REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

IMPERIAL, DE GUZMAN, ABALOS & CO., INC. represented by SECURITY BANK CORPORATION ,	**CTA CASE NO. 8261**
	Members:
Petitioner,	**BAUTISTA,** *Chairperson* **COTANGCO-MANALASTAS,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE,	**Promulgated:**
Respondent.	MAY 15 2013 10:21 a.m.

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DECISION

COTANGCO-MANALASTAS, J.:

STATEMENT OF THE CASE

Before the Court is a Petition for Review filed on April 1, 2011, seeking the refund or the issuance of tax credit certificate in the amount of P100,107.75, allegedly representing the documentary stamp tax (DST) erroneously paid/remitted by petitioner.

STATEMENT OF FACTS

Imperial, De Guzman, Abalos and Co. Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Ground Floor EDSA Central Square, Shaw Boulevard, Mandaluyong City. It is represented by Security Bank Corporation (SBC), which is a duly authorized agent bank to receive payments intended for the Bureau of Internal Revenue (BIR).[1]

Respondent is the Commissioner of the Bureau of Internal Revenue being sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The instant claim for refund arose from petitioner's purported Secondary Trading transactions which necessarily entailed payment of documentary stamp tax pursuant to Section 199 of the National Internal Revenue Code (NIRC) of 1997. Petitioner allegedly made the following payments to the BIR through SBC EDSA Central Branch, its authorized agent bank:[2]

DATE	DST PAID
April 3, 2009	P12,811.50
May 5, 2009	P53,811.00
June 8, 2009	P55,335.75

On July 1, 2009, pursuant to the Memorandum of Agreement (MOA) between the Department of Finance and the Philippine Stock Exchange, Inc. (PSE), the latter issued Announcement No. 2009-0333 pertaining to Refund of

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 70
[2] Par. 11, Statement of Facts, Petition for Review, docket, pp. 3-4

Documentary Stamp Tax on Secondary Trading, stating that DST collected since March 20, 2009 must be refunded.[3]

On July 14, 2009, petitioner requested SBC to refund the aforesaid DST payments, invoking the above announcement.[4]

On October 7, 2009, SBC sent a letter to Ms. Isabel A. Paulino, Revenue District Officer of Revenue District Office (RDO) No. 41, requesting the refund of the amount of P100,107.75, representing DST on Secondary Trading paid through SBC–EDSA Central Branch that SBC inadvertently remitted.[5]

SBC again sent a letter dated November 5, 2009 to the Revenue Accounting Division of the BIR, informing the latter that SBC had already refunded DST payment in the amount of P100,216.32 to petitioner representing DST paid in the amount of P100,107.75 with interest earned in the amount of P108.57.[6]

Subsequently, SBC received a letter dated November 10, 2009 from Ms. Geraldine S. Biermas, the OIC-Chief of the BIR Accounting Division, instructing SBC to request/coordinate with the BIR RDO No. 41 for the reversal/data fix of said payment.[7]

On November 11, 2009, SBC sent a letter to Ms. Isabel A. Paulino, Revenue District Officer of RDO No. 41, requesting the cancellation of DST payments of petitioner and the refund thereof.[8]

Due to respondent's inaction on the above claim for refund, petitioner filed the instant Petition for Review on April 1, 2011.

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[3] Exhibits "B" and "C"
[4] Exhibit "D"
[5] Exhibit "G"
[6] Exhibit "H"
[7] Exhibit "I"
[8] Exhibit "J"

Respondent filed her Answer [9] on May 25, 2011, interposing the following defenses:

> "3. Petitioner's claim for tax refund is subject to administrative investigation/examination by respondent Bureau;
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> 4. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
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> 5. In an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund;
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> 6. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government'. For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption. Claims for tax refunds, when based on statutes granting tax exemption or tax refund, partake of the nature of an exemption; thus, the rule of strict interpretation against the taxpayer-claimant similarly applies *(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. No. 163835, July 7, 2010)*."

The case was set for pre-trial conference on June 23, 2011.[10] Respondent filed her Pre-Trial Brief[11] on June 14,

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[9] Docket, pp. 48-50
[10] Notice of Pre-Trial Conference issued on May 26, 2011, docket, p. 51
[11] Docket, pp. 52-55

2011; while petitioner filed its Pre-Trial Brief[12] on June 15, 2011.

On August 2, 2011, the parties filed with this Court their Joint Stipulation of Facts and Issues.[13] Thereafter, the pre-trial conference was terminated as per the Pre-Trial Order[14] issued by the Court dated August 17, 2011.

Trial proceeded, giving both parties the opportunity to present their respective documentary and testimonial evidence. After presentation, identification, and formal offer, Exhibits "A" to "L" were admitted as part of the evidence for petitioner.[15] On the other hand, counsel for respondent manifested during the hearing held on August 16, 2012 that there are no BIR Records for this case and thus, she will no longer present evidence.[16]

Subsequently, petitioner submitted its Memorandum on October 18, 2012;[17] while respondent failed to file her Memorandum as per records verification dated October 3, 2012.[18] Thus, in a Resolution dated October 9, 2012, the case was submitted for decision.[19]

STATEMENT OF ISSUES

The parties submitted the following issues[20] for this Court's disposition:

> "1. Is petitioner entitled to a refund or tax credit of the amount of tax erroneously remitted by the agent bank?

[12] Docket, pp. 56-61
[13] Docket, pp. 70-72
[14] Docket, pp. 75-78
[15] Resolution dated July 12, 2012, docket, pp. 153-154
[16] Minutes of the hearing held on August 16, 2012, docket, p. 156
[17] Docket, pp. 159-172
[18] Docket, p. 173
[19] Docket, p. 175
[20] Issues, JSFI, docket, p. 71

2. Whether or not petitioner's administrative and judicial claim for tax refund was filed on time."

RULING OF THE COURT

Significant to the resolution of the present case are Sections 204(C) and 229 of the NIRC of 1997, which are quoted hereunder for easy reference:

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

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer 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."

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

> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Thus, for petitioner to be entitled to the tax refund claimed, it must be established that the administrative and the judicial claims for refund were filed within two (2) years from the payment of the tax and that the amount of tax to be refunded has been erroneously or illegally assessed or collected.

As to whether the administrative and the judicial claims for refund were filed within two years from the payment of the tax, petitioner alleged that it paid DST on Secondary Trading on April 3, 2009, May 5, 2009, and June 8, 2009. Counting from said dates, petitioner had two years or until April 3, 2011, May 5, 2011, and June 8, 2011 within which to file its administrative and judicial claims for refund.

In this case, petitioner requested SBC for refund of the aforesaid DST payments on July 14, 2009.[21] Thereafter, a Deed of Undertaking, Release and Quitclaim[22] was executed between petitioner and SBC on September 18, 2009, which, among others, allowed the filing by SBC of the claim for refund of DST paid for the period covering March to May 2009 in petitioner's behalf.

Accordingly, on October 14, 2009, SBC sent a letter addressed to Ms. Isabel A. Paulino, Revenue District Officer of RDO No. 41, to claim a refund of the amount of P100,107.75 for documentary stamp tax on Secondary Trading. Thereafter, the instant Petition was filed on April 1, 2011.

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[21] Exhibit "D"
[22] Exhibit "F"

Clearly, both the administrative and the judicial claims for refund, which were filed on October 14, 2009 and April 1, 2011, respectively, were filed within the two-year prescriptive period provided by law.

Now, the Court shall determine whether the amount to be refunded was erroneously or illegally assessed or collected.

Petitioner argues that it is entitled to a refund of its DST payments pursuant to Republic Act (RA) No. 9648. Petitioner maintains that it paid DST concerning its Secondary Trading transactions, *viz.*, sale, barter or exchange of shares of stock and filed the necessary DST Returns and remitted the same to the BIR through its authorized agent bank at the rate of seventy-five centavos (P0.75) for every two hundred pesos (P200.00) or fractional part thereof of the par value on the sale of shares listed and traded through the Philippine Stock Exchange. In the case of shares of stock without par value, the amount of DST shall be twenty-five percent (25%) of the DST paid upon the original issue of said shares. Petitioner's alleged payments to the BIR through SBC EDSA Central Branch, its authorized agent bank, are summarized below:[23]

DATE	**DST PAID**
April 3, 2009	P12,811.50
May 5, 2009	P53,811.00
June 8, 2009	P55,335.75

[23] Par. 11, Statement of Facts, Petition for Review, docket, pp. 3-4

According to petitioner, per bank procedure and as mandated by the *Bangko Sentral ng Pilipinas* under its Circular Letter No. 2009-019, the documentary stamp tax on Secondary Trading payment should be lodged temporarily to Documentary Stamp Tax-Secondary Trading Account No. (1400-100020-201), while regular Bureau of Internal Revenue Collection shall be lodged to BTR-Bureau of Internal Revenue Account No. (1400-100011-001).[24]

Petitioner contends that SBC's EDSA Central Branch erroneously treated and posted the aforesaid tax payments for DST as part of its regular BIR Collection; thus, the said collected amounts were lodged to BTR-BIR Account No. (1400-100011-001) instead of lodging the same to DST-Secondary Trading Account No. (1400-100020-201).[25]

Since remittance to BIR is supposedly done on the sixth (6th) day after collection date, all collections made in BTR-Bureau of Internal Revenue Account No. (1400-100011-001) received from accredited branches of SBC were electronically remitted by SBC Financial Control Division (FINCON) to the Bureau of Treasury through the BSP Electronic Fund Instruction System (EFTIS) on its respective due dates. SBC's FINCON was not aware that the said payments were DST payments and were not regular BIR Collections.[26]

On June 30, 2009, RA No. 9648, otherwise known as "An Act Exempting from Documentary Stamp Tax Any Sale, Barter or Exchange of Shares of Stock Listed and Traded Through the Stock Exchange, Further Amending for the Purpose Section 199 of the National Internal Revenue Code of 1997 as amended by Republic Act No. 9243, and for Other Purposes", was signed into law. As a consequence, the PSE issued Announcement No. 2009-0333 on July 1, 2009, which authorized agent banks to refund DST collected since March 20, 2009 together with interest.

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[24] Par. 12, Statement of Facts, Petition for Review, docket, p. 4
[25] Par. 13, Statement of Facts, Petition for Review, docket, p. 4
[26] Par. 14, Statement of Facts, Petition for Review, docket, p. 5

Petitioner further alleges that it is listed as among the active members of the PSE and one of its trading participants. Hence, it is clear that it is exempt from paying DST on its Secondary Trading and is entitled to a refund of the DST payments made on April 3, 2009, May 5, 2009, and June 8, 2009.

Section 1 of RA No. 9648 provides:

> "SECTION 1. Section 199 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9243, is hereby further amended to read as follows:
>
> 'SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> 'xxx xxx xxx
>
> '(e) Sale, barter or exchange of shares of stock listed and traded through the local stock exchange."

Based on the foregoing, in order to prove that the subject payments are covered by the exemption granted under the afore-quoted provision, petitioner must first show that the DST was paid on instruments, documents, and papers evidencing sale, barter or exchange of shares of stock listed and traded through the local stock exchange.

To support its claim for refund, petitioner presented the Summary of Periodic Payments it made to its authorized agent bank (SBC) on April 3, 2009, May 5, 2009, and June 8, 2009, as certified by Mr. Renato C. Buccat, the Branch Channel Manager previously assigned to SBC EDSA Central Branch, with Consolidated Report on Daily Collections of Internal

Revenue Taxes;[27]a letter dated November 10, 2009 from Ms. Geraldine S. Bermas, OIC-Chief of the Revenue Accounting Division which purportedly confirmed the remittance of the amount subject of the instant Petition[28]; and the list of PSE Trading Participants[29]. However, there is nothing in the evidence enumerated which would directly show that the alleged documentary stamp tax was paid on instruments, documents, and papers evidencing sale, barter or exchange of shares of stock listed and traded through the local stock exchange.

An examination of the Summary of Periodic Payments reveals that the same failed to show the kind of transaction, instrument, document or papers from which the DST was allegedly paid. The Court further observed that the letter dated November 10, 2009 merely informed SBC that the BIR could not act upon the refund of the amount of P100,107.75 documentary stamp tax on Secondary Trading considering that on-line verification of SBC's records on file in respondent's office shows no discrepancy between the Batch Control Sheet (BCS-A) and the Consolidated Report of Daily Collections (CRDC). There is nothing in the said letter which directly confirmed the remittance of the amount subject of the instant claim for refund. As regards the list of PSE Trading Participants, the same merely established that petitioner is listed as one of the active members of the PSE and one of its trading participants, and did not directly substantiate petitioner's contention that it was on Secondary Trading from which the DST was paid on the dates previously mentioned. In view thereof, it is clear that the evidence presented by petitioner failed to prove that the alleged documentary stamp taxes were paid on instruments, documents, and papers evidencing sale, barter or exchange of shares of stock listed and traded through the local stock exchange transactions.

Furthermore, it must be noted that petitioner likewise failed to present any documentary evidence to support its allegation that SBC's EDSA Central Branch erroneously

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[27] Exhibit "A"; Transcript of Stenographic Notes dated October 17, 2011, pp. 18-20
[28] Exhibit "I"
[29] Exhibit "K"

treated and posted the aforesaid tax payments for DST as part of its regular BIR Collection, and that the said collected amounts were lodged to BTR-BIR Account No. (1400-100011-001) instead of lodging the same to DST-Secondary Trading Account No. (1400-100020-201).[30]

Clearly, the evidence presented by petitioner is insufficient to fully establish that there was actual payment of DST on instruments, documents, and papers evidencing sale, barter or exchange of shares of stock listed and traded through the local stock exchange, which is the subject of the instant claim for refund; and that the said payment is covered by the exemption granted under Section 199 of the NIRC of 1997, as amended by RA No. 9648.

At this juncture, let it be emphasized that under Section 8 of RA No. 1125, this Court is described as a court of record. As cases filed before this Court are litigated *de novo*, party-litigants should prove every minute aspect of their cases.[31] Also, actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[32]

Considering that the evidence presented by petitioner failed to support its claim for refund, the instant Petition must be denied.

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[30] Par. 4, Petitioner's Memorandum dated September 18, 2012, docket, p. 161

[31] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005

[32] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

I CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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