REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

THE TELEEMPIRE INCORPORATED, as represented by its President, Ma. Victoria Arlette A. Feliciano,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE AND THE REGIONAL DIRECTOR OF REVENUE REGION NO. 4, CITY OF SAN FERNANDO, PAMPANGA,
Respondents.

CTA Case No. 9968

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:
APR 2 5 2023 10:30 AM

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DECISION

REYES-FAJARDO, *J.*:

Under consideration is the Petition for Review,[1] filed by The Teleempire Incorporated on November 5, 2018, as represented by its President, Ma. Victoria Arlette A. Feliciano, which seeks to: *first,* annul the Documentary Stamp Tax (DST) assessment for taxable year (TY) 2016, embodied in the Bureau of Internal Revenue (BIR)'s Formal Letter of Demand and Audit Results/Assessment Notice (FLD/FAN) dated February 27, 2018; and *second,* refund or issue a tax credit certificate on the alleged erroneously and illegally collected DST it paid for TY 2016, amounting to ₱3,431,788.92.[2]

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1 Docket (Vol. I), pp. 10-23.
2 See Statement of the Case, Pre-Trial Order dated October 15, 2019. *Id.* at p. 281.

FACTS

Petitioner The Teleempire Incorporated is a corporation organized and existing under the laws of the Republic of the Philippines.[3]

Respondent Commissioner of Internal Revenue (CIR) is the chief of the BIR, which is the agency tasked to, among other things, assess and collect all national internal revenue taxes, fees and charges in the Philippines.[4]

Respondent Regional Director of Revenue Region No. 4 (RD), City of San Fernando, Pampanga, is the duly authorized representative of respondent CIR within the jurisdiction of Revenue Region No. 4 of the BIR.[5]

On February 26, 2016, petitioner, as lessee, and the Subic Bay Metropolitan Authority (SBMA), as lessor, entered into a Lease Agreement, covering certain real properties located in the Subic Bay Freeport Zone (SBFZ).[6]

On April 26, 2016, the SBMA issued a Certificate of Registration and Tax Exemption (CRTE) in favor of petitioner.[7]

On August 24, 2017, a Letter of Authority was issued by Jethro M. Sabariaga, OIC - Regional Director RR 4 - San Fernando, Pampanga, authorizing Revenue Officer Gracita Agaton and Group Supervisor Roel Vergel Narag to examine petitioner's books of account and other accounting records for TY 2016.[8]

On September 14, 2017, petitioner partially paid the DST corresponding to said Lease Agreement, and the surcharge, interest,

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3 Certificate of Incorporation dated December 29, 2015 issued in favor of petitioner, (including its Articles of Incorporation and By-Laws), BIR Records (Exhibit "R-15"), pp. 65-86.
4 Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), *Id.* at p. 259.
5 Par. 2, Stipulation of Facts, JSFI. *Ibid.*
6 BIR Records (Exhibit "R-15"), pp. 100- 115.
7 *Id.* at p. 118.
8 Exhibit "R-1." *Id.* at p. 46.

and compromise penalty, for TY 2016, in the aggregate amount of ₱3,361,358.00,[9] broken down as follows:

Particulars	*Amount*
Basic DST	₱2,140,561.00
Surcharge	535,140.00
Interest	655,657.00
Compromise penalty	30,000.00
Total	**₱3,361,358.00**

On January 16, 2018, respondent RD issued a Preliminary Assessment Notice against petitioner, containing the proposed assessment for TY 2016, particularly: *one*, deficiency EWT; and *two*, the unpaid portion of the deficiency DST.[10]

On March 12, 2018, petitioner received from respondent RD,[11] the FLD[12]/FAN dated February 27, 2018, assessing it for deficiency expanded withholding tax (EWT)[13] and the unpaid portion of the DST[14] for TY 2016. Specifically, said DST was computed as follows:

Documentary Stamp Tax Deficiency		
Tax basis per audit		₱3,651,125.00
Less: Partial payment on tax paid on 9/15/2017		2,140,561.00
Documentary Stamp Tax Due		1,510,564.00
Add: 25% Surcharge	₱377,641.00	
20% Interest per annum* (02/11/2016 to 31/12/2017)	570,289.64	
12% Interest per annum* (01/01/2018 to 3/31/2018)	44,199.52	
Compromise Penalty	10,000.00	1,002,130.16
Documentary Stamp Tax Deficiency		**₱2,512,694.16**

Respondent RD explained his findings of the EWT and DST embodied in the FLD in this wise:

1. **Expanded Withholding Tax Deficiency**
   Investigation disclosed the following:

9 Exhibits "P-11" and "P-12." Docket (Vol. I), pp. 356-358.
10 Exhibit "R-4." BIR Records (Exhibit "R-15"), pp. 145-147.
11 Par. 3, Stipulation of Facts, JSFI. *Id.* at p. 259.
12 Exhibits "P-4" and "R-5." BIR Records (Exhibit "R-15"), pp. 154-156.
13 FAN for EWT. Exhibits "P-5" and "R-6." BIR Records (Exhibit "R-15"), p. 153. This was paid by petitioner, see *infra* notes 16 and 17.
14 FAN for DST. Exhibits "P-6" and "R-6-a." BIR Records (Exhibit "R-15"), p. 152.

a. Payment to contractor rendering construction and security services were not subjected to expanded withholding tax, hence were assessed pursuant to Revenue Regulation No. 2-98. Thus, resulted to deficiency expanded withholding tax of P1,033,067.18, inclusive of penalties.

2. **Documentary Stamp Tax Deficiency**
   a. Full amount of documentary stamp tax on lease agreement with SBMA was not paid at the onset registration when the certification of Registration and Tax Exemption is still under process. As such, you are still liable for the DST on such agreement pursuant to RMC 48-2011 and Revenue Regulation No. 13-2004.[15]

On April 10, 2018, petitioner paid[16] the EWT liability in the total amount of ₱1,173,443.39.[17]

On April 11, 2018, petitioner filed its Letter of Protest[18] (with Claim for Tax Refund and/or issuance of a Tax Credit Certificate) dated April 10, 2018,[19] claiming that: *one,* it is exempt by law from the payment of DST for TY 2016; and *two,* by reason of such exemption, the BIR illegally or erroneously collected the DST and penalties it earlier paid for TY 2016, in the total amount of ₱3,431,788.92.

On November 5, 2018, petitioner filed a Petition for Review, docketed as CTA Case No. 9968,[20] to which respondents filed their Answer[21] on February 11, 2018.

On July 18, 2019, a pre-trial conference was held, whereby the parties: *one,* presented their respective authorities to appear in said proceeding; and *two,* adopted the issues to be addressed in this case. Additionally, we required the parties to embody said issues in their Joint Stipulation of Facts and Issues, as well as set the schedule for the presentation of their evidence, and commissioner's hearing for the marking and comparison of their respective evidence.[22]

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15 Exhibits "P-4" and "R-5," BIR Records (Exhibit "R-15"), p. 154.
16 Par. 5, Stipulation of Facts, JSFI, Docket (Vol. I), p. 260.
17 Exhibit "P-7." *Id.* at pp. 348 to 349.
18 Exhibit "P-1." BIR Records (Exhibit "R-15"), pp. 174-177.
19 Par. 6, Stipulation of Facts, JSFI, Docket (Vol. I), p. 260.
20 *Supra* note 1.
21 Docket (Vol. I), pp. 136-146.
22 Order dated July 18, 2019. *Id.* at pp. 252-253.

On August 1, 2019, the parties submitted their Joint Stipulation of Facts and Issues,[23] which was approved, through the Resolution dated August 14, 2019.[24]

On October 15, 2019, we issued a Pre-Trial Order.[25] Trial ensued.

Petitioner presented Ms. Ma. Victoria Arlette A. Feliciano,[26] as its witness.

On February 13, 2020, petitioner filed its Formal Offer of Evidence,[27] to which respondents filed their Comment on February 21, 2020.[28]

In the Resolution dated June 15, 2020,[29] we admitted the evidence offered by petitioner, *except* for Exhibits "P-2," "P-8," "P-9," "P-10," "P-13," "P-13-a," and "P-13-b," for failure to present the original documents for comparison, and Exhibit "P-14," for failure the present the original for comparison and to present the duly marked exhibit.

For their part, respondents presented Revenue Officer Gracita D. Agaton,[30] as their witness.

On November 20, 2020, respondents filed their Formal Offer of Evidence,[31] to which petitioner filed its Comment/ Opposition (to Respondent's Formal Offer of Evidence) with Motion to Present Rebuttal Evidence on December 3, 2020.[32]

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23 *Id.* at pp. 259-264.
24 *Id.* at p. 267.
25 *Id.* at pp. 281-289.
26 Judicial Affidavit of Ma. Victoria Arlette A. Feliciano, Exhibit "P-15," *id.* at pp. 211-218. Identified during the Hearing held on October 22, 2019, see minutes thereof, and Order dated, October 22, 2019, *id.* at pp. 290-292.

Amended Judicial Affidavit of Ma. Victoria Arlette A. Feliciano, Exhibit "P-14," *id.* at pp. 296-304. Identified during the Hearing held on February 4, 2020, see minutes thereof, and Order dated February 4, 2020, *id.* at pp. 325-329.
27 *Id.* at pp. 330-338.
28 *Id.* at pp. 394-396.
29 *Id.* at pp. 403-404.
30 Exhibit "R-16," *id.* at pp. 171-181. Identified during the Hearing held on November 10, 2020. See minutes thereof, and Order dated November 10, 2020, *id.* at pp. 423-427.
31 *Id.* at pp. 432-443.
32 *Id.* at pp. 445-459.

In the Resolution dated December 21, 2020,[33] we admitted all of respondents' offered exhibits.

In the Resolution dated January 12, 2021, we granted petitioner's Motion to Present Rebuttal Evidence.[34] Respondents moved,[35] but failed[36] to reverse said Resolution. In view thereof, petitioner was allowed to present Josephine Ivy F. Alipoon[37] as its additional witness.

On November 29, 2021, petitioner filed its Formal Offer of Rebuttal Evidence,[38] to which respondents filed their Comment (on Petitioner's Formal Offer of Rebuttal Evidence) on December 3, 2021.[39]

In the Resolution dated March 4, 2022,[40] we admitted petitioner's offered rebuttal evidence.

Respondents posted their Memorandum on March 16, 2022,[41] while petitioner posted its Memorandum on April 20, 2022.[42]

Through Resolution dated May 6, 2022,[43] this case was submitted for decision.

ISSUES[44]

We are called upon to answer the following matters: *first*, whether petitioner is liable to pay the amount of ₱2,648,769.07 as deficiency DST plus interests, surcharges and penalties; and *second*, whether petitioner is entitled to a claim for refund and/or issuance of

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33 *Id.* at pp. 465-466.
34 *Id.* at pp. 472-474.
35 Motion for Reconsideration [Re: Resolution dated 12 January 2021]. *Id.* at pp. 482-486.
36 Resolution dated June 9, 2021. Docket (Vol. II), pp. 675-677.
37 Exhibit "P-16," Docket (Vol. I), pp. 508-525. Identified during the Hearing held on October 21, 2021, see Order of even date, Docket (Vol. II), pp. 687-688.
38 Docket (Vol II), pp. 703-714.
39 *Id.* at pp. 853-855.
40 *Id.* at pp. 863-864.
41 *Id.* at pp. 865-874.
42 *Id.* at pp. 878-909.
43 *Id.* at p. 914.
44 See Issues To Be Resolved, JSFI. Docket (Vol. I), p. 260.

tax credit certificate for the alleged erroneously or illegally paid DST in the amount of ₱3,431,788.92.

ARGUMENTS

Petitioner argues that upon the execution of the Lease Agreement with the SBMA on February 26, 2016, it is deemed registered as a Subic Bay Freeport (SBF) enterprise with the SBMA. Being so, it is exempt from the assessed DST, pursuant to Section 12(c) of Republic Act (RA) No. 7227.[45] Also, on account of such exemption, the DST corresponding to said transaction it previously paid, was illegally and erroneously collected by the BIR.

Petitioner further admits that the SBMA only issued the CRTE in its favor on April 26, 2016. It nonetheless claims that the issuance thereof merely confirms or attests the fact of its previous registration by way of execution of the Lease Agreement with the SBMA on February 26, 2016.

Petitioner also asserts that the SBMA already determined the effectivity date of petitioner's registration. Since government agencies such as the SBMA have the power to interpret its own rules, it is conclusive upon the courts.

Petitioner maintains that the SBMA's CRTE is not a condition *sine qua non* to enjoy the tax exemption privileges under Section 12(c) of Republic Act (RA) No. 7227. To require said CRTE as precondition for tax exemption is to impose an additional requirement not found in such law.

On these accounts, petitioner concludes that the cancellation of the BIR's DST assessment for TY 2016, and refund of the DST it paid by reason of the Lease Agreement are warranted.

On the other hand, respondents point out that the Lease Agreement was entered into by and between petitioner and SBMA on

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45 AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.

February 26, 2016, whereas the SBMA only issued a CRTE in favor of petitioner on April 26, 2016. For them, it is the date of issuance of said CRTE which is the reckoning point of petitioner's tax exemption under RA No. 7227. Since the DST liability accrued on February 26, 2016, or prior to the issuance of the CRTE on April 26, 2016, petitioner is liable to pay such tax.

Respondents further counter that there being no full payment of the DST on said Lease Agreement by SBMA, petitioner is liable for its payment under Section 173 of the National Internal Revenue Code of 1997, as amended (NIRC, as amended).

Respondents finally retort that petitioner is liable for the DST arising from the Lease Agreement; hence, the partial payments of said DST on said transaction is not an illegal or erroneous tax. For this reason, petitioner's prayer for the refund thereof must fail.

RULING

The Petition is partly impressed with merit.

First, do we have jurisdiction over this case?

Yes.

Section 7(a)(2) of Republic Act (RA) No. 1125,[46] as amended by RA No. 9282 reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal,** as herein provided:
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> ...
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the

46 An Act Creating the Court of Tax Appeals.

Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

...[47]

Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) [48] provides that the Court in Division has jurisdiction over the inaction of respondent or his duly authorized representative involving disputed assessments, among others.[49] For the inaction of respondent or his duly authorized representative to be elevated on appeal before the Court in Division, there must first be a disputed assessment. To properly dispute an assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC,[50] as amended which states:

Section 228. *Protesting of Assessment.* — ...

...

If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

...

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of

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47 Boldfacing supplied.

48 A.M. 05-11-07-CTA.

49 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal the following:

...

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments .... *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules ...

50 Tax Reform Act of 1997.

> **documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**[51]

As it stands, the taxpayer has thirty (30) days from receipt of the final assessment to file an administrative protest, either by way of request for reconsideration or request for reinvestigation. If a request for reconsideration was filed, respondent or his duly authorized representative has one hundred eighty (180) days from the filing thereof to decide such request for reconsideration. Upon the lapse of such 180-day period and no decision was made by respondent or his duly authorized representative, it is considered by law as a denial; hence, the taxpayer has another thirty (30) days therefrom to appeal to the Court in Division.

Petitioner received respondent RD's FLD/FAN on March 12, 2018.[52] Counting thirty (30) days therefrom, petitioner had until April 11, 2018, to file an administrative protest thereto; thus, its Letter of Protest (With Claim for Tax Refund and/or Issuance of a Tax Credit Certificate) was timely filed[53] on April 11, 2018.

Respondent RD had one hundred eighty (180) days from April 11, 2018, or until October 8, 2018, to decide on petitioner's protest. As respondent RD failed to render a decision thereon as of October 8, 2018, petitioner's administrative protest is deemed denied. Counting another thirty (30) days from October 8, 2018, petitioner had until November 7, 2018, to seek judicial recourse. Therefore, the timely filing of petitioner's Petition for Review on November 7, 2018[54] endows us with jurisdiction over petitioner's challenge on the DST assessment for TY 2016, embodied in the BIR's FLD/FAN dated February 27, 2018.

Section 7(a)(2) of RA No. 1125,[55] as amended by RA No. 9282, in relation to Section 3(a)(2), Rule 4 of the RRCTA,[56] too, clothes us with jurisdiction over inaction of respondent or his duly authorized representatives involving refund of internal revenue taxes and

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51 Boldfacing supplied.
52 *Supra* notes 10 and 11.
53 *Supra* notes 18 and 19.
54 Docket (Vol. I.), p. 10.
55 The full text of this provision is found in page 9 of this Decision.
56 *Supra* note 50.

penalties in relation thereto, among others. Among the kinds of refund of internal revenue taxes is one premised upon illegal or erroneous collection thereof, as recognized in Sections 204 and 229 of the NIRC, as amended. *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc. (Carrier)* [57] expounded on the requirements for us to acquire jurisdiction over said type of refund case, in the following fashion:

> Section 204 [of the NIRC, as amended] refers to the Commissioner of Internal Revenue's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two years from payment of the tax.
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> Section 229 [of the NIRC, as amended], on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.
>
> Reading the two provisions together, both administrative and judicial claims must be filed within the two-year period. Furthermore, the administrative claim must be filed before the judicial claim. This Court has previously declared that "[t]imeliness of the filing of the claim is mandatory and jurisdictional. The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund file either prematurely or out of time."

Petitioner paid the DST subject of its refund claim on September 14, 2017. [58] Following *Carrier*, it had two (2) years therefrom, or until September 14, 2019, to file both its administrative and judicial claims for refund in the order stated. Petitioner seasonably instituted: *one*, its Letter of Protest (With Claim for Tax Refund and/or Issuance of a Tax Credit Certificate) filed before the BIR[59] on April 11, 2018; *two* its Petition for Review filed on November 7, 2018.[60] Hence, we have jurisdiction over petitioner's judicial claim for refund.

Next, is petitioner liable for the DST assessment covering TY 2016, embodied in the FLD/FAN dated February 27, 2018?

Yes.

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57 G.R. No. 226592, July 27, 2021.
58 *Supra* note 9.
59 *Supra* notes 18 and 19.
60 *Supra* note 54.

Sections 173 and 194 of the NIRC, as amended, read:

> SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.* - **Upon documents**, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, **there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title**, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: *Provided,* That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.
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> SEC. 194. *Stamp Tax on Leases and Other Hiring Agreements.* - **On each lease, agreement**, memorandum, or contract for hire, **use or rent of any lands or tenements, or portions thereof**, there shall be collected a documentary stamp tax of Three pesos (₱3) for the first Two thousand pesos (₱2,000), or fractional part thereof, and an additional One peso (₱1) for every One Thousand pesos (₱1,000) or fractional part thereof, in excess of the first Two thousand pesos (₱2,000) for each year of the term of said contract or agreement. (Boldfacing supplied)

International Exchange Bank v. Commissioner of Internal Revenue[61] described DST as one "... levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination or specific legal relationships through the execution of specific instruments. It is an excise upon the privilege, opportunity of facility offered at exchanges for the transaction of the business."

Petitioner and SBMA executed a Lease Agreement on February 26, 2016, whereby SBMA leased to petitioner, Lots 32 and 33 located along Waterfront Road, Central Business District, SBF,[62] for a period[63] covering March 5, 2016 to March 4, 2066. In consideration thereof, petitioner is required to pay rental amounting to US$77,137.00/month, or its Philippine Peso equivalent.[64] These

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61 G.R. No. 171266, April 4, 2007.

62 Section 1, Article I, Lease Agreement dated February 26, 2016. BIR Records (Exhibit "R-15"), pp. 114-115.

63 Section 1, Article III, Lease Agreement dated February 26, 2016. *Id.* at p. 111.

64 Section 1, Article II, Lease Agreement dated February 26, 2016. *Id.* at pp. 113-114.

covenants demonstrate a contract of lease.[65] Being so, the lease transaction, evidenced by such Lease Agreement is subject to DST under Section 173, in relation to Section 194 of the NIRC, as amended.

Petitioner disagrees with the above conclusion, claiming that it is exempted from DST imposition under Section 12(c) of RA No. 7227.

The claim is not well-taken.

The pertinent portion of Section 12(c) of RA No. 7227, as amended by RA No. 9400[66] provides:

> SEC. 12. *Subic Special Economic Zone*. - ....
>
> ...
>
> (c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone** and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone ....[67]

Section 12(c) of RA No. 7227 recognizes national and local tax exemption within the Subic Special Economic Zone (SSEZ) on business enterprises within the SSEZ. For petitioner to be legally considered as an enterprise engaged in business in the SSEZ, Section 5, Article I of the Lease Agreement dated February 26, 2016 states:

> **Section 5. Certificate of Registration; Certificate of Registration and Tax Exemption; -** [Petitioner] hereby understood that, notwithstanding the execution or perfection of this Agreement, **it can only conduct business on the Leased Property upon issuance**

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65 ARTICLE 1643 of the Civil Code states: "In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid."

66 AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

67 Boldfacing supplied.

> **in its favor of a Certificate of Registration (CR) or Certificate of Registration and Tax Exemption (CRTE) allowing it to do business in the SBF pursuant to the pertinent provisions of the Act and the Subic Bay Metropolitan Authority's ("SBMA") Implementing Rules and Regulations.**[68]

Sections 3(h) and 21 of the Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone and The SBMA Under RA No. 7227 command the issuance of a Certificate of Registration for the enjoyment of the incentives under said law:

> Sec. 3. *Definitions.* For purposes of these Rules these terms shall be understood to have the following meanings:
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> ...
>
> h. ***Certificate of Registration* refers to the certificate issued by the SBMA representing the registration of the business entity as an SBF Enterprise.**
>
> ...
>
> Sec. 21. *Effect of Issuance of Certificates.* **Issuance of the Certificate of Registration** or Residency to an SBF Enterprise or Resident, respectively, **shall entitle and subject the business enterprise or resident to all the benefits and obligations under the Act and these Rules**, and other regulations that may be promulgated by the SBMA, subject to the provisions of Section 5 and 13 hereof.[69]

To be precise, pertinent portions of Sections 3 and 4 of Revenue Regulations (RR) No. 1-95[70] validated that the internal revenue tax exemption within the SSEZ is predicated upon an entity's status as a SBMA Registered Enterprise:

> SECTION 3. *Definition.* - For purposes of these Regulations, the terms used herein shall be construed to have the following meanings:
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> ...

[68] Boldfacing supplied.

[69] Boldfacing supplied.

[70] SUBJECT: Rules and Regulations to Implement the Tax Incentives Provisions under Paragraphs (b) and (c) of Section 12, Republic Act No. 7227 Otherwise Known as the Bases Conversion and Development Act of 1992.

k. **Registered Enterprise - refers to any corporation registered with the SBMA to do business in the Secured Area of the Zone.**

...

SECTION 4. *Exemption and Incentives.* -

A. **All SBMA registered enterprises doing business within the Secured Area in the Zone shall enjoy the following:**

...

b. **Exemption from the internal revenue taxes**, such as gross receipts tax, VAT, ad valorem and excise taxes on their sales of goods and services for which they shall otherwise have been directly liable.[71]

In turn, the evidence that an enterprise is indeed SBMA-registered for the purpose of among others, national tax exemption within the SSEZ is the COR. Section 2(aa) and (bb) of Department of Finance Department Order No. 3-08[72] confirmed:

SEC. 2. *Definition of Terms.* - For purposes of these Rules, the following terms and definitions shall apply:

...

aa. Freeport Enterprise - shall refer to a business entity located within the CFZ, and PPFZ, and within the Subic Freeport Zone, which is entitled to incentives, including tax and duty free importations, as may be provided by law, and duly registered with the Incentives Administration Authority of the Freeport Zone where the business entity is located.

bb. Certificate of Registration - shall refer to the **certificate issued to a business entity in an Ecozone or Freeport Zone by the concerned Ecozone or Freeport Zone Incentives Administration Authority evidencing the registration with incentives of the business entity** as an Ecozone Enterprise, PEZA Enterprise or Freeport

71 Boldfacing supplied.

72 RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT No. 9400, "AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES."

> Enterprise in the Ecozone or Freeport Zone where the business entity is located.[73]

Indeed, the local and national tax exemption in Section 12(c) of RA No. 7227 kicks in, only upon SBMA's issuance of COR or CRTE to a business enterprise within the SSEZ. Given that SBMA issued the CRTE to petitioner on April 26, 2016, the latter may only be considered as a business enterprise within the SSEZ, exempt from national and local taxes in the SSEZ as of said date. *Ergo*, the lease transaction, evidenced by the Lease Agreement executed by and between petitioner and SBMA on February 26, 2016, or *prior* to issuance of said CRTE on April 26, 2016, is subject to DST.

Moreover, Section 173 of the NIRC, as amended, imposes DST on "the person making, signing, issuing, accepting, or transferring the [document]."[74] Section 200(A) of the same Code also mandates that "any person liable to pay documentary stamp tax upon any document subject to tax under Title VII of this Code shall file a tax return and pay the tax." *Sans* any showing that SBMA shouldered the DST pertinent to the Lease Agreement dated February 26, 2016, petitioner, as the other party thereto, bears the burden of paying such DST.

Petitioner nevertheless contends that the SBMA already determined that it is the execution of the Lease Agreement on February 26, 2016, which is the date of its registration.

The contention is illusory.

The SBMA was created as a body corporate,[75] and its powers and functions are exercised by its Board of Directors (BOD).[76] Among the powers of the SBMA is to promulgate all the necessary rules and regulations,[77] which necessarily includes the power to interpret the same.[78] Indeed, the testimony of SBMA's Manager of the Business and Investment Department for Leisure, and the OIC of the Deputy

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73 Boldfacing supplied.

74 See *Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue*, G.R. No. L-6741, January 31, 1956.

75 Section 3 of RA No. 7227.

76 Section 9 of RA No. 7227.

77 Section 5(m) of RA No. 7227.

78 Section 5(n) of RA No. 7227 states: "(n) To perform such other powers as may be necessary and proper to carry out the purposes of this Act."

Administrator for the Business Group Josephine Ivy F. Alipoon (Alipoon)[79] that an applicant is considered a registered SBF enterprise upon the execution of the lease agreement with the SBMA, is *not* the interpretation of the SBMA BOD. On this score alone, we cannot lend credence on Alipoon's testimony.

Assuming, Alipoon's testimony was indeed SBMA BOD's interpretation, it does *not* bind us because such construal is flawed. Again, it is the date of issuance by the SBMA of the COR/CRTE to a business enterprise within the SSEZ which would trigger the national and local tax exemption in the SSEZ under Section 12(c) of RA No. 7227, and *not* the date of execution of the Lease Agreement as Alipoon tried to paint. *Republic of the Philippines, et al. v. Provincial Government of Palawan*[80] is on point:

> [An] order, constituting executive or contemporaneous construction of a statute by an administrative agency charged with the task of interpreting and applying the same, is entitled to full respect and should be accorded great weight by the courts, **unless such construction is clearly shown to be in sharp conflict with the Constitution, the governing statute, or other laws.**[81]

In any event, we delete the imposition of the compromise penalty amounting to ₱10,000.00,[82] also found in the FLD/FAN dated February 27, 2018, because petitioner never agreed to its imposition. Indeed, imposition thereof without the conformity of the taxpayer is illegal and unauthorized.[83]

Therefore, we sustain the DST assessment against petitioner for TY 2016, embodied in the FLD/FAN dated February 27, 2018 and delete the imposition of compromise penalty in said FLD/FAN.

Lastly, is petitioner entitled to the refund or tax credit certificate on the alleged erroneously and illegally collected DST it partially paid for TY 2016, amounting to ₱3,431,788.92?

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79 Exhibit "P-16." Docket (Vol. I), pp. 508-525; Order dated October 21, 2021, Docket (Vol. II), pp. 687-688.

80 G.R. No. 170867, January 21, 2020, citing *Alvarez v. Guingona, Jr.*, G.R. No. 118303, January 31, 1996.

81 Boldfacing supplied.

82 Exhibits "P-4" and "R-5." BIR Records (Exhibit "R-15"), p. 154.

83 *Commissioner of Internal Revenue v. Liangga Bay Logging Co., Inc.*, G.R. No. L-35266, January 21, 1999.

No.

Section 229[84] of the NIRC, as amended, allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[85] Guided by this precept, the DST collected by the BIR from petitioner is not an illegal or erroneous tax.

Adverting to our earlier discussion, the SBMA issued the CRTE to petitioner on April 26, 2016; thus, the latter may only be considered as a business enterprise within the SSEZ, exempt from national and local taxes as of said date. In other words, at the time of the execution of the Lease Agreement on February 26, 2016, petitioner was *not* exempt from DST. *Ergo*, the DST paid by petitioner on September 14, 2017, pertaining thereto, in the total amount of ₱3,431,788.92 was rightfully collected by the BIR.

WHEREFORE, the Petition for Review, filed by The Teleempire Incorporated on November 5, 2018, as represented by its President, Ma. Victoria Arlette A. Feliciano, is **PARTIALLY GRANTED**. Accordingly, we **RESOLVE** to:

a. **ORDER** petitioner **TO PAY** respondents, the total amount of **₱2,484,153.54**, representing the basic DST due, including the corresponding surcharge, deficiency interest and delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018, computed as follows:

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84 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, of any sum alleged to have been excessively or in any manner wrongfully 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.

... (Boldfacing supplied)

85 See *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,* G.R. No. 188497, April 25, 2012.

Taxable Basis Per Audit	₱ 3,651,125.00[86]
Less: Partial Payment on September 14, 2017	2,140,561.00[87]
Basic Deficiency DST Due	₱ 1,510,564.00[88]
25% Surcharge	377,641.00
20% Deficiency Interest (March 5, 2016 to December 31, 2017) *[₱1,510,564.00 x 20% x 666/365 days]*	551,252.40
12% Deficiency Interest (January 1, 2018 to March 31, 2018) *[₱1,510,564.00 x 12% x 90/365 days]*	44,696.14
Total Amount Due as of March 31, 2018	**₱2,484,153.54**

b. **ORDER** petitioner **TO PAY** respondents, the delinquency interest at the rate of twelve percent (12%) on the ₱2,484,153.54, corresponding to the total amount due as of March 31, 2018, as determined above, or an amount of ₱816.71[89] per day, from April 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

c. **DELETE** the compromise penalty imposed upon petitioner amounting to ₱10,000.00 relative to the DST assessment for TY 2016; and,

d. **DENY** petitioner's claim for refund or issue a tax credit certificate on the alleged erroneously and illegally collected DST and penalties it paid for TY 2016, amounting to ₱3,431,788.92.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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86 Exhibit "R-15." BIR Records (Exhibit "R-15"), pp.128-129.
87 Exhibits "P-11" and "P-12." Docket (Vol. I), pp. 356-358; and BIR Records (Exhibit "R-15"), pp. 160-161.
88 Exhibits "P-4" and "R-5." BIR Records (Exhibit "R-15"), p. 156.
89 ₱2,484,153.54 x 12%/365 days.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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