REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE BANK OF COMMUNICATIONS, Petitioner,	**C.T.A. CASE NO. 7486**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 1 3 2009 2:30 p.m.

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DECISION

UY, *J.*:

Before the Court is a Petition for Review praying for the issuance of tax credit certificate in the amount of P11,063,866.67, allegedly representing petitioner's erroneously paid documentary stamp taxes on its repurchase agreements executed with the *Bangko Sentral ng Pilipinas* from March 23, 2004 to December 23, 2004.

THE FACTS

Philippine Bank of Communications (Petitioner) is a commercial bank duly organized under Philippine laws, with principal office at the 8th Floor, PBCOM Tower, 6795 Ayala Avenue corner V.A. Rufino Street, Makati City.[1]

[1] Joint Stipulation of Facts and Issues (JSFI), Par. 1, Docket, p. 175.

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including among others, the power to decide, approve and grant refunds or tax credit certificates of erroneously or excessively paid taxes. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[2]

The BIR authorized petitioner to operate and use On-line Electronic Documentary Stamp Metering Machine (DS Imprinting Machine) with Serial No. SN3631711, as evidenced by Permit No. 08-0434.[3]

On the following dates, petitioner purchased from the BIR documentary stamps and loaded the same to the DS Imprinting Machine:

Date	Amount
March 26, 2004	P 3,000,000.00[4]
April 14, 2004	4,000,000.00[5]
May 12, 2004	6,000,000.00[6]
June 30, 2004	6,000,000.00[7]
August 4, 2004	6,000,000.00[8]
December 22, 2004	3,000,000.00[9]
TOTAL	**P 28,000,000.00**

During the period from March 23, 2004 to December 23, 2004, petitioner executed several repurchase agreements with the *Bangko Sentral ng Pilipinas* (BSP). And during the same period, petitioner imprinted documentary stamps, through its DS Imprinting Machine, on the Confirmation

[2] *Id.*
[3] Exhibit "A".
[4] Exhibits "B" and "B-1".
[5] Exhibits "B-4" and "B-5".
[6] Exhibits "B-6" and "B-7".
[7] Exhibits "B-9" and "B-10".
[8] Exhibits "B-12" and "B-13".
[9] Exhibits "B-15" and "B-16".

Letters corresponding to the repurchase agreements entered into by petitioner and BSP.

On May 12, 2006, petitioner filed an administrative claim for issuance of tax credit certificates with the BIR for the alleged erroneous payment of documentary stamp taxes in the aggregate amount of P11,063,866.67.[10]

On May 18, 2006, petitioner filed the instant Petition for Review. Thereafter, respondent filed his Answer on July 10, 2006, alleging that:

> "4. Petitioner's repurchase agreements for the period 29 March 2004 to 23 December 2004 are subject to DST pursuant to Section 180 of the National Internal Revenue Code of 1997 (1997 NIRC) in relation to Section 22 (Y) of the same Code.
>
> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;
>
> 6. The amount of P11,063,866.67 being claimed by petitioner as alleged erroneous payment of documentary stamp tax (DST) for the period 29 March 2004 to 23 December 2004 is not properly documented;
>
> 7. In an action for refund/credit, 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;
>
> 8. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the 1997 NIRC on the prescriptive period for claiming tax refund/credit.
>
> 9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and** as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)**."[11]

[10] Exhibit "D".
[11] Docket, pp. 123-124.

During trial, petitioner presented testimonial and documentary evidence to prove its purchases of documentary stamps (DS) for the DS Metering Machine, the execution of several repurchase agreements with the BSP from March 2004 to December 2004, the imprinting of DS on the confirmation letters for the said Repurchase Agreements, and the filing of the administrative claim by petitioner for issuance of tax credit certificate with the BIR within a period of two (2) years from the date of payment of the DST.

On the other hand, respondent opted not to present any evidence and both parties were directed to submit their respective Memorandum.[12] Petitioner's Memorandum was filed on June 6, 2008 and respondent's on July 28, 2008. In the Resolution dated 30, 2008, the instant case was submitted for decision.[13]

THE ISSUES

The parties stipulated on the following issues for this Court's resolution:

"1. Whether Petitioner and the Bangko Sentral ng Pilipinas ('BSP') executed various repurchase agreements from 23 March 2004 to 23 December 2004;

2. Whether repurchase agreements executed from 23 March 2004 to 23 December 2004 are subject to DST;

3. Whether Petitioner erroneously paid DST on the repurchase agreements executed from 23 March 2004 to 23 December 2004 by imprinting DST thereon through the DS Metering Machine; and

4. Whether or not Petitioner is entitled to be issued tax credit certificates in the amount of P11,063,866.67 as erroneously paid DST for the period 23 March 2004 to 23 December 2004.[14]"

[12] Minutes of May 14, 2008 hearing, Docket, p. 671.
[13] Docket, p. 712.
[14] JSFI, Docket, p. 176.

Petitioner's arguments

Petitioner asserts that it has presented uncontroverted evidence establishing the fact that it executed from March 23, 2004 to December 23, 2004 various repurchase agreements with the BSP citing Section 199(h) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. (RA) 9243, as legal basis to justify the exemption of the said repurchase agreements from the imposition of the documentary stamp tax (DST). It also relies on the contemporaneous construction found on BIR Ruling No. DA-256-05, wherein it was ruled that repurchase agreements *"are exempt from the documentary stamp tax pursuant to Section 9(h) of R.A. No. 9243, as implemented by Revenue Regulations No. 13-2004."*

Petitioner further claims that the DST payments on the various repurchase agreements were erroneous for the same were not required by the NIRC, as amended, and that it made the said payments due to the mistaken belief that the repurchase agreements were still subject to DST; and that its entitlement to the issuance of a tax credit certificate for its erroneous DST payments derives basis from both the NIRC and the principle of *solution indebiti*.

Respondent's counter-arguments

Respondent strongly argues that petitioner's claim for the issuance of tax credit certificates is tainted with procedural infirmity due to the premature filing of the instant Petition for Review with this Court in violation of the doctrine of exhaustion of administrative remedies; that petitioner deprived respondent of the chance to act on the claim for tax credit by filing a Petition for Review before the Court after only six (6) days from the filing of the administrative claim for tax credit.

THIS COURT'S RULING

The petition is partly meritorious.

Petitioner executed various repurchase agreements with the Bangko Sentral ng Pilipinas ('BSP') from 23 March 2004 to 23 December 2004

The various repurchase agreements entered into between petitioner and the BSP from March 23, 2004 to December 23, 2004, formally offered in evidence by petitioner, contain of the following documentary details:

Repurchase Agreement	Amount	Exhibit
Serial No. 10293, dated 03-23-04	P 969,000,000.00	F
Serial No. 10294, dated 03-24-04	75,000,000.00	G
Serial No. 10295, dated 03-25-04	105,000,000.00	H
Serial No. 10296, dated 03-29-04	93,000,000.00	I
Serial No. 10297, dated 03-29-04	1,827,000,000.00	J
Serial No. 10298, dated 04-05-04	150,000,000.00	K
Serial No. 10299, dated 04-06-04	205,000,000.00	L
Serial No. 10300, dated 04-26-04	1,821,000,000.00	M
Serial No. 10301, dated 04-12-04	164,000,000.00	N
Serial No. 10302, dated 04-16-04	475,000,000.00	O
Serial No. 10303, dated 04-20-04	174,000,000.00	P
Serial No. 10304, dated 04-23-04	969,000,000.00	Q
Serial No. 10306, dated 04-26-04	1,660,000,000.00	R
Serial No. 10307, dated 04-26-04	75,000,000.00	S
Serial No. 10308, dated 04-29-04	93,000,000.00	T
Serial No. 10309, dated 05-04-04	173,000,000.00	U
Serial No. 10311, dated 05-11-04	1,527,000,000.00	V
Serial No. 10312, dated 05-12-04	164,000,000.00	W
Serial No. 10313, dated 05-17-04	475,000,000.00	X
Serial No. 10314, dated 05-18-04	166,000,000.00	Y
Serial No. 10315, dated 05-24-04	969,000,000.00	Z
Serial No. 10316, dated 05-25-04	1,527,000,000.00	AA
Serial No. 10317, dated 05-25-04	380,000,000.00	BB
Serial No. 10318, dated 05-31-04	93,000,000.00	CC
Serial No. 10319, dated 06-01-04	166,000,000.00	DD
Serial No. 10320, dated 06-07-04	150,000,000.00	EE
Serial No. 10321, dated 06-08-04	1,527,000,000.00	FF

Serial No. 10322, dated 06-14-04	223,000,000.00	GG
Serial No. 10323, dated 06-15-04	166,000,000.00	HH
Serial No. 10325, dated 06-22-04	1,527,000,000.00	II
Serial No. 10334, dated 07-07-04	150,000,000.00	JJ
Serial No. 10352, dated 07-14-04	223,000,000.00	KK
Serial No. 10353, dated 07-16-04	139,000,000.00	LL
Serial No. 10354, dated 07-19-04	362,000,000.00	MM
Serial No. 10355, dated 07-26-04	1,345,000,000.00	NN
Serial No. 10356, dated 07-30-04	93,000,000.00	OO
Serial No. 10357, dated 08-09-04	150,000,000.00	PP
Serial No. 10358, dated 08-09-04	188,000,000.00	QQ
Serial No. 10359, dated 08-16-04	362,000,000.00	RR
Serial No. 10360, dated 08-19-04	362,000,000.00	SS
Serial No. 10361, dated 08-20-04	81,000,000.00	TT
Serial No. 10362, dated 08-23-04	188,000,000.00	UU
Serial No. 10364, dated 08-30-04	93,000,000.00	VV
Serial No. 10310, dated 05-05-04	150,000,000.00	WW
Serial No. 10316, dated 06-07-04	1,527,000,000.00	YY
Serial No. 10324, dated 06-17-04	362,000,000.00	ZZ
Serial No. 10326, dated 06-24-04	969,000,000.00	AAA
Serial No. 10327, dated 06-25-04	376,000,000.00	BBB
Serial No. 10328, dated 06-30-04	93,000,000.00	CCC
Serial No. 10363, dated 08-27-04	1,341,000,000.00	DDD
Serial No. 10365, dated 09-09-04	150,000,000.00	EEE
Serial No. 10366, dated 09-16-04	359,000,000.00	FFF
Serial No. 10367, dated 09-20-04	442,000,000.00	GGG
Serial No. 10368, dated 09-27-04	1,341,000,000.00	HHH
Serial No. 10369, dated 09-30-04	93,000,000.00	III
Serial No. 10371, dated 10-11-04	150,000,000.00	JJJ
Serial No. 10372, dated 10-18-04	359,000,000.00	KKK
Serial No. 10373, dated 10-20-04	442,000,000.00	LLL
Serial No. 10374, dated 10-27-04	1,341,000,000.00	MMM
Serial No. 10375, dated 10-29-04	93,000,000.00	NNN
Serial No. 10376, dated 11-11-04	150,000,000.00	OOO
Serial No. 10377, dated 11-18-04	306,000,000.00	PPP
Serial No. 10378, dated 11-22-04	411,000,000.00	QQQ
Serial No. 10379, dated 11-30-04	1,434,000,000.00	RRR
Serial No. 10380, dated 12-20-04	306,000,000.00	SSS
Serial No. 10381, dated 12-22-04	406,000,000.00	TTT
Serial No. 10382, dated 12-23-04	153,000,000.00	UUU

There being no controverting evidence presented by respondent to refute the same, the Court finds the foregoing evidence as sufficient proof to establish the due execution of the subject repurchase agreements between petitioner and the BSP from March 23, 2004 to December 23, 2004.

The repurchase agreements executed from 23 March 2004 to 23 December 2004 are not subject to DST.

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. And documentary stamp taxes in certain instances must be paid upon the issuance of said instruments.[15]

Section 173 of the NIRC of 1997 enumerates instances when documentary stamp taxes are levied, collected and paid for on certain documents, loan agreements, instruments, and papers, to wit:

> "**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 at 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 thereto who is not exempt shall be the one directly liable for the tax."

On March 20, 2004, RA 9243 took effect and amended several provisions of the NIRC of 1997.[16] Specifically, Section 9 thereof reads:

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[15] *Section 200(D) of the NIRC of 1997; Philippine Home Assurance Corporation, Philippine American Accident Insurance Company, Philippine American General Insurance Company and American International Underwriters (Phils.), Inc. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No.* 119446, January 21, 1999, 301 SCRA 443.

[16] RA 9243 shall take effect fifteen (15) days following its publication in the *Official Gazette* or in two (2) newspapers of general circulation. Malaya and Today published RA 9243 on March 5, 2004.

"**SECTION 9.** Section 199 of the National Internal Revenue Code of 1997, as amended is hereby further amended to read as follows:

'**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

h. **Derivatives: *Provided,* That for purposes of this exemption, repurchase agreements and reverse repurchase agreements shall be treated similarly as derivatives.**

xxx xxx xxx

l. All contracts, deeds, documents and transactions related to the conduct of business of the Bangko Sentral ng Pilipinas." (*Emphasis supplied*)

In view of the above-quoted provision, repurchase agreements are exempt from the imposition of the documentary stamp tax.

Petitioner erroneously paid DST on the repurchase agreements executed from March 23, 2004 to December 23, 2004 by imprinting DST thereon through the DS Metering Machine.

To prove erroneous payment of DST by petitioner on the subject repurchase agreements, it presented in evidence the following confirmation letters addressed to the Treasury Department of the BSP, with documentary stamps imprinted on them:

Repurchase Agreement	Amount	Exhibit	Confirmation Letter	Exhibit	DST
Serial No. 10293, dated 03-23-04	P 969,000,000.00	F	03/23/04	C-1	P 384,945.30
Serial No. 10294, dated 03-24-04	75,000,000.00	G	03/24/04	C-2	33,904.20
Serial No. 10295, dated 03-25-04	105,000,000.00	H	03/25/04	C-3	17,260.30
Serial No. 10296, dated 03-29-04	93,000,000.00	I	03/29/04	C-5	39,493.20
Serial No. 10297, dated 03-29-04	1,827,000,000.00	J	03/29/04	C-4	350,383.60

Serial No. 10298, dated 04-05-04	150,000,000.00	K	04/05/04	C-9	61,643.90
Serial No. 10299, dated 04-06-04	205,000,000.00	L	04/06/04	C-6	39,315.10
Serial No. 10300, dated 04-26-04	1,821,000,000.00	M	04/12/04	C-7	349,232.90
Serial No. 10301, dated 04-12-04	164,000,000.00	N	04/12/04	C-11 & C-67	67,397.30
Serial No. 10302, dated 04-16-04	475,000,000.00	O	04/16/04	C-12	201,712.40
Serial No. 10303, dated 04-20-04	174,000,000.00	P	04/20/04	C-8	33,369.90
Serial No. 10304, dated 04-23-04	969,000,000.00	Q	04/23/04	C-13	411,493.20
Serial No. 10306, dated 04-26-04	1,660,000,000.00	R	04/26/04	C-10	341,095.90
Serial No. 10307, dated 04-26-04	75,000,000.00	S	04/26/04	C-14	30,822.00
Serial No. 10308, dated 04-29-04	93,000,000.00	T	04/29/04	C-15	40,767.20
Serial No. 10309, dated 05-04-04	173,000,000.00	U	05/04/04	C-16	33,178.10
Serial No. 10311, dated 05-11-04	1,527,000,000.00	V	05/11/04	C-18	292,849.40
Serial No. 10312, dated 05-12-04	164,000,000.00	W	05/12/04	C-19	74,137.00
Serial No. 10313, dated 05-17-04	475,000,000.00	X	05/17/04	C-20	201,712.40
Serial No. 10314, dated 05-18-04	166,000,000.00	Y	05/18/04	C-21	31,835.70
Serial No. 10315, dated 05-24-04	969,000,000.00	Z	05/24/04	C-22	411,493.20
Serial No. 10316, dated 05-25-04	1,527,000,000.00	AA	05/25/04	C-23	292,849.50
Serial No. 10317, dated 05-25-04	380,000,000.00	BB	05/25/04	C-24	161,369.90
Serial No. 10318, dated 05-31-04	93,000,000.00	CC	05/31/04	C-25	38,219.20
Serial No. 10319, dated 06-01-04	166,000,000.00	DD	06/01/04	C-26	31,835.70
Serial No. 10320, dated 06-07-04	150,000,000.00	EE	06/07/04	C-27	61,643.90
Serial No. 10321, dated 06-08-04	1,527,000,000.00	FF	06/08/04	C-28	292,849.50
Serial No. 10322, dated 06-14-04	223,000,000.00	GG	06/14/04	C-29	91,643.90
Serial No. 10323, dated 06-15-04	166,000,000.00	HH	06/15/04	C-30	31,835.70
Serial No. 10325, dated 06-22-04	1,527,000,000.00	II	06/22/04	C-32	292,849.50
Serial No. 10334, dated 07-07-04	150,000,000.00	JJ	07/07/04	C-36	67,808.30
Serial No. 10352, dated 07-14-04	223,000,000.00	KK	07/14/04	C-37	100,808.30
Serial No. 10353, dated 07-16-04	139,000,000.00	LL	07/16/04	C-38	59,027.40
Serial No. 10354, dated 07-19-04	362,000,000.00	MM	07/19/04	C-39	153,726.10
Serial No. 10355, dated 07-26-04	1,345,000,000.00	NN	07/26/04	C-40	424,657.60
Serial No. 10356, dated 07-30-04	93,000,000.00	OO	06/30/04	C-35	38,219.20
Serial No. 10357, dated 08-09-04	150,000,000.00	PP	08/09/04	C-42	63,698.70
Serial No. 10358, dated 08-09-04	188,000,000.00	QQ	08/09/04	C-43	79,835.70
Serial No. 10359, dated 08-16-04	362,000,000.00	RR	08/16/04	C-44	153,726.10
Serial No. 10360, dated 08-19-04	362,000,000.00	SS	08/19/04	C-45	158,685.00
Serial No. 10361, dated 08-20-04	81,000,000.00	TT	08/20/04	C-46	34,397.30
Serial No. 10362, dated 08-23-04	188,000,000.00	UU	08/23/04	C-47	36,054.80
Serial No. 10364, dated 08-30-04	93,000,000.00	VV	08/30/04	C-49	39,493.20
Serial No. 10310, dated 05-05-04	150,000,000.00	WW	05/05/04	C-17	67,808.30
Serial No. 10326, dated 06-24-04	969,000,000.00	AAA	06/24/04	C-33	424,767.20
Serial No. 10327, dated 06-25-04	376,000,000.00	BBB	06/25/04	C-34	159,671.30
Serial No. 10328, dated 06-30-04	93,000,000.00	CCC	07/30/04	C-41	39,493.20
Serial No. 10363, dated 08-27-04	1,341,000,000.00	DDD	08/27/04	C-48	569,465.90
Serial No. 10365, dated 09-09-04	150,000,000.00	EEE	09/09/04	C-50	65,753.50
Serial No. 10366, dated 09-16-04	359,000,000.00	FFF	09/16/04	C-51	157,369.90
Serial No. 10367, dated 09-20-04	442,000,000.00	GGG	09/20/04	C-52	193,753.50
Serial No. 10368, dated 09-27-04	1,341,000,000.00	HHH	09/27/04	C-53	551,096.00
Serial No. 10369, dated 09-30-04	93,000,000.00	III	09/30/04	C-54	24,835.70

Serial No. 10371, dated 10-11-04	150,000,000.00	JJJ	10/11/04	C-55	19,917.90
Serial No. 10372, dated 10-18-04	359,000,000.00	KKK	10/18/04	C-56	152,452.10
Serial No. 10373, dated 10-20-04	442,000,000.00	LLL	10/20/04	C-57	199,808.30
Serial No. 10374, dated 10-27-04	1,341,000,000.00	MMM	10/27/04	C-58	624,575.60
Serial No. 10375, dated 10-29-04	93,000,000.00	NNN	10/29/04	C-59	40,767.20
Serial No. 10376, dated 11-11-04	150,000,000.00	OOO	11/11/04	C-60	65,753.50
Serial No. 10377, dated 11-18-04	306,000,000.00	PPP	11/18/04	C-61	134,137.00
Serial No. 10378, dated 11-22-04	411,000,000.00	QQQ	11/22/04	C-62	168,904.20
Serial No. 10379, dated 11-30-04	1,434,000,000.00	RRR	11/30/04	C-63	569,671.40
Serial No. 10381, dated 12-22-04	406,000,000.00	TTT	12/22/04	C-65	183,534.30
Serial No. 10382, dated 12-23-04	153,000,000.00	UUU	12/23/04	C-66	67,068.50
TOTAL	**P34,578,000,000.00**				**P10,633,881.20**

In addition, petitioner presented Exhibits "B" and "B-1" to "B-17", showing that it filed BIR Form 2000 and paid the corresponding taxes for several purchases of documentary stamp tax from March 26, 2004 to December 22, 2004.

On the other hand, there is no merit in respondent's contention that the amount sought to be recovered as erroneous payment of documentary stamp tax for the period from March 23, 2004 to December 23, 2004 is not properly documented.

Revenue Regulations No. 9-2000[17] describes an "On-Line Electronic DST Imprinting Machine" as "a device capable of imprinting the value of the stamp tax and other data on the taxable document, . . . with built-in modem which enables users to load/purchase the stamp tax value through an on-line set-up or electronic data transmission with the BIR, thereby enabling the latter **to monitor actual usage of stamp consumption of the users**."[18] Respondent failed to present reports of the DST Monitoring Section of the BIR or the concerned RDO that may refute petitioner's claim as provided in

[17] Dated August 31, 2000.
[18] Emphasis supplied.

Revenue Memorandum Order (RMO) No. 83-98 dated October 16, 1998 and RMO No. 15-2001 dated June 16, 2001, which require petitioner to purchase and load or reload documentary stamps on the machine before it can imprint the amount of documentary stamps on documents.

Thus, in the absence of contrary evidence, this Court finds that petitioner has satisfactorily shown that it paid the substantiated documentary stamp taxes in the amount of P10,633,881.20 due on the subject repurchase agreements.

Petitioner is entitled to the issuance of tax credit certificates in the amount of P11,063,866.67 as erroneously paid DST for the period from March 23, 2004 to December 23, 2004 upon compliance with legal requirements.

In order that petitioner may be entitled to its subject claim, compliance with the requirements set forth under Section 229 of the NIRC of 1997 is necessary. Said provision reads:

> "**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*)

Relative to the prevailing circumstances in the instant case, the first paragraph of the foregoing provision requires that before any suit or proceeding may be instituted in court for the recovery of any tax, alleged to have been erroneously or illegally collected, an administrative claim for refund or credit must first be filed before the respondent Commissioner of Internal Revenue. Further, the second paragraph requires that such suit or proceeding must be filed before the lapse of the period of two (2) years from date of payment of the tax, regardless of any supervening cause that may arise after such payment.

In other words, a taxpayer who intends to file a claim for the refund or issuance of tax credit of any tax alleged to have been erroneously paid or illegally collected, both the administrative claim and judicial claim must be filed well within the period of two (2) years from the date of payment of the tax sought to be refunded regardless of any supervening cause that may arise after such payment.

A careful consideration of the dates of DST payments made by petitioner on its repurchase agreement shows that a portion of petitioner's claims for refund have prescribed as its judicial claim therefore were filed beyond the two-year reglementary period. As petitioner's administrative claim[19] was filed only on May 12, 2006 and the instant Petition for Review, on May 18, 2006, DST payments made prior to May 18, 2004 will not prosper on the ground of prescription.

[19] Annex "A", Petition for Review, Docket, pp. 11-14.

For easy determination as to which of petitioner's claims were filed beyond the two-year prescriptive period, We look at the dates of petitioner's DST payments and the last day within which to file its respective judicial claim, to wit:

Repurchase Agreement	Confirmation Letter	Last Day to File Judicial Claim[20]	DST Payment
Serial No. 10293, dated 03-23-04	03/23/04	03/23/06	P 384,945.30
Serial No. 10294, dated 03-24-04	03/24/04	03/24/06	33,904.20
Serial No. 10295, dated 03-25-04	03/25/04	03/25/06	17,260.30
Serial No. 10296, dated 03-29-04	03/29/04	03/29/06	39,493.20
Serial No. 10297, dated 03-29-04	03/29/04	03/29/06	350,383.60
Serial No. 10298, dated 04-05-04	04/05/04	04/05/06	61,643.90
Serial No. 10299, dated 04-06-04	04/06/04	04/06/06	39,315.10
Serial No. 10300, dated 04-26-04	04/12/04	04/12/06	349,232.90
Serial No. 10301, dated 04-12-04	04/12/04	04/12/06	67,397.30
Serial No. 10302, dated 04-16-04	04/16/04	04/16/06	201,712.40
Serial No. 10303, dated 04-20-04	04/20/04	04/20/06	33,369.90
Serial No. 10304, dated 04-23-04	04/23/04	04/23/06	411,493.20
Serial No. 10306, dated 04-26-04	04/26/04	04/26/06	341,095.90
Serial No. 10307, dated 04-26-04	04/26/04	04/26/06	30,822.00
Serial No. 10308, dated 04-29-04	04/29/04	04/29/06	40,767.20
Serial No. 10309, dated 05-04-04	05/04/04	05/04/06	33,178.10
Serial No. 10311, dated 05-11-04	05/11/04	05/11/06	292,849.40
Serial No. 10312, dated 05-12-04	05/12/04	05/12/06	74,137.00
Serial No. 10313, dated 05-17-04	05/17/04	05/17/06	201,712.40
Serial No. 10314, dated 05-18-04	05/18/04	05/18/06	31,835.70
Serial No. 10315, dated 05-24-04	05/24/04	05/24/06	411,493.20
Serial No. 10316, dated 05-25-04	05/25/04	05/25/06	292,849.50
Serial No. 10317, dated 05-25-04	05/25/04	05/25/06	161,369.90
Serial No. 10318, dated 05-31-04	05/31/04	05/31/06	38,219.20
Serial No. 10319, dated 06-01-04	06/01/04	06/01/06	31,835.70
Serial No. 10320, dated 06-07-04	06/07/04	06/07/06	61,643.90
Serial No. 10321, dated 06-08-04	06/08/04	06/08/06	292,849.50
Serial No. 10322, dated 06-14-04	06/14/04	06/14/06	91,643.90
Serial No. 10323, dated 06-15-04	06/15/04	06/15/06	31,835.70
Serial No. 10325, dated 06-22-04	06/22/04	06/22/06	292,849.50
Serial No. 10334, dated 07-07-04	07/07/04	07/07/06	67,808.30
Serial No. 10352, dated 07-14-04	07/14/04	07/14/06	100,808.30
Serial No. 10353, dated 07-16-04	07/16/04	07/16/06	59,027.40
Serial No. 10354, dated 07-19-04	07/19/04	07/19/06	153,726.10
Serial No. 10355, dated 07-26-04	07/26/04	07/26/06	424,657.60

[20] Following the ruling in *Commissioner of Internal Revenue vs. Primetown Property Group, Inc., G.R. No. 162155, August 28, 2007.*

Serial No. 10356, dated 07-30-04	06/30/04	06/30/06	38,219.20
Serial No. 10357, dated 08-09-04	08/09/04	08/09/06	63,698.70
Serial No. 10358, dated 08-09-04	08/09/04	08/09/06	79,835.70
Serial No. 10359, dated 08-16-04	08/16/04	08/16/06	153,726.10
Serial No. 10360, dated 08-19-04	08/19/04	08/19/06	158,685.00
Serial No. 10361, dated 08-20-04	08/20/04	08/20/06	34,397.30
Serial No. 10362, dated 08-23-04	08/23/04	08/23/06	36,054.80
Serial No. 10364, dated 08-30-04	08/30/04	08/30/06	39,493.20
Serial No. 10310, dated 05-05-04	05/05/04	05/05/06	67,808.30
Serial No. 10326, dated 06-24-04	06/24/04	06/24/06	424,767.20
Serial No. 10327, dated 06-25-04	06/25/04	06/25/06	159,671.30
Serial No. 10328, dated 06-30-04	07/30/04	07/30/06	39,493.20
Serial No. 10363, dated 08-27-04	08/27/04	08/27/06	569,465.90
Serial No. 10365, dated 09-09-04	09/09/04	09/09/06	65,753.50
Serial No. 10366, dated 09-16-04	09/16/04	09/16/06	157,369.90
Serial No. 10367, dated 09-20-04	09/20/04	09/20/06	193,753.50
Serial No. 10368, dated 09-27-04	09/27/04	09/27/06	551,096.00
Serial No. 10369, dated 09-30-04	09/30/04	09/30/06	24,835.70
Serial No. 10371, dated 10-11-04	10/11/04	10/11/06	19,917.90
Serial No. 10372, dated 10-18-04	10/18/04	10/18/06	152,452.10
Serial No. 10373, dated 10-20-04	10/20/04	10/20/06	199,808.30
Serial No. 10374, dated 10-27-04	10/27/04	10/27/06	624,575.60
Serial No. 10375, dated 10-29-04	10/29/04	10/29/06	40,767.20
Serial No. 10376, dated 11-11-04	11/11/04	11/11/06	65,753.50
Serial No. 10377, dated 11-18-04	11/18/04	11/18/06	134,137.00
Serial No. 10378, dated 11-22-04	11/22/04	11/22/06	168,904.20
Serial No. 10379, dated 11-30-04	11/30/04	11/30/06	569,671.40
Serial No. 10381, dated 12-22-04	12/22/04	12/22/06	183,534.30
Serial No. 10382, dated 12-23-04	12/23/04	12/23/06	67,068.50
TOTAL			**P10,633,881.20**

To reiterate, DST payments made earlier than May 18, 2004 are time-barred and will be disallowed in this case. Consequently, out of the substantiated claim of P10,633,881.20, the total amount of P3,072,521.60 is already barred by prescription and only claim for the remaining amount of P7,561,359.60 falls within the two-year prescriptive period, computed as follows:

Confirmation letters with documentary stamps imprinted			**P 10,633,881.20**
Less: Amounts barred by prescription:			
Repurchase Agreement	**Confirmation Letter**	**DST**	
Serial No. 10293, dated 03-23-04	03/23/04	P 384,945.30	
Serial No. 10294, dated 03-24-04	03/24/04	33,904.20	
Serial No. 10295, dated 03-25-04	03/25/04	17,260.30	
Serial No. 10296, dated 03-29-04	03/29/04	39,493.20	
Serial No. 10297, dated 03-29-04	03/29/04	350,383.60	
Serial No. 10298, dated 04-05-04	04/05/04	61,643.90	
Serial No. 10299, dated 04-06-04	04/06/04	39,315.10	
Serial No. 10300, dated 04-26-04	04/12/04	349,232.90	
Serial No. 10301, dated 04-12-04	04/12/04	67,397.30	
Serial No. 10302, dated 04-16-04	04/16/04	201,712.40	
Serial No. 10303, dated 04-20-04	04/20/04	33,369.90	
Serial No. 10304, dated 04-23-04	04/23/04	411,493.20	
Serial No. 10306, dated 04-26-04	04/26/04	341,095.90	
Serial No. 10307, dated 04-26-04	04/26/04	30,822.00	
Serial No. 10308, dated 04-29-04	04/29/04	40,767.20	
Serial No. 10309, dated 05-04-04	05/04/04	33,178.10	
Serial No. 10311, dated 05-11-04	05/11/04	292,849.40	
Serial No. 10312, dated 05-12-04	05/12/04	74,137.00	
Serial No. 10313, dated 05-17-04	05/17/04	201,712.40	
Serial No. 10310, dated 05-05-04	05/05/04	67,808.30	**3,072,521.60**
REFUNDABLE AMOUNT			**P 7,561,359.60**

In fine, petitioner is entitled to the issuance of tax credit certificate for its erroneously paid DST, but only in the reduced amount of P7,561,359.60.

Lastly, We find no merit in respondent's view that the instant petition should not have yet been filed because he was deprived by petitioner *"of the chance to act on the claim for tax credit by filing a petition for review before the Honorable Court after only six (6) days from the filing of the administrative claim for tax credit;"*[21] and that *"(t)he period allotted by petitioner is obviously inadequate for respondent to act on the instant claim, which is allegedly tantamount to a wanton disregard of the doctrine of exhaustion of administrative remedies."*[22]

[21] Docket, p. 706.
[22] *Id.*

It cannot be overemphasized that the above-quoted Section 229 of the NIRC of 1997 is clear on the period within which to file a claim for refund or tax credit certificate. Such period expires *"regardless of any supervening cause that may arise after payment"* of the tax. This matter was elaborated upon by the Supreme Court in the case of *College of Oral & Dental Surgery vs. Court of Tax Appeals*[23], wherein it said thus:

> "This Court, construing the aforequoted provision of law[24] in an identical case, made the pronouncement that although the filing of the claim with the Collector of Internal Revenue is intended as a notice to said official that unless the tax or penalty alleged to have been erroneously or illegally collected is refunded, court action will follow, this does not imply that the taxpayer must await for the action of the Collector before bringing the matter to court (P.J. Kiener Co., Ltd. vs. David, 92 Phil., 945, penned by Mr. Justice Pedro Tuason). Indeed, it must be observed that under said provisions, **the taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in court within 2 years after the payment of the taxes bars him from the recovery of the same**, irrespective of whether a claim for the refund of such taxes filed with the Collector of Internal Revenue is still pending action of the latter." *(Emphasis supplied)*

Hence, upon the expiration of the reglementary two (2) year period, petitioner loses its right to seek judicial redress on its claim, thereby making judicial intervention urgently necessary in this case. Furthermore, the Revised Rules of the Court of Tax Appeals is clear and explicit thereon, to wit:

> "...In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, **the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.**"[25]

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[23] G.R. No. L-10446, January 28, 1958.
[24] Referring to then Section 306 of the National Internal Revenue Code, now Section 229 of the National Internal Revenue Code of 1997.
[25] Section 3(a), Rule 8.

> "...in the case of claims for refund of taxes erroneously or illegally collected, **the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code**;"[26]

Neither can We find justification to respondent's assertion that the six (6)-day period, *i.e.*, such period starting from the filing of the administrative claim until the filing of the instant Petition for Review, *"is obviously inadequate for respondent to act on the instant claim."*[27] The flaw in such assertion is that it presupposes that the processing of the administrative claim for tax refund or credit stops once the concerned taxpayer, the petitioner, in this case, files a Petition for Review.

Revenue Memorandum Circular No. 49-2003[28] however tells Us otherwise. It partly reads:

> "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), **the administrative agency and the tax court may act on the case separately**. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. **In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until**

[26] Section 3(a)(2), Rule 4.
[27] Docket, p. 706.
[28] SUBJECT: Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

It must be noted that this Revenue Memorandum Circular was issued *"(i)n response to request of selected taxpayers for adoption of procedures in handling refund cases that are aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law.."*

such time that a final decision has been reached by either the CTA or the administrative agency." *(Emphases supplied)*

Clearly therefore, the filing of the instant judicial claim should not have stopped the investigating/processing of petitioner's claim for refund at the administrative level until such time that a final decision has been reached by this Court or by the administrative agency concerned, the Bureau of Internal Revenue.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SEVEN MILLION FIVE HUNDRED SIXTY-ONE THOUSAND THREE HUNDRED FIFTY-NINE PESOS AND 60/100 (P7,561,359.60)**, representing erroneously paid documentary stamp taxes for the period covering May 18, 2004 to December 23, 2004.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice