**REPUBLIC OF THE PHILIPPINES**
**Court of Tax Appeals**
**QUEZON CITY**

## ***SECOND DIVISION***

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| **PNB GENERAL INSURERS COMPANY, INC.,** Petitioner, | **C.T.A. CASE NO. 6751** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.* |
| **COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,** Respondent. | **Promulgated:** MAR 1 6 2007 |

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# DECISION

**UY, J.:**

This is a judicial appeal from the Decision of the respondent promulgated on July 14, 2003 holding petitioner liable for the amount of P633,210.30 as surcharge for late payment of Documentary Stamp Tax (DST) for the taxable year 1995 covered by Assessment Notice No. 02-017-95B-97-347 dated August 15, 1997.

**The Facts**

The antecedent facts as borne by the records of this case including the parties' Joint Stipulation of Facts and Issues submitted on March 12, 2004,[1] are as follows:

[1] Joint Stipulation of Facts and Issues, Records, pp. 134 – 138.

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Petitioner is a private corporation duly organized and existing under Philippine laws with its present office address at 2nd Floor, PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City[2] and principally engaged in non-life insurance business.[3]

Respondent is the head of the Bureau of Internal Revenue (BIR), the government entity tasked with the duties/functions of assessing and collecting all national internal revenue taxes, fees, and charges and the enforcement of all forfeitures, penalties and fines connected therewith including the execution of the judgments in all cases decided in its favor by this Honorable Court and the ordinary courts, where he can be served with court processes at the BIR Head Office, BIR Road, Quezon City.[4]

On August 1996, while still in its previous office address at 2/F Skyland Plaza, Sen. Gil Puyat Avenue, Makati City, petitioner received a copy of the respondent's BIR First Tracer/formal preliminary assessment notice demanding the payment of P27,843,350.66 pertaining to the alleged DST discrepancy inclusive of the 25% surcharge,[5] computed as follows:

| | |
|---|---|
| Total amount of premium charged | P227,521,156.49 |
| | |
| Documentary Stamp Tax Due | P 28,440,144.56 |
| Less: DSTs paid | 596,793.90 |
| DISCREPANCY | P 27,843,350.66 |

Said amount was based on the examiner's verification with petitioner's annual report to the Insurance Commission for taxable year 1995.[6]

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[2] Summary of Admitted Facts, Joint Stipulation of Facts and Issues, paragraph 1.
[3] Ibid., paragraph 4.
[4] Ibid., paragraphs 2 and 3.
[5] Ibid., paragraph 6.
[6] Exhibit "D".

Petitioner responded to the said demand/preliminary assessment through its Letter dated August 27, 1996,[7] explaining that it has remitted a total amount of P25,907,303.34 under the metered and direct payment methods.[8]

In response to said letter, BIR, through Ms. Brenda B. Baltazar, Chief of Collection Division, Revenue Region No. 8, directed herein petitioner to send its representative to a formal dialogue to hear the petitioner's explanation on the matter.[9]

As a result of the said formal dialogue/conference, Preliminary Assessment Notices dated March 4 and 19, 1997 were issued by respondent finding petitioner not liable to any basic DST but merely assessed the latter the amount of P633,210.33 representing surcharge for late payment of DST for taxable year 1995, details[10] of which are quoted hereunder:

| | | |
|---|---|---|
| Total amount of premium charged | | P227,521,156.49 |
| Documentary Stamp Tax Due | | P 28,440,144.56 |
| Less: DSTs paid | | |
| ATAP payments | P25,310,509.44 | |
| Metered Machine | 596,793.90 | 25,907,303.34 |
| DISCREPANCY | | P 2,532,841.22 |
| Less: Amount paid January 1996 | | 2,532,841.22 |
| | | P - 0 - |
| 25% surcharge for late payment | | P 633,210.30 |

Prior thereto, the Letter-Request dated October 30, 1996 filed by petitioner was denied for lack of merit by the BIR by virtue of its Letter dated January 6, 1997.[11]

[7] Supra., paragraph 7.
[8] Exhibit "E".
[9] Supra, paragraph 8; Exhibit "F".
[10] Exhibits "I" and "I-1".
[11] Supra., paragraph 10.

In an Application for Cancellation of VAT Registration of petitioner dated February 28, 1997, duly received by BIR RDO-Makati City and BIR RDO-Pasay City on March 6, 1997 and April 10, 1997, respectively,[12] petitioner effectively notified respondent about the change of its business address from Makati City (previous address) to Pasay City (present address).

Consequently, on August 15, 1997, an Assessment Notice was issued by the BIR against the petitioner for the amount of P633,210.33 representing the 25% surcharge for late payment of DST for taxable year 1995. Thereafter, on November 24, 1997, a Collection Letter was sent by the BIR to the previous address (Makati City) of the petitioner.[13]

Another Collection Letter dated October 12, 1998 together with the information regarding the Formal Notice of Assessment dated August 15, 1997 was again sent by the respondent to the previous address of the petitioner and only received by the latter on January 14, 1999.[14]

Petitioner filed a Request for Reconsideration (tantamount to an Assessment Protest) dated February 8, 1999 which contains the following averment: "we request your reconsideration on the amount being assessed from us for P663,210.30 for penalty/surcharge due to alleged late payment of documentary stamp tax in 1995 by our Company which were supposed to be affixed on the following insurance policies xxx".[15] Nonetheless, a Collection Letter dated January 28, 2001 was again sent by the respondent to the

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[12] Exhibits "A", "A-2" and "A-3".
[13] Summary of Admitted Facts, Joint Stipulation of Facts and Issues, paragraphs 12 and 13.
[14] Ibid., paragraph 14; Facts Stipulated Upon by the Parties, Joint Stipulation of Facts and Issues, paragraph 4.
[15] Ibid., paragraphs 15 and 5.

petitioner, duly received by the latter, reiterating the previous demand for payment of surcharge.[16]

On March 15, 2001, petitioner received a Final Notice Before Seizure dated March 8, 2001 and, subsequently, a Warrant of Distraint and/or Levy dated June 18, 2001 was issued by the respondent against the petitioner, duly received by the latter on June 20, 2001.[17] Subsequently on July 4, 2001, petitioner, through its Vice-President and Comptroller Ernaldo S. Yambot, requested to pay by compromise settlement, 40% of the surcharge or the equivalent amount of P253,284.12. However, on July 13, 2001, petitioner, again through its VP and Comptroller, by virtue of a letter, wrote to the respondent stating that: (1) the assessment/warrant would no longer be valid and enforceable considering that the BIR has already lost its right to collect the amount covered by the assessment due to its failure to enforce collection within the prescriptive period; and (2) it is effectively withdrawing its previous offer of compromise.[18]

Respondent, through Ms. Eleanor N. Litao, Chief of Large Taxpayer Collection and Enforcement Division, insisted on the assessment alleging that petitioner failed to notify the BIR about the change of its address and further saying that "Section 223 of the Tax Code of 1997, which provides that the running of statute of limitations may be suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected, is applicable in the instant case".[19] On the other

[16] Ibid., paragraphs 16 and 6.
[17] Ibid., paragraphs 17, 18 and 7.
[18] Ibid., paragraphs 19 and 1.
[19] Ibid., paragraph 20.

hand, petitioner refuted said averment of respondent by virtue of its letter dated September 7, 2001.[20]

Respondent promulgated a Decision on July 14, 2001 and the same was received by the petitioner on July 18, 2003[21] denying petitioner's protest. The aforesaid decision was appealed by the petitioner before this Court on August 18, 2003. Hence, this resolution.

In the Answer to the instant petition for review filed on October 24, 2003, respondent asserts these Special and Affirmative Defenses, to wit:

> "7. The instant case involves collection of deficiency documentary stamp tax surcharge for the taxable 1995. Petitioner contends that the right of the government to collect said surcharge had already prescribed. *We disagree.*
>
> On the question of prescription, the rule now established is that if there is no law or regulation requiring the filing of a return, the right of the Government to assess or **collect** national internal revenue tax does not prescribe. Limitations upon the right of the government to assess and collect taxes will not be presumed in the absence of clear legislation to the contrary and where the government has not by express statutory provision provided a limitation upon its right to assess unpaid taxes, such right is imprescriptible. *(Commissioner of Internal Revenue vs. Ayala Securities Corporation, L-29485, November 21, 1980, 101 SCRA 231.)*
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> Since there is no law or regulation requiring the filing of a return for documentary stamp tax, and none has been pointed to by petitioner, and stamp taxes are national internal revenue taxes, the right of the Government to assess or **collect** the documentary and science stamp taxes involved in this case does **not** therefore prescribe *(The Philippine American Life Insurance Company v. Commissioner [sic], CTA Case No. 4072)* (Emphasis supplied).
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> The filing of the documentary stamp tax returns was **only** required by the Tax Code of 1997 which took effect on 1 January 1998. More particularly, Section 200 (A) (B), states that any person liable to pay documentary stamp tax upon any

[20] Ibid., paragraph 21.
[21] Ibid., paragraph 22.

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document subject to tax, shall file a return and pay the tax within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.

Prior to the enactment of the Tax Code of 1997, no return was required in the payment/filing of the documentary stamp tax. There was no reckoning date therefrom from which we should start counting the prescriptive period within which to collect because there was no law or regulation requiring the filing of the return for documentary stamp tax. Hence, the demand for the collection of the 25% surcharge for late payment of deficiency documentary stamp tax did not prescribe.

8. Assuming *arguendo* that Section 203 of the Tax Code applies, the period to collect the assessed surcharge has not prescribed yet because petitioner filed its administrative protest on 8 February 1999. Section 223 of the Tax Code, as amended, provides that:

> 'The running of the Statute of Limitations provided in **Section** (sic) **203** and 202 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended xxx **when the taxpayer requests for a reinvestigation** which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: xxx; **when the warrant of distraint or levy is duly served upon the taxpayer**, xxx' (Emphasis supplied)

It was alleged by the petitioner in its petition for review, particularly on page 8 thereof, that the Collection Letter date (sic) 12 October 1998 together with the information regarding the Formal Notice of Assessment made by the BIR on 15 August 1997 reached the petitioner on 14 January 1999 and a protest was made on 8 February 1999.

Further, it was held in the case of *Commissioner of Internal Revenue v. Wyeth Suaco Laboratories, Inc., G.R. No. 76281, September 30, 1991,* that the **interruption of the prescriptive period for collection** takes place when the **taxpayer requests for the reinvestigation or reconsideration of the assessment**. The Court in that said case (sic):

> 'Settled is the rule that the prescriptive period provided by law to make a collection by distraint and levy or by proceeding in court is **interrupted** once a taxpayer requests for the reinvestigation or reconsideration of the assessment' (Emphasis supplied).

9. It was alleged by the petitioner in its petition for review, particularly on page 8 thereof, that the **Collection Letter** dated 12 October 1998 **together** with the information regarding the **Formal Notice of Assessment** made by the BIR on 15 August 1997 **reached the petitioner on 14 January 1999**. Petitioner requested for a reconsideration, averred by the petitioner as tantamount to an Assessment Protest, on February 8, 1999. A request for reconsideration refers to a plea for re-evaluation of an assessment on the basis of existing records without need of additional evidence. While petitioner is not required to submit documents because its plea is for reconsideration and not reinvestigation, nonetheless, the 60$^{th}$ day as mandated in Section 228 of the Tax Code, as amended, and its implementing revenue regulations, to submit relevant documents in support of its protest fell on 9 April 1999. Petitioner did not submit any document. Hence, it is submitted that the assessment has long become final and executory. Even the thirty (30)-day period within which to appeal to this Honorable Court from the lapse of the one hundred eighty (180)-day period as provided for in the same section of the Tax Code was not observed by the petitioner, the 190$^{th}$ day falling on **16 October 1999**. Hence, the assessment having become final, executory, demandable and unappealable. It is further submitted that this Honorable Court is devoid of jurisdiction to entertain the instant petition, the Decision of the respondent denying the petitioner's protest on 14 July 2003 notwithstanding. It must be stressed that said Decision resolves only the issue of prescription of collection of surcharge which was assailed by the petitioner upon issuance of the Warrant of Distraint and Levy, which also caused the subsequent withdrawal of the petitioner of its previous offer of compromise settlement under Section 204 of the Tax Code and Revenue Regulations No. 7-2001. The Decision was not anchored on the protest of the taxpayer dated 8 February 1997 which merely asked for the reconsideration of the assessment.

Hence, the collection letters dated 24 November 1997 and 12 October 1998 and the Collection Letter dated 28 January 2001 received by the petitioner, Final Notice Before Seizure dated 8 March 2001 received on 15 March 2001 by the petitioner and the Warrant of Distraint and/or levy dated 18 June 2001 received on 20 June 2001 by the petitioner already

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constitute the Decision of the Commissioner on the protest of the petitioner filed on 8 February 1997.

It is settled that the thirty (30)-day period within which to appeal to this Honorable Court prescribed under Section 11 of RA 1125, as amended, is a jurisdictional requirement. Failure on the part of the petitioner to lodge its appeal to this Honorable Court within the prescribed period bars his appeal and renders the questioned assessment final, executory, demandable and unappealable.

10. Issues and defenses not raised in the administrative level cannot be raised for the first time on appeal. As held in the case of *Aguinaldo Industries Corp. Fishing Nets Division v. Commissioner of Internal Revenue, et al., L-29790, Feb. 25, 1982*:

> 'To allow a litigant to assume a different posture when he comes before the Court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court – which is supposed to *review* administrative determinations – would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.'

Likewise, in the case of *Commissioner of Internal Revenue v. Guerrero, et al., L-19074, Jan. 31, 1967*, it was held that:

> 'Inasmuch as the tax court's jurisdiction is appellate in nature, it is essential that matters taken up in the appeal should be included in the contested assessment.'

11. The assessment and collection of deficiency documentary stamp tax surcharge was issued in accordance with the existing law and regulations.

12. Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving

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> otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of the correctness of tax assessments *(Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, 98 Phil. 290; Sy v. CTA, et al., G.R. No. 81446, August 18, 1988; Dayrit, et al. v. Cruz, et al., L-39910, September 26, 1988; Cagayan Robina Sugar Milling Company v. Court of Appeals, et al., G.R. No. 122451, October 12, 2000)*.
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> 13. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment *(Delta Motors Co. v. Commissioner, CTA Case No. 3782, May 21, 1986; Commissioner of Internal Revenue v. Court of Appeals, et al., G.R. Nos. 104151 and 105563, March 10, 1995)*."

During trial, petitioner presented its evidence, both testimonial and documentary. This included the testimonies of its former Accounting Supervisor, Rosana M. Lustre,[22] its Vice President and Comptroller, Ernaldo S. Yambot,[23] and the General Manager of the Insurance and Surety Associates of the Philippines, Inc. (ISAP, Inc.), Santiago Gascon.[24] After the admission of petitioner's evidence,[25] presentation of respondent's evidence was set on September 12, 2005. However, counsel for the respondent manifested that she will not be presenting any evidence and the parties were thus directed by this Court to file their respective memoranda. Both parties complied[26] and this case was deemed submitted for resolution on March 31, 2006.[27] Hence, this Decision.

## The Issues

As jointly stipulated by the parties, these are the issues submitted for this Court's resolution:

[22] Hearings held on May 26, 2004 and June 24, 2004.
[23] Hearing held on September 28, 2004.
[24] Hearing held on December 8, 2004.
[25] Resolution dated July 20, 2005; Records, pp. 252-253.
[26] Petitioner filed its Memorandum on January 12, 2006 while respondent filed his Memorandum on February 13, 2006, Records, pp. 266-299; 311-331, respectively.
[27] Resolution dated March 31, 2006; Records, p. 342.

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1. Whether or not the assessment has become final and executory, hence not appealable to this Honorable Court;

2. Whether or not the right of the Government to collect the surcharge for the 1995 documentary stamp tax deficiency has already prescribed; and

3. Whether or not the respondent Commissioner erred in not countenancing the prevailing practice for the payment of Documentary Stamp Tax.

## The Court's Ruling

Considering that the issues raised are purely legal in nature and are at the same time interrelated, this Court deems it proper to discuss them jointly for convenience and brevity.

The focal point of the controversy hinges on respondent's right to assess and collect the surcharge for the 1995 DST of petitioner in the amount of P633,210.30.

Sections 203 and 223[28] of the NIRC of 1977, as amended, provide the rules on prescription, pertinent portions of which are quoted hereunder for ready reference, to wit:

> "**SEC. 203. Period of limitation upon assessment and collection**. – Except as provided in the succeeding section, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Underscoring Ours)*

[28] Now Section 222 of the NIRC of 1997.

> "**SEC. 223. Exceptions as to period of limitation of assessment and collection of taxes**. – (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, <u>the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission</u>: *Provided,* That, in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) xxx.
>
> (c) Any internal revenue tax which has been <u>assessed within the period of limitation above prescribed, may be collected by distraint or levy or by a proceeding in court within three (3) years following the assessment of the tax</u>.
>
> xxx xxx x x x" *(Underscoring Ours)*

Pursuant to the abovequoted provisions, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. On the other hand, the collection of tax may be effected within three (3) years after assessment.

As held in the long line of cases,[29] Section 203 presupposes that a return is required to be filed by law because the three-year prescriptive period to assess is reckoned after the last day prescribed by law for such filing. The same is true with Section 223 which applies when a false or fraudulent return is filed or no return is filed when one is so required. There can be no failure or omission to file a return where no return is required to be filed by law.

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[29] Jacinto Iron and Steel Sheets Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6351, June 21, 2005; Prudential Bank vs. Commissioner of Internal Revenue, CTA Case No. 6198, February 16, 2005 (affirmed in CTA EB Case No. 100, July 31, 2006); International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 6159, October 26, 2004 (affirmed in CTA EB Case No. 87, January 30, 2006); The Philippine American Life Insurance Company vs. Commissioner of Internal Revenue, CTA Case No. 4072, July 7, 1989.

In case of DST, there was no specific provision under the NIRC of 1977, as amended, which required the filing of a documentary stamp tax return. Hence, before the effectivity of the NIRC of 1997,[30] the rights of respondent in assessing and collecting deficiency documentary stamp taxes are imprescriptible.

As aptly explained by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Ayala Securities Corporation***,[31] and We quote:

> "The Court is persuaded by the fundamental principle invoked by petitioner that limitations upon the right of the government to **assess and collect** taxes will not be presumed in the absence of clear legislation to the contrary and that where the government has not by express statutory provision provided a limitation upon its right to assess unpaid taxes, such right is imprescriptible.
>
> The Court, therefore, reconsiders its ruling in its decision' under reconsideration that the right to assess and collect the assessment in question had prescribed after five years, and instead rules that there is no such time limit on the right of the Commissioner of Internal Revenue to assess the 25% tax on unreasonably accumulated surplus provided in section 25 of the Tax Code, since there is no express statutory provision limiting such right or providing for its prescription." *(Underscoring and emphasis Ours)*

Clearly, it is well settled that limitations upon the right of the government, not only to assess but, to collect taxes will not be presumed in the absence of clear legislation to the contrary. The existence of a time limit beyond which the government may recover unpaid taxes is purely dependent upon such express statutory provision.[32]

[30] Effectivity date on January 1, 1998.
[31] 101 SCRA 231, 236 (1980).
[32] 51 Am. Jur. 867; 10 Mertens Law on Federal Income Taxation, par. 57.02.

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However, considering that the subject matter in this case involves the assessment and collection of petitioner's DST surcharge for taxable year 1995, We deem it apropos to discuss further the nature of surcharge as provided for in Section 248 of the NIRC of 1977, as amended.

Surcharge is defined as an overcharge or exaction imposed by law as addition to the main tax required to be paid.[33] Being penalties for delinquencies, tax laws imposing said surcharge are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof. Thus, if penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.[34] Therefore, surcharge can neither be condoned nor waived without any valid and legal basis.

Moreover, Section 247 of the same Code states that "[t]he additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. **The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax**" *(Emphasis Ours)*. For this reason, a surcharge imposed in addition to a tax liability which is not covered by any prescriptive period provided under the provisions of the NIRC of 1977, as amended, may be assessed and collected at any time.

Collectively, taking the foregoing principles and discussion into consideration, We are convinced that the right to assess and collect DST

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[33] De Leon, National Internal Revenue Code (5th ed., 1994) p. 664.
[34] Vitug and Acosta, Tax Law and Jurisprudence (2nd ed., 2000) p. 322; Jamora vs. Meer, 74 Phil. 22 (1942).

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surcharge for taxable year 1995 against petitioner has not prescribed. Hence, the assessment[35] issued by respondent on August 15, 1997, the Collection Letters[36] dated November 24, 1997, October 12, 1998 and January 28, 2001, the Final Notice Before Seizure[37] dated March 8, 2001, and the Warrant of Distraint and/or Levy[38] dated June 18, 2001 are proper and within the authority of the respondent. In other words, in the absence of a clear legislation to the contrary, and pursuant to the provisions of the NIRC of 1977, as amended, respondent's rights to assess and collect petitioner's DST surcharge for taxable year 1995 are both imprescriptible.

As to the allegation that respondent countenanced the prevailing practice of petitioner for the time and manner of payment of its DST, petitioner argues that the practice of remitting to the BIR its DST lump sum monthly payment, through Direct Payment, has been allowed if not tolerated by respondent and, as a consequence thereof, equitable estoppel applies. As a matter of fact, petitioner even presented a document[39] in an attempt to establish the acceptance by respondent of the prevailing practice of local insurance companies in the year 1995 for lump sum monthly payments.

This Court is not persuaded.

Sections 3 and 4 of Revenue Regulations (RR) No. 9-94, implementing Section 173 of the NIRC of 1977, as amended, clearly provide that the

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[35] Exhibit "J".
[36] Exhibits "K", "L" and "N".
[37] Exhibit "O".
[38] Exhibit "P".
[39] A photocopy of Circular No. ISAP-2036/92 dated January 22, 1992 (offered as Exhibit "V" by petitioner) which was denied admission by this Court in the Resolution dated July 20, 2005; Records, pp.252 - 253.

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documentary stamp tax shall be paid at the time the act is done or transaction had, i.e., at the same time the document was executed, thus:

> "**SEC. 4. Time and Manner of Payment of Documentary Stamp Tax.** — x x x
>
> If, however, the amount of the documentary stamp tax due on the taxable document is ten pesos (P10.00) or more, **the documentary stamp tax shall be paid by the taxpayer at the time the act is done or transaction had**, x x x" *(Emphasis Ours)*
>
> "**SEC. 3. Definition of Terms**. — For purposes of these Regulations, the following terms shall mean:
>
> xxx xxx xxx
>
> (i) 'At the same time such act is done or transaction had' — means **on the same date the document was executed**, i.e., made, signed, issued, accepted or transferred." *(Emphasis Ours)*

Clearly, the abovequoted sections are the appropriate and legal mode and manner of payment of DST. Failure to comply thereto would constitute failure to pay the tax within the time prescribed for its payment; and therefore, subject to civil penalties and interests provided for in Sections 248 and 249 of the NIRC of 1977, as amended. In the case at bench, petitioner has admitted that it followed a different manner of payment of its DST for taxable year 1995. Unfortunately, the alleged prevailing practice is inconsistent with the abovementioned provisions of law.

"[I]t is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation. The errors of certain administrative officers should never be allowed to jeopardize the government's financial position.[40] Hence, notwithstanding respondent's

[40] Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, 160 SCRA 560, 565 (1988).

alleged acceptance of petitioner's practice of remitting its DST payments, the same cannot justify its legality. This ruling is in accord with the legal maxim: "*dura lex sed lex*" or "the law may be harsh, but it is still the law", which should be strictly observed at all times.

Lastly, the Court also finds petitioner liable to pay 20% delinquency interest per annum from August 18, 2003[41] until such time the said amount is fully paid pursuant to Section 249(c)(3) of the NIRC of 1977, as amended.

**WHEREFORE**, the subject Petition for Review is hereby **DISMISSED** for lack of merit. The assailed Decision of respondent dated July 14, 2003 is hereby **AFFIRMED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **SIX HUNDRED THIRTY THREE THOUSAND TWO HUNDRED TEN PESOS and 30/100 (P633,210.30)** representing deficiency DST surcharge for the taxable year 1995, plus 20% delinquency interest per annum from August 18, 2003 until such time the said amount is fully paid.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

[41] Exhibit "T-3"; Being the 30th day from receipt of the assailed Decision dated July 14, 2003.

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## 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.

**ERNESTO D. ACOSTA**
Presiding Justice

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