REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5289

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 27 1999

x - x

DECISION

Petitioner instituted this petition for review on September 26, 1995 seeking for the issuance of a tax credit certificate/refund in the amount of P2,045,564.70 allegedly representing documentary stamp taxes erroneously paid for the period of September 1993 to August 1994.

The facts of the case are as follows:

Petitioner, Philippine Associated Smelting and Refining Corporation (PASAR, for brevity) is a domestic Corporation duly organized and existing under the laws of the Philippines. Its office address is located at the 4th floor, Morning Star Center, Sen. Gil J. Puyat Avenue, Makati Metro Manila.

It is engaged in the business of smelting and refining copper and its by-products, which are mainly exported abroad (TSN, p. 13 February 21, 1997). In order to finance the operations of the company, PASAR from time to time avails of the Export Credit facilities of the

194

Land Bank of the Philippines (Land Bank, for brevity). Under this arrangement, the Land Bank extends loan to PASAR to finance PASAR's exports of copper Cathodes. As proof of such indebtedness, PASAR executed promissory notes in favor of the Land Bank. Once these promissory notes are executed, an import letter of credit is opened by the foreign buyer in favor of petitioner. It is alleged that as a collateral for the loan, PASAR is also required to execute a "deed of assignment of the letters of credit and Purchase order" in the amount that appears on the promissory note or sometimes higher. (TSN pp. 14-18 February 21, 1997)

The Land Bank, in behalf of PASAR remitted to the BIR the total amount of ₱4,394,304.40 representing documentary stamp taxes due on the instruments executed. (Exh. BB-3) This is evidenced by the "Authority to Accept Payment issued by the BIR examiner (Exh. E-2, F-2, H-2, L-2, N-2, Q-2, R-2, U-2, W-2, X-2, TSN p. 7 September 18, 1997, TSN pp. 8-9 November 13, 1997). The Land Bank later charged the petitioner of the Documentary stamp taxes paid as evidenced by the Debit and Credit advices issued by Land Bank to PASAR. PASAR noticed that there was a double payment of such taxes once on the promissory note and the other on the deeds of assignment even if these documents allegedly pertain to the same transaction (TSN pp. 23-24 February 21, 1997; TSN pp. 12-13 July 7, 1998).

Thus, for the period of September 1993 to August 1994, the Land Bank paid, on behalf of PASAR the total amount of ₱4,394,304.40 representing documentary stamp taxes on the execution of the promissory notes and the deeds of assignments broken down as follows:

DST on the promissory notes	₱2,348,739.70
DST on the deeds of assignments	2,045,564.70
	₱4,394,304.40

On September 5, 1995, PASAR through counsel filed a request for refund in the amount of ₱2,045,564.70 representing the lower amount of DST paid from among the 2 documents (Exh. AA).

Since no action has been taken by respondent and the 2-year prescriptive period within which to file a tax refund is about to expire, the petitioner was constrained to file this instant petition on September 26, 1995.

Respondent, in answer to the petition averred the following Special and affirmative defenses, to wit:

1. The petition has no cause of action;

2. RA 7660 as well as Revenue Regulation 9-94, which was the petitioner's basis for its request for refund has no retroactive effect, hence not applicable to the documents/promissory note executed in 1993;

3. The alleged tax withheld must be shown to have been paid and remitted to the respondent's Bureau and the best evidence of payments and remittances are the official receipts.

198

4. In claiming for refund, it is incumbent upon petitioner to prove that it is entitled to it. Moreover, it must be able to point positively a provision of law granting such rights, otherwise, failure to do so is fatal to its claim for refund;

5. Claims for refund are construed strictly against the claimant, the same being in the nature of exemptions from taxes;

6. It is incumbent upon petitioner to show full compliance with the provisions of Section 230 of the Tax Code.

7. Consequently, petitioner is not entitled to the claim for refund herein sought.

The issue that confronts this Court is whether or not petitioner is entitled to the refund of ₱2,045,564.70 representing alleged erroneously paid DST for the period of September 1993 to August 1994.

Corollary to the main issue presented are the following questions to be resolved:

1. Whether or not the action for refund of erroneously paid DST was filed on time pursuant to Section 230 of the Tax Code;

2. Whether or not RA 7660 as implemented by Revenue Regulation No. 9-94 can be applied retroactively so as to cover transactions executed prior to their effectivity;

3. Whether or not the Deed of Assignment allegedly used as collateral falls under the category of loan agreement;

4. If the claim for refund is legally tenable, whether or not the evidence presented by petitioner would be sufficient to warrant the refund.

199

Anent the first sub-issue, this Court takes into consideration the time when the Land Bank, in behalf of PASAR, remitted to the BIR the documentary stamp taxes due on these transactions. The fact of remittance of DST to the government can be proven by the "Authority to Accept Payment" (ATAP) issued by the BIR. Section 230 of the Tax Code provides:

> "x x x in any case, no such suit or proceeding (for the recovery of tax or penalty erroneously or allegedly collected) shall be begun after the expiration of two years <u>from the date of payment of the tax or penalty</u> regardless of any supervening cause that may arise after payment (Sec. 230, Tax Code) (Underscoring supplied)

On the basis of the evidence submitted, the petitioner paid its DST thru Land Bank on several dates. The initial payment was made on October 22, 1993 as evidenced by the Authority to Accept Payment (ATAP) with serial number 980413 (Exh. E-2). As borne by the records, there are no other ATAP's issued previous to this date. Thus, the reckoning period to be considered from which the 2-year prescriptive period for claiming a refund shall be counted is October 22, 1993. The letter-claim for refund was filed on September 5, 1995 (Exh. AA) and the instant petition on September 26, 1995. Both these claims for refund fall clearly within the 2 year period provided by the aforequoted Section 230 of the Tax Code.

200

As to the issue of whether or not the provisions of RA 7660 and Revenue Regulation No. 9-94 may be given retroactive effect, we rule in the negative. Section 14 of Revenue Regulations No. 9-94 provides for the following:

> "These regulations shall apply to all transactions made or to documents/instruments executed or issued as of January 14, 1994, the date when RA 7660 took effect."

It can be gleaned from the provisions of Section 14 that respondent has a valid basis in arguing that the provisions of RR 9-94 cannot apply to documents/promissory notes executed in 1993 (see No. 7, Answer, page 20, CTA records) because this is precisely the wordings of the aforequoted provision. However, it must be noted that petitioner's claim for refund also covers transactions executed in 1994 thus making them fall within the scope of the coverage of RR 9-94. The foregoing defense then of respondent is not sufficient to deny the entire claim for refund.

We now go to the third sub-issue presented for resolution and that is whether or not the deed of assignment executed by petitioner in favor of Land Bank of the Philippines falls under the category of loan agreements.

It is the contention of the petitioner that when two documents are executed in connection with a single loan transaction, only the execution of one document which is subject to the higher documentary stamp tax shall be taxed. Petitioner used as legal basis the provisions of RA 7660, as implemented by Revenue Regulations No. 9-94, thus:

> "**Sec. 180** Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government as any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand. - On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable except bank notes issued for circulation and on each renewal of any such note, there shall be collected a documentary stamp tax of thirty centavos (P0.30) on each Two Hundred Pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note; <u>provided, that only one documentary stamp tax shall be imposed on either loan agreement or promissory notes issued to secure such loan, whichever will yield a higher tax;</u> provided however, that loan agreements as promissory notes the aggregate of which does not exceed Two Hundred Fifty Thousand Pesos (P250,000.) executed by an individual for his purchase on installment for his personal use as that of his family and not for business resale, barter or hire of a house, lot, Motor vehicle, appliance or furniture shall be exempt from the payment of the DST provided under this Section." (Underscoring supplied)

202

Revenue Regulation No. 4-94, which implements RA No. 7660, states that:

> "**Sec. 7. Loan Secured By a Promissory Note.** - In cases where a loan agreement and a promissory note are simultaneously issued and executed, the loan having been secured by the promissory note, only one documentary stamp tax shall be imposed on either loan agreement or promissory note, whichever will yield a higher tax."

The Memorandum written by Mr. Antonio Aluquin, Group Supervisor of Revenue Region No. 8 of the Bureau of Internal Revenue, is noteworthy. He said that it is important to determine the correct interpretation as to whether the "deed of Assignment" falls under the category of a Loan agreement or used as a collateral to the contract of Loan. He further stated in his Memorandum that the resolution of this issue should be left to the Court (Exhibit CC, page 165, BIR records).

The contention of Mr. Aluquin raises a valid point because if the deeds of assignment executed by petitioner fall under the category of a "deed of pledge" then they are subject to a separate documentary stamp tax as provided in Section 195 of the Tax Code.

However, if these deeds of assignment can be classified as a "loan agreement", then Republic Act No. 660 and Revenue Regulations No. 9-94 will apply making the claim for refund meritorious.

203

Section 3 of Revenue Regulations No. 9-94 defines a loan agreement as follows:

> "Loan agreement - refers to a contract in writing where one of the parties delivers to another money or other consumable thing; upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities which may be evidenced by credit memo, advice or drawings."

On the other hand, an assignment of credit (as the one embodied in the deed of assignment executed by herein petitioner), is defined as an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, transfers his credit and its accessory right to another, known as assignee, who acquires the power to enforce it to the same extent as the assignor could have enforced it against the debtor (Commentaries and Jurisprudence on the Civil Code, Arturo Tolentino, Volume 5, pp. 165-166).

The deed of assignment executed by petitioner had the effect of transferring or conveying all the rights, titles and interest over the letters of credit/purchase orders in favor of the assignee, Land Bank. This was done to secure the loans obtained by petitioner from the Land Bank, a fact alleged in the petition for review (page 2, CTA records) and testified as true by petitioner's witness, Mr. Romeo Donato, during the hearing held on February 21, 1997 (see TSN dated February

204

21, 1997, page 18). As security for the loan obtained by petitioner from the Land Bank of the Philippines, the deed of assignment falls squarely within the provisions of Section 195 of the Tax Code which provides as follows:

> Sec. 195. ***Stamp tax on mortgages, pledges, and deeds of trust.*** — On every mortgage or pledge of lands, estate or property real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid being payable, and on any conveyance of land, estate, or property, whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:
>
> (a) When the amount secured does not exceed five thousand pesos, twenty pesos (₱20.00);
>
> (b) On each five thousand pesos or fractional part thereof in excess of five thousand pesos an additional tax of ten pesos (₱10.00).
>
> On any mortgage, pledge, or deed of trust, where the same shall be made as a security for the payment of a fluctuating account or future advances without fixed limit, the documentary stamp tax on such mortgage, pledge or deed of trust shall be computed on the amount actually loaned or given at the time of the execution of the mortgage, pledge, or deed of trust. However, if subsequent advances are made on such mortgage, pledge, or deed of trust, additional documentary stamp tax shall be paid which shall be computed on the basis of the amount advanced or loaned at the rates specified above: *Provided, however,* That if the full amount of the loan or credit granted under the mortgage, pledge, or deed of trust is specified in such mortgage, pledge, or deed of trust, the documentary stamp tax prescribed in

205

> this Section shall be paid and computed on the full amount of the loan or credit granted.

From the foregoing discussion, it can be concluded that the deed of assignment is not in the nature of a loan agreement as defined by Section 3 of RR 9-94 hence does not fall under the provisions of Section 7 of the same Revenue Regulation, but is more in the nature of a security or pledge for a loan which is subject to a separate DST liability from that of the DST imposed on the execution of the promissory notes. Petitioner correctly paid a separate DST on the promissory note and the deed of assignment hence no refund can be granted.

Nothing in the face of the deed of assignment nor the circumstances surrounding it, shows that it is a loan agreement. Although part of the loan transacted, the deed is not the loan itself. It is merely an accessory to the principal obligation. Without such loan, the promissory note and the deed of assignment will not be executed. The promissory note executed after the contract of loan is consummated is used as evidence of indebtedness with the purpose of securing the obligation. On the other hand, the deed of assignment having been executed simultaneous with the promissory note can be treated as an added security to the loan agreement. They are considered as separate and distinct instruments although they have a common purpose of posing as a collateral to the contract of loan.

206

It is clear from the records of the case that the deed of assignment was intended by the parties as security for the loan obtained by petitioner thus, the intention of the parties should be given highest consideration in interpreting an ambiguous contract. Said the Supreme Court,

> "The character of the transaction between the parties is to be determined by their intention, regardless of what language was used as what the form of the transfer was. If it was intended to secure the payment of money, it must be construed as a pledge. However, even though a transfer, if regarded by itself, appears to have been absolute, its object and character might still be qualified and explained by a contemporaneous writing declaring it to have been a deposit of the property as collateral security (Manila Banking Corp. vs. Anastacio Teodoro GR No. 53955, January 13, 1989)

Accordingly, the Deed of Assignment, being treated as a security for the obligation contracted is subject to a separate Documentary Stamp tax as provided in Section 195 of the Tax Code. Be it noted that in imposing the Documentary stamp tax due what is taxed is not the instrument per se, but the privilege, opportunity or facility offered as exchanges for the transaction of the business (**CIR vs. Heald Lumber Co. GR-L16340, February 2, 1996**). The execution of the promissory note used as evidence of the indebtedness is taxed under Section 180 of the Tax Code and the execution of the deed of

207

assignment used as an added security is taxed under Section 195 of the Tax Code.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED** for lack of merit. Petitioner's claim for refund or issuance of a tax credit certificate is **DENIED.** Without pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(On Leave)
RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals

208