REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA E.B. NO. 681 (CTA CASE NO. 7919)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
UNIVERSITY OF SANTO TOMAS HOSPITAL, INC., Respondent.	
	Promulgated: APR 20 2011 10:15 a.m.

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DECISION

UY, J.:

This Petition for Review filed on September 24, 2010 by the petitioner, Commissioner of Internal Revenue against the respondent, University of Santo Tomas Hospital, Inc., seeks a reconsideration of the Decision dated May 20, 2010[1] and the Resolution dated August 18, 2010[2], rendered by the Second Division (Court in Division) of this Court in CTA Case No. 7919, entitled *"University of Santo Tomas Hospital, Inc., Petitioner, vs. Commissioner of*

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[1] Penned by Associate Justice Cielito N. Mindaro-Grulla, and concurred by Associate Justices Juanito C. Castañeda, Jr., and Caesar Casanova, pp. 15 to 30.

[2] Docket, pp. 31 to 33.

Internal Revenue, Respondent", the dispositive portions of which respectively read:

DECISION dated May 20, 2010

> "**WHEREFORE,** the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **DIRECTED TO REFUND** in favor of petitioner the amount of **FIFTEEN MILLION PESOS (P15,000,000.00)**, representing erroneously paid documentary stamp taxes on the approved credit line/facility dated April 12, 2007.
>
> **SO ORDERED**."

RESOLUTION dated August 18, 2010

> "**WHEREFORE**, premises considered, respondent's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (hereafter referred to as the Commissioner) empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent University of Santo Tomas Hospital, Inc. (hereafter referred to as USTHI) is a non-stock, non-profit corporation duly organized and existing under Philippine laws, with principal office address located at the University of Santo Tomas Compound, España Boulevard, Manila.

On April 12, 2007, respondent, designated as "borrower", signed and executed an Omnibus Loan and Security Agreement (OLSA) with other contracting parties, designated as "lenders", composed of banking institutions, namely: (1) Development Bank of the Philippines (DBP); (2) Land Bank of the Philippines (LBP); (3) Philtrust Bank; and (4) Development Bank of the Philippines-Trust Services (DBP-Trust). The DBP likewise served as Facility Agent, Mortgage Trustee or DSRA Agent. In the said Agreement, the lenders agreed to provide loans to respondent in the aggregate amount of ₱ 3,000,000,000.00, for the purpose of financing respondent's projects and other general financing requirements for its operations, subject to the terms and conditions set forth therein. The said lenders referred to the Agreement as a syndicated loan facility, with each lender bank agreeing to provide its respective approved credit line/facility, detailed as follows:

Lending Bank	***Credit Line/Facility***
DBP	₱ 1,500,000,000
LBP	1,000,000,000
Philtrust Bank	300,000,000
DBP-Trust	200,000,000
TOTAL	**₱ 3,000,000,000**

On April 18, 2007, respondent paid petitioner the amount of ₱ 15,000,000.00 as documentary stamp taxes (DST) for its approved credit line/facility under the OLSA.

However, the credit line/facility, as contained in the OLSA, was never implemented and/or availed of although the DST was already paid. In fact, respondent never made a "drawdown" on the same approved credit line/facility. Eventually, the approved credit line/facility was cancelled by respondent after discovering that there were irregularities in the application for the said credit line/facility as well as in its execution.

On October 2, 2008, respondent filed an administrative claim for refund with the BIR District Office No. 32 of Manila, in the amount of ₱ 15,000,000.00, supposedly representing erroneously paid DST for the approved credit line/facility under the OLSA.

Due to the inaction of the Commissioner, respondent USTHI filed a Petition for Review on April 17, 2009 docketed as CTA Case No. 7919 entitled *"University of Santo Tomas Hospital, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent"*, and was assigned to the Second Division of this Court. An Answer thereto was filed by the Commissioner on May 13, 2009 interposing special and affirmative defenses.

During trial, USTHI presented as its witness, Rev. Fr. Jose Ma. Tinoko, O.P., its former Treasurer and Member of the Board of Trustees. Thereafter, it filed its Formal Offer of Documentary Evidence on October 8, 2009 and rested its case upon admission of its evidence. On the other hand, the Commissioner waived the presentation of respondent's evidence considering that the administrative investigation of the subject claim for refund had not been completed while the tax docket was already forwarded to the Court in Division. Thus, CTA Case No. 7919 was submitted for decision taking into consideration therein petitioner's Memorandum filed on December 22, 2009 and respondent's Memorandum filed on December 23, 2009.

In the assailed Decision dated May 20, 2010, the Court in Division held that if there is no delivery of money or other consumable thing upon the condition that the same amount of the same kind and quality shall also be paid, there will be no DST to be imposed on the document evidencing such loan agreement, citing as legal bases Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. (RA) 9243[3], and Sections 3(b) and 6 of Revenue Regulations No. (RR) 9-94[4], to wit:

> "SEC. 179. *Stamp Tax on All Debt Instruments.*— On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instrument: *Provided*, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be for a proportional amount in accordance with the ratio of its terms 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 note 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 and 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." *(Emphases as supplied in the assailed Decision)*
>
> "SECTION 3. *Definition of Terms.*— For purposes of these Regulations, the following terms shall mean:
>
> xxx xxx xxx
>
> (b) 'Loan Agreement' – refers to a contract in writing **where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid**. The term shall include **credit facilities, which may be evidenced by credit memo, advice or drawings**.
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> xxx xxx xxx

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[3] AN ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

[4] SUBJECT: Republic Act No. 7660, An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax, Amending for the Purpose Certain Provisions of the National Internal Revenue Code, as Amended.

> SECTION 6. *Stamp Tax on All Loan Agreements.*— All loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from the Philippine sources or the property or object of the contract is located or used in the Philippines shall be subject to the documentary stamp tax of thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any of such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
>
> In cases where **no formal loan agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code, as amended**." *(Emphases as supplied in the assailed Decision)*

And considering that there was no conveyance or delivery of the loaned amount in this case, the Court in Division said that no DST has accrued. Accordingly, the Petition for Review in CTA Case No. 7919 was GRANTED and the Court in Division directed petitioner to refund respondent the amount of ₱ 15,000,000.00, representing erroneously paid DST on the approved credit line/facility dated April 12, 2007 (*i.e.*, the OLSA).

On June 11, 2010, the Commissioner filed a Motion for Reconsideration of said Decision contending that the Court in Division erred in finding that respondent is entitled to the said refund, because the OLSA is, in itself, a loan agreement subject to the documentary stamp tax under the Tax Code, as amended by RA 9243. Said motion was DENIED in the assailed Resolution dated August 18, 2010 for lack of merit.

Hence, this Petition for Review assailing both the Decision dated May 20, 2010 and Resolution dated on August 18, 2010 rendered by the Second Division of this Court.

In the Resolution dated October 14, 2010,[5] the Court *En Banc* ordered petitioner to submit, within ten (10) days from receipt thereof, a copy of Revenue Delegation Authority Order No. 2-2007 and the required affidavit of service of the instant Petition for Review. Accordingly, petitioner filed its Compliance[6] on November 2, 2010, submitting the said documents.

As directed by Court *En Banc*, USTHI filed its Comment/Opposition [To The Petitioner's Petition for Review] on December 2, 2010.[7] In the Resolution dated December 16, 2010,[8] both parties were ordered to simultaneously submit their respective memorandum with fifteen (15) days from receipt thereof. Respondent filed its Memorandum on January 4, 2011; while petitioner filed his Memorandum on January 5, 2011. On January 19, 2011, the Court *En Banc* deemed the instant case submitted for decision.

Hence, this Decision.

THE ASSIGNED ERROR AND THE ISSUES RAISED

The Commissioner submits the following assignment of error, viz:

> "THE HONORABLE COURT OF TAX APPEALS – 2nd DIVISION ERRED IN RENDERING THE DECISION PROMULGATED ON MAY 20, 2010 GRANTING RESPONDENT USTHI'S PETITION FOR REVIEW AND DIRECTING THE COMMISSIONER OF INTERNAL REVENUE TO REFUND IN FAVOR OF THE RESPONDENT THE AMOUNT OF FIFTEEN MILLION PESOS (p15,000,000.00), REPRESENTING ERRONEOUSLY PAID DOCUMENTARY STAMP TAXES ON THE APPROVED CREDIT LINE/FACILITY DATED APRIL 12, 2007."

On the other hand, USTHI raises the following issues, to wit:

[5] Docket, pp. 35 to 37.
[6] Docket, pp. 38 to 42.
[7] Docket, pp. 46 to 72.
[8] Docket, pp. 75 to 76.

Respondent's Counter-Arguments

USTHI, herein respondent, contends that the instant Petition for Review is technically infirm and fatally defective for lack of the requisite imprimatur from the Office of the Solicitor General pursuant to existing laws, as well as, for lack of the proper verification under the Revised Rules of the Court of Tax Appeals and the Rules of Court. Respondent also stresses that same Petition for Review is patently unmeritorious for failing to ascribe that the Court *a quo* has committed a reversible error, though in fact it correctly and appropriately ruled that the respondent is entitled to a refund of the DST erroneously paid relative to the approved credit line/facility under the OLSA.

THE COURT EN BANC'S RULING

Respondent failed to prove that the instant Petition for Review lacked the requisite imprimatur from the Office of the Solicitor General.

Respondent USTHI invokes the application of the cases of *Cooperative Development Authority vs. Dolefil Agrarian Reform Beneficiaries Cooperative, Inc., et al.,*[9] *Republic of the Philippines vs. G. Holdings, Inc.,*[10] and *Civil Service Commission, et al. vs. Asensi*[11] in the instant case. However, neither case squarely applies to the instant case.

In the case at bench, it is herein noted that in the proceedings before the Court in Division, respondent USTHI has impliedly acknowledged that the petitioner-Commissioner of Internal Revenue, is represented by the Solicitor General, through petitioner's special attorneys, namely, Mario A. Saldevar and

[9] G.R. No. 137489, May 29, 2002.
[10] G.R. No. 141241, November 22, 2005.
[11] G.R. No. 160657, December 17, 2004.

Ramon B. Lorenzo. Such arrangement was never questioned by USTHI. In fact, it served copies of all its pleadings and papers filed with the Court in Division (and also with the Court *En Banc*), to the Office of the Solicitor General. Such acquiescence is presumed to be conformable to the law or the fact of said representation.[12]

Additionally, the provisions of Section 22, Rule 138 of the Rules of Court comes to mind, to wit:

> "SEC. 22. *Attorney who appears in lower court presumed to represent client on appeal.*— **An attorney who appears *de parte* in a case before a lower court shall be presumed to continue representing his client on appeal**, unless he files a formal petition withdrawing his appearance in the appellate court." *(Emphasis supplied)*

The record of this case is bereft of any indication, much less any evidence to the contrary, that the Office of the Solicitor General filed a formal withdrawal of its appearance. Thus, We are not prepared to declare that such Office discontinued to represent petitioner in this appeal.

The instant Petition for Review is properly verified.

Respondent USTHI submits that the verification attached to the instant Petition for Review did not comply with the requirement of the Rules of Court that the affiant must state that the "allegations therein are true and correct of his *personal knowledge or based on authentic records*" as it simply stated that is true and correct "*of my own knowledge and belief based on authentic records*" without stating under oath that it is based on the affiant's "*personal knowledge*", which the rules consider as inadequate.

Respondent is mistaken.

[12] Section 3(x), Rule 131 of the Rules of Court.

Section 4, Rule 7 of the Rules of Court, as amended (by A.M. No. 00-2-10-SC, May 1, 2000), provides as follows:

> "SEC. 4. *Verification.*— Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
>
> **A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.**
>
> **A pleading required to be verified which contains a verification based on 'information and belief' or upon 'knowledge, information and belief,' lacks a proper verification, shall be treated as an unsigned pleading.**" *(Emphasis supplied)*

In *Negros Oriental Planters Association, Inc. (NOPA) vs. Presiding Judge of RTC-Negros Occidental, Branch 52, Bacolod City, et al.*,[13] the Supreme Court said:

> "xxx. Before the amendment, said Section 4 stated:
>
> > SEC. 4. *Verification.*–Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
> >
> > A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of <u>his knowledge and belief</u>.[14]
> >
> > As amended, said Section 4 now states:
> > SEC. 4. *Verification.*–Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
> >
> > A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of <u>his personal knowledge or based on authentic records</u>.[15]
>
> Clearly, the amendment was introduced in order to make the verification requirement stricter, such that the party cannot now merely state under oath that he *believes* the statements made in the pleading. **He**

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[13] G.R. No. 179878, December 24, 2008.
[14] Emphasis omitted.
[15] Emphasis omitted.

> **cannot even merely state under oath that he *has knowledge* that such statements are true and correct. His knowledge must be specifically alleged under oath to be <u>either</u> *personal knowledge or* at least *based on authentic records*.**" *(Emphasis and underscoring supplied)*

Based on the foregoing pronouncement, the knowledge of the person signing the verification must **either** be of his personal knowledge **or** at least based on authentic records. And, it appearing that in the second paragraph of the Verification and Certification of the instant Petition for Review, it is stated under oath as follows:

> "2. I have caused the preparation of the foregoing Petition for Review; I have read the same and the contents and allegations therein are true and correct **<u>of my own knowledge and belief based on authentic records</u>** (Emphasis and underscoring supplied);[16]"

the Court *En Banc,* finds sufficient compliance with legal requirements as contemplated by the Supreme Court when it issued A.M. No. 00-2-10-SC amending the provisions of Section 4, Rule 7 of the 1997 Rules of Civil Procedure which took effect on May 1, 2000.

Moreover, We cannot say that the said verification comes under the purview of the third paragraph of the above-quoted Section 4. This is so because such verification does not state that it is merely based on "information and belief" nor simply upon "knowledge, information and belief". Such being the case, contrary to respondent's assertions, the verification in the instant Petition for Review is adequate.

Be that as it may, even granting that the instant Petition for Review indeed lacked the necessary verification, such circumstance is not fatal to the action. In

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[16] Docket, p. 13

Median Container Corporation vs. Metropolitan Bank and Trust Company,[17] the Supreme Court clarified:

> "**Verification is a formal, not jurisdictional, requirement**. It is simply intended to secure an assurance that the allegations in the pleading are true and correct, and that the pleading is filed in good faith. **That explains why a court may** order the correction of the pleading if verification is lacking, or **act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order to serve the ends of justice.**" *(Emphases supplied)*

In this case, the ends of justice are better served if We proceed to determine the merits of the case. And so, We shall.

The OLSA is a not a loan agreement, hence, not subject to DST.

Petitioner insists that the OLSA is a loan agreement, and thus, subject to the DST. However, no explanation was ever given by petitioner why the OLSA should be treated as such.

Section 3(b) of RR 9-94 defines the term "loan agreement", to wit:

> "SECTION 3. *Definition of Terms.*— For purposes of these Regulations, the following terms shall mean:
>
> xxx xxx xxx
>
> (b) 'Loan Agreement' – refers to a contract in writing **where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid**. The term shall include **credit facilities, which may be evidenced by credit memo, advice or drawings**." *(Emphases supplied)*

Based on the foregoing, for a contract to be considered as a loan agreement for purpose of imposing the DST, the same must have the following characteristics, to wit: (1) it must be in writing, (2) one of the parties to the

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[17] G.R. No. 166904, August 11, 2008.

contract delivers to the other money or other consumable thing, and (3) such delivery is upon the condition that the same amount of the same kind and quality shall be paid.

The OLSA lacks the second characteristic. The lenders therein did not deliver to respondent money or other consumable thing, as such delivery has yet to be made subsequently, subject to certain requirements or conditions. In fact, as correctly found by the Court in Division, there was no conveyance or delivery of the loaned amount that ever happened in this case.

Neither can We treat the OLSA as falling under the category of "credit facilities", because the same is not evidenced by any credit memo, advice or drawings. As aptly explained in the assailed Decision:

> "Credit facilities by themselves are not considered debt instruments that are subject to DST. There must be another document to prove that such credit facility has indeed been converted into a loan agreement, either by the execution of a formal loan agreement, a promissory note, a credit/debit memo, or an advice or drawings to prove that the credit facility has been availed of by the borrower. A credit facility is merely a facility or a line for making a specific amount available for the use of the borrower. It is not tantamount to the delivery of the money to the borrower. Only when the borrower makes use of the available amount by drawing on this facility will there be delivery of the money that will give rise to a loan, but only up to the amount of the actual amount of money that was drawn from the credit facility."

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision promulgated on May 20, 2010 and Resolution dated August 18, 2010 by the Court in Division, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
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 Section 13, Article VIII 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 *En Banc*.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Justice