REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

SOUTH NEGROS BIOPOWER, INC.,	**CTA Case No. 9921**
Petitioner,	*Members:*
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **FABON-VICTORINO,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	**Promulgated:**
Respondent.	JUL 08 2020 : 8:54 am

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DECISION

DEL ROSARIO, P.J.:

Before this Court is a Petition for Review[1] filed on September 4, 2018 by petitioner South Negros Biopower, Inc., against respondent Commissioner of Internal Revenue, seeking for the refund of Documentary Stamp Tax (DST) in the amount of Thirteen Million Six Hundred Sixteen Thousand Nine Hundred Fifty Six Pesos (₱13,616,956.00) alleged to have been erroneously paid on September 5, 2016.

PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at the National Highway, Brgy. Cubay, Negros Occidental, Negros Occidental.[2] It is registered with the Bureau of Internal Revenue (BIR) with Certificate of Registration OCN 2RC0001576095.[3]

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[1] CTA Docket vol. I, pp. 10-21.
[2] Par. 1, Stipulation of Facts, Joint Stipulation, CTA Docket vol. I, p. 827; Exhibits "P-1" and "P-2", CTA Docket vol. II, pp. 857-908.
[3] Exhibit "P-3", CTA Docket vol. II, p. 909.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the law with authority to carry out all functions, duties, and responsibilities of the BIR. He may be served with summons, and other court processes in the Office of the Commissioner of Internal Revenue, 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

FACTS

Petitioner entered into an Omnibus Agreement[5] dated August 19, 2016 (Loan Agreement) with San Carlos Biopower, Inc., North Negros Biopower, Inc. as co-borrowers and International Finance Corporation (IFC) as lender,[6] for the alleged financing of the construction, equipping, testing, completion, and operation of the borrowers' respective biomass electricity generation facilities.[7]

On September 5, 2016[8], petitioner filed its DST Declaration/Return[9] (BIR Form No. 2000) and paid the BIR the amount of ₱13,616,956.00 representing the DST on the Loan Agreement.[10]

On February 28, 2018, petitioner filed an administrative claim for refund of erroneously paid DST, though a Letter dated February 26, 2018, attaching thereto a duly accomplished BIR Application for Tax Credits/Refunds (BIR Form No. 1914).[11]

On June 19, 2018, petitioner received from Revenue District Office No. 78 a Letter of Authority (LOA) No. 078-2018-00000083 dated June 8, 2018, authorizing Revenue Officer Rowela B. Alacapa, to be supervised by Pearl Marie G. Sta. Maria, to examine records relating to the petitioner's internal revenue taxes for calendar year ending December 31, 2016.[12] Attached to the LOA is a Request for Presentation of Records dated June 19, 2018, requesting for various documents to support the claim for refund.

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[4] Par. 2, Stipulation of Facts, Joint Stipulation, CTA Docket vol. I, p. 827.
[5] Exhibit "P-4", CTA Docket vol. II, pp. 910-1021.
[6] Par. 3, Stipulation of Facts, Joint Stipulation, CTA Docket vol. I, p. 827.
[7] Par. 11, Statement of Facts and Case, CTA Docket vol. I, p. 13.
[8] Exhibits "P-5-a" and "P-6-a", CTA Docket vol. II, pp. 1022 and 1024.
[9] Exhibit "P-5", CTA Docket vol. II, pp. 1022-1023.
[10] Exhibits "P-6" and "P-7", CTA Docket vol. II, p. 1024- 1025.
[11] Exhibit "P-10", CTA Docket vol. II, pp. 1049-1054.
[12] Par. 4, Stipulation of Facts, Joint Stipulation, CTA Docket vol. I, p. 828.

On August 7, 2018, petitioner submitted the additional documents requested by the BIR Revenue District Office No. 78.[13]

In view of respondent's failure to render a decision on petitioner's administrative claim for refund,[14] petitioner was constrained to file a judicial claim for refund of its alleged erroneously paid DST through the filing of the present Petition for Review on September 4, 2018.[15]

On October 5, 2018, respondent filed a Motion for Extension of Time to File Answer,[16] which the Court granted in an Order[17] dated October 19, 2018, thereby extending respondent's period to file an Answer until November 5, 2018.

On November 20, 2018, respondent filed a Motion to Admit Attached Answer,[18] which the Court granted in an Order[19] dated November 22, 2018. The Answer was accordingly admitted as part of the records of the case.[20] In his Answer, respondent insists that the Loan Agreement is subject to DST under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended.

On February 12, 2019, respondent filed his Pre-Trial Brief[21] while petitioner filed its Pre-Trial Brief[22] on February 15, 2019. Pre-Trial Conference ensured on February 21, 2019.[23] Thereafter, the parties filed their Joint Stipulation on March 13, 2019,[24] which the Court approved in the Resolution dated March 28, 2019.[25] The same Resolution terminated the pre-trial and directed the issuance of a Pre-Trial Order. On April 22, 2019, the Court issued the Pre-Trial Order.[26]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Ms. Angelique P.

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[13] Exhibit "P-12", CTA Docket vol. II, pp. 1057-1411.
[14] Par. 5, Stipulation of Facts, Joint Stipulation, CTA Docket vol. I, p. 828.
[15] Par. 6, Stipulation of Facts, Joint Stipulation, CTA Docket vol. I, p. 828.
[16] CTA Docket vol. I, pp. 382-384.
[17] CTA Docket vol. I, p. 386.
[18] CTA Docket vol. I, pp. 388-390.
[19] CTA Docket vol. I, p. 397.
[20] CTA Docket vol. I, pp. 392-396.
[21] CTA Docket vol. I, pp. 402-405.
[22] CTA Docket vol. I, pp. 409-418.
[23] CTA Docket vol I, pp. 819-820.
[24] CTA Docket vol. I, pp. 827-836.
[25] CTA Docket vol. I, p. 843.
[26] CTA Docket vol. II, pp. 1429-1435.

Custodio,[27] the Accounting Officer of Negros Island Biomass Holdings, Inc.; and, Ms. May L. Vargas,[28] petitioner's Accounting Manager.

Petitioner's formally offered exhibits as contained in its Formal Offer of Evidence[29] filed on April 16, 2019, were admitted in evidence in the Resolution[30] dated July 10, 2019, except Exhibits "P-8", "P-9" and "P-11" for failure to present the originals thereof for comparison. On August 7, 2019, petitioner filed a Motion for Reconsideration,[31] which was granted by the Court in the Resolution dated November 22, 2019 thereby admitting Exhibits "P-8", "P-9" and "P-11".

On April 26, 2019, respondent manifested that he will no longer present his witness.[32]

After the filing of petitioner's Memorandum on August 22, 2019,[33] and respondent's Memorandum on September 16, 2016,[34] the case was submitted for decision on November 22, 2019.[35]

ISSUE

The parties submitted, for the Court's resolution, the issue of whether or not petitioner is entitled to a claim for refund or issuance of tax credit certificate for its alleged erroneously paid DST in the amount of ₱13,616,956.00.[36]

PETITIONER'S ARGUMENTS

Petitioner claims that it timely filed its administrative and judicial claims for refund of erroneously paid DST within two (2) years from the date of DST payment on September 5, 2016.

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[27] Exhibit "P-13", CTA Docket vol. I, pp. 797-803; and Minutes of Hearing dated April 2, 2019, CTA docket vol. I, p. 844.
[28] Exhibit "P-14", CTA Docket vol. I, pp. 804-811; and Minutes of Hearing dated April 2, 2019, CTA docket vol. I, p. 844.
[29] CTA Docket vol. II, pp. 848-856.
[30] CTA Docket vol. II, pp. 1456-1457.
[31] CTA Docket vol. II, pp. 1458-1462.
[32] CTA Docket vol. II, pp. 1436-1439.
[33] CTA Docket vol. II, pp. 1491-1505.
[34] CTA Docket vol. II, pp. 1512-1522.
[35] CTA Docket vol. II, pp. 1529-1531.
[36] Issue, Pre-Trial Order, CTA Docket vol. II, p. 1430.

Moreover, petitioner argues that its Loan Agreement with IFC is exempt from DST, thus, making its DST payment erroneous. It avers that IFC is immune from taxation pursuant to Section 9, Article VI, of its Articles of Agreement, which was confirmed by the BIR in BIR Ruling No. DA-(FIT-002) 006-09 dated January 9, 2009.

Further, petitioner contends that IFC did not waive the tax-exempt status of its transaction with petitioner. It claims that in order to constitute as a waiver of the tax exemption granted to an entity or its transactions, the same should be made expressly.

Lastly, petitioner alleges that the absence of a tax treaty relief application is not a bar to the claim for tax refund or credit of erroneously paid tax.

RESPONDENT'S ARGUMENTS

Respondent, on the other hand, argues that IFC waived its immunity from taxation. Thus, any tax which may have been collected in relation to the Loan Agreement was not erroneously collected.

According to respondent, the obligation to pay DST falls upon the shoulder of petitioner pursuant to Section 173 of NIRC of 1997, as amended, and Section 3 of Revenue Regulation (RR) No. 9-2000.

Finally, granting for the sake of argument but without conceding that IFC did not waive its immunity from taxation, IFC's immunity from taxes is personal, hence, non-transferable to petitioner. Petitioner is directly liable for the payment of DST.

THE COURT'S RULING

Petitioner's administrative and judicial claims for refund were timely filed

Before delving into the merits of petitioner's claim for refund, the Court shall make a determination on the timeliness of the filing of petitioner's administrative and judicial claims.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the period within which a claim for refund of internal revenue

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taxes which are erroneously, illegally and wrongfully collected must be filed. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund,[37] *viz.*:

> "**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 stamped 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." *(Boldfacing 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.
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> **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 therefore, 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." *(Boldfacing supplied)*

Pursuant to the aforequoted provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be complied with:

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[37] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019.

1. The tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and

2. The claim for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

The Supreme Court has consistently ruled that a claim for refund or credit with the BIR and the subsequent appeal to this Court must be filed within two (2) years from the date of payment of the tax[38] and that the judicial claim may not be maintained until a claim for refund or credit has been duly filed with the CIR.[39]

Since petitioner paid the amount of ₱13,616,956.00 representing the DST on the Loan Agreement on September 5, 2016,[40] it had until September 5, 2018 within which to file its administrative and judicial claims for refund. Thus, the filing of its administrative claim for refund of erroneously paid DST on February 28, 2018 and the Petition for Review on September 4, 2018 were both done within the prescribed period.[41] Hence, the Court has acquired jurisdiction over the present case.

Petitioner is not entitled to its claim for refund or issuance of TCC

Petitioner claims that its DST payment on September 5, 2016, in the amount of ₱13,616,956.00, is erroneous considering that its Loan Agreement[42] with IFC is exempt from DST.

The Court finds petitioner's contention bereft of merit.

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[38] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968; *J. N. Sweeney, A. O. Baigrie, and Ramon Burgas vs. Collector*, G.R. No. L-12178, August 21, 1959; *P.J. Kiener Company, Ltd. v. Saturnino David*, G.R. No. L-5163, April 23, 1953, cited in *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, January 14, 2015 and *Commissioner of Internal Revenue vs. CBK Power Company Limited*, G.R. Nos. 193407-08, January 14, 2015.
[39] *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016.
[40] Exhibits "P-5-a" and "P-6-a", CTA Docket vol. II, pp. 1022 and 1024.
[41] Exhibit "P-10", CTA Docket vol. II, pp. 1049-1054.
[42] Exhibit "P-4", CTA Docket vol. II, pp. 910-1021.

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.[43]

Section 179 of the NIRC of 1997, as amended, specifies the DST to be imposed on all debt instruments, *viz.*:

> "SEC. 179. ***Stamp Tax on All Debt Instruments.*** — On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
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> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, **loan agreements**, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation." *(Boldfacing supplied)*

It is explicit from the aforecited provision that a loan agreement is subject to DST at the rate of One Peso (₱1.00) on each Two Hundred Pesos (₱200), or fractional part thereof, of the amount of the loan.

Under Section 173 of the NIRC of 1997, as amended, the DST due on loan agreement shall be paid by the person "making, signing, issuing, accepting, or transferring" the instrument. When one of the party to the loan agreement is, however, exempted from tax, the other party not exempt shall be directly liable for the DST, *viz.*:

[43] *Michel J. Lhuiller Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006.

> SEC. 173. ***Stamp Taxes Upon Documents, Instruments, Loan Agreements, 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.***(Emphasis supplied)*

Revenue Regulations (RR) No. 9-2000[44] reiterates that any of the parties to a transaction, *i.e.* the person making, signing, issuing, accepting, or transferring the document, shall be liable for the DST, *viz*:

> **"SEC. 2. Nature of the Documentary Stamp Tax and Persons Liable for the Tax. –**
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> (a) *In General* - The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against "the person making, signing, issuing, accepting, or transferring" the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. ***Any of the parties thereto shall be liable for the full amount of the tax due***: Provided, however, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.
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> (b) *Exception* - **Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax.**" *(Boldfacing supplied)*

Pursuant to Section 173 of the NIRC of 1997, as amended, as implemented by RR No. 9-2000, any of the parties to a transaction shall be liable for the full amount of the DST due under Section 179 of the same Code, unless they agree among themselves on who shall be

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[44] Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

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liable for the same.[45] When one of the parties is exempt from DST, the party not exempt shall be liable therefor.[46]

In the present case, petitioner claims that its Loan Agreement with IFC is not subject to the DST imposed under Section 179 of the NIRC of 1997, as amended. It avers that IFC is immune from taxation pursuant to Section 9, Article VI of its Articles of Agreement.

IFC is a specialized agency of the United Nations and a member of the World Bank Group, the largest global development institution focused exclusively on the private sector in developing countries. IFC's Articles of Agreement[47] provides, among others, that IFC, in association with private investors, assist in financing the establishment, improvement and expansion of productive private enterprises which would contribute to the development of its member countries by making investments, without guarantee of repayment by the member governments concerned, in cases where sufficient private capital is not available on reasonable terms.

Through the enactment of Republic Act No. 1604,[48] the Philippines' membership to the IFC was authorized and accession to the IFC Articles of Agreement was made. Thus, the IFC Articles of Agreement has become part of the law of the land pursuant to Section 2, Article II of the 1987 Constitution.

Section 9, Article VI of the Articles of Agreement of IFC, provides:

"Article VI

Status, Immunities and Privileges

xxx xxx xxx

Section 9. *Immunities from Taxation.*

> **(a) The Corporation, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be**

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[45] *ING Bank N.V., Engaged in Banking Operations in the Philippines as ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue*, G.R. No. 167679, April 20, 2016.
[46] *Hon. Kim Henares, et al. vs. LKY Property Holdings, Inc.*, CTA EB No. 1852 (CTA Case No. 9066), March 8, 2019.
[47] Exhibit "P-8", CTA Docket vol. II, pp. 1026-1044.
[48] An Act Authorizing Philippine Membership in the Proposed International Finance Corporation and Authorizing the Appropriation of Funds.

immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to Directors, Alternates, officials or employees of the Corporation who are not local citizens, local subjects, or other local nationals.

(c) **No taxation of any kind shall be levied on any obligation or security issued by the Corporation** (including any dividend or interest thereon) by whomsoever held:

(i) which discriminates against such obligation or security solely because it is issued by the Corporation; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Corporation.

(d) **No taxation of any kind shall be levied on any obligation or security guaranteed by the Corporation** (including any dividend or interest thereon) by whomsoever held:

(i) which discriminates against such obligation or security solely because it is guaranteed by the Corporation; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation." *(Boldfacing supplied)*

Plainly, IFC, its assets, property, income and its operations and **its transactions authorized by the Agreement** shall be immune from all taxation and all customs duties. IFC shall likewise be immune from liability for the collection or payment of any tax or duty.

Not all transactions entered into by IFC are immune from taxes. Truth to tell, the Agreement specifies the authorized transactions of IFC that shall be immune from taxes, to wit:

i. Any <u>obligation or security issued by IFC</u> (including any dividend or interest thereon) by whomsoever held which discriminates against such obligation or security solely because it is issued by the IFC; or if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by IFC; and,

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ii. Any obligation or security guaranteed by IFC (including any dividend or interest thereon) by whomsoever held which discriminates against such obligation or security solely because it is guaranteed by the Corporation; or if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation."

Indubitably, in order for the transaction entered into by IFC to be considered immune from Philippine taxes, the transaction must pertain to any of the foregoing transactions, that is, **issuance or guaranteeing of any obligation or security by IFC**.

Section 2.01, Article II of the Loan Agreement could not be any clearer as to the real nature of the transaction involved herein, *viz.*:

> **"ARTICLE II**
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> **The Loan**
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> Section 2.01. *The Loan*. (a) Subject to the provisions of this Agreement, IFC agrees to lend (in its own capacity and in its capacity as Implementing Entity), and the Borrowers agree to borrow on a joint and several basis, the Loan consisting of the Tranches in the corresponding amount set forth in the table below:
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> xxx."[49]

Considering that the subject transaction neither involves an obligation or security issued by IFC nor an obligation or security guaranteed by the latter, the same is not one of the authorized transactions of IFC that shall be immune from taxes. Stated differently, the Loan Agreement entered into by IFC with petitioner and its co-borrowers is not *per se* exempt from taxes.

As the loan transaction is not exempt from taxes, and bearing in mind that IFC is immune from liability for the collection or payment of any tax or duty, the parties to the Loan Agreement explicitly agreed that the taxes due on the transaction shall be borne by the borrowers.

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[49] Exhibit "P-4", CTA Docket vol. II, p. 927.

Sections 2.14(a)[50] and 2.15(a)[51] of the Loan Agreement unequivocally provide:

> "Section 2.14. *Taxes*. (a) **The Borrowers shall pay or cause to be paid all Taxes** (other than taxes, if any, payable on the overall income of IFC, CCCP, CTF, any MCPP Investor or any Participant) **on or in connection with the payment of any and all amounts due under this Agreement that** are now or in the future levied or imposed by any Authority of the Country or by any organization of which the Country is a member or any jurisdiction through or out of which a payment is made.
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> (b) All payments of principal, interest, fees and other amounts due under this Agreement shall be made without deduction for or on account of any Taxes.
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> (c) If any Borrower is prevented by operation of law or otherwise from making or causing to be made those payments without deduction, the principal or (as the case may be) interest, fees or other amounts due under this Agreement shall be increased to such amount as may be necessary so that IFC receives the full amount it would have received (taking into account any Taxes payable on amounts payable by any borrower under this subsection) had those payment been made without that deduction. *(Boldfacing supplied)*
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> xxx xxx xxx
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> Section 2.15 *Expenses*. (a) **The Borrowers shall pay or, as the case may be, reimburse IFC or its assignees any amount paid by them on account of, all taxes <u>(including stamp taxes)</u>, duties, fees or other charges payable on or in connection with the execution, issue, delivery, registration or notarization of the Transaction Documents and any other documents related to this Agreement or any other Transaction Document."** (*Boldfacing and underscoring supplied*)

These provisions effectively show that IFC recognizes that the Loan Agreement it entered into is subject to taxes, **<u>including stamp taxes</u>**. The parties further stipulated on who shall bear the burden of paying the taxes due. This stipulation is consistent with the clear mandate of Section 173 of the NIRC of 1997, as amended, and as implemented by RR No. 9-2000, which as, oft-repeated, states that whenever one of the parties to the taxable transaction is exempt from DST, the other party thereto who is not exempt shall be the one directly liable for the tax.

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[50] Exhibit "P-4", CTA Docket vol. II, p. 932.
[51] Exhibit "P-4", CTA Docket vol. II, p. 933.

Since IFC is immune from liability for the collection or payment of any tax or duty, petitioner, being the other party to the transaction who is not exempt from tax, is directly liable to pay the DST. In short, petitioner's payment of the DST in the amount of ₱13,616,956.00 on September 5, 2016 is not erroneous or illegal as petitioner was the party liable to pay the same pursuant to the Loan Agreement and the clear language of the law.

Citing BIR Ruling No. DA-(FIT-002) 006-09 dated January 9, 2009, petitioner contends that the BIR has confirmed that transaction entered into by IFC is exempt from DST pursuant to Article VI, Section 9 of IFC's Articles of Agreement. Petitioner insists that the aforestated BIR ruling must be applied to the present case.

Petitioner's reliance on aforesaid BIR Ruling is misplaced.

Notably, the facts involved therein are substantially different from the facts herein. In the said BIR Ruling, the BIR ruled that the issuance by IFC of a Philippine-peso denominated bond in the local market is exempt from DST under Section 179 of the NIRC of 1997, as amended. The issuance of a bond, an obligation of IFC, is an authorized tax-exempt transaction of IFC as stated in its Articles of Agreement. Hence, the BIR Ruling may not be applied to the present case to justify the exemption of the subject Loan Agreement from DST.

Finally, as the loan agreement is not among the authorized tax-exempt transaction of IFC, there was no waiver of IFC's tax exemption to speak of under Section 11, Article VI of its Articles of Agreement.[52] Precisely, IFC and petitioner (and the other borrowers), recognizing the taxability of the transaction, stipulated on who should be liable to pay the DST thereon, which stipulation is well within the ambit of Section 173 of the NIRC of 1997, as amended, and as implemented by RR No. 9-2000.

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the

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[52] Article VI
Status, Immunities and Privileges
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Section 11. *Waiver*
The Corporation in its discretion may waive any of the privileges and immunities conferred under this Article to such extent and upon such conditions as it may determine.

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government.[53] The burden in claiming tax refund rests upon the taxpayer which petitioner has failed to discharge. For failing to prove its entitlement to a tax refund, petitioner's claim must perforce be denied.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

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[53] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.