REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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SAN MIGUEL ENERGY CORPORATION, Petitioner,	**CTA Case No. 9221**
	Members:
- versus -	**DEL ROSARIO,** *P.J.*, *Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 02 2018 : 1:46 pm

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DECISION

UY, *J*.:

This is a Petition for Review[1] filed on December 18, 2015 by San Miguel Energy Corporation against the Commissioner of Internal Revenue seeking the refund or issuance of tax credit certificate (TCC) in the amount of ₱16,611,637.05, representing its alleged erroneously and/or illegally collected documentary stamp tax (DST) for taxable year (TY) 2010.

THE FACTS

Petitioner San Miguel Energy Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 808 Building, Meralco Avenue corner Gen. Lim Street, San Antonio Village, Pasig City and current office address at 19th Floor San Miguel Properties Building, San Miguel Avenue, Mandaluyong City.

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[1] Docket, pp. 10-40.

Respondent on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has 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) or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 19, 2011, the Supreme Court rendered a decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[2] ("Filinvest case" for brevity) holding, among others, that instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates qualified as loan agreements upon which documentary stamp taxes may be imposed.[3]

On October 6, 2011, the BIR issued Revenue Memorandum Circular (RMC) No. 48-2011, circularizing to all concerned internal revenue officials and employees relevant excerpts from the decision of the Supreme Court in the Filinvest case and enjoining all employees engaged in the audit and review of audit cases "to assess deficiency DST, if warranted, on these kinds of transactions."[4]

On December 16, 2013, the BIR issued a Notice of Informal Conference[5] informing petitioner that in connection with the examination of its internal revenue tax liabilities for the taxable year ending December 31, 2010, the BIR found certain deficiency taxes due from petitioner and requested petitioner to appear for an informal conference.

Petitioner's advances from related parties in 2010 in the amount of ₱1,631,028,000.00 were assessed for deficiency DST by the BIR.[6] The alleged deficiency DST was based on Notes appearing in the 2010 Audited Financial Statements[7] of petitioner and San Miguel Corporation (SMC), a related party.

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[2] G.R. Nos. 163653 and 167689, July 19, 2011.
[3] Par. 1.03, JSFDIOM, docket, p. 276.
[4] Par. 2.01, JSFDIOM, docket, p. 277.
[5] Exhibit "P", docket, pp. 167-172.
[6] Docket, p. 168.
[7] Exhibits "P-1" and "P-1-a", docket, pp. 173-174.

On December 23, 2013, petitioner paid under protest to the BIR the alleged deficiency DST, through the Electronic Filing and Payment System (eFPS), in the amount of ₱16,611,637.05, inclusive of surcharge, interest and compromise penalty.[8]

On November 12, 2015, petitioner filed with the BIR a Claim for Refund[9] dated November 11, 2015, requesting the refund or issuance of tax credit certificate in the amount of ₱16,611,637.05 allegedly representing DST erroneously and/or illegally collected for taxable year 2010, pursuant to Section 229, in relation to Section 204(C) of the NIRC of 1997.[10]

In support of its administrative claim for refund, petitioner raises the following grounds: (a) the decision of the Supreme Court in the Filinvest case as well as RMC No. 48-2011 may not be applied by the BIR on advances from related parties in 2010 without violating the principle of non-retroactivity of laws and rulings, and even assuming that the decision may be applied retroactively, the same will not cover the advances subject of the claim; (b) under Section 179 of the Tax Code, DST may not be imposed on advances in the absence of a debt instrument manifesting such advances; and (c) assuming that it is liable for deficiency DST under Section 179 of the Tax Code, it is liable for the basic tax only (*i.e.*, ₱8,155,140.00), without the imposition of surcharge, interest and penalty, since it relied on existing court decisions and BIR rulings at the time of the extension of the advances.

There being no action taken by respondent on petitioner's claim for refund, petitioner filed the instant Petition for Review before this Court on December 18, 2015.

Respondent then filed his Answer[11] on March 30, 2016, interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and

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[8] Exhibits "P-2", "P-2-a", and "P-2-b", docket, pp. 333-335.
[9] Exhibits "P-3", "P-3-a", and "P-3-b", docket, pp. 178-196.
[10] Par. 1.04, JSFDIOM, docket, p. 276.
[11] Docket, pp. 114-119.

Affirmative Defenses.

5. In an action for refund, 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. Petitioner must likewise show that it has complied with the provisions of Sections 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

The *Filinvest Case* merely affirmed the obligation by corporations to treat their inter-company advances as loan agreements subject to Documentary Stamp Tax under the 1997 National Internal Revenue Code, as amended.

6. Respondent respectfully submits that petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected.

7. It cannot be overemphasized that petitioner banks its claim for refund on the alleged non-retroactivity of laws and rulings. This position is erroneous, as hereunder be discussed.

8. The case of *'Commissioner of Internal Revenue v. Filinvest Development Corporation,'* G.R. Nos. 163653 and 167689 *(Filinvest Case)*, involved an assessment of 1996 deficiency taxes. In contrast, petitioner was assessed for its 2010 internal revenue tax liabilities. Clearly, as early as the year 1996, it can be conclusively established that the **prevailing rule**, insofar, as the BIR is concerned, was that loan advances to affiliates were subject to imposable DST.

9. Therefore, the *Filinvest Case* merely affirmed the tax obligation by corporations to treat their inter-company advances as loan agreements subject

to Documentary Stamp Tax under Section 179 of the 1997 National Internal Revenue Code, as amended.

The factual bases of the DST assessment is already uncontroverted.

10. Petitioner's subsequent argument, that there was no debt instrument to manifest such borrowing or lending transaction, must likewise fail.

11. The foregoing argument is a conspicuous **pregnant denial** considering petitioner's admission that advances to its affiliates were duly recorded in its Audited Financial Statements. Clearly, the loan advances were existing and were correctly assessed of DST.

12. Moreover, petitioner's payment of the DST arose from an assessment. Having settled the same, petitioner was deemed to have admitted the factual bases thereof. In fact, petitioner's 'payment under protest' was grounded only on the legal issue of the non-retroactive application of the *Filinvest Case* against petitioner. Hence, even assuming, for the sake of argument, that no debt instrument was presented, the same is no longer relevant as the factual bases of the assessment is already a non-issue.

Petitioner cannot rely on its supposed good faith and alleged honest belief that it was not liable for DST on the loan advances to its affiliates.

13. Noteworthy, the proper venue to contest the propriety of an assessment, including the imposition of surcharge and interest, is during the administrative audit investigation. However, petitioner never alleged that the assessment was of doubtful validity, and

instead, agreed and paid the assessment, *albeit* under protest.

14. Petitioner's acquiescence with the DST assessment is likewise apparent, in the sense that it only opposed the assessment on the ground of the non-retroactivity of the *Filinvest Case*. Stated differently, petitioner agreed that loan advances to affiliates were to be imposed DST, only that they were not yet liable based on the principle of non-retroactivity of laws and rulings. As above-discussed, this position cannot be countenanced as the basis of the assessment was Section 179 of the Tax Code, as amended. Thus, no erroneous or illegal collection was made.

15. Based on the foregoing, petitioner cannot rely on its supposed good faith and alleged honest belief that it was not liable for DST on the loan advances to its affiliates. The *Filinvest Case* is likewise a clear manifestation that the BIR already assessed taxpayers similarly situated on loan advances to affiliates as early as 1996. Hence, petitioner cannot be excused from claiming otherwise."

After the Pre-Trial Conference[12] held on June 9, 2016, the parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters[13] on July 13, 2016. The same was approved by the Court in the Resolution[14] dated July 21, 2016 and the Court thereafter issued the Pre-Trial Order[15] dated September 19, 2016.

During the trial held on September 20, 2016, petitioner presented its lone witness, Ramon U. Agay, petitioner's Finance Manager.[16] On the other hand, respondent's counsel manifested in open court that he will not present any witness.[17]

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[12] Notice of Pre-Trial Conference dated April 4, 2016, docket, pp. 123-126.
[13] Docket, pp. 275-281.
[14] Docket, p. 289.
[15] Docket, pp. 300-307.
[16] Minutes of the September 20, 2016 hearing, docket, pp. 308-309.
[17] Minutes of the September 20, 2016 hearing, docket, pp. 308-309.

Petitioner filed its Formal Offer of Evidence on October 17, 2016, while respondent filed his Comment thereto on October 20, 2016. In the Resolution dated December 13, 2016, the Court admitted petitioner's Exhibits "P", "P-1" to "P-6" and submarkings. As directed by the Court, petitioner filed its Memorandum [18] on January 31, 2017. For his part, respondent filed a Manifestation on February 13, 2017, stating that he is adopting the arguments raised in his Answer dated March 30, 2016 as his Memorandum.[19] Thus, this case was deemed submitted for decision on February 23, 2017.[20]

Hence, this Decision.

THE ISSUE

The parties submitted the following issue for the Court's resolution:[21]

> "Whether petitioner San Miguel Energy Corporation is entitled to a refund of the amount of ₱16,611,637.05 which was paid to the BIR for alleged deficiency Documentary Stamp Tax."

Petitioner's Arguments

Petitioner argues that the decision of the Supreme Court in *Commissioner of Internal Revenue vs. Filinvest Development Corporation* (*Filinvest* case),[22] which was rendered on July 19, 2011, as well as Revenue Memorandum Circular (RMC) No. 48-2011, which was issued by the BIR on October 6, 2011, may not be applied to SMEC by the BIR on advances made to the latter in 2010 without violating the principle on non-retroactivity of laws and rulings. Even assuming that the said decision may be applied retroactively, the same will not allegedly cover the advances subject of this case.

Moreover, petitioner avers that under Section 179 of the NIRC, DST may not be imposed on advances in the absence of a debt

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[18] Docket, pp. 351-391.
[19] Manifestation filed on February 13, 2017, docket, pp. 395-397.
[20] Resolution dated February 23, 2017, docket, p. 399.
[21] Par. 4.00, JSFDIOM, docket, p. 278.
[22] G.R. Nos. 163653 and 167689, July 19, 2011, 654 SCRA 56.

instrument evidencing such advances.

Thus petitioner claims that it is entitled to a refund in the amount of ₱16,611,637.05 representing erroneous and/or illegal collection of DST for taxable year 2010 from it by the BIR.

Assuming however that SMEC is liable to DST under Section 179 of the NIRC, it is liable for the basic tax of ₱8,155,140.00 only, without the imposition of surcharge, interest, and penalty, since it relied on existing court decisions and BIR Rulings at the time of the extension of the advances.

Lastly, petitioner asserts that its immediate payment of the alleged deficiency DST is beneficial to the government; and that petitioner is not precluded from filing the instant Petition for Review and raising the above grounds, notwithstanding that it did not appeal from the decision of respondent on its administrative protest.

On the other hand, petitioner points out that respondent has not presented any evidence to refute or rebut the evidence adduced by petitioner.

Respondent's counter-arguments:

In the Answer, respondent prays that the instant petition be denied allegedly for utter lack of merit.

The *Filinvest Case* cited by petitioner merely affirmed the obligation of corporations to treat their inter-company advances as loan agreements subject to Documentary Stamp Tax under the 1997 National Internal Revenue Code, as amended.

According to respondent, petitioner failed to show that the tax subject in the case at bar was erroneously or illegally collected. Moreover, petitioner's payment of the assessed DST is deemed as an admission on its part of the factual bases thereof.

In fact, petitioner's 'payment under protest' was grounded only on the legal issue of the non-retroactive application of the *Filinvest Case* against petitioner. Hence, the claim of petitioner that no debt instrument was presented, is no longer relevant as the factual bases of the assessment is already a non-issue.

THE COURT'S RULING

Petitioner's instant claim for refund was filed pursuant to pertinent provisions of Sections 204(C) and 229 of the National Internal Revenue Code of 1997, as amended, which read:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
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> (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)*
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> "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)*

Based on the afore-quoted provisions, to be entitled to a refund of erroneously or illegally collected tax/es, the following requisites must be satisfied:[23]

1. There must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2. The claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3. The suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

On the timeliness of the filing of the administrative and judicial claims, the same must both be filed within two (2) years from date of payment of the claim for refund or tax credit of erroneously or illegally collected tax.

In this case, petitioner paid under protest the alleged deficiency DST in the amount of ₱16,611,637.05 for taxable year 2010 on December 23, 2013. Therefore, petitioner had until December 23, 2015 within which to file both the administrative and judicial claims for refund.

Records show that petitioner filed its administrative and judicial

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[23] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 1078, (CTA Case No. 8049), July 27, 2015.

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claims on November 12, 2015 and on December 18, 2015, respectively. Clearly, both the administrative and judicial claims were filed within the two-year prescriptive period.

The Court shall now resolve the issue raised in this case, to wit: whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of ₱16,611,637.05, purportedly representing erroneously and/or illegally collected DST for taxable year 2010.

We find the instant Petition for Review, partly meritorious.

The Filinvest case and RMC No. 48-2011 may be applied retroactively because no old doctrine of the Supreme Court was overruled therein.

Petitioner asserts that it merely relied on the rule prevailing prior to July 19, 2011, when the subject advances amounting to ₱1,631,028,000.00 were extended to it by related parties - that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST. Thus, the Filinvest case which was rendered on July 19, 2011, as well as RMC No. 48-2011 which was issued by the BIR on October 6, 2011, may not be applied to its advances made in 2010 without violating the principle of non-retroactivity of laws and rulings.

We are not convinced.

As held by the Supreme Court in the case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[24], the interpretation placed upon a law by the Supreme Court shall form part of the law as of the date it was enacted because it establishes the contemporaneous legislative intent of the law, to wit:

> "Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the

[24] G.R. No. 197525, June 4, 2014.

> force of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith."

In the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[25] or the *Filinvest* case for brevity, the Supreme Court interpreted Section 180 of the Tax Code (now Section 179 of the NIRC of 1997), particularly on the scope of the word 'loan agreements', as being subject to DST. The Supreme Court held that loan agreement includes "*instructional letters, as well as, the journal and cash vouchers evidencing the advances of* [Filinvest] *extended to its affiliates"*. Section 180 was inserted in the NIRC through the enactment of RA No. 7660 on December 23, 1994. This provision is, up until now, still in our statute books. Relative thereto, the same Section 180 was also carried over in Republic Act (RA) No. 8424, otherwise known as the "Tax Reform Act of 1997"; and while the said Section 180 was later amended via the enactment of RA No. 9243 on February 17, 2004, the imposition of DST on loan agreements was retained in the present Section 179 of the NIRC of 1997, as amended by said RA No. 9243. Thus, the said interpretation in the *Filinvest* case constituted as part of the NIRC as of said date, *i.e.*, December 23, 1994, up to the present time."

Therefore, the application of the Filinvest case to the present case will not constitute a violation of the principle of non-retroactivity of laws and rulings because the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997), in the Filinvest case was deemed constituted as part of the NIRC as of December 23, 1994 up to the present.

Furthermore, prospective application of decisions is applicable only when an old doctrine of the Supreme Court is overruled by a subsequent decision adopting a new doctrine. In such a situation, the new doctrine must be applied prospectively, as ruled by the

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[25] G.R. No. 163653 and 167689, July 19, 2011.

Supreme Court in the case of *Chavez vs. Public Estates Authority, et al.*[26], as follows:

> "The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. Thus, we emphasized in People v. Jabinal, 55 SCRA 607 [1974] 'x x x when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof."

Similarly, in this case, there is no previous doctrine issued by Supreme Court that is overruled by the doctrine enunciated in the Filinvest case. Hence, the doctrine laid down in the Filinvest case may be retroactively applied to this case without violating the principle of non-retroactivity of laws and rulings. Considering that RMC No. 48-2011 merely implements the doctrine laid down in the Filinvest case, the same may also be applied to the present case.

Moreover, in the case of *Philacor Credit Corporation vs. Commissioner of Internal Revenue*[27], the Supreme Court ruled that BIR Ruling and Revenue Regulations issued even after the transaction took place are still applicable because they are issuances interpreting the same rule imposing a DST, thus:

> "The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes. At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. Moreover, the BIR Ruling referred to a transaction entered into in 1992, when the 1986 Tax Code had been in effect. On the other hand, the BIR

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[26] G.R. No. 133250, May 6, 2003.
[27] G.R. No. 169899, February 6, 2013.

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> issued Revenue Regulations No. 13-2004 when Section 180 of the 1986 Tax Code had already been amended. Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 – the part dealing with promissory notes – remained the same; it imposed the DST on the promissory notes' issuances and renewals, but not on their assignment or transfer: xxx"

Therefore, based on the foregoing jurisprudential pronouncement, RMC No. 48-2011 may also be applied in this case because it merely implements the doctrine laid down in the Filinvest case which interpretation was deemed constituted as part of the NIRC as of December 23, 1994 up to the present.

DST may be imposed on the advances to petitioner on the basis of a mere Note appearing in its 2010 Audited Financial Statement.

Petitioner also claims that even assuming that the decision in the Filinvest case may be applied retroactively, the same will not cover the subject advances in this case because the documents subject of the Filinvest case were instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates. On the other hand in the instant case, the BIR relied on mere Notes to 2010 Audited Financial Statements of petitioner and SMC.

Petitioner further points out that under Section 179 of the NIRC, DST may not allegedly be imposed on advances in the absence of a debt instrument evidencing such advances.

We disagree.

DST is 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.[28] DST is by nature, an excise tax since it is levied on the exercise by

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[28] *Philippine Home Assurance Corporation, et al. vs. Court of Appeals, et al.*, G.R. No. 119446, January 21, 1999.

persons of privileges conferred by law.[29] A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, because it is imposed on the transaction rather than on the document.[30] Thus, there is no basis in petitioner's assertion that a DST is literally a tax on the document.[31] Accordingly, DST may be imposed even in the absence of debt instrument or even if the same was not identified by the BIR, as long as the transactions are clearly established.

Similarly, Section 6 of Revenue Regulations No. 9-94 provides for the imposition of DST where no formal agreements or promissory notes are executed, to wit:

> "SECTION 6. *Stamp Tax on all Loan Agreements.* – All loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
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> In cases where no formal loan agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code."

Based on the foregoing, DST may be imposed on the advances to petitioner from SMC on the basis of a mere Note appearing in their 2010 Audited Financial Statement.

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[29] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 164155 and 175543, February 25, 2013.

[30] *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* G.R. No. 194065, June 20, 2016.

[31] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue*, G.R. No. 167962, September 19, 2008.

Petitioner is not liable to pay interest, surcharge and compromise penalty.

Petitioner asserts that assuming that it is liable to pay DST under Section 179 of the NIRC, it is liable for the basic tax of ₱8,155,140.00 only, without the imposition of surcharge, interest and penalty; since it merely relied on existing court decisions and BIR rulings at the time of the extension of the advances.

We agree with petitioner.

It is settled that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest.[32]

A perusal of petitioner's claim for refund shows that it merely relied on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, which states that inter-company loans and advances covered by inter-office memoranda are not subject to DST. Hence, petitioner's reliance on the said BIR Ruling justifies the non-imposition of surcharges and interest.

Petitioner is also not subject to compromise penalty since this penalty is by its nature, mutual in essence. The payment made under protest by petitioner could only mean that there was no agreement that had effectively been reached between the parties. In the case of *De San Agustin vs. Commissioner of Internal Revenue*[33], the Supreme Court held that:

> "The Court of Tax Appeals correctly held that the compromise penalty of ₱20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence. The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties."

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[32] *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 179085, January 21, 2010.
[33] G.R. No. 138485, September 10, 2001.

Considering that petitioner disputed respondent's assessment of compromise penalty, the said penalty cannot therefore be imposed upon it.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in the aggregate amount of **₱8,456,497.05**, representing the following amounts:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Surcharge	₱ 2,038,785.00
Interest	6,367,712.05
Compromise Penalty	50,000.00
TOTAL	**₱8,456,497.05**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, 1st Division