Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

LA TONDEÑA DISTILLERS, INC., (LTDI)
[NOW: GINEBRA SAN MIGUEL],
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6796

Members:

Castañeda, Jr., *Chairperson*
Uy, and
Palanca-Enriquez, JJ.

Promulgated:

JAN 0 6 2006 [signature]

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DECISION

UY, J.:

This case involves a claim for refund or issuance of a tax credit certificate allegedly representing erroneously paid documentary stamp tax (DST) for the taxable period 2001 in the amount of FOURTEEN MILLION ONE HUNDRED FORTY THOUSAND NINE HUNDRED EIGHTY (P14,140,980.00) PESOS in connection with the transfer of the entire assets of Sugarland Beverage Corporation (SBC), SMC Juice, Inc. (SMCJI) and Metro Bottled Water Corporation (MBWC) to petitioner, La Tondena Distillers, Inc., now Ginebra San Miguel.

The antecedent facts of the case are as follows:

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Petitioner is a resident corporation duly organized and existing under the laws of the Philippines and authorized by the Securities and Exchange Commission (SEC) to engage in business, with office address at 3rd and 6th Floor San Miguel Properties Centre, St. Francis Street, Mandaluyong City *(Par.1, Joint Stipulation of Facts and Issues).*

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) empowered to perform the duties of that Office, including, among others, the power to decide, approve and grant refunds of tax credits of erroneously or excessively paid taxes, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City *(Joint Stipulation of Facts and Issues, paragraph 2, Records, pp. 85-90).*

On September 17, 2001, petitioner entered into a Plan of Merger with SBC, SMCJI and MBWC (collectively referred to as the "Absorbed Corporations"), with the former as the surviving corporation *(Petition for Review, paragraph 3, Records, pp. 1-7).* The SEC approved the Plan of Merger on October 15, 2001 for which petitioner was issued a Certificate of Filing of the Articles and Plan of Merger *(Annex "A", Petition for Review, Records, pp. 8-23).*

Likewise, the SEC issued to petitioner a Certificate of Filing of Amended Articles of Incorporation, for the change of corporate name from La Tondeña Distillers, Inc. (LTDI) to Ginebra San Miguel, Inc. (GSMI) as stated in *paragragh.10 of the parties' Joint Stipulation of Facts and Issues.*

As a result of said merger, the entire assets and liabilities of the "Absorbed Corporations" were transferred to and absorbed by petitioner. Consequently, on various dates, petitioner paid to the BIR the amount of P14,140,980.00 representing

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DST on the transfer of real properties from the "Absorbed Corporations" to petitioner *(Exhibits "A, B, C, E, F and G", Records, pp. 130, 131, 133, 136, 138, 140, respectively).*

Prior to the abovementioned payments, petitioner, in a letter dated September 26, 2001, requested for a confirmation as to the tax-free nature of the subject merger. In reply thereto, the BIR in a ruling dated November 5, 2001, ruled among others, that pursuant to Section 40(C)(2) and (6)(b) of the 1997 Tax Code, no gain or loss shall be recognized by the "Absorbed Corporations", as the transferors of all assets and liabilities, to the petitioner pursuant to the Plan of Merger *(Paragraph 3, Joint Stipulation of Facts and Issues).* The BIR, however, stated in the said Ruling that:

> "The transfer of assets to LTDI, such as real properties shall be subject to the Documentary Stamp Tax (DST) imposed under Section 196 of the 1997 Tax Code."

On the other hand, petitioner believes that its total payment of the DST amounting to P14,140,980.00 on the transfer of assets on the occasion of the statutory merger has no basis. It contends that under Section 196 of the 1997 Tax Code, DST is imposed only on all conveyances, deeds, instruments or writings where realty sold shall be conveyed to a purchaser or purchasers; and in a statutory merger, the transferee has not "bought" or "purchased" real property from the transferor .

Consequently on October 14, 2003, petitioner filed with the respondent a letter claim for refund or tax credit for the amount of P14,140,980.00, representing erroneously paid DST for the taxable year 2001, on the occasion of a statutory merger. On the same day, and in order to toll the running of the prescriptive period

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provided for by law, petitioner filed its Petition for Review before this Court without waiting for respondent to decide on the aforesaid administrative claim.

ISSUE

The parties filed their Joint Stipulation of Facts and Issues on February 9, 2004, manifesting their mutual agreement to define a sole issue for resolution in this case, to wit:

> "Whether or not petitioner is entitled to the claim of refund or credit amounting to Php14,140,980.00 representing erroneously paid Documentary Stamp Tax (DST) as a result of a statutory merger." *(Records, p. 89)*.

PETITIONER'S THEORY

Petitioner submits that no documentary stamp taxes are due on the transfer of assets and properties of the "Absorbed Corporations" to La Tondeña Distillers, Inc. (LTDI) [now: Ginebra San Miguel] as a result of an approved Plan of Merger based on the following grounds:

First, DST is imposed only on all conveyances, deeds, instruments, or writings where realty sold shall be conveyed to purchaser or purchasers, pursuant to Section 196 of the 1997 NIRC, quoted hereunder for easy reference, *viz*:

> "***SEC. 196. Stamp Tax on Deeds of Sale and Conveyances of Real Properties***. – On all ***conveyances, deeds, instruments, or writings***, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred or otherwise conveyed *to the purchaser or purchasers*, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, *based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher*. *Provided*, that when one of the contracting parties is the Government, the tax therein imposed shall be based on the actual consideration:

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xxx xxx xxx"

Applying the foregoing provision, petitioner posits that in case of a merger, it could not have "bought" or "purchased" real property from the "Absorbed corporations" because its absorption of said assets and real properties is merely an inherent legal consequence of the merger and not a sale or other conveyance for a consideration in money or money's worth contemplated by law. Correspondingly, under Section 185 of Revenue Regulations No. 26, it is provided that "conveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable." Thus, there should allegedly be no documentary stamp taxes imposed on any conveyance of real property without consideration. Likewise, citing Section 3.2 of Revenue Memorandum Circular No. 44-86, "the stamp tax referred hereunder applies only if the instrument is a sale or other conveyance of real property for a consideration in money or money's worth."

Second, the concept of a merger is the transfer of the subject real properties which occurs by operation of law rather than a voluntary act and is therefore not subject to DST. Petitioner finds support in Section 80 of the Corporation Code of the Philippines, which provides that no consideration is needed for the transfer of assets and other properties from a constituent corporation "without any further act or deed". As a result of the merger, SBC, SMCJI and MBWC, and all their assets and real properties were automatically absorbed by herein petitioner by operation of law.

In citing the cases of Commissioner of Internal Revenue vs. Heald Lumber Co. (G.R. No. L-16340, February 29, 1964) and Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue (CTA Case No. 6477, April 7, 2003), petitioner stresses the point that the obligation to pay DST is based on the

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voluntary action of the person performing the act or engaging in the activity which is subject thereto. Moreover, the DST imposed on the transfer of real property should not apply to a statutory merger where real property of the absorbed corporation is automatically vested in the surviving corporation by operation of law, without any act or deed, rather than by some voluntary act or deed on the part of the taxpayer concerned.

Lastly, petitioner's absorption of the real properties of the absorbed corporations by operation of law pursuant to the merger constitutes a single and continuing transaction which should not be subject to DST. It explains that considering the nature of DST as an excise tax being imposed on the privilege to enter into a transaction, its imposition should therefore be only once with respect to the same transaction. Therefore, it concludes that all other transactions which form as the integral and inherent part of a merger, such as the absorption of real property by the petitioner, should be treated as a single and continuing transaction subject only to one DST. Consequently, it is petitioner's stand that the DST imposed under Section 196 of the 1997 NIRC should not apply in the case at bar.

RESPONDENT'S THEORY

Respondent, on the other hand, invokes Section 196 of the 1997 NIRC and BIR Ruling No. 002-2001, in connection with Sections 173 and 177 of Revenue Regulations No. 26, and avers that while it is true that in case of a merger between different corporations, the real properties of the absorbed corporation are deemed transferred to the surviving corporation without further act or deed. What is being subjected to DST is precisely the transfer of the real properties; hence, the transaction which is being taxed is the transfer of the "Absorbed Corporations'"

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assets to petitioner in exchange for the latter's shares of stock.

Relying therefore upon the case of Koppers Coal & Transportation Co. vs. United States (107 F. 2d 706), respondent argues that it is not correct to say that the transfer was entirely by operation of law because entering into a merger involves the voluntary act of the parties.

Likewise, to state that no DST is imposable since the transfer was not by means of any deed, instrument or writing is incorrect because Section 196 of the 1997 NIRC does not require any particular document to be executed first before any transfer of real property be effected and be subjected to said tax.

THE COURT'S RULING

This Court finds for the petitioner.

Merger is a form of corporate re-organization of two or more corporations whereby they merge into one or single corporation, which is one of the constituent corporations, one disappearing or dissolving and the other surviving ***(Ruben E. Agpalo, Comments on the Corporation Code, 1993 ed., pp. 323–324, cited on p. 459, Agpalo's Legal Words and Phrases, 1997 ed.)***. And Section 76 of the Corporation Code of the Philippines provides that two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation.

In relation thereto, Section 80 of the same Code sets forth the effects of merger, to wit:

> "**Sec. 80. Effects of merger or consolidation**. — The merger or consolidation, as provided in the preceding sections, shall have the following effects:

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> 1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
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> 2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;
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> 3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;
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> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; <u>and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed</u>; and
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> 5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor any lien upon the property of any of each constituent corporations shall be impaired by such merger or consolidation." *(Underscoring Ours)*

Based on the foregoing legal provision, specifically paragraph 4 thereof, all property, real or personal, all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in the surviving or consolidated corporation without further act or deed. Evidently, this is one of the legal effects of a merger or consolidation. It is therefore safe to say, that the transfer of real property from the absorbed corporation to the surviving

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corporation is by "operation of law", which is defined as "effected by some positive legal rule or amendment" (Black's Law Dictionary, p. 182, 5th Edition, 1979).

In imposing DST upon the transfer of real properties from the absorbed corporations to petitioner, respondent invokes Section 196 of the 1997 NIRC which imposes DST on all conveyances, deeds, instruments, or writings whereby any land, tenement or other realty **sold** shall be granted, assigned, transferred or otherwise conveyed **to the purchaser or purchasers**, based on the **consideration contracted to be paid for such realty or on its fair market value**.

To the mind of this Court, in cases of mergers of corporations, as in the case under consideration, where there is no "purchaser" or "buyer" of real property contemplated by law (considering that the real properties subject of the merger were merely absorbed by the petitioner as a legal and logical consequence of the merger) the pertinent provision of Section 196 is inapplicable. Clearly, the transfer of real properties was neither a sale nor was it a conveyance of real property for a consideration in money or money's worth.

As a matter of fact, under Revenue Regulations No. 26, which was actually invoked by respondent, provides that "[c]onveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable" *(Section 185, Revenue Regulation No. 26, underscoring Ours).*

It is noteworthy that Republic Act No. 9243 *was subsequently passed and became effective April 27, 2004*, entitled "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code", more particularly Section 9, which amends Section 199 of the 1997 NIRC, providing thus:

> **"Sec. 9. Section 199 of the National Internal Revenue Code of 1997, as amended, is further amended to read as follows:**

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'**SEC. 199. Documents and papers not subject to stamp tax.** – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

xxx xxx xxx

(m) Transfer of property pursuant to **Section 40 (C)(2)** of the National Internal Revenue Code of 1997, as amended.'

xxx xxx xxx"

Section 40(C)(2) of the 1997 NIRC reads as follows:

"**SEC. 40. Determination of Amount and Recognition of Gain or Loss. –**

xxx xxx xxx

(C) Exchange of property . –

(1) xxx

(2) ***Exception*** – No gain or loss shall be recognized if in pursuance of **a plan of merger or consolidation** –

(a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or

(b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or

(c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such corporation, solely for stock or securities in another corporation, a party to the merger or consolidation.

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not

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> exceeding four (4) persons, gains control of said corporation: *Provided,* That stocks issued for services shall not be considered as issued in return for property."

Clearly, R.A. No. 9243 is an example of a legislative enactment designed to remove any doubts as to the taxability of any transfers of properties made pursuant to a plan of merger or consolidation. The above statute has already removed any doubt that the transfers of real properties in pursuance of a merger or consolidation are not subject to documentary stamp taxes.

Moreover, this Court had the occasion to exhaustively discuss the same subject matter when it enunciated that:

> "x x x the obligation to pay DST is based on the voluntary action of the person performing the act or engaging in the activity which is subject to DST. Therefore, the DST imposed on the transfer of real property should not apply to a statutory merger where real property of the absorbed corporation is automatically vested in the surviving corporation by operation of law, without any further act or deed, rather than by some voluntary act or deed on the part of the taxpayer concerned.
>
> The petitioner correctly pointed out that this conclusion is consistent with BIR Rulings dated October 24, 1954 and May 14, 1973, where the BIR ruled that the transfer of certificates of stock by operation of law is not subject to DST. The BIR Ruling of May 14, 1973 cited the case of U.S. vs. Seattle-First National Bank, 321 U.S. 583 (1944), where the U.S. Supreme Court held that the transfer of title to stocks owned by a bank or held by it as a fiduciary, and of title to real estate, as a result of the consolidation of banks under the U.S. National Banking Act, is one 'by operation of law' and, therefore, not subject to DST. xxx
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> xxx xxx xxx
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> As correctly observed by petitioner, the provision on imposition of stamp tax on conveyance of real property cited in Seattle-First National Bank is identical to Section 196 of the 1997 National Internal Revenue Code *(Stamp Tax on Deeds of Sale and Conveyances of Real Property)*. Thus, applying the U.S. Supreme Court's ruling in Seattle-First National Bank to petitioner's case, the transfer of real property from SPPC to petitioner was not effected by or dependent on any voluntary act or deed of the parties to the merger. Nor was any

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voluntary deed, conveyance, assignment or other instrument utilized or necessary. Upon the effective date of the merger, the real properties were automatically transferred to and vested in petitioner without further act or deed. The transfer occurred solely and automatically by virtue of Section 80(4) of the Corporation Code. In short, title to real property passed to and vested in petitioner by operation of law pursuant to the merger. There was, in effect, only absorption by the surviving corporation (petitioner), by operation of law, of real property of the absorbed corporation (SPPC) ***(Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6477, April 30, 2003)***."

Applying the foregoing ruling in the case at bar, it is evident that the transfer of the assets and real properties from the "absorbed corporations"' to the petitioner are not subject to DST considering that the same were not conveyed to or vested in petitioner by means of any deed, instrument or writing. By operation of law, said real properties were automatically vested in petitioner without "further act or deed". Additionally, we cannot say that the subject real properties were "sold" or vested in a "purchaser or purchasers" within the ordinary meanings of these terms. Therefore, no DST is due and demandable against the petitioner in this case arising from the merger or consolidation.

With this finding, the Court now looks into the sufficiency of petitioner's evidence in support of its subject claim for refund or tax credit certificate.

Based on the documentary evidence presented before Us, the following assets were actually transferred by SBC and MBWC to petitioner as a result of the approved merger:

La Tondeña Distillers, Inc.
List of Assets Merged with LTDI

Property Locations	Land	Land Improvements	Machineries	Building & Improvements	Total
A. Metro Bottled Water Corp.					
General Trias, Cavite	P150,430,000.00	P953,247.00	P104,280,363.00	P70,845,342.00	P326,508,952.00
Mandaue City, Cebu		1,311,265.00	11,903,009.00	864,107.00	14,078,381.00
Pavia, Iloilo	5,110,740.00		4,101,883.00	1,432,238.00	10,644,861.00

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B. Sugarland Beverage Corp.					
Navotas, Metro Manila	19,968,000.00		89,915,385.00	61,907,405.00	171,790,790.00
Imus, Cavite	47,872,000.00		112,728,398.00	57,543,863.00	218,144,261.00
Pine Street, Mandaluyong		24,023,265.00	177,538,883.00		201,562,148.00
TOTALS *(Exhibit H)*	**P223,380,740.00**	**P26,287,777.00**	**P500,467,921.00**	**P192,592,955.00**	**P942,729,393.00**

A careful review of the relevant documents submitted by petitioner such as DST Declarations/Returns, Revenue Official Receipts, Bank Official Receipts and Certification from the BIR shows that on various dates between October 31, 2001 to November 15, 2001, it actually paid the following documentary stamp taxes on the subject assets transferred, detailed as follows:

Property Locations	**Total Assets**	**DST Payments**	**Exhibits**
A. Metro Bottled Water Corp.			
General Trias, Cavite	P326,508,953.00	**P4,897,635.00**	**D and E**
Mandaue City, Cebu	14,078,381.00	**211,185.00**	**G**
Pavia, Iloilo	10,644,861.00	**159,675.00**	**B and B-8**
B. Sugarland Beverage Corp.			
Navotas, Metro Manila	171,790,790.00	**2,576,865.00**	**C and C-8**
Imus, Cavite	218,114,261.00	**3,272,175.00**	**D and F**
Pine Street, Mandaluyong	201,562,148.00	**3,023,445.00**	**A**
TOTALS	**P942,729,393.00**	**P14,140,980.00**	

Further, the Court finds that petitioner has complied with the provisions of Sections 204 and 229 of the 1997 NIRC, which states that no claim for refund/tax credit certificate for erroneously paid taxes shall be allowed unless filed within two (2) years from payment thereof.

Based on the records *(Exhibits "A to G", inclusive, Records, pp. 130-140)*, petitioner's payments of the assailed documentary stamp taxes on the transfer of real properties in various locations were made within the period from October 31, 2001 to November 15, 2001. The last day for the two (2)-year prescriptive period

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within which to file a claim for refund or credit would fall on October 31, 2003, at the earliest. Hence, both the administrative claim for refund or issuance of a tax credit certificate and the judicial claim filed on October 14, 2003, were well within the prescriptive period allowed by law.

In sum, this Court finds and so holds that petitioner has sufficiently proven its claim for refund or issuance of a tax credit certificate representing its erroneously paid documentary stamp tax for the taxable year 2001 in the amount of P14,140,980.00.

WHEREFORE, the instant petition is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the total amount of **P14,140,980.00** in favor of the petitioner representing erroneously paid documentary stamp taxes for the taxable year 2001.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
Associate Justice

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ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice

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