REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STANDARD CHARTERED BANK - PHILIPPINE BRANCHES,
Petitioner,

- versus -

C.T.A. CASE NO. 5696

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 16 2001

x - x

DECISION

This case involves the deficiency documentary stamp tax assessment of Petitioner for the years 1994 and 1995 in the amount of ONE MILLION TWO HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED TWENTY-FIVE PESOS (P1,281,125.00).

Petitioner is a resident foreign banking institution duly organized and registered under the laws of England and authorized by the Securities and Exchange Commission to engage in business in the Philippines, with office address at 6756 Ayala Avenue, Makati City.

The facts of the case as culled from the records are as follows:

Petitioner purchased treasury bills from the Bangko Sentral ng Pilipinas (BSP) in the years 1994 and 1995.

On April 27, 1998, Petitioner received Formal Assessment Notice (FAN) Nos.381-001-98 and 381-002-98 dated April 14, 1998, from the Respondent for the alleged deficiency documentary stamp taxes (DST) covering the years 1994 and 1995 in the total amount of P1,281,125.00 inclusive of penalties, and summarized as follows;

	1994	1995
Puchase of T-bills from BSP	P348,600,000.00 ============	
Documentary stamp Tax due at P0.30/P200 per Section 180, NIRC	522,900.00	
Less: Payment	0.00 ----------------------	
Documentary Stamp Tax due	P522,900.00	P462,000.00
Add: Surcharge	130,725.00 ----------------------	115,500.00 ----------------------
Compromise	25,000.00 ----------------------	25,000.00 ----------------------
Total amount due and collectible	P678,625.00 =============	P602,500.00 =============

(Exhibit A, p. 8, CTA Records)

On May 26, 1998, Petitioner filed its protest against the subject assessment. (Exhibit D). It likewise submitted a letter from the Government Securities Department of the BSP dated September 11, 1997, confirming the policy that the DST on original issues of government securities are for the account of the issuer (Exhibit J)

For failure of Respondent to decide on the said protest, Petitioner filed the instant Petition for Review with this Court on December 14, 1998.

On February 17, 1999, Respondent filed his Answer, and advanced the following Special and Affirmative Defenses, viz:

"4. The assessments in question were made and issued in accordance with law and existing rules and regulations;

"5. The assessment has become final, executory and demandable for failure of the Petitioner to submit all relevant documents to the Respondent within sixty (60) days from filing of the protest pursuant to Section 228 of the Tax Code;

"6. All presumptions are in favor of the correctness of the tax assessment (Interprovincial Autobus, Inc. vs. Collector of Internal Revenue, 98 PHIL. 290)."

During the hearing conducted on March 23, 1999, Respondent manifested that the court has no jurisdiction to decide on the Petition since the assessment in question has become final and executory. On March 30, 1999, Respondent filed his Motion to Dismiss and alleged that Petitioner failed to submit the relevant records/documents to support its contentions within the sixty-day period after the letter-protest was filed, thus, the deficiency tax assessments in question became final pursuant to Section 228 of the 1997 Tax Code.

On May 27, 1999, the Court issued its Resolution denying Respondent's Motion to Dismiss on the ground that the "relevant supporting documents" mentioned in Section 228 of the 1997 Tax Code "refers to such documents which the taxpayer feels would be necessary to support his protest and not what Respondent Commissioner feels should be submitted." If Petitioner believes that the letter of the BSP is the only relevant document that would best support its protest, then that is sufficient compliance with the requirement set forth in Section 228.

In order to support its contention that it is not liable to pay the deficiency DST imposed by the Respondent, Petitioner presented the following documents, to wit:

1. Department Order No. 141-95 Series of 1995 (Exhibit I)
2. Certification dated September 11, 1997 from the Government Securities Department of the Bangko Sentral ng Pilipinas (Exhibit J)
3. Certification dated March 30, 2000 issued by the Bureau of Treasury (Exhibit L)

The sole issue to be resolved in the case at bar is WHETHER OR NOT STANDARD CHARTERED BANK-MANILA BRANCH SHOULD BE HELD LIABLE TO PAY THE AMOUNT OF ONE MILLION TWO HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED TWENTY-FIVE PESOS (P1,281,125.00) AS DEFICIENCY DOCUMENTARY STAMP TAX FOR ITS PURCHASE OF TREASURY BILLS FOR THE YEARS 1994 and 1995.

We find Petitioner's assertions tenable.

Quoted hereunder are the pertinent provisions of the 1997 National Internal Revenue Code (NIRC), viz:

> "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 at 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 thereto who is not exempt shall be the one directly liable for the tax."

"SEC.180. Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand. – On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, 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 (P0.30) on each Two hundred pesos (P200), 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 (P250,000) 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 the documentary stamp tax provided under this Section."

From the foregoing provisions of law, it can be inferred that the original issuance of treasury bills is subject to the DST. However, it has been the policy of the BSP (Fiscal Agent of the National Government), as the issuer of the treasury bills, to assume the liability for payment of the DST on the original issuance of treasury bills.

Moreover, under Department Order No. 141-95 Series of 1995, the Department of Finance (DOF) assumed the liability of paying the DST, when the fiscal function of issuing Treasury Bills and Bonds was transferred from the BSP to the DOF effective November 16, 1995, pursuant to R.A. No. 7653, otherwise known as the "New Central Bank Act." As such, the BSP (then Central Bank) did not withhold nor remit any DST from the purchase of treasury bills by Petitioner, which was confirmed in the letter dated September 11, 1997 signed by Ms. Lagrimas R. Nuqui, Officer-In-Charge, Government Securities Department, stating:

> "xxx the terms and features of the issuances of government securities, documentary stamp taxes on original issues are for the account of the issuer. These documentary stamp taxes on primary purchases of Treasury Bills have, therefore, not been withheld against the account of the primary purchaser/s.".

The DST on the purchases of Treasury Bills issued by the BSP in behalf of the National Government during the years 1994 and 1995 were paid/remitted by the Bureau of Treasury in compliance with the DOF-DBM Joint Circular No. 2-91 dated November 19, 1991 and DOF Department Order No. 141-95 Series of 1995. (Exhibit L)

Petitioner's non-payment of the DST on its purchases of treasury bills for the years 1994 and 1995 was primarily due to its reliance on the letter confirmation issued by the Government Securities Department of the BSP that the DST on the original issuance of the treasury bills shall be for the account of the issuer, that is, the BSP.

On the other hand, Respondent's primary argument is that the assessment has become final and executory since Petitioner failed to submit all the relevant documents, within the prescribed period. As discussed earlier, the issue has already been settled by this Court in its Resolution dated May 27, 1999. We thus, reiterate that the requirement stated in Section 228 of the NIRC, on the submission of all the relevant supporting documents within the sixty-day period from filing of the protest is directory. In the aforementioned Resolution, the Court ruled in this wise:

> "xxx that the "relevant supporting documents" mentioned in the law refers to such documents which the taxpayer feels would be necessary to support his protest and not what the Respondent Commissioner feels should be submitted, otherwise, Petitioner taxpayer would always be at the mercy of the BIR which may require production of such documents which taxpayer could not produce. xxx"

Moreover, when the protest was filed or within the sixty-day period to file the "relevant supporting documents," Respondent did not require the particular documents which it needed in order that the protest may be given its preferential attention. It merely allowed the prescriptive period of sixty (60) days to lapse without taking any action on the protest.

As stated earlier, the determination of the "relevant supporting documents" initially rests upon the one who filed the protest, in this case, the Petitioner. However, in cases where the BIR finds that additional documents must be submitted, it should have informed the taxpayer-protester to submit whatever documents are lacking in order that a complete determination of the propriety of the assessment may be had. Thus, Respondent has been remiss in informing the Petitioner of any other additional supporting documents to be submitted which fact should not unduly prejudice Petitioner's protest.

Lastly, since the BSP has assumed the liability of paying the DST on the original issuance of the Treasury Bills, as in fact it has paid/remitted such DST with the BIR through the Bureau of Treasury (see Exhibit "L"), Petitioner should no longer be held liable for the payment of such DST.

WHEREFORE, in view of all the foregoing, Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **CANCEL and WITHDRAW** the Formal Assessment Notice Nos. 381-001-98 and 381-002-98 both dated April 14, 1998 for deficiency documentary stamp taxes for the years 1994 and 1995.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge