REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

IMPERIAL, DE GUZMAN, ABALOS & CO., INC, represented by SECURITY BANK CORPORATION, Petitioner,	**CTA EB Case No. 1049** (CTA Case No. 8261)
	Present:
-versus-	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 26 2014 2:15pm

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of Petition for Review[1] filed by Imperial, De Guzman, Abalos & Co., Inc., from the Decision[2] dated May 15, 2013 (Assailed Decision) and Resolution[3] dated July 15, 2013 (Assailed Resolution), both promulgated by Court of Tax Appeals

[1] CTA En Banc Rollo, pp. 1-22.
[2] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 23-37.
[3] Annex "B", Petition for Review, CTA En Banc Rollo, pp. 38-40.

(CTA) Special Third Division, in the case docketed as CTA Case No. 8261, entitled *"Imperial, De Guzman, Abalos & Co., Inc. represented by Security Bank Corporation vs. Commissioner of Internal Revenue"*, involving petitioner's claim for refund or issuance of a tax credit certificate in the amount of P100,107.75 representing Documentary Stamp Tax which was allegedly erroneously remitted by Security Bank Corporation.

The facts of the case, as found by the CTA Special Third Division, are as follows:

> **"STATEMENT OF FACTS**
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> Imperial, De Guzman, Abalos and Co., Inc. 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 Ground Floor EDSA Central Square, Shaw Boulevard, Mandaluyong City. It is represented by Security Bank Corporation (SBC), which is a duly authorized agent bank to receive payments intended for the Bureau of Internal Revenue (BIR).
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> Respondent is the Commissioner of the Bureau of Internal Revenue being sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
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> The instant claim for refund arose from petitioner's purported Secondary Trading transactions which necessarily entailed payment of documentary stamp tax pursuant to Section 199 of the National Internal Revenue Code (NIRC) of 1997. Petitioner allegedly made the following payments to the BIR through SBC EDSA Central Branch, its authorized agent bank:

DATE	DST PAID
April 3, 2009	P12,811.50
May 5, 2009	P53,811.00
June 8, 2009	P55,335.75

On July 1, 2009, pursuant to the Memorandum of Agreement (MOA) between the Department of Finance and the Philippine Stock Exchange, Inc. (PSE), the latter issued Announcement No. 2009-0333 pertaining to Refund of Documentary Stamp Tax on Secondary Trading, stating that DST collected since March 20, 2009 must be refunded.

On July 14, 2009, petitioner requested SBC to refund the aforesaid DST payments, invoking the above announcement.

On October 7, 2009, SBC sent a letter to Ms. Isabel A. Paulino, Revenue District Officer of Revenue District Office (RDO) No. 41, requesting the refund of the amount of P100,107.75, representing DST on Secondary Trading paid through SBC-EDSA Central Branch that SBC inadvertently remitted.

SBC again sent a letter dated November 5, 2009 to the Revenue Accounting Division of the BIR, informing the latter that SBC had already refunded DST payment in the amount of P100,216.32 to petitioner representing DST paid in the amount of P100,107.75 with interest earned in the amount of P108.57.

Subsequently, SBC received a letter dated November 10, 2009 from Ms. Geraldine S. Bermas, the OIC-Chief of the BIR Accounting Division, instructing SBC to request/coordinate with the BIR RDO No. 41 for the reversal/data fix of said payment.

On November 11, 2009, SBC sent a letter to Ms. Isabel A. Paulino, Revenue District Officer of RDO No. 41, requesting the cancellation of DST payments of petitioner and the refund thereof.

Due to respondent's inaction on the above claim for refund, petitioner filed the instant Petition for Review on April 1, 2011.

Respondent filed her Answer on May 25, 2011, interposing the following defenses:

> '3. Petitioner's claim for tax refund is subject to administrative investigation/examination by respondent Bureau;
>
> 4. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
>
> 5. In an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund;
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> 6. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government'. For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption. Claims for tax refunds, when based on statutes granting tax exemption or tax refund, partake of the nature of an exemption; thus, the rule of strict interpretation against the taxpayer-claimant similarly applies (Commissioner of Internal Revenue vs. Eastern Telecommunications

Philippines, Inc., G.R. No. 163835, July 7, 2010).'

The case was set for pre-trial conference on June 23, 2011. Respondent filed her Pre-Trial Brief on June 14, 2011; while petitioner filed its Pre-Trial Brief on June 15, 2011.

On August 2, 2011, the parties filed with this Court their Joint Stipulation of Facts and Issues. Thereafter, the pre-trial conference was terminated as per the Pre-Trial Order issued by the Court dated August 17, 2011.

Trial proceeded, giving both parties the opportunity to present their respective documentary and testimonial evidence. After presentation, identification, and formal offer, Exhibits "A" to "L" were admitted as part of the evidence for petitioner. On the other hand, counsel for respondent manifested during the hearing held on August 16, 2012 that there are no BIR Records for this case and thus, she will no longer present evidence.

Subsequently, petitioner submitted its Memorandum on October 18, 2012; while respondent failed to file her Memorandum as per records verification dated October 3, 2012. Thus, in a Resolution dated October 9, 2012, the case was submitted for decision.

STATEMENT OF ISSUES

The parties submitted the following issues for this Court's disposition:

1. Is petitioner entitled to a refund or tax credit of the amount of tax erroneously remitted by the agent bank?

2. Whether or not petitioner's administrative and judicial claim for tax refund was filed on time."[4]

[4] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 24-29.

On May 15, 2013, the CTA Special Third Division promulgated the Assailed Decision[5], the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**"

On June 3, 2013, petitioner filed a Motion for Reconsideration (Decision dated May 15, 2013)[6] via registered mail, praying for reconsideration and/or setting aside of the Assailed Decision, and the issuance of another one approving the claim for refund or tax credit of the petitioner.

Respondent filed her Comment (Petitioner's Motion for Reconsideration filed on June 3, 2013)[7] on July 5, 2013, arguing that petitioner failed to prove its entitlement to the refund being claimed.

On July 15, 2013, this Honorable Court issued the Assailed Resolution[8] denying petitioner's claim for a refund.

Hence, this Petition for Review.

In a Resolution[9] dated September 9, 2013, this Honorable Court ordered respondent to file her Comment to the present petition within ten (10) days from receipt thereof. As per Records Verification[10] dated November 6, 2013, respondent failed to file her Comment to the Petition for Review.

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[5] See Note 2.
[6] Division Docket, pp. 194-200.
[7] *Ibid.*, pp. 000212-00214.
[8] See Note 3.
[9] En Banc Rollo, pp. 160-161.
[10] *Ibid.*, p. 162.

On December 18, 2013, this Honorable Court issued a Resolution[11] resolving to give due course to the instant petition, granting the parties thirty (30) days from notice to file their respective memorandum, and submitting the instant Petition for Review for decision.

On January 16, 2014, petitioner filed a Manifestation/Motion[12] adopting its Petition as its Memorandum in view of the fact that respondent did not file any comment to the Petition, hence, there is nothing further for the petitioner to add or discuss in a Memorandum. Respondent, on the other hand, filed her Memorandum[13] on February 5, 2014.

Petitioner raised this lone issue in its petition:

> "1. Was petitioner able to present and prove its entitlement for refund of Documentary Stamp Tax (DST)."[14]

Petitioner argues that contrary to the finding of the CTA Special Third Division, it was able to prove its entitlement to its claim for refund. It submits that the BIR, through its letter dated November 10, 2009, made an open declaration that payment has been made and that it was actually received by their office. It further submits that this declaration by the BIR is more than enough proof of actual payment made. It posits that there is ample evidence on record, both documentary and testimonial, to prove its claim.

Moreover, petitioner argues that, as an active member of the Philippine Stock Exchange, it is exempted from paying DST on its secondary trading, and is thus entitled to the refund of its DST payments pursuant to the provisions of Republic Act (RA) No. 9648.

Lastly, petitioner invoked the application of the principle of *solutio indebiti*. It is its position that it was able to sufficiently prove its rightful claim for refund of tax credit, and absent any countervailing

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[11] *Id.*, p. 165-166.
[12] *Id.*, p. 167-170.
[13] *Id.*, p. 172-178.
[14] See Note 1, p. 7.

evidence on the part of respondent, petitioner should be granted the refund or be given the tax credit, lest the state will run defy the principle of *solutio indebiti*.

In her Memorandum, respondent maintained her position that petitioner failed to prove that its subject payments are covered by the exemption granted under RA 9648 since it failed to show that the DST was paid on instruments, documents and papers evidencing sale, barter or exchange of shares of stock listed and traded through the local stock exchange.

After a careful and thorough evaluation and consideration of the records of the case, including both parties' arguments in their respective pleadings, this Court finds no merit in the instant petition.

The sole issue in the instant petition is whether or not petitioner was able to prove its entitlement for claim for refund of DST that it allegedly erroneously paid through its agent bank.

We affirm the Special Third Division's ruling that petitioner was not able to sufficiently prove its present claim for refund. The evidence presented failed to show that the DST payments were made in relation to instruments, documents and papers evidencing sale, barter or exchange of stocks listed and traded through the local stock exchange.

At the risk of being repetitive, We quote with approval the pertinent parts of the Assailed Decision:

> "Based on the foregoing, in order to prove that the subject payments are covered by the exemption granted under the afore-quoted provision, petitioner must first show that the DST was paid on instruments, documents, and papers evidencing sale, barter or exchange of shares of stock listed and traded through the local stock exchange.
>
> To support its claim for refund, petitioner presented the Summary of Periodic Payments it made

to its authorized agent bank (SBC) on April 3, 2009, May 5, 2009, and June 8, 2009, as certified by Mr. Renato C. Buccat, the Branch Channel Manager previously assigned to SBC EDSA Central Branch, with Consolidated Report on Daily Collections of Internal Revenue Taxes; a letter dated November 10, 2009 from Ms. Geraldine S. Bermas, OIC-Chief of the Revenue Accounting Division which purportedly confirmed the remittance of the amount subject of the instant Petition; and the list of PSE Trading Participants. However, there is nothing in the evidence enumerated which would directly show that the alleged documentary stamp tax was paid on instruments, documents, and papers evidencing sale, barter or exchange of shares of stock listed and traded through the local stock exchange.

An examination of the Summary of Periodic Payments reveals that the same failed to show the kind of transaction, instrument, document or papers from which the DST was allegedly paid. The Court further observed that the letter dated November 10, 2009 merely informed SBC that the BIR could not act upon the refund of the amount of P100,107.75 documentary stamp tax on Secondary Trading considering that on-line verification of SBC's records on file in respondent's office shows no discrepancy between the Batch Control Sheet (BCS-A) and the Consolidated Report of Daily Collections (CRDC). There is nothing in the said letter which directly confirmed the remittance of the amount subject of the instant claim for refund. As regards the list of PSE Trading Participants, the same merely established that petitioner is listed as one of the active members of the PSE and one of its trading participants, and did not directly substantiate petitioner's contention that it was on Secondary Trading from which the DST was paid on the dates previously mentioned. In view thereof, it is clear that the evidence presented by petitioner failed to prove that the alleged documentary stamp taxes were paid on instruments, documents, and papers evidencing sale, barter or exchange of shares of stock listed and traded through the local stock exchange transactions.

Furthermore, it must be noted that petitioner likewise failed to present any documentary evidence

> to support its allegation that SBC's EDSA Central Branch erroneously treated and posted the aforesaid tax payments for DST as part of its regular BIR Collection, and that the said collected amounts were lodged to BTR-BIR Account No. (1400-100011-001) instead of lodging the same to DST-Secondary Trading Account No. (1400-100020-201).
>
> Clearly, the evidence presented by petitioner is insufficient to fully establish that there was actual payment of DST on instruments, documents, and papers evidencing sale, barter or exchange of shares of stock listed and traded through the local stock exchange, which is the subject of the instant claim for refund; and that the said payment is covered by the exemption granted under Section 199 of the NIRC of 1997, as amended by RA No. 9648."

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Assailed Decision dated May 15, 2013 and Assailed Resolution dated July 15, 2013 are both **AFFIRMED *in toto.***

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice