REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SHV CALOR ASIA B.V.
Petitioner,

- versus -

C.T.A. CASE NO. 6242

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 1 6 2003

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DECISION

This case involves a claim for refund of documentary stamp taxes alleged to be erroneously paid by the petitioner on its purchase of shares of stock in a domestic corporation amounting to P1,482,350.25.

Petitioner SHV Calor Asia B.V. is a foreign corporation not doing business in the Philippines, duly organized and existing under the laws of The Netherlands, with address at Rijnkade 1, 3511 LC Utrecht, The Netherlands.[1] It is the majority shareholder of and holds the controlling interests in Liquigaz Philippines Corporation (Liquigaz),[2] a domestic corporation engaged in the wholesale distribution of liquefied petroleum gas in

[1] Stipulated Facts, par. A.
[2] *Ibid,* par. B.

the Philippines. Petitioner was registered as a one-time taxpayer with the Bureau of Internal Revenue (BIR) on January 11, 1999.[3]

Liquigaz initially had an authorized capital stock of Forty Million Pesos (P40,000,000.00) divided into Forty Thousand (40,000) shares with par value of One Thousand Pesos (P1,000.00) per share. These shares were fully subscribed, of which forty percent (40%) equivalent to Sixteen Thousand (16,000) shares (the Issued Shares) were held by Hyatt Terminal and Industrial Corporation (Hyatt), Cesar T. Lee, Fernando C. Castro and Ricardo R. Lara (referred collectively as the Sellers).[4]

On October 10, 1996, the stockholders and the directors of Liquigaz approved an increase of its authorized capital stock from Forty Million Pesos (P40,000,000.00) to Three Hundred Eighty Six Million Pesos (P386,000,000.00), divided into Three Hundred Eighty Six Thousand (386,000) shares.[5]

Out of the increase in the authorized capital stock, Hyatt subscribed to One Hundred Thirty Eight Thousand Four Hundred (138,400) shares (the Unissued Shares),[6] equivalent to forty percent (40%) of the increase in the authorized capital stock. Pending the approval of the increase in the authorized capital stock by the Securities and Exchange Commission (SEC), no stock certificate was issued for these shares subscribed by Hyatt.

With the additional subscription of Hyatt, the aggregate shareholding of the Sellers in Liquigaz increased to One Hundred Fifty Four Thousand Four Hundred (154,400)

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[3] Exhibit I.
[4] Exhibit B.
[5] Exhibit C.
[6] Exhibit C-1.

shares which is forty percent (40%) of the total shares of Liquigaz, broken down as follows:

Shareholdings of the Sellers
After the Additional Subscription of Hyatt

Hyatt Terminal and Industrial Corporation	154,397 shares
(with stock certificate – 15,997 shares)	
(without stock certificate – 138,400 shares)	
Cesar T. Lee	1 share
Fernando C. Castro	1 share
Ricardo R. Lara	1 share
	154,400 shares

On March 2, 1998, with the increase in authorized capital stock of Liquigaz still pending approval with the SEC, the Sellers sold all their above-mentioned shares (the Issued and the Unissued Shares) in Liquigaz to petitioner by virtue of a Stock Purchase Agreement (Agreement)[7] executed by and among them for the total contract price of Six and One-Half Million Dollars (US$6,500,000.00) or Forty Two and 98/1000 Dollars (US$42.098) per share.

In order to convey the shares from the Sellers to petitioner, the Sellers delivered their duly endorsed stock certificates of the 16,000 Issued Shares and on March 2, 1998, Hyatt executed a Deed of Assignment Separate from Stock Certificate (Deed) covering the 138,400 Unissued Shares in favor of petitioner.[8] Since petitioner paid the documentary stamp taxes (DST) on the purchase of the Issued and Unissued Shares only on March 1, 1999, it was liable to pay surcharge in the amount of P495,719.00 in addition

[7] Exhibit D.
[8] Exhibit E.

to the basic DST of P1,158,000.00. Thus, petitioner paid the total amount of P1,653,719.00 as documentary stamp taxes on the stock so purchased.[9] Petitioner likewise paid documentary stamp taxes on the Deed in the sum of P1,482,350.25,[10] consisting of P1,038,000.00 basic DST and surcharge of P444,350.25.

It is the allegation of the petitioner that when it reviewed its DST payments, it found out that it erroneously paid DST on the Deed, as if the assignment of the Unissued Shares under the Deed was not covered by or included in the assignment of the Issued and the Unissued Shares under the Agreement. Consequently, on February 1, 2001, petitioner filed with the Appellate Division of the BIR a written claim for refund of erroneously paid DST in the amount of P1,482,350.25.[11] Said request for refund still pending investigation with the BIR,[12] petitioner filed the instant petition on February 28, 2001 to toll the running of the two-year prescriptive period.

The parties submitted the following issues for determination by this court, to wit:

(1) Whether or not petitioner erroneously paid DST twice on its purchase of shares of stock in Liquigaz; and

(2) Whether or not petitioner is entitled to a refund of the DST it erroneously paid.

Section 176 of the Tax Code, as amended, provides:

> "**SEC. 176. *Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Due-bills, Certificates of Obligation, or Shares of Certificates of Stock.*** – On all sales, or agreements to sell, or

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[9] Exhibits F & F-1.
[10] Exhibits G & G-1.
[11] Annex "J", Petition for Review.
[12] Stipulated Facts, par. D.

memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation, or shares or certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificate of obligation or stock, there shall be collected a documentary stamp tax of One peso and fifty centavos (P1.50) on each Two hundred pesos (P200), or fractional part thereof, of the par value of such due-bill, certificate of obligation or stock: *Provided*, That only one tax shall be collected on each sale or transfer of stock or securities from one person to another, regardless of whether or not a certificate of stock or obligation is issued, indorsed, or delivered in pursuance of such sale or transfer: and *Provided, further*, That in the case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock. (Underscoring supplied.)

In the case at bar, the taxable transaction is the transfer of the Sellers' Issued and Unissued Shares totaling 154,400 shares, with a par value of One Thousand Pesos (P1,000.00) per share, or a total par value of One Hundred Fifty-four Million Four Hundred Thousand Pesos (P154,400,000.00), to petitioner. Under Section 176 aforequoted, petitioner is thus required to pay P1,158,000.00 basic DST computed at P1.50 for every P200.00, or fractional part thereof, of the par value, as follows:

154,400 shares x P1,000 = P154,000,000.00

P154,000,000.00/P200 = 772,000

772,000 x P1.50 = P1,158,000.00

Petitioner paid said amount on March 1, 1999 as evidenced by Philippine Veterans Bank Official Receipt No. 180939A *(Exhibit F)*. A surcharge of 25% due to late payment of the basic DST in the amount of P495,719.00 was likewise paid by the petitioner *(Exhibit F-1).*

On the same date, petitioner paid the amount of P1,038,000.00 basic DST on the Unissued Shares subject of Deed of Assignment Separate from Stock, plus 25% surcharge of P444,350.25 *(Exhibits G and G-1)*, computed below:

Basic DST	P1,038,000.00
[138,400 shares x P1,000 = P138,400,000 P138,400,000/P200 = 692,000 692,000 x P1.50 = P1,038,000]	
Surcharge	444,350.25
Total Amount Paid	P1,482,350.25

The amount of P1,482,350.25 is the present subject claim for refund which petitioner asserts constitutes a double payment.

We agree with the petitioner.

In order to convey the shares from the Sellers to petitioner pursuant to Article 5.3(a) & (b) of the Agreement, the Sellers were obligated to deliver to petitioner the original stock certificates of the Issued Shares and a Deed of Assignment covering the Unissued Shares, *viz*:

> 5.3 Proceedings at Closing
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> On closing, the SELLERS shall deliver to the BUYERS the following documents:
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> a. Original stock certificates of HTIC, Cesar T. Lee, Fernando C. Castro and Ricardo R. Lara, for a total of 16,000 shares, duly endorsed in blank or accompanied by duly accomplished assignment separate from certificate;
>
> b. Assignments of Subscription by HTIC, for a total of 138,400 shares;

As adverted to earlier, pursuant to the Agreement, the Sellers delivered their duly endorsed stock certificates of the Issued Shares to petitioner and Hyatt executed on March 2, 1998, a Deed of Assignment Separate from Stock Certificate covering its Unissued Shares in favor of petitioner.

Considering that the Agreement covered the transfer of both the Issued and the Unissued Shares of the Sellers to petitioner, it should not have paid documentary stamp tax on the Deed since it covered the same transfer of Unissued Shares from the Sellers to petitioner. Simply put, the Deed of Assignment Separate from Stock Certificate covers the 138,400 shares which were part of the Stock Purchase Agreement covering the 154,400 shares. There being only one transfer of shares to speak of, only one DST is due notwithstanding the presence of two separate documents evidencing the same transaction. This has been clearly provided under Section 176 earlier cited. In other words, there was a clear-cut double payment of DST made by petitioner. Petitioner's witness explained this erroneous payment, viz:

> ATTY. MELO:
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> How did the erroneous payment happened (sic), Mr. Witness?
>
> MR. BUYAGONG:
>
> It was previously in the account of Liquigaz which was with Romulo Mabanta Law Offices however they had differences so Liquigaz pull the account and transfer it to Sycip Salazar Hernandez & Gatmaitan. At the time Romulo Mabanta Law Offices prepared and initiated the documentation of the sales of the shares of Hyatt Terminals and Liquigaz to SHV Galor (sic) Asia, that was in 1998, however, when the account of Liquigaz was transferred to us the DST on the transaction was not yet paid so our firm informed SHV Calor Asia and Liquigaz that the DST has not yet been paid and must be paid with penalties and surcharge. So, we did not draft the document and we noted that

> when we paid the DST, the previous associates who handled the account paid the DST and considered both the Stock Purchase Agreement covering 154,400 plus the Deed of Assignment separate from Stock Certificate covering 138,400. He did not know that the Deed of Assignment separate from the Stock was prepared pursuant to those conditions in the Stock Purchase Agreement but he did not refer to another sale of shares because at that time Hyatt Terminals only had 154,400 shares of remittances. xxx*(TSN, September 18, 2001, pages 21-22)*.

It bears stressing that the respondent never contested petitioner's allegation of double payment of DST and surcharge in the amount of P1,482,350.25. No evidence was presented by respondent to refute petitioner's averments. In fact, he was declared to have waived the presentation of evidence for the consistent failure of his counsel to present his case (*page 203, CTA records*). Nor did he submit a memorandum.

Article 2154 of the New Civil Code provides that "if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises." There being no doubt that petitioner paid documentary stamp tax twice on its purchase of shares of stocks (the purchase of the 154,400 shares of stock by petitioner from the Sellers) when the law only imposes a single tax to be collected involving a singular transaction. Thus, there arises an obligation on the part of the respondent to return what was mistakenly paid by petitioner twice. Therefore, petitioner is entitled to the refund of P1,482,350.25 representing the documentary stamp tax paid on the Unissued Shares of 138,400 covered by the Deed of Assignment Separate from Stock Certificate.

WHEREFORE, petitioner's claim for refund of erroneously paid documentary stamp taxes on its purchase of shares of stock in a domestic corporation is hereby

GRANTED. Accordingly, respondent COMMISSIONER OF INTERNAL REVENUE is hereby **ORDERED** to **REFUND** to petitioner the amount of P1,482,350.25 representing erroneous documentary stamp tax payment and surcharge.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge