Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Petitioners,	**G.R. Nos. 245330-31**
	Present:
	CAGUIOA, *Chairperson,*
	INTING,
	GAERLAN,
- versus -	DIMAAMPAO, and
	SINGH, *JJ.*
PHILIPPINE AIRLINES, INC., Respondent.	Promulgated:
	April 1, 2024
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DECISION

DIMAAMPAO, *J.:*

This Petition for Review on *Certiorari*[1] oppugns the Decision[2] and the Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Nos. 1488 and 1494, which affirmed respondent Philippine Airlines, Inc. (PAL)'s entitlement to refund of the specific taxes it paid for the importation of Jet A-1 aviation fuel between April to June of 2015, and which denied both Motions for Reconsideration[4] filed by petitioners Commissioner of Internal Revenue (CIR) and Commissioner of Customs (COC).

The facts of this case are uncomplicated.

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1 *Rollo* (vol. 1), pp. 12–132.
2 *Id.* at 134–159. The July 26, 2018 CTA Decision was penned by Associate Justice Erlinda P. Uy, with the concurrence of Presiding Justice Roman G. Del Rosario, and Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan.
3 *Id.* at 161–164. Dated February 20, 2019.
4 *Id.* at 229–242 and 243–266.

Under its statutory franchise,[5] PAL is exempt from the payment of taxes and duties 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,"[6] as long as such articles, supplies, or materials are "for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price."[7] The Bureau of Internal Revenue (BIR) confirmed PAL's exemption in its BIR Ruling No. 13-99.[8]

On January 29, 2003, however, the BIR issued BIR Ruling No. 001-2003,[9] which revoked the earlier issuance. Relying on the Certification dated December 20, 2002 of the Department of Energy (DOE), stating that aviation gas, fuel, and oil for use in domestic operation of domestic airline companies are locally available in reasonable quantity, quality, and price, the BIR declared that PAL's importations would no longer be tax-exempt "for as long as there is such available domestic supply of petroleum products."[10]

Thereafter, on various dates between April to June of 2005, PAL imported Jet A-1 fuel and paid the corresponding specific taxes due thereon under protest.[11]

PAL then lodged a request for refund with the CIR for the specific taxes it paid in the total amount of PHP 258,629,496.00. When its request remained unacted, PAL filed a judicial claim for refund before the CTA on May 7, 2007, through a Petition for Review.[12]

Both the CIR and the COC filed their respective Answers[13] to the Petition and raised similar special and affirmative defenses, to wit: (1) PAL failed to exhaust all administrative remedies; (2) BIR Ruling No. 001-2003 is a valid interpretation of the provisions of the Tax Code; (3) PAL failed to appeal BIR Ruling No. 001-2003 to the Secretary of Finance in accordance with the Tax Code; (4) in essence, PAL asked the CTA to overturn the factual determinations of the DOE in pursuing its refund claim, which cannot be allowed under the doctrine of separation of powers; and (5) the specific taxes

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5 Presidential Decree No. 1590 (1978), An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Between the Philippines and Other Countries.

6 Presidential Decree No. 1590, sec. 13 (2). (Emphasis supplied)

7 *Id.*

8 Issued to respondent on January 29, 1999. *See* Decision of the CTA *En Banc* in CTA EB No. 1488 and 1494, *rollo* (vol. 1), p. 137.

9 Issued to respondent, Cebu Air Inc., Air Philippines Corporation, and Pacific Airways Corporation on January 29, 2003. *Id.* at 137–138.

10 *Id.* at 138.

11 *Id.*

12 *Id.*

13 *Id.* at 301–307 and 308–314.

purportedly paid in May and June of 2005 were not properly documented.[14]

The case then proceeded to trial.[15] After the formal offer of evidence and submission of memoranda by the parties, the case was deemed submitted for decision. However, PAL filed a Motion to Reopen Trial and/or Leave of Court to File Supplemental Memorandum,[16] which was granted by the CTA Second Division in its January 20, 2015 Resolution.[17] Thereafter, the case was again submitted for resolution.

In its original Decision,[18] the CTA Second Division partially granted the Petition and ordered the CIR and the COC to refund or issue a tax credit certificate in favor of PAL in the reduced amount of PHP 88,542,854.00.[19] The CTA found that PAL was able to satisfy the conditions provided under Section 13 of Presidential Decree No. 1590, which would qualify its importations for tax exemption. Nevertheless, the CTA ratiocinated that it could not grant the full amount claimed by PAL given that certain official receipts evidencing payment of specific taxes were denied admission for PAL's failure to present the original receipts.[20]

Thereafter, the CIR and the COC filed their separate Motions for Partial Reconsideration,[21] whereas PAL filed a Motion for Partial Reconsideration of Decision and/or to Reopen the Case for Presentation of Evidence on May 13, 2016.[22] In its Resolution,[23] the CTA Second Division resolved to grant respondent's Motion, while denying CIR and COC's similar bids for reconsideration.

PAL then presented an additional witness and other documentary exhibits in the subsequent hearings conducted by the CTA.[24]

In the meantime, the CIR filed a Petition for Review[25] before the CTA

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14 *Id.* at 302–305 and 309–313, Answers of Commissioner of Internal Revenue and Commissioner of Customs.

15 *Id.* at 139, *see* Decision of the CTA *En Banc* in CTA EB No. 1488 and 1494.

16 *Rollo* (vol. 2), pp. 847–854, Motion to Reopen Trial and/or For Leave of Court to File Supplemental Memorandum.

17 *Id.* at 844–846. The January 20, 2015 Resolution was signed by Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova and Amelia R. Cotangco-Manalastas of the Second Division of the Court of Tax Appeals, Quezon City.

18 *Rollo* (vol. 1), pp. 166–194. The May 3, 2016 Decision was penned by Associate Justice Amelia R. Cotangco-Manalastas, with the concurrence of Associate Justices Juanito C. Castañeda Jr. and Caesar A. Casanova of the Second Division, Court of Tax Appeals, Quezon City.

19 *Id.* at 193, *see* Decision of the CTA Second Division in CTA Case No. 7632.

20 *Id.* at 184–192.

21 *Rollo* (vol. 2), pp. 898A–912 and 913–944, Motions for Partial Reconsideration of the Commissioner of Internal Revenue and Commissioner of Customs.

22 *Id.* at 945–963, Motion for Partial Reconsideration of Decision and/or to Reopen Case for Presentation of Evidence of Philippine Airlines, Inc.

23 *Rollo* (vol. 1), pp. 203–211. The July 12, 2016 Resolution was signed by Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas. Associate Justice Caesar A. Casanova was on wellness leave.

24 *Id.* at 141–142, Decision, CTA EB No. 1488 and 1494.

25 *Rollo* (vol. 2), pp. 1009–1046.

En Banc, docketed as CTA EB No. 1488. The COC likewise filed its own Petition,[26] which was docketed as CTA EB No. 1494. The two cases were then consolidated given that they arose from the same assailed rulings of the CTA Second Division in CTA Case No. 7632.[27]

Eventually, the CTA Second Division issued its September 9, 2016 Amended Decision[28], which increased the amount originally ordered to be refunded to PAL from PHP 88,542,854.00 to PHP 258,629,494.00.

The CIR moved for reconsideration from the Amended Decision, but this was rejected by the CTA Second Division in its January 9, 2017 Resolution.[29] Consequently, the CIR filed a Supplement to the Petition for Review[30] before the CTA *En Banc* to inveigh against the Amended Decision.

The Petitions, including the Supplement filed by the CIR, were given due course and the parties were directed to submit their respective memoranda. Thereupon, the case was deemed submitted for decision.[31]

In the challenged Decision, the CTA *En Banc* denied the Petitions for lack of merit and affirmed the assailed rulings of the CTA Second Division, as modified by its Amended Decision.[32] The CTA *En Banc* declared that PAL was able to sufficiently prove the existence of the requisites laid down under Section 13 of Presidential Decree No. 1590 in order for its importations to qualify for tax exemption. With regard to the requisite that the imported articles or goods must be used in PAL's transport and non-transport operations, the CTA *En Banc* held that the Authority to Release Imported Goods (ATRIGs) submitted by PAL constituted sufficient proof thereof. ATRIGs were issued by the CIR and/or his duly authorized representatives, upon verification and processing of the importation documents submitted by taxpayers and may be regarded as entries in official records which constitute *prima facie* evidence of the facts therein stated. Thus, the contents in the subject ATRIGs — to the effect that the Jet A-1 aviation fuel "will be used exclusively for domestic flight operation" or "will be used exclusively for daily domestic flight operation" — must be given weight. The ATRIGs were also further supported by the testimony of the witnesses presented by PAL.[33] As to the other requisite that aviation fuel was not legally available in reasonable quantity, quality, or price during the time of importation, the CTA *En Banc* agreed with PAL that the Certification issued by the Air Transportation Office (ATO) to that effect was in line with its general powers under its charter. Likewise, the Certification also stood as *prima facie* evidence of the facts stated therein. The

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26 *Id.* at 1054–1154.
27 *See rollo* (vol. 1), p. 142. Decision of the CTA EB in CTA EB No. 1488 and 1494.
28 *Id.* at 196–201, Amended Decision of CTA Second Division in CTA Case No. 7632.
29 *Id.* at 213–218, Resolution of the CTA Second Division in CTA Case No. 7632.
30 *Rollo* (vol. 3), pp. 1272–1302. Supplement to the Petition for Review.
31 *See rollo* (vol. 1), p. 144, Decision in CTA EB No. 1488 and 1494.
32 *Id.* at 158.
33 *Id.* at 150–153.

CTA *En Banc* rejected the CIR and the COC's argument that only the DOE was in a position to determine the local availability of Jet A-1 aviation fuel.[34] The CTA *En Banc* also found no error on the part of the CTA Second Division when it granted PAL's motion to reopen the trial for presentation of additional evidence. It emphasized that the proceedings before the CTA were not strictly governed by the technical rules of evidence.[35]

Both the CIR and the COC moved for reconsideration, but their motions were denied in the disputed Resolution.[36]

Hence, the CIR and the COC, through the Office of the Solicitor General (OSG), instituted the present Petition,[37] arguing that the CTA *En Banc* erred in concluding that PAL was able to prove that the imported aviation fuel would be used for its transport and non-transport operations, and that it was not locally available in reasonable quantity, quality, or price.[38] They likewise maintained that in upholding the CTA Second Division's grant of PAL's motion to reopen the case for presentation of evidence, the CTA *En Banc* violated the well-settled rule that tax refunds are strictly construed against the taxpayer.[39]

Issue

In sooth, the main issue tendered for this Court's resolution is whether or not the CTA *En Banc* erred in upholding PAL's entitlement to a refund of the specific taxes it paid for the importation of Jet A-1 aviation fuel between April to June of 2005.

The Court's Ruling

The Petition must fail.

At the core of this controversy is the proper interpretation and application of Section 13 (2) of Presidential Decree No. 1590, which reads:

> 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:
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> . . . .
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> **The tax paid by the grantee under either of the above alternatives shall**

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34 *Id.* at 153–154.
35 *Id.* at 155–157.
36 *See id.* at 164, Resolution of CTA EB in CTA EB Nos. 1488 and 1494.
37 *Id.* at 12, Petition for Review on *Certiorari*.
38 *Id.* at 41–42.
39 *Id.* at 42.

> **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:
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> . . . .
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> (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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price. (Emphases supplied)

As succinctly opined by the CTA *En Banc,* the foregoing provision lays down three requisites that must concur before PAL's importations may be considered tax-exempt:[40]

1. PAL paid its corporate income tax covering the period when the subject importations were made;

2. The articles, supplies, or materials are imported for PAL's use in its transport and non-transport operations and other activities incidental thereto; and

3. The imported articles, supplies, or materials are not locally available in reasonable quantity, quality, or price.

While PAL's charter was passed in 1978, there had yet to be clear-cut jurisprudence to qualify or interpret the second and third requisites, or to declare what would suffice as competent proof that the imported articles are "for the use of the grantee in its transport and non-transport operations and other activities incidental thereto," and that these are "not locally available in reasonable quantity, quality, or price."

Whenever compliance with these two requisites were raised as issues before the Court, it uniformly declared that these were questions of fact that were best left to the determination of the CTA as a highly specialized body, as may be seen in the cases of *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[41] *Rep. of the Phils. v. Philippine Airlines, Inc. (PAL)*,[42] and *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*[43] Thus, for as long as the CTA's findings were supported by substantial evidence, the Court

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40 *See id.* at 149, Decision of the CTA EB in CTA EB Nos. 1488 & and 1494.
41 742 Phil. 84 (2014) [Per J. Velasco, Jr., Third Division].
42 763 Phil. 108 (2015) [Per C.J. Sereno, First Division].
43 806 Phil. 358 (2017) [Per J. Peralta, Second Division].

deigned to pass upon such issues.

In the case at bench, the CIR and the COC do not dispute the existence of the first requisite and only contend that PAL failed to prove the second and third conditions.[44] Specifically, they asseverate that the CTA *En Banc* abused its authority when it misapprehended the evidence presented by PAL with respect to these two requisites.[45] Thus, they argue that this constitutes an exception to the general rule prohibiting questions of fact in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[46]

Undoubtedly, "when an appeal essentially calls for the re-examination of the probative value of the evidence presented by the appellant, the same raises a question of fact,"[47] as in this case. It is settled that only questions of law may be raised in a petition under Rule 45 given that the resolution of factual issues is the function of the lower courts, whose findings are accorded respect by this Court.[48] "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, unless there has been an abuse or improvident exercise of authority."[49]

However, this rule admits of exceptions such as when the CTA's findings "were not supported by substantial evidence or that it abused its authority."[50] The "party filing the petition, however, has the burden of showing convincing evidence that the appeal falls under one of the exceptions. A mere assertion is not sufficient."[51]

The Court holds that the PAL was able to adduce sufficient proof of compliance with the second and third requisites.

On the second requisite, the CIR and the COC argue that the purported statements in the ATRIGs relied upon by the CTA *En Banc* – that the importations "will be used exclusively for domestic flight operation/s" or "daily domestic flight operations"– were self-serving declarations absent proof that the aviation fuel were actually used in its domestic flight operations. They insist that the information contained in the ATRIGs, having been merely

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44 *See rollo,* p. 46, Petition for Review on *Certiorari.*

45 *Id.* at 45.

46 *Id.*

47 *See Fortune Tobacco Corp. v. Commissioner of Internal Revenue*, 762 Phil. 450, 460 (2015) [Per J. Mendoza, Second Division].

48 *Id.*

49 *Id.*

50 *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division].

51 *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, 823 Phil. 1043, 1065 (2018) [Per J. Leonen, Third Division].

supplied by the importer or its representative, were not within the personal knowledge of either the CIR or its representative. Consequently, the ATRIGs could not be regarded as entries in official records constituting *prima facie* evidence of the facts stated therein as concluded by the CTA *En Banc.*[52] Similarly, they argued that the testimonies and other documentary evidence cited by the CTA did not serve to prove that the aviation fuel was actually used in PAL's transport operations.[53]

The bone of contention for the second requisite rests on whether or not the subject ATRIGs may constitute entries in official records under Section 44 (now Section 46),[54] Rule 130 of the Rules of Court, which reads:

> SECTION 46. *Entries in Official Records.* — Entries in official records made in the performance of his or her 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.

Jurisprudence provides for the following requisites for the above-quoted exception to the hearsay rule to apply:[55]

> (a) that the entry was made by a public officer, or by another person specially enjoined by law to do so;
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> (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and
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> (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.

The CIR and the COC insist that the third requisite is absent given that the contents of the ATRIGs are based merely on the documents and representations of the importer or their broker, hence, the BIR official preparing the same would have no personal knowledge of the facts therein.

This is inaccurate.

The application and subsequent issuance of an ATRIG is not a mechanical process. As provided under Revenue Memorandum Order No. 35-2002, the BIR officer must coordinate with the Bureau of Customs (BOC) if an ocular inspection of the imported articles is necessary or for purposes of laboratory analysis. The BIR officer may likewise refer an application to the

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52 *Rollo,* (vol. I) pp. 47–55, Petition for Review on *Certiorari.*

53 *Id.* at 55–70.

54 *See* 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC). Issued on October 8, 2019.

55 *UCPB General Insurance, Co., Inc. v. Pascual Liner, Inc.*, G.R. No. 242328, April 26, 2021 [Per J. J. Lopez], citing *Sps. Africa v. Caltex (Phil.), Inc.*, 123 Phil. 272 (1966) [Per J. Makalintal, *En Banc*].

Legal Division of the Regional Office or to the Law Division of the National Office if it involves legal issues on the taxability or exemption of the imported articles. Whenever there are doubts on the representations made on the application, the BIR officer may require further substantiation, documentation, or certification from other regulatory offices to authenticate the statements made by the importer. In short, various verification and processes are done prior to the issuance of an ATRIG, which presumably arms the BIR officer with sufficient knowledge of the facts contained therein.

To be clear, such entries are only *prima facie* evidence of the facts stated therein; they are not conclusive.[56] The trustworthiness of such documents is based on the presumption of regularity of performance of official duty,[57] which is itself a mere disputable presumption.[58] However, given the *prima facie* case established by the ATRIGs, the burden of evidence shifted to the petitioners to rebut the same with controverting proof.[59] However, as the CTA *En Banc* correctly observed, no such controverting evidence was presented.[60]

Moreover, PAL's compliance with the second requisite likewise appears to be corroborated by the testimony of its witnesses which the CTA found to be competent and credible.[61] It is oft-repeated that the Court gives the highest respect to the trial court's evaluation of the testimonies of witnesses since it is in the best position to note their demeanor, conduct, and attitude under grueling examination.[62] There is no compelling reason to overturn such conclusion in this case.

On the third requisite, CIR and COC vehemently rejected the ATO Certification offered by PAL. They maintain that the ATO (now the Civil Aviation Authority of the Philippines [CAAP]), is not vested with the power and duty to certify as to the local availability of Jet A-1 aviation fuel under its charter.[63] In contradistinction, the DOE is expressly empowered under Republic Act No. 8479 to "monitor... international crude oil prices, as well as follow the movements of domestic oil prices," to "monitor the quality of petroleum products," and to "maintain a periodic schedule of present and future total industry inventory of petroleum products for the purpose of determining the level of supply."[64] Moreover, the CTA erred in its appreciation of the data provided by the DOE in terms of the local supply of petroleum products. The CIR and the COC averred that "there was never a time when there was insufficient aviation fuel in the country" since local refining

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56 *See Ford v. Court of Appeals*, 264 Phil. 411 (1990) [Per J. Regalado, Second Division].
57 *See Dimaguila v. Sps. Monteiro*, 725 Phil. 337 (2014) [Per J. Mendoza, Third Division].
58 *See* RULES OF COURT, Rule 131, sec. 3 (m).
59 *See* RULES OF COURT, Rule 131, sec. 1.
60 *Rollo*, p. 153, Decision of the CTA EB in CTA EB Nos. 1488 and 1494.
61 *Id.*
62 See *H.S. Pow Construction and Development Corp. v. Shaughnessy Development Corp.*, G.R. No. 229262, July 7, 2021 [Per J. Inting, Third Division].
63 *Rollo*, pp. 71–89, Petition for Review on *Certiorari*..
64 *Id.* at 89–90.

companies are capable of increasing their production based on demand.[65]

On this score, the Court reiterates that the determination of the sufficiency of the proof presented as compliance with statutory conditions to avail of tax exemptions are factual in nature best left to the discretion of the CTA.[66] Here, the CTA *En Banc* affirmed that the evidence adduced by respondent showed that Jet A-1 aviation fuel was not available in reasonable quantity, quality, or price at that time.[67] Barring any indication that this finding was not supported by substantial evidence, it is binding on the Court.[68]

Regardless, petitioners' arguments primarily focus on the local availability of Jet A-1 fuel in reasonable *quantity*. On this point, there is a need to clarify the third requisite.

When Section 13(2) conditions the tax exemption of PAL's importations of the articles lack of local availability in reasonable quantity, quality, or price, it is logically a safeguard to ensure that PAL is able to keep its operating costs low. Certainly, if PAL's operating materials are not available locally in competitive quality, quantity, or price, it would have no choice except to import to continue operating at a certain standard as the Philippines' flagship carrier. The rationale is easy to deduce. High operating costs would ultimately become the burden of PAL's passengers and clientele. It bears emphasizing that "[t]ax exemptions are granted for specific public interests that the Legislature considers sufficient to offset the monetary loss in the grant of exemptions."[69]

Indeed, the parties focus mainly on the "quantity" aspect of this condition; however, the *proviso* actually contemplates that PAL may also prove that the articles or supplies imported are not locally available in reasonable quality or price. The separator used is the word "or", which is a disjunctive article indicating an alternative and a disassociation of the enumerated terms.[70] This means that to qualify for exemption, PAL need only prove that the locally available article is either insufficient in quantity, or is of subpar quality, or is severely overpriced compared to its imported variant. Even one of the foregoing qualifications would entitle PAL to exemption. Otherwise, this would result in an absurdity when the *proviso* is applied, such as when aviation fuel is locally available for a reasonable price and quantity, but it is sub-standard in quality. This could not have been the intent of the provision. "It is a general rule of statutory construction that a law should not be so construed as to produce an absurd result. The law does not intend an

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65 *Id.* at 109.

66 *See Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, 806 Phil. 358, 372 (2017) [Per J. Peralta, Second Division].

67 *Rollo*, p. 154, Decision of CTA EB in CTA EB Nos. 1488 & 1494.

68 *See Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, 806 Phil. 358, 372 (2017) [Per J. Peralta, Second Division].

69 *Secretary of Finance Purisima v. Rep. Lazatin*, 801 Phil. 395, 426 (2016) [Per J. Brion, *En Banc*].

70 *See Mayor Vargas v. Cajucom*, 761 Phil. 43, 61 (2015) [Per J. Peralta, Third Division].

absurdity or that an absurd consequence shall flow from the enactment. Statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion."[71]

In this case, even if there had been sufficient quantity of locally available Jet A-1 fuel as the CIR and the COC claimed, PAL was able to adduce proof that had it sourced its aviation fuel locally between April to June of 2005, it would have paid a significantly higher sum.[72] As the CTA Second Division observed, the domestic cost of Jet A-1 fuel would have been either PHP 329,955,751.00 or PHP 564,148,535.00 more had PAL bought from either Petron Corporation or Pilipinas Shell Petroleum Corporation.[73] Hence, even if we were to assume that the CIR and the COC were correct in stating that there was sufficient supply of fuel at that time, it would not have been available at a reasonable price to PAL.

In sum, PAL was able to adduce substantial evidence to prove its entitlement to the conditional tax exemption of its importation of Jet A-1 fuel from April to June of 2005. Accordingly, the CTA's grant of refund must stand.

On the final argument raised by the CIR and the COC regarding the CTA's purported repugnant leniency in favor of PAL when it granted the latter's motion to reopen the case for presentation of evidence, suffice to say that "the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that the paramount consideration remains the ascertainment of truth. We ruled that procedural rules should not bar courts from considering undisputed facts to arrive at a just determination of a controversy."[74]

ACCORDINGLY, the Petition for Review on *Certiorari* is hereby **DENIED**. The July 26, 2018 Decision and the February 20, 2019 Resolution of the Court of Tax Appeals *En Banc* in CTA EB Nos. 1488 and 1494 are **AFFIRMED**.

SO ORDERED.

JAPAR B. DIMAAMPAO
Associate Justice

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71 *Bansilan v. People*, G.R. No. 239518 (Resolution), 888 Phil. 832, 845 (2020) [Per C.J. Peralta, First Division].

72 *Rollo* (vol. 3), p. 1484, *see* Final Report on the Results of the Procedures Performed on the Verification of Documents and Schedules Supporting the Claim for Refund/Tax Credit Certificates for Specific Taxes Paid for the Period from May 2005 to June 2005, CTA Case 7632.

73 *Rollo* (vol. 1), p. 191, Decision of the CTA Second Division in CTA Case No. 7632.

74 *Commissioner of Internal Revenue v. De La Salle Univ., Inc.*, 799 Phil. 141, 178 (2016) [Per J. Brion, Second Division].

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

See Concurring Opinion

w/ separate concurring opinion

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

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

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third 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 cases were assigned to the writer of the opinion of this Court.

ALEXANDER G. GESMUNDO
Chief Justice

THIRD DIVISION

G.R. Nos. 245330–31 — COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, Petitioners, **v. PHILIPPINE AIRLINES, INC.,** Respondent.

Promulgated:

April 1, 2024

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* in granting respondent Philippine Airlines, Inc. (PAL) its claim for refund of taxes paid on imported aviation fuel. I also agree with the *ponencia*'s disquisition that to qualify for tax exemption under Section 13(b)(2) of Presidential Decree No. 1590,[1] what only needs to be proven is that the locally available article is either insufficient in quantity, or is of subpar quality, or is severely overpriced compared to its imported variant. Any one of the foregoing qualifications is sufficient so as to entitle the claimant to exemption.[2]

I submit this Concurring Opinion to highlight that the Air Transportation Office (ATO), now known as the Civil Aviation Authority of the Philippines (CAAP), is the proper body to make a definitive determination as to the availability of local aviation fuel for purposes of proving entitlement to the exemption under Presidential Decree No. 1590. I submit that the charter of the ATO gives it the authority to issue certifications pertaining to the local availability or non-availability of Jet A-1 fuel. Thus, the Court of Tax Appeals (CTA) correctly gave weight to the ATO certifications, offered by PAL as evidence, that Jet A-1 fuel was not locally available in reasonable quality, quantity, or price.

Brief review of the facts

Under Presidential Decree No. 1590, PAL is exempt from paying taxes and duties 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, supplies, or materials are imported "**for the use of the grantee in its transport and non-transport operations** and other activities incidental thereto and are **not locally available in reasonable quantity, quality, or price**." The Bureau of Internal

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1 An Act Granting A New Franchise To Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In The Philippines And Between The Philippines And Other Countries (1978).

2 *Ponencia*, p. 10.

Revenue (BIR) initially confirmed this exemption through BIR Ruling No. 13-99[3] issued on January 29, 1999, but later revoked it through BIR Ruling No. 001-2003[4] issued on January 29, 2003 based on a certification from the Department of Energy (DOE) dated December 20, 2002 (2002 DOE Certification),[5] stating that aviation fuel was locally available.

BIR Ruling No. 001-2003 essentially states that pursuant to the 2002 DOE Certification, one of the conditions allowing the tax-free importation of aviation fuel, as specified under Section 13 of Presidential Decree No. 1590, i.e., that the aviation gas, fuel, and oil must not be locally available in reasonable quantity, quality, or price, is no longer present.

On various dates between April to June of 2005, PAL imported Jet A-1 fuel and paid taxes under protest. PAL then filed a judicial claim after its request for refund was not acted upon.

The CTA Division granted the refund claim, which the CTA *En Banc* (CTA EB) affirmed. As to the requisite that aviation fuel was not locally available in reasonable quantity, quality, or price during the time of importation, the CTA EB agreed with PAL that the certifications issued by the ATO dated October 1, 2004 to April 20, 2010[6] to that effect was in line with its general powers under its charter.

Before the Court, petitioners Commissioner of Internal Revenue (CIR) and Commissioner of Customs (petitioners) argue that the CTA EB erred in concluding that PAL was able to prove that the imported aviation fuel would be used for its transport and non-transport operations, and that it was not locally available in reasonable quantity, quality, or price.

The *ponencia* affirms PAL's entitlement to the refund claim.

The crux of the controversy in the present case is the proper interpretation of Section 13(b)(2) of Presidential Decree No. 1590 or PAL's franchise, which reads:

> 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:
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> (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

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3 Re: Tax Exemption Privileges Of Philippine Airlines (1999).

4 Re: Guidelines For Exemption From Taxes Granted To Airline Companies On Importation Of Aviation Gas, Fuel And Oil (2003)

5 *Rollo*, p. 1653, attached as Annex "GGGGG" to the Petition.

6 *Id.* at 823.

> (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 non-transport 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:**
>
> ....
>
> (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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**. (Emphasis supplied)

Section 13(b)(2) of Presidential Decree No. 1590 provides for the conditions that must be complied with for the imported aviation gas, fuel, and oil to be exempt from taxes, namely: (1) the supplies are imported for the use of the grantee in its transport and non-transport operations and other incidental activities; and (2) they are not locally available in reasonable quantity, quality or price.

In *CIR, et al. v. PAL*,[7] the Court discussed the status of PAL's tax privileges as follows:

> 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. ...
>
> ....
>
> 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

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7 742 Phil. 84 (2014) [Per J. Velasco, Jr., Third Division].

> 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.[8] (Citations omitted)

It would suffice for PAL to prove even just one qualification out of the three—not locally available in a) reasonable quantity, b) reasonable quality, or c) reasonable price.

One of the qualifications for PAL to be entitled to import aviation fuel tax-free is that said fuel is not locally available in reasonable quantity, quality or price. This means that to be entitled to a refund of taxes paid on imported aviation fuel, it would suffice to prove even just one qualification out of the three—**the imported Jet A-1 fuel was not locally available in reasonable a) quantity, b) quality, *or* c) price**, as the qualification for exemption is in the alternative, and not cumulative.

Again, for easier reference, the provision in question reads as follows:

> (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 non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price**. (Emphasis supplied)

While not involving aviation gas, fuel, and oil, the following cases are instructive on what constitutes sufficient evidence to establish that the imported articles are not "locally available in reasonable quantity, quality, **or** price."

In the 2014 case of *CIR, et al. v. PAL*,[9] the Court rejected therein petitioners bid to foil PAL's claim for refund on the ground of non-compliance with the conditions set by Section 13(b)(2) of Presidential Decree No. 1590. To satisfactorily prove that the imported articles were not locally available at a reasonable quantity, quality or price, PAL presented the affidavit of Mr. Victor Santos, Assistant Vice-President in charge of the Catering and In-flight-Sub-department of PAL, where he stated that importing the supplies is much cheaper for PAL than purchasing them locally as shown by the various price lists attached to his affidavit.[10] The Court found that PAL fully complied with the requirements of Presidential Decree No. 1590; or simply, the Court

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8 *Id.* at 93–94.

9 *Id.*

10 *See CIR v. PAL*, CTA EB Cases Nos. 942 & 944, December 9, 2013.

ruled this way even if the said supplies were locally available as to reasonable quantity or quality.

Similarly, the 2015 case of *Republic of the Philippines v. PAL*[11] affirmed the CTA's conclusion that PAL had satisfactorily proven the non-availability of the imported supplies in reasonable quantity, quality, or price. In particular, PAL presented the following pieces of evidence: (1) Mr. Andy Y. Li's testimony stating that importation of the articles was cheaper for PAL than if it purchased locally; (2) a tabulation of comparison of the cost of importing the articles and the cost of purchasing them locally; (3) invoices issued to PAL for its purchase of the subject articles; (4) Price List for 2005 of Duty-Free Philippines corresponding to the same articles subject of the claim for refund; and (5) letter that Duty-Free Philippines does not have wines that meet PAL's price budget and required quality, and that the average price difference of the cost of imported wines, liquors, and cigarettes as against the local purchase of said articles is about 63% for all items in favor of importation directly by PAL.[12] The Court held:

> As to the issue of PAL's non[-]compliance with the conditions set by Section 13 of [PD 1590] 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. 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.[13] (Citations omitted)

Again, focusing only on the price—and again admitting that there were locally available supplies of wine, the Court affirmed that PAL had qualified with the conditions set by Section 13 of Presidential Decree No. 1590.

Furthermore, in the 2017 case of *CIR, et al. v. PAL*,[14] the Court again upheld the CTA's findings that PAL had sufficiently established that the alcohol products it imported are not locally available in reasonable price, and thus, PAL had complied with the conditions under Presidential Decree No. 1590. The pieces of evidence offered to prove that PAL made out a *prima facie* case that the cost of importing the alcohol products was indeed reasonably cheaper than purchasing them locally are the following: (1) testimony of Mr. Victor Santos, PAL's Assistant Vice President in charge of the Catering and In-flight Materials Purchasing; (2) Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies; (3) Philippine Wine Merchant's January 11, 2007 Price List; and (4) Monthly Philippine Dealing System rates for the year 2007-2008, 2008-2009, and 2009-2010.[15]

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11 763 Phil. 108 (2015) [Per C.J. Sereno, First Division].
12 *See PAL v. CIR*, CTA Cases Nos. 7665 & 7713, April 17, 2012.
13 *Republic of the Philippines v. PAL*, *supra* note 11, at 118.
14 806 Phil. 358 (2017) [Per J. Peralta, Second Division].
15 *See PAL v. CIR*, CTA EB Cases Nos. 1029, 1031 & 1032, April 30, 2014.

The foregoing cases illustrate that the Court has consistently upheld PAL's tax exemption notwithstanding that it substantiated only the non-availability of the imported article in the local market "for a reasonable price"—in the face of its availability in reasonable quantity and quality. In all these cases, the Court affirmed the CTA's findings that PAL sufficiently proved compliance with the conditions for tax exemption under Section 13 of Presidential Decree No. 1590.

In the present case, both the CTA Division and CTA EB found that PAL complied with the requisites for exemption from all taxes under Section 13 of Presidential Decree No. 1590. Concerning the requirement that the aviation fuel is not locally available in reasonable quantity, the CTA Division held:

> [PAL] made a comparison between the total refinery production and the total industry petroleum products demand using the Table of Data which was prepared and provided by the DOE, and concluded that in all years from 1998 to 2010, the figures for all types of petroleum products, including jet fuel or kerosene, show that the demand far outstripped the local refinery production. It continues that in each of the years included in the Table of Data (including the year 2005), the total refinery production was never enough to meet the total demand.[16] (Citation omitted)

PAL also presented the Report of the court-commissioned Independent Certified Public Accountant (ICPA) showing the comparison of the cost of importation of aviation turbo jet fuel and the cost of domestic purchases of aviation turbo jet fuel using the price quotations issued by local oil companies. According to the ICPA, it would have cost PAL an additional PHP 329,955,751 and PHP 564,148,535 had it purchased from Petron Corporation and Pilipinas Shell Petroleum Corporation, respectively, the same volume of aviation turbo jet fuel or Jet A-1.[17] Hence, the local price is patently unreasonable compared to the price of imported fuel.

Indeed, PAL only presented evidence showing no local available supply of Jet A-1 fuel in reasonable quantity and price. Even though there was no proof in relation to "reasonable quality," the CTA Division and CTA EB were convinced that PAL is entitled to a refund or the issuance of a tax credit certificate (TCC) representing the specific taxes paid for the importation of Jet A-1 aviation fuel for its domestic flight operations from April to June 2005.

Thus, I agree with the *ponencia* that each of the qualifications or conditions—reasonable quantity, reasonable quality, **or** reasonable price—stand independently of each other. The use of "or" in the provision suggests that they are alternative criteria. Simply put, as long as PAL can establish the non-availability of Jet A-1 fuel in either reasonable quantity, reasonable quality, or reasonable price, it would already satisfy the second condition for

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16 *Rollo*, p. 191, CTA Division Decision dated May 3, 2016.
17 *Id.* at 190–191.

tax exemption. PAL is not required to prove all the three conditions to benefit from the exemption provided under its charter.

Accordingly, since PAL was able to sufficiently prove compliance with the conditions for tax exemption under Section 13(b)(2), it is entitled to the refund or issuance of TCC for the taxes paid on importation of Jet A-1 fuel.

ATO (now CAAP) has the authority to issue certifications pertaining to the local availability or non-availability of Jet A-1 fuel.

Petitioners assert that the ATO is not vested with the power and duty to certify as to the local availability of Jet A-1 aviation fuel under its charter, insisting that it is only the DOE, under Republic Act No. 8479,[18] which is in a position to determine the local availability of Jet A-1 aviation fuel.

The *ponencia* rules that the CTA EB correctly upheld PAL's evidence showing the unavailability of Jet A-1 aviation fuel in reasonable quantity, quality, or price during the relevant period. As long as there is no indication that this finding lacks substantial evidence, it is considered binding on the Court.[19]

I fully agree.

As to the petitioners' argument that the ATO has no power to issue a certification, I believe this to be erroneous. I submit that the ATO is **not precluded** from issuing certifications with respect to the availability of local supply of aviation fuel and oil. Its power, as expressed in its charter, is sufficiently broad to include determining the availability of aviation fuel in the local market.

The matters on aviation fuel and oil, including the certification as to their local availability in reasonable quantity, quality, or price, is consistent with the policy of the ATO for the development and utilization of the air potential of the Philippines.[20] A perusal of the powers of the ATO in relation to its authority to issue the certifications, would show that such is in line with its general powers under Section 32 of Republic Act No. 776, thus:

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18 Downstream Oil Industry Deregulation Act Of 1998 (1998).

19 *Ponencia*, p. 10.

20 Section 4(a) of Republic Act No. 776, otherwise known as "THE CIVIL AERONAUTICS ACT OF THE PHILIPPINES," approved on June 20, 1952, reads:

> Section 4. *Declaration of policies.* — In the exercise and performance of its powers and duties under this Act, the Civil Aeronautics Board and the Civil Aeronautics Administrator shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:
>
> (a) The development and utilization of the air potential of the Philippines.

> 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 pursuance to, said Act; and **he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters**. (Emphasis supplied)

The above-mentioned provision is reproduced under Republic Act No. 9497,[21] which reads:

> Section 35. *Powers and Functions of the Director General.* — The Director General shall be the chief executive and operating officer of the Authority. He shall have the following powers, duties and responsibilities:
>
> (a) **To carry out the purposes and policies established in this Act**; to enforce the provisions of the rules and regulations issued in pursuance to said Act; and **he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters**. (Emphasis supplied)

Furthermore, part of the powers and duties of the ATO (now CAAP), is to cooperate with the government on matters relating to research and technical studies on aircraft fuel and oil, *viz.*:

Republic Act No. 776:

> 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:
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> ....
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> (21) **To cooperate, assist and coordinate with any research and technical agency of the Government on matters relating to 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. (Emphasis supplied)

Republic Act No. 9497:

> Section 35. *Powers and Functions of the Director General.* — The Director General shall be the chief executive and operating officer of the Authority. He shall have the following powers, duties and responsibilities:

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[21] Civil Aviation Authority Act Of 2008 (2008).

. . . .

> (q) **To cooperate, assist and coordinate with any research and technical agency of the government on matters relating to 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. (Emphasis supplied)

Based on the foregoing, the ATO's authority to determine local availability of aviation fuel is well within the ambit of its general powers.

It is worth noting that the enumerated powers and duties conferred upon the ATO (now CAAP) are not exclusive. The absence of qualifying or restrictive words in its charter indicates that the powers and duties are not intended to be exhaustive. Rather, they are illustrative of the broader authority granted to the ATO (now CAAP) in fulfilling its mandate. To be sure, it is the declared policy of the State to provide safe and efficient air transport and regulatory services in the Philippines.[22] The operation of aircraft is inextricably linked to the availability and quality of fuel. It stands to reason that the ATO (now CAAP) must be able to determine the availability of aviation fuel in the local market to effectively manage and ensure safe and efficient air transport services. **The ATO's technical and operational expertise uniquely positions it to certify the availability of aviation fuel and oil. Its specialized knowledge equips it to evaluate and confirm the availability of supply of local aviation fuel and oil.** There is no doubt that such certification holds significant importance for the airline industry's operations.

Furthermore, the ATO's role in ensuring the safety of air transport entails ensuring that aircrafts are fueled with quality aviation fuel—a responsibility that requires the ATO to assess and report on the availability of fuel supplies. To strip the ATO (now CAAP) of the ability to certify such matters would be to ignore the practical realities of its operational responsibilities, severely limiting the ATO's ability to carry out its mandate.

Notably, in the 2020 case of *CIR v. Air Philippines Corp.*,[23] the Court affirmed the ruling of the CTA EB that gave weight to the ATO certifications. The CTA EB ruled that the issuance of ATO certifications, with respect to whether aviation fuel was not locally available in reasonable quantity, quality or price, was consistent with the general power of the ATO (now CAAP)

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22 Republic Act No. 9497 (2008), sec. 2.

23 G.R. No. 243260, February 5, 2020 (Unsigned Resolution) [Perlas-Bernabe, A. Reyes, Jr., Inting and Delos Santos, *JJ.*; Hernando, *J.*, on official leave; Second Division].

under its charter. Both the CTA Division and CTA EB found the absence of locally available aviation fuel in reasonable quantity, quality or price, basing such finding on the ATO certification which supported the claim of insufficient locally available aviation fuel in reasonable quantity, quality, or price. Two contradictory certifications were presented to the CTA, one from the ATO and another from the DOE. While the Court denied the petition on procedural grounds, citing it as a question of fact because the CIR was requesting a re-evaluation of the certifications to determine which carried more evidentiary weight, the Court ultimately upheld the CTA EB Decision, which gave weight to the ATO certifications.

Hence, the CTA in this case correctly gave weight to the ATO certification as mandated under Section 44, Rule 130 of the Rules of Evidence which provides:

> Section. 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.

Entries in official records made by public officers or persons in the performance of duties specially enjoined by law are considered *prima facie* evidence of the facts stated therein. The ATO certification falls squarely within this category, as it is issued by a responsible authority with expertise in aviation matters. Consequently, the subject ATO certifications questioned by petitioners were properly given due consideration as *prima facie* evidence of the availability or non-availability of aviation fuel in reasonable quantity, quality, or price.

Furthermore, the refund claim subject of the present case covers the importation of Jet A-1 aviation fuel for PAL's domestic flight operations from April to June 2005. Hence, the DOE Certification dated December 20, 2002, and on which BIR Ruling No. 001-2003 is solely based, cannot be given any weight because the DOE Certification was issued in 2002. It is important to emphasize that the DOE Certification was based on information and data available as of 2002 and was not intended to account for subsequent years. The coverage of the 2002 DOE Certification does not extend beyond the years of its issuance, as it could not have taken into account circumstances and developments that occurred after 2002.

Therefore, the 2002 DOE Certification does not, as it cannot, attest to the local availability or non-availability of aviation fuel in reasonable quantity, quality or price in 2005. It cannot be given weight for the 2005 importation of Jet A-1 aviation fuel for PAL's domestic flight operations. The 2002 DOE Certification's limitations in terms of its coverage and data availability preclude its application in this case. **In contrast to the 2002 DOE Certification which predates the subject importations, the ATO**

certifications[24] dated October 1, 2004 to April 20, 2010[25] submitted by PAL state unequivocally that there was no locally available supply of Jet A-1 fuel in reasonable quantity, quality, or price at the time of the subject importations in 2005.[26]

At this point, it should be recognized that the *ponencia*'s ruling does not rest on the 2002 DOE Certification nor the ATO certifications to resolve the core issue of PAL's entitlement to the refund claim. The *ponencia*'s conclusion is grounded on the totality of evidence presented by PAL, which unequivocally showed that aviation fuel was not available at a reasonable price during the relevant period.[27]

In sum, I concur with the ultimate disposition that PAL is entitled to a refund. My concurrence to PAL's entitlement to a refund is twofold: the evidence presented by PAL concerning the price and quantity of aviation fuel, and the corroborative significance provided by the ATO certifications. This comprehensive consideration strengthens the position that PAL met the conditions for the claimed refund.

Thus, taking into account that the ATO (now CAAP) is not precluded from issuing certifications as to the availability or non-availability of locally sourced aviation fuel, and given the additional circumstance that the ATO certifications show that there was no locally available aviation fuel in reasonable quantity, quality, or price, it follows that both the CTA Division and CTA EB correctly gave weight to these ATO certifications.

Accordingly, I concur with the *ponencia* in holding that the Petition filed by petitioners should be **DENIED**. PAL is entitled to its claim for refund of taxes paid on imported aviation fuel, as it was able to sufficiently prove the conditions that must be complied with for the imported aviation fuel to be exempt from taxes under Section 13(b)(2) of Presidential Decree No. 1590.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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24 *Rollo*, p. 823, Memorandum filed by PAL before the CTA Division.
25 *Id.*
26 *Id.* at 190, CTA Division Decision dated May 3, 2016.
27 *Ponencia*, pp. 10–11.

THIRD DIVISION

G.R. Nos. 245330-31 — COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS, Petitioners **v. PHILIPPINE AIRLINES, INC.,** Respondent.

Promulgated:

April 1, 2024
MisPDCBatt

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INTING, *J.*:

SEPARATE CONCURRING OPINION

In opposition to the claim for refund by respondent Philippine Airlines, Inc. (PAL), petitioners Commissioner of Internal Revenue and Commissioner of Auctions (collectively, petitioners) contend that PAL failed to prove that it met the conditions set forth in Section 14 of Presidential Decree (PD) No. 1590 to claim excise tax exemption of its importations of Jet A-1 aviation fuel from April to June 2005. The conditions are the following: (1) that the Jet A-1 aviation fuel was imported for the use of PAL in its transport/non-transport operations and other incidental activities; and (2) that the Jet A-1 aviation fuel was not locally available in reasonable quantity, quality, and price.

Petitioners maintain that as an exception to the general rule, the Court may review the factual findings of the Court of Tax Appeals (CTA) in the case because the assailed judgment is based on a misapprehension of facts. They argue as follows:[1]

First. The information contained in the Authority to Release Imported Goods (ATRIGs) was supplied by PAL and therefore not necessarily within the personal knowledge of the Bureau of Internal Revenue (BIR) personnel who issued it.[2] Setting aside the ATRIGs, there is no concrete evidence to prove that PAL's Jet A-1 aviation fuel importations were actually used in its domestic flight operations as provided in the ATRIGs.

Second. The certifications from the Air Transportation Office (ATO) did not sufficiently establish that Jet A-1 aviation fuel was locally available in reasonable quantity, quality, or price because the ATO, (now the Civil Aviation Authority of the Philippines [CAAP]), is not vested with

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[1] *Rollo*, p. 43.
[2] *Id.* at 51.

the power and duty to certify as to the local availability of Jet A-1 aviation fuel under its charter; hence, these certifications were issued *ultra vires*. More, these ATO certifications were controverted by Saturnino B. Dela Cruz (Mr. Dela Cruz), Assistant General Director I of the Flight Standards Inspectorate Service of CAAP, who categorically declared that the contents of these certifications were merely copied and pasted from other certifications issued by the ATO.[3]

Third. The interpretation of the Department of Energy (DOE) of "locally available supply" deserves more credence, weight and even respect by the courts.[4] According to petitioners, the supply side of the Supply-Demand Balance for 2001-2010 in Thousand Barrels (MB) of aviation fuel was composed of inventory, local production, and importation; and this was further affirmed by the reports prepared by PAL's own witness, namely, Ms. Glendalyn Dela Cruz (Ms. Dela Cruz).[5] Hence, the CTA Second Division took Ms. Dela Cruz's testimony out of context when it held that demand far outstripped local refinery production and that total refinery production was never enough to meet the total demand. More, petitioners contend that as stated by former DOE Secretary Zenaida Y. Monsada (Sec. Monsada) in her judicial affidavit, total available local supply is composed of local production, importation, and inventory.[6]

Verily, the issues raised by petitioners in the case are mixed questions of fact and law. For one, whether PAL presented sufficient evidence that it met the conditions for excise tax exemption under Section 13 of PD No. 1590 is a question of fact. For another, the correct interpretation of "*locally available supply*" is a question of law.

I concur in the *ponencia*'s denial of the petition on the following grounds:

> *I. The declaration made by PAL that the Jet A-1 aviation fuel would be used for its domestic operations, as contained in the ATRIGs, sufficiently met the first condition.*

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3 *Id.* at 72.
4 *Id.* at 96.
5 *Id.* at 98.
6 *Id.* at 105–106.

To set the records straight, it must be pointed out that PAL's Jet A-1 aviation fuel would be exempt from excise tax so long as these were used in its operations, whether transport or non-transport. Thus, PAL need not prove that the aviation fuel it imported from April to June 2005 was used for its domestic operations for it would still qualify for excise tax exemption under Section 13 of PD No. 1590 even if it used them for its international operations.

Moreover, PAL has in its favor the disputable presumption under Rule 131, Section 3(q) of the Rules of Evidence that the ordinary course of business has been followed. Stated differently, it is presumed that PAL, an entity engaged in the air transport of passengers and cargo, used the Jet A-1 aviation fuel it imported from April to June 2005 in its transport operations.

As to the sufficiency of the ATRIGs, I concur with the *ponencia* that these sufficiently met the first condition based on the presumption of regularity of performance of official duty.

As aptly noted in the *ponencia*, the application and subsequent issuance of an ATRIG is not a mechanical process, and there are various verification and processes that had to be done prior to the issuance of an ATRIG. Nonetheless, petitioners aptly pointed out that the purpose of PAL's importation as stated in the ATRIGs were taken from PAL's own declaration that the purpose of its importations was for its domestic operations; thus, it is not within the personal knowledge of the BIR personnel who issued the ATRIGs.

It is worth noting, however, that an importer's declaration of the purpose of an importation is made under oath in his or her Application for ATRIG which had to be notarized.[7]

In view of the presumption of regularity as to the issuance of the ATRIGs by the concerned BIR personnel, it is presumed that PAL submitted all the documentary requirements for its issuance, including a notarized Application for ATRIG containing its officer's declaration under oath as to the purpose of the importations. As public documents, PAL's Applications for ATRIGs were by law entitled to presumption of truth as to the recitals contained therein.[8] Absent any contrary proof from

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[7] *See* Annex "A" to Revenue Memorandum Order No. 35-2002.

[8] *Heirs of Teves v. Court of Appeals*, 375 Phil. 96 (1999).

petitioners, the presumption will prevail.

II "Locally available" supply under Section 13 of PD No. 1590 should be construed to mean the inventory of locally produced or manufactured supply that are available for sale at the time of importation.

The word "local" is synonymous with "domestic" which the Court defined in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[9] as "of or relating to one's own country" or "an article of domestic manufacture."[10] By its very definition, imported goods are excluded from the definition of locally available supply because these were sourced outside the Philippines.

Evidently, Sec. Monsada's inclusion of imported goods in the definition of locally available supply under Section 13 of PD No. 1590 would render this provision inutile. This will result in an absurd situation wherein the arrival of PAL's own imported aviation fuel in our shores will disqualify PAL from availing of its excise tax exemption privilege under its franchise.

Moreover, I submit that the word "available" means "*present or ready for immediate use*" and is synonymous with the words "accessible" and "obtainable."[11]

In determining whether PAL's importations of Jet A-1 aviation fuel from April to June 2005 are exempt from excise tax, the scope of the Court's inquiry is limited to what was locally available during the relevant time period, that, is from April to June 2005. In other words, the locally available supply of aviation fuel two years prior to the importations is irrelevant for purposes of determining whether PAL is entitled to its excise tax exemption privilege for its importations of Jet A-1 aviation fuel from April to June 2005.

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[9] 713 Phil. 134 (2013).
[10] *Id.*
[11] At https://www.merriam-webster.com/dictionary/available (last accessed on February 25, 2024).

Thus, assuming *arguendo* that the facts stated in the DOE Certification[12] dated December 20, 2002, were true, I still submit that this would not bar PAL from availing of its excise tax privilege for the importations made from April to June 2005 because the certification was based on available data and records at that time. Human experience and common sense dictates that the quantity and price of locally available aviation gas will fluctuate over time; thus, the contents of the DOE Certification[13] dated December 20, 2002, will not hold true in perpetuum.

Stated differently, the DOE Certification dated December 20, 2002 is not incompatible with PAL's contention that aviation gas was not locally available with reasonable quality, quantity, and price between April and June 2005.

Lastly, a careful review of the records would reveal that the DOE also erroneously included the inventory of airline companies in its definition of locally available supply of aviation fuel in the Philippines.[14]

I submit that locally available supply only refers to supply that may be legally obtained by PAL through purchase in the local market. Thus, the inventory and importations of other airline companies, who are themselves end-users and are not authorized to engage in the resale of aviation fuel, should be excluded from the equation as these are not available for sale to the public.

HENRI JEAN PAUL B. INTING
Associate Justice

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[12] *Rollo*, p. 1552.
[13] *Id.*
[14] *Id.* at 633–634, 1663–1664.