REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SARTORIOUS AKETIENGESELLSCHAFT, **CTA CASE NO. 8951**
Petitioner,

-versus-

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO,
and
RINGPIS-LIBAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 08 2017
2:50 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

The case involves the Petition for Review[1] filed by Sartorious Aketiengesellschaft on December 19, 2014, praying for the refund of the amounts ₱1,379,368.42 and ₱63,027.62, respectively representing alleged erroneously paid capital gains tax (CGT) and documentary stamp tax (DST).

THE FACTS

Petitioner Sartorious Aketiengesellschaft is a non-resident foreign corporation[2] organized and existing under the laws of the Republic of Germany,[3] with principal office address at Weender Landstraße 94-108, 37075

[1] Docket, vol. 1, pp. 1-5.
[2] Exhibit "P-1", docket, vol. 1, p. 374.
[3] Exhibit "P-3", docket, vol. 1, pp. 387-408.

Goettingen, Germany, registered in the commercial register of the local court of Goettingen under HRB 1970.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner and Sartorius Weighing Technology GmbH ("SWT GmbH" for brevity) executed a Spin-Off and Take-Over Agreement[5] and an Addendum[6], whereby petitioner agreed to transfer its 10,083 shares of stock in Sartorius Mechatronics Philippines, Inc. ("Sartorius Philippines" for brevity) in exchange for 1 share of stock of SWT GmbH.

SWT GmbH is a foreign corporation organized and existing under the laws of Germany, with principal office at Weender Landstraße 94-108, 37075 Goettingen, Germany, registered in the commercial register of the local court of Gottingen under HRB 201458.[7] It is the wholly-owned subsidiary of petitioner.[8]

Sartorius Philippines is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with SEC Registration No. A200000893. Its principal place of business is at Unit 20A, The World Center Building, 330 Senator Gil Puyat Avenue, Makati City.[9]

On July 19, 2012, petitioner filed a Request for Tax Ruling[10] with the BIR for the confirmation of its opinion that the transfer of its shares in Sartorius Philippines to its wholly-owned subsidiary, SWT GmbH, is not subject to CGT pursuant to Section 40(C)(2) of the National Internal Revenue Code of 1997, as amended.

About five months from the filing of the said Request, both petitioner and SWT GmbH were required to present their corresponding stock certificates in SWT GmbH and Sartorius Philippines, respectively. As the Certificate Authorizing Registration (CAR) could not be secured without the BIR's Ruling to allow the corporate secretary of Sartorius Philippines to register the transfer of shares in the Stock and Transfer Book and to subsequently issue

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[4] Exhibit "P-2", docket, vol. 1, pp. 375-386.
[5] Exhibit "P-6", docket, vols. 1 and 2, pp. 448-564.
[6] Exhibit "P-6-a", docket, vol. 2, pp. 565-568.
[7] Exhibit "P-4", docket, vol. 1, pp. 409-423.
[8] Exhibit "P-7", docket, vol. 2, pp. 569-576.
[9] Exhibits "P-23" to "P-23-c", docket, vol. 2, pp. 628-693.
[10] Exhibit "P-8", docket, vol. 2, pp. 577-580.

the share certificate in the name of SWT GmbH, petitioner paid under protest the pertinent CGT[11] in the amount of ₱1,379,368.42 and DST[12] in the amount of ₱63,027.62 on December 20, 2012. On the same date, petitioner also filed its letter regarding Payment of Taxes under Protest[13].

On January 9, 2013, the then Revenue District Officer of Revenue District Office (RDO) No. 39, Clavelina S. Nacar, issued the CAR[14] covering the transfer of shares from petitioner to SWT GmbH.

On December 15, 2014, petitioner filed its administrative claims for refund[15] of CGT in the amount of ₱1,379,368.42 and DST in the amount of ₱63,027.62 with the BIR-RDO No. 39, South Quezon City.

In order to comply with the two-year prescriptive period under Section 229 of the NIRC of 1997, as amended, petitioner filed the instant Petition for Review on December 19, 2014[16].

In the Resolution[17] dated January 12, 2015, the Court ordered petitioner to submit a Secretary's Certificate/Board Resolution showing that Atty. Editha R. Hechanova is authorized to sign the Verification/Certification for the corporation.

Petitioner filed its Compliance/Manifestation[18] on February 2, 2015, stating that the authority granted to Atty. Editha R. Hechanova to execute the Verification/Certification of Non-Forum Shopping is contained in an authenticated Special Power of Attorney (SPA) dated May 10, 2012, copies of which already forms part to the Petition for Review.

In the Resolution[19] dated March 3, 2015, the Court ordered petitioner to explain why it should not be cited for contempt for failure to comply with the Resolution dated January 12, 2015 and to submit the required Secretary's Certificate/Board Resolution.

Petitioner filed its Compliance[20] on March 31, 2015, submitting the original authenticated Certification/Special Power of Attorney executed by Dr. Joachim Kreuzberg, Chairman of the Board of petitioner and Mr. Jens Michael

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[11] Exhibits "P-10" and "P-11", docket, vol. 2, pp. 583-584.
[12] Exhibits "P-12" and "P-13", docket, vol. 2, pp. 585-586.
[13] Exhibit "P-9", docket, vol. 2, pp. 581-582.
[14] Exhibit "P-14", docket vol. 2, p. 587.
[15] Exhibits "P-15", "P-16", "P-24", and "P-25", docket, vol. 2, pp. 593, 598, 694-698, and 699-703.
[16] Docket, vol. 1, p. 1.
[17] Docket, vol. 1, p. 105-107.
[18] Docket, vol. 1, pp. 108-111.
[19] Docket, vol. 1, pp. 119-121.
[20] Docket, vol. 1, p. 127.

Artlet, authorized signatory of petitioner, and notarized by Heinz Arend, Notary Public of Gottingen, Germany.

In the Resolution[21] dated May 14, 2015, the Court deemed petitioner to have substantially complied with the provision of Section 2 of Rule 42 of the Rules of Court.

Within the extended time granted by the Court,[22] respondent filed his Answer[23] on July 2, 2015, interposing the following special and affirmative defenses that: the judicial claim for refund was filed out of time; that Editha R. Hechanova was not authorized to sign the Verification and Certification Against Forum Shopping at the time she signed the documents on 18 December 2014; that there was no Secretary's Certificate authorizing her to sign on behalf of the Petitioner; that the records of this case will reveal that the Secretary's Certificate authorizing her to sign the Petition was executed only on 23 February 2015 and it was only on 31 March 2015 that the Petition for Review was validly filed; that given the lack of a proper verification and a valid certification, the Petition is treated as an unsigned pleading which produces no legal effect.

The Pre-Trial Conference was set on September 1, 2015.[24] Hence, the Petitioner's Pre-Trial Brief[25] and the Respondent's Pre-Trial Brief[26] were both filed on August 28, 2015.

The parties filed their Joint Stipulation of Facts and Issue[27] on September 14, 2015. This was adopted by the Court in the Pre-Trial Order[28] dated October 12, 2015, which also terminated the Pre-Trial.

During trial, petitioner presented its sole witness, Atty. Editha R. Hechanova[29], a partner of the law firm Hechanova Bugay Vilchez & Andaya-Racadio and Sartorious Philippines' Corporate Secretary and Treasurer.

Petitioner filed its Formal Offer of Evidence[30] on February 1, 2016. In the Resolution[31] dated April 12, 2016, the Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-6-a", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-18-a", "P-18-b",

[21] Docket, vol. 1, pp. 140-141.
[22] Resolution dated June 10, 2015, docket, vol. 1, p. 147.
[23] Docket, vol. 1, pp. 148-153.
[24] Notice of Pre-Trial Conference, docket, vol. 1, pp. 154-155.
[25] Docket, vol. 1, pp. 181-195.
[26] Docket, vol. 1, pp. 199-201.
[27] Docket, vol. 1, pp. 228-231.
[28] Docket, vol. 1, pp. 290-295.
[29] Minutes of the Hearing dated December 1, 2015, docket, vol. 1, p. 358; Amended Judicial Affidavit of Atty. Editha R. Hechanova In Lieu of Direct Testimony, docket, vol. 1, pp. 303-316.
[30] Docket, vol. 1, pp. 365-372.
[31] Docket, vol. 2, pp. 712-713.

"P-18-c", "P-20" , "P-21", "P-21-a", "P-22", "P-22-a", "P-23", "P-23-a", "P-23-b", "P-23-c", "P-24", and "P-25" as petitioner's evidence.

During the hearing on October 18, 2016, respondent manifested that he has no evidence to present.[32]

Subsequently, the instant case was declared submitted for decision in the Resolution[33] dated January 6, 2017, after petitioner's Memorandum[34] was filed on December 19, 2016 and respondent failed to file his memorandum as per Records Verification[35] dated December 22, 2016.

THE ISSUES

The parties submitted the following issues[36] to be resolved by this Court:

1. Whether or not Editha R. Hechanova was authorized to sign the Verification and Certification Against Forum Shopping at the time she signed the documents on 18 December 2014.

2. Whether or not the judicial claim for refund was filed on time.

3. Whether or not Petitioner is entitled to the refund of CGT in the amount of Php1,379,368.42 which it paid under protest.

4. Whether or not Petitioner is entitled to the refund of DST in the amount of Php63,027.62 which it paid under protest.

The foregoing issues may be summarized as follows:

> "Whether petitioner is entitled to its claim for refund in the amounts of ₱1,379,368.42 and ₱63,027.62 respectively representing erroneously paid capital gains tax and documentary stamp tax."

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[32] Minutes of the Hearing dated October 18, 2016, docket, vol. 2, p. 718.
[33] Docket, vol. 2, p. 744.
[34] Docket, vol. 2, pp. 727-740.
[35] Docket, vol. 2, p. 742.
[36] Issues, JSFI, docket, vol. 1, p. 229.

RULING OF THE COURT

Atty. Editha R. Hechanova was authorized to sign the Verification and Certification Against Forum Shopping.

Respondent claims that Atty. Editha R. Hechanova was not authorized to sign the Verification and Certification Against Forum Shopping when she signed the petition on December 18, 2014 because there was no Secretary's Certificate authorizing her to sign on behalf of petitioner.

Petitioner argues that the authority of Atty. Editha R. Hechanova to sign the Verification and Certification Against Forum Shopping had been granted to her by petitioner in an authenticated Special Power of Attorney dated May 10, 2012 and confirmed through the execution of the Certification/SPA dated February 23, 2015.

Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure provide:

> "SEC. 4. *Verification.* – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
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> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.
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> A pleading required to be verified which contains a verification based on information and belief or upon knowledge, information and belief or lacks a proper verification, shall be treated as an unsigned pleading.
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> SEC. 5. *Certification against forum shopping.* – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall

> report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."

Moreover, in the case of *Fuji Television Network, Inc. vs. Arlene S. Espiritu*[37], the Supreme Court, citing *Altres, et al. vs. Empleo, et al.*[38], summarized the rules on verification and certification against forum shopping in this manner:

> "For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements . . . respecting non-compliance with the requirement on, or submission of defective, verification and certification against forum shopping:
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> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
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> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
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> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

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[37] G.R. No. 204944-45, December 3, 2014.
[38] G.R. No. 180986, December 10, 2008.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'

5) The certification against forum shopping must be signed by <u>all</u> the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf."

A perusal of the records shows that petitioner have substantially complied with the requirements of verification and certification.

The authenticated Special Power of Attorney[39] dated May 10, 2012 granted Atty. Editha R. Hechanova the authority to sign the Verification and Certification Against Forum Shopping. This authority was confirmed through the execution of the Certification/Special Power of Attorney[40] dated February 23, 2015.

Moreover, in the Resolution[41] dated May 14, 2015, the Court has already deemed petitioner to have substantially complied with the provision of Section 2 of Rule 42 of the Rules of Court.

The administrative and judicial claims for refund were timely filed.

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:

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[39] Exhibit "P-17", docket, vol. 2, pp. 599-603.
[40] Exhibit "P-18", docket, vol. 2, pp. 604-608.
[41] Docket, vol. 1, pp. 140-141.

"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 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 above-mentioned 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 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.*[42], the Supreme Court held that Section 229 of the NIRC of 1997, as amended, states that judicial claims for refund must 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.[43]

Based on the records of the case, petitioner paid under protest the pertinent CGT in the amount of ₱1,379,368.42[44] and DST in the amount of ₱63,027.62[45] on December 20, 2012. Thus, counting two years from such date, petitioner had until December 22, 2014[46], within which to file both its administrative and judicial claims for refund. Clearly, petitioner's administrative claim[47] filed on December 15, 2014 and the subsequent appeal before this Court on December 19, 2014[48] were well within the two-year period prescribed by law.

Furthermore, the Court finds no merit in respondent's contention that the Petition for Review must only be considered to be validly filed on March 31, 2015, when the Compliance with the attached Certification/SPA dated February 23, 2015 was filed.

In the case entitled *Spouses Eugene L. Lim and Constancia Lim vs. the Court of Appeals, et al.*[49], the Supreme Court made the following discussion:

"BPI's subsequent execution of the SPA, however, constituted a ratification of Ramos' unauthorized representation

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[42] G.R. No. 216130, August 3, 2016.
[43] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.
[44] Exhibits "P-10" and "P-11", docket, vol. 2, pp. 583-584.
[45] Exhibits "P-12" and "P-13", docket, vol. 2, pp. 585-586.
[46] December 20, 2014 fell on a Saturday.
[47] Exhibits "P-15", "P-16", "P-24", and "P-25", docket, vol. 2, pp. 593, 598, 694-698, and 699-703.
[48] Docket, vol. 1, p. 1.
[49] G.R. No. 192615, January 30, 2013.

in the collection case filed against the petitioners. A corporation can act only through natural persons duly authorized for the purpose or by a specific act of its board of directors, and can also ratify the unauthorized acts of its corporate officers. The act of ratification is confirmation of what its agent or delegate has done without or with insufficient authority.

In *PNCC Skyway Traffic Management and Security Division Workers Organization (PSTMSDWO) v. PNCC Skyway Corporation*, we considered the subsequent execution of a board resolution authorizing the Union President to represent the union in a petition filed against PNCC Skyway Corporation as an act of ratification by the union that cured the defect in the petition's verification and certification against forum shopping. We held that 'assuming that Mr. Soriano (PSTMSDWO's President) has no authority to file the petition on February 27, 2006, the passing on June 30, 2006 of a Board Resolution authorizing him to represent the union is deemed a ratification of his prior execution, on February 27, 2006, of the verification and certification of non-forum shopping, thus curing defects thereof.'"

In this case, the Certification/SPA dated February 23, 2015 merely ratified the prior SPA dated May 10, 2012 and thus cured any defect in the verification and certification against forum shopping executed by Atty. Editha R. Hechanova on December 18, 2014.

Petitioner is entitled to the refund of its payments under protest of CGT in the amount of ₱1,379,368.42 and DST in the amount of ₱63,027.62.

Petitioner contends that the transfer of its shares in Sartorius Philippines to its wholly-owned subsidiary, SWT GmbH, is not subject to CGT pursuant to Section 40(C)(2) of the NIRC of 1997, as amended.

Section 40(C)(2) of the NIRC of 1997, as amended, provides:

"**SEC. 40.** ***Determination of Amount and Recognition of Gain or Loss.*** –

xxx xxx xxx

(C) *Exchange of Property.* –

> (1) *General Rule.* – Except as herein provided, upon the sale or exchange or property, the entire amount of the gain or loss, as the case may be, shall be recognized.
>
> (2) *Exception.* – No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation –
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> > (a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or
> >
> > (b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or
> >
> > (c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in another corporation, solely for stock or securities in another corporation, a party to the merger or consolidation.
>
> **No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation**: *Provided, That* stocks issued for services shall not be considered as issued in return for property." (*Emphasis supplied*)

The term "control" is defined as "ownership of stocks in a corporation possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote."[50]

From the above provision, the requisites for the non-recognition of gain or loss are: (a) the transferee is a corporation; (b) the transferee exchanges its shares of stock for property/ies of the transferor; (c) the transfer is made by a person, acting alone or together with others, not exceeding four persons; and,

[50] Section 40(C)(6)(c) of the NIRC of 1997, as amended.

(d) as a result of the exchange the transferor, alone or together with others, not exceeding four, gains control of the transferee.[51]

After a careful study and analysis of the case, the Court finds that petitioner's transfer of its shares in Sartorius Philippines to SWT GmbH satisfied all of the above requisites.

SWT GmbH is a foreign corporation organized and existing under the laws of Germany, registered in the commercial register of the local court of Gottingen under HRB 201458.[52]

Under the Spin-Off and Take-Over Agreement and its Addendum, executed by petitioner and SWT GmbH, petitioner agreed to transfer its 10,083 shares of stock in Sartorius Philippines in exchange for 1 share of stock of SWT GmbH.

In order to allow the corporate secretary of Sartorius Philippines to register the transfer of shares in the Stock and Transfer Book and to subsequently issue the share certificate in the name of SWT GmbH, petitioner paid under protest the pertinent CGT[53] in the amount of ₱1,379,368.42 and DST[54] in the amount of ₱63,027.62 on December 20, 2012.

As proof of the transfer of the Sartorius Philippines shares from petitioner to SWT GmbH, petitioner submitted the certified true copy of the General Information Sheet (GIS) of Sartorius Philippines for 2012[55], showing petitioner as the owner of 10,083 shares of stock of Sartorius Philippines before the spin-off and the certified true copy of the GIS of Sartorius Philippines for 2013[56], showing SWT GmbH as the owner of the said shares of stock after the spin-off. Petitioner also presented a copy of Certificate of Stock No. 009[57] for 10,083 shares in Sartorius Philippines in the name of SWT GmbH.

By virtue of the transfer of Sartorius Philippines shares by petitioner to SWT GmbH in exchange for an SWT GmbH share (primary issuance), petitioner gained further control of its subsidiary, SWT GmbH. As provided in the Memorandum of Association[58] and List of Shareholders[59] of SWT GmbH,

[51] *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689, July 19, 2011.
[52] Exhibit "P-4", docket, vol. 1, pp. 409-423.
[53] Exhibits "P-10" and "P-11", docket, vol. 2, pp. 583-584.
[54] Exhibits "P-12" and "P-13", docket, vol. 2, pp. 585-586.
[55] Exhibits "P-21" and "P-21-a", docket, vol. 2, pp. 610-617.
[56] Exhibits "P-22" and "P-22-a", docket, vol. 2, pp. 618-627.
[57] Exhibit "P-20", docket, vol. 2, p. 609.
[58] Exhibit "P-5", docket, vol. 1, pp. 424-447.
[59] Exhibit "P-7", docket, vol. 2, pp. 569-576.

petitioner remains its sole shareholder prior to and after the transfer of the shares of Sartorius Philippines.

Based on the foregoing, petitioner has complied with all the requisites of a tax-free exchange under Section 40(C)(2) of the NIRC of 1997, as amended. Thus, the transfer of Sartorius Philippines shares by petitioner to SWT GmbH is not subject to income tax or CGT.

Furthermore, Section 199 of the NIRC of 1997, as amended by Section 9 of Republic Act No. 9243, explicitly exempts from DST transfers of properties by virtue of tax-free exchanges under Section 40(C)(2) of the NIRC of 1997, as amended, to wit:

> "SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> xxx xxx xxx
>
> (m) Transfer of property pursuant to Section 40 (C)(2) of the National Internal Revenue Code of 1997, as amended."

The exemption of transfer of property pursuant to Section 40(C)(2) referred to above pertains to the DST due on the deed transferring the property. Based on the foregoing, petitioner's transfer of shares to its SWT GmbH is also not subject to DST.

In sum, the CGT and DST payments that petitioner made under protest on December 20, 2012 are erroneous, and thus, refundable under Sections 204(C) and 229 of the NIRC of 1997, as amended.

In view of the foregoing, petitioner has sufficiently proven its entitlement to the refund of ₱1,442,396.04, broken down as follows:

KIND OF TAX	AMOUNT OF TAX ERRONEOUSLY PAID
Capital Gains Tax	₱ 1,379,368.42[60]
Documentary Stamp Tax	63,027.62[61]
Total	**₱1,442,396.04**

[60] Exhibits "P-10" and "P-11", docket, vol. 2, pp. 583-584.
[61] Exhibits "P-12" and "P-13", docket, vol. 2, pp. 585-586.

To borrow from *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*[62], if the state expects taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding erroneous exactions and payment of such taxes. It thus behooves the government to refund what it erroneously collected.[63]

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** to petitioner the total amount of **₱1,442,396.04**, representing the capital gains tax and documentary stamp tax it erroneously paid on December 20, 2012.

SO ORDERED.

Ma. Belen S—

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

[62] G.R. Nos. 167274-75, July 21, 2008.
[63] *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*, G.R. No. 212536-37, August 27, 2014.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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