Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION
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METROPOLITAN BANK AND TRUST COMPANY,
Petitioner,

-versus-

CTA Case No. 6765

Members:

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 13 2007; 10:05 am

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DECISION

CASANOVA, J.:

This is a Petition for Review seeking a refund and/or tax credit in the amount of P5,296,773.05 filed by herein petitioner, Metropolitan Bank and Trust Company. The amount being claimed for refund allegedly represents excess payment or double payment or remittance of 10% Final Tax on interest earned by petitioner from its foreign currency denominated loan ("FCDU") to its borrower, Luzon Hydro Corporation ("LHC"), covering the months of March 2001 and October 2001.

THE FACTS

Petitioner, Metropolitan Bank and Trust Company ("Metrobank"), is a universal banking corporation duly organized and existing under the laws of the Philippines with principal address at Metrobank Plaza Building, Sen. Gil J. Puyat Avenue Extension, Makati City.

Respondent is the duly appointed Commissioner of Internal Revenue ("Commissioner") with the authority among others, to decide, approve and grant tax credit and/or refund and holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[1]

On June 5, 1997, Solidbank Corporation, together with other local and foreign banks forged an Omnibus Agreement[2] ("Agreement") with Luzon Hydro Corporation or LHC. Pursuant to the Agreement, Solidbank extended a foreign currency denominated loan with the principal amount of US$123,780,000.00 with LHC as borrower. The Agreement also provides, specifically under Section 9.01[3] thereof, that the borrower will shoulder all the corresponding internal revenue taxes required by law to be deducted or withheld on the said loan, as well as the filing of the tax returns thereof and remittance of the taxes withheld to respondent Bureau of Internal Revenue ("BIR").

On September 1, 2000, petitioner-Metrobank became the successor-in-interest of Solidbank Corporation per Banko Sentral ng Pilipinas Resolution 1282.[4]

Alleged First Remittance done by LHC

On March 2, 2001, LHC allegedly paid Metrobank a total of US$1,538,122.17 which was composed of the amounts of US$902,545.47 as principal and US$635,576.70 as interest evidenced by Debit Ticket No. 5511264.[5]

In compliance with the Agreement, LHC allegedly paid and remitted the 10% Final Tax on said interest amounting to **US$63,106.40**[6] with peso equivalent of P3,060,029.24. As proof of remittance and payment, petitioner presented as its

[1] *1st and 2nd Pars. of Joint Stipulation of Facts ("JSF"), Rollo, pp. 50-52, duly approved by this Court in a Resolution dated February 9,2004, Rollo, p. 53.*
[2] *Exhibit "A", Rollo. pp. 121-189.*
[3] *Exhibit "A-36", Rollo. p. 157.*
[4] *1st par. JSF. Ibid.*
[5] *Exhibit "K", Rollo. p. 205 and Par. 2 of Petitioner's Memorandum.*
[6] *Petitioner presented no explanation why the amount was lowered to US$63,106.40 from US$63,557.67 (10% of US$635,576.70 interest paid).*

evidence, LHC's Schedule of Final Tax for March 2001[7], Monthly Remittance Return for March 2001 (BIR Form 1601-F)[8] and Philippine National Bank debit memo[9] dated April 10, 2001.

On October 31, 2001, LHC allegedly again paid Metrobank a total of US$1,333,268.31 composed of the amounts of US$902,545.45 as principal and US$430,722.86 as interest evidenced by Debit Ticket No. 0169653.[10]

LHC allegedly paid and remitted to BIR the 10% Final Tax on said interest amounting to **US$43,072.29** with peso equivalent of P2,236,743.81. As proof of remittance and payment, petitioner presented as its evidence, LHC's Schedule of Final Tax for October 2001[11], Monthly Remittance Return for October 2001 (BIR Form 1601-F)[12] and Philippine National Bank debit memo[13] dated November 12, 2001.

In sum, the alleged total 10% Final Tax on such FCDU interest payments in US dollars is **US$106,178.69** (US$63,106.40 for March + US$43,072.29 for October). The peso equivalent of the above mentioned remittances of 10% Final Tax on FCDU is **P5,296,773.05** (P3,060,029.24 for March + P2,236,743.81 for October).

Alleged Second Remittance
done by Petitioner-Metrobank

Metrobank, however, allegedly remitted to the BIR *the same final withholding taxes* when it inadvertently included the foreign currency denominated interest income of US$631,063.98 for March 2001 and US$430,722.86 for October 2001 (or

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[7] *Exhibit "C", Rollo. p. 192.*
[8] *Exhibit "B", Rollo. pp. 190-191.*
[9] *Exhibits "D" and "D-1", Rollo. p. 193.*
[10] *Exhibit "L", Rollo. p. 206.*
[11] *Exhibit "F", Rollo. p. 196.*
[12] *Exhibit "E", Rollo. pp. 194-195.*
[13] *Exhibit "G" and "G-1", Rollo. p. 197.*

a total of US$1,061,786.84) in its Monthly Remittance Returns of Final Income Taxes Withheld for the said months.

On December 27, 2002, due to the alleged double remittance of **P5,296,773.05** representing 10% Final Tax on foreign currency transactions, Metrobank filed with the BIR a letter[14] requesting for the refund thereof.

On September 10, 2003, Metrobank appealed by way of a Petition for Review before this Court.

In his Answer to the Petition, filed on October 15, 2003, the Commissioner stated that the claim for refund is subject to administrative investigation by the BIR; that petitioner must prove that there was double payment of the tax sought to be refunded; that the claim for refund must have been filed within the prescriptive period in accordance with Section 229 of the 1997 NIRC, as amended; that in an action for refund, the burden of proof is on the taxpayer in establishing its right to a refund and failure to sustain the burden is fatal and that claims for refund are construed strictly against the claimant for the same partake the nature tax exemption.[15]

Meanwhile, on April 4, 2005, respondent's Large Taxpayers Audit and Investigation Division, through it Deputy Commissioner Kim S. Jacinto-Henares denied petitioner's claim for refund due to its failure to file the Alpha List reflecting the remittance of overpaid onshore income tax.[16]

As the proceeding of the case continues, petitioner presented as its witness, Ms. Agnes C. Lista, its Junior Assistant Manager, who testified that there was double payment of the 10% Final Tax on the subject FCDU transaction. She also claimed that it was on June 2002 that petitioner discovered the double payment when LHC furnished petitioner a copy of its Monthly Remittance Return or BIR Form 1601F.[17]

Petitioner also presented as its witness, Mr. Jesus Pangan, its Senior Finance Manager, who also testified that Metrobank has onshore tax overpayment because

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[14] *Exhibit "J", Rollo. 203-204.*
[15] *Rollo, pp. 28-30.*
[16] *Exhibit "9", BIR Records p. 178.*
[17] *Testimony of Ms. Agnes C. Lista, TSN, August 3, 2005, pp. 8-9.*

the bank uses an accrual basis of accounting. He further claimed that the 10% Final Tax was being paid on a monthly basis.[18]

On the other hand, respondent presented Revenue Officer IV, Ms. Edralin M. Celerio. According to Ms. Celerio, as Group Supervisor of respondent's Large Taxpayers Audit and Investigation Division, she recommended, after investigation, to deny petitioner's claim for refund because of the sole reason of its failure to submit the required Alpha List of payees for Final Withholding Tax. She further stated that the Alpha List is "a requirement called for in a particular section of the Tax Code that all the recipients or payor of the interest expense in this case, Metropolitan Bank and Trust Company, interest expense on the part of the debtor and interest income on the part of Metrobank. That the Alpha List will establish the allegation made by Metrobank that they [paid] the Final Withholding Tax on the income it generated from the particular debtor. And this list will clearly show or establish that they did so."[19]

After both parties submitted their documentary evidence, petitioner filed its memorandum and supplemental memorandum. Respondent did not file his memorandum. Hence, in a Resolution dated February 13, 2007, this case was submitted for decision.

THE ISSUES

The parties stipulated the following issues for the consideration of the Court:

> "1. Whether or not petitioner Metrobank is entitled to a tax credit or refund for its alleged double payment of P5,296,773.05(or $103,178.69) to respondent for calendar year 2001 representing the 10% final withholding tax on the interest income it earned from the foreign currency denominated loan it granted to Luzon Hyrdo Corporation;
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> 2. Whether or not petitioner Metrobank filed its claim for refund within the period prescribed in Section 229 of the Tax Code."[20]

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[18] *Testimony of Mr. Jesus Pangan, TSN, May 26, 2005.*
[19] *Testimony of Ms Edralin M. Celerio, TSN, July 25, 2006, pp. 7 and 16.*
[20] *Rollo. p. 51.*

THE COURT'S RULING

The Court shall primarily discuss the *Second Issue* (issue on prescription).

Applicable here are Sections 204(C) and 229 of the NIRC of 1997, as amended, which state that:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** **—** The Commissioner may —
>
> x x x
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a ***claim for credit or refund within two (2) years after the payment of the tax or penalty****:* Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. x x x"
>
> "**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."

The law mandates that the administrative and judicial remedy of filing a claim for refund of erroneously paid tax must be done within two years from the payment of the tax.

Here, petitioner's claim for refund covers 10% final withholding taxes arising from FCDU transactions for the months of March 2001 and October 2001. The total amount being claimed is P5,296,773.05 (P3,060,029.24 for March 2001 + P2,236,743.81 for October 2001).

For the month of March 2001, the 10% Final Tax on interest amounting to P3,060,029.24 was remitted by petitioner on April 25, 2001[21] as shown in its Monthly Remittance Returns of Final Income Tax Withheld or BIR Form 1601-F. Therefore, applying the two (2)-year requirement as mentioned in Sections 204 and 209 of the 1997 NIRC, counting two (2) years from April 25, 2001, petitioner has until April 25, 2003 within which to file its claim for refund for both administrative and judicial levels. Here, the administrative claim was filed on December 27, 2002.[22] However, the instant Petition for Review was filed on September 10, 2003, clearly way beyond April 25, 2003. Therefore, petitioner's claim referring to March 2001 in the amount of P3,060,029.24 was already barred by prescription.

For the month of October 2001, the 10% Final Tax on interest amounting to P2,236,743.81 was remitted by petitioner on November 12, 2001[23] as shown in its Monthly Remittance Returns of Final Income Tax Withheld or BIR Form 1601-F. Therefore, applying the two (2)-year requirement as mentioned in Sections 204 and 209 of the 1997 NIRC, counting two (2) years from November 12, 2001, petitioner has until November 12, 2003 within which to file its claim for refund for both administrative and judicial levels. Here, as mentioned above, the administrative

[21] *Exhibit "H-3", Rollo. p. 198.*
[22] *Exhibit "J", Ibid.*
[23] *Exhibit "I-2", Rollo. p. 201.*

claim was filed on December 27, 2002.[24] and the instant Petition for Review was filed on September 10, 2003. Hence, petitioner's claim referring to October 2001 in the amount of P2,236,743.81 was filed well within the two (2) year requirement.

The Court will now discuss the *First Issue*, whether or not petitioner-Metrobank is entitled to a tax credit or refund in the amount of P5,296,773.05. Since part of the total amount being claimed for refund of P5,296,773.05 is the P3,060,029.24 already barred by prescription, what is now left to be determined is whether or not there was double payment of the 10% Final Tax in the remaining amount being claimed of P2,236,743.81 for the month of October 2001.

Per BIR letter dated April 4, 2005, the respondent's denial of petitioner's claim of P5,296,773.05 was due to the latter's failure to file the Alpha List to reflect the remittance for the said overpaid onshore tax[25]. Thus, respondent does not dispute the fact that Luzon Hydro Corporation paid the 10% Final Taxes on the interest payments of its foreign currency denominated loan with petitioner for the months of March 2001 and October 2001 in the amounts of P3,060,029.24 and P2,236,743.81, respectively, or in the sum of P5,296,773.05. What is in issue is whether or not petitioner also paid the same final withholding taxes through the filing of its Monthly Remittance Returns of Final Income Taxes Withheld for the months of March 2001 and October 2001.

To substantiate its claim, petitioner presented the following documents:

Description	Exhibit
Petitioner's Monthly Remittance Return of Final Income Taxes Withheld for the month of March 2001	"H", "H-1" to "H-4", "H-1-a"
Petitioner's Monthly Remittance Return of Final Income Taxes Withheld for the month of October 2001	"I", "I-1" to "I-5"
Petitioner's Debit Ticket No. 5511264 dated March 2, 2001 showing the amount of the interest of US$635,576.70 and and Debit Ticket No. 0169653 dated October 31, 2001 showing the amount of the interest of US$430,722.86 that were collected from Luzon Hydro Corporation	"K" and "L"

24 *Exhibit "J", Ibid.*
25 *Exhibit "9", Ibid.*

Annual Income Tax Return for the calendar year ending December 31, 2001 of petitioner's FCDU unit	"M", "M-1" to "M-5"
Schedule of Onshore and Offshore Income and the Corresponding Income Tax of the petitioner's FCDU unit accompanying its Annual Income Tax Return for the calendar year ending December 31, 2001	"O", "O-1" to" O-3" "P", "P-1" and "Q"
Breakdown of the Offshore and Onshore Income for the calendar year ending December 31, 2001 as shown in the audited Schedule of Onshore and Offshore Income and the Corresponding Income Tax of petitioner's FCDU unit	"R" to "R-3"
Breakdown of the Interest Earned - L&D – FCDU Others: Onshore for the calendar year ending December 31, 2001 as shown in audited Schedule of Onshore and Offshore Income and the Corresponding Income Tax of the petitioner's FCDU unit	"S", "S-1"," S-1-a", "S-2" to "S-4", "S-4-a" and "S-4-b"
Breakdown of Luzon Hydro-Interest Earned and Collected For the calendar year ending December 31, 2001 as shown in the breakdown of the audited Schedule of Onshore and Offshore Income and the Corresponding Income Tax of the petitioner's FCDU unit	"T", "T-1" to "T-5"
Petitioner's Monthly Remittance Returns of Final Income Taxes Withheld for the months of January, February, April, May, June, July, August, September, November and December 2001	"V", "V-1", "W", "W-1" "X", "X-1", "Y", "Y-1" "Z", "Z-1", "AA", "AA-1" "BB", "BB-1", "CC-1" "DD", "DD-1", "EE", "EE-1"
Petitioner's Summary of Final Tax Remittances for the year 2001	FF, FF-1, FF-2

In its Memorandum, petitioner elaborated on the inclusion of the claimed final withholding taxes of P3,060,029.24 and P2,236,743.81 in its remittances to the BIR for the months of March and October 2001, respectively, as follows:

> "The inclusion of the Final Tax on the interest payments to Luzon Hydro Corporation in the Monthly Remittance Returns of Final Income Taxes Withheld filed by Metrobank on March and October 2001 is supported and confirmed by the following:
>
> a. The year end audited Breakdown of Offshore and Onshore Income (Exhibit "R") shows that the total interest income

earned by Metrobank from said source amounted to P3,180,200,899 (Exhibit "R-3");

b. Out of the total Offshore and Onshore Interest Income earned by Metrobank in 2001, P1,481,268,340 were earned from L&D-FCDU-OTHERS-ONSHORE (Exhibit "R-2");

c. The Breakdown of Interest Earned on L&D-FCDU-OTHERS-ONSHORE (Exhibit "S", inclusive) included the interest paid by Luzon Hydro Corporation for the months of March and October 2001 (Exhibit "S-1-a");

d. In computing for the Final Income Tax for the calendar year 2001, Metrobank deducted from the Gross Onshore Income exempt and tax paid income amounting to P1,569,842,417.00 arriving at a Net Onshore Income of P1,897,372,095.00 (Exhibit "P");

e. The interest payment of Luzon Hydro Corporation was included in the Net Onshore Income subject to 10% Final Tax since its name was not included in the Summary of Tax Credits (Exhibit "Q") submitted by petitioner to respondent;

f. The total amount of Final Tax remitted by Metrobank to respondent for the year 2001 amounted to P189,813,917.11 (Exhibit "FF-2"). The Final Tax to be paid by Metrobank for interest earned on FCDU Onshore loans amounts to P189,737,210.00 or a difference of P76,708.11;

g. Clearly, the Final Tax on the interest payment of Luzon Hydro Corporation amounting to P5,296,773.05 which was paid by the latter was likewise paid by Metrobank and remitted to respondent."[26]

The Court finds the documents submitted and explanations made by the petitioner insufficient.

It should be noted that the remaining amount being claimed for refund of P2,236,743.81 pertains to the peso equivalent of US$43,072.29, the 10% Final Tax on interest for October 2001 of US$430,722.86.

[26] *Rollo. pp. 321-322.*

Petitioner should be reminded that for the month of March 2001, the interest allegedly paid by LHC to petitioner was US$631,063.98 and, as previously mentioned, US$430,722.86 for October 2001 or for a total of **US$1,061,786.84**.

A scrutiny of petitioner-Metrobank's schedule of Breakdown of Interest Earned on L&D-FCDU-OTHERS-ONSHORE (*Exhibit "S"*)[27] revealed that the total interest it earned from LHC on the concerned period is **US$936,358.58**[28] (or P48,400,375.00). However, as previously discussed and as alleged by petitioner in its pleadings including this petition[29] , the total interest payment related[30] to the claimed 10% Final Tax was for **US$1,061,786.84**. Therefore, there is a difference of **US$125,428.26** (US$1,061,786.84 less US$936,358.58).

Also, a closer look at petitioner's submitted exhibits (Metrobank's debit tickets), to prove actual payment by LHC of its interest to petitioner, disclosed that the total amount paid was **US$1,066,299.56** (US$635,576.70 for March 2001- *Exhibit "K"* plus US$430,722.86 for October 2001- *Exhibit "L"*). The total amount of payment of **US$1,066,299.56** if compared to the total interest earned by petitioner from LHC on the concerned period of **US$936,358.58**[31] will reveal a difference of **US$129,940.98.**

Petitioner did not present enough proof to explain the discrepancies.

Furthermore, petitioner's gross onshore income in Philippine peso is P3,467,214,512.00 (*Exhibit "R"*) [32] and it includes the interest income of P48,400,375.00[33], the peso equivalent of the amount of **US$936,358.58** discussed above.

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[27] *Rollo. pp. 215-219.*
[28] *Exhibit S-1-a, Rollo. p. 216.*
[29] *Except on the second paragraph of petitioner's Memorandum which used the amount of US$635,576.70.*
[30] *Metrobank allegedly remitted to the BIR Final Tax equivalent to 10% of US$631,063.98 interest for March 2001 amounting to US$63,106.40 and 10% of US$430,722.86 interest for October 2001 amounting to US$43,072.29. The alleged total of the interest payment is US$1,061,786.84 and the total 10% Final Tax is US$106,178.69.*
[31] *Exhibit "S-1-a", Rollo. p. 216.*
[32] *Rollo. p. 214.*
[33] *The amount of P48,400,375.00 interest ("Exhibit S-1-a") is included in the amount of P1,481,268,340.00 stated in the Breakdown of Interest Earned ("Exhibit S-4-a"). The amount of P1,481,268,340.00 is in turn*

A study of petitioner's Computation of Tax for the year 2001 (*Exhibits "O" and "P"*)[34] revealed that it deducted from its gross onshore income of P3,467,214,512.00 an item described as:

> **"Exempt/tax paid income/income wherein counterparty shoulders the related tax"**

the amount of P1,569,842,417.00, thus leaving a difference of P1,897,372,095.00. Verification of other exhibits[35] disclosed that only the difference of P1,897,372,095.00 was actually subjected to 10% Final Tax.

After a careful study of the pieces of evidence submitted, this Court cannot verify if the remaining subject claim for refund of P2,236,743.81 (for October 2001) was included in the amount of P1,569,842,417.00, the amount not subjected by petitioner to the 10% Final Tax, and deducted as **"Exempt/tax paid income/income wherein counterparty shoulders the related tax"** from its gross onshore income.

Other than the Summary of Tax Credits for the year 2001 (*Exhibit "Q"*)[36], petitioner did not submit documents to sufficiently establish that the subject claim of P2,236,743.81 did not form part of the P1,569,842,417.00.

In sum, considering that there are inconsistencies in the evidence presented by petitioner, particularly the differences between the figure petitioner-Metrobank reflected as its interest earned from LHC in the amount of **US$936,358.58**[37] *(Exhibits "S" and "S-1-a") vis-a-vis* the amount of **US$1,061,786.84** in its pleadings and the total of the amounts reflected as interest payments made by LHC of **US$1,066,299.56**, evidenced by Metrobank's Debit Ticket Nos. 5511264 and 0169653 (*Exhibits "K" and "L"*) and considering further, that the Court cannot determine with certainty if the

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included in the amount of P3,467,214,512.00 declared in the Breakdown of Offshore and Onshore Income (Exhibit "R").

[34] *Rollo. pp. 211-212.*

[35] *Exhibits "FF-2", "V", "V-1", "W", "W-1" "X", "X-1", "Y", "Y-1" "Z", "Z-1", "AA", "AA-1" "BB", "BB-1", "CC-1", "DD", "DD-1", "EE", "EE-1".*

[36] *Rollo. 213.*

[37] *Exhibit "S-1-a", Rollo. p. 216.*

remaining amount of claim for refund of P2,236,743.81 did not form part of the P1,569,842,417.00, the amount that petitioner did not subject to the 10% Final Tax, the Court is constrained to deny petitioner's claim for refund.

Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it.[38] In the present case, petitioner failed to discharge its burden of establishing its claim for a tax refund or credit.

IN VIEW OF THE FOREGOING, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

[38] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332; and Commissioner of Customs vs. Court of Tax Appeals, 328 SCRA 822*

C E R T I F I C A T I O N

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.

ERNESTO D. ACOSTA
Presiding Justice