



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **05 February 2020** which reads as follows:*

“G.R. No. 243260 (*Commissioner of Internal Revenue v. Air Philippines Corporation*). — This is a petition for review on *certiorari*¹ taken under Rule 45 of the Rules of Court seeking to nullify the Decision² dated May 21, 2018 and the Resolution³ dated November 13, 2018 rendered by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB Case No. 1545. The CTA EB affirmed the Amended Decision⁴ dated July 1, 2016 and Resolution⁵ dated October 10, 2016 rendered by the Court of Tax Appeals (CTA) Third Division in CTA Case Nos. 8039, 8069, 8104, and 8113.

Factual Antecedents

Air Philippines Corporation (respondent) is engaged in the business of air transportation of passengers and cargoes to and from points within and outside the Philippines, pursuant to its legislative franchise, Republic Act (RA) No. 8339, as amended by RA No. 9215.⁶

R.A. No. 8339, as amended by R.A. No. 9215 in relation to Section 13 of the Presidential Decree (PD) No. 1590, granted the respondent a tax exemption from excise tax on its importations of aviation turbo jet fuel for its domestic flight operations.⁷

¹ *Rollo*, pp. 10-84.

² Penned by Associate Justice Cielito N. Mindaro-Grulla concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan; *id.* at 94-116.

³ *Id.* at 118-126.

⁴ *Id.* at 128-148. Penned by Associate Justice Ma. Belen M. Ringpis-Liban concurred by Associate Justice Lovell R. Bautista. Associate Justice Esperanza R. Fabon-Victorino on leave.

⁵ *Id.* at 150-156.

⁶ *Id.* at 96.

⁷ *Id.* at 96-97.

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However, on January 29, 2003, the Bureau of Internal Revenue (BIR) Commissioner issued BIR Ruling No. 001-2003, addressed to respondent, Philippine Airlines (PAL), Cebu Air Inc. (CAI), and Pacific Airways Corporation, the significant parts of which reads:

In the light of the Certification of the Department of Energy dated December 20, 2002 that aviation gas, fuel and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, it is the considered opinion of this Office that there is now an absence of the second condition required for the airlines to continue to enjoy tax exemption on their importations of petroleum products for domestic operations as stated in Section 13 of PAL's Charter (PD 1590, as amended by LOI 1483) and which condition applies *ipso facto* to other airlines. Accordingly your importations may not be given the same treatment as before for as long as there is such available domestic supply of petroleum products.

This Ruling, therefore, supersedes the above rulings and all such other ruling that may be contrary to the intent of this Ruling, and constitutes the final decision of this Office on the matter.⁸

In light of the foregoing BIR Ruling, the Commissioner of Internal Revenue (petitioner), acting through the Commission on Customs (COC), assessed the respondent for specific taxes on its importations of Jet A-1 aviation fuel used for its domestic operations.⁹

From March 2008 to October 2008, the respondent made importations and paid its corresponding specific taxes under protest. The respondent filed formal written protests for refund with the District Collector of Customs, Port of Batangas, Batangas City, on the following importations:¹⁰

Date of Importation	Date of Payment Under Protest	Date of Filing of Protest	Amount Involved in Php (₱)
March 1, 2008	March 19, 2008	April 1, 2008	14,762,792.00
March 13, 2008	April 10, 2008	April 23, 2008	5,872,385.00
April 29, 2008	May 7, 2008	May 22, 2009	23,649,135.00
June 4, 2008	June 27, 2008	July 8, 2008	17,754,847.11
August 23,	September	October 3,	2,966,116.00

⁸ Id. at 101.

⁹ Id.

¹⁰ *Rollo*, p. 102.

2008	18, 2008	2008	
September 24, 2008	October 10, 2008	October 24, 2008	3,557,423.00
October 22, 2008	October 31, 2008	November 13, 2008	5,935,311.00

The alleged inaction of the petitioner on the written claims for refund prompted the respondent to file four petitions for review before the CTA, praying for the refund in the aggregate amount of Seventy Four Million Four Hundred Ninety-Eight Thousand Nine Pesos and 11/100 (₱74,498,009.11), broken down as follows:¹¹

CTA Case No.	Date of Importation	Amount of Specific Tax Involved
8039	March 1, 2008	₱14,762,792.00
8069	March 13, 2008	₱5,872,385.00
8104	April 29, 2008	₱23,649,135.00
8113	June 4, 2008	₱17,754,847.11
	August 23, 2008	₱2,966,116.00
	September 23, 2008	₱3,557,423.00
	October 22, 2008	₱5,935,311.00

Afterwards, the CTA granted the respondent's motions to consolidate CTA Case Nos. 8039, 8069, 8104, and 8113.¹²

Ruling of the CTA Division

On July 13, 2015, the CTA division promulgated a Decision¹³ denying the respondent's petition, to wit:

WHEREFORE, premises considered, petitioner Air Philippines Corporation's claim for refund is hereby **DENIED**.

SO ORDERED.¹⁴

The CTA division ruled that one of the three requirements for the respondent's tax exemption under Section 13 of PD No. 1590 was not fulfilled. To be specific, the third requisite is absent because the imported Jet A-1 fuel was allegedly locally available in reasonable quantity. According to the testimony of Glendalyn Dela Cruz (Dela Cruz), and her tabular reports on Product Importation, Product Exportation, Refinery Production, Total Industry Petroleum Products Demand for 1998 to first quarter of 2010 and Supply Demand Balance for 2001 to 2010, the composition of the total local

¹¹ Id. at 190.

¹² Id. at 103.

¹³ Id. at 190-230.

¹⁴ Id. at 229.

available supply of petroleum pertains to the sum of three components, namely: Refinery Production, Product Importation and Inventory.¹⁵ In view of the foregoing definition of local available supply and the reported demands of the local market, the local supply of Jet A-1 fuel was deemed sufficient by the CTA division.¹⁶

The CTA division acknowledged that a perusal of the document submitted by the respondent, denominated as Comparison of the Cost of Importation of Aviation Turbo Jet Fuel or Jet A-1 and the Cost of Domestic Purchases of Locally Available Turbo Jet Fuel or Jet A-1 for the Period of February to October 2008 Using the Price Quotation Issued to the Company by Pilipinas Shell Petroleum Corporation, showed that even if the specific taxes and customs duties are not considered as part of the local price of Jet A-1 fuel, the total cost of purchasing it locally is still greater than the total cost of its importation.¹⁷ However, the respondent's claim for tax refund was denied for failure to prove that Jet A-1 fuel is available locally in reasonable quantity.¹⁸

Dissatisfied, the respondents filed a motion for reconsideration.

On July 1, 2016, the CTA division promulgated an Amended Decision reversing itself and granting the respondent's petition, to wit:

WHEREFORE, petitioner's Motion for Reconsideration, the Supplement to Motion, and the Second Supplement to Motion for Reconsideration are **GRANTED**.

The Decision dated July 13, 2015 is **AMENDED** to the extent that the Petition for Review in CTA Case Nos. 8039, 8069, 8104 & 8114 are **GRANTED**. Respondents are **ORDERED TO REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in petitioner's favor in the amount of **SEVENTY FOUR MILLION FOUR HUNDRED NINETY-EIGHT THOUSAND NINE AND 11/100 PESOS (P74,498,009.11)**, representing specific taxes paid under protest corresponding to its importations of Jet A-1 fuel for its domestic operations for the period of March 2008 to October 2008.

SO ORDERED.¹⁹

This time, the CTA division gave more probative value to the testimony of the respondent's expert witness, former Secretary of the Department of Energy (DOE), Mario V. Tiaoqui (Tiaoqui), who testified that "local supply" and "locally available supply" are equivalent to, and have

¹⁵ Id. at 221.

¹⁶ Id. at 221-229.

¹⁷ Id. at 229.

¹⁸ Id.

¹⁹ *Rollo*, p. 147.

always been deemed to be equivalent to local refinery, which necessarily excludes imported items.²⁰ The CTA division also ruled that the meaning of the phrase “domestic petroleum products” is synonymous to or encompassing the phrase “locally available” supply.²¹ Accordingly, imported Jet A-1 fuel is excluded in the computation of locally available supply of aviation fuel.

Moreover, citing *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*,²² the CTA division mentioned that the requirement for the importations of Jet A-1 fuel to be exempted from tax is alternative, not cumulative. Thus, to avail of tax exemption under PD 1590, it will suffice for the petitioner to prove the absence of just one of the three qualifications, *i.e.* the Jet A-1 fuel should not be locally available in reasonable quantity, quality or price.²³

In this case, based on the Independent Certified Public Accountant (ICPA) reports submitted, even if the specific taxes and customs duties were not considered as part of the local price of Jet A-1 fuel, the total cost of purchasing it locally would still be significantly greater than the total cost of importation.²⁴ The petitioner was able to prove that the aviation fuel is not locally available in reasonable price for the period of March 2008 to October 2008.²⁵ Consequently, the CA found that all the requirements for exemption from excise taxes on respondent’s importation of Jet A-1 fuel were proven.

After the petitioner’s motion for reconsideration was denied for lack of merit,²⁶ the petitioner filed a Petition for Review to the CTA EB on November 2, 2016.

Ruling of CTA EB

On May 21, 2018, the CTA EB promulgated a Decision denying the petitioner’s petition for review, to wit:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Amended Decision dated July 1, 2016 and the Resolution dated October 10, 2016 are hereby **AFFIRMED**.

SO ORDERED.²⁷

²⁰ Id. at 137-138.

²¹ Id. at 143.

²² CTA Case Nos. 7767, 7791, 7807, 7816, 7837, 7839, 7851, June 10, 2016.

²³ *Rollo*, p. 143.

²⁴ Id. at 147.

²⁵ Id.

²⁶ See Resolution dated October 10, 2016 of the CTA division; id. at 150-156.

²⁷ *Rollo*, p. 115.

The CTA EB found no new and compelling averments to reverse the Amended Decision of the CTA division. It cited a similar tax case, *Air Philippines Corporation v. Commissioner of Internal Revenue and Commissioner of Customs*,²⁸ which ruled that respondent's importation is supported by Certifications issued by the Air Transportation Office (ATO), stating to the effect that the imported Jet A-1 aviation fuel was not locally available in reasonable quantity, quality and price, and is necessary/incidental for the operation of the respondent.²⁹ These ATO Certifications were given weight pursuant to Section 44, Rule 130 of the Rules of Court, to wit:

SEC. 44. *Entries in official records.*- Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.³⁰

The CTA EB ruled that the issuance of ATO certifications, with respect to whether aviation fuel were not locally available in reasonable quantity, quality or price, was consistent with the general power of ATO (Now Civil Aviation Authority of the Philippines [CAAP]) under Section 32 and 35 of its charter, R.A. No.776, to wit:

SECTION 32. Powers and duties of the Administrator. - Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:

(1) To carry out the purposes and policies established in this Act; to enforce the provisions of, the rules and regulations issued in pursuant to, said Act, and he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters.

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(21) To cooperate, assist and coordinate with any research and technical studies on design, materials, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances and air navigation facilities including aircraft fuel and oil; Provided, That nothing in this Act shall be construed to authorize the duplication of the laboratory research, activities or technical studies of any existing governmental agency.³¹ (Underscoring supplied.)

²⁸ CTA Case Nos. 7630, 7642, 7643, 7673, 7712, & 7734, December 1, 2015.

²⁹ *Rollo*, p. 111.

³⁰ *Id.* at 112.

³¹ *Id.* at 112-113.

The CTA EB also gave more credence to the testimony of the former Secretary of DOE Tiaoqui, and ruled that imported aviation fuel should not be included in the term “locally available supply.”³² It agreed with the CTA division that if locally available Jet A-1 fuel includes both local production and imports, there will never be an instance when the Jet A-1 fuel available is insufficient to meet the demands of the domestic market.³³

It was noted that the 2002 DOE Certification invoked by the petitioner, and on which the 2003 BIR Ruling is solely based, was already declared null and void by a Regional Trial Court Decision in a different case.³⁴ The DOE Certification was also considered irrelevant because it was based on a 2002 report while the subject Jet A-1 fuel refers to the supply for year 2008.³⁵

Furthermore, based on the ICPA’s Financial and Supplemental Reports, the respondent was able to prove that the subject Jet A-1 fuel is not locally available in reasonable price, qualifying the respondent to the tax exemption.³⁶

From the said adverse decision, the petitioner and COC separately filed their Motions for Reconsideration which were both denied in a Resolution dated November 13, 2018.

Unfazed, the petitioner filed the instant petition.

The Issue

Whether or not the CTA EB committed a reversible error in ruling that the respondent is entitled to tax exemption for its importation of the subject Jet A-1 fuel

The Ruling of this Court

The petition is bereft of merit.

A cursory reading of the present petition for review on *certiorari* under Rule 45 of the Rules of Court reveals that it is mainly just a reiteration of factual issues and arguments raised by petitioner in their appeal, which had already been fully passed upon by the CTA. Specifically, the petitioner claims that there is sufficient locally available aviation fuel in reasonable quantity, quality or price because the DOE, the alleged proper authority, issued a certification to that effect. However, both the CTA division and CTA EB found the absence of locally available aviation fuel in

³² Id. at 113.

³³ Id.

³⁴ Id.

³⁵ *Rollo*, p. 114.

³⁶ Id.

reasonable quantity, quality or price. The CTA was convinced by the certification issued by the ATO, now known as CAAP, the evidence presented to prove the sufficiency of locally available aviation fuel in reasonable quantity, quality or price.

In other words, there are two different and contradicting certifications presented before the lower courts, one of them was issued by the ATO, now known as CAAP, and the other by the DOE. In essence, what the petitioner asks from this Court is a re-evaluation of the certifications and other relevant evidence already presented and reviewed by the CTA to determine again which of the certifications held more evidentiary weight. Clearly, this is a question of fact which cannot be raised before this Court, except for recognized exceptions.

Under Section 1, Rule 45 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari*.³⁷ It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court.³⁸ In fact, the rule finds greater significance with respect to the findings of specialized courts, such as the CTA, the conclusions of which are not lightly set aside because of the very nature of its functions which is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject.³⁹

Moreover, this case clearly falls under none of the recognized exceptions. The petitioner's self-serving assertions that the CTA acted with grave abuse of discretion and missappreciated the evidence on record failed to convince this Court. Instead, this Court accords the findings and conclusions of the CTA with the highest respect.⁴⁰ As a specialized court dedicated exclusively to the resolution of tax problems, the CTA has accordingly developed an expertise on the subject of taxation.⁴¹ Thus, its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the part of the tax court.⁴² In the instant case, the assailed CTA Decision is supported by substantial evidence, as can be gleaned from the quantity and quality of the testimonial and documentary evidence

³⁷ *Pacual v. Burgos, et al.*, 776 Phil. 167, 182 (2016).

³⁸ *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, 762 Phil. 450, 459 (2015).

³⁹ *Id.* at 459.

⁴⁰ *Sitel Philippines Corporation (formerly Clientlogic Phils. Inc.) v. Commissioner of Internal Revenue*, 805 Phil. 464, 480 (2017), citing *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, 529 Phil. 785, 794 (2006).

⁴¹ *Id.*, citing *Rizal Commercial Banking Corp. v. Commissioner of Internal Revenue*, 672 Phil. 514, 530 (2011), further citing *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil. 239, 246 (1999).

⁴² *Id.*, citing *Rizal Commercial Banking Corp. v. Commissioner of Internal Revenue*, *id.*, further citing *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, 628 Phil. 430, 467-468 (2010), citations omitted.

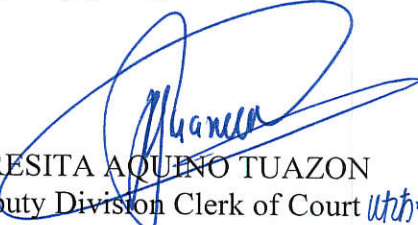
presented. There is also no legal and factual basis to support the allegation of CTA's abuse of authority.

In light of the foregoing, none of the recognized exceptions to Rule 45, Section 1 of the Rules of Court exists in the instant case. Thus, this Court does not find any compelling reason to review the factual findings of the CTA.

WHEREFORE, the petition is **DENIED**. The assailed Decision dated May 21, 2018 and the Resolution dated November 13, 2018 rendered by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB Case No. 1545 is **AFFIRMED**.

SO ORDERED." (Hernando, J., on official leave)

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Utch 6/18*

18 JUN 2020

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