REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NORTH NEGROS BIOPOWER, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9920

Members:

CASTAÑEDA, JR., *Chairperson,*
and
BACORRO-VILLENA, *JJ.*

Promulgated:

SEP 2 1 2020
9:10 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

The *Petition for Review* filed on September 4, 2018 prays for the refund to petitioner the amount of ₱13,616,956.00, allegedly representing its erroneously paid documentary stamp tax (DST).[1]

THE PARTIES

Petitioner North Negros Biopower, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at Emerald Arcade F.C. Ledesma Avenue, Brgy. Palampas, San Carlos City,

[1] Summary of the Case, Pre-Trial Order dated February 21, 2019, Docket – Vol. II, p. 935.

Negros Occidental.[2] It entered into an *Omnibus Loan Agreement* dated August 19, 2016 with San Carlos Biopower, Inc., South Negros Biopower, Inc., and the International Finance Corporation (IFC).[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested under the law with authority to carry out all functions, duties, and responsibilities of the Bureau of Internal Revenue (BIR),[4] with office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

THE FACTS

On February 28, 2018, petitioner filed with the BIR an administrative claim for refund of allegedly erroneously paid DST.[6]

On May 2, 2018, petitioner received from BIR Revenue District Office (RDO) No. 76 – Victorias City, the letter dated March 8, 2018, requesting for various documents to support the claim for refund.[7] Thus, on August 7, 2018, petitioner submitted additional documents to further support its claim for refund.[8]

Petitioner filed the present *Petition for Review* on September 4, 2018.[9]

Respondent filed his *Answer* on November 28, 2018,[10] raising the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

6. Respondent adopts the abovementioned admissions and denials as part of his special and affirmative defenses. *gr*

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[2] Par. 1, Stipulation of Facts, *Joint Stipulation*, Docket – Vol. II, p. 920.
[3] Par. 3, Stipulation of Facts, *Joint Stipulation*, Docket – Vol. II, p. 920.
[4] Par. 2, Stipulation of Facts, *Joint Stipulation*, Docket – Vol. II, p. 920.
[5] Par. 3, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. II, pp. 13 and 393, respectively.
[6] Par. 4, Stipulation of Facts, *Joint Stipulation*, Docket – Vol. II, p. 921.
[7] Par. 5, Stipulation of Facts, *Joint Stipulation*, Docket – Vol. II, p. 921; Exhibit "P-11", Docket – Vol. II, p. 711.
[8] Par. 6, Stipulation of Facts, *Joint Stipulation*, Docket – Vol. II, p. 921.
[9] Docket –Vol. I, pp. 12 to 27.
[10] Docket – Vol. I, pp. 393 to 401.

7. Petitioner is not entitled to the refund of alleged erroneously paid documentary stamp tax in the aggregate amount of P13,616,956.00.

International Finance Corporation waived its immunity from taxation.

8. In the instant petition, petitioner alleges that the Loan Agreement entered into with International Finance Corporation (IFC) is exempt from the imposition of documentary stamp tax in view of the immunities and privileges IFC is entitled to under the IFC Articles of Agreement.

9. However, petitioner conveniently omitted the fact that the Corporation may waive its immunities and privileges. Section 9, Article VI of the Articles of Agreement provides:

> '**Article VI – Status, Immunities and Privileges**
>
> **xxx**
>
> **Section 11. Waiver**
>
> The Corporation in its discretion may waive any of the privileges and conferred under this Articles to such extent and upon such conditions as it may determine.'

10. Perusal of the Loan Agreement entered into between IFC and petitioner shows that IFC recognized that the loan agreement is subject to taxes and stipulated on as to who bears the burden of paying the taxes due thereon effectively waiving its immunity and privileges.

11. Section 2.14 of the Loan Agreement, states that:

> 'Section 2.14. *Taxes.* (a) **The Borrowers shall pay or cause to be paid all Taxes** (other than taxes, if any, payable

> on the overall income of IFCC, CCP, CTF, any MCPP Investor or any Participant) **on or in connection with the payment of any and all amounts due under this Agreement** that are now or in the future levied or imposed by any Authority of the Country or by any organization of which the Country is a member or any jurisdiction through or out of which a payment is made.' (*Emphasis supplied*)

12. Section 2.15 of the Loan Agreement further provides:

> 'Section 2.15 *Expenses.* (a) **The Borrowers shall pay or, as the case may be, reimburse IFC or its assignees any amount paid by them on account of, all taxes (including stamp taxes), duties, fees or other charges payable on or in connection with the execution, issue, delivery, registration or notarization of the Transaction Documents and any other documents related to this Agreement or any other Transaction Document.**' (*Emphasis supplied*)

13. It is clear from the above quoted provisions of the Loan Agreement that IFC waived its immunities and privileges. It explicitly acknowledged that the Loan Agreement is subject to the imposition of taxes, including documentary stamp taxes.

14. In fact, the parties voluntarily subjected themselves into taxation as provided for in the Loan Agreement.

15. Further, the Loan Agreement did not mention any exemption from payment of taxes nor invoked its exemption based on the Articles of Agreement of IFC.

16. Clearly, these provisions in the Loan Agreement and omission to invoke the tax immunity and privilege are understood as a waiver of the immunities

and privileges it is entitled to under the Articles of Agreement.

17. Thus, in view of the waiver of IFC of its immunities and privileges, any tax which may have been collected in relation to the Loan Agreement was not erroneously collected.

Obligation to pay DST falls upon the shoulder of petitioner.

18. Section 173 of the NIRC of 1997, as amended, expressly provides that DST shall be paid by the person making, signing, issuing, accepting or transferring the obligation, right or property, to wit:

> '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 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.' (Emphasis supplied)

19. From the foregoing, the DST may be levied and collected and paid from and paid by any person making, signing, issuing, accepting or transferring *r*

obligation, right or property. Thus, the burden of tax could be either be upon the borrower or the lender.

20. Corollary to the foregoing is Revenue Regulations (RR) No. 9-2000 which specify the persons liable for DST, and who, under certain conditions shall be liable for payment thereof, to wit:

> 'Section 2. Nature of the Documentary Stamp Tax and Persons Liable for the Tax. —
>
> (a) In General. — The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against *'the person making, signing, issuing, accepting, or transferring'* the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. **Any of the parties thereto shall be liable for the full amount of the tax due: Provided, however, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax**.
>
> (b) Exception. — Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax.' (*Emphasis supplied*)

21. Pursuant to the foregoing provisions, any of the parties to the taxable transaction may be liable for DST. As such, the BIR may impose and collect DST from any parties.

22. However, the parties may agree between themselves as to who will take the burden of paying DST and such agreement is binding upon them. *ge*

23. It is worthy to note that the parties to the Loan Agreement stipulated as to who will pay the taxes due under the Agreement.

24. As stipulated under Sections 2.14 and 2.15 of the Loan Agreement, it is the borrower, petitioner in the instant case, who shall be liable for the taxes due.

25. The agreement being binding upon the parties, the obligation to pay rests upon the shoulder of petitioner.

Granting for the sake of argument but without conceding that IFC did not waive its immunity from taxation, IFC's immunity from taxes is personal. Petitioner is directly liable for the payment of DST.

26. A cursory reading of Section 9 of the Articles of Agreement would show that it is the entity, IFC, which has been granted to tax exemptions.

27. Therefore, the immunity from taxation granted to IFC is personal, that is it only pertains to IFC.

28. In much the same way that taxes are personal, tax exemptions are likewise personal. Being personal to IFC, it is non-transferable.

29. As mentioned above, Section 173 of the Tax Code, as implemented by RR 9-2000 provides that where one of the party is exempt from the tax imposed, the other party not covered by such exemption shall be directly liable for the tax.

30. Thus, granting for the sake of argument but without conceding that IFC did not waive its immunities and privileges, petitioner, the party not covered by exemption, shall be directly liable for the payment of DST. gr

31. Thus, its payment could not have been erroneously collected as there was basis for the collection of the same.

Petitioner cannot invoke BIR Ruling No. [DA-(FIT-002) 006-09].

32. Petitioner cannot use as basis for the exemption from payment of income tax BIR Ruling No. [DA-(FIT-002) 006-09] as petitioner was not the one who secured the said ruling and the facts surrounding the issuance of the ruling and the instant case are not at all fours.

33. The cited BIR Ruling dealt with the issue on the tax consequences on IFC's proposed issuance of Peso-denominated bonds and not on a loan agreement entered into by IFC.

34. Further, the said ruling was secured by IFC and not petitioner.

35. In the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation,* the Supreme Court ruled that a taxpayer cannot invoke a ruling which it did not seek from the CIR.

36. It must be stressed that BIR rulings are issued based on the facts and circumstances surrounding particular issue/issues in question and are resolved on a case-to-case basis. It would be this erroneous to invoke the ruling of the BIR in specific cases, which have different transaction as tot eh case of the herein applicant.

Tax exemptions must be strictly construed against the taxpayer.

37. It has been consistently ruled that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. ℱℓ

38. As such, they are regarded in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption.

39. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.

40. As here, petitioner failed to prove its exemption which can justify its claim. Thus, by such failure, petitioner cannot escape the fact that its claim has no basis in law and hence must be denied.

41. Exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

42. Further, taxes paid and collected are presumed to have been made in accordance with the laws and regulations.

43. Finally, it is incumbent upon the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the claim for refund. To repeat, for failure of petitioner to overcome its burden, its claim must be denied."

On January 11, 2019, respondent elevated to this Court the *BIR Records* for the present case.[11]

The Pre-Trial Conference was set and held on January 17, 2019.[12] Prior thereto, *Respondent's Pre-Trial Brief* was filed on January 11, 2019,[13] while petitioner's *Pre-Trial Brief* was submitted on January 14, 2019.[14]

On February 1, 2019, the parties filed their *Joint Stipulation*.[15] Subsequently, the Pre-Trial Order dated February 21, 2019 was

[11] *Compliance* dated January 9, 2019, Docket – Vol. I, pp. 410 to 413.
[12] *Notice of Pre-Trial Conference* dated December 5, 2018, Docket – Vol. I, pp. 403 to 404; Minutes of the hearing held on, and Order dated, January 17, 2019, Docket – Vol. II, pp. 918 to 919.
[13] Docket – Vol. I, pp. 405 to 409.
[14] Docket – Vol. II, pp. 418 to 427.
[15] Docket – Vol. II, pp. 920 to 929.

issued by this Court,[16] approving the parties' *Joint Stipulation* and deeming the pre-trial conference terminated.

Trial then ensued.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following witnesses, namely: (1) Ms. Angelique P. Custodio,[17] Accounting Officer of petitioner; and (2) Ms. May L. Vargas,[18] its Accounting Manager.

Petitioner filed its *Formal Offer of Evidence* on March 8, 2019.[19] Respondent filed his *Comment (on Petitioner's Formal Offer of Evidence)* on April 1, 2019.[20]

In the Resolution dated May 10, 2019,[21] this Court admitted petitioner's exhibits, *except* for: (1) Exhibits "P-1", "P-2", "P-4", "P-4-A", "P-4-B", and "P-7", for petitioner's failure to submit the duly marked exhibits; and (2) Exhibits "P-8", and "P-9", for failure to present the originals for comparison.

Petitioner then filed a *Motion for Reconsideration* on June 3, 2019.[22] Respondent filed his *Comment/Opposition (on Petitioner's Motion for Reconsideration)* on June 24, 2019.[23]

In the Resolution dated July 26, 2019,[24] petitioner's *Motion for Reconsideration* was partially granted, thereby admitting Exhibits "P-1", "P-2", "P-4", "P-4-A", "P-4-B", and "P-7", but still denying the admission of Exhibits "P-8" and "P-9".

When called to present his case, respondent manifested that he will no longer present any witness. Thus, the parties were given a

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[16] Docket – Vol. II, pp. 935 to 938.
[17] Exhibit "P-13", Docket – Vol. II, pp. 901 to 907; Minutes of the hearing held on, and Order dated, March 4, 2019, Docket – Vol. III, pp. 939 to 940.
[18] Exhibit "P-14", Docket – Vol. II, pp. 908 to 914; Minutes of the hearing held on, and Order dated, March 4, 2019, Docket – Vol. III, pp. 939 to 940.
[19] Docket – Vol. III, pp. 941 to 948.
[20] This *Comment* was filed through respondent's *Manifestation & Omnibus Motion (1. Motion to Withdraw 2. Motion to Admit Comment)*, Docket – Vol. III, pp. 1301 to 1308; Refer also to the Resolution dated April 5, 2019, Docket – Vol. IV, p. 1658.
[21] Docket – Vol. IV, pp. 1660 to 1662.
[22] Docket – Vol. IV, pp. 1664 to 1668.
[23] Docket – Vol. IV, pp. 1919 to 1921.
[24] Docket – Vol. IV, pp. 1924 to 1927.

period of thirty (30) days within which to submit their respective memorandum.[25]

Respondent submitted his *Memorandum* on September 23, 2019,[26] while petitioner filed its *Memorandum* on September 27, 2019.[27] Accordingly, the present case was deemed submitted for decision on October 14, 2019.[28]

THE ISSUE

The sole issue stipulated by the parties for this Court's resolution is:

> "...Whether or not Petitioner is entitled to a claim for refund or issuance of tax credit certificate for its alleged erroneously paid documentary stamp taxes in the amount of P13,616,956.00."[29]

Petitioner's arguments:

Petitioner argues that it timely filed its claim for refund of DST erroneously paid; that its Loan Agreement with IFC is exempt from DST, thus, the DST payment made by petitioner is erroneous; that IFC did not waive the tax-exempt status of its transaction with the petitioner; and that the absence of a tax treaty relief application is not a bar to the claim for tax refund or credit of erroneously paid tax.

Respondent's counter-arguments:

Respondent contends that claims for refund are construed strictly against the taxpayer and in favor of the government; that the IFC waived its immunity from taxation; that the obligation to pay DST falls upon the shoulder of petitioner; that granting for the sake of argument, but without conceding that IFC did not waive its immunity from taxation, its immunity from taxes is personal, hence, non-transferrable to petitioner; that the latter is directly liable for the payment of DST; that petitioner cannot invoke BIR Ruling No. [DA-

[25] Minutes of the hearing held on, and Order dated, August 28, 2019, Docket – Vol. IV, p. 1954 to 1955.
[26] Docket – Vol. IV, pp. 1956 to 1965.
[27] Docket – Vol. IV, pp. 1967 to 1981.
[28] Resolution dated October 14, 2019, Docket – Vol. IV, p. 1984.
[29] Stipulation of Issues, *Joint Stipulation*, Docket – Vol. II, p. 921.

(FIT-002) 006-09]; and that tax exemptions must be strictly construed against the taxpayer.

THE COURT'S RULING

The present *Petition for Review* lacks merit.

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

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
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> 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." *(Emphasis added)*
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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. *gr*

> **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." *(Emphases added)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. **Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional**, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[30]

Furthermore, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[31]

Thus, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject DST paid is an "erroneous or illegal tax".

Petitioner timely filed both its administrative and judicial claims.

In the present case, petitioner filed its *Documentary Stamp Tax Declaration/Return* (BIR Form 2000) for its transaction with IFC on *Je*

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[30] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

[31] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

September 5, 2016,[32] and paid the DST on the same date, through the *Tax Payment Deposit Slip* of the Development Bank of the Philippines, San Carlos City, Negros Occidental.[33]

Counting two years from the said date of payment, petitioner had until September 5, 2018, within which to file both its administrative and judicial claims for refund. By filing its administrative claim on February 28, 2018 with the BIR, via the letter dated February 26, 2018 with attached *Application for Tax Credits/Refunds* (BIR Form No. 1914),[34] and its ensuing appeal to this Court via the present *Petition for Review* filed on September 4, 2018,[35] petitioner timely filed its refund claim with the BIR and this Court.

However, this Court finds that the subject DST paid by petitioner is **not** an "erroneous or illegal tax".

Petitioner is not exempt from DST.

Verily, a documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.[36]

Section 173 of the NIRC of 1997 provides 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 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

[32] Exhibit "P-5", Docket – Vol. II, p. 676.
[33] Exhibit "P-6", Docket – Vol. II, p. 678; Exhibit "P-7", Docket – Vol. IV, p. 1915.
[34] Par. 4, Stipulation of Facts, Joint Stipulation, Docket – Vol. II, p. 921; Exhibit "P-10", Docket – Vol. II, pp. 703 to 705.
[35] Docket –Vol. I, pp. 12 to 27.
[36] *Commissioner of Internal Revenue v. Heald Lumber Company*, G.R. No. L-16340. February 29, 1964.

> 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, <u>the other party who is not exempt shall be the one directly liable for the tax</u>.**" *(Emphasis and underscoring added)*

As a corollary, the implementing rules of the above cited provision, Revenue Regulations No. 09-00,[37] likewise specifies that when one of the parties to the taxable transaction is exempt from the tax, the other party who is not exempt shall be the one directly liable for the tax, in which case, the tax shall be paid and remitted by the said non-exempt party.

However, petitioner insists that by virtue of Republic Act (RA) No. 1604,[38] the Philippines became a member of the IFC, thereby acceding to the IFC Articles of Agreement, and binding itself to give certain immunities and privileges to the IFC pursuant to the said Articles of Agreement. Section 9(a), Article VI, of the IFC Articles of Agreement provides as follows:

> "ARTICLE VI
> *Status Immunities and Privileges*
>
> xxx xxx xxx
>
> Sec. 9. *Immunities from Taxation.* – (a) The Corporation, its assets, property, income and its operations and transaction authorized by the Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty."

Based on the above provision, it is clear that IFC is exempt from the payment of DST. However, petitioner claims that IFC's immunity from taxation extends to their loan agreement since the

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[37] SUBJECT: Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

[38] AN ACT AUTHORIZING PHILIPPINE MEMBERSHIP IN THE PROPOSED INTERNATIONAL FINANCE CORPORATION AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR, approved on August 23, 1956.

above provision encompasses *transaction authorized* by the IFC Articles of Agreement.

Unfortunately, this Court does not agree.

Upon a cursory examination of petitioner's *Formal Offer of Evidence* filed on March 8, 2019,[39] no exhibit or evidence has been offered by petitioner to prove that the subject transaction was authorized by the IFC Articles of Agreement. On this score alone, there being no evidence to establish such fact, the present claim for refund must already fail.

Nevertheless, even when petitioner was able to show that the subject transaction was authorized by the IFC Articles of Agreement, the same is of no moment.

Indeed, this Court is aware that the interpretation of our national tax laws should be geared towards fulfilling our treaty obligations and avoid consequences that may promote negative implications on international relations, and unduly discourage foreign investors, under the time-honored international principle of *pacta sunt servanda*, which demands performance in *good faith* of treaty obligations on the part of the states that enter into the agreement.

However, it also bears stressing that tax refunds, just like tax exemptions, must not rest on vague, uncertain or indefinite inference but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. 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. Simply stated, 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.[40]

In the present case, although certain immunities and privileges are provided under Section 9, Article VI, of the IFC Articles of

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[39] Docket – Vol. III, pp. 941 to 948.
[40] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010; citing *CIR v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008.

Agreement, the said immunities and privileges, however, pertains only to IFC. It must be emphasized that the purpose of IFC is to further economic development by encouraging the growth of productive private enterprise in member countries, it supplements the activities of the International Bank for Reconstruction and Development.[41] In fact, the introductory statement of RA No. 1604 states that it is to the economic interest of the Philippines to become a member of the IFC. Thus, it is specifically for the foregoing reasons that IFC was endowed with immunities and privileges. For such reasons, the said immunities and privileges cannot extend to petitioner.

The basis for the rule on strict construction to statutory provisions granting tax exemptions or deductions is to minimize differential treatment and foster impartiality, fairness and equality of treatment among taxpayers. He who claims an exemption from his share of common burden must justify his claim that the legislature intended to exempt him by unmistakable terms. **For exemptions from taxation are not favored in law, nor are they presumed. They must be expressed in the clearest and most unambiguous language and not left to mere implications.** It has been held that exemptions are never presumed, **the burden is on the claimant to establish clearly his right to exemption and cannot be made out of inference or implications but must be laid beyond reasonable doubt.** In other words, since taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms.[42]

Furthermore, as a corollary, having been entered into together with San Carlos Biopower, Inc. and South Negros Biopower, Inc., for the financing of construction, equipping, testing, completion, and operation of their respective biomass electricity generation facility, the *Omnibus Loan Agreement* [43] is the governing law among the parties therein. It is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding between the parties.[44] Incidentally, the pertinent provisions, Sections

[41] Article I of the IFC Articles of Agreement.
[42] *Quezon City, et al. v. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008.
[43] Exhibit "P-4", Docket – Vol. IV, pp. 1700 to 1914.
[44] *Romeo G. Roxas, et al. v. Antonio De Zuzuarregui, Jr.*, G.R. Nos. 152072 and 152104, January 31, 2006.

2.14 and 2.15, Article II of the *Omnibus Loan Agreement* provide as follows:

> **"ARTICLE II**
>
> **The Loan**
>
> xxx xxx xxx
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> Section 2.14. *Taxes*. (a) **The Borrowers shall pay or cause to be paid all Taxes** (other than taxes, if any, payable on the overall income of IFCC, CCCP, CTF, any MCPP Investor or any Participant) on or in connection with the payment of any and **all amounts due under this Agreement that are now or in the future levied or imposed by any Authority of the Country** or by any organization of which the Country is a member or any jurisdiction through or out of which a payment is made.
>
> xxx xxx xxx
>
> Section 2.15. *Expenses*. (a) **The Borrowers shall pay** or, as the case may be, reimburse IFC or its assignees any amount paid by them on account of, **all taxes (<u>including stamp taxes</u>),** duties, fees or other charges **payable on or in connection with the execution, issue, delivery, registration or notarization of the Transaction Documents and any other documents related to this Agreement or any other Transaction Document**."[45] *(Emphases and underscoring added)*

Thus, it is clear that the parties to the *Omnibus Loan Agreement* intended or contemplated that all taxes, which include specifically, DST or "stamp taxes" due on the transaction, must be paid by the Borrowers, which include petitioner. Correspondingly, such stipulation is binding on the latter.

In view of the foregoing discussions, and especially considering that petitioner's claim of tax exemption is not supported by *"the clearest grant and most unambiguous language"* of the law, there is no erroneous payment of the subject DST to speak of as petitioner, *gc*

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[45] Docket – Vol IV, pp. 1744 to 1745

the non-exempt party to the transaction, is legally liable to pay the same. We cannot, therefore, grant the present claim for refund.

The BIR Ruling should not override, supplant, or modify the law.

As for petitioner's reliance on BIR Ruling No. DA-(FIT-002) 006-09 dated January 9, 2009, which was marked and offered as Exhibit "P-9", the same cannot be considered. To recall, in this Court's Resolutions dated May 10, 2019[46] and July 26, 2019[47], the said Exhibit was denied admission for failure to present the original thereof for comparison, and that the same is binding only to a specific party (*i.e.,* IFC), as well as it cannot be taken judicial notice of by this Court.

But even granting that the Exhibit "P-9" was admitted in evidence by this Court and that the ruling of exemption from the DST stated therein covers petitioner, it must be emphasized that this Court is not bound by these administrative interpretations or rulings. As consistently ruled by the Supreme Court, interpretations placed upon a statute by the executive officers, whose duty is to enforce it, are not conclusive and will be ignored if judicially found to be erroneous as the courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[48] Perforce, no amount of interpretation can ever revoke, repeal or modify what the law says.[49]

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[46] Docket – Vol. IV, pp. 1660 to 1662.
[47] Docket – Vol. IV, pp. 1924 to 1927.
[48] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999.
[49] *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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