REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MANILA ELECTRIC COMPANY,
Petitioner,

CTA EB No. 687
(CTA Case No. 7545)

-versus-

Members:

Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.:*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 2 1 2011 [illegible]
9:00 a.m.

x- -x

DECISION

CASTAÑEDA, JR., J.:

Assailed before this Court are the Decision dated March 22, 2010 denying Manila Electric Company's Petition for Review and the Resolution dated September 13, 2010, also denying its Motion for Reconsideration in the case docketed as CTA Case No. 7545, both issued by the Court's Special First Division.

THE FACTS

Manila Electric Company ("Petitioner"), a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, is engaged in the business of distributing and supplying electric power within its franchise area. Petitioner is a registered taxpayer with taxpayer identification number 000-101-528-000 and Certificate of Registration No. OCN8RC0000016119.[1]

The Commissioner of Internal Revenue ("respondent") as a public official is tasked to decide disputed assessments, collection, refund of erroneously or excessively paid internal revenue taxes, fees or other charges, penalties, or other matters under the 1997 National Internal Revenue Code ("NIRC"), as amended, or other laws administered by the Bureau of Internal Revenue ("BIR").[2]

In year 2004, petitioner executed several Loan Agreements, Mortgage Bonds and Supplemental Indenture, namely:

TRANSACTION	**PURPOSE**
Omnibus Agreement dated November 12, 2004 executed by petitioner and BPI Capital Corporation, Citibank, N.A., Philippine Branch, Citigroup Global Markets Asia Limited, and other parties named therein.	To refinance under the terms and conditions set out in the finance documents, and with respect to the DBP-Tranche B Lenders (as such term is defined in the Tranche B Facility Agreement), to revise and redocument the terms and conditions governing the DBP-JBIC Syndicated

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[1] Joint Stipulation of Facts and Issues, Docket, CTA Case No. 7545, p. 59.
[2] *Ibid.*

	Facility in accordance with and to conform to the terms and conditions set out in the finance documents".[3]
Tranche A Facility Agreement attached to the Omnibus Agreement dated November 12, 2004.	To provide loan facility to petitioner[4].
Tranche B Facility Agreement attached to the Omnibus Agreement dated November 12, 2004.	To pursue a comprehensive liability management program, the implementation of which will include, among others, the revision and redocumentation of the terms and conditions governing the DBP-JBIC Syndicated Facility in accordance with and to conform to the terms and conditions set out in this Agreement and the Common Terms Agreement.[5]
Omnibus Loan and Security Agreement dated November 26, 2004 by petitioner and Meralco Employees Savings and Loan Association, Inc.("MESALA")	To extend loan facility to petitioner in refinancing the existing loan.[6]
One Hundred Second Supplemental Indenture entered by petitioner and Bank of the Philippine Islands as trustee.	To secure the principal of, the interest and premium (if any) on, and (to the maximum extent allowed under the Indenture) all other amounts payable under, all bonds at any time issued and outstanding under the Original Indenture dated December 31, 1957.[7]
First Mortgage Bond, Series 5K, No. RSK-1, dated December 1, 2004, in the amount of US$170,053,200.00 due on September 14, 2011;	

[3] Whereas Clause, Exhibit "A".
[4] Whereas Clause, Vol. B, Tranche A Facility Agreement.
[5] Whereas Clause, Vol. C Tranche B Facility Agreement.
[6] Whereas Clause, Omnibus Loan and Security Agreement dated November 26, 2004, Exhibit "C".
[7] Exhibit "B".

First Mortgage Bond, Series 5L-DBP Tranche B Loans, No. R5L-1, dated 1 December 2004, in the amount of Php1,935,000,000.00 due on 14 September 2011;	
First Mortgage Bond, Series 5L — LBP Tranche B Loans, No. R5L-2, dated December 1, 2004, in the amount of P359,999,995.00 due on September 14, 2011;	
First Mortgage Bond, Series 5L — Tranche B3 Loans, No. R5L-3, dated December 1, 2004, in the amount of P935,964,000.00 due on September 14, 2011	
First Mortgage Bond, Series 5M, No. R5M-1, dated December 1, 2004, in the amount of P5,167,466.13 due on March 14, 2005;	
First Mortgage Bond, Series 5M, No. R5M-2, dated December 1, 2004, in the amount of P5,167,466.13 due on June 14, 2005;	
First Mortgage Bond, Series 5M, No. R5M-3, dated December 1, 2004, in the amount of P5,167,466.13 due on September 14, 2005;	
First Mortgage Bond, Series 5M, No. R5M-4, dated December 1, 2004, in the amount of P5,167,466.13 due on December 14, 2005;	
First Mortgage Bond, Series 5M, No. R5M-5, dated December 1, 2004, in the amount of P5,167,466.13 due on March 14, 2006;	
First Mortgage Bond, Series 5M, No. R5M-6, dated December 1, 2004, in the amount of P5,167,466.13 due on June 14, 2006;	

First Mortgage Bond, Series 5M, No. R5M-7, dated December 1, 2004, in the amount of P5,167,466.13 due on September 14, 2006;	
First Mortgage Bond, Series 5M, No. R5M-8, dated December 1, 2004, in the amount of P5,167,466.13 due on December 14, 2006;	
First Mortgage Bond, Series 5M, No. R5M-9, dated December 1, 2004, in the amount of P15,502,398.39 due on March 14, 2007;	
First Mortgage Bond, Series 5M, No. R5M-10, dated December 1, 2004, in the amount of P15,502,398.39 due on June 14, 2007;	
First Mortgage Bond, Series 5M, No. R5M-11, dated December 1, 2004, in the amount of P15,502,398.39 due on September 14, 2007;	
First Mortgage Bond, Series 5M, No. R5M-12, dated December 1, 2004, in the amount of P15,502,398.39 due on December 14, 2007;	
First Mortgage Bond, Series 5M, No. R5M-13, dated December 1, 2004, in the amount of P15,502,398.39 due on March 14, 2008;	
First Mortgage Bond, Series 5M, No. R5M-14, dated December 1, 2004, in the amount of P15,502,398.39 due on June 14, 2008;	

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First Mortgage Bond, Series 5M, No. R5M-15, dated December 1, 2004, in the amount of P15,502,398.39 due on September 14, 2008;	
First Mortgage Bond, Series 5M, No. R5M-16, dated December 1, 2004, in the amount of P15,502,398.39 due on December 14, 2008;	
First Mortgage Bond, Series 5M, No. R5M-17, dated December 1, 2004, in the amount of P20,669,864.53 due on March 14, 2009;	
First Mortgage Bond, Series 5M, No. R5M-18, dated December 1, 2004, in the amount of P20,669,864.53 due on June 14, 2009;	
First Mortgage Bond, Series 5M, No. R5M-19, dated December 1, 2004, in the amount of P20,669,864.53 due on September 14, 2009;	
First Mortgage Bond, Series 5M, No. R5M-20, dated December 1, 2004, in the amount of P20,669,864.53 due on December 14, 2009;	
First Mortgage Bond, Series 5M, No. R5M-21, dated December 1, 2004, in the amount of P20,669,864.53 due on March 14, 2010;	
First Mortgage Bond, Series 5M, No. R5M-22, dated December 1, 2004, in the amount of P20,669,864.53 due on June 14, 2010;	

First Mortgage Bond, Series 5M, No. R5M-23, dated December 1, 2004, in the amount of P20,669,864.53 due on September 14, 2010; 31.	
First Mortgage Bond, Series 5M, No. R5M-24, dated December 1, 2004, in the amount of P20,669,864.53 due on December 14, 2010;	
First Mortgage Bond, Series 5M, No. R5M-25, dated December 1, 2004, in the amount of P26,870,823.88 due on March 14, 2011;	
First Mortgage Bond, Series 5M, No. R5M-26, dated December 1, 2004, in the amount of P26,870,823.88 due on June 14, 2011; and	
First Mortgage Bond, Series 5M, No. R5M-27, dated December 1, 2004, in the amount of P28,937,810.34 due on September 14, 2011.[8]	

Petitioner allegedly filed the corresponding 2004 documentary stamp tax ("DST") returns for the following transactions: *gr*

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[8] Joint Stipulation of Facts and Issues, Docket, CTA Case No. 7545, pp. 60-62.

TRANSACTION	**EXHIBIT**	**DATE OF FILING OF DST RETURN**	**AMOUNT/TAX BASE**	**DST PAID**
LOAN AGREEMENT (TRANCHE A)	II	November 30, 2004	P 9,579,266,809.20	P 47,896,335.00
LOAN AGREEMENT (TRANCHE B)	KK	November 30, 2004	P 3,230,963,995.00	P 16,154,820.00
LOAN AGREEMENT (MESALA)	MM	December 6, 2004	P 413,397,290.50	P 2,066,987.00
			Sub-total	P 66,118,142.00
MORTGAGE BONDS	OO	December 6, 2004	P 13,806,784,359.98	P 66,118,142.00
ONE HUNDRED SECOND SUPPLEMENTAL INDENTURE ("SUPPLEMENTAL INDENTURE")	QQ	December 6, 2004	P 13,806,784,359.98	P26,447,266.19[9]

In the letter dated November 28, 2006 addressed to then Commissioner Jose Mario C. Buñag, petitioner claimed DST excess payments of P66,118,140.42.[10]

On December 4, 2006, petitioner demanded a refund of additional excess documentary stamp taxes ("DST") of P26,447,266.19 or the aggregate amount of P92,565,408.61.[11]

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[9] Docket, CTA Case No. 7545, pp. 120, 140 & 148.
[10] Joint Stipulation of Facts and Issues, Docket, CTA Case No. 7545, p. 62.
[11] *Ibid.*

Respondent's inaction on the refund claim prompted petitioner to appeal before the Court's Special First Division on December 5, 2006. Petitioner sought for the refund of P92,565,408.61 allegedly representing excess and erroneous 2004 DST payments arising from Loan Agreements, Mortgage Bonds, and Supplemental Indenture executed in connection with refinancing and revision of its loan facilities.[12]

The Court's Special First Division rendered a Decision dated March 22, 2010 dismissing the Petition for Review.[13]

Acting upon petitioner's Motion for Reconsideration of the assailed Decision, the Court's Special First Division issued a Resolution dated September 13, 2010 denying the same for lack of merit.[14] The Court reasoned that the parties clearly intended to treat the Omnibus Agreement containing Tranche A and B Facility Agreements, Supplemental Indenture, the Omnibus Loan and Security Agreement, and the Mortgage Bonds as separate transactions, each subject to DST. Thus, the denial of the refund claim is proper.

THE ISSUES

Unfazed, petitioner filed a Petition for Review with the Court *En Banc* raising the following issues:

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[12] *Ibid.*
[13] Rollo, pp. 23-35. Penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova
[14] Rollo, pp. 37-41.

> WHETHER THE PETITIONER ERRONEOUSLY PAID EXCESS DOCUMENTARY STAMP TAXES IN THE TOTAL AMOUNT OF P92,565,408.61;
>
> WHETHER THE OMNIBUS AGREEMENT (TRANCHE A) IN THE AMOUNT OF USD170,053,200.00 (PHP 9,759,266,809.00), AND THE FIRST MORTGAGE BOND AND MORTGAGE TRUST INDENTURE SECURING THE SAME, CONSTITUTE A SINGLE AND ENTIRE TRANSACTION WHICH IS SUBJECT TO ONE DOCUMENTARY STAMP TAX;
>
> WHETHER THE OMNIBUS AGREEMENT (TRANCHE B) IN THE AMOUNT OF PHP 3,230,963,995.00, AND THE FIRST MORTGAGE BOND AND MORTGAGE TRUST INDENTURE SECURING THE SAME, CONSTITUTE A SINGLE ENTIRE TRANSACTION WHICH IS SUBJECT TO ONE DOCUMENTARY STAMP TAX;
>
> WHETHER THE OMNIBUS LOAN AND SECURITY AGREEMENT IN THE AMOUNT OF PHP413,397,290.50, AND THE FIRST MORTGAGE BONDS AND MORTGAGE TRUST INDENTURE SECURING THE SAME, CONSTITUTE A SINGLE AND ENTIRE TRANSACTION WHICH IS SUBJECT TO ONE DOCUMENTARY STAMP TAX; AND
>
> WHETHER THE PETITIONER IS ENTITLED TO A REFUND OR TAX CREDIT IN THE AMOUNT OF P92,565,408.61 REPRESENTING EXCESS DOCUMENTARY STAMP TAX ERRONEOUSLY PAID.[15]

Respondent failed to file her Comment to the Petition.

In the Resolution dated December 1, 2010, the Court directed the parties to file their respective Memorandum. However, only petitioner filed its Memorandum.[16] Thereafter, the case was submitted for decision. *gc*

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[15] Rollo, p. 7.
[16] Rollo, p. 49.

THE COURT'S RULING

DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto.[17] Otherwise stated, this tax is imposed upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.[18] It is not limited to the document, instrument and paper embodying the transaction specified under the law.[19]

Considering that in the instant case, the parties executed the Loan Agreements, Mortgage Bonds and Supplemental Indenture, and the corresponding 2004 DST were each paid for these transactions, the applicable law is the 1997 NIRC, as amended by Republic Act ("R.A.") No. 9243[20] and implemented by Revenue Regulations ("RR") No. 13-04.[21]

DST is imposed on debt instruments under Section 179 of the 1997 NIRC, as amended, as follows:

> "SEC. 179. *Stamp Tax on All Debt Instruments.* – On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: *Provided,* That for such debt instruments with

[17] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, 489 SCRA 147.
[18] *Commissioner of Internal Revenue v. Manila Bankers' Life Insurance Corporation,* G.R. No. 169103, March 16, 2011.
[19] *Irene C. Salud v. Commissioner of Internal Revenue,* C.T.A. EB Case No. 412, April 30, 2009.
[20] AN ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES took effect on March 20, 2004.
[21] IMPLEMENTING THE PROVISIONS OF REPUBLIC ACT No. 9243, AN ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments, securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. (Emphasis supplied.)

Debt instruments under Section 179 of the 1997 NIRC, as amended, cover instruments representing borrowing and lending transactions including but not limited to the following:

a. Debentures,

b. Certificates of indebtedness,

c. Due bills,

d. bonds,

e. loan agreements, including those signed abroad wherein the object of the contract is located or used in the Philippines,

f. instruments and securities issued by the government or any of its instrumentalities,

g. deposit substitute debt instruments,

h. certificates or other evidences of deposit that are drawing instrument significantly higher than the regular saving deposit taking into consideration the size of the deposit and the risks involved, *jr*

> i. certificates or other evidences of deposits that are drawing interest and having a specific maturity date,
>
> j. orders for payment of any sum of money otherwise than at sight or on demand,
>
> k. promissory notes, whether negotiable or non-negotiable , except bank notes issued for circulation.[22] (Emphasis supplied.)

Clearly, the Omnibus Agreement dated November 12, 2004, including Tranches A and B Facility Agreements and the Omnibus Loan and Security Agreement dated November 26, 2004 as debt instruments are subject to DST under Section 179 of the 1997 NIRC, as amended.

THE OMNIBUS AGREEMENT, TRANCHES A AND B FACILITY AGREEMENTS ALL DATED NOVEMBER 12, 2004, OMNIBUS LOAN AND SECURITY AGREEMENT DATED NOVEMBER 26, 2004, MORTGAGE BONDS AND SUPPLEMENTAL INDENTURE PERTAIN TO DIFFERENT AND INDEPENDENT TRANSACTIONS, THUS, EACH OF WHICH IS SUBJECT TO DST.

Petitioner alleges the payment of one DST on either the loan agreement or the promissory notes issued to secure such loan. Since the parties essentially intended to enter into one taxable transaction, a contract of loan, the issuance of security for the loan formed an integral part of the contract, and is not subject to another DST because this tax is principally a privilege tax, and not a tax on documents. *Je*

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[22] Revenue Regulations No. 13-04.

Only one DST can be imposed either on the loan agreement or the other "debt instruments" issued to secure such loan. Bonds issued to secure a loan, equivalent to the amount of loan being secured, being certificates of indebtedness which are promissory notes, are not subject to a separate DST.

DST imposed on debt instruments under Section 179 of the 1997 NIRC, as amended, and mortgages under Section 195 of the same Code refer to the one taxable transaction rule as attested by Section 8 of Revenue Regulations ("RR") Nos. 9-94 and 13-2004 and BIR Rulings DA-091-03, DA-317-07 and DA-201-2007.

The loan agreements, both with auxiliary security covenants, each constitute one taxable transaction, and each subject to only one DST. Otherwise, the fundamental principles of "just taxation" and due process are violated.

The Court disagrees.

In executing the Omnibus Agreement, Tranches A and B Facility Agreements all dated November 12, 2004, the parties have in effect stipulated separate and independent treatment for each of these transactions as bolstered by subheadings (a) and (c), Section 2 of the Omnibus Agreement dated November 12, 2004, reading: *gr*

2. AGREEMENT AND BINDING EFFECT

> **(a) All persons party to this Omnibus Agreement agree to the provisions hereof and any person described as a party to a Volume of this Omnibus Agreement hereby agrees to the provisions of such Volume as if it had separately executed and delivered such Volume;**
>
> **xxx xxx xxx**
>
> **(c) Each party to any Volume of this Omnibus Agreement is entitled to enforce such Volume as a separate agreement, as if the agreement set out in such Volume did not comprise part of this Omnibus Agreement, and the inclusion of such agreement as a Volume of this Omnibus Agreement does not in any way derogate from or impair the rights of such party under, or the effectiveness or enforceability of the provisions of, such Volume.**[23] (Emphasis supplied.)

The Omnibus Agreement dated November 12, 2004 marked as Exhibit "A" was formally offered and subsequently admitted by the Court as shown in the Resolution dated June 3, 2008.[24] Under Section 34, Rule 132 of the Rules of Court, "The Court shall consider no evidence which has not been formally offered". The offer of evidence is necessary because it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial. Such offer may be made orally or in writing sufficient to show that the party is ready and willing to submit the evidence to

[23] Exhibit "A", p.2.
[24] Docket, CTA Case No. 7545, p. 120.

the court.[25] Thus, the Court gives credence to petitioner's admission in the Omnibus Agreement dated November 12, 2004.

On the other hand, the Omnibus Loan and Security Agreement dated November 26, 2004 entered between petitioner and Meralco Employees Savings and Loan Association, Inc. ("MESALA") is also distinct and separate from the Omnibus Agreement, Tranches A and B Facility Agreements all dated November 12, 2004. Aside from the fact that the loan agreements involve different parties, the terms and conditions of each loan facility vary. The purpose of the Omnibus Agreement dated November 12, 2004 is to refinance under the terms and conditions set out in the finance documents, and, with respect to the DBP-Tranche B Lenders (as such term is defined in the Tranche B Facility Agreement) to revise and redocument the terms and conditions governing the DBP-JBIC Syndicated Facility in accordance with and to conform to the terms and conditions set out in the finance documents.[26] The objective of the MESALA Agreement dated November 26, 2004 is for MESALA to provide a loan facility to petitioner to refinance the existing unsecured loan; while petitioner agreed to issue First Mortgage Bonds to MESALA as security for the prompt payment, when due, of all liabilities and indebtedness of petitioner under the loan.[27] Moreover, Tranches A and B Loan Facility Agreements cover the amounts of

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[25] *Ramos v. Spouses Dizon*, G.R. No. 137247, August 07, 2006, 498 SCRA 17 citing Chua v. Court of Appeals, G.R. No. 88383, February 19, 1992, 206 SCRA 339. See *Elvira Mato Vda. de Oñate v. Court of Appeals*, G.R. No. 116149, November 23, 1995, 250 SCRA 283.
[26] Whereas Clause, Exhibit "A"
[27] Exhibit "C".

USD170,053,200.00 and PHP3,230,963,995.00[28], respectively; while the MESALA agreement dated November 26, 2004 pertains to petitioner's outstanding loans of PHP93,397,290.50 and PHP320,000,000[29]. Clearly, the respondent correctly imposed separate DST on the MESALA loan agreement.

DST is likewise imposed on each of the mortgage bonds securing petitioner's loans under Section 195 of the 1997 NIRC, as amended. The law requires DST payments on mortgage, pledge and trust transactions similar to petitioner's mortgage bonds pursuant to Section 195 of the same Code, stating:

> SECTION. 195. Stamp Tax on Mortgages, Pledges and Deeds of Trust. – On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing for forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax xxx.

Petitioner also argues that in the same manner, the Supplemental Indenture and the Mortgage Bonds issued pursuant thereto, cannot be taxed separately. The Supplemental Indenture and Mortgage Bonds are indivisible because these are integral parts of the two Loan Agreements, and each of the Loan Agreements constitutes one taxable transaction covered by DST.

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[28] Exhibit "A", pp.31- 32.
[29] Exhibit "C", p. 1.

Independently of the mortgage bonds, the Supplemental Indenture could not be taxed DST since the amount of the security appears not on the Mortgage Indenture itself but on the face of the Mortgage Bonds issued pursuant thereto. The Mortgage Bonds and the Supplemental Indenture were issued by the petitioner only as security for the payment of the obligations as expressly mentioned in the Loan Agreements. A mortgage bond can be likened to a promissory note. It is immaterial, if it was covered by a separate document. DST is a tax on the privilege of entering into a contract of loan. It is not a tax on documents.

Both loan agreements contained a security agreement. Thus, the execution and delivery of the Mortgage Bonds and the Supplemental Indenture were not separate and independent transactions, but merely formed integral parts of the two (2) Loan Agreements. Further, each Loan Agreement, secured by the Mortgage Bonds and the Supplemental Indenture constituted a single and entire taxable transaction subject to one DST. Thus, petitioner is entitled to DST refund or tax credit in the total amount of P92,565,408.61.

We are not persuaded.

Section 17.01 of the Original Indenture dated December 31, 1957 authorizes the petitioner and trustee "to enter into indentures supplemental thereto for the purpose of setting forth the terms and provisions of any series of bonds to be issued thereunder (other than the bonds of Series A referred to therein) and the form of bonds and coupons of such series, and conveying, transferring and assigning to the trustee xxx".[30] The Supplemental Indenture refers to First Mortgage Bonds with various dates due on years 2005, 2006, 2007, 2008, 2009, 2010 and 2011. Thus, the Supplemental Indenture is merely an extension of the Original Indenture, and is subject to DST independently from the Mortgage Bonds under Section 198 of the 1997, NIRC, as amended:

> SEC.198. *Stamp Tax on Assignments and Renewals of Certain Instruments.* – Upon each and every assignment or transfer of any mortgage, lease or policy of insurance, or the renewal or continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness by altering or otherwise, there shall be levied, collected and paid a documentary stamp tax, at the same rate as that imposed on the original instrument.

The one taxable transaction rule does not apply to the Omnibus Agreement, Tranches A and B Facility Agreements all dated November 12, 2004, Omnibus Loan and Security Agreement dated November 26, 2004 and Supplemental Indenture because these pertain to different transactions, and are separately subject to DST.[31] In the Resolution dated September 13, 2010, the Court in Division aptly observed that:

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[30] Exhibit "B", p.1.
[31] See *Philippine Bank of Communication v. Commissioner of Internal Revenue*, CTA Case No. 6177, June 30, 2008.

> xxx each of the documents subjected to DST conferred different rights and obligations to the parties, and that the parties such as Manila Electric Company, BPI Capital Corporation, Citibank, N.A., Philippine Branch, Citigroup Global Markets Asia Limited, Bank of the Philippine Islands, and Meralco Employees Savings and Loan Association, Inc., were not exactly the same and/or were not parties to other contracts/documents.[32]

Clearly, the Court in Division's findings explained why petitioner is not entitled to the refund claim of P92,565,408.61 representing DST paid for taxable year 2004.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. The assailed Decision dated March 22, 2010 and the Resolution dated September 13, 2010 are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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[32] Rollo, pp. 40-41.

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice