REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NORTH NEGROS BIOPOWER, INC.,	**CTA CASE NO. 9920**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	FEB 01 2021 12:39 PM

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RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is petitioner's **Motion for Reconsideration (to Decision dated 21 September 2020)** filed on October 12, 2020, with respondent's **Comment/Opposition** filed *via* a Motion to Admit on November 5, 2020, which was granted and admitted by the Court as per Resolution dated November 16, 2020.

On September 21, 2020, this Court promulgated a Decision denying petitioner's claim for refund of documentary stamp tax (DST) rationalizing that there was no erroneous payment made, the dispositive portion of which reads as follows:

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

In its Motion, petitioner primarily insists that the *Omnibus Loan Agreement* it entered into with International Finance Corporation ("IFC" hereinafter) is exempt from DST. Petitioner cites Republic Act (RA) No. 1604,[1] wherein Section 9, Article VI of the IFC Articles of Agreement provides that the IFC, its assets, property, income, operations, and transactions as authorized by the agreement, shall be exempt from taxation and customs duties, which includes DST. Based therefrom, petitioner claims that IFC's immunity from taxation extends to their loan agreement since it falls within the *transactions authorized* by IFC's Articles of Agreement. Lastly, petitioner asserts that IFC did not waive the tax-exemption status of its transaction with petitioner since there were no clear and express statement of the same, so as to constitute a valid waiver.

On the other hand, in his Comment, points out that the arguments presented by petitioner in its Motion are mere rehashes of the same arguments it previously raised during trial which have already been threshed out by the Court in the assailed Decision. As such, respondent maintains its position that Sections 2.14 and 2.15 of the *Omnibus Loan Agreement* reveal 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. For the said reason, petitioner may be held liable for DST under Section 173 of the National Internal Revenue Code (NIRC) of 1997, as amended, considering that DST may be levied and collected from any person making, signing, issuing, accepting, or transferring obligation, right or property. Finally, respondent also reiterates that a claim for tax refund partakes of the nature of a tax exemption, as such it is therefore strictly construed against the taxpayer claimant by proving every minute aspect of its claim not only its entitlement to the grant of the claim under substantive law, but also its compliance with all the documentary and evidentiary requirements provided by the NIRC, as well as by the revenue regulations implementing them.

This Court finds petitioner's Motion for Reconsideration bereft of merit.

At the onset, this Court points out that, as correctly observed by respondent, the arguments raised by petitioner in the present

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

Motion are mere rehash of the same facts and issues which have already been discussed extensively in the Decision it assails.

Again, 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.[2] Perforce, Section 173[3] of the NIRC of 1997, as implemented by Revenue Regulations (RR) No. 09-00,[4] further provides 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, in which case, the tax shall be paid and remitted by the said non-exempt party.

As to petitioner's argument that by virtue of RA No. 1604, the Philippines acceded 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, the Court does not agree. To emphasize, although certain immunities and privileges are provided under Section 9, Article VI, of the IFC Articles of Agreement, the said immunities and privileges however pertains only to IFC which does not extend to petitioner. As held in the assailed Decision, to wit:

> "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* is the governing law amongst 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

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[2] *Commissioner of Internal Revenue v. Heald Lumber Company,* G.R. No. L-16340. February 29, 1964.

[3] "**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)*

[4] "SUBJECT: Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions", dated August 31, 2000.

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. Incidentally, the pertinent provisions, Sections 2.14 and 2.15, Article II of the *Omnibus Loan Agreement* provide as follows:

'**ARTICLE II**

The Loan

x x x

> 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.

x x x

> 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**.' *(Emphases supplied)*

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."[5]

On the final note, 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. Accordingly, unless there is a clear grant of tax exemption or refund in the law, the Court cannot grant petitioner's claim for tax refund as this would constitute judicial legislation, which is not allowed.

In view of the foregoing disquisitions, this Court finds no cogent reason to reverse or modify the conclusion reached in the Decision assailed by petitioner.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (to Decision dated 21 September 2020) is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[5] Decision, pp. 17 to 18.