REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BANGKO SENTRAL NG PILIPINAS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9010

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

AUG 18 2017 3:51 p.m.

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DECISION

UY, J.:

Before Us is a *Petition for Review*[1] filed by petitioner *Bangko Sentral ng Pilipinas* against respondent Commissioner of Internal Revenue, praying that respondent be ordered to refund petitioner the amount of ₱162,019.05, which consists of surcharge, interest, and compromise penalty on the alleged late payment of capital gains tax.[2]

THE FACTS

Petitioner is the *Bangko Sentral ng Pilipinas*, a government instrumentality created and is operating by virtue of Republic Act (R.A.) No. 7653 (The New Central Bank Act), with principal office at A. Mabini corner P. Ocampo Streets, Malate, Manila. It is registered as a taxpayer with Taxpayer Identification No. 000-691-315.[3]

Respondent is the Commissioner of Internal Revenue, with address at the Bureau of Internal Revenue (BIR) National Office

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[1] Docket, pp. 6 to 27.
[2] Docket, p. 22.
[3] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 210; and Par. 1, Facts Admitted, Supplemental JSFI, Docket, p. 218.

Building, Agham Road, Quezon City, where he may be served with summons, and who was duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or issue the tax credit certificate as provided by law.[4]

The property subject of this *Petition* is covered by Transfer Certificate of Title (TCT) No. T-436159, and is located in San Jose Del Monte, Bulacan. It is registered under the name of BF Town Corporation (BF Town), a client/stockholder and accommodation-mortgagor, of Banco Filipino Savings and Mortgage Bank (BFSMB), the borrower-bank.[5]

The property was used as a collateral for the Special Liquidity Assistance granted by petitioner to BFSMB under a Deed of Real Estate Mortgage (REM) dated 22 November 2004.[6]

The parties to the REM are BF Town, as accommodation-mortgagor; BFSMB, as borrower-bank; and petitioner, as mortgagee.[7]

On December 16, 2011, the mortgaged property was foreclosed with petitioner as the purchaser.[8] Thereafter on December 20, 2011, the Certificate of Sale was registered.[9]

On April 23, 2012, petitioner paid the capital gains tax due on the sale in the amount of ₱552,126.00, through Credit Advice of even date to the Treasurer of the Philippines (ToP).[10]

In the process of consolidating the title to the property, the BIR, through its Revenue District Office No. 25-B, assessed petitioner for

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[4] Par. 2, Facts Admitted, JSFI, Docket, p. 210; and Par. 2, Facts Admitted, Supplemental JSFI, Docket, p. 218.
[5] Par. 3, Facts Admitted, JSFI, Docket, p. 211; and Par. 3, Facts Admitted, Supplemental JSFI, Docket, p. 219.
[6] Par. 4, Facts Admitted, JSFI, Docket, p. 211; and Par. 4, Facts Admitted, Supplemental JSFI, Docket, p. 219.
[7] Par. 5, Facts Admitted, JSFI, Docket, p. 211; and Par. 5, Facts Admitted, Supplemental JSFI, Docket, p. 219.
[8] Par. 6, Facts Admitted, JSFI, Docket, p. 211; and Par. 6, Facts Admitted, Supplemental JSFI, Docket, p. 219.
[9] Par. 7, Facts Admitted, JSFI, Docket, p. 211; and Par. 7, Facts Admitted, Supplemental JSFI, Docket, p. 219.
[10] Par. 8, Facts Admitted, JSFI, Docket, p. 211; and Par. 8, Facts Admitted, Supplemental JSFI, Docket, p. 219.

an additional ₱162,019.05 for surcharge, interest, and compromise penalty ("penalties").[11]

Petitioner paid the alleged penalties "under protest" through Credit Advice to the ToP on March 21, 2013.[12] It formally made its objections to the BIR on the imposition of the alleged penalties in the letter dated April 2, 2013.[13]

In the letters dated June 4, 2013 and February 18, 2014, Revenue Region No. 5, through its Legal Division and Regional Director, respectively, both denied petitioner's claim for refund.[14]

In the letter dated March 13, 2015, petitioner sought reversal of the decision of the Revenue Region No. 5 with respondent and prayed for refund of the alleged penalties. The said letter was received by respondent on the same date.[15]

Due to respondent's failure to act on its claim for refund, petitioner filed the subject *Petition for Review* on March 19, 2015,[16] praying for the refund of the amount of ₱162,019.05, which consists of surcharge, interest, and compromise penalty on the alleged late payment of capital gains tax.

For his part, respondent filed his *Answer to the Petition for Review* on April 29, 2015,[17] raising the following Special and Affirmative Defenses, to wit:

> "**The Rationale behind the shorter redemption period under Section 47 of Republic Act No. 8791 or the General Banking Law**

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[11] Par. 9, Facts Admitted, JSFI, Docket, p. 211; and Par. 9, Facts Admitted, Supplemental JSFI, Docket, p. 219.

[12] Par. 10, Facts Admitted, JSFI, Docket, p. 211; and Par. 10, Facts Admitted, Supplemental JSFI, Docket, p. 219.

[13] Par. 11, Facts Admitted, JSFI, Docket, p. 211; and Par. 11, Facts Admitted, Supplemental JSFI, Docket, p. 219.

[14] Par. 12, Facts Admitted, JSFI, Docket, p. 211; and Par. 12, Facts Admitted, Supplemental JSFI, Docket, p. 219.

[15] Par. 13, Facts Admitted, JSFI, Docket, pp. 211-212; and Par. 13, Facts Admitted, Supplemental JSFI, Docket, pp. 219-220.

[16] Docket, pp. 6 to 27.

[17] Docket, pp. 61 to 65.

of 2000 very well supports the applicability of the shorter redemption period in favor of Bangko Sentral ng Pilipinas

6. In the case *Goldenway Merchandising Corporation vs. Equitable PCI Bank,* G.R. No. 195540, March 13, 2013, the Supreme Court had the occasion to explain, taking into account the sponsorship speech of the late Senator Raul S. Roco, the rationale behind the shorter redemption period provided under Section 47 of R.A. No. 8791, the Court said:

> **'The difference in the treatment of juridical persons and natural persons was based on the nature of the properties foreclosed – whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case a shorter term is deemed necessary to reduce the period of uncertainty in the ownership of property and enable mortgagee-banks to dispose sooner of these acquired assets. It must be underscored that the General Banking Law of 2000, crafted in the aftermath of the 1997 Southeast Asian financial crisis, sought to reform the General Banking Act of 1949 by fashioning a legal framework for maintaining a safe and sound banking system. In this context, the amendment introduced by Section 47 embodied one of such safe and sound practices aimed at ensuring the solvency and liquidity of our banks. It cannot therefore be disputed that the said provision amending the redemption period in Act 3135 was based on a reasonable classification and germane to the purpose of the law.'**

7. Considering that the banking industry is very much imbued with public interest considerations, it is with more reason and more keeping with public policy to have the benefits under Section 47 of R.A. No. 8791 available

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to Bangko Sentral ng Pilipinas whose primary objective is to maintain price stability conducive to a balanced and sustainable growth of the economy.

8. The petitioner may have correctly pointed out that Bangko Sentral ng Pilipinas does not fall under any of the classifications enumerated under Section 3 of R.A. No. 8791 but it does not mean that it does not or it cannot apply the provision under Section 47 of R.A. No. 8791.

9. As a matter of fact, the Petitioner already admitted that in its operations it also uses the three (3) month redemption.

10. Particularly in paragraphs 35, 36, 37 and 38, the petitioner tried to impress upon this Honorable Court of Tax Appeals that there are two different modes of acquisition of property by the Bangko Sentral ng Pilipinas, hence, there are two classes of properties for which different redemption periods are applicable. The distinction proposed by the petitioner is misplaced and misleading. For the respondent, the only valid distinction would be whether the owner of the property mortgaged is a natural person or a juridical person.

11. To give life to the intent of the provisions of Section 47 of R.A. No. 8791 would mean that the shorter redemption period of three months is applicable to juridical persons with regard to properties mortgaged to Bangko Sentral ng Pilipinas.

12. There is also a need to point out that, contrary to petitioner's claim in paragraph 38 of the Petition for Review, the present case does not really fall squarely under the classification that **"Real property in the name of borrower-bank, its stockholder, or its clients ('mortgagor') which executed the mortgage over the property in favor of the Bangko Sentral ng Pilipinas ('mortgagee')"**. As already pointed out in paragraph 3 of this Answer, there are three parties, to wit: **Bangko Sentral ng Pilipinas** (as the MORTGAGEE); **BF TOWN CORPORATION** (as the MORTGAGOR); and **BANCO FILIPINO SAVINGS & MORTGAGE BANK** (as the BORROWER).

13. The fact that the Supreme Court already ruled

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that the applicability of Section 47 of R.A. No. 8791 extends also to credit institutions, it is with more logic and reason that the said section applies in favor of Bangko Sentral ng Pilipinas as the central monetary authority of the Philippines.

14. To accept the proposition laid by the petitioner would also put in jeopardy the petitioner's act of consolidating the title over the property mortgaged in its name even before the expiration of the argued applicable one year period of redemption.

No refund is due because there is no erroneous or illegal imposition of penalty against Bangko Sentral ng Pilipinas

15. When the petitioner paid the capital gains tax due on April 23, 2012 pursuant to the sale of its property acquired through extrajudicial foreclosure that took place on December 16, 2011 and registered with the Registry of Deeds on December 20, 2011, the imposition of interest, surcharge, and compromise penalty against the petitioner is legal and not erroneous since the petitioner was late in filing and paying the capital gains tax due which should have been paid after the lapse of the three month redemption period *(or after the registration of the certificate of foreclosure sale with the Registry of Deeds).* In this case, the capital gains tax was paid on April 23, 2012, or beyond three months after December 20, 2011.

16. As discussed earlier, it is more in keeping with public policy and more logical and reasonable to have the benefits of a shorter redemption period under Section 47of R.A. No. 8791 available in favor of Bangko Sentral ng Pilipinas.

17. By giving effect and life to the letter and intent of Section 47 of R.A. No. 8791, public policy and interest considerations are addressed even if it would mean having to accept late payment of capital gains tax." *(Emphases in the original.)*

Thereafter, petitioner filed its *Motion to Admit Reply*[18] with attached *Reply*[19] on June 4, 2015. In said Reply, petitioner argues that: the rationale of Section 47 of R.A. No. 8791 has no application to petitioner, and the refund of the penalties paid under protest is due to petitioner. In the Resolution dated June 10, 2015, the Court granted petitioner's *Motion* and the *Reply* was admitted.

Both parties filed their respective *Pre-Trial Brief*,[20] as well as a *Joint Stipulation of Facts and Issues*[21] and a *Supplemental Joint Stipulation of Facts and Issues*[22], which were approved by this Court in the Resolution dated September 15, 2015. [23] Pursuant thereto, this Court issued a Pre-Trial Order dated October 13, 2015[24].

During trial, petitioner presented two (2) witnesses in support of its *Petition for Review*, namely: Giovanni P. Gesmundo, Manager of Accounts Management Division C with the Department of Loans and Credits (DLC) of the petitioner; and Cynthia A. Samonte, Bank Officer II with the Asset Management Department (AMD) of petitioner. They testified as follows:

Witness **Giovanni P. Gesmundo** is the Manager of Accounts Management Division C with the DLC of petitioner since 2010. His office is charged with processing requests of banks for release of emergency loans, the monitoring and collection of emergency and rediscounting loans, including foreclosure of the properties used as collateral for emergency/rediscounting loans in case of default of the borrower-bank, as well as negotiation and acceptance of *dacion en pago* in settlement of loan obligations. They also keep documents related to these bank loans.

According to him, the property subject of this case is covered by Transfer Certificate of Title (TCT) No. T-436159, and is located in San Jose Del Monte, Bulacan. It is registered under the name of BF Town Corporation, a client/stockholder of Banco Filipino Savings and Mortgage Bank. The property was used as collateral for the Special Liquidity Assistance granted by petitioner to Banco Filipino Savings and Mortgage Bank (BFSMB) under a Deed of Real Estate Mortgage

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[18] Docket, pp. 70 to 72.
[19] Docket, pp. 73 to 80.
[20] Docket, pp. 83 to 91, and 127 to 130.
[21] Docket, pp. 210 to 214.
[22] Docket, pp. 218 to 228.
[23] Docket, p. 231.
[24] Docket, pp. 243 to 249.

(REM) dated November 22, 2004.

The Deed of REM was allegedly executed by BF Town as an accommodation-mortgagor for BFSMB, the borrower-bank, the purpose of which is to secure BFSMB's obligation under the Special Liquidity Facility (SLF) granted by petitioner, as the lender-mortgagee.

Despite demands, BFSMB was allegedly unable to pay its obligations under the SLF, which prompted DLC to enforce petitioner's rights through foreclosure of the property subject of the Deed of REM on December 16, 2011. The foreclosure sale was registered with the Register of Deeds on December 20, 2011.[25]

He further testified that their department is not in charge of processing the payments of capital gains taxes and/or the consolidation of the titles of properties acquired by petitioner, as the latter is a function of the Asset Management Department.[26]

Witness **Cynthia A. Samonte**, testified that she is Bank Officer II of petitioner assigned with the Asset Management Department (AMD) since October 2014. She said that petitioner, through the DLC, foreclosed the property subject of the Deed of REM on December 16, 2011, after BFSMB failed to pay its obligations on the SLF despite repeated demands. The sale was registered with the Register of Deeds on December 20, 2011, with petitioner as the highest bidder. As soon as the sale was annotated in the title covering the property, DLC endorsed the matter to AMD, which is tasked with the function of consolidating titles to the property in the name of petitioner.

To effect the consolidation of the title to the property, AMD allegedly had to pay the capital gains tax as required by the BIR, among other taxes and fees necessary for the issuance of the title in the name of petitioner.

She further said that in the case of properties directly mortgaged to petitioner, as in this case, the capital gains tax is ordinarily paid within thirty (30) days after the expiration of the one (1) year redemption period counted from the registration of the

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[25] Exhibit "P-1," Docket, pp. 104 to 115.
[26] Transcript of Stenographic Notes, January 26, 2016, p. 15.

foreclosure sale, based on Section 6 of Act No. 3135. On the other hand, for properties assigned by a borrower-bank to the petitioner as mortgage credits, petitioner pays the capital gains tax within thirty (30) days after the three (3) month redemption period under Section 47 of R.A. No. 8791.

Allegedly in this case, the period followed by AMD was that under Section 6 of Act No. 3135, since the property was directly mortgaged by an accommodation mortgagor, BF Town, for BFSMB, in favor of the petitioner. As the sale was registered on December 20, 2011, AMD had until thirty (30) days after December 20, 2012, within which to pay the capital gains tax. AMD paid the capital gains tax due in the amount of ₱552,126.00 on April 23, 2012, via Credit Advice to the Treasurer of the Philippines, way before the deadline under Act No. 3135.

On cross-examination, she clarified that the said payment on April 23, 2012, was before the expiration of the one year period, which will end on December 20, 2012. It is allegedly the practice of petitioner to pay the capital gains tax within thirty (30) days after the one year redemption period. But in this case, the consolidation of the title was effected before the one year redemption period.

And it was during the process of consolidating the title to the property that petitioner was allegedly assessed for an additional ₱162,019.05 as surcharge, interest, and compromise penalties for allegedly paying the capital gains tax late. BIR was of the position that the capital gains tax on the sale was due three (3) months from the date of the registration of the sale, that is on March 20, 2012, in accordance with Section 47 of R.A. No. 8791. Thus, for the BIR, petitioner was already late when it paid the capital gains tax on April 23, 2012.

Hence, petitioner paid under protest the penalties on the alleged late payment of the capital gains tax, through Credit Advice to the Treasurer of the Philippines on March 21, 2013. For this purpose, AMD also formally filed with the BIR a capital gains tax Return (BIR Form No. 1706) on April 22, 2013. In addition, they also wrote a letter dated April 2, 2013 to the BIR, which stated that petitioner paid the capital gains tax on time on April 23, 2012, way before the expiration of the redemption period, which is thirty (30) days after December 20, 2012. As such, the payment of penalties for the alleged late payment of capital gains tax was made under protest.

The BIR replied to petitioner's letter through a Memorandum dated June 4, 2013, which stated that the payment of the capital gains tax was made beyond the three (3) month restrictive period prescribed and, as such, petitioner is liable to pay the additional capital gains tax in the amount of ₱162,019.05.

Subsequently, the BIR wrote another letter dated February 18, 2014, reiterating that the redemption period in the case of petitioner should be three (3) months, and thus, the imposition of additional capital gains tax for late payment was proper.

On March 13, 2015, petitioner filed an *Appeal* before respondent, requesting for a reversal of the opinion of the Regional Director of Revenue Region No. 5.[27] However, the appeal filed with respondent is still pending and remains unacted upon by the respondent.[28] According to her, the mortgagor can still redeem the title within the one year redemption period. If title has been transferred to petitioner, the mortgagor can just buy back the property.[29]

Upon termination of the presentation of its testimonial evidence, petitioner filed its *Formal Offer of Evidence* on July 14, 2016[30], with respondent's *Comment* filed on July 25, 2016.[31] Petitioner's documentary evidence were admitted in the Resolution dated August 30, 2016.[32] For his part, respondent did not present counter-evidence.

As directed by the Court, respondent filed his "*Memorandum for the Respondent*"[33] on September 5, 2016, while petitioner filed its "*Memorandum for the Petitioner* " on October 4, 2016.[34] Thereafter, the instant case was submitted for decision on October 13, 2016.[35]

Hence, this Decision.

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[27] Exhibit "P-2," Amended Judicial Affidavit of Cynthia A. Samonte, Docket, pp. 285 to 298.
[28] Transcript of Stenographic Notes (TSN) dated June 14, 2016, pp. 14 to 16.
[29] Transcript of Stenographic Notes (TSN) dated June 14, 2016, pp. 11 to 13.
[30] Docket, pp. 330 to 336.
[31] Docket, pp. 391 to 392.
[32] Docket, pp. 400 to 401.
[33] Docket, pp. 402 to 407.
[34] Docket, pp. 408 to 429.
[35] Docket, p. 431.

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THE ISSUES

As stipulated by the parties, these are the issues submitted for the resolution of this Court,[36] to wit:

> "1. Whether the three (3) – month redemption period under Section 47 of R.A. No. 8791 is the applicable period in determining whether penalties for late payment of CGT should be imposed for properties directly mortgaged to the BSP; and
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> 2. Whether BSP is entitled to refund of penalties on alleged late payment of CGT."

Petitioner's arguments:

Petitioner contends that the one (1) year redemption period under Section 6 of Act No. 3135, and not Section 47 of R.A. No. 8791, is applicable in determining whether penalties for late payment of capital gains tax should be imposed for properties directly mortgaged to petitioner. The reason proffered by petitioner was that Section 47 of R.A. No. 8791 applies only to properties mortgaged by juridical entities to "banks" as defined in the same law, and not to the petitioner.

Moreover, petitioner argues that neither Section 20, Article XII of the 1987 Constitution, nor R.A. No. 7653 intended for the petitioner to be considered as a bank. Instead, it is the government entity charged with the general responsibility to provide policy directions in the areas of money, banking, and credit. Among its objectives is the maintenance of financial stability through effective bank supervision and regulation. Accordingly, it is responsible for supervising the operations of banks and regulating the operations of finance companies, quasi-banks, and institutions performing similar functions.

Allegedly, there are two classes of properties it can acquire through extrajudicial foreclosure. In the first class, petitioner is the assignee of the mortgage credit, as in the case of loan receivables, of a borrower-bank. In the second, petitioner is the direct mortgagee of the borrower-bank (mortgagor) or accommodation mortgagor.

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[36] Issues, JSFI, Docket, pp. 212 to 213; and Issues, Supplemental JSFI, Docket, pp. 220 to 221.

Since the modes of acquisition of property by petitioner are different, it posits that the applicable redemption period for each class of property should also be different. Petitioner is of the view that in the first, R.A. No. 8791 applies as it merely acquires, and is only subrogated to, the rights of the borrower-bank, while in the second, Act No. 3135 applies as the petitioner acquires the property as a direct mortgagee.

Petitioner likewise emphasizes that in this case, the property subject of the foreclosure sale was not a receivable assigned by BFSMB to the petitioner; that on the contrary, the property was directly mortgaged by BFSMB to petitioner as a collateral for its emergency loan; and that this is clear from the Deed of Real Estate Mortgage which BFSMB executed in favor of the petitioner. Thus, the redemption period that is allegedly applicable in this case is the one (1)-year redemption period under Section 6 of Act No. 3135, the general law governing foreclosure of properties by entities other than banks or credit institutions.

Petitioner points out that it paid the capital gains tax due on April 23, 2012, through Credit Advice addressed to the Treasurer of the Philippines; and that this payment was made way before the thirty (30)-day period required under BIR rules, counted from the expiration of the one (1) year redemption period after the registration of the sale under Act No. 3135, which is on December 30, 2012. Thus, the assessment of penalties based on alleged late payment of the capital gains tax was erroneous and wrongfully collected.

Respondent's counter-arguments:

For his part, respondent counters that the three (3) month redemption period under Section 47 of R.A. No. 8791 is the applicable period to be considered in setting the reckoning point of the period within which to pay capital gains tax.

According to respondent, the rationale behind the shorter redemption period under Section 47 of R.A. No. 8791 supports the applicability of the shorter redemption period in favor of petitioner.

Considering that the banking industry is very much imbued with public interest considerations, it is with more reason and more in keeping with public policy to allegedly have the benefits under Section 47 of R.A. No. 8791 available to petitioner, whose primary objective is to maintain price stability conducive to a balanced and sustainable growth of the economy.

Respondent avers that petitioner may have correctly pointed out that petitioner does not fall under any of the classifications enumerated under Section 3 of R.A. No. 8791, but it does not mean that it does not or cannot apply the provision under Section 47 of R.A. No. 8791.

When petitioner paid the capital gains tax on April 23, 2012, pursuant to the sale of its property acquired through extrajudicial foreclosure that took place on December 16, 2011 and registered with the Registry of Deeds on December 20, 2011, the imposition of the penalties against petitioner is allegedly legal since petitioner was late in filing and paying the capital gains tax due, which should have been paid after the lapse of the three month redemption period, or after the registration of the certificate of foreclosure sale with the Registry of Deeds. Respondent then points out that in this case, the capital gains tax was paid on April 23, 2012, or beyond the three months after December 20, 2011.

THE COURT'S RULING

The *Petition for Review* has merit.

The point of contention in this case is centered on the applicable redemption period in an extrajudicial foreclosure of mortgage, which in turn, would determine whether petitioner was erroneously assessed of penalties based on the alleged late payment of capital gains tax.

Section 6 of Act No. 3135, as amended by Act No. 4118, states that the redemption period in the case of an extrajudicial foreclosure of mortgage is one (1) year, to wit:

> "Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may **redeem the same at any time within the term of one**

> **year from and after the date of the sale**; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act." *(Emphasis supplied)*

On the other hand, Section 47, Article III of R.A. No. 8791, or the General Banking Law of 2000, provides for a shorter redemption period in the case of juridical persons, which time commences from the date of the foreclosure sale, and expires upon the registration of the certificate of sale or three months after foreclosure, whichever is earlier, to wit:

> "ARTICLE III –
> PROVISIONS APPLICABLE TO ALL BANKS, QUASI-BANKS, AND TRUST ENTITIES
>
> SECTION 47. *Foreclosure of Real Estate Mortgage.* — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.
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> **Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an**

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> **extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier.** Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration." *(Emphasis supplied)*

Thus, as a rule, the one-year period of redemption is counted from the date of the registration of the certificate of sale, pursuant to Section 6 of Act No. 3135, as amended by Act No. 4118. However, under Section 47 of R.A. No. 8791, an exception is made in the case of juridical persons which are allowed to exercise the right to redemption only *"until, but not after, the registration of the certificate of foreclosure sale"* and in no case more than three (3) months after foreclosure, whichever comes first.

In the case of *Goldenway Merchandising Corporation vs. Equitable PCI Bank,*[37] the Supreme Court identifies the reason for the difference in treatment regarding the period of redemption, to wit:

> "Section 47 did not divest juridical persons of the right to redeem their foreclosed properties but only modified the time for the exercise of such right by reducing the one-year period originally provided in Act No. 3135. The new redemption period commences from the date of foreclosure sale, and expires upon registration of the certificate of sale or three months after foreclosure, whichever is earlier. xxx.
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> xxx xxx xxx
>
> The difference in the treatment of juridical persons and natural persons was based on the nature of the properties foreclosed – whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case a shorter term is deemed necessary to reduce the period of uncertainty in the ownership of property and **enable <u>mortgagee-banks</u> to**

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[37] G.R. No. 195540, March 13, 2013.

> **dispose sooner of these acquired assets. It must be underscored that the General Banking Law of 2000, crafted in the aftermath of the 1997 Southeast Asian financial crisis, sought to reform the General Banking Act of 1949 <u>by fashioning a legal framework for maintaining a safe and sound banking system</u>. In this context, the amendment introduced by Section 47 embodied one of such safe and sound practices aimed at ensuring the solvency and liquidity of <u>our banks</u>.** It cannot therefore be disputed that the said provision amending the redemption period in Act 3135 was based on a reasonable classification and germane to the purpose of the law." *(Emphases supplied)*

With the foregoing statements, it is apparent that the above-quoted Section 47 of R.A. No. 8791 is contemplating a scenario where the mortgagor is a juridical person, while the mortgagee and the entity who would foreclose the subject property is a bank.

Petitioner, however, espouses that since it is an independent central monetary authority, it is not among the mortgagee-banks covered by the amendment introduced by Section 47 of R.A. No. 8791. Simply put, petitioner is of the view that it is not a "bank" as defined by law. Consequently, according to petitioner, it is Section 6 of Act No. 3135, as amended by Act No. 4118, that should be applied, for purposes of determining the applicable redemption period in this case, which in turn, is determinative as to when the capital gains tax would fall due.

This Court agrees with petitioner.

The same R.A. No. 8791 defines and classifies banks. Section 3 thereof provides:

> "Sec. 3. *Definition and Classification of Banks.* —
>
> 3.1. **'Banks' shall refer to entities engaged in the lending of funds obtained in the form of deposits.**
>
> 3.2. Banks shall be classified into:
>
> (a) Universal banks;
> (b) Commercial banks;
> (c) Thrift banks, composed of:

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(i) Savings and mortgage banks;
(ii) Stock savings and loan associations; and
(iii) Private development banks, as defined in the Republic Act No. 7906 (hereafter the 'Thrift Banks Act');

(d) Rural banks, as defined in Republic Act No. 7353 (hereafter the 'Rural Banks Act');

(e) Cooperative banks, as defined in Republic Act No. 6938 (hereafter the 'Cooperative Code');
(f) Islamic banks as defined in Republic Act No. 6848, otherwise known as the 'Charter of Al Amanah Islamic Investment Bank of the Philippines';
(g) Other classifications of banks as determined by the Monetary Board of the Bangko Sentral ng Pilipinas." *(Emphasis supplied)*

Furthermore, a bank has been jurisprudentially defined as a moneyed institute founded to facilitate the borrowing, lending and safe-keeping of money and to deal, in notes, bills of exchange, and credits.[38] It is an investment company which loans out the money of its customers, collects the interest and charges a commission to both lender and borrower.[39]

In this case, there is no indication that petitioner is a bank, as above defined. There is no showing that it is engaged in the lending of funds obtained in the form of deposits and collects interest and charges as commission; and that it falls under any of the banks as classified.

Neither is it proven that petitioner is founded to facilitate the borrowing, lending and safekeeping of money, and to deal in notes, bills of exchange, and credits.

In fact, the law is clear as to the reason why petitioner was founded or established, and it can hardly be said that petitioner may

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[38] *Republic of the Philippines vs. Security Credit and Acceptance Corporation, et al.*, G.R. No. L-20583, January 23, 1967.
[39] *Supra.*

be considered as a "bank", based on its legal definition.

Pertinent provisions of R.A. No. 7653, otherwise known as the New Central Bank Act, read:

> "SECTION 1. *Declaration of Policy.* — **The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit.** In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a government-owned corporation, shall enjoy fiscal and administrative autonomy.
>
> SEC. 2. *Creation of the Bangko Sentral.* — There is hereby established an independent central monetary authority, which shall be a body corporate known as the Bangko Sentral ng Pilipinas, hereafter referred to as the Bangko Sentral.
>
> xxx xxx xxx
>
> **SEC. 3. *Responsibility and Primary Objective.* — The Bangko Sentral shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions.**
>
> **The primary objective of the Bangko Sentral is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and convertibility of the peso.**" *(Emphases supplied)*

In addition, it must be emphasized that petitioner, *inter alia*, has the supervisory powers over banks, pursuant to Section 4 of R.A. No. 8791, which provides as follows:

> "SEC. 4. *Supervisory Powers.* — **The operations and activities of banks shall be subject to supervision of the Bangko Sentral.** xxx." *(Emphasis supplied)*

Hence, on the basis of the foregoing provisions of law, there is a clear delineation between banks, on one hand, and petitioner, on the other. Correspondingly, since petitioner is not considered a bank, the period of redemption under Section 47 of R.A. No. 8791 is not applicable to the subject transaction. Rather, it is the one-year period of redemption under Section 6 of Act No. 3135, as amended by Act No. 4118, which must be applied thereto.

Consequently, considering that it is undisputed that the subject Certificate of Sale was registered on December 20, 2011,[40] the period of redemption ends only on December 20, 2012. From the expiration of the said redemption period, petitioner has thirty (30) days,[41] or until January 19, 2013, within which to file the Capital Gains Tax Return and remit the capital gains tax due.

In view of petitioner's timely payment of the capital gains tax due on April 23, 2012,[42] way ahead of the January 19, 2013 deadline, petitioner should not be held liable for penalties for the alleged late payment of tax.

And it appearing that petitioner already paid for the erroneously assessed penalties through Credit Advice dated March 21, 2013,[43] it is entitled to a tax refund in the amount of ₱162,019.05, representing the said penalties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** to petitioner in the amount of **₱162,019.05**, representing erroneously collected surcharge, interest, and compromise penalty.

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[40] Par. 7, Facts Admitted, JSFI, Docket, p. 211; and Par. 7, Facts Admitted, Supplemental JSFI, Docket, p. 219.
[41] Section 2, Revenue Regulations No. 9-2012.
[42] Exhibit "P-6", Docket, p. 374; Par. 8, Facts Admitted, JSFI, Docket, p. 211; and Par. 8, Facts Admitted, Supplemental JSFI, Docket, p. 219.
[43] Par. 10, Facts Admitted, JSFI, Docket, p. 211; and Par. 10, Facts Admitted, Supplemental JSFI, Docket, p. 219.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, 1st Division