REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE AND REGIONAL DIRECTOR OF REVENUE REGION NO. 4, CITY OF SAN FERNANDO, PAMPANGA,
Petitioners,

CTA EB No. 2817
(CTA Case No. 9968)

-versus-

THE TELEEMPIRE INCORPORATED, as represented by its President, Ma. Victoria Arlette A. Feliciano,
Respondent.

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THE TELEEMPIRE INCORPORATED, as represented by its President, Ma. Victoria Arlette A. Feliciano,
Petitioner,

CTA EB No. 2819
(CTA Case No. 9968)

-versus-

COMMISSIONER OF INTERNAL REVENUE AND THE REGIONAL DIRECTOR OF REVENUE REGION NO. 4 CITY OF SAN FERNANDO PAMPANGA,
Respondents.

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, *JJ.*

Promulgated:
APR 29 2025 2:21 p.m.

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D E C I S I O N

ANGELES, *J.*:

THE CASE

Before the Court *En Banc* are the following consolidated cases:

(1) *Petition for Review*[1] filed on November 20, 2023 by the Commissioner of Internal Revenue (CIR) and Regional Director (RD) of Revenue Region No. 4, City of San Fernando, Pampanga (collectively referred to as the Bureau of Internal Revenue or BIR), docketed as CTA EB No. 2817; and

(2) *Petition for Review*[2] filed on November 23, 2023 by The Teleempire Incorporated (TELEEMPIRE), as represented by its President, Ma. Victoria Arlette A. Feliciano, docketed as CTA EB No. 2819.

Both Petitions for Review seek to appeal the *Decision*[3] dated April 25, 2023 (assailed Decision) and *Resolution*[4] dated October 16, 2023 (assailed Resolution) promulgated by the CTA First Division and Special First Division (Court in Division), respectively, in CTA Case No. 9968, entitled "*The Teleempire Incorporated, as represented by its President, Ma. Victoria Arlette A. Feliciano vs. The Commissioner of Internal Revenue and The Regional Director of Revenue Region No. 4, City of San Fernando, Pampanga.*"

FACTS

The Court in Division narrated the facts as follows:

> [TELEEMPIRE] is a corporation organized and existing under the laws of the Republic of the Philippines.
>
> [CIR] is the chief of the BIR, which is the agency tasked to, among other things, assess and collect all national internal revenue taxes, fees and charges in the Philippines.
>
> [RD] of Revenue Region No. 4, City of San Fernando, Pampanga, is the duly authorized representative of [the] CIR within the jurisdiction of Revenue Region No. 4 of the BIR.
>
> On February 26, 2016, [TELEEMPIRE], as lessee, and the Subic Bay Metropolitan Authority (SBMA), as lessor, entered into a Lease Agreement, covering certain real properties located in the Subic Bay Freeport Zone (SBFZ).

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[1] CTA EB No. 2817 Docket, pp. 19-28.
[2] CTA EB No. 2819 Docket, pp. 8-64.
[3] *Id.*, pp. 76-95.
[4] *Id.*, pp. 98-107.

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On April 26, 2016, the SBMA issued a Certificate of Registration and Tax Exemption (CRTE) in favor of [TELEEMPIRE].

On August 24, 2017, a Letter of Authority was issued by Jethro M. Sabariaga, OIC - Regional Director RR 4 - San Fernando, Pampanga, authorizing Revenue Officer Gracita Agaton and Group Supervisor Roel Vergel Narag to examine petitioner's books of account and other accounting records for [taxable year (TY)] 2016.

On September 14, 2017, petitioner partially paid the [documentary stamp tax (DST)] corresponding to said Lease Agreement, and the surcharge, interest, and compromise penalty, for TY 2016, in the aggregate amount of ₱3,361,358.00, broken down as follows:

Particulars	***Amount***
Basic DST	₱2,140,561.00
Surcharge	535,140.00
Interest	655,657.00
Compromise penalty	30,000.00
Total	**₱3,361,358.00**

On January 16, 2018, [the] RD issued a Preliminary Assessment Notice against [TELEEMPIRE], containing the proposed assessment for TY 2016, particularly: *one*, deficiency [expanded withholding tax (EWT)]; and *two*, the unpaid portion of the deficiency DST.

On March 12, 2018, petitioner received from [the] RD, the [Final Letter of Demand (FLD)/Final Assessment Notice (FAN)] dated February 27, 2018, assessing it for deficiency [EWT] and the unpaid portion of the DST for TY 2016. Specifically, said DST was computed as follows:

Documentary Stamp Tax Deficiency		
Tax basis per audit		₱3,651,125.00
Less: Partial payment on tax paid on 9/15/2017		2,140,561.00
Documentary Stamp Tax Due		1,510,564.00
Add: 25% Surcharge	₱377,641.00	
20% Interest per annum* (02/11/2016 to 31/12/2017)	570,289.64	
12% Interest per annum* (01/01/2018 to 3/31/2018)	44,199.52	
Compromise Penalty	10,000.00	1,002,130.16
Documentary Stamp Tax Deficiency		**₱2,512,694.16**

[The] RD explained his findings of the EWT and DST embodied in the FLD in this wise:

1. **Expanded Withholding Tax Deficiency**
   Investigation disclosed the following:
   a. Payment to contractor rendering construction and security services were not subjected to expanded withholding tax, hence were assessed pursuant to Revenue Regulation No. 2-98. Thus, resulted to deficiency expanded withholding tax of P1,033,067.18, inclusive of penalties.

2. **Documentary Stamp Tax Deficiency**
   a. Full amount of documentary stamp tax on lease agreement with SBMA was not paid at the onset registration when the certification of Registration and Tax Exemption is still under process. As such, you are still liable for the DST on such agreement pursuant to RMC 48-2011 and Revenue Regulation No. 13-2004.

On April 10, 2018, [TELEEMPIRE] paid the EWT liability in the total amount of ₱1,173,443.39.

On April 11, 2018, [TELEEMPIRE] filed its Letter of Protest (with Claim for Tax Refund and/or issuance of a Tax Credit Certificate) dated April 10, 2018, claiming that: *one*, it is exempt by law from the payment of DST for TY 2016; and *two*, by reason of such exemption, the BIR illegally or erroneously collected the DST and penalties it earlier paid for TY 2016, in the total amount of ₱3,431,788.92.

On November 5, 2018, [TELEEMPIRE] filed a Petition for Review docketed as CTA Case No. 9968, to which [the BIR] filed their Answer on February 11, 2018.

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[TELEEMPIRE] presented Ms. Ma. Victoria Arlette A. Feliciano, as its witness.

On February 13, 2020, [TELEEMPIRE] filed its Formal Offer of Evidence, to which [the BIR] filed their Comment on February 21, 2020.

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For their part, [the BIR] presented Revenue Officer Gracita D. Agaton, as their witness.

On November 20, 2020, [the BIR] filed their Formal Offer of Evidence, to which [TELEEMPIRE] filed its Comment/ Opposition (to Respondent's Formal Offer of Evidence) with Motion to Present Rebuttal Evidence on December 3, 2020.

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In the Resolution dated January 12, 2021, we granted [TELEEMPIRE's] Motion to Present Rebuttal Evidence. [The BIR] moved, but failed to reverse said Resolution. In view thereof [TELEEMPIRE] was allowed to present Josephine Ivy F. Alipoon as its additional witness.

On November 29, 2021, [TELEEMPIRE] filed its Formal Offer of Rebuttal Evidence, to which [the BIR] filed their Comment (on Petitioner's Formal Offer of Rebuttal Evidence) on December 3, 2021.

In the Resolution dated March 4, 2022, we admitted [TELEEMPIRE's] offered rebuttal evidence.

[The BIR] posted their Memorandum on March 16, 2022, while [TELEEMPIRE] posted its Memorandum on April 20, 2022.

Through Resolution dated May 6, 2022, this case was submitted for decision.[5]

The Court in Division rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, the Petition for Review, filed by The Teleempire Incorporated on November 5, 2018, as represented by its President, Ma. Victoria Arlette A. Feliciano, is **PARTIALLY GRANTED**. Accordingly, we **RESOLVE** to:

a. **ORDER** [TELEEMPIRE] **TO PAY** [the BIR], the total amount of **₱2,484,153.54**, representing the basic DST due, including the corresponding surcharge, deficiency interest and delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, by [Republic Act (RA)] No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018, computed as follows: xxx xxx xxx

b. **ORDER** [TELEEMPIRE] **TO PAY** [the BIR], the delinquency interest at the rate of twelve percent (12%) on the ₱2,484,153.54, corresponding to the total amount due as of March 31, 2018, as determined above, or an amount of ₱816.71 per day, from April 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

c. **DELETE** the compromise penalty imposed upon [TELEEMPIRE] amounting to ₱10,000.00 relative to the DST assessment for TY 2016; and,

d. **DENY** [TELEEMPIRE's] claim for refund or issue a tax credit certificate on the alleged erroneously and illegally collected DST and penalties it paid for TY 2016, amounting to ₱3,431,788.92.

SO ORDERED.[6]

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[5] *Decision* dated April 25, 2023, Division Docket - Vol. II, pp. 930-934.

[6] *Id.*, pp. 946-947.

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The *Motion for Partial Reconsideration (of the Decision promulgated on April 25, 2023)*[7] filed by the BIR on May 17, 2023, and the *Motion for Partial Reconsideration*[8] posted by TELEEMPIRE on May 22, 2023, were both denied for lack of merit in the assailed Resolution.

PROCEEDINGS BEFORE THE COURT *EN BANC*

After being granted an extension of time[9], BIR filed its *Petition for Review* on November 20, 2023 **(CTA EB No. 2817)**, praying that the assailed Decision and Resolution be partially modified ordering TELEEMPIRE to pay compromise penalties in the amount of ₱10,000.00, in addition to the deficiency taxes, surcharge and interests mentioned in the assailed Decision.

Upon a similar grant for extension[10], TELEEMPIRE filed its *Petition for Review* on November 23, 2023 **(CTA EB No. 2819)**, praying for, among others, partial reversal of the assailed Decision, specifically, for this Court to declare TELEEMPIRE exempt from Documentary Stamp Tax (DST) liability on the Lease Agreement dated February 26, 2016 (subject Lease Agreement), pursuant to Section 12(c) of Republic Act (RA) No. 7227, otherwise known as the Bases Conversion and Development Act of 1992[11], as amended, and for this Court to grant its claim for refund or issuance of a Tax Credit Certificate (TCC) of erroneously and illegally collected DST and penalties paid for TY 2016, in the amount of ₱3,431,788.92.

In a Resolution dated November 24, 2023, the Court resolved to consolidate CTA EB Nos. 2817 and 2819, pursuant to Section 1, Rule 31 of the Rules of Court, as amended.[12]

BIR filed its *Comment/Opposition (Re: Petitioner's Petition for Review dated November 22, 2023)*[13] on February 2, 2024, while TELEEMPIRE filed its *Comment/Opposition (to the Petition for Review dated November 17, 2023 of the Commissioner of Internal Revenue)*[14] on February 12, 2024. The case was submitted for decision on February 28, 2024.[15]

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[7] Division Docket - Vol. II, pp. 949-954.
[8] Division Docket - Vol. II, pp. 1006-1049.
[9] *Resolution* dated November 7, 2023, CTA EB No. 2817 Docket, p. 13.
[10] *Resolution* dated November 10, 2023, CTA EB No. 2819 Docket, p. 7.
[11] March 13, 1992.
[12] Resolution dated November 24, 2023, CTA EB No. 2817 Docket, p. 65.
[13] CTA EB No. 2819 Docket, p. 67-81.
[14] CTA EB No. 2817 Docket, p. 83-90.
[15] *Id.*, p. 94.

ISSUES

The BIR raises the following assignment of errors in CTA EB No. 2817:

1. Whether the Court in Division erred in ruling that TELEEMPIRE is not liable for compromise penalty.[16]

On the other hand, TELEEMPIRE raises the following issues in CTA EB No. 2819:

1. Whether the Court in Division erred in finding that the issuance of a Certificate of Registration and Tax Exemption (CRTE) is required to enjoy the tax exemption under Section 12(c) of RA No. 7227, based on the RA No. 7227 Implementing Rules and Regulations (IRR), Revenue Regulations (RR) No. 1-95, Department of Finance (DOF) Department Order (DO) No. 3-08, and the subject Lease Agreement;

2. Whether the Court in Division erred in not finding that TELEEMPIRE was registered as a Subic Bay Freeport (SBF) Enterprise upon the execution of the subject Lease Agreement with the Subic Bay Metropolitan Authority (SBMA) on February 16, 2016;

3. Whether the Court in Division erred in not according the greatest weight to the SBMA's interpretation of its own rules;

4. Whether the Court in Division erred in not considering the constitutional issues raised by TELEEMPIRE;

5. Whether the Court in Division erred in not finding that the alleged CRTE requirement is unconstitutional for being an impermissible modification, and inconsistent with the objectives of RA No. 7227; and,

6. Whether the Court in Division erred in not resolving the conflict as to TELEEMPIRE's tax exemption in its favor as expressly demanded by RA No. 7227.[17]

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[16] CTA EB No. 2817 Docket, p. 25.
[17] CTA EB No. 2819 Docket, pp. 23-24.

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ARGUMENTS OF THE PARTIES

CTA EB No. 2817

The BIR argues that the Court *a quo* correctly found TELEEMPIRE liable for DST on the subject Lease Agreement. As TELEEMPIRE failed to pay the deficiency DST at the time or times required by law or regulation provided under Section 255 of the National Internal Revenue Code of 1997 (Tax Code), as amended, and Revenue Memorandum Order (RMO) No. 7-2015, the imposition of administrative penalty is justified.

The BIR thus prays that the assailed Decision and Resolution be partially modified ordering TELEEMPIRE to pay compromise penalty in the amount of ₱10,000.00, in addition to the deficiency taxes plus surcharge and interest mentioned in the assailed Decision.[18]

TELEEMPIRE counters that the Court *a quo* correctly deleted the BIR's assessment of compromise penalty against it. TELEEMPIRE argues that a compromise penalty cannot be imposed without the consent of the taxpayer. As TELEEMPIRE never agreed to pay compromise penalty, the BIR's prayer has no merit.[19]

CTA EB No. 2819

TELEEMPIRE argues that the Court *a quo* erred in finding that the issuance of a CRTE is required to enjoy the tax exemption under Section 12(c) of RA No. 7227. It is **registration with the SBMA** as an SBF Enterprise that confers the tax exemption under the said law. It emphasizes that Section 12(c) of RA No. 7227 itself does not impose the issuance of a CRTE before the tax exemption granted therein can be enjoyed.[20]

TELEEMPIRE claims that prior issuance of a CRTE is not required to be considered a registered SBF Enterprise, as can be seen in other provisions of the RA No. 7227 IRR.[21] TELEEMPIRE avers that Sections 3(h) and 21 of the RA No. 7227 IRR, which provides for the issuance of a CRTE, should be read together with Sections 3(g) and 16 thereof.[22] As such, while a CRTE may prove or represent registration,

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[18] *Id.*, p. 26.
[19] *Comment/Opposition (to the Petition for Review dated November 17, 2023 of the Commissioner of Internal Revenue)* dated February 12, 2024, CTA EB No. 2817 Docket, p. 84.
[20] *Petition for Review* dated November 22, 2023, CTA EB No. 2819 Docket, p. 26.
[21] *Id.*, p. 28.
[22] *Id.*, p. 29.

the issuance of the CRTE is not the registration itself. The CRTE merely confirms or validates the fact of registration and tax exemption of an SBF Enterprise.[23]

TELEEMPIRE points out that there is nothing in RA No. 7227 IRR that states that the date of issuance of the CRTE is considered as the date of registration of the SBF Enterprise.[24] Neither is there anything in RR No. 1-95 and DOF DO No. 3-08, which were cited by the Court *a quo*, that requires a CRTE for tax exemption of the Freeport Enterprise.[25]

TELEEMPIRE also claims that RA No. 7227, its IRR, and DOF DO No. 3-08 expressly provide that any conflict arising from the interpretation thereof or of RA No. 7227 must be resolved in favor of tax exemption. Further, Article I, Section 5 of the subject Lease Agreement is irrelevant, as it is registration as an SBF Enterprise, not the conduct of business in the SBF, that confers the tax exemption.[26]

TELEEMPIRE argues the Court *a quo* erred in not considering the constitutional issues raised in its Motion for Partial Reconsideration of the assailed Decision. It counters that the said constitutional issues were raised at the earliest opportunity and are now *lis mota* of the case.[27]

It likewise argues that administrative agencies cannot impose additional requirements for the enjoyment of tax exemptions, when no such requirement is contemplated under the relevant law. This infringes the exclusive power of Congress to grant tax exemptions, and is thus unconstitutional.[28] This also results in allegedly absurd consequences that are inconsistent with the clear objective of the said law, penalizing investors with taxes for locating within the SBF, which is the very activity that RA No. 7227 seeks to encourage.[29]

Lastly, TELEEMPIRE argues SBF Enterprises such as itself should not be penalized for the insufficiencies in the SBMA's registration procedures, and conflicting language used by the SBMA in the RA No. 7227 IRR and the subject Lease Agreement, in the face of

[23] *Id.*, pp. 30-31.
[24] *Id.*, p. 32.
[25] *Id.*, pp. 33-35.
[26] *Id.*, p. 36.
[27] *Id.*, pp. 47-48.
[28] *Id.*, pp. 49-54.
[29] *Id.*, pp. 55-59.

the clear and overriding intent of RA No. 7227 to grant tax exemptions for investors locating within the SBF.[30]

TELEEMPIRE thus prays that it be exempted from DST liability on the subject Lease Agreement, surcharge and deficiency and delinquency interest, and that it be granted a refund or tax credit of the alleged erroneously and illegally collected DST and penalties it paid for TY 2016, in the amount of ₱3,431,788.92.

In opposition, the BIR argues that the Court in Division correctly ruled that petitioner is not exempt from the payment of DST on the subject Lease Agreement.[31]

It argues that the liability to pay DST arises upon execution of the taxable document, and the taxpayer must show that it enjoys exemption at the time the liability to pay the said tax arose. Here, records show that the subject Lease Agreement with the SBMA was entered into on February 26, 2016; however, the Amended Articles of Incorporation of TELEEMPIRE reflecting its change of address to the Subic Bay Freeport Zone (SBFZ) was approved by the Securities and Exchange Commission (SEC) on April 25, 2016, while the CRTE of TELEEMPIRE was issued only on April 26, 2016. The BIR asserts that since TELEEMPIRE did not enjoy tax exemption at the time the subject Lease Agreement was executed, the assessment against it was valid.[32]

The BIR posits that for TELEEMPIRE to be entitled to exemption from DST on the subject Lease Agreement pursuant to Section 12(C) of RA No. 7227, it must first be an SBF Enterprise at the time the subject Lease Agreement was executed.[33] For the BIR, it is the **issuance of the CRTE** which signifies with definiteness that a business entity is qualified to be an SBF Enterprise, and only upon its issuance can the said business entity be legally considered as registered as an SBF Enterprise.[34]

The BIR adds that Section 21 of the RA No. 7227 IRR is clear and categorical that a business enterprise shall be entitled to the benefits under RA No. 7227 only upon the issuance of a Certificate of Registration in its favor. It also notes that administrative issuances have the force and effect of law and are entitled to the presumption of

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[30] *Id.*, pp. 59.
[31] *Comment/Opposition (Re: Petitioner's Petition for Review dated November 22, 2023) dated January 31, 2024*, CTA EB No. 2819 Docket, p. 65.
[32] *Id.*, p. 65-66.
[33] *Id.*, p. 70.
[34] *Id.*, p. 71.

constitutionality. It further notes that the requirement of a CRTE is not merely imposed by the BIR but is mandated by the RA No. 7227 IRR, which was approved by the Board of Directors of the SBMA.[35]

Moreover, the BIR avers that the effects of the CRTE does not retroact to the date the taxable document was executed.[36] It likewise avers that the CRTE requirement does not penalize investors with taxes for locating within the Subic Special Economic Zone (SSEZ), and that the testimony of Ms. Alipoon cannot override the clear provisions of the IRR.[37]

The BIR also argues that even assuming that TELEEMPIRE is exempt from the payment of DST on the subject Lease Agreement, the latter failed to prove that the SBMA paid the subject tax. Citing Section 173 of the Tax Code and Revenue Regulations (RR) No. 9-2000, the BIR states that should one of the parties to the taxable document enjoy exemption from paying tax, the other party who is not exempt would then be liable. Here, TELEEMPIRE failed to prove that the SBMA has paid the deficiency DST. Hence, the liability of TELEEMPIRE to pay the deficiency DST remains.[38]

There being no erroneous payment to speak of, the BIR submits that TELEEMPIRE's claim for refund has no basis and was thus correctly denied.[39]

RULING OF THE COURT

The instant Petitions for Review are **denied** for lack of merit.

Timeliness of the appeals

Before We discuss the merits of the case, We shall first determine whether the instant Petitions for Review were timely filed.

For CTA EB No. 2817, records show that the BIR received a copy of the assailed Resolution on October 19, 2023.[40] The BIR had fifteen (15) days from such receipt, or until November 3, 2023, to file a

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[35] *Id.*, p. 74.
[36] *Id.*, p. 73.
[37] *Id.*, p. 75.
[38] *Id.*, p. 76-78.
[39] *Id.*.
[40] Division Docket - Vol. II, p. 1080.

Petition for Review before the Court *En Banc*, pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA).[41]

Petitioner filed a *Motion for Extension to File Petition for Review*[42] via electronic mail on October 31, 2023. In a Resolution[43] dated November 7, 2023, this Court granted the said *Motion*, giving the BIR an additional period of fifteen (15) days from November 3, 2023, or until November 18, 2023, to file its Petition for Review. It is noted that November 18, 2023 fell on a Saturday.

The *Petition for Review* in CTA EB No. 2817 was thus filed on November 20, 2023. Hence, the said *Petition* was filed on time.

As for CTA EB No. 2819, it appears from the records that the assailed Resolution was received by TELEEMPIRE on October 24, 2023.[44] TELEEMPIRE had fifteen (15) days from such receipt, or until November 8, 2023, to file its Petition for Review before this Court.

On November 8, 2023, TELEEMPIRE filed a *Motion for Extension to File Petition for Review*[45], which the Court granted in a Resolution dated November 10, 2023.[46] TELEEMPIRE was given an additional period of fifteen (15) days from November 8, 2023, or until November 23, 2023, to file its Petition for Review.

Since the *Petition for Review* in CTA EB No. 2819 was filed on November 23, 2023, the same was likewise filed on time. Accordingly, the Court *En Banc* has jurisdiction over the instant Petitions.

DST exemption under RA No. 7227, as amended

Section 173 of the Tax Code, in relation to Section 194 thereof, mandates the payment of DST upon the execution of documents, instruments, agreements and papers for the lease of land, as follows:

> **SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.*** - Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property

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[41] A.M. No. 05-11-07-CTA, November 22, 2005.
[42] CTA EB No. 2817 Docket, p. 5-8.
[43] *Id.*, p. 18.
[44] *Supra*, note 52.
[45] CTA EB No. 2819 Docket, p. 1-4.
[46] *Id.*, 7.

> incident thereto, **there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had:** Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.
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> xxx xxx xxx
>
> **SEC. 194. *Stamp Tax on Leases and Other Hiring Agreements.*** - **On each lease, agreement, memorandum, or contract for hire, use or rent of any lands or tenements, or portions thereof, there shall be collected a documentary stamp tax** of Six pesos (P6.00) for the first Two thousand pesos (P2,000), or fractional part thereof, and an additional Two peso (P2.00) for every One Thousand pesos (P1,000) or fractional part thereof, in excess of the first Two thousand pesos (P2,000) for each year of the term of said contract or agreement. *(Emphasis supplied)*

Jurisprudence has clarified that DST is essentially an excise tax; it is not an imposition on the document itself but on the privilege to enter into a taxable transaction.[47] It is levied on the exercise of certain privileges granted by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.[48] Thus, DST on lease agreements, while imposed on the document itself, is actually levied on the privilege to lease lands or tenements, or portions thereof.

Moreover, DST is paid upon the execution of the instrument, without regard to its validity.[49] Failure to pay DST in accordance with the applicable provisions of the Tax Code is dealt with under Section 201 thereof, as quoted below:

> **SEC. 201. *Effect of Failure to Stamp Taxable Document.*** - An instrument, document or paper which is required by law to be stamped and which has been signed, issued, accepted or transferred without being duly stamped, **shall not be recorded, nor shall it or any copy thereof or any record of transfer of the same be admitted or used in evidence in any court** until the requisite stamp or stamps are affixed thereto and cancelled.

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[47] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, September 11, 2006.
[48] *Commissioner of Internal Revenue v. Manila Bankers' Life Insurance Corporation*, G.R. No. 169103, March 16, 2011.
[49] *Id.*

> **<u>No notary public or other office authorized to administer oaths shall add this jurat or acknowledgment</u>** to any document subject to documentary stamp tax unless the proper documentary stamps are affixed thereto and cancelled. *(Emphasis supplied)*

An exception to the foregoing rules on the payment of DST is provided under Section 12(c) of RA No. 7227, as amended by RA No. 9400[50], which provides for tax exemption privileges in the Subic Special Economic Zone (SSEZ), to wit:

> **SECTION 12.** ***Subic Special Economic Zone.*** – Subject to the concurrence by resolution of the *sangguniang panlungsod* of the City of Olongapo and the *sangguniang bayan* of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Free-port Zone xxx xxx xxx
>
> The abovementioned zone shall be subject to the following policies:
>
> xxx xxx xxx
>
> (c) **<u>The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone.</u>** In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone and shall be remitted as follows: three percent (3%) to the National Government, and two (2%) percent to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone, namely: the City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan, on the basis of population (50%) , land area (25%) , and equal sharing (25%)
>
> In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter;

Relative thereto, Section 13 of RA No. 7227 created the SBMA as the operating and implementing arm of the Bases Conversion and Development Authority (BCDA)[51], with the power to do all acts as may be essential, necessary or incidental to the powers expressly granted

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[50] An Act Amending Republic Act No. 7227, as amended, otherwise known as the Bases Conversion and Development Act of 1992, and for other purposes, March 20, 2007.
[51] Section 13(a) of RA No. 7227, March 13, 1992.

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unto it as well as to carry out the policies and objectives of RA No. 7227.[52]

To implement the provisions governing the SSEZ and the SBMA under RA No. 7227, the Board of Directors of the SBMA approved and promulgated the RA No. 7227 IRR[53], which provides, among others, the procedures for registration of SBF Enterprises and their tax incentives and exemptions.

With respect to the tax incentives and exemptions of SBF Enterprises, Section 43 of RA No. 7227 IRR enumerates the same, *viz.*:

> **SECTION 43.** ***Tax Exemption.*** – **<u>SBF Enterprises shall be exempt from all national and local taxes, including but not limited to the following:</u>**
>
> a. Customs and import duties and national internal revenue taxes, such as VAT, excise and ad valorem taxes on foreign articles;
>
> b. **<u>Internal revenue taxes</u>**, such as VAT, *ad valorem* and excise taxes on their sales of goods and services for which they are directly liable;
>
> c. Income tax on all income from sources within the SBF and foreign countries, Export Processing Zones, Bonded Warehouses and other Special Economic Zones within the Philippines, as well as all other areas that may now or hereafter be considered to be outside the Customs Territory, whether or not payment of such income is actually received, made or collected within such areas; *Provided*, that SBF Enterprises shall, as withholding agents for the National Government, withhold tax on compensation and income payments to persons or individuals subject to expanded withholding tax; and
>
> d. Franchise, common carrier or value added taxes and other percentage taxes on public and service utilities and enterprises within the SBF.
>
> In lieu of paying taxes, all SBF Enterprises shall pay a final tax of five (5%) percent of gross income earned in accordance to breakdown specified and defined under Section 57 hereunder.

Under Section 12 of RA No. 7227 and Section 43 of its IRR, SBF Enterprises within the SSEZ are granted an exemption from the payment of all national and local taxes, including DST, subject to the payment of a final tax on gross income earned.

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[52] Section 13(b)(11) of RA No. 7227, March 13, 1992.

[53] Rules and Regulations Implementing the Provisions Relative to SSEFZ and SBMA, IRR of RA 7227, November 3, 1992.

However, as tax exemptions are construed strictly against the grantee and liberally in favor of the taxing authority, the burden proof rests upon the party claiming the tax exemption to prove that it is in fact covered by the exemption so claimed. The party claiming the tax exemption must therefore be expressly mentioned in the exempting law or at least be within its purview by clear legislative intent.[54]

Issuance of the CRTE should be the basis for registration with the SBMA and tax exemption under RA No. 7227

TELEEMPIRE claims that the Court in Division erred when it found that the issuance of a CRTE is required before a business entity can be considered an SBF Enterprise entitled to the tax exemption under Section 12(c) of RA No. 7227. TELEEMPIRE argues that it is registration as an SBF Enterprise with the SBMA that confers the said tax exemption. The definition of "SBF Enterprise" and the provisions on the Registration Office, respectively found in Sections 3(g) and 16 of the RA No. 7227 IRR, prove that registration occurs prior to the issuance of the CRTE, which merely confirms the fact of registration.

To prove that it was already registered as an SBF Enterprise at the time it entered into the subject Lease Agreement with the SBMA, TELEEMPIRE presented the following evidence, among others: **(1)** the testimony of Ms. Alipoon where she stated that an applicant is considered a registered SBF Enterprise upon the execution of the lease agreement with the SBMA; **(2)** the SBMA Citizen's Charter[55] which shows the procedure and requirements for an application for registration with the SBMA; **(3)** the SBMA Board Secretariat Certification[56] dated February 18, 2016 on the Board Resolution dated February 4, 2016 approving TELEEMPIRE's application for registration and lease on even date; **(4)** the Letter[57] dated February 10, 2016 from the SBMA to TELEEMPIRE informing the latter of the board approval of its application; and, **(5)** the subject Lease Agreement[58] dated February 26, 2016.

Contrariwise, the BIR maintains that the Court in Division correctly found that at the time of the execution of the subject Lease Agreement, TELEEMPIRE did not yet enjoy the tax incentives under Section 12(c) of RA No. 7227. The BIR argues that for TELEEMPIRE

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[54] *Caltex Philippines, Inc. v. The Honorable Commission on Audit*, G.R. No. 92585, May 8, 1992.

[55] Exhibit "P-23", Division Docket - Vol. II, pp. 741-753.

[56] Exhibit "P-26", Division Docket - Vol. II, pp. 783-784.

[57] Exhibit "P-27", Division Docket - Vol. II, p. 797.

[58] Exhibit "P-28", Division Docket - Vol. II, pp. 798-814.

to be entitled to exemption from payment of DST on the Lease Agreement pursuant to Section 12(c) of RA No. 7227, it must first be an SBF Enterprise at the time the subject Lease Agreement was executed.

Citing several provisions of RA No. 7227 IRR, the BIR submits that it is the issuance of the CRTE which signifies with definiteness that a business entity is qualified to be an SBF Enterprise, and only upon such issuance can the business entity be legally considered as registered.

The BIR further argues that the effects of the CRTE, especially the grant of tax exemption, does not retroact to the date the taxable document was executed. It also argues that mere execution of the Lease Agreement does not vest upon TELEEMPIRE registration with the SBMA and tax exemption.

After a careful consideration of all the arguments and evidence of the parties, We find no compelling reason to reverse the findings of the Court *a quo*.

It is true that RA No. 7227, as amended, is silent as to the details on the tax exemption provided under Section 12(c) thereof. A perusal of the entire law reveals the general policy that no taxes, local and national, shall be imposed within the SSEZ. Notably, there are no rules or guidelines provided therein for the determination of the extent, limitations or procedures for the availment of the tax grant.

However, the SBMA, by virtue of its power to carry out the policies and objectives of RA No. 7227[59] as the operating and implementing arm of the BCDA, promulgated the RA No. 7227 IRR precisely "to implement the provisions governing the Subic Special Economic and Freeport Zone, and the Subic Bay Metropolitan Authority, under Republic Act No. 7227."[60]

Under Section 43 of the RA No. 7227 IRR, it is stated that "SBF Enterprises shall be exempt from all national and local taxes..." Relatedly, Section 3(g) defines "SBF Enterprise" as "any business entity or concern within the SBF duly registered with and/or licensed by the SBMA to operate any lawful economic activity within the SBF."

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[59] *Supra*, note 60.

[60] Section 1, Rules and Regulations Implementing the Provisions Relative to SSEFZ and SBMA, IRR of RA 7227, November 3, 1992.

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Based on the foregoing rules, it appears that to be entitled to the tax exemption under RA No. 7227, a business entity must be an SBF Enterprise. To be an SBF Enterprise, a business entity must be duly registered with the SBMA.

The question before us, therefore, is **when** is a business entity applying for SBF registration considered as duly registered, as it is only upon due registration that one becomes an SBF Enterprise entitled to the tax exemption under RA No. 7227.

At this juncture, We find critical the following provisions of the RA No. 7227 IRR on the procedures for SBF registration, reproduced below:

CHAPTER III
Procedures for Registration of Subic Bay Freeport Enterprises & Residents
A. General Provisions

> ***SECTION 16. Registration Office.*** — The SBMA shall establish an office to register all business enterprises or concerns applying to be SBF Enterprises, as well as natural persons applying to be SBF Residents xxx xxx xxx
>
> The above departments shall issue standard application forms and require submission of pertinent documents to the proper department which shall act thereon in the most expeditious manner possible. **<u>If warranted, the Registration Office shall approve the application and register qualified enterprises and residents, after which it shall issue certificates attesting to their registration and residency, respectively.</u>** After issuance of the certificates, the Registration Office shall periodically monitor the status of all SBF Enterprises and Residents.
>
> ***SECTION 17. Who are Eligible.*** — Application for SBF registration shall be open to nationals and business enterprises of any country in any area of economic activity, except only as is specifically limited by the Constitution of the Philippines.
>
> ***SECTION 18. Conditions for Registration.*** — An SBF Enterprises shall be a constituted business enterprise organized or domiciled in the Philippines or any foreign country. The enterprise must name a representative or agent who is a legal resident of the SBF. If affiliated with an existing enterprise in the Philippines outside of the SBF, the SBF Enterprise must establish a separate business organization to conduct business exclusively within the SBF which shall be a separate taxable entity.
>
> ***SECTION 19. Criteria for Issuance of Certificates.*** — The SBMA shall issue the Certificates of Registration or Residency to an SBF Enterprise or Resident, respectively, **<u>if qualified and if in</u>**

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> <u>**the SBMA's discretion such issuance will promote the policies set forth in the Act and these Rules.**</u>
>
> ***SECTION 20. Period for Issuance of Certificate.*** – <u>**Should the application(s) merit approval,**</u> the SBMA shall issue the certificates applied for no later than thirty (30) days following receipt of the completed application and all required supporting documents.
>
> ***SECTION 21. Effect of Issuance of Certificates.*** – <u>**Issuance of the Certificate of Registration or Residency to an SBF Enterprise or Resident, respectively, shall entitle and subject the business enterprise or resident to all the benefits and obligations under the Act and these Rules**</u>, and other regulations that may be promulgated by the SBMA, subject to the provisions of Section 5 and 13 hereof.

A careful review of the foregoing provisions clearly shows that it is the issuance of the Certificate of Registration (COR) or CRTE which indicates the SBMA's final approval of a business entity's application for SBF registration. Prior to such final approval, the applicant must first be eligible under Section 17 of the IRR and qualified under Sections 18 and 19 of the same, and must have submitted a completed application with all required supporting documents per Section 20 thereof. If the application merits approval in view of the aforementioned requirements, only then will the SBMA issue the COR or CRTE.

Plainly, it is the issuance of the COR or CRTE which not only represents and confirms the SBMA's approval of an application for registration, but actually finalizes such approval for purposes of enjoying the tax exemption and other privileges granted under RA No. 7227.

A contrary interpretation would create a policy where the end of the registration process and the start of entitlement to the rights and benefits under the law, are blurred and based on incidents other than what is already expressly provided under the law and its IRR, *i.e.*, the issuance of the COR or CRTE.

Hence, contrary to TELEEMPIRE's position, We find that a business entity applying for SBF registration is considered as duly registered when it has been issued a COR or CRTE. Consequently, only upon the issuance of a COR or CRTE is a business entity entitled to the legal effects of registration, including the tax exemption under Section 12(c) of RA No. 7227, as amended. To be sure, the date of issuance of the COR or CRTE shall be considered the date of registration and entitlement to tax exemption.

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In view of the foregoing, the Court in Division was correct when it held, as follows:

> Indeed, the local and national tax exemption in Section 12 (c) of RA No. 7227 kicks in, only upon SBMA's issuance of COR or CRTE to a business enterprise within the SSEZ. Given that SBMA issued the CRTE to petitioner on April 26, 2016, the latter may only be considered as a business enterprise within the SSEZ, exempt from national and local taxes in the SSEZ as of said date. *Ergo*,the lease transaction, evidenced by the Lease Agreement executed by and between petitioner and SBMA on February 26, 2016, or *prior* to issuance of said CRTE on April 26, 2016, is subject to DST.[61]

TELEEMPIRE's reliance on the second paragraph of Section 12(c) of RA No. 7227, as reiterated in Section 4(b) of the IRR, is misplaced. The said provision reads:

> In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter.

It must be noted there is no national or local law being juxtaposed with RA No. 7227. It is the latter's IRR, which provides for the COR or CRTE requirement, that is being questioned by TELEEMPIRE. Thus, this provision does not apply.

As correctly pointed out by the BIR, the COR or CRTE requirement is not imposed by the BIR, but is mandated by the RA No. 7227 IRR itself.[62]

Anent TELEEMPIRE's argument that administrative agencies may not limit, extend, expand or otherwise modify a statute beyond its terms, the same is untenable in this case.

In *Public Schools District Supervisors Association v. De Jesus*[63], the Supreme Court laid down the parameters on the power of administrative bodies to promulgate implementing rules and regulations of statutes, to wit:

> It must be stressed that the power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment. The implementing rules and regulations of a law

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[61] *Decision* dated April 25, 2023, CTA EB No. 2819 Docket, p. 91.
[62] *Supra*, note 47.
[63] G.R. No. 157286, June 16, 2006.

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> cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature. **It bears stressing, however, that administrative bodies are allowed under their power of subordinate legislation to implement the broad policies laid down in a statute by "filling in" the details. All that is required is that the regulation be germane to the objectives and purposes of the law; that the regulation does not contradict but conforms with the standards prescribed by law.** Moreover, as a matter of policy, this Court accords great respect to the decisions and/or actions of administrative authorities not only because of the doctrine of separation of powers but also for their presumed knowledgeability and expertise in the enforcement of laws and regulations entrusted to their jurisdiction. The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.

Further, in *La Suerte Cigar & Cigarette Factory v. Court of Tax Appeals*[64], the Supreme Court specifically discussed the authority of specialized administrative agencies like the Secretary of Finance to fill in details in the enforcement and administration of tax laws, *viz.*:

> The power of taxation is inherently legislative and may be imposed or revoked only by the legislature. Moreover, this plenary power of taxation cannot be delegated by Congress to any other branch of government or private persons, unless its delegation is authorized by the Constitution itself. Hence, the discretion to ascertain the following — (a) basis, amount, or rate of tax; (b) person or property that is subject to tax; (c) exemptions and exclusions from tax; and (d) manner of collecting the tax — may not be delegated away by Congress.
>
> **However, it is well-settled that the power to fill in the details and manner as to the enforcement and administration of a law may be delegated to various specialized administrative agencies like the Secretary of Finance in this case.**
>
> This court in *Maceda v. Macaraig, Jr.* explained the rationale behind the permissible delegation of legislative powers to specialized agencies like the Secretary of Finance:
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> xxx xxx xxx
>
> **Thus, rules and regulations implementing the law are designed to fill in the details or to make explicit what is**

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[64] G.R. No. 125346, November 11, 2014.

> **general, which otherwise cannot all be incorporated in the provision of the law. Such rules and regulations, when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, "deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields."** To be valid, a revenue regulation must be within the scope of statutory authority or standard granted by the legislature. Specifically, the regulation must (1) be germane to the object and purpose of the law; (2) not contradict, but conform to, the standards the law prescribes; and (3) be issued for the sole purpose of carrying into effect the general provisions of our tax laws. *(Emphasis supplied)*

Applying the foregoing jurisprudential precepts to the case at bar, Section 21 of the RA No. 7227 IRR, which requires the issuance of the COR or CRTE to be entitled to all the benefits under RA No. 7227, is valid.

To start, Section 13(b)(11) of RA No. 7227 authorizes the SBMA to do all acts as may be essential, necessary or incidental to carry out the policies and objectives of RA No. 7227. The promulgation of the RA No. 7227 IRR is surely essential and necessary for the effective implementation of the said law.

Further, Section 21 of the RA No. 7227 IRR merely implements the broad policy of tax exemption under Section 12(c) of RA No. 7227, as amended, by providing a standard incident or period of time from which an applicant for SBF registration shall reckon its registered status and corresponding entitlement to all the benefits under the law. The said provision does not in any way limit, extend, expand or otherwise modify the full tax exemption granted under RA No. 7227 to SBF Enterprises, but merely fills in the details on how to avail of such exemption. In this regard, the said provision is germane to the objectives and purposes of the law, and conforms with the same.

As for TELEEMPIRE's reliance on *Commissioner of Internal Revenue v. The Insular Life Assurance Co. Ltd.*[65] (Insular Life case) and *Republic v. Sunlife Assurance Company of Canada*[66] (Sunlife case), the same cannot be countenanced.

In the *Insular Life* case, which cites the *Sunlife* case, the Supreme Court essentially held that registration with the Cooperative Development Authority (CDA) is not necessary for cooperatives to claim exemption from DST under Section 199 of the Tax Code, as there

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[65] G.R. No. 197192, June 4, 2014.
[66] G.R. No. 158085, October 14, 2005.

was no law which imposes registration with the CDA as a condition precedent to claiming DST exemption. Thus, respondent therein, being a cooperative company not mandated by law to be registered with the CDA, cannot be required under RMC No. 48-91, a mere circular, to be registered prior to availing of DST exemption.[67]

In the present case, however, the issue between the parties is not whether a business entity should be registered as an SBF Enterprise to claim tax exemption under RA No. 7227. In fact, TELEEMPIRE itself admits and even argues that "registration with the SBMA as an SBF Enterprise confers the tax exemption under Section 12(c) of RA 7227."[68] The true issue is **<u>when</u>** a business entity is considered as duly registered for purposes of claiming the tax exemption. As such, the aforementioned cases are not applicable.

Neither can TELEEMPIRE rely on *The Abbas' Orchard School, Inc. vs. Commissioner of Internal Revenue*[69] because, *one*, the said case is not on all fours with the instant case; and *two*, CTA decisions do not constitute binding precedents. Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[70] Hence, this Court is not bound to uphold the ruling of the CTA in another case, in disposing of the instant case.

Execution of the Lease Agreement does not signify nor prove registration as a SBF Enterprise

TELEEMPIRE claims that the SBMA itself confirmed that TELEEMPIRE was registered as an SBF Enterprise upon the execution of the subject Lease Agreement on February 26, 2016, or before the issuance of the CRTE on April 16, 2016.

It argues that the SBMA Board of Directors' act of approving the issuance of the CRTE, as seen from the SBMA Board Secretariat Certification on the Board Resolution dated February 4, 2016, should carry more weight than the actual issuance of the CRTE.[71]

It also argues that the Court *a quo* was mistaken in rejecting Ms. Alipoon's testimony, particularly her confirmation that TELEEMPIRE

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[67] *Supra*, note 77.
[68] *Supra*, note 27.
[69] CTA Case No. 8377, November 4, 2014.
[70] *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[71] *Supra*, note 27, p. 37-38.

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was considered registered as of the execution of the subject Lease Agreement.[72]

For the BIR, TELEEMPIRE's assertions lack legal basis, as there is nothing in the law and the rules that show that the mere execution of the Lease Agreement vests upon petitioner registration with the SBMA and the tax exemption under RA No. 7227.

We rule for the BIR.

Scrutiny of the SBMA Board Secretariat Certification[73] on the SBMA Board Resolution dated February 4, 2016, shows that on even date, the SBMA Board of Directors approved the following: (1) the subject Lease Agreement between TELEEMPIRE and the SBMA; and (2) the issuance of the CRTE in favor of TELEEMPIRE. While this document may prove that the SBMA Board of Directors approved and authorized the execution of the subject Lease Agreement and issuance of the CRTE on February 4, 2016, it does not prove that TELEEMPIRE was actually and finally registered and entitled to tax exemption on the same day.

In fact, it was only several days later or on February 26, 2016, when TELEEMPIRE and the SBMA entered into the subject Lease Agreement.

It is worth noting that under the SBMA Citizen's Charter[74], which shows the checklist of requirements and procedures for the issuance of a COR or CRTE, there are several documents that need to be submitted to the Business and Investment Group of the SBMA for the processing of a request for issuance of a COR or CRTE. An "SBMA Approved Lease / Sublease Assignment Agreement (duly signed and notarized)" is **only one** of the several documentary requirements.

Further examination of the SBMA Citizen's Charter reveals that after submission of the complete documentary requirements, several steps will still follow before the COR or CRTE is forwarded to the Office of the Chairman and Administrator of the SBMA for review and signature.[75]

During trial, Ms. Alipoon, the Department Head of SBMA's Business Investment Department for Leisure, also testified that

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[72] *Id.*, pp. 38-47.
[73] *Supra*, note 68.
[74] Exhibit "P-23", Division Docket - Vol. II, pp. 741-753.
[75] *Id.*

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"[a]fter the execution of the lease agreement, the SBF enterprise will then be asked to submit certain requirements for the issuance of the Certificate of Registration and Tax Exemption or CRTE, which includes the executed lease agreement with the SBMA. The CRTE will then be issued by the SBMA after complete and satisfactory submission of the said requirements."[76]

It appears, therefore, that due registration with the SBMA, which entitles an SBF Enterprise to tax exemption under RA No. 7227, is preceded not only by the SBMA Board of Directors' approval, nor by the mere execution of the subject Lease Agreement, but by the submission of complete documentary requirements, as well as several internal processes for review and approval, culminating with the final approval of the Chairman and Administrator of the SBMA, as evidenced by a duly signed COR or CRTE.

It is true that Ms. Alipoon testified that an applicant is considered a registered SBF enterprise upon the execution of the lease agreement with the SBMA;[77] and that TELEEMPIRE was registered with the SBMA as an SBF enterprise upon its execution of the Lease Agreement on February 26, 2016.[78] However, such interpretation is not conclusive and will be ignored if judicially found to be erroneous.[79]

As aptly ruled by the Court in Division, the testimony of Ms. Alipoon on this matter cannot be given credence in light of the clear import of the applicable rules. The Court held, to wit:

> The SBMA was created as a body corporate, and its powers and functions are exercised by its Board of Directors (BOD). Among the powers of the SBMA is to promulgate all the necessary rules and regulations, which necessarily includes the power to interpret the same. Indeed, the testimony of SBMA's Manager of the Business and Investment Department for Leisure, and the OIC of the Deputy for the Business Group Josephine Ivy F. Alipoon (Alipoon) that an applicant is considered a registered SBF enterprise upon the execution of the lease agreement with the SBMA, **is *not* the interpretation of the SBMA BOD.** On this score alone, we cannot lend credence on Alipoon's testimony.
>
> Assuming, Alipoon's testimony was indeed SBMA BOD's interpretation, **it does not bind us because such construal is flawed.** Again, it is the date of issuance by the SBMA of the COR/CRTE to a business enterprise within the SSEZ which would trigger the national and local tax exemption in the SSEZ under

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[76] Exhibit "P-16", Division Docket - Vol. II, pp. 724-725.
[77] *Id.*
[78] *Id.*, p. 730.
[79] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999.

> Section 12(c) of RA No. 7227, and not the date of execution of the Lease Agreement as Alipoon tried to paint. *Republic of the Philippines, et al. v. Provincial Government of Palawan* is on point:
>
> > [An] order, constituting executive or contemporaneous construction of a statute by an administrative agency charged with the task of interpreting and applying the same, is entitled to full respect and should be accorded great weight by the courts, **unless such construction is clearly shown to be in sharp conflict with the Constitution, the governing statute, or other laws.**[80] *(Emphasis supplied)*

Ms. Alipoon also clarified during trial that the COR or CRTE does not provide the date of effectivity of registration with the SBMA; it merely provides the date of issuance of the certificate.[81] This Court cannot, for the sake of good order, accept such construal as it is the COR or CRTE that positively shows the registration status of a business entity. It is what any person or government agency refers to when verifying the fact of registration. It would thus be incongruous to determine the effectivity of registration, not from the document which certifies the same, but from some other internal document, such as the SBMA Board Resolution or the parties' Lease Agreement.

The issue of constitutionality of the CRTE requirement was belatedly raised

TELEEMPIRE argues that the constitutional issues it raised in its *Motion for Partial Reconsideration* before the Court in Division merely expanded its arguments in its Memorandum. It submits that this satisfies the "earliest opportunity" requirement for a court to exercise its power of judicial review, and that jurisprudence does not limit the "earliest opportunity" requirement to initial pleadings. TELEEMPIRE would also have this Court believe that it raised the constitutional issues at the earliest opportunity, *i.e.*, when it became apparent from the assailed Decision.[82]

TELEEMPIRE's arguments must fail.

The earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, "if it is not raised in the pleadings, it cannot be considered at

[80] *Supra*, note 73.
[81] *Transcript of Stenographic Notes* (TSN), October 21, 2021, pp. 13-14.
[82] CTA EB No. 2819 EB Docket, p. 49.

the trial, and, if not considered at the trial, it cannot be considered on appeal."[83]

In *Umali v. Guingona, Jr.*[84], one of the issues before the Supreme Court was whether the petitioner can raise the issue of constitutionality of the Presidential Commission on Anti-Graft and Corruption in its motion for reconsideration of the decision of the Regional Trial Court of Makati. The Supreme Court categorically held that it was certainly too late to raise the said issue for the first time at such late stage of the proceedings.

Guided by the foregoing, there is no doubt that TELEEMPIRE's challenge to the constitutionality of the CRTE requirement embedded in the RA No. 7227 IRR is a belated theory that should not be entertained. It was not particularly raised in the pleadings before the Court in Division nor included in the issues considered during trial; thus, it cannot now be considered on appeal. Neither will this Court sanction the use of a memorandum or motion for reconsideration to introduce constitutional issues in this case as these were not the earliest opportunities for pleading such issues.

The CRTE requirement is not inconsistent with the policies and objectives of RA No. 7227

TELEEMPIRE argues that the application of the law should be consistent with its purpose. As one of the objectives of RA No. 7227 is to attract investors into the SSEZ by way of economic incentives such as tax exemption[85], it is the height of absurdity and inconsistent with the said objectives to tax investors for the very activity that the law seeks to encourage and incentivize, *i.e.*, locating their business within the SBF.[86]

This Court is not blind to the policies and purposes of RA No. 7227. It must be pointed out that the COR or CRTE requirement provided in the RA No. 7227 IRR does not in any way deprive qualified business entities from enjoying all the benefits under the law, including tax exemption. As long as a business entity is qualified in accordance with the law and applicable rules, there is nothing to stop it from availing such benefits and enjoying the same.

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[83] *Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002.
[84] G.R. No. 131124, March 29, 1999.
[85] CTA EB No. 2819 EB Docket, p. 55.
[86] *Id.*, p. 57.

But before any tax exemption may be granted, certain procedures must first be undergone to allow the government, through the SBMA, to ascertain whether a business entity is indeed eligible and qualified for such. Hence, procedures for registration were laid down in RA No. 7227 IRR. Once registered, a COR or CRTE shall be issued by the SBMA to finalize and prove the registration of the business entity as an SBF Enterprise.[87]

As mentioned earlier, an approved Lease Agreement is only one out of several documentary requirements for registration; thus, it cannot be made the basis for registration. Neither can the effects of issuance of the COR or CRTE be given retroactive effect, as TELEEMPIRE has failed to show any basis in law to support this.

Considering the above, We agree with the Court in Division when it held that TELEEMPIRE failed to establish that it was an SBF Enterprise within the SSEZ at the time the subject Lease Agreement was executed on February 26, 2016. As such, it cannot be exempted from the payment of DST on the said document.[88]

TELEEMPIRE is not liable for compromise penalty

The BIR argues that since respondent failed to pay the deficiency DST at the time required under Section 255 of the Tax Code, as amended, and RMO No. 7-2015, the imposition of administrative penalty is justified.[89]

The BIR's arguement is totally lacking in merit.

It is an established doctrine that a compromise penalty cannot be imposed or collected without the agreement and conformity of the taxpayer.[90] This is because a compromise, by its nature, is mutual in essence.[91] It is imposed when the taxpayer and the BIR agree to settle on a certain amount.

Records of this case do not show that an agreement was reached by the parties concerning TELEEMPIRE's deficiency DST assessment

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[87] Section 3(h), Rules and Regulations Implementing the Provisions Relative to SSEFZ and SBMA, IRR of RA 7227, November 3, 1992.
[88] CTA EB No. 2819 Docket, p. 106.
[89] CTA EB No. 2817 Docket, p. 25.
[90] *Wonder Mechanical Engineering Corp. v. Court of Tax Appeals*, G.R. Nos. L-22805 & L-27858, June 30, 1975.
[91] *San Miguel Corp. v. Commissioner of Internal Revenue*, G.R. No. 252083, December 4, 2023.

as found in the Formal Letter of Demand (FLD)[92] dated February 27, 2018. Hence, the imposition of compromise penalty in the amount of ₱10,000 is baseless and must be deleted.

Finding no compelling reason to reconsider, modify or reverse the assailed *Decision* and *Resolution*, We shall no longer belabor in this *Decision*, to repeat the disquisitions made therein.

WHEREFORE, premises considered, the instant *Petitions for Review En Banc* are **DENIED** for lack of merit. The *Decision* dated April 25, 2023 and *Resolution* dated October 16, 2023 in CTA Case No. 9968 are **AFFIRMED.**

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ON LEAVE

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[92] Exhibits "P-4" and "R-5", Division Docket - Vol. I, p. 31.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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.

ROMAN G. DEL ROSARIO
Presiding Justice