**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**CHINA BANKING CORPORATION,**
Petitioner,

- versus -

C.T.A. CASE NO. 6296

**THE COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:

APR 2 1 2004

x - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# D E C I S I O N

This is a petition praying for the refund or tax credit in the amount of P1,332,725.84, plus interest at the legal rate, allegedly representing erroneous payment by petitioner of its Gross Receipts Tax for the 1st, 2nd, 3rd, and 4th taxable quarters of 1999, emanating from the mistaken inclusion of interest income on the loan account of one of its clients, Steel Corporation of the Philippines (SteelCorp for brevity), which income is supposedly exempt from taxation.

The facts of the case are as follows:

Petitioner is a universal banking institution duly organized and existing in accordance with the laws of the Philippines with principal office at 8745

637

Paseo de Roxas corner Villar St., Makati City. During the taxable year 1999, petitioner paid gross receipts tax as follows:

| Exhibit | Period Covered | GRT Paid |
|---|---|---|
| A-1 | 1st Qtr. 1999 | P27,270,761.91 |
| B-2 | 2nd Qtr. 1999 | 34,962,759.31 |
| C-2 | 3rd Qtr. 1999 | 13,982,576.04 |
| D-2 | 4th Qtr. 1999 | 15,528,325.68 |

After the above payments, petitioner claimed that it discovered erroneous computation relating to the mistaken inclusion of the interest income from the loan account of one of its clients, SteelCorp, which income is alleged to be exempt from taxation. The error resulted to an overpayment of P1,332,727.84, which is the aggregate amount of the following:

| Period Covered | GRT Paid |
|---|---|
| 1st Qtr. 1999 | P395,337.50 |
| 2nd Qtr. 1999 | 399,987.88 |
| 3rd Qtr. 1999 | 279,462.50 |
| 4th Qtr. 1999 | 257,940.39 |

*(par. 3, Petition for Review)*

Upon discovery of the error, petitioner filed an amended return on March 25, 2000 *(Exhibit I)*. Then, on April 24, 2001, petitioner filed with the Commissioner of Internal Revenue a formal claim for refund or tax credit *(Annex I, Petition for Review)* amounting to P1,332,727.84 allegedly representing excess Gross Receipts Tax payment for the year 1999. The following day, April 25, 2001, petitioner the filed instant petition

638

In his Answer filed on May 30, 2001, respondent raised the following Special and Affirmative Defenses:

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P1,332,725.84 being claimed by petitioner as alleged erroneous payment of Gross Receipt Tax for the 1st, 2nd, 3rd, and 4th quarters of 1999 was not properly documented;

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit;

7. Petitioner must show that it has complied with the provisions of Sections 204 (c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

In a resolution promulgated on August 21, 2001, the parties, with the approval of the court, limited the issues in this case to be as follows:

1. Whether or not there was an error in the computation in the Gross Receipts Tax of the petitioner for the period covering the First Quarter to the Fourth Quarter of 1999 which may warrant the refund or tax credit in favor of the petitioner; and

2. Whether or not there was an overpayment of Gross Receipts Tax for the year 1999.

Before we resolve the jointly stipulated issues, we find it necessary to determine first whether or not petitioner, on the basis of the evidence

639

presented, is entitled to the tax exemption provided for under Section 6(e) of R.A. No. 7103 (*Iron and Steel Industry Act*).

Section 6(e) of R.A. No. 7103, otherwise known as the "Iron and Steel Industry Act," provides:

> **SEC. 6.** *Incentives.* – All enterprises certified by the BOI in accordance with the foregoing section of this Act shall be entitled to the following incentives:
>
> xxx
>
> (e) Other Loans – The certified enterprise shall be authorized to contract; subject to the prior approval of the Central Bank of the Philippines, such loans, credits, and indebtedness, from time to time and in any convertible foreign currency or capital goods, from foreign private financial institutions or fund sources as may be necessary to undertake the manufacturing activity described in Section 5(b) above. The Central Bank of the Philippines shall give priority to the applications made by certified enterprises to foreign currency loans, debt-asset and debt-equity conversion and such other transactions as may receive the approval of the Central Bank of the Philippines. <u>The Government shall likewise encourage private financial institutions, whether domestic or foreign, to extend loans for equity investments of Philippine nationals in a certified enterprise. The interest income from loans with maturity of five (5) years or more extended by financial institutions shall be exempt from all national internal revenue taxes.</u> (*Emphasis supplied*)

A careful analysis of the incentives granted to steel and iron industries under the afore-quoted provision would reveal that the following are exempt from all national internal revenue taxes: a) foreign private financial institutions or fund sources and b) domestic or foreign private financial institutions.

As to foreign private financial institutions or fund sources, the following are the requisites before they may be entitled to exemption from taxation of interest income:

640

1. the loans must be contracted by a certified enterprise;
2. there must be a prior approval of the Central Bank of the Philippines of the loans, credits, and indebtedness;
3. the loans granted must be in any foreign convertible currency or capital goods;
4. the loans must be necessary to undertake the manufacturing activity described in Section 5(b) of the Act.
5. The loans must have a maturity period of five years or more.

On the other hand, the following are required before domestic or foreign private financial institutions extending loans for equity investments of Philippine nationals in a certified enterprise may be granted the tax exemption incentive under Section 6(e) of R.A. No. 7103:

a) the loan must be granted to a Philippine national;
b) the loan extended will be utilized for equity investment in a certified enterprise;
c) The loans must have a maturity period of five years or more.

Petitioner, being a universal banking institution duly organized and existing in accordance with the laws of the Philippines, qualifies as a domestic financial institution. However, the loans (*Exhibits P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE*) extended by the petitioner to Steel Corporation of the Philippines are not the loans contemplated under Section 6(e) of R.A. No. 7103. While SteelCorp is a certified enterprise (*Exhibit CCC*) and the loans granted to it have a maturity period of more than five (5) years, it bears

641

stressing that for the interest income to be exempt from taxation, the loans should have been granted to a Philippine national which the latter shall use for equity investment in a certified enterprise.

The loans involved in this case were granted directly to the certified enterprise by CBC, which is not a foreign private financial institution; hence, the first requirement was not met. Moreover, as to the requirement on the utilization of the loan granted, the same must be utilized by the Philippine national for equity investment in a certified enterprise. The record is bereft of any evidence to show that the loans were utilized by SteelCorp for equity investment.

Because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. Furthermore, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based. Thus, the claimed exemption "must expressly be granted in a statute stated in a language too clear to be mistaken ***(Commissioner of Internal Revenue vs. Court of Appeals, 298 SCRA 83)***.

Having ruled that petitioner is not entitled to tax exemption under Section 6(e) of R.A. No. 7103, the court finds it no longer necessary to delve into the issues raised.

642

**WHEREFORE**, the petition for review is hereby **DENIED** for failure of petitioner to meet the requirements for exemption under Section 6(e) of R.A. No. 7103.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Judge

**WE CONCUR:**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Judge

**LOVELL R. BAUTISTA**
Associate Judge

**CERTIFICATION**

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

**ERNESTO D. ACOSTA**
Presiding Judge

643