REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BANK OF THE PHILIPPINE ISLANDS, *Petitioner,*	**CTA Case No. 9692**
	Members:
	CASTAÑEDA, JR., *Chairperson,* and **MANAHAN,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 31 2019 10:40 a.m.

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DECISION

CASTAÑEDA, JR., ***J.:***

This is a Petition for Review filed by the Bank of the Philippine Islands on September 28, 2017 to seek the refund or issuance of tax credit certificate (TCC) in the total amount of ₱29,700,428.00, allegedly representing overpaid or erroneously paid documentary stamp tax (DST).

THE FACTS

Petitioner Bank of the Philippine Islands is a domestic corporation duly organized and existing under the laws of the

Republic of the Philippines, with principal office address at the BPI Building, Ayala Avenue corner Paseo de Roxas, Makati City.[1] It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification No. 000-438-366-00000.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide on 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.

On September 17, 2015, petitioner entered into an Amended and Restated Peso Loan Agreement[3] ("Loan Agreement") with SN Aboitiz Power-Benguet, Inc. ("SNAP-BI") in which petitioner and other domestic banks, as Peso Lenders, severally agreed to advance to SNAP-BI, as Peso Borrower, an amount not exceeding the aggregate principal amount of ₱15,000,000,000.00.

Pursuant to the Loan Agreement, SNAP-BI drew from petitioner a loan in the amount of ₱4,340,085,597.14 and issued a Promissory Note[4] to petitioner on September 21, 2015 to evidence its indebtedness.

On September 22, 2015, petitioner entered into an Omnibus Notes Facility and Security Agreement[5] ("the Facility") with Hedcor Bukidnon, Inc. ("Hedcor") in which petitioner and other entities, as Note Holders, severally agreed to advance to Hedcor, as Note Issuer, an amount not exceeding the aggregate principal amount of ₱10,000,000,000.00.

On September 24, 2015, Hedcor drew the amount of ₱1,600,000,000.00 from Tranche A of the Facility and issued a Fixed Rate Note[6] ("Note") to petitioner as evidence of its indebtedness. Je

[1] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket (vol. II), pp. 508-509.
[2] Exhibit "P-2", docket (vol. I), pp. 153-155.
[3] Exhibit "P-8", docket (vol. I), pp. 401-441.
[4] Exhibit "P-9", docket (vol. 1), p. 442.
[5] Exhibit "P-3", docket (vol. I), pp. 156-390.
[6] Exhibit "P-4", docket (vol. I), pp. 391-394.

On September 30, 2015, Hedcor filed a DST Declaration/Return (BIR Form No. 2000) and paid DST in the amount of ₱25,000,000.00 on petitioner's total credit commitment of ₱5,000,000,000.00 to Hedcor under the Facility.[7] On September 30, 2015, SNAP-BI likewise filed a DST Declaration/Return for the amount drawn from petitioner under the Loan Agreement. Thereafter, SNAP-BI paid on October 2, 2015 the corresponding DST in the amount of ₱21,700,428.00.[8]

On October 5, 2015, petitioner paid the amount of ₱8,000,000.00 representing the DST due on the ₱1,600,000,000.00 Note issued by Hedcor to petitioner.[9] Also on October 5, 2015, petitioner paid ₱21,700,428.00 representing the DST on the ₱4,340,085,597.14 it extended to SNAP-BI in connection with the Loan Agreement.[10]

On February 1, 2017, petitioner filed separate administrative claims for refund or tax credit of ₱8,000,000.00 and ₱21,700,428.00, respectively representing the alleged overpaid or erroneously paid DST on its transactions with Hedcor and SNAP-BI.[11]

Respondent failed to act on petitioner's claims for refund, prompting petitioner to file its judicial claim for refund of overpaid or erroneously paid DST in the aggregate amount of ₱29,700,428.00 through the instant Petition for Review[12] on September 28, 2017.

Within the extended period granted by the Court,[13] respondent submitted his Answer[14] on November 23, 2017, raising the following defenses and counter-arguments:

> 3.1. Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:
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> xxx xxx xxx
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> Section 229 further provides, thus:

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[7] Exhibit "P-17", docket (vol. I), p. 523.
[8] Exhibit "P-18", docket (vol. II), p. 524.
[9] Exhibit "P-19", docket (vol. II), p. 525; Exhibit "P-27", docket (vol. I), p. 460.
[10] Exhibits "P-19" and "P-29", docket (vol. II), pp. 525 and 792; Exhibit "P-28", docket (vol. I), p. 461.
[11] Exhibits "P-12" and "P-13", docket (vol. I), pp. 451-454 and 455-458, respectively.
[12] Docket (vol. I), pp. 10-85.
[13] Order dated October 26, 2017, docket (vol. I), p. 91.
[14] Docket (vol. I), pp. 93-97.

xxx xxx xxx

3.2. From the foregoing, it is clear that in order to be entitled to a refund of erroneously or illegally collected taxes, there must be a showing that there is an erroneous or illegal collection of tax, or penalty collected without authority, or sum excessively or wrongfully collected. In the case at bar, the documentary stamp tax was not erroneously nor illegally collected.

3.3. A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. Documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.

3.4. Petitioner is mistaken that there is only one transaction subject to documentary stamp tax.

3.5. With regard to the transaction with Hedcor Bukidnon, Inc., the execution of the Notes Facility Agreement and the subsequent execution of the Fixed Rate Note are two separate and distinct transactions subject to documentary stamp tax.

3.6. The same goes with petitioner's transaction with SN Aboitiz Power-Benguet, Inc. The execution of the Amended and Restated Peso Loan Agreement and promissory note are two distinct transactions subject to documentary stamp tax.

3.7. In view of the foregoing, there is no erroneous payment of documentary stamp tax. *gr*

On November 27, 2017, this Court scheduled the pre-trial conference of the instant case on January 18, 2018 and ordered both parties to submit their respective Pre-Trial Briefs.[15] Respondent submitted his Pre-Trial Brief[16] on January 11, 2018, while petitioner submitted its Pre-Trial Brief[17] on January 15, 2018.

The parties filed their Joint Stipulation of Facts and Issues[18] on February 2, 2018. Thereafter, the Court issued the Pre-trial Order[19] on February 14, 2018.

To prove its case, petitioner presented Ms. Ma. Cecilia S. Nazario (petitioner's Senior Manager for Corporate Banking Systems Planning and Product Integration) and Mr. Mark I. Gasingan (petitioner's Assistant Vice President and Head of Corporate Loan Operations) as witnesses.[20]

Subsequently, petitioner filed its Formal Offer of Evidence[21] on March 1, 2018, consisting of Exhibits "P-1" to "P-20-A" and "P-26" to "P-29", inclusive of submarkings.

In a Resolution dated May 23, 2018, the Court admitted all of petitioner's evidence, except for Exhibits "P-6" and "P-7" for failure to present their originals for comparison.[22]

On the other hand, respondent, through counsel, manifested that there is no report of investigation from the investigating officers and that he has no witness to present.[23]

The Court declared the instant case submitted for decision on July 16, 2018[24] after respondent and petitioner both filed their respective Memoranda on July 6, 2018.[25]

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[15] Notice of Pre-Trial Conference, docket (vol. I), pp. 98-99.
[16] Docket (vol. I), pp. 104-107.
[17] Docket (vol. I), pp. 108-114.
[18] Docket (vol. II), pp. 508-512.
[19] Docket (vol. II), pp. 535-539.
[20] Order dated February 19, 2018, docket (vol. II), p. 540.
[21] Docket (vol. II), pp. 547-558.
[22] Docket (vol. II), pp. 806-807.
[23] Order dated June 6, 2018, docket (vol. II), p. 809.
[24] Docket (vol. II), p. 848.
[25] Docket (vol. II), pp. 810-816 and 817-841, respectively.

Petitioner's Arguments[26]

Petitioner maintains that considering that the Fixed Rate Note of Hedcor and the Promissory Note of SNAP-BI were issued to secure the loans made available by petitioner respectively under the Facility and the Loan Agreement, then one DST shall be imposed on either the Facility or the Note issued by Hedcor and one DST shall be imposed on either the Loan Agreement or the Promissory Note issued by SNAP-BI in accordance with Section 179 of the Tax Code.

Petitioner avers that the Facility and the Note issued by Hedcor represent only one loan transaction. Likewise, the Loan Agreement and the Promissory Note issued by SNAP-BI represent only one loan transaction. Petitioner alleges that aside from the legal relationship of lender-borrower, no other relationship is established by the execution of such instruments. It therefore follows that only one DST shall be imposed on either the Facility or the Note issued by Hedcor and only one DST shall be imposed on either the Loan Agreement or the Promissory Note issued by SNAP-BI.

Petitioner asserts that it is entitled to a refund of erroneously paid DST in the total amount of ₱29,700,428.00 representing DST purportedly paid on its separate loan transactions with Hedcor and SNAP-BI. According to petitioner, the retention by respondent of the erroneously paid DST constitutes unjust enrichment on the part of the government.

Respondent's Counter-Arguments[27]

Respondent, on the other hand, argues that there is no erroneous payment by petitioner of DST considering that (1) the execution of the Notes Facility Agreement and the subsequent execution of a Fixed Rate Note are two separate and distinct transactions subject to DST, and (2) the execution of the Amended and Restated Peso Loan Agreement and the Promissory Note are likewise two distinct transactions subject to DST. According to respondent, petitioner's claim for refund or issuance of tax credit certificate for its alleged erroneously paid DST was not duly substantiated with proper documentary evidence. *ge*

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[26] Docket (vol. II), pp. 825-839.
[27] Docket (vol. II), pp. 811-814.

THE ISSUE

The parties submitted the following issue[28] for this Court's resolution:

> Whether or not petitioner is entitled to a refund in the total amount of ₱29,700,428.00 representing the claimed overpaid or erroneously paid DST on its transactions with Hedcor and SNAP-BI.

THE COURT'S RULING

Relevant to the resolution of the stipulated issue is Section 229 of the NIRC of 1997, as amended, which is quoted hereunder for ready reference:

> 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.
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> 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. gr

[28] Stipulation of Issue, JSFI, docket (vol. II), p. 509.

Pursuant to the foregoing provision, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be satisfied:

> 1. The tax has been erroneously or illegally collected, or the penalty has been collected without authority, or any sum has been excessively or in any manner wrongfully collected; and
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> 2. The claim for refund must be filed within two (2) 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.*[29], the Supreme Court held that Section 229 of the Tax Code 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 tax credit has been duly filed with the Commissioner of Internal Revenue.

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.[30]

On the basis of the evidence submitted, petitioner paid on October 5, 2015 the amount of ₱8,000,000.00 representing the DST due on the ₱1,600,000,000.00 Note issued by Hedcor and the amount of ₱21,700,428.00 representing the DST on the ₱4,340,085,597.14 loan it extended to SNAP-BI in connection with the Loan Agreement.[31] Thus, the reckoning period to be considered from which the two-year prescriptive period for claiming a refund shall be counted is October 5, 2015. The separate administrative

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[29] G.R. No. 216130, August 3, 2016.
[30] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.
[31] Exhibits "P-27" and "P-28", docket (vol. I), pp. 460 and 461; Exhibits "P-19" and "P-29", docket (vol. II), pp. 525 and 792, respectively.

claims for refund[32] were filed on February 1, 2017 and the judicial claim[33] was filed on September 28, 2017. Evidently, both the administrative and the judicial claims for refund were filed within the two-year period provided by the afore-quoted Section 229 of the NIRC of 1997, as amended.

The Court shall now determine whether petitioner is entitled to tax refund or issuance of tax credit certificate in the amount of ₱29,700,428.00, representing the claimed overpaid or erroneously paid DST on its transactions with Hedcor and SNAP-BI.

A documentary stamp tax is in the nature of an excise tax because it is imposed upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, or transfer of an obligation, right or property incident thereto.[34]

In this regard, Section 179 of the NIRC of 1997, as amended, imposes DST on the following documents or instruments:

> SEC. 179. *Stamp Tax on All Debt Instruments.* – On every original issue of debt instruments, there shall collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: *Provided*, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
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> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due

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[32] Exhibits "P-12" and "P-13", docket (vol. I), pp. 451-454 and 455-456, respectively.
[33] Petition for Review, docket (vol. I), pp. 10-85.
[34] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 192398, September 29, 2014.

> bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.

Section 3(b) of Revenue Regulations (RR) No. 9-94[35] defines the term "loan agreement" in the following manner:

> SECTION 3. *Definition of Terms.* – For purposes of these Regulations, the following terms shall mean:
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> xxx xxx xxx
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> (b) "Loan Agreement" – refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.

Based on the foregoing, for a contract to be considered as a loan agreement for purpose of imposing the DST, the same must have the following characteristics: (1) it must be in writing; (2) one of the parties to the contract delivers to the other money or other consumable thing; and (3) such delivery is upon the condition that the same amount of the same kind and quality shall be paid.

In *Union Bank of the Philippines vs. Spouses Rodolfo T. Tiu and Victoria N. Tiu*[36], the Supreme Court made the following pronouncements relative to the nature of a credit line/facility. ℊ

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[35] Implementing the provisions of Republic Act No. 7660, An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax, Amending for the Purpose Certain Provisions of the National Internal Revenue Code, as Amended.

> [O]pening a credit line does not create a credit transaction of loan or mutuum, since the former is merely a preparatory contract to the contract of loan or mutuum. Under such credit line, the bank is merely obliged, for the considerations specified therefor, to lend to the other party amounts not exceeding the limit provided. The credit transaction thus occurred not when the credit line was opened, but rather when the credit line was availed of. xxx.

Credit facilities by themselves are not considered debt instruments that are subject to DST. There must be another document to prove that such credit facility has indeed been converted into a loan agreement, either by the execution of a formal loan agreement, a promissory note, a credit/debit memo, or an advice or drawings to prove that the credit facility has been availed of by the borrower. A credit facility is merely a facility or a line for making a specific amount available for the use of the borrower. It is not tantamount to the delivery of the money to the borrower. Only when the borrower makes use of the available amount by drawing on this facility will there be delivery of the money that will give rise to a loan, but only up to the amount of the actual amount of money that was drawn from the credit facility.[37]

Accordingly, it was only when Hedcor drew the amount of ₱1,600,000,000.00 from Tranche A of the Facility and issued a Fixed Rate Note to petitioner as evidence of its indebtedness that DST became due. Accordingly, Hedcor's payment on September 30, 2015 of DST in the amount of ₱25,000,000.00 on petitioner's total credit commitment of ₱5,000,000,000.00 to it under the Facility was erroneous considering that only ₱1,600,000,000.00 was actually drawn by Hedcor from the Facility on September 24, 2015.

On the other hand, DST in the amount of ₱21,700,428.00 was due when pursuant to the Amended and Restated Loan Agreement, SNAP-BI drew from petitioner a loan in the amount of ₱4,340,085,597.14 and issued a Promissory Note to petitioner on September 21, 2015 to evidence its indebtedness.

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[36] G.R. Nos. 173090-91, September 7, 2011.

[37] *Commissioner of Internal Revenue vs. University of Santo Tomas Hospital, Inc.*, CTA EB No. 681 (CTA Case No. 7919), April 20, 2011.

Section 173 of the NIRC of 1997, as amended, names those who are primarily liable for the DST and those who would be secondarily liable:

> SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments, and Papers.* – Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted, or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.

The persons primarily liable for the payment of the DST are the persons (1) making, (2) signing, (3) issuing, (4) accepting, or (5) transferring the taxable documents, instruments or papers. Should these parties be exempted from paying tax, the other party who is not exempt would then be liable.

Corollary thereto, Section 3 of Revenue Regulations No. 9-2000[38] clearly provides that when one of the parties to the taxable document or transaction is a bank, the bank shall be responsible for the remittance of the DST prescribed under Title VII of the NIRC of 1997; and unless it is exempt from said tax, then it shall remit the same only as a collecting agent of the BIR Commissioner.[39]

The pertinent provisions of Revenue Regulations No. 9-2000 are quoted below:

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[38] Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.
[39] *Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue*, G.R. No. 178797, August 4, 2009.

SECTION 3. *Mode of Payment and Remittance of the Tax.* –

(a) *In general.* – Unless otherwise provided in these Regulations, any of the aforesaid **parties to the taxable transaction shall pay and remit** the full amount of the tax in accordance with the provisions of Section 200 of the Code.

(b) *Exceptions.* –

(1) If **one of the parties to the taxable transaction is exempt** from the tax, the other party who is not exempt shall be the one directly liable for the tax, in which case, the **tax shall be paid and remitted by the said non-exempt party**, unless otherwise provided in these Regulations.

(2) **If the said tax-exempt party is one of the persons enumerated in Section 3(c)(4) hereof, he shall be constituted as agent of the Commissioner for the collection of the tax**, in which case, he shall remit the tax so collected in the same manner and in accordance with the provisions of Section 200 of the Code: Provided, however, that if he fails to collect and remit the same as herein required, he shall be treated personally liable for the tax, in addition to the penalties prescribed under Title X of the Code for failure to pay the tax on time.

xxx xxx xxx

(c) *Persons liable to remit the DST.* – In general, the full amount of the tax imposed under Title VII of the Code may be remitted by any of the party or parties to the taxable transaction, except in the following cases:

xxx xxx xxx

(4) **When one of the parties to the taxable document or transaction is included in any of the** *gc*

> **entities enumerated below, such entity shall be responsible for the remittance of the stamp tax prescribed under Title VII of the Code: *Provided, however,* that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent**, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding:
>
> (a) A **bank**, a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company. (*Emphases supplied*)

Based on the foregoing provisions, as a rule, any of the parties to the transaction subject to DST shall pay and remit the full amount of DST. However, if one of the parties to the said transaction is a bank, *inter alia*, the remittance of the DST shall be the responsibility of such bank.

As a party to a taxable transaction, petitioner is responsible for the payment and remittance of the documentary stamp tax. However, if petitioner were exempt from the tax, it should be required to remit the same only as a collecting agent of respondent.[40]

There has never been any allegation made in this case that petitioner is exempt from the DST on the Fixed Rate Note issued by Hedcor as well as the Promissory Note issued by SNAP-BI and that it is tasked to remit the said tax only as a collecting agent. The standing presumption, therefore, is that petitioner is directly liable for the payment and remittance of the DST on the Fixed Rate Note and the Promissory Note.

Consequently, petitioner's payment on October 5, 2018 in the amount of ₱8,000,000.00 representing DST on the ₱1,600,000,000.00 Note issued by Hedcor to petitioner under the terms of the Facility does not constitute an overpayment nor was it erroneous. Similarly, petitioner's payment on even date of ₱21,700,428.00 representing DST on the ₱4,340,085,597.14 loan extended to SNAP-BI evidenced by a Promissory Note dated *gc*

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[40] *ING Bank N.V., engaged in banking operations in the Philippines as ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue,* G.R. No. 167679, April 20, 2016.

September 21, 2015 in connection with the Amended and Restated Loan Agreement was proper.

Also devoid of merit is the applicability of the principle of *solutio indebiti* to the present case.

According to this principle, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In that situation, a creditor-debtor relationship is created under a quasi-contract, whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive the payment becomes obligated to return it. The quasi-contract of *solutio indebiti* is based on the ancient principle that no one shall enrich oneself unjustly at the expense of another.[41]

There is *solutio indebiti* where:

1. Payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and

2. Payment is made through mistake, and not through liberality or some other cause.[42]

Though the principle of *solutio indebiti* may be applicable to some instances of claims for refund, the elements thereof are wanting in this case.

First, there exists a binding relation between petitioner and respondent, the former being an entity responsible for the remittance of the stamp tax prescribed under Title VII of the Tax Code in accordance with Revenue Regulations No. 9-2000.

Second, the payment of DST was not made through mistake, considering that petitioner was legally obligated to pay and to remit the DST. As mentioned earlier, there has never been any allegation

[41] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 198729-30, January 15, 2014.
[42] *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017, citing *Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO)*, G.R. No. 181459, June 9, 2014.

made in this case that petitioner is exempt from the DST on the Fixed Rate Note issued by Hedcor as well as the Promissory Note issued by SNAP-BI and, thus, it is tasked to remit the said tax only as a collecting agent. The standing presumption, therefore, is that petitioner is directly liable for the payment and remittance of the DST on the Fixed Rate Note issued to it by Hedcor and the Promissory Note issued to it by SNAP-BI.

Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit.[43] In the case at bar, petitioner failed to discharge this burden, thus, this Court has no other recourse but to deny the claim for refund.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[43] *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

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.
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.

ROMAN G. DEL ROSARIO
Presiding Justice