



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL
REVENUE AND COMMISSIONER
OF CUSTOMS,

G.R. No. 215705-07

Petitioners,

Present:

CARPIO, J., Chairperson,
LEONARDO-DE CASTRO,*
PERALTA,
MENDOZA, and
LEONEN, JJ.

- versus -

Promulgated:

PHILIPPINE AIRLINES, INC.,
Respondent.

22 FEB 2017

x ----- x

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* seeking the reversal and setting aside of the Decision¹ and Resolution² of the Court of Tax Appeals (CTA) *En Banc*, dated April 30, 2014 and December 16, 2014, respectively, in CTA EB Nos. 1029, 1031 and 1032. The assailed judgment affirmed the January 17, 2013 Decision³ and June 4, 2013 Resolution⁴ of the CTA Special 2nd Division in CTA Case No. 8153.

The controversy in the instant case, which gave rise to the present petition for review on *certiorari*, revolves around the interpretation of the

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated March 5, 2015.

¹ Penned by Associate Justice Erlinda P. Uy with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, Annex "A" to Petition; *rollo*, Vol. I, pp. 155-174. Presiding Justice, Roman G. Del Rosario wrote a Dissenting Opinion; *rollo*, Vol. I, pp. 175-189.

² Annex "B" to Petition, *id.* at 43-45. This time, Presiding Justice Del Rosario concurred with the majority opinion.

³ Penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justices Caesar A. Casanova and Cielito N. Mindaro-Grulla, Annex "I" to Petition; *rollo*, Vol. I, pp. 484-508.

⁴ Annex "K" to Petition; *rollo*, Vol. II, pp. 607-615.

provisions of Presidential Decree No. 1590 (*PD 1590*), otherwise known as “An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air Transport Services in the Philippines and Other Countries” *vis-a-vis* Republic Act No. 9334 (*RA 9334*), otherwise known as “An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 145, and 228 of the National Internal Revenue Code of 1997.” PD 1590 was enacted on June 11, 1978, while RA 9334 took effect on January 1, 2005.

Prior to the effectivity of RA 9334, Republic Act No. 8424 (*RA 8424*), otherwise known as the “Tax Reform Act of 1997,” was enacted and took effect on January 1, 1998, thereby amending the National Internal Revenue Code (NIRC). Section 131 of the NIRC, as amended by RA 8424, provides:

SEC. 131. *Payment of Excise Taxes on Imported Articles.* –

(A) *Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon: *Provided, however,* That this shall not apply to cigars and cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and are not transshipped to any other port in the Philippines: *Provided, further,* That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon: *Provided, still further,* That if such articles directly imported by a government-owned and operated duty-free shop like the Duty-Free Philippines, shall be labeled “tax and duty-free” and “not for resale”: *Provided, still further,* That is such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such

introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General manager of the Philippine Tourism Authority.

The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

(B) Rate and Basis of the Excise Tax on Imported Articles.- Unless otherwise specified imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles.⁵

On January 1, 2005, RA 9334 took effect, Section 6 of which amended the abovequoted Section 131 of the NIRC and, accordingly, reads as follows:

SEC. 131. *Payment of Excise Taxes on Imported Articles.* –

(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

"In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

"The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under

⁵ Emphasis supplied.

Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further,* That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory."

"Cigars and cigarettes, distilled spirits and wines within the premises of all duty-free shops which are not labelled as hereinabove required, as well as tax and duty-free articles obtained from a duty-free shop and subsequently found in a non-duty-free shop to be offered for resale shall be confiscated, and the perpetrator of such non-labelling or re-selling shall be punishable under the applicable provisions of this Code.

"Articles confiscated shall be disposed of in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue, upon consultation with the Secretary of Tourism and the General Manager of the Philippine Tourism Authority.

"The tax due on any such goods, products, machinery, equipment or other similar articles shall constitute a lien on the article itself, and such lien shall be superior to all other charges or liens, irrespective of the possessor thereof.

"(B) *Rate and Basis of the Excise Tax on Imported Articles.* - Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."⁶

The amendment increased the rates of excise tax imposed on alcohol and tobacco products. It also removed the exemption from taxes, duties and charges, including excise taxes, on importations of cigars, cigarettes, distilled spirits, wines and fermented liquor into the Philippines.

Thereafter, PAL's importations of alcohol and tobacco products which were intended for use in its commissary supplies during international flights, were subjected to excise taxes. For the said imported articles, which arrived in Manila between October 3, 2007 and December 22, 2007, PAL was assessed excise taxes amounting to a total of ₱6,329,735.21.

⁶ Emphasis supplied.

On September 5, 2008, PAL paid under protest. On March 5, 2009, PAL filed an administrative claim for refund of the above excise taxes it paid with the Bureau of Internal Revenue (*BIR*) contending that it is entitled to tax privileges under Section 13 of PD 1590, which provides as follows:

Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

- (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or**
- (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.**

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and



catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;

3. All taxes on lease rentals, interest, fees, and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts, and other property rented, leased, or chartered by the grantee where the payment of such taxes is assumed by the grantee;

4. All taxes on interest, fees, and other charges on foreign loans obtained and other obligations incurred by the grantee where the payment of such taxes is assumed by the grantee;

5. All taxes, fees, and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal and real property of the grantee; and

6. The corporate development tax under Presidential Decree No. 1158-A.

The grantee, shall, however, pay the tax on its real property in conformity with existing law.

For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

- (a) To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and
- (b) To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.⁷

Considering that the two-year prescriptive period for filing a judicial claim for refund was about to expire and the BIR was yet to act on its claims, PAL filed a judicial claim for refund, via a petition for review, with the CTA on September 2, 2010. The case, docketed as CTA Case No. 8153, was raffled-off to the Second Division of the tax court.

⁷

Emphasis supplied.



Respondent CIR filed his Answer, while respondent COC was declared in default for failure to file his Answer and Pre-Trial Brief. Thereafter, trial ensued.

On January 17, 2013, the CTA Second Division issued a Decision⁸ partially granting PAL's claim for refund. The dispositive portion of the said Decision reads:

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondents are hereby **ORDERED to REFUND** to petitioner the amount of ₱2,094,985.21, representing petitioner's erroneously-paid excise tax on September 5, 2008.

SO ORDERED.⁹

The CTA Second Division found that PAL was able to sufficiently prove its exemption from the payment of excise taxes pertaining to its importation of alcoholic products and since it already paid the disputed excise taxes on the subject importation, it is entitled to refund. However, the tax court ruled that, with respect to its subject importation of tobacco products, PAL failed to discharge its burden of proving that the said product were not locally available in reasonable quantity, quality or price, in accordance with the requirements of the law. Thus, it is not entitled to refund for the excise taxes paid on such importation.

The herein parties filed separate motions for reconsideration, but these were all denied by the CTA Second Division in its Resolution dated June 4, 2013.

Consequently, the parties appealed to the CTA *En Banc* via separate petitions for review, docketed as CTA EB Nos. 1029, 1031 and 1032, which were later consolidated.

On April 30, 2014, the CTA *En Banc* rendered a Decision dismissing the consolidated petitions and affirming *in toto* the assailed Decision of the CTA Second Division.

The parties filed their respective motions for reconsideration, but the CTA *En Banc* denied them in its Resolution dated December 16, 2014.

⁸ Penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justices Caesar A. Casanova and Cielito N. Mindaro-Grulla.

⁹ *Rollo*, pp. 507-508. (Emphasis in the original)



Hence, the instant petition for review on *certiorari* raising a sole issue, to wit:

Whether PAL's alcohol and tobacco importations for its commissary supplies are subject to excise tax.¹⁰

In the present petition, petitioner argues that:

I.

Section 131 of the NIRC revoked PAL's tax privilege under Section 13 of P.D No. 1590 with respect to excise tax on its alcohol and tobacco importation.

II

Assuming that it is still entitled to the tax privilege, PAL failed to adequately prove that the conditions under Section 13 of P.D. No. 1590 were met in this case.¹¹

The main question raised in the instant case is whether the tax privilege of PAL provided in Section 13 of PD 1590 has been revoked by Section 131 of the NIRC of 1997, as amended by Section 6 of RA 9334.

The Court rules in the negative.

This issue is not novel. Thus, as in previous cases resolving the same question and involving substantially similar factual backgrounds, the ruling will not change.

In the fairly recent case of *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc.*,¹² the core issue raised was whether or not PAL's importations of alcohol and tobacco products for its commissary supplies are subject to excise tax. This Court, ruling in favor of PAL, held that:

It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute. So it must be here.

Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in

¹⁰ *Id.* at 119.

¹¹ *Id.* at 119-120.

¹² G.R. Nos. 212536-37, August 27, 2014, 733 SCRA 741.



Commissioner of Internal Revenue v. Philippine Air Lines, Inc [G.R. No. 180066, July 7, 2009, 609 Phil. 695]:

That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. x x x

To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforementioned Sec. 24, has not been demonstrated. And as aptly held by the CTA en banc, borrowing from the same *Commissioner of Internal Revenue* case:

While it is true that Sec. 6 of RA 9334 as previously quoted states that "the provisions of any special or general law to the contrary notwithstanding," such phrase left alone cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. x x x

Noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by 9334, which is a general law, the former necessary prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and other general creates a presumption that the special is considered as remaining an exception to the general, one as a general law of the land and the other as the law of a particular case.

Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*. In that case, the Court, on the premise that the "propriety of a tax refund is hinged on the kind of exemption which forms its basis," declared in no uncertain terms that PAL has "sufficiently prove[d]" its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. x x x¹³



¹³ *CIR, et al. v. PAL, supra*, at 749-751.

In the more recent consolidated cases of *Republic of the Philippines v. Philippine Airlines, Inc. (PAL)*¹⁴ and *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*,¹⁵ this Court, echoing the ruling in the abovesited case of *CIR v. PAL*, held that:

In other words, the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax – whichever is lower – shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax. The phrase "in lieu of all other taxes" includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, provided that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.¹⁶

On July 1, 2005, Republic Act No. 9337 (*RA 9337*) took effect thereby further amending certain provisions of the NIRC. Section 22 of RA 9337 specifically provides as follows:

SEC. 22. Franchises of Domestic Airlines. – The provisions of P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:

(A) The franchise tax is abolished;

(B) The franchisee shall be liable to the corporate income tax;

(C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and

(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.¹⁷

Thus, this Court held in the abovesited PAL consolidated cases:

However, upon the amendment of the 1997 NIRC, Section 22 of R.A. 9337 abolished the franchise tax and subjected PAL and similar

¹⁴ G.R. Nos. 209353-54, July 6, 2015, 761 SCRA 620.

¹⁵ G.R. Nos. 211733-34, July 6, 2015, 761 SCRA 620.

¹⁶ *Commissioner of Internal Revenue, et al. v. PAL, supra* note 12, at 630.

¹⁷ Emphasis supplied.

entities to corporate income tax and value-added tax (VAT). PAL nevertheless remains exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays corporate income tax as granted in its franchise agreement. Accordingly, PAL is left with no other option but to pay its basic corporate income tax, the payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter.¹⁸

It bears to note that the repealing clause of RA 9337 enumerated the laws or provisions of laws which it repeals. However, there is nothing in the repealing clause, nor in any other provisions of the said law, which makes specific mention of PD 1590 as one of the acts intended to be repealed.

Lastly, as in the abovesited cases, petitioners in the present petition again raise the issue regarding PAL's alleged failure to comply with the conditions set by Section 13 of PD 1590 for its imported tobacco and alcohol products to be exempt from excise tax. These conditions are: (1) such supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities; and (2) they are not locally available in reasonable quantity, quality and price.¹⁹ However, as this Court has previously held, the matter as to PAL's supposed noncompliance with the conditions set by Section 13 of P.D. 1590 for its imported supplies to be exempt from excise tax, are factual determinations that are best left to the CTA, which found that PAL had, in fact, complied with the above conditions.²⁰ The CTA is a highly specialized body that reviews tax cases and conducts trial *de novo*. Thus, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court.²¹

WHEREFORE, the instant petition for review on certiorari is **DENIED**. The assailed Decision and Resolution of the Court of Tax Appeals En Banc, dated April 30, 2014 and December 16, 2014, respectively, in CTA EB Nos. 1029, 1031 and 1032 are **AFFIRMED**.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

¹⁸ *Id.* at 630-631.

¹⁹ *Commissioner of Internal Revenue, et al. v. Philippine Airlines, Inc.*, *supra* note 12.

²⁰ *Id.*; *Republic v. Philippine Airlines, Inc./Commissioner of Customs v. Philippine Airlines, Inc.*, *supra* notes 14 and 15.

²¹ *Id.*

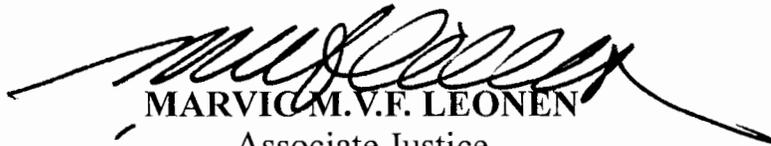
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Jose Caural Mendoza
JOSE CAURAL MENDOZA
Associate Justice



MARVIC M. V. F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice