REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SOUTH LUZON TOLLWAY CORPORATION, Petitioner,	**CTA CASE NO. 9272**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson*, **UY**, *and* **MINDARO-GRULLA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 27 2018 : 9:20am

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on February 24, 2016 by petitioner South Luzon Tollway Corporation praying that the Court: (i) cancel and set aside the deficiency Documentary Stamp Tax Assessment (Assessment Number DS-125-00000018-11-15-57700, dated October 22, 2015) issued by the Bureau of Internal Revenue against petitioner; (ii) declare petitioner entitled to a refund of the amount of ₱49,777,714.28, representing erroneous and/or illegal collection by the Bureau of Internal Revenue of documentary stamp tax on September 30, 2015; and, (iii) order respondent to refund the aforesaid amount of ₱49,777,714.28 to petitioner, with legal interest, or issue to petitioner a tax credit certificate for said amount.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with office address at 2nd

Floor, Operations Control Center, Km. 44 North Bound, South Luzon Expressway, Sitio Latian, Barangay Mapagong, Calamba, Laguna.[1]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila, where he may be served with judicial papers and processes.[2]

THE FACTS

On July 19, 2011, the Supreme Court rendered a decision in "*Commissioner of Internal Revenue vs. Filinvest Development Corporation*" [3] (*Filinvest Case*), declaring, among others, that instructional letters and journal and cash vouchers evidencing advances extended by a corporate entity to its affiliates qualified as loan agreements upon which documentary stamp taxes may be imposed.[4]

On October 6, 2011, Revenue Memorandum Circular (RMC) No. 48-2011 was issued by the Bureau of Internal Revenue (BIR), circularizing to all internal revenue officials and employees relevant excerpts from the decision of the Supreme Court in the *Filinvest Case*, and enjoining all employees engaged in the audit and review of cases "to assess deficiency Documentary Stamp tax (DST), if warranted, on these kinds of transactions", obviously referring to "instructional letters and journal and cash vouchers" evidencing cash advances.[5]

On October 2, 2015, petitioner received from the BIR a copy of a "PRELIMINARY ASSESSMENT NOTICE (Part I)" and "PRELIMINARY ASSESSMENT NOTICE (Part II)" (PAN), both dated September 30, 2015.[6]

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[1] Par. 1.01., Joint Stipulation of Facts, Documents, Issues, and Other Matters, CTA Docket, p. 320.
[2] Par. 1.02., Joint Stipulation of Facts, Documents, Issues, and Other Matters, CTA Docket, p. 320.
[3] G.R. Nos. 163653 and 167689, 654 SCRA 56.
[4] Par. 1.03., Joint Stipulation of Facts, Documents, Issues, and Other Matters, CTA Docket, p. 321.
[5] *Id.*
[6] Par. 1.04., Joint Stipulation of Facts, Documents, Issues, and Other Matters, CTA Docket, p. 321.

Based on the Details of Discrepancies attached to the PAN (Part I), the following deficiency taxes were found due from petitioner: (i) Value-Added Tax, ₱4,524,305.04; (ii) Expanded Withholding Tax, ₱150,160.23; (iii) Withholding Tax on Compensation, ₱1,109,485.43; (iv) Final Withholding Tax, ₱200,421.64; and, (v) DST, ₱49,777,714.28, in the total amount of ₱55,762,086.62.[7]

As per Schedule 7 of the Details of Discrepancy attached to the PAN (Part I), the deficiency DST assessment amounting to ₱25,540,865.00 (exclusive of surcharge, interest and penalty) is based on petitioner's advances from/to "related parties" in the alleged aggregate amount of ₱5,105,972,863.00 and on an alleged "obligation under finance lease" in the amount of ₱2,200,000.00. As stated therein, the related parties from whom petitioner received advances are MTD Manila Expressways (MTDME) and MTD Equity (MTDE), and the related party to whom petitioner extended advances is Alloy Manila Toll Expressways, Inc. (AMTEX).[8]

In the same Details of Discrepancy attached to the PAN (Part I), it is stated that the DST was assessed "pursuant to Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to RMC No. 48-2011 circularizing the *En Banc* Supreme Court Decision on the imposition of DST on inter-office memo on advances from affiliates xxxx".[9]

PAN (Part II) pertains to the imposition of a Compromise Penalty in the amount of ₱12,000.00 for failure to file BIR Form No. 1600 on time.[10]

On September 30, 2015, petitioner paid the alleged deficiency DST in the amount of ₱49,777,714.28 (inclusive of increments).[11]

On October 22, 2015, notwithstanding payment by petitioner, the BIR issued a Formal Letter of Demand (FLD) with Assessment Notice to petitioner, maintaining its deficiency assessment against petitioner for DST (increased to ₱50,589,423.96), again citing Section 179 of the NIRC, as amended, in relation to RMC No. 48-2011.[12]

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[7] *Id.*
[8] *Id,* CTA Docket, pp. 321-322.
[9] *Id.*, CTA Docket, p. 322.
[10] *Id.*
[11] Par. 1.05., Joint Stipulation of Facts, Documents, Issues, and Other Matters, CTA Docket, p. 322.
[12] *Id.*

On November 3, 2015, petitioner received from the BIR an FLD dated October 22, 2015 with Assessment Notice No. DS-125-00000018-11-15-577 of even date for deficiency DST in the amount of ₱50,589,423.96.[13]

On December 3, 2015, or within the reglementary period of thirty (30) days, petitioner filed with the BIR its "Request for Reconsideration/Protest and Claim for Refund" dated December 2, 2015 protesting the deficiency DST assessment issued against it in the amount of ₱50,589,423.96 and claiming for refund of the amount of ₱49,777,714.28 which it had already paid.[14]

On January 26, 2016, respondent issued a Decision, in the form of a Letter of even date, denying "for lack of legal and factual basis" petitioner's "Request for Reconsideration/Protest and Claim for Refund".[15]

Hence, this Petition for Review was filed by petitioner on February 24, 2016.

On April 8, 2016, respondent filed his Answer,[16] with the following Special and Affirmative Defenses:

> "5. Verification disclosed that petitioner failed to pay Documentary Stamp Tax (DST) on its advances to/from related parties, namely, MTD Manila Expressways, Inc. (MTDME), MTD Equity and Alloy Manila Toll Expressways, Inc. (AMTEX), and on the finance lease of its transportation equipment.
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> 6. Hence, for failure of petitioner to pay DST, it was assessed pursuant to Section 179 of the NIRC of 1997, in relation to Revenue Memorandum Circular (RMC) No. 48-2011 circularizing the En Banc Decision of the Supreme Court on the imposition of DST on inter-office memo on advances from affiliates and RMC No. 46-2014 clarifying the taxability of financial lease for purposes of DST, xxx:
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> x x x
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> 7. Also, contrary to petitioner's assertion, there is no retroactive application of the Supreme Court Decision in the *Filinvest* case. The said case was decided on 19 July 2011. Petitioner's deficiency DST assessment was for the taxable year ended 31 March 2012.

[13] Par. 1.06., Joint Stipulation of Facts, Documents, Issues, and Other Matters, CTA Docket, p. 323.
[14] *Id.*
[15] *Id.*, CTA Docket, p. 323.
[16] CTA Docket, pp. 109-120.

8. The basis of the deficiency DST assessment is Section 179 of the Tax Code which is the law on the imposition of DST on all debt instrument for the year under audit. The ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation* is an affirmation of respondent's position that intercompany loans and advances covered by mere office memo, instructional letter and/or cash and journal vouchers qualify as loan agreements that are subject to DST. Hence there is no retroactive effect in the instant case.

9. In the case of *Diageo Philippines, Inc. vs. CIR,* the Honorable Court of Tax Appeals En Banc ruled, to wit:

> "In refuting the application of *Aichi* Case in the instant petition, **petitioner argues that the rule enunciated in the *Aichi* Case should not be applied retroactively as its vested rights would be unduly impaired. Petitioner asseverates that at the time it filed the instant Petition for Review, the controlling jurisprudence insofar as the prescriptive period for filing a judicial claim for refund under *Section 112(A) of the NIRC of 1997, as amended,* was that both the administrative and judicial claims for input VAT refund must** be filed within two years reckoned from the filing of the VAT return citing ***Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*** (the '*Atlas Case*').
>
> Petitioner's argument is misplaced.
>
> **It is axiomatic that when the Supreme Court decides a case, it does not amount to a passage of a new law but merely interprets a pre-existing one, and such judicial interpretation of a statute constitutes part of that law as of the date of its original passage. It merely casts light upon the contemporaneous legislative intent of that law.**
>
> In the recent case of *Accenture, Inc. v. Commissioner of Internal Revenue*, the Supreme Court elucidated the foregoing principle in this wise:
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> > 'Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. **When this Court decides a case, it does not pass a new law, but merely interprets pre-existing one.** When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. **It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.**'
>
> Thus, contrary to petitioner's assertion, the Supreme Court's interpretation of *Section 112(C) of the NIRC of 1997, as amended,*

σ)

> in **the *Aichi* Case may be applied to the instant case without violating the rule against retroactive application as such interpretation constitutes part of the law as of the date of its original passage.** (Boldfacing and underscoring supplied)

10. Petitioner executed a Waiver of the Statute of Limitations on 3 November 2014 which was duly accepted and signed on 12 November 2014 and that a copy was duly received by petitioner's accountant on 24 November 2014. Hence, respondent's right to assess petitioner has not yet prescribed.

11. Thus, petitioner's payment is considered as full settlement of the basic deficiency tax including the surcharge, interest and penalties thereon, notwithstanding that the said payment was made 'under protest'.

12. Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997), categorically provides:

> **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.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

13. It is thus clear from the above-cited provision of law that the Honorable Court has no jurisdiction to act on the instant petition for review. The amount petitioner paid for the purchase of the old internal revenue stamps was not illegally or erroneously collected by respondent. Hence, the said amount cannot be the proper subject of a claim for refund.

14. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer (**Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner**

of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).

15. Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al. CA G.R. SP NO. 16432, March 30, 1999)**. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)**.

16. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

On April 27, 2016 and July 11, 2016, the Pre-Trial Briefs of respondent[17] and petitioner[18] were respectively filed.

The Pre-Trial Conference was held on July 14, 2016.[19] The parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters[20] on August 4, 2016, and the same was approved in the Resolution[21] dated August 10, 2016. In the same Resolution, the Court terminated the Pre-Trial.

During trial, petitioner presented testimonial and documentary evidence. Petitioner's formally offered exhibits, as contained in its Formal Offer of Evidence,[22] were admitted in the Resolution dated January 4, 2017[23] except for Exhibit P-7-b. On January 19, 2017, petitioner filed a Motion for Partial Reconsideration, which was denied by the Court in the Resolution dated March 28, 2017.[24]

On April 11, 2017, petitioner filed a Motion[25] praying that the Court take judicial notice of BIR Ruling (DA [C-035] 127-08) dated August 8, 2008. The Court, in the Resolution dated November 6, 2017, denied such Motion but granted its alternative Motion for Time

[17] CTA Docket, pp. 129-133.
[18] CTA Docket, pp. 268-283.
[19] Minutes of the hearing, and Resolution issued on July 14, 2016; CTA Docket, pp. 301-303, 304-305.
[20] CTA Docket, pp. 320-330.
[21] CTA Docket, p. 333.
[22] CTA Docket, pp. 367-383.
[23] CTA Docket, pp. 397-398.
[24] CTA Docket, pp. 426-430.
[25] CTA Docket, pp. 431-435.

within which to Submit a Certified True Copy of the Original of the aforementioned BIR Ruling.[26]

On November 17, 2017, petitioner filed a Compliance/Supplemental Offer of Evidence[27] praying that the said BIR Ruling be admitted in evidence. Petitioner's Compliance was noted and its offer of Exhibit P-7-b-1 was admitted into evidence in the Resolution dated December 15, 2017.[28]

Considering that respondent's counsel manifested in open court on October 4, 2016 that she was no longer presenting any evidence,[29] and since respondent already filed his Memorandum[30] on January 12, 2017, the Court ordered petitioner to file its memorandum within thirty (30) days from notice.[31]

In view of the filing of the Memorandum for the Petitioner[32] on January 31, 2018 and respondent's Memorandum[33] on January 12, 2017, the case was submitted for decision on February 15, 2018.[34]

ISSUES[35]

The parties agreed that the issues for resolution are as follows:

"3.01. The main issues for resolution of the Court are:

> 3.01.a [Whether] or not the Court has jurisdiction to rule on the validity of the assessment.
>
> 3.01.b Whether or not SLTC is entitled to a cancellation of the disputed Documentary Stamp Tax assessment.
>
> 3.01.c Whether or not petitioner is entitled to a refund in the amount of ₱49,777,714.28 allegedly representing DST for the fiscal year ending March 31, 2012.

3.02. The following are the corollary issues:

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[26] CTA Docket, pp. 445-449.
[27] CTA Docket, pp. 450-452.
[28] CTA Docket, pp. 457-458.
[29] Minutes of the hearing, and Order issued on October 4, 2016; CTA Docket, pp. 356-358, 359-360.
[30] CTA Docket, pp. 399-409.
[31] CTA Docket, pp. 457-458.
[32] CTA Docket, pp. 464-526.
[33] CTA Docket, pp. 399-409.
[34] CTA Docket, p. 529.
[35] Joint Stipulation of Facts, Documents, Issues, and Other Matters, CTA Docket, pp. 325-326.

3.02.a Whether or not SLTC is liable for the subject deficiency Documentary Stamp Tax assessment.

3.02.b Whether or not DST may be imposed on petitioner SLTC's advances from/to related parties on the basis of mere Notes appearing in the Audited Financial Statements of SLTC.

3.02.c Whether or not the decision in the Filinvest Case and RMC No. 48-2011 may be applied retroactively against SLTC.

3.02.d Assuming the decision in the Filinvest Case may be applied retroactively, whether or not advances subject of the instant case are covered by the aforesaid decision.

3.02.e Assuming that the deficiency DST assessment is valid, whether or not the immediate payment by SLTC of the alleged deficiency has rendered the FLD/assessment notice *functus officio* and moot and academic.

3.02.f Whether or not the deficiency DST assessment of the BIR on SLTC's "finance lease obligation" has already been paid.

3.02.g Whether or not the right of the Government to assess SLTC for deficiency DST has prescribed.

3.02.h Assuming also that petitioner is liable to pay the alleged deficiency DST, whether or not interest, surcharge and penalty may be imposed on the basic tax."

THE PARTIES' ARGUMENTS

Petitioner submits the following propositions:[36]

(i) Respondent violated the principle on non-retroactivity of laws and rulings in applying the *Filinvest Case* rendered on July 19, 2011 and Revenue Memorandum Circular (RMC) No. 48-2011 issued on October 6, 2011 to petitioner's advances which were received from and extended to related parties prior to July 2011;

(ii) The *Filinvest Case* does not apply to the present case as the facts involved therein are different from the present case;

[36] Memorandum for the Petitioner, CTA Docket, pp. 464-523.

(iii) The imposition of DST on mere Notes to Audited Financial Statements (without corresponding debt instruments) is not sanctioned by Section 179 of the NIRC of 1997, as amended;

(iv) Even assuming that the deficiency DST assessment is valid, the immediate payment by petitioner of the alleged deficiency DST (and other alleged deficiency taxes) was a supervening event which effectively rendered the PAN, and consequently, the FLD/FAN also, moot and academic and/or *functus officio*;

(v) The inclusion of petitioner's obligation under finance lease in the computation of deficiency DST was not proper as the DST thereon was already paid;

(vi) The right of the government to assess petitioner for deficiency DST had already prescribed;

(vii) Petitioner has proven its entitlement to the refund of the amount of ₱49,777,714.28, representing erroneous and/or illegal collection of DST by the BIR from petitioner on September 30, 2015 of DST;

(viii) Assuming that petitioner is liable for DST under Section 179 of the NIRC of 1997, as amended, it is liable for the basic DST of ₱8,155,140.00 only, without the imposition of surcharge, interest, and penalty, as it relied on existing court decisions and BIR rulings at the time of receipt/extension of the advances which held that mere inter-office memos covering inter-company advances were not loan agreements subject to DST under the NIRC;

(ix) The Waiver of the Statute of Limitation dated November 3, 2014 referred to by the respondent in his Answer is not valid as it was not signed and accepted by the CIR, in violation of Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990; and,

(x) Petitioner's claim for refund is not a claim for tax exemption, nor is it an ordinary and simple claim for refund, but one that arose from the illegal and unlawful imposition and collection of DST by the BIR.

On the other hand, respondent argues that:[37]

[37] Respondent's "Memorandum", CTA Docket, pp. 399-409.

(i) The *Filinvest Case* which was decided on July 19, 2011 is applicable to the present case which involves the taxable year ending March 31, 2012;

(ii) Respondent's right to assess petitioner has not yet prescribed since the Waiver was duly accepted and signed on November 12, 2014 and a copy thereof was duly received by petitioner's accountant on November 24, 2014;

(iii) Petitioner's payment is considered as full settlement of the basic deficiency tax including the surcharge, interest and penalties thereon, notwithstanding that the said payment was made under protest;

(iv) The Court has no jurisdiction to act on the present Petition for Review since the DST paid by petitioner was not illegally or erroneously collected by respondent;

(v) Petitioner has the burden of proof to establish the factual basis of his claim for tax credit or refund since tax refunds, like tax exemptions, are construed strictly against the taxpayer.

THE COURT'S RULING

Petition for Review was timely filed

Under Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, a party adversely affected by a decision of the CIR may file an appeal with the Court of Tax Appeals (CTA) within thirty (30) days after receipt of such decision.[38] Similary, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, categorically states that if the protest is denied, in whole or in part, by the CIR or his duly authorized representative, **the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.** But if the taxpayer elevates his protest to the CIR within thirty (30) days from date of receipt of the final decision of the CIR's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the CIR.

[38] Sec. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a) (2) herein. xxx.

Records disclosed that petitioner opted to appeal the Letter dated January 26, 2016 (denying its protest to the FAN) issued by the CIR's duly authorized representative directly to the CTA.

Since petitioner received the Letter dated January 26, 2016, which denied its protest to the FAN on January 26, 2016, petitioner had until February 25, 2016 within which to file an appeal with the CTA. The present Petition for Review was filed on February 24, 2016; hence, it was timely filed.

FAN issued against petitioner is void

Section 228 of the NIRC of 1997, as amended, provides the procedure in issuing and protesting an assessment:

> "**SEC. 228.** *Protesting of Assessment.* —
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing **of the law and the facts on which the assessment is made**; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, **the Commissioner or his duly authorized representative shall <u>issue an assessment</u> based on his findings.**" *(Boldfacing and underscoring supplied)*

To implement the provisions of Section 228, *supra*, Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, states:

> "*3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand **<u>and</u>** Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void (see illustration in ANNEX "B" hereof)."

Clearly, a formal letter of demand **<u>AND</u>** an assessment notice are indispensable in the assessment of a taxpayer. **The use of the word "shall" in Section 3.1.3 of RR No. 12-99, as amended by RR**

No. 18-2013, indicates the mandatory nature of the requirement.[39]

A close perusal of the FLD and FAN reveals that both failed to demand payment of the basic deficiency DST, surcharge, interest and compromise penalty mentioned therein within a specific period. While the FLD specifically states that petitioner is requested to pay its aforesaid deficiency tax liabilities through EFPS within the time shown in the enclosed assessment notice, **the due date in the left-hand portion of the enclosed FAN[40] was conspicuously left blank**, *viz.*:

BIR FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD FY 03/31/2012	[redacted]	ASSESSMENT NUMBER [illegible] DATE ISSUED OCT 22 2015
TIN: NAME: ADDRESS	207-247-094-000 SOUTH LUZON TOLLWAY CORPORATION Km. 44 South Luzon, Brgy. Mapagong, Sitio Latian, Calamba, Laguna 4029	

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE:	PARTICULARS	AMOUNT
DOCUMENTARY STAMP TAX	Basic	25,540,865.00
BASED ON/REASON:	Surcharge	6,385,216.25
Sec. 179 of the NIRC	Interest (4/6/12 to 11/27/15)	18,613,342.71
Due Date:	Compromise penalty	50,000.00
		50,589,423.96

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

D2

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

By: NESTOR S. VALEROSO
Assistant Commissioner
Large Taxpayers Service
SIGNATURE OVER PRINTED NAME OF AUTHORIZED REVENUE OFFICIAL

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD FY 03/31/2012	[redacted]	BCS NUMBER (TO BE FILLED UP BY BIR)
TIN:	207-247-094-000	FOR FILING OF PROTEST
NAME:	SOUTH LUZON TOLLWAY CORPORATION	☐ I/WE DISAGREE TO THE ABOVE FINDINGS. (SUBMIT LETTER OF PROTEST)
TAX TYPE:	DOCUMENTARY STAMP TAX	
AMOUNT PAYABLE	50,589,423.96	TAXPAYER'S SIGNATURE OVER PRINTED NAME
DUE DATE:		POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)					TO BE FILLED UP BY BIR
PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	
CASH					AUDITED BY:
CHECK					
TAX DEBIT MEMO					DATE:
OTHERS					

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

0000000185

[39] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.
[40] Assessment Notice attached to Exhibit P-5, "Formal Letter of Demand" dated October 22, 2015, CTA Docket, p. 185.

Since there was no assessment notice which properly indicated the **due date** when the deficiency DST, surcharge, interest and penalty must be paid, no proper demand for the payment thereof within a specific period was made. The omission is fatal.

In ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***,[41] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> "An assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx
>
> xxx
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> Xxx. **Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the <u>period</u> within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.**
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability**. It did not state a demand or a period for payment.** Xxx." *(Boldfacing and underscoring supplied)*

In ***Commissioner of Internal Revenue vs. Fitness by Design, Inc.***,[42] the Supreme Court **invalidated** an assessment after noting its failure to state the due date for the payment of the tax liabilities:

xxx xxx xxx

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[41] G.R. No. 128315, June 29, 1999.
[42] G.R. No. 215957, November 9, 2016.

"**<u>The disputed Final Assessment Notice is not a valid assessment</u>**.

xxx xxx xxx

Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**

> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.

Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay**.

Compliance with Section 228 of the National Internal Revenue Code is a substantative requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." *(Boldfacing and underscoring supplied)*

The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, an assessment *sans* a specific date or period within which the alleged tax liabilities must be settled is, in legal contemplation, void.

In sum, the assessment in this case, being void, bears no fruit[43] and may be slain at sight.

[43] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.

Petitioner is entitled to the refund of the amount it paid under protest

As afore-discussed, the FAN issued against petitioner is void. In consequence, petitioner is not liable to pay the deficiency DST and increments for the fiscal year ending March 31, 2012. Since petitioner's actual payment of the amount of ₱49,777,714.28 is undisputed by the parties, respondent is obliged to refund the aforesaid amount to petitioner.

In *Treasurer-Assessor vs. University of the Philippines,*[44] the Supreme Court clarified the jurisdiction of the CTA to order the refund of taxes illegally collected after declaring an assessment invalid, thus:

> "Xxx xxx xxx. **When the law vested the Court of Tax Appeals with the power to declare an assessment illegal or unreasonable, in the exercise of its appellate jurisdiction, it follows that said court is also given the power to grant the relief arising from its finding that the appealed assessment is illegal or unreasonable.** The law could not have intended that after the Court of Tax Appeals had decided that a tax assessment is invalid or unreasonable the aggrieved taxpayer would still have to go to another court to seek the refund of the realty taxes illegally collected from him on the basis of the assessment that was declared invalid or unreasonable. **To hold the view that the Court of Tax Appeals, after declaring a tax assessment invalid, cannot order the refund of the taxes illegally collected under the invalid assessment but has to order the aggrieved taxpayer to go to the regular courts to seek a refund, would be to sanction multiplicity of suits.** Certainly Congress, in enacting R.A. 1125, did not intend to promote multiplicity of suits." *(Boldfacing supplied)*

Similarly, in *Dr. Felisa L. Vda. San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of Jose San Agustin vs. Commissioner of Internal Revenue,*[45] which involves an assessment case for deficiency estate tax, including surcharge, interest and penalties, the Supreme Court upheld the CTA's decision granting the taxpayer therein a refund of the assessed deficiency estate tax upon reversing the CIR's decision assessing and requiring full payment from the taxpayer, *viz.*:

> "Xxx, the instant petition where petitioner submits that -

[44] G.R. No. L-20550, April 30, 1971.
[45] G.R. No. 138485, September 10, 2001.

1. The filing of a claim for refund [is] not essential before the filing of the petition for review.

xxx xxx xxx

The case has a striking resemblance to the controversy in *Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue.*

The petitioner in that case paid under protest the sum of P5,201.52 by way of income tax, surcharge and interest and, forthwith, filed a petition for review before the Court of Tax Appeals. Then respondent Collector (now Commissioner) of Internal Revenue set up several defenses, one of which was that petitioner had failed to first file a written claim for refund, pursuant to Section 306 of the Tax Code, of the amounts paid. Convinced that the lack of a written claim for refund was fatal to petitioner's recourse to it, the Court of Tax Appeals dismissed the petition for lack of jurisdiction. On appeal to this Court, the tax court's ruling was reversed; the Court held:

> We agree with petitioner that Section 7 of Republic Act No.1125, creating the Court of Tax Appeals, in providing for appeals from –
>
> (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue –
>
> allows an appeal from a decision of the Collector in cases involving 'disputed assessments' as distinguished from cases involving 'refunds of internal revenue taxes, fees or other charges, x x'; that the present action involves a 'disputed assessment'; because from the time petitioner received assessments Nos. 17-EC-00301-55 and 17-AC-600107-56 disallowing certain deductions claimed by him in his income tax returns for the years 1955 and 1956, he already protested and refused to pay the same, questioning the correctness and legality of such assessments; and that the petitioner paid the disputed assessments under protest before filing his petition for review with the Court *a quo,* only to forestall the sale of his properties that had been placed under distraint by the respondent Collector since December 4, 1957. **To hold that the taxpayer has now lost the right to appeal from the ruling on, the disputed assessment but must prosecute his appeal under section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would**

> **only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law, should not be interpreted as to result in absurdities.**
>
> The Court sees no cogent reason to abandon the above *dictum* and to require a useless formality that can serve the interest of neither the government nor the taxpayer. The tax court has aptly acted in taking cognizance of the taxpayer's appeal to it.
>
> xxx xxx xxx" *(Boldfacing supplied)*

Legal Interest, in the absence of arbitrariness on the part of the BIR, may not be imposed in refund of tax erroneously collected

Anent petitioner's prayer for the Court to order respondent to refund the amount of ₱49,777,714.28 to petitioner, **with legal interest**, the same is untenable.

The rule that legal interest may not be imposed on tax refunds unless there is a clear statutory authority thereon was first enunciated in *Collector of Internal Revenue vs. St. Paul's Hospital of Iloilo*.[46] In that case, the CTA ordered the Collector of Internal Revenue to refund the sum of ₱485.00, **with legal interest**, to St. Paul's Hospital for overpayment of business tax on its operation of a pharmacy department. The Solicitor General appealed the CTA's decision and assigned as an error the imposition of legal interest on the refund. In resolving the issue, the Court made the following rationalization:

> "xxx However, the court *a quo* erred in ordering the payment of interest on the amount to be refunded. **In the absence of a statutory provision clearly or expressly directing or authorizing such payment, and none has been cited, the National government cannot be required to pay interests."**[47] *(Boldfacing supplied)*

Prior to *St. Paul's Hospital*, however, the Supreme Court had amplified the rule that a tax refund may be subject of legal interest. In *Carcar Electric & Ice Plant Co., Inc. vs. Collector of Internal Revenue*,[48] the Court elucidated the history of the tax laws

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[46] G.R. No. L-12127, 105 Phil. 1319, May 25, 1959.
[47] *Id.* at 1320.
[48] G.R. No. L-9257, 100 Phil. 57, November 27, 1956.

then prevailing, and the basis for which interest may be imposed, as follows:

> "xxx Under the Internal Revenue Act of 1914, the Collector of Internal Revenue was held liable for such interests (Hongkong Shanghai Bank vs. Rafferty, 39 Phil. 153; Heacock Co. vs. Collector of Customs, 37 Phil. 970; Vda. e Hijos de P. Roxas vs. Rafferty, 37 Phil. 957, and authorities cited therein) in the absence of any exempting provision in the law, and on the strength of American authorities to the effect that the State's exemption from paying interest on its obligations was never applied to subordinate governmental agencies. In Heacock Co. vs. Collector of Customs, supra, p. 980–981, this Court said:
>
> > **While the sovereign State, in the absence of statute or contract, is not liable to pay interest, it has been held, however, that governmental agencies, whether individuals or boards, which have been given the power to sue and to defend suits may be compelled to pay interest upon their indebtedness even though the Government itself ultimately pays the indebtedness.** Tax collectors are almost universally given the power to defend suits against them for illegal collection of taxes. It is usually provided that the person taxed may protest and appeal to the courts to have the question of the legality of the assessment determined. It is usually provided that when the courts determine that assessment was illegal, the Government itself will refund the money, relieving the collector of personal liability. (See Section 989, Revised Statutes of the United States.)
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> In the case of Erskine vs. Van Arsdale (15 Wall. [U.S.], 68–75), the Supreme Court of the United States held that—
>
> > 'Taxes illegally assessed and paid may always be recovered back, if the collector understands from the payer that the taxes are regarded as illegal and that suit will be instituted to compel the refunding of them. * * * **Where an illegal tax has been collected, the citizen who has paid it, and has been obliged to bring suit against the collector, is, we think, <u>entitled to interest</u> in the event of recovery, from the time of the illegal exaction.'** (See also Schell vs. Crockren, 107 U.S., 625; National Home vs. Parrish, 229 U.S., 196; White vs. Arthur, 10 Fed. Rep. 80; McClain vs. Pennsylvania Company, 108 Federal Republic 618.)
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> In the case of National Rome vs. Parrish (229 U.S., 496), the Supreme Court, discussing the question before us, said:

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> 'It is quite true that the United States cannot be subjected to the treasury. (Erskine vs. Van Arsdale, 15 Wall., [U.S.], 68–75; to pay it or a statute permitting its recovery. (U.S. Ex rel. Angarica vs. Bayard, 127 U.S., 251; U.S. vs. State of North Carolina, 136 U.S., 211.) But this exemption has never as yet been applied to subordinate governmental agencies. On the contrary, **in suits against collectors to recover moneys illegally exacted as taxes and paid under protest, <u>the settled rule is that interest is recoverable</u> without any statute to that effect, and this although the judgment is not to be paid by the collector, but directly from the treasury.'** (Erskine vs. Van Arsdale, 15 Wall. [U.S.], 68–75; Redfield vs. Bartels, 139 U.S. 694)"

Subsequently, Section 1579 of the Administrative Code of 1917 (Act 2711) expressly authorized suits against the Collector of Internal Revenue 'for the recovery without interest of the sum alleged to have been illegally collected,' and thereafter, no judgments for interest were rendered against the Collector. **But in 1939, the National Internal Revenue Code came into effect and its section 306 authorized recovery of taxes erroneously or illegally collected, but <u>omitting the expression 'without interest' employed in section 1579 of the 1917 Administrative Code that it superseded.</u> Considering the repeated holdings of this Court that in the absence of words of exemption the Collector was liable for interest on taxes improperly collected, the legislature's failure to reenact the words 'without interest' of the Administrative Code of 1917 imparted a desire to return to the rule in force before 1917 and under the Internal Revenue Act of 1914.** Xxx

xxx xxx xxx

We conclude that under the present Internal Revenue Code the Collector of Internal Revenue may be made to answer for interest at the legal rate on taxes improperly collected. **<u>Such liability serves as additional safeguard in favor of the taxpayer against arbitrariness in the exaction or collection of taxes and imposts</u>.**"[49] *(Boldfacing and underscoring supplied)*

It is noted that despite *Carcar,* the Supreme Court's ruling in *St. Paul's Hospital* was reiterated in subsequent cases[50] until it was eventually modified with a declaration that tax refunds are not subject

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[49] *Id.* at 57-60.

[50] *See, e.g., Collector of Internal Revenue vs. Sweeney*, G.R. No. L-12178, 106 Phil. 59, August 21, 1959; *Commissioner of Customs vs. Borres*, G.R. No. L-12867, 106 Phil. 625, November 28, 1959; and *Collector of Internal Revenue vs. Fisher*, G.R. Nos. L-11622 and L-11668, 110 Phil. 686, January 28, 1961.

to legal interest in the absence of statutory authority[51] and when there is no arbitrariness in the denial of the refund by the Commissioner of Internal Revenue.[52]

The foregoing notwithstanding and by way of *obiter dictum* the rulings in *Carcar* and *St. Paul's Hospital* should be revisited in light of the provisions of the Civil Code, the NIRC of 1997, as amended, and the prevailing jurisprudence on the imposition of interest.

Parenthetically, the Civil Code itself constitutes as the statutory authority in the imposition of interest. The seminal case of *Eastern Shipping Lines, Inc. vs. Court of Appeals*,[53] as restated in *Nacar vs. Gallery Frames*,[54] is enlightening:

> "I. When an **obligation, regardless of its source**, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the **contravenor can be held liable for damages**. The provisions under Title XVIII on 'Damages' of the Civil Code govern in determining the measure of recoverable damages.
>
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
>> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>>
>> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with

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[51] *Atlas Fertilizer Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals*, G.R. Nos. L-26686 and L-26698, October 30, 1980.
[52] *See, e.g.*, *Collector of Internal Revenue vs. Prieto*, G.R. No. L-11976, 2 SCRA 1007, August 29, 1961 (Decision) and G.R. No. L-11976, 3 SCRA 101, September 26, 1961 (Resolution); *Commissioner of Internal Revenue vs. Asturias Sugar Central, Inc.*, G.R. No. L-15013, 2 SCRA 1140, August 31, 1961 (Decision) and G.R. No. L-15013, 3 SCRA 727, December 28, 1961 (Resolution); and *Victorias Milling Co., Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. L-24769 and L-24779, 19 SCRA 430, February 25, 1967.
[53] G.R. No. 97412, 234 SCRA 78, July 12, 1994.
[54] G.R. No. 189871, 703 SCRA 439, August 13, 2013.

> reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum **from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.**" [55] *(Boldfacing supplied)*

While the foregoing pronouncement is confined to "loans or forbearance of money", the amount of tax refund which the taxpayer is entitled to, and which the government is obliged to pay on the basis of a final and executory judgment, is no different from a "forbearance of money".

In *Hermojina Estores vs. Spouses Arturo and Laura Supangan,*[56] the Supreme Court clarified the essence of "forbearance of money," *viz.*:

> "Xxx. This definition describes a loan where a debtor is given a period within which to pay a loan or debt. In such case, forbearance of money, goods or credits will have no distinct definition from a loan. We believe however, that the phrase forbearance of money, goods or credits is meant to have a separate meaning from a loan, otherwise there would have been no need to add that phrase as a loan is already sufficiently defined in the Civil Code. **Forbearance of money, goods or credits should therefore refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions.**" *(Boldfacing supplied)*

Indeed, a tax refund may be considered as an "arrangement other than loan agreement" where the taxpayer pays the government, albeit illegally or erroneously, an amount representing the tax which

[55] *Id.* at 457-458.
[56] G.R. No. 175139, 670 SCRA 95, April 18, 2012.

the taxpayer nonetheless expects to be refunded. In the meantime, the taxpayer essentially allows the government to have "temporary use of his money pending the happening of certain events or fulfillment of certain conditions," i.e. - - the grant of the taxpayer's application for refund.

Applying Paragraph II (3) of the guidelines set forth in *Nacar* and there being no specific provision in the NIRC of 1997, as amended, categorically stating that the payment of refund is **without interest**, it may be considered that a tax refund is subject to the legal rate of interest upon finality of judgment until its satisfaction. In the language of the afore-quoted doctrine in *Carcar:*

> "We conclude that under the present Internal Revenue Code the Collector of Internal Revenue may be made to answer for interest at the legal rate on taxes improperly collected. **Such liability serves as additional safeguard in favor of the taxpayer against arbitrariness in the exaction or collection of taxes and imposts.**"[57] *(Boldfacing and underscoring supplied)*

Any unreasonable delay in the payment of refund to the taxpayer, *sans* any adverse consequence to government, should no longer be countenanced:

> "Xxx. **The imposition of unreasonable requirements and vexatious delays before effecting payment is not only galling and arbitrary but a rich source of discontent with government. There should be some kind of swift and effective recourse against unfeeling and uncaring acts of middle or lower level bureaucrats.**" [58] *(Boldfacing and underscoring supplied)*

Thus, non-imposition of interest on tax refunds should appropriately be revisited as the development of laws and jurisprudence on the matter suggests that there is basis for its imposition.

The foregoing disquisitions notwithstanding - - since the prevailing doctrine is that interest may not be imposed on tax refunds - - the Court finds that the prevailing doctrine should be applied in the present case. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one

[57] *Id.* at 57-60.
[58] *Provincial Government of Sorsogon vs. Rosa E. Vda. De Villaroya, et al.,*G.R. No. L-64037, August 27, 1987.

Supreme Court from whose decisions all other courts should take their bearings.

WHEREFORE, premises considered, the Petition for Review is **GRANTED.** The Formal Letter of Demand and Assessment Notice No. DS-125-00000018-11-15-577, both dated October 22, 2015, assessing petitioner South Luzon Tollway Corporation of basic deficiency Documentary Stamp Tax, surcharge, interest and compromise penalty in the total amount of ₱50,589,423.96 for fiscal year ending March 31, 2012, are hereby **CANCELLED** and **SET ASIDE.**

Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate to petitioner South Luzon Tollway Corporation in the total amount of ₱49,777,714.28 representing the basic deficiency Documentary Stamp Tax, surcharge, interest and compromise penalty that it paid on September 30, 2015, without legal interest.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice