Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

ASIASEC EQUITIES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8242

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
NOV 04 2013
4:00 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review[1], filed by petitioner-Asiasec Equities, Inc., seeks the refund or issuance of tax credit certificate in the amount of P1,139,608.50, representing petitioner's payments of documentary stamp tax on secondary trading of listed shares in the Philippine Stock Exchange for the period March 25, 2009 to May 6, 2009, which was erroneously collected by the Bureau of Internal Revenue (BIR).

Petitioner is a corporation organized and existing under Philippines laws with principal office address at 8th Floor, Chatham House Building, 116 Valero corner V.A. Rufino Streets, Salcedo Village, Makati City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including inter alia, the power to abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed, and holds office at the BIR National Office Building, Diliman,

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[1] Docket (Vol I), pp. 4-23
[2] Petition for Review, par. II-1, Ibid, p. 5

Quezon City, where she may be served with summons and other court processes.[3]

Petitioner, a domestic corporation registered with the Securities and Exchange Commission ("SEC") with SEC Registration No. 170885, is primarily engaged in the brokerage business of stocks, bonds and other financial securities and in all activities directly or indirectly connected therewith or incidental thereto, and to be a member of any stock exchange.[4] It has a current license to operate as a broker dealer in securities, with Certificate of Registration No. 01-2004-00016 issued by the SEC on December 23, 2010.[5]

In a Memorandum of Agreement ("MOA") dated March 17, 2009 between the Department of Finance ("DOF") and the Philippine Stock Exchange ("PSE"), the DOF and PSE agreed that during the period March 20, 2009 to June 30, 2009, broker-dealer taxpayers who transacted in shares of stock listed in the stock exchange shall file the documentary stamp tax ("DST") returns and remit the DST on the transactions to the Bureau of Internal Revenue ("BIR") through any of the BIR's Authorized Agent Banks ("AAB").

The MOA also provides that in the event the Philippine Congress passes a new law on or before June 30, 2009 exempting listed shares traded through the stock exchange from DST, or the new law providing for such exemption has retroactive effect to March 20, 2009, the DST collected on shares trade in the stock exchange will be refunded to the broker-dealer taxpayers through the AABs.

For the period from March 20, 2009 to April 30, 2009, petitioner purchased/traded listed shares of stock through the PSE and filed a DST return on each transaction and paid the corresponding DST via EFPS to Security Bank Corporation (SBC), Head Office-Cash and Commercial Accounts Department, an AAB of the BIR.

Petitioner made the following DST payments on the purchased/traded listed shares of stock through the PSE via EFPS to SBC for the period March 25, 2009 to May 6, 2009, to wit:

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[3] Petition for Review, par II-2, Id., p. 379
[4] Petition for Review, par. 6, Id., p. 7
[5] Petition for Review, Id., par. 7

Date Remitted	Total Amount Remitted
March 25, 2009	₱ 10,659.75
March 26, 2009	9,622.50
March 27, 2009	7,335.00
March 30, 2009	20,936.25
March 31, 2009	36,451.50
April 1, 2009	48,727.50
April 2, 2009	18,486.00
April 3, 2009	37,480.50
April 7, 2009	24,045.75
April 8, 2009	92,208.00
April 13, 2009	22,498.50
April 14, 2009	16,761.75
April 15, 2009	20,914.50
April 16, 2009	78,416.25
April 17, 2009	23,807.25
April 20, 2009	36,651.00
April 21, 2009	67,114.50
April 22, 2009	157,704.75
April 23, 2009	38,411.25
April 24, 2009	55,389.75
April 27, 2009	37,428.75
April 28, 2009	21,378.75
April 29, 2009	57,997.50
April 30, 2009	12,561.75
May 4, 2009	59,883.75
May 5, 2009	55,473.75
May 6, 2009	71,262.00
TOTAL	**₱ 1,139,608.50**

Subsequently, R.A. No. 9648, which took effect on June 30, 2009, was enacted exempting the sale, barter or exchange of shares of stocks listed and traded through the local stock exchange from DST, retro active to March 20, 2009.

Pursuant to the MOA dated March 17, 2009, between the DOF and PSE and with the passage of R.A. No. 9648, petitioner, thereafter, sent a letter[6] dated July 7, 2009 to SBC requesting the refund of the DST payments it made for the trading/purchase of listed shares of stocks in the stock exchange for the period March 25, 2009 to May 6, 2009.

However, SBC could no longer refund the amount of P1,139,608.50 to petitioner, because the amount had been remitted by SBC to the account of the BIR.[7]

[6] Exhibit "H"
[7] Petitioner's Memorandum, No. 2.11, Docket (Vol. II), p. 869

Petitioner, thus, filed with the BIR RDO No. 50 on August 4, 2009 its administrative claim for tax refund or issuance of TCC in the amount of P1,139,608.50, representing petitioner's DST payments on the Secondary Trading of listed shares in the PSE for the period March 25, 2009 to May 6, 2009, which had been erroneously remitted to the BIR.

Since no action has been made by respondent on petitioner's administrative claim for refund, petitioner filed the instant Petition for Review to preserve its right to judicially claim a tax refund or issuance of TCC.

On May 18, 2011, respondent filed her Answer[8], interposing the following Special and Affirmative Defenses, to wit:

> "5. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
>
> 6. It is to be noted that the DST Law or Republic Act (R.A.) No. 9648 which exempts the sale, barter or exchange of shares of stock listed and traded through the local stock exchange from the documentary stamp tax was signed by then President Gloria M. Arroyo on June 30, 2009. The announcement dated July 1, 2009 by the PSE also supposedly provides as follows:
>
> x x x
>
>> Accordingly, please claim the refund of the DST and interest earned thereon, from your respective authorized agent bank (AAB) in accordance with the following procedures:
>>
>> 1. The broker-taxpayer should submit to the concerned AAB a letter claiming the DST and interest refund. Please attach a copy of this announcement to the claim for refund. X x x
>>
>> 2. Upon receipt of the claim for refund, **the AAB shall immediately refund to the broker-taxpayers the DST and interest earned thereon**.
>>
>> 3. Thereafter, brokers should immediately reimburse the amount of DST and interest collected from their clients.
>
> 7. Under the said RA 9648, it is the Authorized Agent Bank of the broker-taxpayer that should refund to the latter the DST and

[8] Docket (Vol. I), pp. 278-283

interest earned thereon and NOT the respondent. We need not belabor on the obvious. Verily, Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

Parenthetically, paragraph II of the subject Memorandum of Agreement (MOA) between the Department of Finance and the Philippine Stock Exchange entered on March 17, 2009 clearly provided as follows:

> x x x
>
> II. Authority to refund DST
>
> In the event that by June 30, 2009, Congress does not pass a new law exempting from DST the sale of listed shares through the PSE or the law that is passed does not provide for any retroactive effect, the AAB shall immediately turn over the total collections of DST on Secondary Trading to the BIR, including all interests accruing on said collections.
>
> In case a new law is passed on or before June 30, 2009 exempting from DST the sale of listed shares through the stock exchange with retroactive application to March 20, 2009, the AABs are hereby duly authorized to refund the DST on Secondary Trading collected during the period of Coverage, including any interest earned, to the respective broker-taxpayers, as follows:
>
> a. The PSE shall issue circular ('PSE Circular') announcing that the new law has been passed by Congress and that pursuant to this Agreement, the brokers-taxpayers may file their claims for refund with the concerned AABs;
>
> b. The broker-taxpayers shall submit a letter to the AABs to claim a refund of the DST on Secondary Trading that they remitted during the Period of Coverage. The Claim for refund shall be accompanied by a copy of the PSE circular duly certified by the PSE;
>
> c. Immediately upon receipt of the claim refund, the AABs shall refund the DST on Secondary Trading, together with any interest earned thereon, to the respective brokers-taxpayers.
>
> x x x

As can be gleaned, not a single statement is made in the MOA to the effect that the BIR shall refund to brokers-taxpayers the DST and interest earned thereon. In the same manner, the Circular Letter No.

CL-2009-019 as supposedly issued by Deputy Governor Nestor A. Espenilla, Jr. provides that claim for refund is to be made to the concerned Authorized Agent Banks. In any event, the burden is on the petitioner to prove that it is entitled to the refund.

8. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;

9. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

10. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation **(*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*)** and as such, they are looked upon with disfavor **(*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)**.

11. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another. – Non videtur quisquam id capere quod ei necesse est alii restitutere."

On June 17, 2011, petitioner filed a Motion for Leave to File and to Admit Attached Reply[9]. Respondent, on the other hand, filed her Opposition and Comment (To the Motion for Leave to File and to Admit Attached Reply)[10] on June 23, 2011.

Petitioner filed its Reply (to respondent's Opposition and Comment to the Motion for Leave to File and to Admit Attached Reply)[11] on July 1, 2011.

In a Resolution[12] promulgated on July 14, 2011, petitioner's Motion for Leave to File and to Admit Attached Reply was granted and the attached Reply was admitted.

[9] Ibid, pp. 301-303
[10] Id, pp. 317-319
[11] Id, pp. 322-326
[12] Id., pp. 331-332

On October 21, 2011, the parties filed their Joint Stipulation of Facts and Simplification of Issues[13], which was subsequently approved by the Court in a Resolution[14] dated October 25, 2011.

After presentation of its evidence, petitioner filed its Formal Offer of Evidence[15] on July 4, 2012 without respondent's comment despite due notice.

This Court, per Resolution[16] dated August 14, 2012, resolved to admit Exhibits "A" to "RRR-1", inclusive, of submarkings. Discrepancies, however, were noted with regard to the following:

> "1) Exhibit **'B'** described as 'Petitioner's administrative claim dated 03 August 2009 for refund of Documentary Stamp Tax (DST) on secondary trading of listed shares, addressed to Mr. Florante R. Aninag, Revenue District Officer of BIR-RDO No. 50', is actually addressed to Mr. Floranter R. Aninag;
>
> 2) Exhibit **'Y-1'** described as 'Date of transaction/purchase: 8 April 2009', actually bears the date April 14, 2009;
>
> 3) Exhibit **'Y-2'** described as 'No. 19: Total amount payable Php20,914.50', actually bears the total amount of Php23,807.25;
>
> 4) Exhibit **'Y-3'** described as 'BIR's EFPS payment details for the tax period 08 April 2009', is actually eFPs Payment Details for the tax period April 14, 2009;
>
> 5) Exhibit **'Y-4'** described as 'BIR-041309-015400000 Date 04/15/2009', actually refers to BIR-041509-003600000 dated 04/17/2009;
>
> 6) Exhibit **'Y-5'** described as 'Total Payments (Successful): Php20,914.50', actually refers to Total Payments (Successful) Php23,807.25;

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[13] Id, pp. 378-381
[14] Id., p. 383
[15] Docket (Vol. II), pp. 639-678
[16] Ibid, pp. 855-857

7) Exhibit **'BB-3'** described as 'BIR's EFPS payment details for the tax period 15 April 2009' is actually eFPS Payment Details for the tax period April 20, 2009;

8) Exhibit **'OO-2'** described as 'Column described as 'Parvalue', actually refers to the column of number of shares sold;

9) Exhibit **'PP-2'** described as 'Column described as 'Parvalue', actually refers to the columns Parvalue and number of shares sold;

10) Exhibit **'JJJ'** described as 'PSE Daily Transaction Report-Form ABC Transaction Date: 04/13/2009' is actually PSE Daily Transaction Report with transaction date of 4/22/2009;

11) Exhibit **'JJJ-1'** described as 'Printed: 04/13/2009', actually refers to Printed: 4/22/2009;

12) Exhibits offered as Exhibits **'BBB'**, **'BBB-1'**, **'CCC'** and **'CCC-1'**; are actually marked as Exhibits **'B^3'**, **'B^3-1'**, **'C^3'** and **'C^3-1'**, respectively."

On September 5, 2012, petitioner filed a Manifestation and Motion[17] acknowledging the corrections made by the Court with respect to Exhibits "B", "Y-1", "Y-2", "Y-3", "Y-4", "Y-5", "BB-3", "PP-2", "JJJ", "JJJ-1", "B^3", "B^3-1", "C^3" and "C^3-1". Petitioner explained that Exhibit "OO-2" should in fact refer to the column described as "Par value" and not to the column described as "number of shares sold". Thus, petitioner prays that it be allowed to re-mark Exhibit "OO-2" so that it will refer to the column described as "Par value" and not the column described as "number of shares sold". Petitioner's prayer for the re-marking of Exhibit "OO-2" was granted by the Court during the hearing on September 10, 2012.[18]

In the same hearing of September 10, 2012, counsel for respondent manifested that he has no evidence to present and both parties were, thereafter, given up to October 10, 2012 to file their respective memorandum.

[17] Id., pp. 859-862
[18] Minutes of September 10, 2012 hearing, Id., p. 863

Petitioner filed its Memorandum on October 9, 2012 while respondent filed her Memorandum on November 12, 2012.

The lone issue submitted by the parties for this Court's resolution is whether or not respondent should refund or issue a tax credit in the amount of Php1,139,608.50, representing its payments of documentary stamp tax on Secondary Trading of listed shares in the Philippine Stock Exchange during the period of March 25, 2009 to May 6, 2009.

Petitioner's claim is anchored on the Memorandum of Agreement entered into by and between the Department of Finance and the PSE, with the conformity of the BIR on March 17, 2009.

To have a clear view of the facts surrounding the claim, a brief backgrounder is in order.

Section 199 of the National Internal Revenue Code (NIRC) of 1997, as amended by R.A. No. 9243, exempts the sale, barter or exchange of shares of stocks listed and traded through the local stock exchange from the documentary stamp tax (DST) for a period of five (5) years from the date of effectivity of R.A. No. 9243 which is March 20, 2004.

Section 199 (e) of the NIRC of 1997, as amended by R.A. No. 9243 is quoted hereunder:

> "SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> xxx xxx xxx
>
> (e) Sale, barter or exchange of shares of stock listed and traded through the local stock exchange for a period of five (5) years from the effectivity of this Act."

Pursuant to the above-quoted provision, the exemption from DST of the sale, barter or exchange of shares of stock listed and traded through the local stock exchange shall be only until March 20, 2009.

Subsequently, R.A. No. 9648 was enacted on June 30, 2009, further amending Section 199(e) of the NIRC of 1997, as follows:

"SECTION 1. Section 199 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9243, is hereby further amended to read as follows:

'SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

'xxx xxx xxx

(e) Sale, barter or exchange of shares of stock listed and traded through the local stock exchange.

xxx xxx xxx

SECTION 5. *Effectivity.* — This Act shall take effect on March 20, 2009 or immediately upon the expiration of the five (5)-year exemption from the documentary stamp tax on the sale, barter or exchange of shares of stock listed and traded through the local stock exchange pursuant to Republic Act No. 9243."

Thus, with the enactment of R.A. No. 9648, the exemption from DST of the sale, barter or exchange of shares of stock listed in the local stock exchange shall remain even after March 20, 2009.

Pending enactment of R.A. 9648, however, a Memorandum of Agreement (MOA) was entered into on March 17, 2009 by and between the DOF and PSE, the relevant provisions of which are hereinbelow quoted:

"I. Collection of DST

From March 20, 2009 to June 30, 2009 or any earlier date of enactment by Congress of the DST law ('Period of Coverage'), **the brokers-taxpayers shall file the DST returns and remit to the Bureau of Internal Revenue ('BIR') through any of the authorized agent banks ('AABs') the DST** at the rate of P0.75 for every P200 or fractional part thereof of the par value **on the sale of shares listed and traded through the PSE** ('DST on Secondary Trading'). Further, in the case of stocks without par value, the amount of the DST shall be equivalent to twenty-five percent (25%) of the DST paid upon the original issue of said stock.

The total DST on Secondary Trading collected by the AABs shall be placed in a separate AAB

account to be disposed of in accordance with this MOA. The AAB and the brokers-taxpayers shall maintain a record of all the names of the brokers-taxpayers and the corresponding DST amounts that have been remitted during the Period of Coverage. The brokers-taxpayers shall agree with their respective AAB on the other terms of the separate account, including the interest that will be earned by the amount deposited therein.

II. Authority to Refund DST

In the event that by June 30, 2009, Congress does not pass a new law exempting from DST the sale of listed shares through the PSE or the law that is passed does not provide for any retroactive effect, the AAB shall immediately turn over the total collections of DST on Secondary Trading to the BIR, including all interests accruing on said collections.

In case a new law is passed on or before June 30, 2009 exempting from DST the sale of listed shares through the stock exchange with retroactive application to March 20, 2009, the AABs are hereby duly authorized to refund the DST on Secondary Trading collected during the Period of Coverage, including any interest earned, to the respective brokers-taxpayers, as follows:

a. The PSE shall issue a circular ('PSE Circular') announcing that the new law has been passed by Congress and that pursuant to this Agreement, the brokers-taxpayers may file their claims for refund with the concerned AABs;

b. **The brokers-taxpayers shall submit a letter to the AABs to claim a refund of the DST on Secondary Trading that they remitted during the Period of Coverage.** The claim for refund shall be accompanied by a copy of the PSE Circular duly certified by the PSE;

c. Immediately upon receipt of the claim for refund, the AABs shall refund the DST on Secondary Trading, together with any interest earned thereon, to the respective brokers-taxpayers.

III. Liability for DST

In accordance with law and regulations, **the concerned broker-taxpayer shall be solidarily liable and responsible for any deficiency DST on the sale of listed shares through the PSE.**" *(Emphasis supplied)*

Petitioner's primary purpose, as stated in its Amended Articles of Incorporation[19], is to principally engage in the brokerage business of stocks, bonds and other financial securities and in all activities directly or indirectly connected therewith or incidental thereto and to be a member of any stock exchange. Thus, petitioner was licensed to operate as a broker dealer in securities, with Certificate of Registration No. 01-2004-00016 issued by the SEC on December 28, 2007 and December 23, 2010 and January 1, 2011 to December 31, 2013, respectively.[20] Likewise, petitioner was registered with the BIR on February 10, 1995 as an entity engaged in security dealing activities.[21]

Evidence presented to this Court such as petitioner's Documentary Stamp Tax Declarations/Returns [BIR Forms No. 2000][22] PSE Daily Transaction Reports[23], SBC's eFPS Certification Letter[24] to petitioner, Summary of Paid Documentary Stamp Tax (DST) thru EFPS[25] and letter from the BIR Revenue District Office No. 050, South Makati, signed by Revenue District Officer, Mr. Ricardo B. Espiritu[26] show that for the period covering March 25, 2009 to May 6, 2009, petitioner purchased/traded listed shares of stock through the PSE for which it filed DST returns and paid the corresponding DST in the amount of P1,139,608.50 broken down as follows:

Date Remitted	Filing Ref No	Payment Transaction Number	Amount of DST Payment
March 25, 2009	140900002855971	91134017	₱ 10,659.75
March 26, 2009	140900002855996	91134044	9,622.50
March 27, 2009	140900002857747	91135538	7,335.00
March 30, 2009	140900002859322	91136846	20,936.25
March 31, 2009	140900002859327	91136851	36,451.50
April 1, 2009	140900002859931	91137254	48,727.50
April 2, 2009	140900002861955	91138245	18,486.00
April 3, 2009	140900002865642	91140284	37,480.50
April 7, 2009	140900002867422	91141802	24,045.75
April 8, 2009	140900002870199	91144657	92,208.00
April 13, 2009	140900002875671	91149765	22,498.50
April 14, 2009	140900002881443	91156018	16,761.75
April 15, 2009	140900002891593	91165218	20,914.50
April 16, 2009	140900002903867	91179165	78,416.25
April 17, 2009	140900002903964	91179352	23,807.25
April 20, 2009	140900002906324	91183517	36,651.00

[19] Exhibit "C", Id., pp. 681-690
[20] Exhibits "D" and "G", Id., pp. 691 and 694
[21] Exhibit "E", p. 692
[22] Exhibits "K" to "Z" and "AA" to "JJ", Id., pp. 700-768
[23] Exhibits "MM" to "ZZ" and "DDD" to "PPP", Id., pp. 772-799 and 822-847
[24] Exhibit "J", Id., pp. 697-698
[25] Exhibit "J-1", Id., p. 699
[26] Exhibits "KK", "KK-1" and "KK-2", Id., p. 769

April 21, 2009	140900002906568	91183778	67,114.50
April 22, 2009	140900002913443	91189658	157,704.75
April 23, 2009	140900002916116	91192040	38,411.25
April 24, 2009	140900002917675	91193279	55,389.75
April 27, 2009	140900002919612	91194897	37,428.75
April 28, 2009	140900002922281	91197434	21,378.75
April 29, 2009	140900002927327	91201641	57,997.50
April 30, 2009	140900002929986	91204025	12,561.75
May 4, 2009	140900002931155	91204686	59,883.75
May 5, 2009	140900002932032	91205386	55,473.75
May 6, 2009	140900002933939	91206751	71,262.00
		Total	**₱1,139,608.50**

Since the sale of shares of stock listed and traded through the local stock exchange is exempt from DST pursuant to Section 199(e) of the NIRC of 1997, as amended by R.A. No. 9648, the DST paid by petitioner in the amount of P1,139,608.50 constitutes erroneously paid tax which may be a proper subject of a claim for refund under Sections 204(c) and 229 of the NIRC of 1997, as amended, which, respectively, provide as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may -
>
> xxx xxx xxx
>
> (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 stamps 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." *(Emphasis supplied)*
>
> xxx xxx xxx
>
> "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.

> **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." *(Emphasis supplied)*

Clearly, the aforequoted sections govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally. Section 204(C) applies to administrative claims filed with the BIR while Section 229 refers to judicial actions for the recovery of the tax. The settled rule, however, is that both the administrative claim filed with the BIR and the subsequent judicial appeal to this Court must be filed within the two (2)-year period from date of payment of tax.

The earliest DST remittance covered by the instant claim was made by petitioner on March 25, 2009.[27] Counting from this date, petitioner had until March 25, 2011 within which to file its claim both in the administrative and judicial levels. Hence, petitioner's administrative claim, filed on August 4, 2009[28] and the subsequent appeal before this Court via Petition for Review, filed on March 24, 2011, fell within the two-year prescriptive period.

WHEREFORE, the Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **One Million One Hundred Thirty Nine Thousand Six Hundred Eight and 50/100 pesos (P1,139,608.50)**, representing erroneously paid Documentary Stamp Tax (DST) on Secondary Trading of listed shares in the Philippine Stock Exchange for the period March 25, 2009 to May 6, 2009.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[27] Exhibit "K-4", Docket (Vol. II), p. 702
[28] Exhibits "A-1" and "B-2", Docket (Vol. II), pp. 679 and 680

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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