REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

BASES CONVERSION AND DEVELOPMENT AUTHORITY,
Respondent.

CTA EB No. 1384
(CTA Case No. 8473)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

MAR 2 1 2017 2:50pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court *En Banc* are the following:

(1) Petitioner's Motion for Partial Reconsideration filed through registered mail on October 17, 2016, with respondent's Comment (On CIR's Motion for Partial Reconsideration) filed on October 26, 2017; and

(2) Respondent's Motion for Reconsideration filed on October 18, 2016, *sans* petitioner's comment.

For easy reference, the dispositive portion of the assailed Decision dated September 21, 2016 reads:

> "**WHEREFORE**, in view thereof, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the Decision dated July 3, 2015 is modified, as follows:
>
> > '**WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to:
> >
> > *(i)* **CANCEL** the Formal Assessment Notices (Part I and II) and the Assessment Notices WE-MOAONETT-0111-E-002819-11-11-0689, DSMOAONETT-0111-E-002819-11-11-0689, and MC-MOAONETT-0111-E-002819-11-11-0689 all dated August 22, 2011 representing petitioner's alleged deficiency Expanded Withholding Tax, Documentary Stamp Tax, and alleged failure to file and pay internal revenue taxes at the time or times required by law, in the amounts of PhP5,566,953.65, PhP1,673,426.93 and PhP50,000.00 (including penalties and surcharges from February 2, 2011 to September 26, 2011), respectively;
> >
> > *(ii)* **RETURN** to petitioner the amount of Php4,052,125.00 representing its payment under protest on September 4, 2012 for basic deficiency Expanded Withholding Tax; and
> >
> > *(iii)* **ISSUE** the corresponding Certificates Authorizing Registration for the sale of properties.'
>
> **SO ORDERED.**"

Petitioner asserts that respondent assumed EDC's entire tax obligation arising from the contract and that respondent is not one of those government entities exempt from tax on their taxable business activities.

On the other hand, respondent asserts that the Court *En Banc* has jurisdiction to grant tax refund with respect to its DST.

After careful analysis of the parties' arguments, the Court *En Banc* resolves to deny both motions.

It is BCDA's charter and not its contract with EDC, which governs its exemption from EWT

Petitioner argues that respondent assumed the obligation to pay both the EWT and the DST under its contract with EDC.

In this regard, Article 1306 of the Civil Code provides that the contracting parties may establish such stipulations, clauses, terms, and conditions, as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy.

Meanwhile, Section 8(d) of respondent's charter, Republic Act (RA) No. 7227, as amended by RA No. 7917, provides that "The provision of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished, and, therefor, exempt from all forms of taxes and fees".

Harmonizing respondent's contract with EDC, in relation to Article 1306 of the Civil Code and Section 8(d) of RA No. 7227, as amended by RA No. 7917, said contract is clearly subject to respondent's charter that the proceeds of the sale shall not be diminished and as such, exempt from all forms of taxes and fees. Thus, even if respondent assumed tax liabilities, *i.e.*, EWT, under its contract with EDC, the stipulation would be contrary to its charter because it would effectively diminish the proceeds of the sale. Hence, respondent's charter should prevail over the contractual stipulations between respondent and EDC.

Respondent's sales transaction with EDC is exempt from income tax under its charter

Petitioner further argues that respondent is not one of those corporations exempt from income tax under Section 27(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

The Court *En Banc* observes that petitioner merely rehashed his arguments. In fact, this issue has been completely addressed in the assailed Decision by discussing the history of respondent's charter, as follows:

> "The Court in Division extensively discussed in the assailed Decision the history of respondent's charter in relation to the Tax Code. Consequently, the Court in Division pronounced that:

'It is apparent from the foregoing that Congress did not make petitioner itself a tax exempt entity. It however clearly and unequivocally declared that the proceeds from the sale by petitioner of portions of Metro Manila military camps are exempt from all forms of taxes.

From the foregoing discussion, PD No. 1158, RA Nos. 8424 and 9337 (collectively referred to as the 'Tax Code') refer in general to the taxability of government owned or controlled corporations, agencies or instrumentalities. While the BCDA Charter specifically governs petitioner's proceeds from the sale of portions of Metro Manila military camps.

In the recent case of *Commissioner of Internal Revenue vs. BCDA*, the CTA *En Banc* had the occasion to rule that between the BCDA Charter, on one hand, which is a special law governing the BCDA, which took effect in 1995; and the Tax Code, on the other hand, which is the general law on national internal revenue taxes, that took effect on January 1, 1998, the former prevails.

It is a well-established rule of statutory construction that a special law prevails over a general law regardless of their dates of enactment; and the special law is to be considered as remaining an exception to the general law.

Therefore, the BCDA charter which exempts the proceeds from the sale of portions of Metro Manila military camps from all forms of taxes, *i.e.*, EWT and DST governs.

Likewise, in the case of *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, the Supreme Court settled the issue of exemption from all forms of taxes that arises from the proceeds of petitioner's sale of properties in Metro Manila military camps.

Thus, from the foregoing discussion, it is established that the proceeds of the sale of petitioner's properties in Metro Manila military camps are exempt from all forms of taxes.'

We agree with the Court in Division that respondent is exempt from payment of all forms of taxes relative to the proceeds from its sale of portions of the Metro Manila military camps, including the payment of EWT and DST, pursuant to its charter."[1]

Considering the foregoing, the denial of petitioner's Motion for Partial Reconsideration is in order.

The Court *En Banc* has no jurisdiction to grant tax refund with respect to respondent's DST

In this regard, respondent asserts that the Court *En Banc* has jurisdiction to grant its DST tax refund, based on the Concurring and Dissenting Opinion of the Honorable Presiding Justice Roman G. Del Rosario. The pertinent portion of the discussion states:

"I submit that the basis for the grant or denial of the refund is not purely contractual or civil in nature, BCDA's action having been instituted against the BIR and not against EDC with whom it entered into a Contract. In determining whether BCDA is entitled to refund or not, the Court *En Banc* is called upon to apply the provisions of Sections 173 and 196 of the Tax Code *vis-à-vis* the provision in the Contract between BCDA and EDC whereby BCDA expressly assumed the responsibility to pay corresponding taxes under Section 2.1 thereof. Otherwise stated, this Court is vested with jurisdiction to resolve the issue concerning the validity of the deficiency DST assessment issued against BCDA and its entitlement to refund of the DST paid under protest, pursuant to Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282."

The Court *En Banc*, however, sees no cogent reason to deviate from its previous ruling, as follows:

"However, with respect to the payment of DST, the *proviso* of Section 173 of the Tax Code provides:

'SEC. 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. – xxx

[1] Decision, Court *En Banc* Docket, pp. 130-131.

xxx *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.'

In relation to the above-quoted provision, it is significant that Section 1.2 of the Deed of Absolute Sale between respondent and EDC provides:

'1.2 The VENDOR shall be responsible for, and shall pay, all costs and expenses incurred for, the transfer of the Subject Properties, including those for the processing of documents and coordination with the government agencies. Likewise, **all taxes arising from the transfer and sale of the Subject Properties shall be for the account of, and shall be paid by, the VENDOR**.

The VENDOR and the VENDEE shall make representations with the Bureau of Internal Revenue and the Local Government of Taguig to seek exemption from the payment of taxes resulting from the transfer and sale of the Subject Properties. **However, this shall not alter the VENDOR's responsibility for these taxes**.'

An analysis of respondent's charter in relation to Section 1.2 of the Deed of Absolute Sale between respondent and EDC shows that, despite respondent being exempt from payment of all forms of taxes under its charter, it expressly assumed liability over all taxes arising from the transfer and sale of the Subject Properties under its contract with EDC.

Necessarily, respondent's rights and obligations emanate not only from its charter or the Tax Code, but also from its contract with EDC to which it expressly agreed.

On this score, Section 229 of the Tax Code provides:

'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.'

Section 229 of the Tax Code allows the refund of taxes erroneously or illegally assessed or collected, or those which were collected without authority, or taxes which have been excessively or in any manner wrongfully collected. From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.

As stated earlier, respondent is exempt from payment of all forms of taxes under its charter, which include the payment of EWT and DST. Thus, there is no controversy over respondent's non-liability to pay EWT by express provision of its charter. On the other hand, a reading of respondent's charter in relation to Section 173 of the Tax Code reveals that, considering that respondent is exempt from payment of DST, it is EDC who is directly liable to pay the DST.

However, while EDC is the entity directly liable to pay the tax, respondent expressly assumed EDC's liability to pay the corresponding taxes under Section 1.2 of their contract. Thus, respondent's obligation to pay EDC's tax liability arose through its own action, by consenting to assume the tax liabilities arising from the contract.

Therefore, it will logically follow that there is no wrongful payment on the part of respondent with respect to DST. Respondent knows fully well its rights under its own charter, *i.e.*, that it is exempt from payment of all forms of taxes. Yet, for reasons known only to the parties, respondent gave its express and willful consent under the contract to pay the DST that EDC should have been directly liable to pay under Section 173 of the Tax Code. Hence, where there is no wrongful payment, there is no wrongfully collected tax that may be the subject of a tax refund.

To clarify, respondent has no obligation to pay EWT and DST on the proceeds from its sale of portions of Metro Manila military camps, pursuant to its charter. However, it is equally important to apply the elementary principle that 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 as between the parties. By expressly assuming the liability of EDC to pay the taxes attributable to the latter, *i.e.*, DST by virtue of Section 173 of the Tax Code, it incurred a contractual obligation to pay the DST to which it would otherwise be exempt under its charter.

As a consequence, the Court has no jurisdiction to grant a relief for tax refund with respect to DST covering the subject transaction, the source of the obligation being contractual or civil in nature and hence, should be litigated in a proper forum."

Simply put, should the Court *En Banc* acquire jurisdiction over respondent's claim for DST refund, such exercise of jurisdiction will principally call for the examination and adjudication of the rights or obligations of the parties arising from their contract, and not the application of Section 173 whose provision clearly states: "whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax". Evidently, the CTA, being a court of special jurisdiction, is not armed with jurisdiction to principally rule upon the rights or obligations of the parties arising from a contract.

As such, the denial of respondent's Motion for Reconsideration is likewise in order.

WHEREFORE, petitioner's Motion for Partial Reconsideration and respondent's Motion for Reconsideration are **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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Ringpis-Liban, and
Manahan, JJ.

Promulgated:
MAR 2 1 2017 2:50 pm

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in holding that it is Bases Conversion and Development Authority's (BCDA) Charter and not its contract with Energy Development Corporation (EDC) which governs its exemption from the Expanded Withholding Tax (EWT), and that BCDA's sales transaction with EDC is exempt from income tax under its charter.

The point of my dissent relates to the *ponencia's* conclusion that the Court *En Banc* has no jurisdiction over BCDA's claim for refund of Documentary Stamp Tax (DST). The *ponencia* states that the Court of Tax Appeals (CTA), being a court of special jurisdiction, is not vested with jurisdiction to rule upon the rights and obligations of the parties arising from a contract. It declared that if jurisdiction is exercised, the same would call for the examination and adjudication of the rights or obligation of the parties arising from their contract, and not the application of Section 173 of the National Internal Revenue Code (NIRC).

With due respect, I maintain the position I have taken in my earlier Concurring and Dissenting Opinion dated September 21, 2016 that the Court *En Banc* has jurisdiction to rule on whether the Bureau of Internal Revenue (BIR) should be ordered to refund the DST paid by BCDA. Pertinent parts of my earlier Concurring and Dissenting Opinion read:

> "Anent the relief of tax refund prayed for with respect to the DST, I am of the view that the Court *En Banc* has jurisdiction to rule on whether the BIR should be ordered to refund the DST paid by BCDA. I submit that the basis for the grant or denial of the refund is not purely contractual or civil in nature, BCDA's action having been instituted against the BIR and not against EDC with whom it entered into a Contract. In determining whether BCDA is entitled to refund or not, the Court *En Banc* is called upon to apply the provisions of Section 173 and 196 of the Tax Code *vis-à-vis* the provision in the Contract between BCDA and EDC whereby BCDA expressly assumed the responsibility to pay corresponding taxes under Section 2.1 thereof. **Otherwise stated, this Court is vested with jurisdiction to resolve the issue concerning the validity of the deficiency DST assessment against BCDA and its entitlement to refund of the DST paid under protest, pursuant to Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282**.
>
> The grant of the relief of refund in an assessment case is not novel. In *Dr. Felisa L. Vda. De Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of Jose San Agustin v. Commissioner of Internal Revenue*,[1] an assessment case for deficiency estate tax including surcharge, interest and penalties, the Supreme Court upheld the Court of Tax Appeals' decision granting the taxpayer therein a refund of the assessed deficiency estate tax upon reversing the CIR's decision assessing and requiring full payment from the taxpayer." (Boldfacing supplied)

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[1] G.R. No. 138485, September 10, 2001.

(initials)

In other words, the Court *En Banc* should not shy away from exercising its jurisdiction over the case, *i.e.,* in resolving the crux of the controversy which is the propriety of BCDA's payment of DST to the BIR in view of the exemption provided in its Charter *vis-à-vis* the effect of its contractual stipulation with EDC. To be clear, the case brought before the CTA is an action assailing an assessment made by the BIR; it does not involve a legal contest between BCDA and EDC, but concerns BCDA and the BIR with respect to the validity of a DST assessment, which had been issued pursuant to the provisions of the NIRC.

The contractual stipulation between BCDA and EDC states that *"all taxes arising from the transfer and sale of the subject properties shall be for the account of, and shall be paid by the vendor (referring to BCDA)."* The said contractual stipulation therefore effectively exempts EDC from the corresponding DST due on the taxable document. **I submit, however, that such contractual stipulation could not validly override the provision of Section 173 of the 1997 NIRC, as amended, which imposes DST due on the taxable document to the party who is not enjoying tax exemption, and the benevolent provision of the BCDA Charter providing exemption to BCDA from all forms of taxes on its proceeds from sale of portions of military camps**. The exemption of the proceeds from sale of the portions of Metro Manila military camps from taxes, including DST, has been recognized by the Supreme Court in *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue,*[2] *viz.*:

> "Besides, it is clear from Section 8 of R.A. 7227 that the capital of BCDA, **which shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, was not intended to be diminished by the payment of DST**. Section 8 states:
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> 'SEC. 8. *Funding Scheme.* — **The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nichols) Air Base,** namely: x x x
>
> x x x x
>
> The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government

[2] G.R. Nos. 164155 & 175543, February 25, 2013.

> properties: *Provided*, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. **However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines.** The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. **The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds**: x x x (Emphasis supplied)
>
> Had FBDC paid the amount on February 8, 1995 when it was supposed to be due, such payment would have resulted in diminishing the proceeds of the sale that the Republic received and turned over to BCDA to capitalize it. **The above-quoted provision of Section 8 clearly exempted the proceeds of the sale of the Fort Bonifacio land from all forms of taxes, including DST**." (Boldfacing and underscoring supplied)

While it is true that obligations arising from contracts have the force of law between the contracting parties,[3] the contracting parties may not establish such stipulations, clauses, terms and conditions which are contrary to law.[4] **As the contractual stipulation involved in this case appears to be contrary to the existing provisions of the NIRC and BCDA Charter, the same is not binding upon the Court**.[5]

Moreover, the subject contractual stipulation should not be allowed to defeat the tax imposition provided in the NIRC. It is settled doctrine in this jurisdiction that **taxation is the State's inherent power and its imposition cannot be subject to the will of the parties**.[6]

Based on the foregoing, I am constrained to reconsider the position I have earlier taken that BCDA should be made liable for DST

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[3] Art. 1159 of the Civil Code. – Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.
[4] Art. 1306 of the Civil Code. - The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.
[5] Dacasin v. Dacasin, G.R. No. 168785, February 5, 2010.
[6] Honda Cars Philippines, Inc. v. Honda Cars Technical Specialist and Supervisors Union, G.R. No. 141658, March 18, 2005.

and surcharge by reason of its categorical assumption of obligation to pay the DST due on the transaction. **As oft-repeated, BCDA's contractual assumption of obligation to pay taxes on the proceeds from sale of the portions of Metro Manila military camps to EDC, being contrary to the existing provisions of the NIRC and BCDA charter, is void.**

Considering BCDA's exemption from all forms of taxes on its proceeds from sale of portions of military camps pursuant to its Charter, it is therefore not liable for DST on the subject transaction. The DST due thereon is the liability of EDC pursuant to Section 173 of the NIRC which provides that whenever one party to the taxable document enjoys exemption from the tax imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

All told, I VOTE to DENY the CIR's Motion for Partial Reconsideration and GRANT BCDA's Motion for Reconsideration. The Decision dated July 3, 2015 of the Court in Division which ordered the cancellation of Assessment Notices WE-MOAONETT-0111-E-002819-11-11-0689, DSMOAONETT-0111-E-002819-11-11-0689, and MC-MOAONETT-0111-E-002819-11-11-0689 all dated August 22, 2011 representing BCDA's alleged deficiency EWT, DST, penalties and surcharges in the amounts of PhP5,566,953.65, PhP1,673,426.93 and PhP50,000.00 and the return to BCDA of the amounts of PhP4,052,125.00 and PhP1,215,645.00 representing its payment under protest on September 4, 2012 for basic deficiency EWT and DST should be AFFIRMED.

ROMAN G. DEL ROSARIO
Presiding Justice