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THIRD DIVISION

[G.R. Nos. 212536-37, August 27, 2014]

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, PETITIONERS, VS. PHILIPPINE AIRLINES, INC., RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

This is a Petition for Review on Certiorari under Rule 45 assailing and seeking to set aside the December 9, 2013 Decision[1] and May 2, 2014 Resolution[2] of the Court of Tax Appeals *en banc* in CTA EB No. 942 and 944,which granted the claim of respondent Philippine Airlines, Inc. (PAL) for refund of excise taxes it paid in connection with its importation in 2007 of certain items for its commissary and catering supplies.

The antecedent facts are simple and undisputed.

On June 11, 1978, PAL was granted under Presidential Decree No. 1590 (PD 1590)a franchise to operate air transport services domestically and internationally. Section 13[3] of the decree prescribes the tax component of PAL's franchise. Under it, PAL, during the lifetime of its franchise, shall pay the government either basic corporate income tax or franchise tax based on revenues and/or the rate defined in the provision, whichever is lower and the taxes thus paid under either scheme shall be in lieu of all other taxes, duties and other fees.

On January 1, 2005, Republic Act No. 9334 (RA 9334)[4] took effect.Of pertinent relevance in this proceeding is its Sec.6 which amended Sec. 131 of the 1997 National Internal Revenue Code (NIRC) to read:

> **SEC. 6**. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:
>
> "SEC. 131. *Payment of Excise Taxes on Imported Articles.* -
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> "(A) *Persons Liable.* - **Excise taxes on imported articles shall be paid by the owner or importer** to the Customs Officers, x x x 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.
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> "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 x x x.

"**The provision of any special or general law to the contrary notwithstanding, the importation of x x x cigarettes, distilled spirits**, fermented liquors **and wines** x x x, 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 [said items] x x x brought directly into the duly chartered or legislated freeports x x x, and such other freeports as may hereafter be established or created by law x x x. (emphasis added.)

Pursuant to the above-quoted tax code provisions, PAL was assessed excise taxes on its February and March 2007 importation of cigarettes and alcoholic drinks for its commissary supplies used in its international flights. In due time, PAL paid the corresponding amounts, as indicated below, under protest:

BOC Official Receipt Number	Date of Payment	Amount Paid
138110892	February 5, 2007	PhP 1,497,182
1138348761	February 26, 2007	PhP 1,525,480
138773503	March 23, 2007	PhP 1,528,196.85

PAL, thereafter, filed separate administrative claims for refund before the Bureau of Internal Revenue (BIR) for the alleged excise taxes it erroneously paid on said dates. As there was no appropriate action on the part of the then Commissioner of Internal Revenue (CIR) and obviously to forestall the running of the two-year prescriptive period for claiming tax refunds, PAL filed before the Court of Tax Appeals (CTA)a petition for review, docketed as CTA Case No. 7868.

After the parties had submitted their respective memoranda following the joinder of issues and the formal offer of evidence, the CTA Second Division rendered on June 22, 2012 in CTA Case No. 7868 a Decision[5] finding for PAL, as petitioner, the CIR and the Commissioner of Customs (COC), as respondents, being ordered to pay PAL by way of refund the amount of PhP 4,550,858.85. The amount represented the excise taxes paid in February and March 2007, covering PAL's importation of commissary supplies. The *fallo* of the June 22, 2012 judgment reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondents are hereby **ORDERED TO REFUND** to petitioner the amount of P4,550,858, representing petitioner's erroneously paid excise taxes.

SO ORDERED.

Therefrom, the CIR and the COC interposed separate motions for reconsideration, both of which were, however, denied, in a consolidated Resolution[6] of September 20, 2012. This prompted the CIR to elevate the matter to the CTA *en banc* on a

petition for review, the recourse docketed as CTA EB No. 942. The COC later followed with his own petition, docketed as CTA EB No. 944. The cases were thereafter ordered consolidated.

By Decision dated December 9, 2013, the CTA *en banc,* with two justices dissenting, dismissed the CIR and COC's petitions, thereby effectively affirming the judgment of the CTA Second Division. Just as its Second Division, the CTA *en banc*, citing an earlier case between the same parties and involving similar issues, held in the main that the "in lieu of all taxes" clause in PAL's franchise exempts it from excise tax, an exemption that, contrary to petitioners' unyielding posture, has not been withdrawn by Congress when it enacted RA 9334. Pushing the point, the tax court stated that Sec. 6 of RA 9334, as couched, cannot be construed as an express repeal of the "in lieu of all taxes" exemption granted under PAL's franchise, because said Sec. 6, despite its "the provisions of any special law or general law to the contrary notwithstanding" proviso, has failed to specifically refer to Sec. 13 of PD 1590 as one of the key provisions intended to be repealed.

Anent PAL's entitlement to the exemption claimed, and consequently the refund, the CTA took note of the following issuances:

1. Section 22[7] of RA 9337, which took effect on July 1, 2005, abolished the franchise tax under PAL's and other domestic airlines' charter and subjected them to corporate income tax and value-added tax. Nevertheless, the same section provides that PAL shall remain exempt from any taxes, duties, royalties, etc., as may be provided in PD 1590.

2. *Philippine Air Lines, Inc. v. Commissioner of Internal Revenue*,[8] in which the Court has recognized the applicability of the exemption granted to PAL under its charter and necessarily its right to a refund, when appropriate.

Still dissatisfied,petitioners separately sought reconsideration, but the CTA *en banc*, in its May 2, 2014 Resolution, denied the motions, with the same adverted justices reiterating their dissent.

Hence, this petition, on this **core issue**: whether or not PAL's importations of alcohol and tobacco products for its commissary supplies are subject to excise tax.

Petitioners, as to be expected, would dispose of the query in the affirmative, on the contention that PAL's tax exemption it heretofore enjoyed under Sec. 13 of its franchise had been revoked by Congress when, via RA 9334, it amended Sec. 131 of the NIRC, which, as earlier recited, subjects the importation of cigars, cigarettes, distilled spirits and wines to all applicable taxes inclusive of excise tax "the provision of any special or general law to the contrary notwithstanding."

On the other hand, PAL, citing at every turn the assailed CTA ruling, contends that its exemption from excise tax, as provided in its franchise under PD 1590, has not been withdrawn by the NIRC of 1997, as amended by RA 9334. And on the postulate that RA 9334 partakes the nature of a general law which could not have plausibly repealed a special law, e.g., PD 1590, PAL would draw attention to Sec. 24 of PD 1590 providing how its franchise or any of its provisions may be modified or

amended:

> 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 of provisions. (emphasis added)

The petition lacks merit.

It is a basic principle of statutory construction that a later law, general in terms and not expressly repealing or amending a prior special law, will not ordinarily affect the special provisions of such earlier statute.[9] So it must be here.

Indeed, as things stand, PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec.131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. We said as much in *Commissioner of Internal Revenue v. Philippine Air Lines, Inc*:

> 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.[10] 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. x x x
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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.[11]