REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRODUCERS BANK OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 4810

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 10 1997 [signature]

x - x

DECISION

This is a petition for review filed by the petitioner, PRODUCERS BANK OF THE PHILIPPINES, against the respondent COMMISSIONER OF INTERNAL REVENUE, for the latter's decision to assess the former the total amount of P3,033,198.58, allegedly representing the deficiency documentary stamps tax of the petitioner for the year 1986.

The antecedent facts of the case are as follows:

Petitioner is a commercial banking corporation duly registered and operating under the laws of the Republic of the Philippines.

On January 18, 1990, petitioner received from respondent a letter, dated January 9, 1990, demanding payment of P3,033,198.58 representing deficiency documentary stamp tax for the year 1986, inclusive of surcharge and compromise penalty.

On February 11, 1990, petitioner wrote respondent a letter protesting the aforementioned deficiency assessment and requesting the reconsideration and withdrawal of said assessment. In the same letter, petitioner stressed that in the computation of documentary stamps purchased and affixed by the bank, only the stamps purchased and affixed by the Head Office were taken into account in the sum of ₱762,525.31 and that the stamps purchased and affixed by the bank's Binondo Branch in the sum of ₱1,426,533.20 and that of Cebu Regional Office in the sum of ₱979,844.15 were not considered by the examiners. Petitioner opined that had these items been considered, there would not have been any documentary stamp tax deficiency.

On April 27, 1992, respondent issued a "Warrant of Distraint and/or Levy" on the properties of the petitioner. This was construed by the petitioner as an outright denial of its protest and request for reconsideration mentioned in the preceding paragraph. Hence, this petition.

The revenue examiners based their questioned deficiency assessment on Sections 193 and 195 of the 1986 National Internal Revenue Code, which provides as follows:

SEC. 193. ***Stamp tax on negotiable promissory notes, bills of exchange, drafts, certificates of deposit bearing interest and others not payable on sight or demand.*** - On all bills of exchange (between points within the Philippines), drafts, or certificates of deposits drawing interests, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all negotiable promissory notes, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note. (217)(As amended by PD 1457 and PD 1959)

SEC. 195. ***Stamp tax on foreign bills of exchange and letter of credit.*** - On all foreign bills of exchange and letters of credit (including orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons) drawn in but payable out of the Philippines in a set of three or more according to the customs of merchants and bankers, there shall be collected a documentary stamp tax of thirty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign currency. (As amended by PD 1457 and PD 1959)

Respondent insists that the 1986 books of petitioner during their audit investigation revealed among others that petitioner issued domestic and foreign commercial papers, bills, etc. in the total amount of ₱1,340,519,937.71 and ₱1,224,376,153.73 respectively, and taking into account the above provisions of law and for failure of the petitioner to pay the documentary stamp tax (DST) on the same, respondent assessed the petitioner for DST, in the following manner:

Domestic-Commercial Papers deposit substitutes and time deposits	P1,340,519,937.71 / 200	x 0.20 =	P1,340,519.94
Foreign-Commercial Papers, bills and letters of Credit	P1,224,376,153.73 / 200	x 0.30 =	P1,836,564.23
Total Tax Due			P3,177,084.17
Less: Amount Paid			762,525.31
Balance			P2,414,558.86
Add: 25% surcharge			603,639.72
Compromise			15,000.00
Total Amount Due and Collectible (found on page 20, BIR records)			P3,033,198.58

The above-mentioned provisions of law and computations were not disputed by the petitioner, thus, clearly this case merely involves questions of facts, and the issue in this case is whether or not petitioner has in fact paid its documentary stamp tax liabilities for the year 1986. Juxtaposed to this is the issue of jurisdiction which was raised by the respondent in its answer. He avers that since respondent has not yet issued a decision relative to the petitioner's protest on the subject assessment, this Court should not take cognizance of the instant petition.

The respondent might have failed to consider that it has already issued a Warrant of distraint and/or Levy on the properties of the petitioner when he prepared his answer to the instant petition.

The Supreme Court has already resolved the same issue in **Commissioner of Internal Revenue v. Algue, Inc., 158 SCRA 9, February 17, 1988,** and we find no cogent justification for us to deviate from said decision of the Highest Court of the land, to wit:

> "It is true that as a rule the warrant of distraint and levy is a proof of the finality of the assessment and renders hopeless a request for reconsideration, being tantamount to an outright denial thereof and makes the said request deemed rejected."

During the trial before this Court, petitioner presented evidence (Exhs. "A" to "CH") to substantiate its claim, and to prove that the Binondo and Cebu Branches have indeed paid a total amount of ₱2,300,000.00 for its 1986 documentary stamp tax, to which no objection was interposed by the respondent, except for the purposes for which they were offered. Respondent did not object to the existence of the Confirmation Receipts and BIR Payment Orders which were offered by the petitioner as proof of its payment of the alleged deficiency documentary stamp tax for 1986 but took exception to their collective purposes. Despite said reservation, up until the submission of this case for decision, respondent was not heard to complain about the authenticity of the contents of these documents or exhibits nor has she shown any irregularity in the same which will taint their reliability or sufficiency as proofs of payment of documentary stamp tax despite the fact that it was well within her competence to do so. Respondent is thereby considered to have vouched the veracity of these exhibits.

It is not amiss to mention that respondent also adduced exhibits "I" and "I-A", together with the testimony of Mr. Hermes Ribaya, as its evidence to support its contention but the Court found them as but surmises that cannot stand against the detailed evidence of petitioner.

Accordingly, the petitioner's deficiency documentary stamp tax for 1986 should be computed as follows:

Domestic-Commercial Papers, deposit substitutes and time deposits		₱1,340,519.94
Foreign-Commercial Papers, bills and letters of credit		1,836,564.23
Total Tax Due		₱3,177,084.17
Less:		
Amount paid per return	₱ 762,525.31	
Amount paid by its Binondo & Cebu Branches, per evidence presented	2,300,000.00	3,062,525.31
Balance		₱ 114,558.86
Add: 25% surcharge		28,639.72
Total Amount Due and Collectible		₱ 143,198.58

WHEREFORE, premises considered, judgment is hereby rendered partially **GRANTING** the herein petition. Petitioner is hereby **ORDERED** to **PAY** the respondent Commissioner of Internal Revenue the amount of ₱143,198.58 as deficiency documentary stamp tax for the year 1986, inclusive of surcharge, plus 20% interest per annum from the date prescribed for payment until fully paid pursuant to Section 249(b) of the Tax Code, as amended. No pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals