REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

ECO LEISURE AND HOSPITALITY HOLDING COMPANY, INC., Petitioner,	**CTA Case No. 8347**
	Members:
- versus -	**UY,** *Acting Chairperson, and* **FABON-VICTORINO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 04 2013 4:25pm

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DECISION

UY, J.:

This Petition for Review seeks the refund or issuance of tax credit certificate (TCC) in favor of petitioner Eco Leisure and Hospitality Holding Company, Inc. in the amount of P3,066,823.75 for its alleged erroneous overpayment of Documentary Stamp tax (DST) on its purchase of the 93,727 common shares of stock of Hotel Enterprises of the Philippines, Inc. (HEPI) from Biscom, Inc.

THE FACTS

Petitioner Eco Leisure and Hospitality Holding Company, Inc. is engaged in the business of investing in, purchasing, developing or otherwise acquiring real or personal property. It is duly organized and existing under Philippine laws, with principal office at Unit 1108, Tektite West Tower, Exchange Road, PSE Center, Ortigas, Pasig City.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered

[1] Par. 1.1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 82.

to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit arising under the National Internal Revenue Code (NIRC). She holds office at the BIR National Office Building, Diliman, Quezon City.

Biscom, Inc. is a Philippine corporation, with principal place of business at 6/F Legaspi Towers 200, Paseo de Roxas, Legaspi Village, Makati City.[2]

Hotel Enterprises of the Philippines, Inc. is a Philippine corporation, with principal place of business at 2702 Roxas Boulevard, Pasay City.[3]

On September 17, 2009, Biscom, Inc., through a Deed of Absolute Sale[4], sold 93,727 common shares of stock of HEPI to petitioner for a consideration of P911,545,000.00. The subject shares have par value of P1,000.00 each, or a total par value of P93,727,000.00.[5]

On October 8, 2009, petitioner filed the DST Return and paid DST in the amount of P3,418,300.00 for the purchase of 93,727 common shares of stock of HEPI.[6]

On March 26, 2010, petitioner filed a claim for refund or issuance of tax credit certificate for its alleged overpaid DST in the amount of P3,066,823.75 with Revenue District Office (RDO) No. 051 of the BIR.[7]

There being no final action taken by respondent on petitioner's claim for refund or issuance of TCC, petitioner filed the instant Petition for Review on October 5, 2011.

In her Answer[8] filed through registered mail on November 14, 2011, and received by this Court On November 24, 2011, respondent interposed the following Special and Affirmative Defenses:

> "5. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;

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[2] Par. 1.3, Stipulation of Facts, JSFI, docket, p. 83
[3] Par. 1.4, Stipulation of Facts, JSFI, docket, *ibid.*
[4] Exhibit "C"
[5] Exhibits "K" and "K-1"
[6] Exhibits "D" and "E"
[7] Exhibit "F"
[8] Docket, pp. 46-48

6. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.

7. Petitioner failed to substantiate that the amount of ₱3,066,823.75, representing its alleged overpaid Documentary Stamp Tax (DST) on its sales of shares of stock was erroneously paid or remitted to the BIR;

8. Pursuant to the 1997 Tax Code, the Documentary Stamp Tax (DST) on petitioner's sale transactions of its shares of stock is computed based on the total purchase price of P911,545,000.00 which is higher than the total par value shares of P93,727,000.00;

9. Petitioner failed to comply with the requirements under ***Sections 204*** *in relation to* ***Section 229*** *of the 1997 Tax Code*.

10. Claims for refund are construed strictly against herein petitioner for the same partakes the nature of exemption from *taxation (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95**)* and as such, they are looked upon with disfavor. *(**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211**)*."

Petitioner filed its Reply[9] on November 28, 2011, stating the following counter-arguments:

"I. THE RESPONDENT WAS GIVEN AMPLE OPPORTUNITY TO CONDUCT AN INVESTIGATION OF ECO LEISURE'S CLAIM FOR A TAX CREDIT CERTIFICATE.

II. THE PRESUMPTION THAT TAXES ARE PAID AND COLLECTED IN ACCORDANCE WITH LAW MAY BE REBUTTED BY EVIDENCE TO THE CONTRARY.

III. CONTRARY TO THE RESPONDENT'S CLAIM, THE DST ON THE SALE OF THE SUBJECT SHARES SHOULD BE COMPUTED BASED ON THE PAR

[9] Docket, pp. 51-58

VALUE OF THE SHARES AND NOT ON THEIR PURCHASE PRICE.

IV. ECO LEISURE HAS SUBSTANTIATED, AND WILL PRESENT OVER THE COURSE OF TRIAL, FURTHER EVIDENCE IN SUPPORT OF ITS CLAIM.

V. ECO LEISURE HAS COMPLIED WITH THE REQUIREMENTS OF SECTION 204 IN RELATION TO SECTION 229 OF THE NIRC.

VI. CONTRARY TO REPONDENT'S CONTENTION, NOT ALL CLAIMS FOR REFUND PARTAKE OF THE NATURE OF AN EXEMPTION FROM TAXATION. AS SUCH, THE RULE OF STRICT CONSTRUCTION AGAINST ECO LEISURE DOES NOT APPLY."

During Pre-trial held on February 3, 2012[10], the parties entered into stipulation of facts and issues, identification of documentary evidence and names of the parties' witnesses. Thereafter, as directed by the Court, the parties submitted their Joint Stipulation of Facts and Issues[11] on February 20, 2012, which was approved by the Court in the Resolution dated February 24, 2012.[12]

During trial, petitioner presented documentary and testimonial evidence, while respondent's counsel manifested during the hearing held on June 21, 2012[13] that petitioner's claim for refund is still pending with RDO No. 051, and that no final report was submitted. Thus, he was constrained to submit the case for decision based on the pleadings with a directive to both parties to file their respective Memorandum within thirty (30) days.

In the Resolution dated August 23, 2012, this case was submitted for decision[14], taking into consideration petitioner's Memorandum[15] filed on July 20, 2012; and respondent's Manifestation and Motion[16] filed on August 3, 2012, stating that she is adopting all her arguments and affirmative defenses found in the Answer as her Memorandum.

Hence, this Decision.

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[10] Minutes of Pre-trial held on February 3, 2012, docket, p. 81
[11] Docket, pp. 82-86
[12] Resolution dated February 24, 2012, docket, pp. 88-89
[13] Minutes of the hearing held on June 21, 2012, docket, p. 354
[14] Docket, p. 377
[15] Docket, pp. 357-368
[16] Docket, p. 373

THE ISSUES

The parties submitted the following issues[17] for this Court's resolution:

> "2.1 Whether or not ECO Leisure failed to substantiate that the amount of P3,066,823.75 representing the alleged overpaid Documentary Stamp Tax (DST) on its sales of shares of stock was erroneously paid or remitted to the BIR.
>
> 2.2. Whether the DST on the sale of shares of stock is computed based on the par value or the consideration for the sale of the shares of stock.
>
> 2.3. Whether or not ECO Leisure has complied with the requirements under Sections 204 in relation to Section 229 of the 1997 Tax Code.
>
> 2.4. Whether ECO Leisure is entitled to a refund in the amount of P3,066,823.75 representing the overpaid DST on the sale of the HEPI Common Shares."

Petitioner's arguments

Petitioner alleges that on September 17, 2009, it bought from Biscom, Inc., through a Deed of Absolute Sale[18], 93,727 common shares of stock of HEPI for a consideration of P911,545,000.00. The said shares of stock have a par value of P1,000.00 each or a total of P93,727,000.00.[19] Petitioner claims that it paid DST on October 8, 2009 as computed by the BIR's One Time Transaction Section, based on the total consideration it paid, and not based on the aggregate value of the shares of stock it bought, computed as follows:

Purchase price	P911,545,000.00
Multiplied by DST Rate	0.375%
DST Paid	**P3,418,300.00**

Petitioner thus contends that it is entitled to a refund or tax credit of its erroneously overpaid DST on its purchase of the 93,727 common shares of stock of HEPI from Biscom, Inc. since respondent

[17] Docket, pp. 83-84
[18] Exhibit "C"
[19] Exhibits "K" and "K-1"

computed the DST based on the purchase price and not on the aggregate par value of the shares.

Respondent's counter-arguments

Respondent counter-argues that petitioner is not entitled to a refund or issuance of TCC in the amount of P3,066,823.75, representing its alleged erroneous overpayment of DST because it failed to comply with the provisions of Sections 204 and 229 of the NIRC of 1997.

THE COURT'S RULING

Petitioner erroneously paid DST on its purchase of shares of stocks

Section 175 of the NIRC of 1997, as amended, which provides:

> "SEC. 175. *Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificates of Stock.* — **On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of shares or certificates of stock in any association, company or corporation**, or transfer of such securities by assignment in blank, or by delivery, or any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money, or for the future transfer of any stock, **there shall be collected a documentary stamp tax of Seventy-five centavos (P0.75) on each Two hundred pesos (P200), or fractional part thereof, of the par value of such stock**: *Provided*, That only one tax shall be collected on each sale or transfer of stock from one person to another, regardless of whether or not a certificate of stock is issued, indorsed, or delivered in pursuance of such sale or transfer: and *Provided further,* That in the case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock." *(Emphasis supplied)*

Clearly from the foregoing, DST on sale or transfer of shares of stock in any corporation is computed based on the par value of each share of stock.

As earlier mentioned, on March 26, 2010, petitioner filed with respondent a claim for refund in the amount of P3,066,823.75,[20] representing the difference between: the DST due based on the par value, and the DST actually paid based on the purchase price of the shares of stocks purchased by petitioner, computed as follows:

Total par value (93,727 x P1,000.00)	P 93,727,000.00
DST Rate (P0.75/P200)	0.375%
DST Due	P 351,476.25
DST Paid based on purchase price	3,418,300.00
Difference	**P3,066,823.75**

A closer look at HEPI's Amended Articles of Incorporation, would disclose that the par value of its capital stock is at P1,000.00 per common share.[21] Hence, the 93,727 common shares of stock of HEPI bought by petitioner from Biscom, Inc. amount to a total of P93,727,000.00 at par value.

Applying the afore-quoted provision of Section 175 of the NIRC of 1997, as amended, the DST to be paid by petitioner on its purchase of HEPI's common shares from Biscom, Inc. should only be computed based on the total par value of the shares of stock purchased.

In view of the foregoing and considering that petitioner presented Biscom Inc.'s Tax Clearance Certificate and Certificate Authorizing Registration (BIR Form No. 1954)[22] to prove that all the taxes due on the subject transaction, including DST, have been duly paid, this Court finds petitioner to be entitled to its claim for refund or issuance of TCC in the amount of P3,066,823.75, as computed above.

Petitioner fully complied with the provisions of Section 204(C) and Section 229 of the NIRC of 1997, as amended

[20] Exhibit "F"
[21] Exhibits "K" and "K-1"
[22] Exhibits "G" and "H"

Petitioner's entitlement to its refund claim necessitates compliance with the requirements set forth under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended. Said provisions are quoted hereunder for ready reference:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer filed in writing with the Commissioner **a claim for credit or refund within two (2) years after the payment of the tax** or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax** or penalty regardless of any supervening cause that may arise after payment; *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which

payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

As emphasized above, the two-year prescriptive period for the filing of a claim for refund or issuance of a tax credit certificate, is reckoned from the date of payment of DST by petitioner, and in the instant case, from October 8, 2009[23]. Counting two years therefrom, the two-year prescriptive period ended on October 8, 2011.

Based on the records, petitioner filed its administrative claim with respondent on March 26, 2010[24]; while it filed the instant Petition for Review on October 5, 2011. Applying the provisions of Sections 204 and 229 of the NIRC of 1997, as amended, it is clear that the filing of the administrative and judicial claims fall within the prescribed period.

In sum, petitioner was able to substantiate its claim and has sufficiently proven its entitlement to a refund in the amount of P3,066,823.75, representing its overpaid DST on its purchase of the HEPI common shares from Biscom, Inc.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P3,066,823.75 for its erroneous overpayment of Documentary Stamp Tax.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

[23] Exhibits "D" and "E"
[24] Exhibit "F"

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached after due consultation before the case was assigned to the writer of the opinion of the Court.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice