REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

-versus-

STATELAND, INC., Respondent.

CTA EB NO. 599
(CTA Case No. 7128)

Present:

Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

JUL 21 2011 2:30pm

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D E C I S I O N

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by Commissioner of Internal Revenue ("CIR") on March 22, 2010, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, assailing the Decision[2] promulgated by the Second Division of the Court ("Court in Division") on November 6, 2009,

[1] *Rollo*, CTA EB No. 599 (CTA Case No. 7128), pp. 5-39, with Annexes.
[2] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring; *Annex "A;" Rollo*, pp. 19-37

which ordered the CIR to refund or to issue a tax credit certificate in favor of respondent Stateland, Inc., ("SLI") the amount of P2,305,860.00 representing the documentary stamp tax ("DST") erroneously paid the transfer of real properties on account of a corporate merger; and its Resolution[3] dated January 20, 2010, which denied CIR's Motion for Reconsideration.

Antecedent Facts

The relevant facts, as culled from the assailed Decision of the Court in Division:

> Petitioner[4] Stateland, Incorporated is a domestic corporation engaged in real estate business with principal address located at 3rd Floor State Centre Building, 333 Juan Luna Street, Binondo, Manila.
>
> On the other hand, respondent[5] is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of said office, including among others, the power to decide, approve and grant refunds or tax credits erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Diliman, Quezon City.
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> On November 28, 2002, three (3) domestic entities namely: State Land Investment Corporation (SLIC), Central Land, Inc. (CLI), and Central Equity Ventures, Inc. (CEVI) executed a Plan of Merger whereby said corporations shall enter into a merger, with SLIC as the surviving entity to be called Stateland, Inc. (SLI). On the same date, its Articles of Merger was executed. Before the merger, all the absorbed companies, CLI and CEVI have been engaged in the real estate business.
>
> On December 26, 2002, the Securities and Exchange Commission (SEC) approved the merger effective on January 1, 2003. Thus, the corporate existence of SLIC, CLI, and CEVI ceased to exist and the new corporation SLI succeeded to all the rights, privileges, immunities and franchises, and all the properties, real and personal, of the absorbed corporations.

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[3] *Annex "B;" Rollo*, pp. 38-39.
[4] Respondent SLI.
[5] Petitioner CIR.

By reason of the merger, petitioner paid the amount of FIFTY-FIVE THOUSAND ONE HUNDRED SEVENTY SIX PESOS (₱ 55,176.00) on January 3, 2003, representing documentary stamp tax on original issue of shares of stocks of petitioner said to be in favor of the minority stockholders.

On January 8, 2003, CEVI executed a Deed of Transfer dated December 27, 2002, relative to its transfer of rights, businesses, assets and other properties in favor of the petitioner. On the other hand, CLI also executed on the same date a Deed of Transfer dated 27, 2002 (sic) of similar import in favor of petitioner. On February 4, 2003, petitioner paid to respondent the amount of TWO MILLION THREE HUNDRED FIVE THOUSAND EIGHT HUNDRED SIXTY PESOS (₱ 2,305,860.00), representing documentary stamp tax on the said transfer of real properties from CLI to petitioner, with the following breakdown:

Exhibit	Nature of Document	Date Filed and Paid	Amount
L, M	BIR Form 2000, LBP Deposit Slip	February 4, 2003	249,960.00
N, O	BIR Form 2000, LBP Deposit Slip	February 4, 2003	192,525.00
P, Q	BIR Form 2000, LBP Deposit Slip	February 4, 2003	209,505.00
R, S	BIR Form 2000, LBP Deposit Slip	February 4, 2003	337,020.00
T, U	BIR Form 2000, LBP Deposit Slip	February 4, 2003	901,395.00
V, W	BIR Form 2000, LBP Deposit Slip	February 4, 2003	415,455.00
		TOTAL	2,305,860.00

On March 11, 2003, petitioner wrote the respondent a letter requesting for a ruling to determine if the said merger is a "Tax-Free Merger" under Sections 40(C)(2) and (6) (B) of the National Internal Revenue Code (NIRC) of 1997. In a Ruling dated July 17, 2003, the respondent confirmed that the said merger is within the contemplation of *Sec. 40(C)(6) (b) of the NIRC of 1997* for being undertaken under a *bona fide* business purpose, and not for the purpose of escaping the burden of taxation. It likewise states that the merger is qualified for non-recognition of gain or loss for income tax purposes in accordance with Section 40(C)(2) of the NIRC of 1997; that no gain or loss was recognized by CEVI and CLI when they transferred all their assets and liabilities to petitioner, nor was there any gain or loss that shall be recognized by petitioner as transferee on its receipt of the asset and liabilities of both CEVI and CLI pursuant to and as consequence of said merger.

Contrary thereto, however, respondent finds that the transfers of the real properties of CEVI and CLI to petitioner are subject to DST imposed under Section 196 of the NIRC of 1997 based on the consideration contracted to be paid for such realty or on its Fair Market Value, in accordance with Section 6(E) of the NIRC of 1997, whichever is higher.

On the belief that there was an erroneous payment representing the DST on the transfer of real property, petitioner filed with respondent an administrative claim for refund or issuance of tax credit certificate in the amount of TWO MILLION THREE HUNDRED FIVE THOUSAND EIGHT HUNDRED SIXTY PESOS (₱ 2,305,860.00) on July 5, 2004. Due to respondent's inaction thereon, petitioner filed with this Court a Petition for Review on January 19, 2005, in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for refund/issuance of a tax credit certificate.

Respondent filed an Answer on February 24, 2005[6] alleging the following special and affirmative defenses:

"4. Petitioner's alleged claim for refund was erroneously filed with the Office of the Commissioner, Bureau of Internal Revenue, National Office, Agham Road, Diliman, Quezon City instead of the Revenue District Office No. 30-Binondo, with address at Port Area, Manila, as required under the Revenue Delegation Authority Order No. 03-02 dated February 15, 2002 as cited in the BIR Ruling (DA-083-03) dated March 17, 2003;

5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

6. The amount of ₱ 2,305,860.00 being claimed by Petitioner as alleged erroneously paid DST for taxable year 2003 was not properly documented;

7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

[6] Docket, pp. 94-98.

8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

9. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (C) and 229 of the Tax Code on the prescriptive period claiming tax refund/credit;

10. BIR Ruling No. S-40-022-2003 dated July 17, 2003 (Attached to Annex 'B', Petition) requires that in order that the re-organization can be considered as merger under Section 40 (C) (2) of the Tax Code, the petitioner together with the other parties to the merger should comply with the requirements enumerated in pages 8 and 9 thereof, which up to now petitioner failed to comply with;

11. Assuming the above requirements are duly complied with, BIR Ruling No. S-40-022-2003 dated July 17, 2003 itself states further that the transfer of real properties by CEVI and CLI to SLI, petitioner is subject to documentary stamp tax imposed under Section 196 of the 1997 Tax Code on account of the merger (see also BIR Ruling No. 002-01 dated 2-2-2001, BIR Ruling DA-017-02, 2-7-2002 and BIR Ruling DA-023-02, 2-19-2002);

12. The term: 'Conveyances', referred to in Section 196, 1997 Tax Code is not limited to the transfer of real property by sale, but contemplates of all kinds of conveyances with or without consideration.

In general, 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. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the documentary stamp taxes are leases of lands, mortgages, pledges, and trusts, and **conveyances of real property.**

Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transaction giving rise thereto. The documentary stamp taxes must be paid upon the issuance of the said instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. As the Supreme Court of the

United States held in Du Pont vs United States (300 US 150, 153, 1936):

> 'The tax is not upon the business transacted but is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. **In this view it is immaterial whether the transfer of the account constituted a sale**. (Philippine Home Assurance Corporation et al., vs CA and CIR, GR No. 119446, January 21, 1999)

'Apropos, the documentary stamp tax may be imposed on all deeds, instruments, writings, or conveyances of real property. The only exception is when such conveyance or transfer is effected by way of a grant, patent, or original certificate of adjudication issued by the Government (Fort Bonifacio Development Corporation vs. CIR, CA-GR SP No. 76017, June 11, 2004).

13. In the recent case of Philippine Home Assurance Corporation et. al vs. Court of Appeals, G.R. No. 119446, January 21, 1999, the Court made a categorical pronouncement that the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, in this case, at the time of the issuance of the document.

14. The act of entering into a plan of merger involves the voluntary act of the parties. This could be validated in the case of Koppers Coal & Transportation Co., vs. United States 107 F.2 706, where the Court has held that:

> 'The transfer of the stock from Koppers Coal & Transportation Company to C.C.B. Smokeless Coal Company was not "wholly by operation of law" since the voluntary act and participation of the constituent company was required in order to effect the merger or consolidation.'

15. The BIR has consistently ruled that in tax-deferred exchanges, DST is imposed.

This has been affirmed in BIR Ruling No. 2-2001 dated February 2, 2001, to wit:

> 'In view of all the foregoing, it is the opinion of this Office, as we hereby hold, that the tax-deferred exchange of properties of a corporation, which is a party to merger or consolidation, solely for shares of stock in a corporation which is also a party to the merger or consolidation, is subject to the documentary stamp tax under Section 176 if the properties to be transferred are shares of stock or even certificates of obligation and also to the documentary stamp tax under Section 196, if the properties to be transferred are real properties. Finally, it may be worth mentioning that the original issuance of shares for stock of the surviving corporation in favor of the stockholders of the absorbed corporation as a result of the merger, is subject to the documentary stamp tax under Section 175 of the Tax Code of 1997 (BIR Ruling No. S-40-220-2000, December 21, 2000).'

16. Prior to the effectivity of Republic Act No. 9243 signed on February 17, 2004 which now exempts transfer of real property from documentary stamp tax under Section 196 on account of the merger, the 1997 Tax Code still imposes DST on any conveyance with or without consideration under said Section.

17. Well settled is the rule that claims for refund/credit are construed strictly in *strictissimi juris* against the taxpayers as they partake the nature of exemption from tax, and it is incumbent upon the petitioner to show that it is entitled thereto under the law."

During trial, petitioner presented its lone witness, Bienvenido S. Uy, its Senior Vice President, while petitioner submitted the case for decision without presenting any witness. After the parties have filed their respective memoranda, this case was submitted for decision on November 20, 2008.[7]

[7] *Rollo*, pp. 20-26.

The Ruling of the Court in Division

The following issues were jointly stipulated by the parties for resolution by the Court in Division:

1. Whether petitioner is entitled to a tax refund or tax credit in the amount of **PESOS: TWO MILLION THREE HUNDRED FIVE THOUSAND EIGHT HUNDRED SIXTY AND 00/100 (₱ 2,305,860.00)** for DST alleged to be erroneously paid.

    1.1 Whether or not the transfer of real properties by CEVI and CLI to SLI is subject to DST imposed under § 296 of the 1997 Tax Code on account of the merger.

2. Whether or not the petitioner together with the other parties to the merger complied with the requirements enumerated in pages 8 and 9 of BIR Ruling No. S-40-022-2003 dated July 17, 2003, in order that the re-organization can be considered as merger under Sec. 40 (C) (2) of the Tax Code.

3. Whether or not the term "**CONVEYANCES,**" referred to in Sec. 196 of the 1997 Tax Code is not limited to the transfer of real property by sale, but contemplates all kinds of conveyances with or without consideration.

4. Whether or not the act of entering into a plan of merger involves the voluntary act of the parties.

    4.1 Whether or not the consequences of merger transpires by operation of law.

5. Whether or not petitioner erroneously filed the claim for refund with the Office of the Commissioner, Bureau of Internal Revenue, National Office, Agham Road, Diliman, Quezon City and instead of the Revenue District Office No. 30-Binondo, with address at Port Area, Manila as required under Revenue Delegation Authority Order No. 03-02 dated February 15, 2002 as cited in BIR Ruling DA-083-03, dated March 17, 2003.

6. Whether or not prior to the effectivity of Republic Act No. 9243, signed into law on February 17, 2004, which now exempts transfer of real property from documentary stamp tax under Sec. 196 on account of merger, there is a specific law or regulation

> which categorically exempts from documentary stamp tax any conveyance of real property with or without consideration."[8]

The Court in Division fused the foregoing issues into one ultimate issue of whether or not SLI is entitled to tax refund or tax credit as claimed in the Petition.

In the Decision dated November 6, 2009, the Court in Division, finding merit on the Petition, ordered petitioner CIR to refund or to issue a tax credit certificate in favor of SLI in the amount of P2,305,860.00, representing the documentary stamp tax erroneously paid as a result of the transfer of real properties on account of a corporate merger.

It ruled that as one of the legal effects of a merger or consolidation, all property, real or personal, belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in the surviving or merged corporation without further act or deed or by "**operation of law**" which is defined as "effected by some positive legal rule or amendment".

Likewise, the Court in Division said that there were no sales of real properties when CLI and CEVI executed the Deeds of Transfers to SLI as the same were made pursuant to a corporate merger wherein the constituent corporations or the surviving corporation are not considered as buyer or purchaser in the subject transfers. Consequently, the Court found no merit in the contention of the CIR that respondent is liable for documentary stamp tax under Section 196 of the NIRC of 1997.

The Court in Division opined that as previously held by the Court *En Banc*, transfers of real properties in pursuance of a merger or consolidation are not subject

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[8] *Rollo*, pp. 26-27.

to documentary stamp taxes as there is no actual "purchaser" or "buyer" of real property; said properties, subject of the consolidation, were merely absorbed by SLI as a legal consequence of the consolidation without any form of consideration being contracted to be paid.

Moreover, the Court in Division noted that the CIR issued BIR Ruling No. S-40-022-2003 dated July 17, 2003, which explicitly ruled that SLI's merger with CLI and CEVI is a tax-free merger in contemplation of Section 40(C)(2) of the NIRC of 1997 having been entered into for a *bona fide* business purpose and not merely to avoid the burden of taxation. The Court in Division further stated that in the aforesaid BIR Ruling that "in a merger, the surviving corporation (SLI) succeeds to the rights and liabilities of the absorbed corporations (CEVI and CLI) and merely carries on the identity of the latter corporations. Consequently, no gain was realized by the surviving corporation (BIR Ruling No. 112-96 dated October 25, 1996)"[9]. As there was no intention on the part of CEVI and CLI to donate to SLI their assets since the transaction is purely for legitimate purpose, the aforesaid merger will not be subject to gift tax and the transaction is a *bona fide* merger effected solely for business reasons. Clearly on the basis of the aforesaid ruling, the CIR impliedly recognized that the transfer of assets and liabilities from the absorbed corporations CLI and CEVI to SLI, is in exchange solely for its shares and is without consideration. These are therefore, transfers not in contemplation of conveyance of real properties subject to documentary stamp tax.

Accordingly, the Court in Division disposed of the case as follows:

[9] *Rollo*, p. 33.

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue[10] is hereby **ORDERED** to refund or to issue a tax credit certificate in favor of petitioner[11] the amount of ***TWO MILLION THREE HUNDRED FIVE THOUSAND EIGHT HUNDRED SIXTY PESOS (₱ 2,305,860.00)*** representing the documentary stamp tax erroneously paid as a result of the transfer of real properties on account of a corporate merger.
>
> **SO ORDERED.**

Aggrieved by the Decision, petitioner filed a Motion for Reconsideration on November 25, 2009. The same was denied by the Court in Division in a Resolution[12] promulgated on February 11, 2010.

The Issue

Hence, the instant Petition for Review filed on March 22, 2010 where petitioner alleges the following ground:

> 1. THE HONORABLE COURT ERRED IN RENDERING THE DECISION PROMULGATED ON NOVEMBER 6, 2009 ORDERING THE REFUND OR THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN FAVOR OF PETITIONER THE AMOUNT OF TWO MILLION THREE HUNDRED FIVE THOUSAND EIGHT HUNDRED SIXTY PESOS (P2,305,860.00) REPRESENTING ERRONEOUSLY PAID DOCUMENTARY STAMP TAX.[13]

CIR's Arguments

The petitioner claims that although there was a ruling issued on January 17, 2003 confirming that the subject merger is within the contemplation of Sec. 40(C)(6)(b) of the NIRC of 1997, and therefore, qualified for non-recognition of gain or loss for income tax purposes, this does not exempt SLI from the imposition of DST

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[10] Herein petitioner.
[11] Herein respondent.
[12] *Supra* Note 3.
[13] *Rollo*, p. 13.

under Section 196 of the NIRC of 1997. It is the assertion of the CIR that the term "conveyances" referred to in Section 196 is not limited to the transfer of real property by sale, but contemplates all kinds of conveyances with or without consideration which includes the subject merger.

Additionally, the CIR alleges that the Court in Division in applying retroactively Republic Act No. 9243, ("RA 9243"),[14] approved on February 17, 2004, undermined the prospective application of tax laws unless the contrary is clearly provided. Since the transfer transactions were executed on January 8, 2003 (Deed of Transfer both dated December 27, 2002), or more than a year before the effectivity of RA 9243 which now exempts transfer of real property from documentary stamp tax under Section 196 of the NIRC of 1997, he contends that the DST paid by SLI was legally due in accordance with law and related rulings, and therefore, not erroneous.

SLI's Counter-Arguments

Respondent SLI argues that the CIR misconstrued the context in which the Court in Division cited RA 9243 in the assailed Decision of November 6, 2009. The law in question was mentioned in the Decision not to be given effect but merely to emphasize and confirm the validity of exemption from documentary stamp tax on the transfer of real properties on account of corporate merger.

SLI further maintains that by issuing its Ruling No. S-40-022-2003 dated July 17, 2003, the CIR recognized that the corporate merger among SLIC, CLI, and CEVI, with it as the surviving corporation, was a tax-free merger in contemplation of

[14] "An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, As Amended, and for Other Purposes."

Section 40(C)(2) of the NIRC of 1997 having been done for a *bona fide* business purpose and not merely to evade the burden of taxation. Clearly, SLI avers that the merger could not be considered a conveyance within the meaning of Section 196 of the NIRC of 1997 since no sale of real properties was intended in the Deeds of Transfer of the properties from CLI and CEVI to SLI.

SLI, therefore, claims that it should not be liable to DST under Section 196 of the NIRC of 1997 as the absorption by SLI of the real properties of CLI and CEVI, as a legal consequence of the merger, is part and parcel of a single and continuing principal transaction that is the merger.

The Ruling of the Court En Banc

The petition is bereft of merit.

The present law authorizes two or more corporations to merge into a single corporation which shall be one of the constituent corporations.[15] This merger is a union whereby one or more existing corporations are absorbed by another corporation which survives and continues the combined business.[16] The parties to a merger, constituent corporations, are dissolved leaving only the surviving corporation. In such a case, there is no liquidation of the assets of the dissolved corporations, and the surviving corporation assumes *ipso jure* the liabilities of the dissolved corporations, regardless of whether the creditors have consented or not to such merger or consolidation.[17]

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[15] Section 76, Batas Pambansa Blg. 68 entitled "Corporation Code of the Philippines."
[16] Cesar L. Villanueva, Philippine Corporate Law, 2001, pp. 606-607.
[17] *Id.*

The process of merger or consolidation, unlike the regular transfer and acquisition processes, are able to achieve a continuous flow of the juridical personalities and business enterprises of the constituent corporation, and under the clear rules of Section 80 of the Corporation Code of the Philippines ("Corporation Code"), there is no legal break in such juridical personalities and business enterprises as they end up combined in the surviving or consolidated corporation.[18]

As correctly pointed out by the Court in Division in its Decision promulgated on November 6, 2009, the effect of a merger or consolidation is one by "**operation of law**"[19] or without further act or deed, evident in the words of Section 80, paragraph 4 of the Corporation Code stated in this wise:

> "*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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> xxx xxx
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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; **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;** xxx (*Boldfacing supplied)*

In the case of *Associated Bank v. Court of Appeals and Lorenzo Sarmiento Jr.*,[20] the Supreme Court simplified the effect of merger as:

[18] *Supra* Note 16 at p. 613.
[19] *Rollo*, p. 29.
[20] G.R. No. 123793, June 29, 1998, 291 SCRA 511, citing Jose C. Campos Jr. and Maria Clara Lopez-Campos, *The Corporation Code: Comments, Notes and Selected Cases*, Vol. 2, 1990 ed., p. 441; § 80, Corporation Code.

> "Ordinarily, in the merger of two or more existing corporations, one of the combining corporations survives and continues the combined business, while the rest are dissolved and all their rights, properties and liabilities are acquired by the surviving corporation. Although there is a dissolution of the absorbed corporations, there is no winding up of their affairs or liquidation of their assets, because the **surviving corporation automatically acquires all their rights, privileges and powers, as well as their liabilities.**" *(Boldfacing supplied)*

This automatic acquisition which the Supreme Court impresses upon us proves to merely refute the argument of petitioner that the merger is a conveyance akin to the transfer of real property referred to in Section 196 of the NIRC of 1997. A clear understanding of the provision under dispute necessitates a look back at the words of the law and it provides:

> **SEC. 196.** ***Stamp tax on Deeds of Sale and Conveyances of Real Property.*** **-** 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 herein imposed shall be based on the actual consideration.
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> (a) When the consideration, or value received or contracted to be paid for such realty after making proper allowance of any encumbrance, does not exceed One thousand pesos (P1,000) fifteen pesos (P15.00).
>
> (b) For each additional One thousand pesos (P1,000), or fractional part thereof in excess of One thousand pesos (P1,000) of such consideration or value, Fifteen pesos (P15.00).
>
> When it appears that the amount of the documentary stamp tax payable hereunder has been reduced by an incorrect statement of the consideration in any conveyance, deed, instrument or writing subject to

> such tax the Commissioner, provincial or city Treasurer, or other revenue officer shall, from the assessment rolls or other reliable source of information, assess the property of its true market value and collect the proper tax thereon.

The conveyance of real property envisioned by the wordings of the aforesaid law is one which involves firstly, a *purchaser* or *purchasers;* and secondly, there is a *consideration* or *fair market value* which shall be the basis for the computation of the DST. It does not take one to have a keen eye and thorough legal knowledge base to determine that what this provision intends is a conveyance or transfer of real properties through sale. Article 1458 of the Civil Code defines a "sale" as a contract whereby one of the contracting parties (*the Seller*) obligates himself to transfer ownership of, and to deliver, a determinate thing; and the other party (*the Buyer)* obligates himself to pay therefore a price certain in money or its equivalent.[21] Fittingly, the conveyance or transfer under Section 196 is exactly that of a sale as provided by the Civil Code.

The Court subscribes to the interpretation of Section 196 of the NIRC made by the Court of Appeals ("CA") in the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,*[22] which shed light on this matter. This was an appeal from the decision entitled *"Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue," CTA Case No. 6477 dated April 30, 2003,* at the time when Republic Act No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals" was still in effect vesting the Court of Appeals the jurisdiction over the said case. The CA, in that case, made the ensuing pronouncement, *viz.:*

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[21] Cesar L. Villanueva, Law on Sales, 2004. p.1.
[22] CA-G.P SP No. 77117, September 10, 2009.

> "It is a fundamental rule in statutory construction that the clauses, phrases, sections and provisions of a law are read as a whole; never as disjointed or truncated parts, for a law is enacted as a single entity and not by installment of paragraphs here and subsections there.
>
> **Section 196 should be read as a whole and not phrase by phrase. The phrase granted, assigned, transferred or otherwise conveyed clearly refers to the phrase whereby any land, tenement or other realty is sold. This clearly shows that the legislature intended Section 196 to refer to a transfer of realty by virtue of sale.** This is further bolstered by the fact that the property is granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers. In addition, the basis of the stamp tax is the consideration agreed upon by the parties or the property's fair market value. Taking all of these into consideration, it is beyond doubt that the Section 196 pertains to a transfer of realty by way of sale.[23] *(Boldfacing supplied)*

Likewise, the claim of the CIR that prior to the effectivity of RA 9243, Section 196 still imposes DST on any conveyance, with or without consideration, including those transfers on account of merger, does not persuade the Court *En Banc*. On December 3, 1993, or more than a decade before RA 9243 became into a law, the CIR issued BIR RULING NO. 472-93 dated December 3, 1993 that addressed the issue on a reorganization/merger for a bona fide business purpose as a tax-free exchange. In an almost similar set of facts extant in the present case, the ruling relates:

> " xxx Tagaytay Highlands Corporation (THC) and Belle Resources Corporation (BRC) are both domestic corporations, the primary purpose of which are to invest in, purchase, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of, as may be permitted by law, real and personal property of every kind and description; that on August 25, 1993, **THC and BRC executed a Plan of Merger whereby BRC is the surviving corporation; that with the merging of the two corporations, the outstanding shares of stock of THC shall, after the effective merger date and upon surrender by the registered owners of the shares of**

[23] Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, CA-G.P SP No. 77117, September 10, 2009.

stock, be exchanged with shares of stock of BRC at the ratio of eight (8) shares of BRC for one (1) share of THC, as determined on the basis of the amount of the net assets of THC, as of July 31, 1993; that upon effective merger date, THC's corporate existence shall cease and all its rights, privileges, powers and franchises, all its properties, real and personal, including receivables on whatever account, and all and every other interest of THC shall be assumed by, and be vested in BRC without further act or deed; that all debts, liabilities and obligations of THC in the amount of P37,216,936.00, as well as pending claims, actions and proceedings shall likewise vest in, attach to and be assumed by BRC, and may be enforced against BRC as if they had been originally contracted or incurred by it without further act or deed; and that the merger will achieve mutually advantageous and beneficial business purposes, such as but not limited to (1) increased financial strength; and (2) rationalization of overall business expenses, particularly administrative expenses."[24] *(Boldfacing supplied)*

The points raised in the said ruling that needed confirmation by the CIR where:

"(1) The merger of THC and BRC qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 34(c)(2) of the Tax Code, such that no gain or loss shall be recognized to THC and BRC upon the assumption of the assets and liabilities of THC and BRC pursuant to the merger;

(2) No gain or loss shall be recognized by the shareholders of THC upon the issuance and distribution of BRC's shares to them in exchange for their shares in THC pursuant to and as a consequence of the merger;

(3) The basis of the BRC shares of stock to be received by the stockholders of THC shall be the same as their basis in THC shares of stock surrendered and exchanged pursuant to the plan of merger;

(4) The basis of the properties of THC in the hands of BRC shall be the same as it would be in the hands of THC;

(5) The assumption by BRC of the assets of THC will not be considered as a transfer of property for an insufficient consideration subject to gift tax, since there is no intention to donate on the part of either party and the transaction is purely for legitimate business purposes;

[24] BIR Ruling No. 472-93, December 3, 1993, signed by Commissioner Liwayway Vinzons-Chato.

(6) **The assumption by BRC of the assets of THC shall not be subject to the documentary stamp tax under Sec. 196 of the Tax Code, as amended.**"[25] *(Boldfacing supplied)*

Astutely, the CIR had the following to say:

"In reply thereto, I have the honor to inform you that **the above reorganization is a merger within the contemplation of Section 34(c) (2) and (50) (b) of the Tax Code because a corporation, BRC will acquire all the assets and assume all the liabilities of THC solely for stocks, the transaction to be undertaken being for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation.**

Accordingly, **the transfer by THC of all its assets and liabilities to BRC solely in exchange for the latter's shares of stock shall not give rise to the recognition of gain or loss pursuant to Section 34(c) (2) of the Tax Code.** No gain or loss shall be recognized to THC upon the distribution of BRC shares to THC stockholders in complete redemption of their stocks solely for BRC stocks under Section 34(c) of the Tax Code.

The basis of the assets received by BRC shall be the same as it would be in the hands of THC. The basis of the BRC stocks received by the stockholders of THC shall be the same as the basis of the THC stocks surrendered in exchange therefor.

If the total liabilities to be assumed by BRC upon effective merger date exceed the historical or original acquisition cost (cost basis) of the assets transferred by THC, the excess shall be recognized as gain of THC [Section 34(c) (4) (b), Tax Code, as amended by P.D. No. 1773].

It is understood, however, that upon the subsequent sale or exchange of the assets or shares of stock acquired by the parties, the gain derived from such sale or exchange shall be subject to income tax.

The Agreement of Merger executed by BRC and THC is not subject to documentary stamp tax.

The abovementioned transactions shall not be subject to the gift tax as there is no intention to donate on the part of any of the parties.[26]" *(Boldfacing supplied)*

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[25] *Ibid.*

It is unmistakable from the foregoing ruling that even before RA 9243, the CIR has recognized that mergers, when done purely for a bona fide business purposes and not merely to evade taxes, are not subject to documentary stamp taxes. The categorical statement emphasized above leaves no doubt as to the position which the CIR has taken in the past regarding the exemption of tax-free mergers from DST. Hence, applying the above ruling to this case, the CIR cannot validly claim that the merger which SLI consummated is subject to DST, absent any proof showing to the contrary.

Moreover, as was noted by the Court in Division in its Decision,[27] the BIR Ruling No. S-40-022-2003 issued by herein petitioner on July 17, 2003, which explicitly ruled that SLI's merger with CLI and CEVI is a tax-free merger in contemplation of Section 40(C)(2) of the NIRC of 1997 having been entered into for a *bona fide* business purpose and not merely to avoid the burden of taxation, impliedly recognized that the transfer of assets and liabilities from the absorbed corporations CLI and CEVI to SLI, is in exchange solely for its shares and is without consideration. These are therefore, transfers not in contemplation of conveyance of real properties subject to documentary stamp tax. The Court in Division held:

> "Respondent[28] further stated in the aforesaid BIR Ruling that "in a merger, the surviving corporation (SLI) succeeds to the rights and liabilities of the absorbed corporations (CEVI and CLI) and merely carries on the identity of the latter corporations. Consequently, no gain was realized by the surviving corporation (BIR Ruling No. 112-96 dated October 25, 1996)". There is no intention on the part of CEVI and CLI to donate to SLI their assets since the transaction is purely for legitimate

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[26] *Ibid.*
[27] *Rollo*, p. 33.
[28] Herein petitioner.

purpose. Thus, the aforesaid merger will not be subject to gift tax and the transaction is a *bona fide* merger effected solely for business reasons."

In fine, the Court *En Banc* finds no compelling reason to warrant a modification of the assailed Decision.

WHEREFORE, the Petition for Review is hereby **DISMISSED.** Accordingly, the impugned Decision of the Court in Division dated November 6, 2009, and Resolution dated February 11, 2010 in C.T.A. Case No. 7128 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice