REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SAN CARLOS BIOPOWER, INC., Petitioner,	**CTA CASE NO. 9919**
	Members:
- versus -	**CASTAÑEDA,** *Chairperson,* and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 01 2021 2:32 PM

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RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is petitioner's **Motion for Reconsideration (to Decision dated 4 November 2020)** filed on November 24, 2020, with respondent's **Comment/Opposition** filed on December 18, 2020

On November 4, 2020, this Court promulgated a Decision denying petitioner's claim for refund of its alleged erroneously paid documentary stamp tax (DST) in the amount of ₱9,980,261.00, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**."

In its Motion, petitioner primarily insists that the *Omnibus Loan Agreement* it entered into with International Finance Corporation

("IFC" hereinafter) is exempt from DST. Petitioner cites Republic Act (RA) No. 1604,[1] wherein Section 9, Article VI of the IFC Articles of Agreement provides that the IFC, its assets, property, income, operations, and transactions as authorized by the agreement, shall be exempt from taxation and customs duties, which includes DST. Based therefrom, petitioner claims that IFC's immunity from taxation extends to their loan agreement since it falls within the *transactions authorized* by IFC's Articles of Agreement. Petitioner further reiterates that the fact of tax immunity was even previously acknowledged by the Bureau of Internal Revenue (BIR) in BIR Ruling NO. DA-(FIT-002) 006-09 dated January 9, 2009.

In any case, petitioner claims that the shifting of the liability to pay DST under Section 173 of the National Internal Revenue Code (NIRC) of 1997, as amended, shall not apply, as there is no instance that DST may be imposed on any transaction entered into by IFC pursuant to its Articles of Agreement. Nonetheless, petitioner asserts that there was nothing in the *Omnibus Loan Agreement* that states that petitioner will pay the DST due on the loan. Lastly, petitioner asserts that IFC did not waive the tax-exemption status of its transaction with petitioner since there were no clear and express statement of the same, so as to constitute a valid waiver.

On the other hand, in his Comment, respondent argues that petitioner must prove that the *Omnibus Loan Agreement* it entered into with IFC is exempt from DST. He maintains that a claim for tax refund partakes of the nature of a tax exemption, and as such it is therefore strictly construed against the taxpayer claimant by proving every minute aspect of its claim not only its entitlement to the grant of the claim under substantive law, but also its compliance with all the documentary and evidentiary requirements provided by the NIRC, as well as by the revenue regulations implementing them.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

At the onset, this Court points out that the arguments raised by petitioner in the present Motion are mere rehash of the same facts and issues which have already been discussed extensively in the Decision it assails. *ge*

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[1] "AN ACT AUTHORIZING PHILIPPINE MEMBERSHIP IN THE PROPOSED INTERNATIONAL FINANCE CORPORATION AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR", approved on August 23, 1956.

Again, a documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.[2] Perforce, Section 173[3] of the NIRC of 1997, as implemented by Revenue Regulations (RR) No. 09-00,[4] further provides that whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax, in which case, the tax shall be paid and remitted by the said non-exempt party.

In the present case, the Court already found that petitioner failed to present proof that the transaction was indeed authorized under the IFC's Articles of Agreement. In fact, the Court already stated that the *Omnibus Loan Agreement* itself explicitly provided that the borrowers shall pay or cause to be paid all taxes and all amounts due under the loan agreement imposed by any country. As held in the assailed Decision, to wit:

> "Upon a cursory examination of petitioner's *Formal Offer of Evidence* filed on May 20, 2019, no exhibit or evidence has been offered by petitioner to prove that the subject transaction was authorized by the IFC Articles of Agreement.
>
> Moreover, the fact that the subject transaction was *not* authorized by the IFC Articles of Agreement is bolstered by the subject Loan Agreement itself. Sections 2.14 and 2.15, Article II thereof reads:
>
> **'ARTICLE II**
>
> **The Loan** Jr

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[2] *Commissioner of Internal Revenue v. Heald Lumber Company*, G.R. No. L-16340. February 29, 1964.

[3] **"SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.*** – Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: ***Provided,* That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax**." *(Emphasis supplied)*

[4] "SUBJECT: Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions," dated August 31, 2000.

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> Section 2.14. *Taxes*. (a) **The Borrowers shall pay or cause to be paid all Taxes** (other than taxes, if any, payable on the overall income of IFCC, CCCP, CTF, any MCPP Investor or any Participant) on or in connection with the payment of any and **all amounts due under this Agreement that are now or in the future levied or imposed by any Authority of the Country** or by any organization of which the Country is a member or any jurisdiction through or out of which a payment is made.

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> Section 2.15. *Expenses*. (a) **The Borrowers shall pay** or, as the case may be, reimburse IFC or its assignees any amount paid by them on account of, **all taxes (<u>including stamp taxes</u>),** duties, fees or other charges **payable on or in connection with the execution, issue, delivery, registration or notarization of the Transaction Documents and any other documents related to this Agreement or any other Transaction Document**." *(Emphases and underscoring added)*

Thus, it is clear that the parties to the Loan Agreement intended or contemplated that all taxes, which include specifically, DST or 'stamp taxes' due on the transaction, must be paid by the Borrowers, which include petitioner. Thus, if IFC contemplated that the subject transaction fall under the category of a transaction authorized under the IFC Articles of Agreement, which is clearly immune from taxation, the Loan Agreement should not have provided for the stipulation that all taxes, including the DST, shall be payable by petitioner (and the other co-borrowers)."[5]

Moreover, the Court likewise reiterates that a DST is imposable on all debt instruments, and the same is imposed on the person

[5] Decision, pp. 8 to 9.

making, signing, issuing, accepting, or transferring the same. Simply put, the liability for the DST rests on the parties to the taxable document. However, when one of the parties to the taxable transaction is exempt from the DST, the other party who is not exempt shall be the one directly liable therefor, in which case, the DST shall be paid and remitted by the said non-exempt party. Since it is established that IFC is immune from all taxation, the liability to pay the DST is now shifted to petitioner, being the party not exempt from the payment thereof.

Lastly, the Court already discussed that BIR rulings cannot be used as precedents; notwithstanding the fact that the BIR ruling cited by petitioner was not only issued in its favor, but the facts stated therein are also different from the present case.

In view of the foregoing disquisitions, this Court finds no cogent reason to reverse or modify the conclusion reached in the Decision assailed by petitioner.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (to Decision dated 4 November 2020) is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice