REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

STEAMSHIP COMPANY OF SVENDBORG AND STEAMSHIP COMPANY OF 1912,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 117
(C.T.A. Case No. 6567)

Present:
Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:

SEP 12 2006 [signature]

x- -x

D E C I S I O N

CASTAÑEDA, JR., *J.*:

This is a Petition for Review before the Court of Tax Appeals *En Banc* (the Court *En Banc*) pursuant to Section 18 of Republic Act No. 1125 as amended by Section 11 of Republic Act No. 9282 seeking for the amendment of the Decision promulgated on June 24, 2005 by the Second Division of this Court (the Court in Division) in C.T.A. Case No.

6567 entitled *Steamship Company of Svendborg and Steamship Company of 1912 vs. Commissioner of Internal Revenue* and the setting aside of the Resolution promulgated on September 1, 2005 denying petitioners' Motion for Partial Reconsideration. The dispositive portion of the assailed Decision reads as follows:

> "WHEREFORE, premises considered, the present Petition For Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioners are ordered to pay respondent the sum of P4,413,025.48, as deficiency income tax for the taxable year ended 1988, computed as follows:

	Petitioner	Amount	Total
1988 Deficiency Tax	Maersk	56,257.77	
1988 Deficiency Tax	Svendborg	971,464.41	
1988 Deficiency Tax	Steamship of 1912	971,464.41	1,942,928.82
1989 Deficiency Tax	Maersk	P 9,630.42	
1989 Deficiency Tax	Svendborg	1,235,048.33	
1989 Deficiency Tax	Steamship of 1912	1,235,048.33	2,470,096.66
Total			**4,413,025.48**

> plus 20% delinquency interest per annum computed from November 16, 2002 until fully paid, pursuant to Section 249 of the NIRC of 1977, as amended.
>
> SO ORDERED."

This Petition for Review seeks to amend the Decision and reverse the Resolution denying petitioners' Motion for Partial Reconsideration in the following manner: (a) to declare the demurrage fees collected by petitioners from consignees of cargoes originating from outside the Philippines not subject to the 35% regular corporate income tax imposed under Section 25 (a) (1) of the 1977 Tax Code; (b) to cancel the deficiency income tax assessments issued against petitioners in the amount of P971,464.41 each for the taxable year 1988 and in the amount of P1,235,048.33 each for taxable year 1999 (hereinafter the "Sustained Assessments"); and (c) to reverse the Order against petitioners to pay respondent the Sustained Assessments plus 20% delinquency interest per annum computed from 16 November 2002 until fully paid.[1]

THE FACTS

The pertinent facts as culled from the assailed Decision are as follows:

> "4. Petitioner Maersk-Tabacalera Shipping, Agency (Filipinas), Inc. (now MAERSK-FILIPINAS, "INC.), and hereinafter referred to as "Maersk" for brevity, is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 900 Romualdez; Street, Paco, Manila, Philippines, where it may be served with processes of this Honorable Court; petitioners Steamship Company of Svendborg, hereinafter referred to as "Svendborg," and Steamship Company of 1912, hereinafter referred to as "Steamship of 1912" are foreign corporations organized and existing under the laws of Denmark and engaged in international shipping with Maersk as the general agent in the Philippines and, as such, may be served with processes of this Honorable Court through its agent, Maersk, at the latter's principal office."
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> 5. Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue, National Office, Diliman, Quezon City, where he may be served with summons.
>
> 6. On January 22, 1992, petitioner Maersk received from respondent a demand letter dated January 6, 1992 together with various assessment notices (Assessment Notice No. FAS-1-88-89-91) for alleged deficiency income taxes and deficiency withholding taxes for the taxable years 1988; and 1989 in the aggregate amount of P8,882,466.81 which are broken down as follows:

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1 Petition for Review, p. 4

Taxpayer	Annex	Year	Tax Type	Amount
Maersk-Tabacalera	"B-1"	1988	IncomeTax	P1,200,708.83
Svendborg	"B-1"	1988	Income Tax	991,464.41
Steamship of 1912	"B-1"	1988	Income Tax	991,464.41
Maersk-Tabacalera	"B-2"	1988	Withholding Tax	1,054,234.97
Maersk-Tabacalera	"B-2"	1989	Income Tax	1,140,971.67
Svendborg	"B-3"	1989	Income Tax	10,888.75
Steamship of 1912	"B-3"	1989	Income Tax	10,888.75
Svendborg	"B-3"	1989	Income Tax	1,255,048.33
Steamship of 1912	"B-4"	1989	Income Tax	1,255,048.33
Maersk-Tabacalera	"B-4"	1989	Withholding Tax	911,748.36

7. The copies of the Demand letter and assessment notices for the alleged deficiency income tax and deficiency withholding tax assessments attached as Annexes "B" and "B-1" to "B-4" of the Petition for Review are faithful reproduction of the originals.

8. Petitioners duly protested the said demand letter and assessment notices through a protest-letter dated February 20, 1992 timely filed with the respondent, through the Chief, Accounts Receivable/Billing Division of the BIR National Office.

9. The copy of petitioners' protest letter attached as Annex "C" of the Petition for Review is a faithful reproduction of the original.

10. In reply to petitioners' protest, respondent issued the Decision dated August 8, 2002, copy of which was received by petitioners on October 16, 2002, ordering petitioners to pay the deficiency income tax assessments in the aggregate amount of P6,856,483.48, broken down in paragraph 3 hereof, and stating that the Decision constitutes our final decision on the matter. Paragraph 3 is quoted hereunder:

> "3. In the Decision, respondent cancelled the deficiency withholding tax assessments but reiterated the deficiency income tax assessments and ordered petitioners to pay the following amounts:

Year	Tax Type	Taxpayer	Amount
1988	deficiency income tax	Maersk-Tabacalera	P1,200,708.83
1988	deficiency income tax	Svendborg	991,464.41
1988	deficiency income tax	Steamship of 1912	991,464.41
1989	deficiency income tax	Maersk-Tabacalera	1,140,971.67
1989	deficiency income tax	Svendborg	1,255,048.33
1989	deficiency income tax	Steamship of 1912	1,255,048.33
1989	deficiency income tax	Svendborg	10,888.75
1989	deficiency income tax	Steamship of 1912	10,888.75
TOTAL DEFICIENCY TAXES			P6,856,483.48"

xxx xxx xxx

> 14. The respondent cancelled the deficiency withholding tax assessments against Maersk for the taxable years 1988 and 1989 in the amount of P1,054,234.97 and P911,748.36, respectively, leaving in issue the deficiency income tax assessments for 1988 and 1989 in the aggregate amount of P6,856,483.48.
>
> xxx xxx xxx
>
> 17. Petitioners Svendborg and Steamship of 1912 collect demurrage fees from importers.
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> 18. Respondent maintains that the demurrage fees collected by Svendborg and Steamship of 1912 (principals of Maersk) are not as part of gross Philippine billings but are considered "other income" subject to regular corporate income tax pursuant to Section 25(a)(1) of the Tax Code [now Section 28(A)(1) of the National Internal Revenue Code of 1997], in relation to Section 15 of Revenue Regulations No. 2 (Income Tax Regulations), as amended by Revenue Regulations No. 8-75, quoting Section 2 of Rev. Regs. 8-75.
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> 19. The assessment for deficiency income tax against Svendborg and Steamship of 1912 of P10,888.75 each arose from a finding of additional freight revenue for November, 1989.
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> xxx xxx xxx
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> 25. The deficiency income tax, assessments, against Svendborg and Steamship of 1912 of P991,464.41 each for 1988 and P1,225,048.33 each for 1989 arose purely from the demurrage fee which respondents claims to be subject to the 35% corporate-income tax.
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> 26. The demurrage fee is a fee collected for the inbound cargoes of importers.
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> 27. The demurrage rates are fixed in accordance with the Transpacific Westbound Rate Agreement to which Maersk is a signatory." [2]

In the assailed Decision, the Court in Division noted that the other petitioner in C.T.A. Case No. 6567, Maersk-Filipinas, Inc., did not contest and in fact admitted that it is liable for the 1988 and 1989

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2 Assailed Decision, pp. 3 to 8

deficiency income tax based on the disallowed medical expenses. Thus, the Court in Division found Maersk-Filipinas, Inc. liable for deficiency income tax in the amount of P56,257.77 for 1988 and P9,630.42 for 1989 instead of P1,200,708.83 and P1,140,971.67 respectively.

On July 13, 2005, the petitioners filed a Motion for Partial Reconsideration of the Decision in C.T.A. Case No. 6567, which was, as stated at the outset, denied by the Court in Division in a Resolution promulgated on September 1, 2005. Hence, this appeal to the Court *en banc* by way of Petition for Review filed on October 13, 2005 by herein petitioners Steamship Company of Svendborg and Steamship Company of 1912. Maersk-Filipinas, Inc. neither filed a Motion for Reconsideration[3] nor filed an appeal from the Decision within the period allowed pursuant to the Rules of Court.

ASSIGNMENT OF ERRORS

In their Petition for Review, petitioners made the following assignment of errors:

1.

THE SECOND DIVISION ERRED IN RULING THAT INTERNATIONAL SHIPPING INCOME, SUCH AS DEMURRAGE, THAT DO NOT FORM PART OF GROSS PHILIPPINE BILLINGS UNDER SEC. 25(a)(2) OF THE 1977 TAX CODE IS NEVERTHELESS SUBJECT TO THE REGULAR CORPORATE INCOME TAX UNDER SEC. 25(a)(1) OF THE SAME CODE.

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3 Motion for Leave to Intervene and to Admit Petition in Intervention, p. 5.

2.

THE SECOND DIVISION ERRED IN TAXING DEMURRAGE, AN INCIDENTAL CHARGE, SEPARATELY FROM FREIGHT REVENUES.

3.

THE SECOND DIVISION ERRED IN IMPOSING A 35% TAX ON GROSS DEMURRAGE WHEREAS FREIGHT REVENUE DERIVED FROM THE MAIN BUSINESS ACTIVITY OF INTERNATIONAL SHIPPING IS TAXED ONLY AT 2 ½% ON GROSS PHILIPPINE BILLINGS.

4.

THE SECOND DIVISION ERRED IN APPLYING STRICT CONSTRUCTION OF TAX EXEMPTIONS INSTEAD OF FIRST APPLYING THE WELL SETTLED DOCTRINE OF STRICT INTERPRETATION OF IMPOSITION OF TAXES.

5.

THE SECOND DIVISION ERRED IN RULING THAT DEMURRAGE IS INCOME RATHER THAN A PENALTY AND A MERE RETURN OF CAPITAL.

6.

THE SECOND DIVISION ERRED IN CHARACTERIZING DEMURRAGE AS INCOME FROM PROVISION OF SERVICES OR RENTALS SUBJECT TO THE 35% ORDINARY CORPORATE INCOME TAX INSTEAD OF ADOPTING THE WELL ACCEPTED CHARACTERIZATION OF DEMURRAGE AS PART OF FREIGHT.

PETITIONERS' ARGUMENTS

Petitioners argue that under the assailed Decision, the income of international carriers not forming part of gross Philippine billings would be subject to 35% regular corporate income tax based on net income. The necessary implication of such an interpretation is that even freight revenues on inbound cargoes, which are clearly not part of gross

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Philippine billings because the term is defined by law to include only income from outbound cargoes, will be subject to income tax in the Philippines at the regular corporate income tax rate. According to the petitioners, this is clearly not the intention of the law considering that Section 25(a)(1) imposing the 35% regular corporate income tax is the general rule on taxability of resident foreign corporations. Being a general rule, it applies only in the absence of other specific provisions in the Tax Code, however, Section 25(a)(2) specifically provides that international carriers are subject to a 2.5% tax on "Gross Philippine Billings" thus the regular corporate income tax imposed under Sec. 25(a)(1) should not apply. Absent a clear mandate to tax separately international shipping income not forming part of gross Philippine billings, no other form of income tax can be legally imposed on international carriers with respect to their income as such.

According to the petitioners, the Decision imposes an exorbitant 35% tax on demurrage when freight revenues from the main business activity engaged in for profit is taxed only on Gross Philippine Billings at a much lower rate and based only on revenues from outbound cargoes. The Decision creates an anomalous situation where the freight revenue derived from the main business activity of petitioners is taxed only on Gross Philippine Billings based on revenues on cargoes originating from the Philippines whereas demurrage, an incidental charge or penalty imposed on inbound cargo not for profit but only to ensure the prompt return of containers will be taxed at 35% of the gross amount. While admittedly the regular corporate income tax is based on net income, the extreme difficulty in determining the cost basis and deductions pertaining to demurrage effectively makes the regular corporate income tax a tax on gross income. Petitioners maintain that demurrage is not income from a contract of lease but primarily a penalty which must be treated as a mere return of capital. Petitioners argue that even assuming for the sake of argument that demurrage is a form of rental or lease fee, the 35% ordinary corporate income tax would not apply to petitioners who are residents of Denmark pursuant to the provisions of the Convention between the Philippines and Denmark for the Avoidance of Double Taxation with Respect to the Taxes on Income and Capital (RP-Denmark Tax Treaty signed on December 16, 1966 and entered into force on January 1, 1974). Under Article III of the aforementioned Treaty, the business profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other contracting state through a permanent establishment situated therein but the term profits excludes income from the rental of personal property pursuant to Art. III (7) of the treaty. In any event, demurrage arises from a transaction between the offshore shipper and the international carrier and is therefore not attributable to a permanent establishment that the international carrier may have in the Philippines. There is therefore no basis to impose the 35% ordinary corporate income tax on the demurrage.

On October 14, 2005, the Association of International Shipping Lines, Inc., filed a Motion for Leave to Intervene and to Admit Petition-in- Intervention. In its Motion, the would-be intervenor alleged that it is a non-stock, non-profit association of international shipping lines duly organized and existing under Philippine laws. It is the umbrella organization of forty-eight (48) international shipping lines operating in the Philippines, of which Maersk-Filipinas, Inc., *(a company engaged in the business of acting as general agent in the Philippines for foreign principals engaged in international shipping, which include, among others, petitioners Steamship Company of Svendborg and Steamship Company of 1912, which are foreign corporations engaged in international shipping)* is a member in good standing and organized for the primary purpose of establishing, maintaining and perpetuating amiable relations and closer cooperation between and among its members. Among other things being coordinated by would-be intervenor is the collection and monitoring of demurrage fees on behalf of some member international shipping lines.

Would-be intervenor alleges that it has a legal interest in the matter in litigation having international shipping companies as members collecting such demurrage fees and not subjecting the same to ordinary corporate income tax as being imposed by the Respondent. Member international shipping lines of would-be intervenor are similarly situated with the petitioners having collected such demurrage fees and not subjecting said fees to the regular corporate income tax. As such, they are adversely affected by any decision of the Court and the action of the respondent imposing the regular corporate income tax on said demurrage fees. All the member shipping lines of the would-be intervenor will be placed at a great disadvantage if the position of the respondent taxing said fees will be finally affirmed by the Court *en banc*.

The would-be intervenor admits that "[u]nder the rules on intervention, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. Discretion is a faculty of a court or an official by which he may decide a question either way, and still be right."[4]

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[4] Motion for Leave to Intervene and to Admit Petition in Intervention, p. 7.

On October 25, 2005, this Court issued a Resolution requiring the parties to Comment on would-be intervenor's motion. On November 11, 2005, this Court required respondent to Comment on petitioners' Petition for Review within ten (10) days from receipt thereof.

On November 17, 2005, Respondent Commissioner filed an Opposition against the would-be intervenor's Motion for Leave to Intervene and To Admit Petition-in-Intervention. Respondent argues that petitioner-intervenor is not a party-in-interest. In the first place, no assessment was issued against it. Hence, Section 2, Rule 3 of the 1997 Rules of Civil Procedure categorically provides:

> "SEC. 2. Parties in interest – A real party in interest is the party who stands to be benefited or injured by the judgment in a suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest."

Section 1, Rule 19 of the 1997 Rules of Civil Procedure likewise provides:

> "SEC. 1. Who may intervene. – Any person who has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The Court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding."

Moreover, according to the respondent, it is too late for herein petitioner-intervenor to intervene in the proceedings since the same is already before the Court *en banc*. Intervenor should have done so in the early stages of the proceeding.

On November 24, 2005, the would-be intervenor filed a Motion for Leave to File Opposition and to Admit Reply to Opposition. It argues that it has a legal interest in the matter in litigation having as its members international shipping lines which are similarly situated with the Petitioners having collected such demurrage fees and not subjecting said fees to the regular corporate income tax. As such, *they* are adversely affected by any decision of the Court and the action of the respondent imposing the regular corporate income tax on said demurrage fees. It also argues that Sec. 2 of Rule 19 of the 1997 Rules of Civil Procedure allows the filing of a motion to intervene at any time before the rendition of judgment, hence, its Motion for Intervention can still be filed and may still be granted by the Court in its discretion.

THIS COURT'S RULING

The right to intervene is not an absolute right. The statutory rules or conditions for the right of intervention must be shown.[5] The would-be intervenor, the Association of International Shipping Lines, Inc., has not shown its legal interest in the matter under litigation as

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5 *Big Country Ranch Corporation vs. Court of Appeals, Max B. Palarca and Golden Flame Sawmill Corporation,* G.R. No. 102927, October 12, 1993.

required by Sec. 1 of Rule 19 of the 1997 Rules of Civil Procedure which provides that any person who desires to intervene in an action or proceeding must have a legal interest in the matter under litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof. The would-be intervenor is aware of this when it stated in its motion that "[a]s such, *they* are adversely affected by any decision of the Court and the action of the respondent imposing the regular corporate income tax on said demurrage fees"[6] referring to its members' predicament, not its own interest. The members of the would-be intervenor are the ones who may be affected by the ruling of this Court, however, they are still not clothed with legal interest as pointed out by the respondent because the assessments in question pertains only to the petitioners herein.

In its Motion for Leave to Intervene, the Association of International Shipping Lines, Inc. alleges that it is the umbrella organization of forty-eight (48) international shipping lines operating in the Philippines, of which Maersk-Filipinas, Inc. is a member of good standing. That Maersk-Filipinas, Inc. is engaged in the business of

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6 Motion for Leave to Intervene and to Admit Petition-in-Intervention, p. 6.

acting as general agent in the Philippines for foreign principals engaged in international shipping, which include, among others, petitioners Steamship Company of Svendborg and Steamship Company of 1912. Notably, it does not allege that petitioners Steamship Company of Svendborg and Steamship Company of 1912 are also their members. It is therefore clear that the would-be intervenor derives its alleged legal interest from its member Maersk-Filipinas, Inc. which was a party to the original Petition for Review in C.T.A. Case No. 6567. In fact, the official receipts covering the payment of the docket fees are in the name of Maersk-Filipinas, Inc. and not in the name of the Association of International Shipping Lines, Inc. and in all pleadings filed by the would-be intervenor, it appears that Maersk-Filipinas, Inc. would be reinstated as a petitioner in the present appeal. This Court cannot allow a party who had lost its right to appeal to be reinstated through a mere motion for intervention.

After the assailed Decision was rendered by the Court in Division, Maersk-Filipinas, Inc., did not file a Motion for Reconsideration. Neither did it file an appeal, hence, the failure of Maersk-Filipinas, Inc. to file a Motion for Reconsideration and to appeal the Court's Decision rendered the assailed Decision final and unappealable as regards Maersk-

Filipinas, Inc. Therefore, Maersk-Filipinas, Inc. had lost its legal standing to seek an affirmative relief from this Court.

The present Petition for Review was filed by Steamship Company of Svendborg and Steamship Company of 1912 only. Considering that Maersk-Filipinas, Inc. is no longer a party to the present appeal, the Association of International Shipping Lines, Inc. has likewise no legal interest in the matter under litigation considering that it derives its alleged legal interest from its members, none of which is a real party in interest in this appeal. A motion for intervention filed when the judgment is already final and executory should be denied considering that there is no pending principal action wherein the would-be intervenor may intervene.

We shall now discuss the merits of the petition. The errors assigned by the petitioners can be reduced to a single issue, that is, whether or not demurrage fees are considered as income of the petitioners, as international carriers, that are subject to the 35% regular corporate income tax under Sec. 25(a)(1) of the 1977 National Internal Revenue Code (NIRC) in addition to the 2 ½ % tax imposed on their Gross Philippine Billings under Sec. 25(a)(2).

As stated in the assailed Decision, petitioners collect demurrage fees from consignees who failed to return the carrier's containers within the allotted free time. This fee is imposed to force consignees to unload their cargoes from the containers to enable the carrier to use the container for outbound cargoes. Petitioners contend that as international carriers, they are taxable only on freight arising from shipments originating from the Philippines, pursuant to Section 25(a)(2) of the 1977 NIRC, which provides:

> "SEC. 25. Rates of tax on foreign corporations. —
>
> (a) Tax on resident foreign corporations. — (1) In General. — Unless otherwise provided, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to a tax equivalent to 35% of the taxable income derived in the preceding taxable year from all sources within the Philippines.
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> (2) International Carriers. — International carriers doing business in the Philippines shall pay a tax of two and one-half percent (2 ½%) on its 'Gross Philippine Billings' as defined hereunder:
>
> (A) International Air Carrier. — xxx xxx xxx
>
> (B) International Shipping. — "Gross Philippine Billings" means gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents."

According to the petitioners, the above provision defines "Gross Philippine Billings" as gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents. Consequently, Gross Philippine Billings shall be the only income of international carriers that should be subject to tax pursuant to the abovementioned provision. Petitioners assert that absent a clear mandate to tax separately international shipping income not forming part of gross Philippine billings, as the demurrage fees in question, no other form of income tax can be legally imposed on international carriers with respect to their income as such.

We do not agree.

First, petitioners are considered as resident foreign corporations doing business in the Philippines. As resident foreign corporations, petitioners were not able to show that they are beyond the scope of Section 25(a) of the 1977 NIRC which imposes the 35% regular corporate income tax on the net income of all resident foreign corporations, it provides in part:

> "SEC. 25. Rates of tax on foreign corporation. —
>
> (a) Tax on resident foreign corporations (l) In general. — Unless otherwise provided, **a corporation organized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to a tax equivalent to 35% of the taxable income** derived in the preceding taxable year from all sources within the Philippines." *(Emphasis supplied)*

We concur with the ruling of the Court in Division that the provisions of Sec. 25 (a) (2) in relation to Sec. 25 (a) (1) of the 1977 NIRC did not preclude its imposition upon international carriers such as petitioners herein, thus:

> "The above provision provides that in general, resident foreign corporations are subject to 35% corporate income tax on their taxable

> income derived from all sources within the Philippines. **The different rate provided for "Gross Philippine billings" with regard to international carriers did not preclude the latter from being subjected to the 35% corporate income tax on their income other than Gross Philippine Billings, pursuant to Section 25 (a)(1). To construe otherwise would be to provide an exemption where no exemption is intended.** Settled is the rule that exemptions from taxation are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority primarily because taxes are the lifeblood of government and their prompt and certain availability is an imperious need. Thus, to be exempted from payment of taxes, it is the taxpayer's duty to justify the exemption "by words too plain to be mistaken and too categorical to be misinterpreted *(Province of Tarlac vs. Alcantara, 216 SCRA 797-798).*" *(Emphasis supplied)*

Secondly, demurrage fees are definitely income or revenue accruing to the international carriers, hence, "consignees who fail to take delivery of their containerized cargo within the 10-day free period are liable to pay demurrage charges"[7]. Petitioners argue that demurrage fee is a penalty imposed upon the consignees. No matter how petitioners describe the fees or charges for consignees' failure to take delivery of their containerized cargoes, demurrage charges consists of an inflow of funds to the international carriers which are neither capital contributions nor incurrence of liabilities. It cannot be understood in any other manner except in the concept of income to the petitioners. The Court in Division is correct when it ruled:

> "The words 'income from any source', mentioned in the foregoing section [Sec. 25(a)(1) of the 1977 NIRC], disclose a legislative policy to include all income not expressly exempted within the class of taxable income under our laws. **Income means "cash**

7 *Telengtan Brothers & Sons, Inc., vs. United States Lines, Inc. and the Court of Appeals,* G.R. No. 132284, February 28, 2006.

> **received or its equivalent;" it is the amount of money coming to a person within a specific time . . .; it means something distinct from principal or capital.** For, while capital is a fund, income is a flow. As used in our income tax law, "income" refers to the flow of wealth *(Commissioner of Internal Revenue v. British Overseas Airways Corporation, 149 SCRA 407). (Emphasis supplied)*
>
> It is undeniable that petitioners are rendering service to its client in providing containers for their use. For the extended use of the containers, petitioners are charging demurrage fees. Although, petitioners call it a penalty, they are in effect imposing a form of rental or lease fee for the continued use of the containers. The cash or its equivalent that they receive is a flow of wealth."

Thirdly, the demurrage fees are income derived from sources within the Philippines. The subject demurrage fees were generated within the Philippines, hence, "the containers as well as the payments exchanged hands here. Thus, the flow of wealth proceeded from, and occurred within Philippine territory, enjoying the protection accorded by the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government *(Commissioner of Internal Revenue vs. British Overseas Airways Corporation, supra).*"[8]

WHEREFORE, finding no cogent reason to disturb the findings and conclusions reached by the Court in Division in the assailed Decision dated June 24, 2005 as well as in the assailed Resolution dated September 1, 2005, the same are hereby **AFFIRMED**.

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8 Assailed Decision, p.20.

Accordingly, the Petition for Review filed with the Court *en banc* on October 13, 2005 is hereby **DISMISSED** for lack of merit.

SO ORDERED.

JUANITO C. CASTANEDA, JR.,
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of this Court before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice