REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MUSIC CORPORATION (formerly Music Semiconductors Corporation),
Petitioner,

- versus -

C.T.A. CASE NO. 5670

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 06 2000

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DECISION

This is a petition for review filed by petitioner MUSIC CORPORATION against respondent COMMISSIONER OF INTERNAL REVENUE, for the failure of the latter to act on the former's claim for refund in the amount of P1,081,456.00 allegedly representing the documentary stamp tax (DST) which petitioner paid twice, first on September 25, 1996, and second on September 26, 1996 on the same initial public offering/original issuance of petitioner's shares of stocks.

As represented, petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Lot 8, Phase II B, Special Export Processing Zone, Carmelray Industrial Park, Canlubang, Laguna. It is engaged in the design, development, and marketing of specialty semiconductors for the worldwide network systems market.

On September 26, 1996, petitioner sold, *inter alia*, by way of a primary offering through the Securities and Exchange Commission, one hundred eight million one hundred forty five thousand five hundred sixty (108,145,560) shares at a par value of one peso (P1.00) per share. On this transaction, petitioner paid DST at the East Revenue District Office (RDO No. 47) of Makati in the amount of one million eighty one thousand four hundred fifty six pesos (P1,081,456.00) on September 25, 1996 under ATAP No. 3983645 (Annex "C").

Petitioner alleges that upon review of the DST which it had paid, it realized that the DST was not paid in the RDO of the BIR, Makati that has jurisdiction over petitioner. Due to the then requirements that the DST be paid within twenty-four (24) hours after the taxable transaction, petitioner caused the preparation, filing and payment of DST for exactly the same amount (P1,081,456.00) at the South RDO No. 50, Makati on September 26, 1996 under ATAP No. 3886797 (Annex "D").

On November 25, 1997, petitioner, through the Law Offices of Soo Gutierrez Leogardo & Lee, filed with the Law Division , BIR National Office, a request for confirmation of petitioner's right to claim as refund or in the nature of a tax credit the aforesaid amount of P1,081,456.00 (Annex "E").

On September 24, 1998, petitioner through its external auditors, SGV & Co., filed with the BIR a request/claim for refund or issuance of the corresponding Tax Credit Certificate (TCC) for the same amount of P1,081,456.00 (Annex "F").

The same was not acted upon by respondent, hence, on September 24, 1998, petitioner filed with this Court the instant petition for review.

Petitioner asseverates that it is entitled to a refund or the issuance of a TCC for the DST erroneously paid to RDO No. 47, in the amount of P1,081,456.00. It said that it dutifully complied with the provision of Section 175 of the Tax Code, *infra*, and effected the payment of the DST due on its initial public offering (IPO) of its shares of stocks, however, due to an honest mistake in effecting the payment of the DST to RDO No. 47, instead of RDO No. 50 which has jurisdiction over it at that time, it again paid the same amount in the latter RDO to show that it adhered to the tax laws of the Philippines, resulting in the double payment of the DST due. Thus, citing Article 2154 of the Civil Code, on "solutio indebiti", Section 204 of the Tax Code, and the case of **Anscor Hagedorn Securities, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4985, October 3, 1995**, petitioner concluded that respondent is under obligation to refund the claimed amount of P1,081,456.00.

Further, Petitioner argued that in a Joint Stipulation of Facts dated April 7, 1999, quoted below, filed by its counsel and the counsel of respondent, the latter admitted, *inter alia*, that petitioner had paid the same tax twice in relation to the same transaction, thus, it said, as a matter of law, it is entitled to a refund of the overpaid tax. Moreover, petitioner contended that the above-mentioned facts, being the subject of judicial admissions by the respondent, require no further proof, invoking Section 4, Rule 129, Rules of Court.

Joint Stipulation of Facts

> 1. That petitioner did pay to respondent Commissioner of Internal Revenue on September 25, 1996, the amount of P1,081,456.00, representing Documentary Stamp Tax (DST) on the issuance of shares stock through the Initial Public Offering (IPO) of Petitioner's shares of stock, as evidenced by the Authority to Accept Payment (ATAP) Form with No, 3983645 dated September 25, 1996 (certified true copy verified by Respondent), ,said ATAP issued in the name of petitioner.
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> 2. That petitioner did pay to respondent Commissioner of Internal Revenue on September 26, 1996, the amount of P1,081,456.00, representing Documentary Stamp Tax (DST) on the issuance of shares of stock through the Initial Public Offering (IPO) of petitioner's shares of stock, as evidenced by the Authority to Accept Payment (ATAP) Form with No. 3886797 dated

September 26, 1996 (original copy verified by respondent), said ATAP issued in the name of petitioner.

3. That petitioner secured the appropriate Certificate of Permit to Offer Securities for Sale from the Securities and Exchange Commission (SEC) to allow the sale of petitioner's shares of stock in the Philippines by way of initial and secondary public offering, particularly 108,145,560 shares of petitioner at a par value of P1.00 per share (original copy verified by respondent).

4. That on September 24, 1998, petitioner through its external auditors, filed with respondent Commissioner of Internal Revenue a request/claim for refund for the amount of P1,081,456.00 representing the erroneously paid DST due on the issuance of shares of stock (original copy verified by respondent).

On the other hand, respondent, in his answer, raised the herein special and affirmative defenses, thus: (1) assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the BIR; (2) petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected; (3) taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable; (4) in an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to adduce sufficient proof is fatal to the action for tax refund/credit; (5) it is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code; and (6) claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

Respondent submitted his case based on the pleadings and argued in its memorandum that petitioner is not entitled to the refund of the amount sought to be refunded on the sole ground that petitioner failed to file its formal offer of evidence.

The issues that come to fore for our consideration are: (1) whether or not the admissions made by a party during trial need to be proven, and (2) whether or not respondent's admissions are sufficient by themselves to warrant the grant of the refund.

With regard to the first issue, it must be stressed that admissions made by the parties in the pleading, or in the course of trial or other proceedings do not require proof and cannot be contradicted unless previously shown to have been made through palpable mistakes **(Eastern Shipping Lines, Inc. vs. Court of Appeals, G.R. No. 80936, October 17, 1990; National Irrigation vs. Judge Regino, G.R. No. 86586, December 4, 1990)**. Facts judicially known, presumed, admitted or confessed need not be proved **(People vs. Maspil, G.R. No. 85177, August 20, 1990).** Where the Stipulation of Facts of the parties at the pre-trial appear to be undisputed, the Court can very well resolve the case without need of a trial on the merits **(Penticostes Sr. vs. Development Bank of the Philippines, G.R. No. 89620, July 13, 1990).**

In the case at bar, the written judicial admissions made by respondent in his answer and in the Joint Stipulation of Facts need not be proven, as this is crystal clear in Section 4 of Rule 129 of the Revised Rules of Court, which states, to wit:

> **Section 4.** ***Judicial Admissions.*** - An admission, verbal or written, made by a party in the course of the proceeding in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Throughout the trial of the instant case, respondent never withdrew its admissions for any reason whatsoever, thus these admissions stand as the best proof of petitioner's case. Stated otherwise, there being no allegation of a palpable mistake that would relieve respondent from the stipulation of facts, the admissions in the Joint Stipulation of Facts above-quoted are conclusive upon the parties.

We will now dwell on the issue of whether or not the above-mentioned admissions of respondent together with the testimony of petitioner's witness are sufficient to grant the relief sought by the latter.

The admissions and the testimony of petitioner's witness clearly show that petitioner has overpaid the DST for the same IPO/issuance of shares of stock. The taxable transaction consisted of the issuance of One Hundred Eight Million One Hundred Forty Five Thousand Five Hundred Sixty (108,145,560) shares of stock with a par value of One Peso (P1.00) per share, or a total par value of P108,145,560.00. Under Section 175 of the Tax Code, quoted below, the petitioner was thus required to pay P1,081,456.00 DST for the issuance of the shares computed on a P2.00 for every P200.00 or fractional part thereof. Since in the Joint Stipulation of Facts dated April 7, 1999, respondent clearly admitted that the Commissioner of Internal Revenue received two payments from petitioner pertaining to the one and the same transaction, (initial public offering/original issuance of latter's shares of stocks), first on September 25, 1996 in the amount of P1,081,456.00 as evidenced by Authority to Accept Payment (ATAP) No. 3983645, and second on September 26, 1996, or a day after, in the same amount of P1,081,456.00 as evidenced by ATAP No. 3886797; and that petitioner secured the appropriate Certificate of Permit to Offer Securities for Sales from the Securities and Exchange Commission (SEC) to allow the sale of petitioner's shares of stocks in the Philippines by way of initial and secondary public offering, particularly 108,145,560 shares at a par value of P1.00; and (3) that petitioner on September 24, 1998 filed with the Bureau a claim for refund for the aforesaid amount of P1,081,456.00, and further considering the unrebutted testimony of Mr. Jose Razon, Jr. on April 13, 1999, TSN, p. 10, stating *inter alia*, that the two payments were made for the same IPO/issuance of petitioner's shares of stocks, the Court believes that the aforestated issue should be ruled in the affirmative. Clearly, petitioner's evidence is sufficient to grant the relief sought by petitioner.

> **"Section 175.** ***Stamp tax on original issue of certificates of stock.*** - On every original issue, whether on organization, reorganization or for any lawful purpose, of certificates of stock by any association, company, or corporations, there shall be collected a documentary stamp tax of Two Pesos (P2.00) on each two hundred pesos, or fractional part thereof, of the par value of such certificates: x x x."

As correctly stated by petitioner, this Court, in the case of **Anscor Hagedorn Securities, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4985, October 3, 1995,** ruled that the fact of double payment of taxes made by a taxpayer can be the basis for a claim for refund or issuance of a TCC, thus:

> "From the facts thus presented, there exists no doubt that petitioner, by mistake, paid the tax that has already been previously paid by the withholding agent resulting in the double recovery of taxes on the part of the BIR. This situation creates a quasi-contract relationship between petitioner and respondent more particularly categorized as a case of "solutio indebiti" governed by Article 2154 of the Civil Code of the Philippines which provides as follows:
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> > "Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."
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> The law and the facts are clear. Respondent, in receiving two payments pertaining to a single taxable transaction when the law imposes merely a single taxable amount to be paid by the proper withholding agent, is obliged to return what was erroneously paid pursuant to the aforecited Article 2154 of the Civil Code. Fair deal is expected by our taxpayers from the BIR and the duty demands that BIR should refund without any unreasonable delay what it

> erroneously collected. (Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., represented by Soriamont Steamship Agencies, Inc., and the Court of Tax Appeals, G.R. No. 68252, May 26, 1995)"

While the overriding purpose of tax laws is the collection of taxes **(Commissioner of Internal Revenue vs. Fireman's Funds Co., Inc., 148 SCRA 315)**, the observance of the same principle does not preclude exceptions in the interest of justice and fair play. The payment of petitioner to respondent of documentary stamp tax twice clearly constitutes double payment, thus a refund in the instant case is in order.

IN THE LIGHT OF ALL THE FOREGOING, the instant petition for review is **GRANTED.** Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a tax credit certificate to herein petitioner in the amount of P1,081,456.00, representing the latter's erroneously paid DST on its original issuance of shares of stocks. No costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge