REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SOUTH PREMIERE POWER CORP.,
Respondent.

CTA EB NO. 1898
(CTA CASE NO. 9337)

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SOUTH PREMIERE POWER CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1899
(CTA CASE NO. 9337)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

Promulgated:

OCT 14 2019
4:18 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* are Petitions for Review[1] seeking nullification of the Decision dated February 27, 2018[2] (Assailed Decision) and Resolution[3]

[1] Rollo, CTA EB No. 1898, pp. 7-22, with annexes; CTA EB. No.1899, pp. 9-48, with annexes.
[2] Rollo, pp. 23-51., CTA EB No. 1898.
[3] Rollo, pp. 55-65, CTA EB No. 1898.

dated July 12, 2018 (Assailed Resolution), all promulgated by the Second Division of this Court (Court in Division) in CTA Case No. 9337 entitled "*South Premiere Power Corp. vs. Commissioner of Internal Revenue*" which partially granted South Premiere Power Corp. (SPPC)'s claim for refund or issuance of a tax credit certificate in the amount of P1,359,773.48, representing Surcharge, Interest and Compromise Penalty.

The dispositive portions of the assailed Decision and Resolution are as follows:

Decision:

> "**WHEREFORE**, the present Petition for Review is PARTIALLY GRANTED. Accordingly, respondent is ORDERED TO REFUND or to ISSUE A TAX CREDIT CERTIFICATE to petitioner in the aggregate amount of P1,359,773.48, representing the following amounts:
>
> | PENALTIES ERRONEOUSLY PAID BY PETITIONER | AMOUNT |
> |---|---|
> | Surcharge | P 345,454.50 |
> | Interest up to April 30, 2014 | 989,338.98 |
> | Compromise Penalty | 25,000.00 |
> | **TOTAL** | **P 1,359,773.48** |
>
> **SO ORDERED.**"

Resolution:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration of the Decision dated February 27, 2018** and respondent's **Motion for Partial Reconsideration Re: Decision dated 27 February 2018** are both **DENIED** for lack of merit.
>
> **SO ORDERED.**"

PARTIES

SPPC is a corporation duly organized and existing under the laws of the Republic of the Philippines and registered with the Securities and Exchange Commission (SEC). Its registered office address is at 808 Bldg., Meralco Avenue corner Gen. Lim Street, San Antonio Village, Pasig City; and its current address is at 19th Floor, San Miguel Properties Bldg., San Miguel Ave., Mandaluyong City. SPPC is engaged in the production and generation of electricity as well as in the supply and consolidation of electric power demand of end-users and other related ancillary services.

On the other hand, the Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), with office address at the Office of the Commissioner of Internal Revenue, Bureau of Internal Revenue, National Office Buiding, Agham Road. Diliman, Quezon City, Metro Manila.

THE FACTS

The facts as culled from the Assailed Decision[4] and the records are as follows:

> "On July 19, 2011, the Supreme Court rendered a decision in the *Commissioner of Internal Revenue vs. Filinvest Development Corporation* ("*Filinvest Case*" for brevity) holding, among other, that instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates qualified as loan agreements upon which documentary stamp taxes may be imposed.
>
> On October 6, 2011, the BIR issued Revenue Memorandum Circular (RMC) No. 48, 2011, circularizing to all concerned internal revenue officials and employees relevant excerpts from the decision of the Supreme Court in the Filinvest case and enjoining all employees engaged in the audit and review of audit cases "to assess deficiency DST, if warranted, on these kinds of transactions."
>
> On April 16, 2012, petitioner received a Letter of Authority dated April 12, 2012 from the BIR, authorizing revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2010 to December 31, 2010.
>
> Thereafter, on April 21, 2014, petitioner received from respondent a Preliminary Assessment Notice (PAN) dated April 15, 2014 assessing petitioner for alleged deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), and DST in the aggregate amount of P1,018,382,024.01 (inclusive of surcharge, interest and penalty), broken down as follows:

[4] Citations omitted.

KIND OF TAX		AMOUNT
I.	Income Tax	P 991,728,596.86
II.	Value-added Tax	21,673,131.83
III.	Expanded Withholding Tax	2,238,783.84
IV.	Documentary Stamp Tax	2,741,511.48
TOTAL		P1,018,382,024.01

The alleged deficiency DST is computed as follows:

D. DOCUMENTARY STAMP TAX-ADVANCES FROM AFFILIATES		
Tax Base Per Return		
Add: Adjustments		
Advances from Affiliates		P1,407,545,228.00
Taxable Basis Per Audit		1,407,545,228.00
DST Rate		1.00/200.00
Basic Documentary Stamp Tax		1,381,738.00
25% Surcharge	P345,434.50	
20% Interest (various to 4-40-14)	989,338.98	
Compromise Penalty	P 25,000.00	1,359,773.48
Total Deficiency DST		**P 2,741,511.48**

The deficiency DST assessment was imposed under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Regulations (RR) No. 13-2004 and the decision of the Supreme Court in the *Filinvest* case.

On April 30, 2014, petitioner paid the alleged deficiency DST in the amount of P2,741,511.48, (inclusive of increments). On May 6, 2014, petitioner submitted a Letter dated May 5, 2014, as reply to the PAN received on April 21, 2014. It also informed respondent that petitioner paid under protest the deficiency DST assessment amounting to P2,741,511.48.

Subsequently, on July 30, 2014, petitioner received from respondent a Formal Letter of Demand (FLD)/Assessment Notice dated July 30, 2014, assessing petitioner for alleged deficiency income tax only. Petitioner paid the said income tax assessment on July 31, 2014.

On February 2, 2016, petitioner filed with respondent its Letter/Claim for Refund dated January 28, 2016, seeking the refund or issuance of tax credit certificate in the amount of P2,741,511.48, allegedly representing erroneously and/or illegally collected DST for taxable year 2010, pursuant to Section 229 and Section 204 (C) of the NIRC of 1997, as amended.

Due to respondent's inaction on petitioner's administrative claim for refund, petitioner filed the present Petition for Review before this Court on April 27, 2016."

In the Answer dated July 20, 2016,[5] the CIR raised the following as his Special and Affirmative Defenses: that the case should be dismissed for lack of jurisdiction and that the taxes paid are not erroneously or illegally collected, hence not a proper subject of an action for refund.

In the Joint Stipulation of Facts and Issues,[6] the parties agreed that the issue to be resolved by the Court in Division is whether SPPC is entitled to a refund in the amount of P2,741,511.48 that it paid to the BIR for alleged deficiency DST for taxable year 2010.

After trial on the merits, and upon submission of petitioner's memorandum, the case was submitted for decision on March 7, 2017.[7]

On February 27, 2018, the Court in Division rendered the questioned Decision.[8]

On March 8, 2018, SPPC filed a "Motion for Partial Reconsideration of the Decision dated February 27, 2018."[9]

On March 14, 2018, the CIR filed a "Motion for Partial Reconsideration Re: Decision dated 27 February 2018."[10]

On April 5, 2018, the CIR filed his Opposition Re: Petitioner's Motion for Partial Reconsideration."[11]

On April 16, 2018, SPPC filed an "Opposition to Respondent's 'Motion for Partial Reconsideration.....' dated March 14, 2018."[12]

On July 12, 2018, the Court in Division issued a Resolution[13] on the parties' respective Motions for Partial Reconsideration.

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[5] Docket, CTA Case No. 9337, pp. 142-153.
[6] Ibid., p. 335.
[7] Ibid. p. 435.
[8] Ibid. pp. 439-467.
[9] Ibid. pp. 471-487.
[10] Ibid. pp. 510-522.
[11] Ibid. pp. 401-412.
[12] Ibid., pp. 530-540.
[13] Ibid., pp. 599-615.

On July 31, 2018, the CIR filed before this Court a "Motion for Extension of Time to File Petition For Review,"[14] praying that the CIR be given an additional period of fifteen (15) days from August 1, 2018 or until August 16, 2018, within which to file the Petition for Review.

On August 2, 2018, the Court *En Banc* issued a Minute Resolution[15] which granted the CIR's "Motion for Extension of Time to File Petition for Review." On even date, SPPC filed a "Motion for Extension of Time to File Petition for Review"[16] praying that it be given an additional period of fifteen (15) days from August 4, 2018 or until August 19, 2018, within which to file its Petition for Review.

On August 3, 2018, the Court *En Banc* issued a Minute Resolution granting SPPC's prayer for extension of time to file Petition for Review.

On August 14, 2018, the CIR filed his Petition for Review[17] before this Court.

On August 15, 2018, SPPC filed its Petition for Review[18] before this Court.

On August 16, 2018, the Court *En Banc* issued a Minute Resolution[19] ordering the consolidation of CTA EB No. 1899 with CTA EB No. 1898, the case bearing the lower docket number.

On September 7, 2018, the Court *En Banc* issued a Resolution[20] ordering the parties to file their respective Comments on the Petitions for Review within ten (10) days from notice.

On September 28, 2018, the CIR filed his Comment.[21]

On October 8, 2018, SPPC filed a "Motion for Extension of Time to File Comment on Petition for Review in CTA Case No. 1898,"[22] praying that it be given an additional period of ten (10) days from October 12, 2018, or until October 22, 2018, within which to file its Comment on the Petition for Review of the CIR in CTA EB No. 1898.

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[14] Rollo, CTA EB No. 1899, pp. 1-5.
[15] Ibid., p. 6.
[16] Ibid., pp. 1-7.
[17] Rollo, CTA EB No. 1898, pp. 7-22, with Annexes.
[18] Rollo, CTA EB No. 1899, pp. 9-48, with Annexes.
[19] Rollo, CTA EB No. 1898, p. 71.
[20] Ibid., pp. 72-73.
[21] Ibid., pp. 74-86.
[22] Ibid., pp. 87-89.

On October 10, 2018, the Court *En Banc* issued a Minute Resolution[23] which granted SPPC's "Motion for Extension of Time to File Comment on Petition for Review in CTA Case No. 1898."

On October 16, 2018, SPPC filed its "Comment on the Petition for Review in CTA EB No. 1898."[24]

On November 15, 2018, the Court *En Banc* issued a Resolution[25] submitting the cases for decision.

ASSIGNMENT OF ERRORS

The CIR raised this issue for resolution of the Court *En Banc*:

> Whether SPPC is entitled to refund of the entire amount of P2,741,511.48 allegedly representing erroneous and/or illegal collection of DST for taxable year 2010.

On the other hand, SPPC filed its Petition for Review based on the following assignment of errors:

a. The Court in Division erred in holding that the Decision of the Supreme Court in "*Commissioner of Internal Revenue vs. Filinvest Development Corporation*", G.R. No. 163653 and 167689, July 19, 2011, and Revenue Memorandum Circular No. 48-2011 may be applied retroactively to the cash advances subject of the instant case.

b. The Court in Division erred in holding that DST may be imposed on the subject advances received by SPPC on the basis of mere notes appearing in the 2010 Audited Financial Statements of SPPC and its affiliates.

c. The Court in Division erred in not granting to SPPC the refund of the amount of P1,381,738, representing erroneously and/or illegally collected basic deficiency DST for taxable year 2010.

The principal issue in these consolidated cases is whether or not the Court in Division erred in partially granting the Petition for Review filed by SPPC, which resulted to the granting of refund in the amount of P1,359,773.48, representing surcharge, interest and compromise penalty.

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[23] Ibid., p. 90.
[24] Ibid., pp. 91-112, with Annexes.
[25] Ibid., pp. 170-171.

CONSOLIDATED ARGUMENTS OF THE PARTIES

The CIR contends that SPPC is not entitled to refund of the entire amount of P2,741,511.48 allegedly representing erroneous collection of DST for taxable year 2010; that the imposition of DST on SPPC's loan transactions is warranted pursuant to Section 179 of the NIRC of 1997, as amended; that SPPC's reliance on court decisions and alleged previous BIR issuances that intercompany loans and advances covered by interoffice memoranda were not loan agreements subject to DST does not entitle respondent to claim for refund of the interest, surcharge and compromise penalty that it paid.

On the other hand, SPPC contends that Article 4 of the Civil Code of the Philippines, laws shall have no retroactive effect, unless the contrary is provided, and under Article 8 of the same Code, decisions of the Supreme Court form part of the law of the land; that being parts of the law of the land, decisions of the Supreme Court, including decisions involving tax law, are therefore governed by the proscription under Article 4 against the retroactivity laws; that the Supreme Court decision in the Filinvest Case cannot be given retroactive application against SPPC; that Notes to a Financial Statement are not documents, much less are they debt instruments; that they are mere additional information added to Financial Statements that help explain specific items in the statements as well as provide a more comprehensive assessment of a company's financial condition; and that SPPC is not liable to pay the subject DST since there was an erroneous or illegal collection of tax under Section 229, in relation to Section 204, of the NIRC of 1997, as amended.

RULING OF THE COURT EN BANC

The Petition for Review before the Court in Division was anchored on SPPC's claim for refund pursuant to Section 229, in relation to Section 204 of the NIRC of 1997, as amended, which reads as follows;

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally receive 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."

"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 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."

Timeliness of the Petition

On April 30, 2014, SPPC paid under protest the alleged deficiency DST in the amount of P2,741,511.48 for taxable year 2010. Thus, SPPC has until April 30, 2016 within which to file both the administrative and judicial claims for refund. SPPC filed its administrative claim for refund before the BIR on February 2, 2016. On April 27, 2016, SPPC filed its Petition for Review before the Court in Division. Accordingly, the filing of the administrative claim for refund before the BIR and the Petition for Review before the Court in Division both fell within the prescriptive period allowed by law.

On February 28, 2018, the CIR received a copy of the Court in Division's Decision. Then, within the period to file an appeal, the CIR filed a Motion for Partial Reconsideration,[26] which was eventually denied by the Court in Division in its Resolution dated July 12, 2018. The said Resolution was received by the CIR on July 17, 2018. On July 31, 2018, the CIR filed before the Court *En Banc* an extension of fifteen (15) days or until August 16, 2018 within which to file the instant Petition for Review. On August 16, 2018, the Court *En Banc* issued a Minute Resolution granting the CIR's motion. On August 14, 2018, the CIR filed the instant Petition for Review docketed as CTA EB No. 1898. Hence, the CIR's Petition for Review was timely filed.

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[26] Docket, CTA Case No. 9337, pp. 491 to 505.

On the other hand, SPPC received on February 28, 2018, a copy of the Court in Division's Decision. Thereafter, within the period to file an appeal, SPPC filed a Motion for Partial Reconsideration on March 8, 2018, which was also denied by the Court in Division in the Resolution dated July 12, 2018. The Resolution on the parties' Motions for Partial Reconsideration was received by SPPC on July 20, 2018. On August 2, 2018, SPPC filed a "Motion for Extension for Time to File Petition for Review," praying that it be given an additional period of fifteen (15) days or until August 19, 2018, within which to file the Petition for Review. On August 3, 2018, the Court *En Banc* issued a Minute Resolution granting SPPC's motion. On August 15, 2018, SPPC filed the instant Petition for Review, docketed as CTA EB No. 1899. Hence, the SPPC's Petition for Review was timely filed.

The Court *En Banc* shall now proceed to determine the merits of the Petition for Review.

After a careful review of the parties' respective arguments in their respective Petitions for Review, and the records of the case, the Court *En Banc* finds no reason to reverse the assailed Decision and Resolution of the Court in Division. The records of the case show that the Court in Division had fully and exhaustively resolved the issues raised in the Petition for Review. The Court *En Banc* notes that the arguments presented herein are basically the same arguments offered by the CIR and SPPC in their respective Motions for Partial Reconsideration before the Court in Division. Nonetheless, the Court *En Banc* shall discuss the issues raised by the parties to stress the salient points in the assailed Decision and Resolution.

Whether the Court in Division erred when it applied retroactively the *Filinvest* case and Revenue Memorandum Circular (RMC) No. 48-2011

SPPC maintains that the Court in Division erred in holding that the Decision of the Supreme Court in *"Commissioner of Internal Revenue vs. Filinvest Development Corporation,"* G.R. No. 163653 and 167689, July 19, 2011, and Revenue Memorandum Circular No. 48-2011 may be applied retroactively to the cash advances subject of the instant case.

On the other hand, the CIR avers that the ruling of the Court in the *Filinvest* case on the imposition of DST on inter-office memo covering advances granted by an affiliated corporation was clarificatory in nature. Hence, SPPC's stance that the *Filinvest* case cannot be given retroactive application should not be given due course.

Contrary to SPPC's claim, there is no previous doctrine that was overruled by the doctrine laid down in the *Filinvest* case. The Court *En Banc* reiterates the findings of the Court in Division in the assailed Resolution, as regards the interpretation placed upon Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended) by the Supreme Court in the *Filinvest* case constitutes part of the NIRC as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law.

In the assailed Resolution[27] the Court in Division ruled as follows:

> "Considering that the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended) in the *Filinvest* case was deemed part of the NIRC as of December 23, 1994 up to the present time, the same may therefore be applied to this case without violating the principle of non-retroactivity of laws and rulings.
>
> The Court finds no merit to petitioner's assertion that there was a previous doctrine that was overruled by the doctrine in the *Filinvest* case.
>
> It must be noted that decisions cited by petitioner were those issued by the Court of Appeals (CA) and Court of Tax Appeals (CTA) and not by the Supreme Court. Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law.
>
> Moreover, in the case of Government Service Insurance System vs. Leo L. Cadiz, the Supreme Court stressed that judicial decisions which form part of our legal system are only the decisions of the Supreme Court.
>
> CTA or CA decisions are specific rulings applicable only to the parties to the case not to the public. CTA or CA decisions, unlike those of the Supreme Court, do not form part of the law of the land. Decisions of the lower courts do not have any value as precedents and are not binding on the Supreme Court. Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.
>
> Based on the foregoing, petitioner's cited CA and CTA decisions cannot be considered as previous doctrines and therefore have no value as precedents. Thus, there was no previous doctrine overruled by the *Filinvest* case.

[27] Resolution, pages 5-6. Citations omitted.

> There being no doctrine or jurisprudence being overruled, the interpretation of the Supreme Court in the *Filinvest* case on Section 180 of the NIRC constitutes part thereof as of the date it was originally passed, i.e., on December 23, 1994, as stated in the assailed Decision. Consequently, the *Filinvest* case cannot be applied prospectively."

Considering that RMC No. 48-2011[28] merely implements the doctrine laid down in the *Filinvest* case, the same may be applied in the present case.

Whether DST may be imposed on the advances to SPPC on the basis of a Note appearing in the Audited Financial Statement

SPPC argues that it is not liable to pay the subject DST because there was erroneous collection of tax. The assessment on DST was based on the Notes to the 2010 Audited Financial Statements (AFS) of SPPC[29] and Notes from the AFS of San Miguel Energy Corporation (SMEC)[30] and San Miguel Corporation (SMC).[31]

The Court *En Banc* finds SPPC's argument without merit. A DST may be imposed even in the absence of a debt instrument provided the transactions are distinctly established. Hence, the CIR's assessment on DST is valid. Consequently, SPPC is not entitled to a refund of the DST.

As correctly found by the Court in Division in the assailed Decision:[32]

> "A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, because it is imposed on the transaction rather than on the document. It is levied on the exercise by persons of privileges conferred by law.
>
> From the foregoing, there is no basis for petitioner's (SPPC) assertion that if there is no document or if the document itself does not in any way manifest such borrowing and lending transaction, then DST on debt instruments under Section 179 of the NIRC of 1997, as amended, cannot be applied. DST may be

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[28] Circularization of the relevant excerpts from the *En Banc* SC Decision in G.R. Nos. 163653 & 167689 on the imposition of DST on inter-office memo covering advances granted by an affiliated corporation.
[29] Exhibit "P-1".
[30] Exhibit "P-1-a".
[31] Exhibit "P-1-b".
[32] Decision, pages 24-26. Citations omitted.

imposed even in the absence of debt instrument, as long as the transactions are clearly established.

Moreover, Section 6 of Revenue Regulations No. 9-94 provides for the imposition of DST where no formal agreements or promissory notes are executed, to wit:

> 'SECTION 6. *Stamp Tax on all Loan Agreements*.- All loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to documentary stamp tax of thirty centavos (P.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
>
> In cases where no formal loan agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code.'

In this case, while it may be true that respondent based the assessment of DST from information obtained from the Notes to the 2010 Audited Financial Statements (AFS) of petitioner (Note 11) and from Notes to the AFS of San Miguel Energy Corporation (Note 13) and SMC (Note 25), petitioner does not deny the existence of the subject transactions, nor does petitioner deny that it is a party to the same transactions.

In fact, petitioner impliedly admitted the existence of the subject transactions since its witness, Mr. Ramon U. Agay, testified that the subject advances are non-interest bearing and unsecured and are not covered by debt instruments such as certificates of indebtedness, bonds or loan agreements. Moreover, petitioner itself admitted the existence of the taxable transactions by declaring them in its financial statements. Thus, it is clear that the subject transactions really did happen.

Since the subject transactions are clearly established, petitioner is liable to pay the subject DST on the basis of the Notes to the 2010 AFS of petitioner and the AFS of San Miguel

Energy Corporation. Therefore, the assessment of DST by respondent (CIR) is valid."

Xxx xxx xxx

One of the requirements of the refund of erroneous and/or illegal collection under Section 229 and 204 of the NIRC of 1997, as amended, is that the tax has been erroneously or illegally collected, or the penalty has been collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected.

Considering that petitioner is liable to pay the subject DST on the basis of the Notes to the 2010 AFS of petitioner and the AFS of San Miguel Energy Corporation, its payment of the deficiency DST on April 30, 2014 cannot be considered as tax that has been erroneously or illegally collected.

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. In this case, petitioner was not able to prove its entitlement to the claim for refund of DST for taxable year 2010."

Whether SPPC is liable to pay Interest, Surcharge and Compromise Penalty

The CIR contends that SPPC's reliance on court decisions and alleged previous BIR issuances that intercompany loans and advances by interoffice memoranda were not loan agreements subject to DST does not entitle SPPC to claim for refund of the interest, surcharge and compromise penalty that it paid. On the other hand, SPPC argues that the imposition of surcharge, interest and compromise penalty would totally ignore the evidence it adduced that it acted in good faith when it relied on court decisions and BIR issuances prevailing at the time the subject advances were extended to it by related parties, which laid down the rule that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST under the NIRC. Also, SPPC's good faith is showed by the fact that it paid the assessed DST.

After consideration, the Court *En Banc* finds CIR's argument without merit. The Court *En Banc* reiterates the findings of the Court in Division in the assailed Resolution[33] that SPPC is not liable to pay interest, surcharge and compromise penalty. The Court in Division ruled as follows:

[33] Resolution, pp. 9-11. Citations omitted.

"In the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*, the Supreme Court held that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.

An examination of petitioner's claim for refund shows that at the time the advances were made in 2010, petitioner relied on prevailing court decisions and previous BIR issuances to the effect that inter-company loans and advances covered by inter-office memoranda were not loan agreements subject to DST. Petitioner relied on the cases of *Commissioner of Internal Revenue vs. APC Group, Inc.* and *Commissioner of Internal Revenue vs. Belle Corporation* and on BIR Ruling [DA (C-035) 127-2008]55 dated August 8, 2008, BIR Ruling No. 116-98 dated July 30, 1998, and BIR Ruling No. DAO 16-2008 dated January 17, 2008. Hence, petitioner's reliance on the said cases and BIR issuances justifies the non-imposition of surcharges and interest.

Petitioner is also not subject to compromise penalty since this penalty is by its nature, mutual in essence. The payment made under protest by petitioner could only mean that there was no agreement that had been reached between the parties. In the case of *De San Agustin vs. Commissioner of Internal Revenue*, the Supreme Court held that:

> The Court of Tax Appeals correctly held that the compromise penalty of P20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence. The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties.
>
> Since petitioner disputed respondent's assessment of compromise penalty, the same cannot be imposed upon it.'

Thus, the interest, surcharge, and compromise penalty were wrongfully collected by respondent. Petitioner is therefore entitled to the refund of interest, surcharge, and compromise penalty.

Finally, with respect to the allegation of respondent on the imposition of compromise penalties based on Revenue

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> Memorandum Order (RMO) No. 7-2015, in relation to RMO No. 1-90, the Court finds that the same does not apply in this case.
>
> A perusal of RMO No. 7-2015, in relation to RMO No. 1-90, shows that the compromise penalties provided therein refers to criminal violations of the provision of NIRC of 1997, as amended, and that the same are mere amounts suggested in settlement of criminal liability which may not therefore be imposed or exacted on the taxpayer. Since the instant case does not involve criminal violations of the NIRC, and that petitioner did not agree to settle its tax liability, the compromise penalty assessed should not have been imposed and collected. Thus, the same was properly refunded to petitioner."

The findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[34]

In view of the foregoing discussions, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review dated August 14, 2018 filed by the Commissioner of Internal Revenue and the Petition for Review dated August 14, 2018 filed by South Premiere Power Corp. are **DENIED for lack of merit.** Accordingly, the assailed Decision dated February 27, 2018 and Resolution dated July 12, 2018 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[34] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(With due respect, I reiterate my CDO dtd. Feb. 27, 2018)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1898** (CTA Case No. 9337)
-versus-	
SOUTH PREMIERE POWER CORP., *Respondent,*	
x---x	
SOUTH PREMIERE POWER CORP., *Petitioner,*	**CTA EB NO. 1899** (CTA Case No. 9337)
	Present:
-versus-	**DEL ROSARIO,** ***P.J.***, **CASTANEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, and **MODESTO-SAN PEDRO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 14 2019

x--x
4:18 p.m.

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1898 for lack of merit.

With due respect, however, I am constrained to withhold my assent on the denial of the Petition for Review filed by South Premiere Power Corp. (SPPC) in CTA EB No. 1899 for lack of merit.

I am not unaware of the doctrine laid down in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1](*Filinvest case*) that instructional letters and journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements upon which Documentary Stamp Tax (DST) may be imposed. I submit, however, that the doctrine laid down in the *Filinvest case* cannot be applied to the present case.

In failing to subject to DST its 2010 inter-company advances, SPPC merely relied on the judicial interpretation then prevailing that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended.

To be specific, SPPC relied on the following:

(i) *Commissioner of Internal Revenue vs. APC Group, Inc.* (*APC case*), CA-G.R. SP No. 69869, November 29, 2002 wherein the Court of Appeals (CA) held that the interpretation of the Bureau of Internal Revenue (BIR) in BIR Ruling No. 116-98 dated July 30, 1998 that inter-office memo covering advances granted by an affiliate company is not subject to DST is in accordance with law;

(ii) *Commissioner of Internal Revenue vs. Belle Corporation/Belle Corporation vs. Commissioner of Internal Revenue* (*Belle case*), CTA EB Nos. 147 and 155, October 13, 2006 wherein the Court of Tax Appeals (CTA) ruled that the ruling in BIR Ruling No. 116-98 dated July 30, 1998 that the inter-company advances made by Belle to its affiliates is not subject to DST is consistent with the provisions of the NIRC of 1997;

(iii) BIR Ruling [DA-(C-035) 127-08] dated August 8, 2008, addressed to SGV & Co., wherein the BIR confirmed that inter-company loans and advances granted by Standard Bank Plc to member companies of Star Group, which are covered by inter-office memoranda, are not subject to

[1] G.R. Nos. 163653 and 167689, July 19, 2011.

DST under Section 179 of the NIRC of 1997, as amended; and,

(iv) Resolution of the Supreme Court dated May 17, 2004 in G.R. No. 162185 entitled *Commissioner of Internal Revenue vs. APC Group, Inc.* wherein the Supreme Court, in a Minute Resolution, dismissed the Petition for Review filed by the CIR effectively affirming the CA ruling referred to in (i) above.

Clearly, the existing interpretation at the time of the transaction (taxable year 2010) was that loans and advances to affiliates covered by inter-office memoranda are not subject to DST. The rulings of the CA in the *APC case* and the CTA in the *Belle case*, interpreting BIR Ruling No. 116-98 dated July 30, 1998, were in essence the final judicial determination on the non-taxability of loans and advances to affiliates which are covered by inter-office memoranda. Pronouncements of the CA and the CTA are at the very least persuasive.

Specifically, on the matter of the persuasive effect of the decisions of the CTA, the disquisition of the Supreme Court in *Commissioner of Internal Revenue vs. Court of Appeals, Atlas Consolidated Mining Corporation and Court of Tax Appeals/Atlas Consolidated Mining Corporation vs. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals*[2] is enlightening:

> "The Commissioner of Internal Revenue argues that the ruling in the case above stated is not binding, considering that the incumbent Commissioner of Internal Revenue is not bound by decisions or rulings of his predecessor when he finds that a different construction of the law should be adopted, invoking therefor the doctrine enunciated in *Hilado vs. Collector of Internal Revenue, et al.* This trenches on specious reasoning. What was involved in the *Hilado* case was a previous ruling of a former Commissioner of Internal Revenue. In the case at bar, the Commissioner based his findings on a previous decision rendered by the Court of Tax Appeals itself.
>
> The Court of Tax Appeals is not a mere superior administrative agency or tribunal but is a part of the judicial system of the Philippines. It was created by Congress pursuant to Republic Act No. 1125, effective June 16, 1954, as a centralized court specializing in tax cases. It is a regular court vested with exclusive appellate jurisdiction over cases arising under the National Internal

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[2] G.R. Nos. 104151 and 105563, March 10, 1995.

> Revenue Code, the Tariff and Customs Code, and the Assessment Law.
>
> **Although only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and may serve as judicial guides.** It is even possible that such a conclusion or pronouncement can be raised to the status of a doctrine if, after it has been subjected to test in the crucible of analysis and revision the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.
>
> **Furthermore, as a matter of practice and principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part.**" (Boldfacing supplied)

While the doctrine on the non-taxability of loans and advances covered by inter-office memoranda was over-ruled in year 2011 when the Supreme Court promulgated the *Filinvest case*, the same cannot be applied retroactively to the prejudice of taxpayers who relied in good faith on the judicial interpretation laid down in the *APC case* and *Belle case*. Needless to say, **if a taxpayer can rely in good faith on an erroneous ruling of the BIR without suffering any legal prejudice (that is — by applying the Supreme Court doctrine reversing the BIR ruling prospectively), I submit that reliance in good faith on a principle of law as interpreted by no less than a collegial court should be accorded the same legal consequence to the taxpayer.**

All told, I VOTE to: (i) **DENY** the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1898 for lack of merit; (ii) **GRANT** the Petition for Review filed by South Premiere Power Corp. in CTA EB No. 1899; (iii) **AFFIRM** with **MODIFICATION** the assailed Decision to read:

> "**WHEREFORE,** the present Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the aggregate amount of ₱2,741,511.48 representing the following amounts:

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	Amount
Documentary Stamp Tax	₱ 1,381,738.00
Surcharge	345,434.50
Interest up to April 30, 2014	989,338.98
Compromise Penalty	25,000.00
Total	₱ 2,741,511.48

SO ORDERED."

ROMAN G. DEL ROSARIO
Presiding Justice