Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES, rep. by the COMMISSIONER OF CUSTOMS,
Petitioner,

- versus -

PHILIPPINE AIRLINES, INC. (PAL),
Respondent.

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G.R. Nos. 209353-54

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE AIRLINES, INC. (PAL),
Respondent.

G.R. Nos. 211733-34

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:
JUL 0 6 2015

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RESOLUTION

SERENO, *CJ:*

Before the Court are consolidated Petitions for Review on *certiorari* assailing the Decision of the Court of Tax Appeals *en banc* (CTA *en banc*) dated 9 September 2013[1] in C.T.A. EB Nos. 920 and 922. Petitioner

[1] *Rollo* (G.R. Nos. 209353-54), pp. 97-135; penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Esperanza R. Fabon-Victorino, with dissents by Presiding Justice Roman G. del Rosario and Associate Justice Ma. Belen M. Ringpis-Liban.

Commissioner of Internal Revenue (CIR) also assailed the appellate court's Resolution dated 10 March 2014[2] in the same consolidated cases.

THE FACTS

The case stemmed from a claim for a refund by respondent Philippine Airlines, Inc. (PAL) of the amount of □4,469,199.98 representing the alleged erroneously paid excise tax for the period covering July 2005 to February 2006. On 18 January 2007, PAL filed written claims for a refund with the Bureau of Internal Revenue (BIR). For failure of the BIR to act on the administrative claim, PAL filed two separate Petitions for Review with the CTA on 30 July 2007 and 21 December 2007, docketed as C.T.A. Case Nos. 7665 and 7713, respectively.

The CTA consolidated the two Petitions and tried them jointly. On 17 April 2012, the CTA Second Division rendered a Decision granting the Petitions and ordered the CIR and the Commissioner of Customs (COC) to refund PAL in the total amount of □4,469,199.98.

On 23 April 2012 and 4 May 2012, the CIR and the COC filed their respective Motions for Reconsideration, which were both denied in a Resolution dated 28 June 2012.

C.T.A. EB No. 920

The CIR, in its Petition for Review before the CTA *en banc*, raised the issue of whether PAL is entitled to a tax refund of the alleged erroneously paid excise tax. The CIR argued that Presidential Decree (P.D.) No. 1590,[3] particularly Section 13 thereof, had already been expressly amended by Republic Act (R.A.) No. 9334.[4] Moreover, PAL failed to prove that the alleged commissary supplies were not locally available in reasonable quantity, quality and price considering that no independent credible evidence was presented but merely PAL's own employee where testimony was self-serving and not comprehensive.

C.T.A. EB No. 922

A separate Petition for Review was filed before the CTA *en banc* by the COC. The latter argued that the case should have been dismissed outright, as it stated no cause of action against petitioner, which merely acted as a collecting agent for the CIR. The COC further alleged that PAL had also failed to exhaust the latter's administrative remedies with the former. Finally, like the CIR, the COC maintained that Sections 6 and 10 of R.A. 9334 had repealed Sections 13 and 24 of P.D. 1590.

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[2] *Rollo* (G.R. Nos. 211733-34), pp. 115-123.

[3] An Act Granting A New Franchise To Philippine Airlines, Inc. To Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries.

[4] An Act Increasing the Excise Tax Rates Imposed On Alcohol and Tobacco Products, Amending for the Purpose Sections 131,141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as amended.

THE RULING OF THE CTA *En Banc*

The appeals were consolidated. The CTA *en banc* denied both Petitions and ruled that R.A. 9334 was not expressly repealed by P.D. 1590. The tax court also emphasized that P.D. 1590 is a special law that governs the franchise of PAL, while R.A. 9334 is a general law, and therefore P.D. 1590 must prevail. The CTA held that reliance by petitioners on *Cagayan Electric Power Light Co. Inc. v. CIR*[5] is also misplaced. In that case, there was an express repeal of R.A. 5431, as all corporate taxpayers not expressly exempted under that law and under Section 27 of the Tax Code were subjected to income tax.

The CTA ruled that respondent PAL was entitled to a refund of excise taxes paid on the latter's commissary supplies. The appellate court explained that the exemption granted to PAL under P.D. 1590 was not expressly repealed by R.A. 9334. The CTA found that PAL had opted to pay the latter's basic corporate income tax for the fiscal year ending 31 March 2006. The court also found that the articles imported were intended for the operations of PAL and were not locally available in reasonable quantity, quality or price. The latter is therefore entitled to a refund of erroneously paid excise tax in the total amount of □4,469,199.98.

THE PETITIONS

The COC, instead of filing a motion for reconsideration with the CTA, directly filed a Petition before this Court. The COC assailed the Decision of the CTA e*n banc* in C.T.A. EB Nos. 920 and 922, herein docketed as G.R. Nos. 209353-54.

On the other hand, the CIR appealed the Decision dated 9 September 2013 and Resolution dated 10 March 2014 on its Motion for Reconsideration herein docketed as G.R. Nos. 211733-34.

ISSUE

Both Petitions raise similar issues, which boil down to the principal one of whether Sections 6 and 10 of R.A. 9334 repealed Section 13 of P.D. 1590.

THE COURT'S RULING

We find no merit in the Petitions.

The controversy before the Court is not novel. In *CIR v. PAL,*[6] the Court has already passed upon the very same issues raised by the same

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[5]223 Phil. 211 (1985).
[6] G.R. Nos. 212536-37, 27 August 2014 .

petitioners. The only differences are the taxable period involved and the amount of refundable tax.

We have held in that case that it is a basic principle in 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 the earlier statute. A reading of the pertinent provisions of P.D. 1590 and R.A. 9334 shows that there was no express repeal of the grant of exemption:

PRESIDENTIAL DECREE NO. 1590[7]

x x x x

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:

x x x x

(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 nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;**

x x x x

SECTION 24. This franchise, as amended, or any section or provision hereof may only be modified, amended, or repealed expressly by a special law or decree that shall specifically modify, amend, or repeal this franchise or any section or provision thereof. (Emphasis supplied)

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[7] Took effect on 11 June 1978.

REPUBLIC ACT NO. 9334[8]

x x x x

SECTION 6. Section 131 of the National Internal Revenue Code of 1997, is amended, is hereby amended to read 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 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 on introduction into the Philippine customs territory.

x x x x

SECTION 10. *Repealing Clause*. — All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly. (Emphasis supplied)

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[8] Took effect on 1 January 2005 (Section 11 of R.A. 9334).

The Court has exhaustively discussed all issues similar to those in the present case in this wise:

> 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 *Commissioner of Internal Revenue v. Philippine Air Lines, Inc.*:[9]
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> > 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 aforequoted 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. . . . (Emphasis supplied)
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> 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.[10]

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

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[9] 609 Phil. 695, 719 (2009).
[10] Supra note 6.

transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

However, upon the amendment of the 1997 NIRC, Section 22[11] of R.A. 9337[12] abolished the franchise tax and subjected PAL and similar 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.

In this case, the CTA found that PAL had paid basic corporate income tax for fiscal year ending 31 March 2006.[13] Consequently, PAL may now claim exemption from taxes, duties, charges, royalties, or fees due on all importations of its commissary and catering supplies, provided it shows that 1) such articles or supplies or materials are imported for use in its transport and nontransport operations and other activities incidental thereto; and 2) they are not locally available in reasonable quantity, quality, or price.

As to the issue of PAL's noncompliance with the conditions set by Section 13 of P.D. 1509 for the imported supplies to be exempt from excise tax, it must be noted that these are factual determinations that are best left to the CTA. The appellate court found that PAL had complied with these conditions.[14] The CTA is a highly specialized body that reviews tax cases and conducts trial *de novo*. Therefore, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court.[15]

In view thereof, we find no cogent reason to reverse or modify the findings of the CTA *en banc*.

WHEREFORE, premises considered, both Petitions are **DENIED** for lack of merit.

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[11]SECTION 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.

[12] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of The National Internal Revenue Code of 1997, as amended, and For Other Purposes.

[13] Decision in C.T.A. Case Nos. 7665 and 7713, *rollo*, pp.299-300.

[14] Id. at 300-302.

[15] *Commissioner of Internal Revenue v. United International Pictures,* 597 Phil. 1, 4 (2009).

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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