REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SOUTH PREMIERE POWER CORP., *Petitioner,*	**CTA Case No. 9337**
	Members:
	CASTAÑEDA, JR., *Chairperson,* **CASANOVA,** and **MANAHAN,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 27 2018 10:00 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a Petition for Review[1] filed by South Premiere Power Corp. against the Commissioner of Internal Revenue to seek the refund or the issuance of tax credit certificate (TCC) in the amount of ₱2,741,511.48, allegedly representing erroneous and/or illegal collection of documentary stamp tax (DST) for taxable year 2010.

[1] Docket, pp. 12-47.

THE FACTS

Petitioner South Premiere Power Corp. is a corporation duly organized and existing under the laws of the Republic of the Philippines and registered with the Securities and Exchange Commission (SEC). Its registered office address is at 808 Bldg., Meralco Avenue corner Gen. Lim Street, San Antonio Village, Pasig City; and its current address is at 19th Floor, San Miguel Properties Bldg., San Miguel Ave., Mandaluyong City.[2] Petitioner is engaged in the production and generation of electricity as well as in the supply and consolidation of electric power demand of end-users and other related ancillary services.[3]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), with office address at the Office of the Commissioner of Internal Revenue, Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.

On July 19, 2011, the Supreme Court rendered a decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[4] ("Filinvest case" for brevity) holding, among others, that instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates qualified as loan agreements upon which documentary stamp taxes may be imposed.[5]

On October 6, 2011, the BIR issued Revenue Memorandum Circular (RMC) No. 48-2011, circularizing to all concerned internal revenue officials and employees relevant excerpts from the decision of the Supreme Court in the Filinvest case and enjoining all employees engaged in the audit and review of audit cases "to assess deficiency DST, if warranted, on these kinds of transactions."[6]

[2] Par. 3.00, The Parties, Petition for Review, docket, p. 16.
[3] Par. 4.00, Statement of the Facts and Matters Involved, Petition for Review, docket, p. 16.
[4] G.R. Nos. 163653 and 167689, July 19, 2011.
[5] Par. 1.02, Joint Stipulation of Facts, Documents, Issues, and Other Matters (JSFDIOM), docket, p. 333.
[6] Par. 1.03, JSFDIOM, docket, p. 334.

On April 16, 2012, petitioner received a Letter of Authority dated April 12, 2012 from the BIR, authorizing revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2010 to December 31, 2010.[7]

Thereafter, on April 21, 2014, petitioner received from respondent a Preliminary Assessment Notice[8] (PAN) dated April 15, 2014 assessing petitioner for alleged deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), and DST in the aggregate amount of ₱1,018,382,024.01 (inclusive of surcharge, interest and penalty), broken down as follows:[9]

KIND OF TAX	AMOUNT
I. Income Tax	₱ 991,728,596.86
II. Value-added Tax	21,673,131.83
III. Expanded Withholding Tax	2,238,783.84
IV. Documentary Stamp Tax	2,741,511.48
TOTAL	₱1,018,382,024.01

The alleged deficiency DST is computed as follows:[10]

D. DOCUMENTARY STAMP TAX-ADVANCES FROM AFFILIATES		
Tax Base Per Return		
Add: Adjustments		
Advances from Affiliates		₱1,407,545,228.00
Taxable Basis Per Audit		1,407,545,228.00
DST Rate		1.00/200.00
Basic Documentary Stamp Tax		1,381,738.00
25% Surcharge	₱345,434.50	
20% Interest (various to 4-30-14)	989,338.98	
Compromise Penalty	₱ 25,000.00	1,359,773.48
Total Deficiency DST		**₱ 2,741,511.48**

The deficiency DST assessment was imposed under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended, Jr

[7] Par. 1.04, JSFDIOM, docket, p. 334.
[8] Exhibit "P-2", docket, pp. 179-183.
[9] Par. 1.05, JSFDIOM, docket, p. 334.
[10] Exhibit "P-2", docket, pp. 180-181.

in relation to Revenue Regulations (RR) No. 13-2004 and the decision of the Supreme Court in the Filinvest case.

On April 30, 2014, petitioner paid the alleged deficiency DST in the amount of ₱2,741,511.48. (inclusive of increments).[11] On May 6, 2014, petitioner submitted a Letter[12] dated May 5, 2014, as reply to the PAN received on April 21, 2014. It also informed respondent that petitioner paid under protest the deficiency DST assessment amounting to ₱2,741,511.48.

Subsequently, on July 30, 2014, petitioner received from respondent a Formal Letter of Demand (FLD)/Assessment Notice dated July 30, 2014, assessing petitioner for alleged deficiency income tax only. Petitioner paid the said income tax assessment on July 31, 2014.[13]

On February 2, 2016, petitioner filed with respondent its Letter/Claim for Refund[14] dated January 28, 2016, seeking the refund or issuance of tax credit certificate in the amount of ₱2,741,511.48, allegedly representing erroneously and/or illegally collected DST for taxable year 2010, pursuant to Section 229 and Section 204(C) of the NIRC of 1997, as amended.

Due to respondent's inaction on petitioner's administrative claim for refund, petitioner filed the present Petition for Review before this Court on April 27, 2016.[15]

Within the extended time granted by the Court,[16] respondent filed his Answer[17] on July 20, 2016, interposing the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

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[11] Exhibits "P-3", "P-3-a", and "P-3-b", docket, pp. 370-373.
[12] Exhibit "P-4", docket, pp. 188-192.
[13] Par. 1.06, JSFDIOM, docket, p. 335.
[14] Exhibit "P-5", docket, pp. 193-253.
[15] Docket, pp. 12-47.
[16] Orders dated May 31, 2016, and June 22, 2016, docket, pp. 135 and 141.
[17] Docket, pp. 142-153.

The instant petition should be dismissed for lack of jurisdiction

1. Petitioner's act of paying the tax assessment under protest finds no relevance in support of this claim for refund. Interestingly, there is no provision for payment under protest under our present NIRC of 1997. Whether or not the same was paid with or without protest the final end result is still the same. The more important question is, 'Did the taxpayer follow the proper remedy to contest the same?'

2. Regardless if the payment made was under protest or not, and regardless if whether or not the taxpayer informed the Bureau that the payment was made under protest, the deciding factor is whether or not the taxpayer followed the proper remedy of contesting the assessment notices. This proper remedy is found in RR 12-99, and which is to appeal the same to this Honorable Court or to the Office of the Commissioner of Internal Revenue. Failure on the part of the taxpayer to do so renders the findings in the FDDA final, executory and demandable. In other words, the taxpayer could no longer contest the illegality of the tax assessment.

3. In the instant case, petitioner was not able to file its appeal or request for consideration within thirty (30) days from receipt of the Formal Letter of Demand on 30 July 2015, in accordance with RR 12-99. It has lost its remedy to contest the illegality of the tax as assessed by the respondent. Thus, its claim for refund for alleged 'erroneously or illegally collected' tax has no merit.

4. Respondent most respectfully submits that before this Honorable Court assumes jurisdiction over the substantive issue of whether or not petitioner is entitled to its claim for tax refund, petitioner must first establish that it preliminarily complied with all the administrative requirements leading up to the filing of this action. This Honorable Court must first be convinced that petitioner indeed thoroughly pursued an administrative claim for tax

refund, before it proceeds to determine petitioner's entitlement to the same under substantive law.

5. The procedure in the protests of assessments can be found in RR 12-99, the relevant portion of which states that:

> 3.1.5 Disputed Assessment. - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
>
> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the

corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation. **If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.**

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final,

> **<u>executory and demandable, in which case, the protest shall be decided by the Commissioner.</u>**
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.

6. Thus, under RR 12-99, petitioner has 30 days from receipt of the Formal Letter of Demand within which to contest the findings thereof, otherwise 'the assessment shall become final, executory and demandable'.

7. However, petitioner did not, or was not able to file its protest to the Formal Letter of Demand in accordance with RR 12-99. In effect, the findings in the FLD are now final, executory and demandable. As it was already stated in the FLD that petitioner was liable for DST, it cannot now come to this Honorable Court and by way of a petition for refund, again contest the findings in the FLD.

8. It is noteworthy that petitioner had already contested the imposition of the Documentary Stamp Tax (DST) in its protest to the Preliminary Assessment Notice and that respondent, through the FLD, had found petitioner liable for DST, still.

9. Instead, petitioner now files this instant case for refund for allegedly erroneously or illegally collected tax.

10. Section 229 of the National Internal Revenue Code is the governing provision relative to refund of internal revenue taxes. It provides:

> ***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.*

11. As indicated in the above stated provision, which is also the basis for this instant case, a claim for refund must be for erroneously or illegally collected tax. In the case at bar, as the findings of tax liability has already become final, there is no erroneously or illegally collected tax. Hence, petitioner's claim for refund has no basis in law.

12. At the point of being repetitive, the instant petition must be dismissed for lack of jurisdiction, or alternatively, that the case be dismiss for being without merit. In the event that this Honorable Court finds that it has jurisdiction to entertain the same or finds the same meritous, the petition must still fall based on the foregoing discussion.

The taxes paid are not erroneously or illegally collected which is the *jr*

<u>proper subject of an action for refund</u>

13. Taxes collected are presumed to be in accordance with laws and regulations. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

14. The claim for refund in the amount of P2,741,511.48 allegedly representing payment of Documentary Stamp Tax erroneously and/or illegally collected for taxable year 2010 is not warranted.

15. Section 229 of the National Internal Revenue Code is the governing provision relative to refund of internal revenue taxes. It 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, of any sum alleged to have been excessively or in any manner wrongfully 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.*

It bears stressing that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the *clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications* **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R 127624, November 18, 2003)** A perusal of the provision will emphasize that to validly substantiate a claim for refund, the taxes paid must be erroneous or illegally collected. Accordingly, the law granting tax exemption cannot rests on vague inference.

16. In the case at bench, petitioner is asking for a refund of its allegedly erroneously paid documentary stamp in the amount of P2,741,511.48 allegedly representing payment of Documentary Stamp Tax erroneously and/or illegally collected for taxable year 2010.

17. However, as previously discussed, this amount of P2,741,511.48 representing Documentary Stamp Tax is not an erroneously and/or illegally collected tax for taxable year 2010 because the period to contest if the same is erroneous or illegal has already lapsed.

18. Moreover, the Supreme Court promulgated in the *En Banc* Decision of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, which was reiterated in RMC 48-2011, that:

> On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned. Section 180 of the NIRC provides follows:
>
> > *Sec. 180. Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of*

deposit bearing interest and others not payable on sight or demand. - On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or nonnegotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note: ***Provided***, *That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax:* ***Provided however***, *That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from*

> *the payment of documentary stamp tax provided under this Section.*

When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to '(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines.' Correlatively, Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

> *Section 3: Definition of Terms. - For purposes of these Regulations, the following term 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.*
>
> *The terms 'Loan Agreement' under Section 180 and 'Mortgage' under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195.'*
>
> *'Section 6. Stamp on all Loan Agreements. - All loan agreements*

whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.

In cases where no formal 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.

Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed.' (Emphasis supplied)

19. Thus, based on the above Supreme Court ruling, and the subsequent Revenue Memorandum Circular, and the fact that petitioner has failed to contest the same in accordance with RR 12-99, petitioner is not entitled to a refund.

20. Petitioner, however, contends that the subject advances were extended to it by its affiliates in 2010. At that time, prevailing court decisions and BIR issuances were to the effect that inter-company advances not covered by loan agreements were not subject to DST.

21. However, in view of the aforestated *En Banc* Supreme Court Decision of *CIR vs. Filinvest* on the Imposition of Documentary Stamp Tax on inter-office memo covering advances granted by an affiliated corporation, these advances from San Miguel Corp. (SMC) amounting to P1,941,888.00 and San Miguel Brewery Inc. (SMBI) amounting to P80,217,126.00 during taxable year 2009 are subject to the Documentary Stamp Tax imposed under Section 179 of the NIRC, as amended. It is worthy to mention that the subject Assessment Notices issued for deficiency Documentary Stamp Tax declared to be valid in the said decision pertained to taxable years 1996 and 1997, **thus it can be inferred that the decision of the court was clarificatory in nature. Accordingly, petitioner's position that the above-mentioned Supreme Court decision cannot be given a retroactive application should not be given due course.**

22. Taxes are essential to government's very existence; **(CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003)** hence, the dictum that 'taxes are the lifeblood of the government.' Since tax refunds are regarded as tax exemptions and these are to be construed *strictissimi juris* against the person or entity claiming the exemption. **(Philippine Phospate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R 141973, June 28,2005)**

23. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim." ~~

The Pre-Trial Conference was set on September 1, 2016.[18] Thus, the Petitioner's Pre-Trial Brief[19] and the Respondent's Pre-Trial Brief[20] were both filed on August 26, 2016.

The parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters[21] on October 7, 2016. This was approved and adopted by the Court in the Pre-Trial Order[22] issued on October 19, 2016.

During trial, petitioner presented Mr. Ramon U. Agay[23], its Finance Manager, as its sole witness. Thereafter, petitioner filed its Formal Offer of Evidence[24] on October 25, 2016, consisting of Exhibits "P-1", "P-1-a", "P-1-b", "P-1-c", "P-2", "P-3", "P-3-a", "P-3-b", "P-4", "P-5", "P-5-a", "P-6", "P-6-a", "P-6-b", "P-6-c", "P-7", "P-7-a", "P-8", and "P-8-a". In the Resolution[25] dated December 16, 2016, the Court admitted all the formally offered exhibits as petitioner's evidence.

On the other hand, respondent, through counsel, manifested during the hearing on October 19, 2016 that he will no longer present evidence.[26]

The Memorandum for the Petitioner[27] was filed on March 1, 2017; while respondent failed to file his memorandum as per Records Verification[28] issued by the Court's Judicial Records Division on March 3, 2017. Thus, in the Resolution[29] dated March 7, 2017, the Court declared the present case submitted for decision.

[18] Notice of Pre-Trial Conference, docket, pp. 154-155.
[19] Docket, pp. 290-299.
[20] Docket, pp. 310-313.
[21] Docket, pp. 333-339.
[22] Docket, pp. 347-351.
[23] Minutes of the Hearing dated October 19, 2016, docket, p. 352; Exhibit "P-8", Judicial Affidavit of Mr. Ramon U. Agay In Lieu of Direct Testimony, docket, pp. 162-174.
[24] Docket, pp. 357-369.
[25] Docket, pp. 377-378.
[26] Minutes of the Hearing dated October 19, 2016, docket, p. 352.
[27] Docket, pp. 391-433.
[28] Records Verification dated March 3, 2017, docket, p. 434.
[29] Docket, p. 435.

THE ISSUE

The parties stipulated the following issue for resolution of this Court:[30]

> Is SPPC entitled to a refund of the amount of ₱2,741,511.48 that it paid to the Bureau of Internal Revenue ("BIR") for alleged deficiency Documentary Stamp Tax for the taxable year 2010?

THE COURT'S RULING

The provisions of the National Internal Revenue Code of 1997, as amended, pertinent to claiming a refund of erroneously paid tax are Sections 204(C) and 229, which read as follows:

> "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." *(Emphasis supplied)*
>
> "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

[30] Par. 3.01, JSFDIOM, docket, p. 335.

> 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." *(Emphasis supplied)*

Pursuant to the foregoing provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be complied with:

> 1. that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and
>
> 2. that the claim for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

The Court shall determine first whether petitioner's claim for refund was timely filed.

In the case of *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*[31], the Supreme Court held that Section 229 of the NIRC of 1997, as amended, states that judicial claims for refund must

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[31] G.R. No. 216130, August 3, 2016.

be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the CIR.

Thus, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.[32]

Based on the records, petitioner paid under protest the alleged deficiency DST in the amount of ₱2,741,511.48 for taxable year 2010 on April 30, 2014.[33] This means that petitioner had until April 30, 2016 within which to file both the administrative and judicial claims for refund. Petitioner filed its administrative claim for refund on February 2, 2016[34]; while the present Petition for Review was filed on April 27, 2016[35]. Clearly, petitioner's administrative and judicial claims were filed within the two-year prescriptive period provided by the law. *Ergo*, the Court has jurisdiction over the present case.

The Court shall now determine whether petitioner is entitled to tax refund or issuance of TCC in the amount of ₱2,741,511.48, allegedly representing erroneously and/or illegally collected DST for taxable year 2010.

In support of its refund claim, petitioner interposed the following grounds: (a) the Filinvest case and RMC No. 48-2011 may not be applied to the advances made in 2010 without violating the principle of non-retroactivity of laws and rulings, and even assuming that the decision may be applied retroactively, the same will not cover the advances subject of this case; (b) under Section 179 of the Tax Code, DST may not be imposed on advances in the absence of a debt instrument evidencing such advances; (c) petitioner is entitled to a refund in the amount of ₱2,741,511.48, representing erroneous and/or illegal collection from it by the BIR of DST for taxable year 2010; (d) assuming that petitioner is liable to pay DST under Section 179 of the Tax Code, it is liable for the basic tax of ₱1,381,738.00 only, without the imposition of surcharge, interest, and penalty, since it relied on existing court decisions and BIR rulings at the time of the extension of

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[32] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.
[33] Exhibits "P-3", "P-3-a", and "P-3-b", docket, pp. 370-373.
[34] Exhibit "P-5", docket, pp. 193-253.
[35] Docket, pp. 12-47.

the advances and should therefore be refunded to it; (e) there is no merit in the "Special and Affirmative Defenses" raised in the Answer to the Petition for Review; and (g) respondent has not presented any evidence to refute or rebut the evidence adduced by petitioner.[36]

On the other hand, respondent contends that the present Petition for Review should be dismissed for lack of jurisdiction. Respondent claims that the taxes paid are not erroneously or illegally collected. Moreover, respondent asserts that in view of the ruling in the Filinvest case, the advances from San Miguel Corp. (SMC) amounting to ₱1,941,888.00 and from San Miguel Brewery Inc. (SMBI) amounting to ₱80,217,126.00 during taxable year 2009 are subject to DST pursuant to Section 179 of the Tax Code, as amended. Further, respondent alleges that there is no retroactive application of the Filinvest case since it was merely clarificatory in nature. Finally, respondent points out that petitioner has the burden of proving that the right to such tax refund exists and that a well-founded doubt is fatal to the claim.

The Filinvest case and RMC No. 48-2011 may be applied retroactively because prospective effect applies only to decisions issued by the Supreme Court enunciating new doctrines.

Petitioner argues that the Decision of the Supreme Court in the Filinvest case and RMC No. 48-2011, which were both issued in 2011, may not be applied to advances made to petitioner in 2010 without violating the principle of non-retroactivity of laws and rulings. It contends that it merely relied on the rules prevailing when the subject advances were extended to it by related parties; that intercompany advances covered by mere inter-office memos were not loan agreements subject to DST. Petitioner also alleges that even assuming that the decision may be applied retroactively, the same will not cover the advances subject of this case.

Petitioner's argument is untenable. ℊ

[36] Memorandum for the Petitioner, docket, pp. 400-401.

In the case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[37], it was held that the Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law, to wit:

> "Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith."

In the case of *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*[38] and *San Miguel Corporation vs. Commissioner of Internal Revenue*[39], this Court held that the Supreme Court's interpretation of Section 180 of the Tax Code (now Section 179 of the NIRC of 1997), in the Filinvest case, constituted as part of the Tax Code as of December 23, 1994, since said section was already inserted in the Tax Code, through the enactment of Republic Act (RA) No. 7660, on the said date, as follows:

> "In the *Filinvest* case, what was interpreted by the High Court is Section 180 of the NIRC, particularly on the scope of the word 'loan agreements' as being subject to DST, in that it includes '*instructional letters as well as the journal and cash vouchers evidencing the advances of* [Filinvest] *extended to its affiliates'.* Said Section 180 was inserted in the NIRC, through the enactment of RA No. 7660 on December 23, 1994; and it is still in our statute books up to this time. Parenthetically, it must be noted that the same Section 180 was carried over in the Republic Act (RA) No. 8424, otherwise known as the 'Tax Reform

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[37] G.R. No. 197525, June 4, 2014.
[38] CTA Case No. 8892, September 30, 2016.
[39] CTA Case No. 9007, April 19, 2017.

> Act of 1997'; and while the said Section 180 was later amended via the enactment of RA No. 9243 on February 17, 2004, the imposition of DST on loan agreements is retained in the present Section 179 of the NIRC of 1997, as amended by said RA No. 9243. Thus, the said interpretation in the *Filinvest* case constituted as part of the NIRC as of said date, *i.e.*, December 23, 1994, up to the present time."

Considering that the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997) in the Filinvest case was deemed constituted as part of the NIRC as of December 23, 1994 up to the present time, the same may therefore be applied to this case without violating the principle of non-retroactivity of laws and rulings.

Moreover, it is only when a prior ruling of the Supreme Court finds itself later overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith in accordance therewith under the familiar rule of *lex prospicit, non respicit.*[40] In this case, however, there is no prior ruling that is overruled by the doctrine in the Filinvest case.

Furthermore, in the case of *Chavez vs. National Housing Authority, et al.*[41], the High Court ruled that prospective effect applies only to decisions enunciating new doctrines:

> "The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. Thus, we emphasized in People v. Jabinal, 55 SCRA 607 [1974] 'x x x when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.'"

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[40] *Jocelyn M. Suazo vs. Angelito Suazo and Republic of the Philippines*, G.R. 164493, March 10, 2010.

[41] G.R. No. 164527, August 15, 2007.

Bearing in mind that RMC No. 48-2011 merely implements the doctrine laid down in the Filinvest case, the same may likewise be applied to the present case.

Additionally, in the case of *Philacor Credit Corporation vs. Commissioner of Internal Revenue*[42], the Highest Tribunal ruled that BIR Rulings issued even after the transaction took place are still applicable because they are issuances interpreting the same rule imposing a DST, thus:

> "**The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes.** At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. Moreover, the BIR Ruling referred to a transaction entered into in 1992, when the 1986 Tax Code had been in effect. On the other hand, the BIR issued Revenue Regulations No. 13-2004 when Section 180 of the 1986 Tax Code had already been amended. Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 – the part dealing with promissory notes – remained the same; it imposed the DST on the promissory notes' issuances and renewals, but not on their assignment or transfer xxx" *(Emphasis supplied)*

DST may be imposed on the advances to petitioner on the basis of a Note appearing in its Audited Financial Statement.

Petitioner argues that under Section 179 of the Tax Code, as amended, DST may not be imposed on advances in the absence of a debt instrument evidencing such advances.

[42] G.R. No. 169899, February 6, 2013.

A 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. The DST is actually an excise tax, because it is imposed on the transaction rather than on the document.[43] It is levied on the exercise by persons of privileges conferred by law.[44]

From the foregoing, there is no basis for petitioner's assertion that if there is no document or if the document itself does not in any way manifest such borrowing and lending transaction, then DST on debt instruments under Section 179 of the NIRC of 1997, as amended, cannot be applied. DST may be imposed even in the absence of debt instrument, as long as the transactions are clearly established.

Moreover, Section 6 of Revenue Regulations No. 9-94 provides for the imposition of DST where no formal agreements or promissory notes are executed, to wit:

> "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 Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any 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." *gr*

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[43] *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* G.R. No. 194065, June 20, 2016.

[44] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 164155 and 175543, February 25, 2013.

In this case, while it may be true that respondent based the assessment of DST from information obtained from the Notes to the 2010 Audited Financial Statements (AFS) of petitioner (Note 11)[45] and from Notes to the AFS of San Miguel Energy Corporation (Note 13)[46] and SMC (Note 25)[47], petitioner does not deny the existence of the subject transactions, nor does petitioner deny that it is a party to the same transactions.

In fact, petitioner impliedly admitted the existence of the subject transactions since its witness, Mr. Ramon U. Agay, testified that the subject advances are non-interest bearing and unsecured and are not covered by debt instruments such as certificates of indebtedness, bonds, or loan agreements.[48] Moreover, petitioner itself admitted the existence of the taxable transactions by declaring them in its financial statements. Thus, it is clear that the subject transactions really did happen.

Since the subject transactions are clearly established, petitioner is liable to pay the subject DST on the basis of the Notes to the 2010 AFS of petitioner and the AFS of San Miguel Energy Corporation. Therefore, the assessment of DST by respondent is valid.

Petitioner is not entitled to a refund of the DST.

Petitioner argues that it is entitled to a refund in the amount of ₱2,741,511.48, representing erroneous and/or illegal collection from it by respondent of DST for taxable year 2010. It contends that it has met the required burden of proof.

One of the requirements for the refund of erroneous and/or illegal collection under Sections 229 and 204 of the NIRC of 1997, as amended, is that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected.

45 Exhibit "P-1", docket, p. 175.
46 Exhibit "P-1-a", docket, p. 176.
47 Exhibit "P-1-b", docket, p. 177.
48 Q & A No. 17, Exhibit "P-8", Judicial Affidavit of Mr. Ramon U. Agay in Lieu of Direct Testimony, docket, pp. 167-168.

Considering that petitioner is liable to pay the subject DST on the basis of the Notes to the 2010 AFS of petitioner and the AFS of San Miguel Energy Corporation, its payment of the deficiency DST on April 30, 2014[49] cannot be considered as tax that has been erroneously or illegally collected.

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[50] The burden in claiming tax refund rests upon the taxpayer. In this case, petitioner was not able to prove its entitlement to the claim for refund of DST for taxable year 2010.

Petitioner is not liable to pay interest, surcharge and compromise penalty.

Petitioner contends that assuming that it is liable to pay DST under Section 179 of the NIRC of 1997, as amended, it is liable for the basic tax of ₱1,381,738.00 only, without the imposition of surcharge, interest, and penalty, since it relied on existing court decisions and BIR rulings prevailing at the time of the extension of the advances.

There is merit in petitioner's contention.

In the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*[51], the Supreme Court held that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.

An examination of petitioner's claim for refund[52] shows that at the time the advances were made in 2010, petitioner relied on prevailing court decisions and previous BIR issuances to the effect that inter-company loans and advances covered by inter-office memoranda were not loan agreements subject to DST. Petitioner relied on the pc

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[49] Exhibits "P-3", "P-3-a", and "P-3-b", docket, pp. 370-373.
[50] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[51] G.R. Nos. 195909 and 195960, September 26, 2012.
[52] Exhibit "P-5", docket, pp. 193-212.

cases of *Commissioner of Internal Revenue vs. APC Group, Inc.*[53] and *Commissioner of Internal Revenue vs. Belle Corporation*[54] and on BIR Ruling [DA (C-035) 127-2008][55] dated August 8, 2008, BIR Ruling No. 116-98 dated July 30, 1998, and BIR Ruling No. DAO 16-2008 dated January 17, 2008. Hence, petitioner's reliance on the said cases and BIR issuances justifies the non-imposition of surcharges and interest.

Petitioner is also not subject to compromise penalty since this penalty is by its nature, mutual in essence. The payment made under protest by petitioner could only mean that there was no agreement that had been reached between the parties. In the case of *De San Agustin vs. Commissioner of Internal Revenue*[56], the Supreme Court held that:

> "The Court of Tax Appeals correctly held that the compromise penalty of ₱20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence. The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties."

Since petitioner disputed respondent's assessment of compromise penalty, the same cannot be imposed upon it.

WHEREFORE, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the aggregate amount of **₱1,359,773.48**, representing the following amounts:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Surcharge	₱ 345,434.50
Interest up to April 30, 2014	989,338.98
Compromise Penalty	25,000.00
TOTAL	**₱1,359,773.48**

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[53] CA-G.R. SP No. 69869, November 29, 2002; Exhibit "P-6", docket, pp. 254-262.
[54] CTA EB No. 147, October 13, 2006; Exhibit "P-6-a", docket, pp. 263-281.
[55] Exhibit "P-6-b", docket, pp. 282-284.
[56] G.R. No. 138485, September 10, 2001.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(With all due respect, please see my Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
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.
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOUTH PREMIERE POWER CORP., *Petitioner,*	**CTA Case No. 9337**
-versus-	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 27 2018 10:00 a.m.

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CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I concur with the ponencia's findings that petitioner should not be liable to pay interest, surcharges and compromise penalty. As to the compromise penalty, there was no agreement between the parties in the instant case that would warrant such imposition. A compromise, in its essence, is mutual in nature.

As regards the interest and surcharges, I assent to the position of the majority that this should also not be imposed because petitioner merely relied on prevailing court decisions and previous Bureau of Internal Revenue (BIR) issuances which in effect affirmed that inter-company loan advances covered by mere inter-office memos were not loan agreements subject to documentary stamp tax (DST).

This brings me to the point of my dissent.

The basis of petitioner's claim for refund of DST is the fact that it relied on prevailing court decisions and rulings of the BIR that pronounced that board resolutions, inter-office memos etc., evidencing intercompany advances cannot be categorized as loan agreements subject to DST. The decision of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1] promulgated on July 19, 2011 which effectively reversed previous court decisions and rulings of the BIR should not be applied to transactions or documents issued prior to its promulgation.

The assessment for DST deficiencies issued by the BIR against petitioner was based on information gathered from its 2010 audited financial statements (AFS) which was eventually paid by petitioner under protest. The subsequent claim for refund stemmed from petitioner's view that the decision in the aforementioned *Filinvest* case decided in 2011 should not have been given retroactive application as this will go against the principle that rulings should not be given retroactive application if this will be prejudicial to the taxpayers.

I find merit in petitioner's position.

The legal and doctrinal milieu prevailing during the period of assessment (2010) suggested quite strongly that the DST may not be imposed on mere "Notes" appearing in the AFS of petitioner. The decision of the Court of Appeals in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[2] and various BIR Rulings led petitioner to believe that such "Memos" are not subject to DST. I hold that it is against justice, equity and fair play to subject a taxpayer to payment of taxes as a result of a court interpretation promulgated after a particular taxable period where prevailing court decisions and BIR rulings ruled otherwise.

In the consolidated cases of *CIR vs. San Roque Power, Taganito Mining Corp vs. CIR and Philex Mining Corp vs. CIR* [3], the Supreme Court recognized the good faith of the taxpayers who relied on previous rulings which turn out to be erroneous under a recent interpretation, and we quote:

> "Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, **should such interpretation later turn out to be erroneous**

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[1] G.R. Nos. 163653 and 167689, July 19, 2011.
[2] C.A.-G.R. SP No. 74510, January 26, 2005.
[3] G.R. Nos. 187485,196113 and 197156, February 12, 2013.

> **and be reversed by the Commissioner or this Court.** Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal." (emphasis supplied)

I find it incomplete when the majority of my colleagues merely cancelled the imposition of interests due to the fact that petitioner relied on previous court decisions and rulings. I believe that a complete application of justice in the instant case requires the full grant of its claim for refund of DST.

I vote to grant the claim for refund of petitioner for erroneously paid DST for taxable year 2010.

CATHERINE T. MANAHAN
Associate Justice