REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HOPEWELL POWER (PHILIPPINES) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5310

Promulgated:
NOV 18 1998

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DECISION

This is a judicial claim for the refund of ₱24,864,781.58 allegedly representing erroneous payment of documentary stamp tax ("DST", for short) over loan and security documents executed in Hong Kong on December 29, 1993.

Petitioner is a corporation organized and existing under Philippine laws, with address at Suite 202, CTC Building, 2232 Roxas Boulevard, Pasay City.

The facts are as hereunder stated.

On December 29, 1993, petitioner, together with Hopewell Energy International Limited, a company organized under the laws of Hong Kong, entered into a Mortgage Trust Indenture ("MTI", for brevity) for the mortgage of their chattel and real estate assets with the BankAmerica National Trust Company, a corporation

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organized under the laws of New York, U.S.A. The execution of the MTI was done in Hong Kong.

On even date, petitioner paid under protest the abovesaid amount of DST with respondent's Bureau in order to facilitate the registration of the MTI with the Register of Deeds of Lucena, Province of Quezon. On the same day, the respondent's Bureau received from the petitioner a letter of request, dated July 21, 1993, asking for confirmation on the tax exemption from DST of mortgage documents executed abroad.

Consequently, on November 17, 1995, petitioner filed the requisite written claim for refund with respondent's Bureau alleging erroneous payment on account of the MTI's execution in Hong Kong.

Due to the continued inaction of the respondent on its claim for refund and on its request for confirmation, petitioner was constrained to elevate its case before this Court. Hence, the instant petition for review.

At bar, petitioner contends, *inter alia*, that a DST, being an excise tax, does not attach to the execution of the documents in Hong Kong following respondent's previous rulings on the matter[1]; that at the time the MTI was executed, the prevailing provisions of Section 173 of

1 BIR Rulings Nos. 150-93, 068-93, 235-91, 072-91, 205-90, 147-90, 064-90, 164-89, 143-89, 074-89, 069-89, 068-89, 045-89, 017-89, 016-89, 006-89, 005-89, 497-88, 488-88, 480-88, 388-88, 373-88, 290-88, 234-88, 030-88, 050-86 and 068-83 (Petition, p. 3)

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the Tax Code did not cover documents executed abroad; and that, the subsequent enactment of Republic Act No. 7660 which became effective on January 14, 1994, specifically addressed such perceived loophole in the law[2] by making the execution of loan agreements abroad subject to DST when the obligation or right arises from Philippine sources or the property is situated in the Philippines.

In her Answer, respondent admitted the existence of Authority to Accept Payment No. 1140274 and its corresponding BIR Official Receipt No. 2319144L, both of which are dated December 29, 1993, and in payment for DST in the amount of ₱24,864,781.58.

By way of special and affirmative defenses, however, respondent asserts, among others, that the DST in question was paid in accordance with Section 195 of the Tax Code and, therefore, not refundable; that petitioner failed to show proof that the documents subject of the DST were executed abroad; and that claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes.

During the trial, petitioner offered in evidence a duly notarized copy of the MTI document, together with the authentication of the Philippine consul in Hong Kong.

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2 as shown by congressional deliberations on House Bill No. 7789 and Senate Bill No. 1330 and the explanatory notes of House Bill No. 4821 and Senate Bill No. 1308 (Annexes to the Petition)

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Respondent admitted the same, without any qualification, in her comment thereto.

As We see it, the only issue remaining in the case at bar is purely legal, that is, whether or not the MTI document executed in Hong Kong is exempted from DST, being an excise tax.

After a careful review of the attending facts, the disquisition of the parties and the provisions of the Tax Code and jurisprudence in point, this Court rules in favor of the petitioner.

The position of the respondent in its various rulings aforecited is in conformity with the Honorable Supreme Court's dictum on the issue at bar in the case of **Allied Thread Co., Inc. vs. City Mayor of Manila, 133 SCRA 338 at p. 343**, to wit:

> The power to levy an excise upon the performance of an act or the engaging in an occupation does not depend upon the domicile of the person subject to the excise , nor upon the physical location of the property and in connection with the act or occupation taxed, but depends upon the place in which the act is performed or occupation engaged in.
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> Thus, the gauge for taxability x x x does not depend on the location of the office, but attaches upon the place where the respective x x x transaction(s) is perfected and consummated. (See **Koppel (Phil) vs. Yatco, 77 Phil. 496 [1946]**.) (Underscoring supplied)

Thus, inasmuch as the MTI was executed and signed in Hong Kong prior to the effectivity of Republic Act No.

7660 on January 14, 1994, no DST is imposable on the same in the Philippines. This conclusion is also in keeping with one of the inherent limitations of taxation, namely, that it may be exercised only within the territorial jurisdiction of the taxing authority (**51 Am. Jur. 88 as cited in Compendium of Tax Law and Jurisprudence by Vitug, 1993 ed.**)

Prescinding from the above, this Court sees Section 173 of the Tax Code, as amended by Republic Act No 7660, as imposing DST, not directly anymore upon the act or privilege of transacting documents, instruments, papers and loan agreements *per se*, but rather on the act or privilege of simply transacting on any obligation or right arising from Philippine sources, or on any property situated in the Philippines. Unlike before the amendment where the execution of the document, instrument, paper or loan agreement itself automatically gives rise to the imposition of DST, such execution is now deemed to be merely incidental.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** the amount of **P24,864,781.58** to the petitioner immediately.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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

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