REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NUBE STORAGE SYSTEMS, INC., Petitioner,	CTA CASE NO. 9189
	Members:
-versus-	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 01 2018 1:38 p.m.

x- -x

DECISION

***Fabon-Victorino, J.*:**

This Petition for Review filed by Nube Storage Systems, Inc. on November 12, 2015 involves its claim for refund of alleged erroneously paid Documentary Stamp Tax (DST) in the amount of Two Million Four Hundred Seventy-Five Thousand Pesos (₱2,475,000.00).[1]

Petitioner Nube Storage Systems, Inc. is a domestic corporation, with present office address at Building M, J.Y. & Sons Compound, Veterans Road, Western Bicutan, Taguig City.[2]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC), as amended, as well as other laws

---

[1] Summary of the Case, Pre-Trial Order, docket, p. 122.
[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p.115.

administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 9, 2013, petitioner was incorporated with authorized capital stock of ₱5,000,000.00 [3] divided into 50,000 fully subscribed[4] shares with par value of ₱100.00 per share[5].

On November 5, 2013 [6], petitioner paid the corresponding DST on the said subscription of shares of stock in the amount of ₱2,500,000.00.

On December 11, 2013, petitioner filed with respondent a claim for refund in the amount of ₱2,475,000.00 which it allegedly overpaid for DST.[7]

On November 5, 2015, petitioner filed, through registered mail, the instant Petition for Review[8] claiming inaction of respondent.

In his Answer[9] posted on January 21, 2016, respondent contends that the burden of proof to establish its firth to refund lies on petitioner who must as well substantiate its claim in accordance with the pertinent laws and established jurisprudence on the matter. Moreover, collection and payment of taxes are presumed made in accordance with law, hence, not refundable. Claims for refund are likewise strictly construed against the taxpayer claimant since it partakes the nature of exemption from tax.

After the filing of their respective pre-trial briefs, the parties submitted their Joint Stipulation of Facts and Issues[10]. On August 3, 2016, the Pre-Trial Order[11] was issued terminating the pre-trial conference.

---

[3] Exhibit "P-2-a", docket, p. 144.
[4] Exhibit "P-2-b", docket, p. 145.
[5] Exhibits "P-1" and "P-2", docket, p. 139 and pp. 141 to 148, respectively.
[6] Exhibits "P-3" and "P-4", docket, pp. 149 and 150, respectively.
[7] Exhibit "P-5", docket, p. 151.
[8] Docket, pp. 12 to 16.
[9] Docket, pp. 38 to 40.
[10] Docket, pp. 115 to 119.
[11] Docket, pp. 122 to 126.

To establish its case petitioner presented its lone witness, **Anna Francesca C. Respicio**,[12] a Senior Associate of Tan Venturanza Valdez law firm, which was engaged to assist petitioner in its incorporation with the Securities and Exchange Commission (SEC). She testified that petitioner was incorporated and registered with the SEC on October 9, 2013, as shown in its Certificate of Incorporation and Articles of Incorporation which she received from the SEC.

At the time of incorporation, petitioner had a subscribed capital stock of Five Million Pesos (₱5,000,000.00) divided into 50,000 shares with par value of One Hundred Pesos (₱100.00) per share.

In computing the DST for such subscription, the witness cited Section 174 of the NIRC, as amended, which provides that on every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by any association, company or corporation, there shall be collected a DST of one peso (P1.00) on each two hundred or fractional part thereof of the par value, of such shares of stock. Thus, for the original issuance of petitioner's 50,000 shares of stock with par value of Five Million Pesos (₱5,000,000.00), the DST should amount to Twenty-Five Thousand Pesos (₱25,000.00).

During a follow-up to ascertain payment of the DST, petitioner learned that it erroneously paid Two Million Five Hundred Thousand Pesos (₱2,500,000.00) for the DST, instead of the correct amount of Twenty-Five Thousand Pesos (₱25,000.00). The said erroneous payment of DST was reflected in the DST Declaration/Return (BIR Form No. 2000) filed on November 5, 2013, as well as in the copy of the Chinabank - Pasong Tamo/Cityland branch deposit slip likewise dated November 5, 2013.

In view of the said development, petitioner filed an administrative claim for refund of its DST overpayment of Two Million Four Hundred Seventy-Five Thousand Pesos

---

[12] Minutes of the hearing dated October 3, 2016, docket p. 134; Exhibit P-7, Judicial Affidavit dated June 7, 2016, docket pp. 153-159; no cross-examination conducted, see TSN dated October 3, 2016, p. 8.

(₱2,475,000.00), through a letter dated December 10, 2013, with BIR RDO 48 on December 11, 2013.

To date, respondent has not acted on the claim for refund, hence, this appeal filed via registered mail with the Court in Division on November 5, 2015.

In the Resolution dated December 5, 2016, the Court admitted all the exhibits[13] formally offered by petitioner who thereafter rested its case.

During the hearing for reception of evidence for respondent, his counsel manifested that he had no witness to present.[14]

On February 20, 2017, [15] the instant case was submitted for decision.

THE ISSUE

The parties submitted the following issue for the Court's disposition:

> Whether petitioner is entitled to a refund of Two Million Four Hundred Seventy-Five Thousand Pesos (₱2,475,000.00) as overpaid DST on the original issuance of petitioner's shares of stock.[16]

RULING OF THE COURT

According to petitioner, upon its incorporation, it subscribed capital stock of ₱5,000,000.00 divided into 50,000 shares with a par value of ₱100.00 per share. It paid respondent ₱2,500,000.00 for DST on its original issuance of shares of stock, instead of ₱25,000.00, which

---

[13] Docket, pp. 167 to 168.
[14] Minutes of the October 3, 2016 hearing, docket, p. 134.
[15] Resolution, docket, p. 183.
[16] Statement of Issue, JSFI, docket, p. 116.

was the correct DST for the said transaction. As such, there was allegedly as overpayment of ₱2,475,000.00, justifying the refund of the said amount.

Note, that in every judicial claim for refund, the timeliness of the Petition for Review must first be determined by the Court. On the matter, Sections 204(C) and 229 of the NIRC, as amended, are instructive:

> 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 received 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." *(Emphasis supplied)*
>
> 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 suit or proceeding may be maintained, whether or not 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. *(Emphasis supplied)*

It is clear that the afore-quoted Sections 204(C) and 229 of the NIRC of 1997, as amended, govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally. [17] Section 204(C) applies to administrative claims filed with the BIR; while Section 229 refers to judicial actions for the recovery of the tax. However, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.[18]

Petitioner filed its BIR Form No. 2000 for the subscription of the original issue of shares of stock and paid the corresponding DST of ₱2,500,000.00 through China Bank on November 5, 2013.[19] Counting two years from this date, petitioner had until November 5, 2015, within which to file its administrative and judicial claims for refund. Clearly, petitioner's administrative claim [20] for refund filed on December 11, 2013 and the Petition for Review filed on November 5, 2015 [21] were both timely filed within the prescribed period.

On the merits of the refund sought, the present case involves DST erroneously overpaid by petitioner in connection with its subscription on its originally issued shares of stock.

---

[17] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue vs. Insular Lumber Co., et al.*, G.R. No. L-24221, December 11, 1967.
[18] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, January 3, 1968; *Manila North Tollways Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 812 (CTA Case No. 7864), October 11, 2012.
[19] Exhibits "P-3" and "P-4", docket, pp. 149 and 150, respectively.
[20] Exhibit "P-5", docket, p. 151.
[21] The date the Petition for Review was sent by registered mailed, pursuant to Section 3 of Rule 13 of the Rules of Court.

To be entitled to the refund sought, petitioner must comply with the following requisites under Section 229 of the NIRC of 1997, as amended, to wit:

1. the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and

2. the claim for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

As already discussed, both the administrative and the judicial claims for refund were seasonably instituted by petitioner.

In the meantime, on October 9, 2013, the SEC approved petitioner's Articles of Incorporation and By-Laws.[22]

In its Articles of Incorporation, petitioner has authorized capital stock of ₱5,000,000.00 divided into 50,000 shares with par value of ₱100.00 per share,[23] all of which were subscribed by its incorporators;[24] as indicated in the pertinent portions of the document:

> **SEVENTH:** The authorized capital stock of the Corporation is **FIVE MILLION PESOS (₱5,000,000.00)**, Philippine Currency, divided into **FIFTY THOUSAND (50,000)** shares at the par value of **ONE HUNDRED PESOS (₱100.00)** per share.
>
> xxx xxx xxx

---

[22] Exhibit "P-1", docket, p. 139.
[23] Exhibit "P-2-a", docket, p. 144.
[24] Exhibit "P-2-b", docket, p. 145.

EIGHTH: The amount of capital stock that has been subscribed is **FIVE MILLION PESOS (₱5,000,000.00)**, Philippine Currency, and the following persons have subscribed for the number of shares and the amount of capital stock set out after their respective names:

FULL NAME	CITIZENSHIP	NO. OF SHARES SUBSCRIBED	AMOUNT OF CAPITAL STOCK SUBSCRIBED
WILLIAM N. CHUA CO KIONG	FILIPINO	22,500	₱ 2,250,000.00
CELY Y. CHUA CO KIONG	FILIPINO	20,000	2,000,000.00
WESLEY Y. CHUACOKIONG	FILIPINO	2,500	250,000.00
CARLYN Y. CHUACOKIONG	FILIPINO	2,500	250,000.00
WILVER Y. CHUACOKION	FILIPINO	2,500	250,000.00
TOTAL		**50,000.00**	**₱ 5,000,000.00**

Petitioner paid and remitted the amount of ₱2,500,000.00 as DST due on such issuance of shares, pursuant to Section 174 of the NIRC of 1997, as amended. As proof thereof, petitioner submitted its duly stamped Documentary Stamp Tax Declaration/Return (BIR Form No. 2000)[25] and Chinabank's BTR-BIR Deposit Slip[26] dated November 5, 2013.

Pertinently, Section 174 of the NIRC of 1997, as amended, provides for the imposition of DST on original issue of shares of stock, to wit:

> SEC. 174. *Stamp Tax on Original Issue of Shares of Stock.* – On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by any association, company or corporation, there shall be collected a documentary stamp tax of One peso (₱1.00) on each Two hundred pesos (₱200), or fractional part thereof, of the par value, of such shares of stock: *Provided*, That in the case of the original issue of shares of stock without par value, the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: *Provided, further,*

[25] Exhibit "P-3", docket, p. 149.
[26] Exhibit "P-4", docket, p. 150.

> That in the case of stock dividends, on the actual value represented by each share.

Per the foregoing provision, a DST of ₱1.00 for every ₱200.00, or fractional part thereof shall be imposed on every original issuance of shares of stock based on either (a) the par value of such shares for shares, if with par value, (b) the actual consideration for such issuance of shares, if without par value, or (c) the actual value represented by each share for shares without par value issued as stock dividends.

Documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision or termination of specific legal relationships through the execution of specific instruments.[27] Its imposition is essentially addressed and directly brought to bear upon the document evidencing the transaction of the parties which establishes their rights and obligations.

In this case, the rights and obligations between petitioner and its incorporators were established upon approval by the SEC of petitioner's Articles of Incorporations; hence, the right to tax on the subscription of petitioner's shares of stock is in order.

Applying the provision of Section 174 of the NIRC of 1997, as amended, and considering that the subscription of petitioner's shares of stock by its incorporators involves 50,000 common shares of stock with a par value of ₱100.00 per share, the DST due thereon should be ₱25,000.00, computed as follows:

Common shares issued/subscribed	50,000 shares
Multiply by Par value per share	₱ 100.00
Par Value of common shares issued/subscribed	₱ 5,000,000.00
Multiply by DST rate	x 1.00/200.00
DST due	**₱ 25,000.00**

---

[27] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue,* G.R. No. 167962, September 19, 2008 citing *Philippine Home Assurance Corporation vs. Court of Appeals,* G.R. No. 119446, January 21, 1999

As mentioned earlier, petitioner paid and remitted DST of ₱2,500,000.00 to respondent, which was clearly beyond what was actually due for the transaction. In other words, petitioner erroneously paid ₱2,500,000.00 instead of the correct amount due for DST of ₱25,000.00. Evidently, there was an erroneous overpayment of the DST in the amount of ₱2,475,000.00, as shown below:

DST Remitted	₱ 2,500,000.00
DST Due	(25,000.00)
Overpayment	**₱2,475,000.00**

All said, the Court finds petitioner entitled to the claim for refund in the amount of ₱2,475,000.00 representing erroneously overpaid DST.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of **₱2,475,000.00** in favor of petitioner representing overpaid DST on the original issuance of petitioner's shares of stock.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson'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.

ROMAN G. DEL ROSARIO
Presiding Justice