

SECOND DIVISION

petitioner's approved credit line/facility under the Omnibus Loan and Security Agreement dated April 12, 2007.

Petitioner University of Santo Tomas Hospital, Inc. 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.¹

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) 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 April 12, 2007, petitioner, designated as "borrower", signed and executed an Omnibus Loan and Security Agreement (OLSA)² 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 Development Bank of the Philippines likewise served as Facility Agent, Mortgage Trustee or DSRA Agent.

¹ Annex "A", Petition for Review, Docket, pp. 32-42

² Exhibit "A"

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In the said Agreement, the lenders agreed to provide loans to petitioner in the aggregate amount of P3,000,000,000.00, for the purpose of financing petitioner's projects³ and other general financing requirements for its operations, subject to the terms and conditions set forth therein.⁴ The said lenders referred to the Agreement as a syndicated term loan facility, with each lender bank agreeing to provide its respective approved credit line/facility, detailed as follows:

Lending Bank	Credit Line/Facility
DBP	P 1,500,000,000
LBP	1,000,000,000
Philtrust Bank	300,000,000
DBP-Trust	200,000,000
TOTAL	P3,000,000,000

On April 18, 2007, petitioner paid respondent the amount of P15,000,000.00 as documentary stamp taxes (DST) for its approved credit line/facility under the Omnibus Loan and Security Agreement dated April 12, 2007.⁵

However, the credit line/facility, as contained in the Omnibus Loan and Security Agreement, was never implemented and/or availed of although the

³ The 3-Phase redevelopment and expansion of the University of Santo Tomas Hospital involving the construction of the Benavides Cancer Institute Building, a 21-storey Medical Arts Building, a 7-storey Podium that will include clinics and office spaces for around 1,000 doctors comprising its medical staff, parking spaces for lease, retail facilities and the renovation and expansion of existing facilities, including the acquisition of new hospital furniture and equipment; page 7 of OLSA dated April 12, 2007, Docket, p. 238

⁴ Exhibit "A", Docket, p. 233

⁵ Exhibits "F" and "F-1", Judicial Affidavit of Rev. Fr. Jose Ma. Tinoko, O.P.; pars. 1 and 3, Joint Stipulation of Facts and Issues (JSFI), Docket, pp. 179-180

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documentary stamp taxes were already paid. In fact, petitioner never made a "drawdown" on the same approved credit line/facility. Eventually, the approved credit line/facility was cancelled by petitioner after discovering that there were irregularities in the application for the said credit line/facility as well as in its execution.⁶

On October 2, 2008, petitioner filed an administrative claim for refund with the BIR District Office No. 32 of Manila, in the amount of P15,000,000.00, representing erroneously paid DST for the approved credit line/facility under OLSA dated April 12, 2007.⁷

To date, respondent has yet to act on said administrative claim for refund. Hence, petitioner filed this Petition for Review on April 17, 2009.

Respondent filed his Answer⁸ on May 13, 2009, alleging the following Special and Affirmative Defenses:

"23. The petition is premature considering that petitioner's application for the refund of the alleged erroneously paid documentary stamp tax in the amount of Php15,000,000.00 is still pending investigation with Revenue District Office No. 32, Revenue Region No. 6, Manila.

⁶ Exhibit "B", Docket, p. 903; Exhibit "F", page 2 of Judicial Affidavit of Rev. Fr. Jose Ma. Tinoko, O.P., Docket, p. 908

⁷ Par. 2, JSFI, Docket, p. 179

⁸ Docket, pp. 157-161

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24. The subject 'Omnibus Loan and Security Agreement' (OLSA), as the words imply, is in itself a loan agreement subject to the documentary stamp tax under the Tax Code of 1997, as amended by R.A. 9243. Section 179 of the said Act further provides that only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
25. The documentary stamp tax was legally due and paid in accordance with law.
26. In *Philippine Home Assurance Corporation, Philippine American Accident Insurance Company, Philippine American General Insurance Company and American International Underwriters (Phils.), Inc. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 119446 dated January 21, 1999 it was held that –

In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges, and trusts, and conveyances of real property.

Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto. The documentary stamp taxes must be paid upon the issuance of the said instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. xxx xxx xxx

27. Claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically.
28. The allegations regarding tax refundability do not ipso facto merit the refund claimed."

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During trial, petitioner presented as witness Rev. Fr. Jose Ma. Tinoko, O.P., petitioner's former Treasurer and Member of the Board of Trustees.⁹ Thereafter, petitioner filed its Formal Offer of Documentary Evidence¹⁰ on October 8, 2009, from Exhibits "A" to "H", inclusive of sub-markings. This Court resolved to admit all said exhibits in a Resolution¹¹ dated November 20, 2009. On the other hand, respondent waived the presentation of his evidence considering that the administrative investigation of petitioner's claim for refund has not been completed yet and that the tax docket has already been forwarded to this Court.¹²

On January 8, 2010, this case was submitted for decision, considering respondent's Memorandum filed on December 22, 2009 and petitioner's Memorandum filed on December 23, 2009.¹³

The parties' jointly stipulated issues¹⁴ submitted for this Court's consideration are as follows:

- "1. Whether or not petitioner is entitled to a refund of the PhP15,000,000.00 documentary stamp taxes paid plus interest, if any, in connection with its approved credit line/facility under the Omnibus Loan and Security Agreement dated 12 April 2007.

⁹ Minutes of Hearing dated July 27, 2009, Docket, p. 199

¹⁰ Docket, p. 217

¹¹ Docket, p. 917

¹² Par. 3, Joint Stipulation of Facts filed on September 9, 2009, Docket, p. 207

¹³ Docket, p. 955

¹⁴ Docket, p. 180

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2. Whether or not petitioner erroneously paid the amount of PhP15,000,000.00 as documentary stamp taxes relative to its approved credit line/facility under the Omnibus Loan and Security Agreement dated 12 April 2007."

The above-stated two (2) issues are joined as one (1) principal issue - whether petitioner is entitled to a tax refund in the amount of P15,000,000.00, arising from the alleged erroneous payment of documentary stamp taxes on the approved credit line/facility under the Omnibus Loan and Security Agreement dated April 12, 2007.

The principal issue is answered affirmatively, as follows:

1. Petitioner has two (2) years from the date of payment of tax within which to file its claim for tax refund. Petitioner paid the subject DST on April 18, 2007;¹⁵ filed its administrative claim with respondent on October 2, 2008;¹⁶ and filed its judicial claim on April 17, 2009. Thus, counting from April 18, 2007, when petitioner made its payment, both administrative and judicial claims were timely filed within the two-year prescriptive period.

Sections 229 and 204(C) of the National Internal Revenue Code (NIRC) of 1997 read:

¹⁵ Par. 3, JSFI, Docket, p. 180

¹⁶ Annex "J", Petition for Review, Docket, p. 140

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"SEC. 229. *Recovery of tax erroneously or illegally collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; *Provided however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.*"

"SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* - The Commissioner may -

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(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty;** *Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.*" (*Emphasis supplied*)

2. Section 179 of the NIRC of 1997, as amended by Republic Act No.

9243, provides:

"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 instruments: *Provided, That for such debt*

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instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term **debt instrument shall mean instruments representing borrowing and lending transactions including** but not limited to debentures, certificates of indebtedness, due bills, bonds, **loan agreements**, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments 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." (*Emphasis supplied*)

Further, Sections 3(b) and 6 of Revenue Regulations No. 9-94 state that:

"SECTION 3. *Definition of Terms.* – For purposes of these Regulations, the following terms shall mean:

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(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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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

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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.**" (*Emphasis supplied*)

Based on the foregoing, Section 179 of the NIRC of 1997¹⁷, provides that **debt instruments shall mean instruments representing borrowing and lending transactions including** but not limited to debentures, certificates of indebtedness, due bills, bonds, and **loan agreements**. Under Sections 3(b) and 6 of Revenue Regulations No. 9-94, a 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.** Stated otherwise, for a loan agreement to be subject to DST, there must be delivery of money or other consumable thing by a lender to the borrower, with corresponding obligation of repayment. The debt instrument, which includes loan agreement, must represent borrowing and lending transaction. Clearly, 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.

¹⁷ Amended by Republic Act No. 9243

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Records show that in support of its claim for refund, petitioner presented the following documentary evidence:

1. Omnibus Loan and Security Agreement dated April 12, 2007 (Exhibit "A") representing petitioner's approved credit line/facility granted by creditor banks DBP, DBP-Trust Services, LBP, and Philtrust Bank;
2. Certification by Rev. Fr. Rolando V. De La Rosa, O.P. dated July 29, 2008 (Exhibit "B"), certifying that petitioner never made a drawdown on the same approved credit line/facility covered by the Omnibus Loan and Security Agreement dated April 12, 2007 and that the approved credit line/facility was eventually cancelled;
3. Development Bank of the Philippines Letter-Certification dated July 9, 2008 (Exhibit "C") certifying that no drawdown was made by petitioner on DBP's participation in the approved credit line/facility under OLSA dated April 12, 2007;
4. Philtrust Bank Certification dated February 3, 2009 (Exhibit "D") certifying that no drawdown was made by petitioner on Philtrust Bank's participation in the approved credit line/facility and that the said bank had already cancelled said credit line/facility under the OLSA dated April 12, 2007;
5. Land Bank of the Philippines Certification dated February 9, 2009 (Exhibit "E") certifying that no drawdown was made by petitioner on LBP's participation in the approved credit line/facility and that the said bank had already cancelled said credit line/facility;
6. Judicial Affidavit of Rev. Fr. Jose Ma. Tinoko, (O.P.) (Exhibits "F" and "F-1") stating that petitioner erroneously paid the documentary stamp taxes in the amount of P15,000,000.00 in connection with its approved credit line/facility under OLSA dated April 12, 2007. He further explained that petitioner was under the false impression or mistaken belief that it is obligated to pay documentary stamp taxes on the approved credit line/facility covered by the OLSA even though there is no actual drawdown on it yet;
7. Development Bank of the Philippines-Trust Services Letter-Certification dated July 15, 2009 (Exhibit "G") certifying that no drawdown was made by petitioner on DBP-Trust Services' participation in the approved credit line/facility and that it had already cancelled said credit line/facility; and

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8. Development Bank of the Philippines Letter-Certification dated July 23, 2009 (Exhibit "H") certifying that petitioner never made a drawdown on DBP's participation in the approved credit line/facility and that it had already cancelled the credit line/facility under the OLSA.

It is undisputed that the OLSA dated April 12, 2007, executed by petitioner and a consortium of creditor banks (DBP, LBP, Philtrust Bank, and DBP-Trust Services), is an agreement/commitment that the lenders-creditors will make available to petitioner a credit line or credit facility in the total amount of P3,000,000,000.00, subject to certain conditions.¹⁸ Further, pursuant to the subject OLSA, a "Note"¹⁹ is required to be executed by the borrower once it makes a drawdown on the credit line/facility. However, as correctly pointed out by petitioner, there was no conveyance or delivery of the loaned amount in this case. In fact, the lenders-creditors certified that petitioner did not make an actual drawdown on the said credit line/facility and that the same creditors cancelled the approved credit line/facility; hence, no DST accrued.

Mere execution of the Omnibus Loan and Security Agreement, without the requisite delivery of the loaned amount and the execution of other

¹⁸ Exhibit "A", Section 4, pp. 16-18 of OLSA

¹⁹ Exhibit "A", Section 3.03, p. 12 of OLSA

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documents evidencing the amount of drawings will not give rise to DST liability on the part of petitioner.

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.²⁰

DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. DST is actually an excise tax because it is imposed on the transaction rather than on the document. DST is also levied on the exercise by persons of certain privileges conferred by law for the

²⁰ BIR Ruling No. DA-036-07, January 24, 2007

creation, revision, or termination of specific legal relationships through the execution of specific instruments.²¹

Since petitioner did not avail of the credit line/facility under the OLSA, petitioner also did not exercise a privilege considered taxable within the purview of Section 179 of the NIRC of 1997.

In *Maersk Filipinas, Inc. vs Commissioner of Internal Revenue*²², this Court held that:

"xxx Thus, pursuant to Section 229 of the NIRC of 1997, in relation to Section 204 (C) of the same Code and Article 2154 of the New Civil Code which provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises, thus, respondent has the bounden duty to return the erroneously paid withholding tax made by petitioner."

In the case of *Hewlett-Packard Philippines Corporation vs. Commissioner of Internal Revenue*²³, it was likewise ruled that:

"Basic is the principle that when money is paid to another under the influence of a mistake of fact, it may be recovered. The Government is not exempt from the scope of *solutio indebiti* principle. There being no doubt that petitioner paid its EWT for March 2006 twice, there arises an obligation on the part of the respondent to return what was mistakenly paid by petitioner".

²¹ Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc., G.R. Nos. 172045-46, June 16, 2009, citing Section 173 of the 1997 Tax Code and Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue, G.R. No. 166786, May 3, 2006

²² C.T.A. Case No. 7073, April 4, 2007

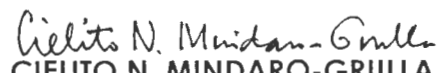
²³ C.T.A. Case No. 7756, August 6, 2009

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In fine, this Court finds petitioner entitled to a refund of the amount of P15,000,000.00, representing documentary stamp taxes erroneously paid relative to the approved credit line/facility under the Omnibus Loan and Security Agreement dated April 12, 2007, but which was not availed and was cancelled by the parties therein.

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.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
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's Division.


JUANITO C. CASTANEDA, JR.

Acting Presiding Justice
Chairperson, 2nd Division