

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

MANILA ELECTRIC COMPANY,
Petitioner,

C.T.A. CASE NO. 7545

Members:

- versus -

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

MAR 22 2010 3:05 pm

X -----X

DECISION

BAUTISTA, J.:

The above-captioned case is an appeal from respondent's inaction on petitioner's claim for refund of excess documentary stamp tax in the sum of NINETY-TWO MILLION FIVE HUNDRED SIXTY-FIVE THOUSAND FOUR HUNDRED EIGHT PESOS AND 61/100 (P92,565,408.61) alleged to have been erroneously paid by petitioner on December 6, 2004 for loan agreements, bonds, and trust indenture executed in connection with the refinancing and revision of its loan facilities.

Manila Electric Company (Petitioner) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Lopez Building, Ortigas Avenue, Pasig City. It is engaged in the business of distributing and supplying electric power within its franchise area. Petitioner is likewise a registered taxpayer in accordance with the National Internal Revenue Code

(NIRC) of 1997, with Taxpayer Identification No. (TIN) 000-101-528-000 and Certificate of Registration No. OCN8RC0000016119 issued by the Bureau of Internal Revenue (BIR) on January 29, 1996.¹

Respondent is the officer duly authorized by law to assess and collect all national internal revenue taxes, fees, and charges, including the power to decide refunds of internal revenue taxes, fees or other charges. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On various dates, petitioner and its lenders executed several loan agreements, bonds, and mortgage trust indentures,² to wit:

1. Omnibus Agreement dated November 12, 2004 by petitioner and BPI Capital Corporation, Citibank, N.A., Philippine Branch, Citigroup Global Markets Asia Limited, and other parties named therein, which includes a Tranche A Facility Agreement, a Tranche B Facility Agreement, and a Security Agreement;
2. One Hundred Second Supplemental Indenture dated November 12, 2004 by petitioner to the Bank of Philippine Islands, as Trustee;
3. Omnibus Loan and Security Agreement dated November 26, 2004 by petitioner and Meralco Employees Savings and Loan Association, Inc.;
4. First Mortgage Bond, Series 5K, No. RSK-1, dated December 1, 2004, in the amount of US\$170,053,200.00 due on September 14, 2011;
5. First Mortgage Bond, Series 5L – DBP Tranche B Loans, No. R5L-1, dated December 1, 2004, in the amount of P1,935,000,000.00 due on September 14, 2011;
6. First Mortgage Bond, Series 5L – LBP Tranche B Loans, No. R5L-2, dated December 1, 2004, in the amount of P359,999,995.00 due on September 14, 2011;
7. First Mortgage Bond, Series 5L – Tranche B3 Loans, No. R5L-3, dated December 1, 2004, in the amount of P935,964,000.00 due on September 14, 2011;
8. First Mortgage Bond, Series 5M, No. R5M-1, dated December 1, 2004, in the amount of P5,167,466.13 due on March 14, 2005;
9. First Mortgage Bond, Series 5M, No. R5M-2, dated December 1, 2004, in the amount of P5,167,466.13 due on June 14, 2005;
10. First Mortgage Bond, Series 5M, No. R5M-3, dated December 1, 2004, in the amount of P5,167,466.13 due on September 14, 2005;

¹ Pars. 1 and 2, Facts and Documents, Joint Stipulation of Facts and Issues, docket, pp. 59

² Exhibits "H" to "HH"



11. First Mortgage Bond, Series 5M, No. R5M-4, dated December 1, 2004, in the amount of P5,167,466.13 due on December 14, 2005;
12. First Mortgage Bond, Series 5M, No. R5M-5, dated December 1, 2004, in the amount of P5,167,466.13 due on March 14, 2006;
13. First Mortgage Bond, Series 5M, No. R5M-6, dated December 1, 2004, in the amount of P5,167,466.13 due on June 14, 2006;
14. First Mortgage Bond, Series 5M, No. R5M-7, dated December 1, 2004, in the amount of P5,167,466.13 due on September 14, 2006;
15. First Mortgage Bond, Series 5M, No. R5M-8, dated December 1, 2004, in the amount of P5,167,466.13 due on December 14, 2006;
16. First Mortgage Bond, Series 5M, No. R5M-9, dated December 1, 2004, in the amount of P15,502,398.39 due on March 14, 2007;
17. First Mortgage Bond, Series 5M, No. R5M-10, dated December 1, 2004, in the amount of P15,502,398.39 due on June 14, 2007;
18. First Mortgage Bond, Series 5M, No. R5M-11, dated December 1, 2004, in the amount of P15,502,398.39 due on September 14, 2007;
19. First Mortgage Bond, Series 5M, No. R5M-12, dated December 1, 2004, in the amount of P15,502,398.39 due on December 14, 2007;
20. First Mortgage Bond, Series 5M, No. R5M-13, dated December 1, 2004, in the amount of P15,502,398.39 due on March 14, 2008;
21. First Mortgage Bond, Series 5M, No. R5M-14, dated December 1, 2004, in the amount of P15,502,398.39 due on June 14, 2008;
22. First Mortgage Bond, Series 5M, No. R5M-15, dated December 1, 2004, in the amount of P15,502,398.39 due on September 14, 2008;
23. First Mortgage Bond, Series 5M, No. R5M-16, dated December 1, 2004, in the amount of P15,502,398.39 due on December 14, 2008;
24. First Mortgage Bond, Series 5M, No. R5M-17, dated December 1, 2004, in the amount of P20,669,864.53 due on March 14, 2009;
25. First Mortgage Bond, Series 5M, No. R5M-18, dated December 1, 2004, in the amount of P20,669,864.53 due on June 14, 2009;
26. First Mortgage Bond, Series 5M, No. R5M-19, dated December 1, 2004, in the amount of P20,669,864.53 due on September 14, 2009;
27. First Mortgage Bond, Series 5M, No. R5M-20, dated December 1, 2004, in the amount of P20,669,864.53 due on December 14, 2009;
28. First Mortgage Bond, Series 5M, No. R5M-21, dated December 1, 2004, in the amount of P20,669,864.53 due on March 14, 2010;



29. First Mortgage Bond, Series 5M, No. R5M-22, dated December 1, 2004, in the amount of P20,669,864.53 due on June 14, 2010;
30. First Mortgage Bond, Series 5M, No. R5M-23, dated December 1, 2004, in the amount of P20,669,864.53 due on September 14, 2010;
31. First Mortgage Bond, Series 5M, No. R5M-24, dated December 1, 2004, in the amount of P20,669,864.53 due on December 14, 2010;
32. First Mortgage Bond, Series 5M, No. R5M-25, dated December 1, 2004, in the amount of P26,870,823.88 due on March 14, 2011;
33. First Mortgage Bond, Series 5M, No. R5M-26, dated December 1, 2004, in the amount of P26,870,823.88 due on June 14, 2011; and
34. First Mortgage Bond, Series 5M, No. R5M-27, dated December 1, 2004, in the amount of P28,937,810.34 due on September 14, 2011.

On November 28, 2006, petitioner wrote a letter addressed to the former Commissioner of the Bureau of Internal Revenue, Jose Mario C. Buñag, seeking the recovery of excess documentary stamp tax paid in the amount of P66,118,140.42, which was received by the Appellate Division of the BIR on November 30, 2006.³

On December 4, 2006, petitioner wrote another letter addressed to former BIR Commissioner Buñag, praying for the recovery of allegedly erroneously paid documentary stamp tax in the amount of P26,447,266.19. The letter was received by the BIR Appellate Division also on December 4, 2006.⁴

On December 5, 2006, petitioner filed the instant Petition for Review as respondent has not acted upon petitioner's letters dated November 28, 2006 and December 4, 2006.

Respondent filed his Answer on January 18, 2007. As a Special and Affirmative Defense, respondent argued that he has the power and original primary jurisdiction to resolve administrative claims for refund, pursuant to Section 229 of the NIRC of 1997, and pertinent revenue issuances.

³ Exhibit "SS"

⁴ Exhibit "TT"



After pre-trial, petitioner presented its evidence, documentary and testimonial; while respondent was considered to have waived his right to present evidence.⁵

On April 3, 2009, the case was submitted for decision, considering petitioner's Memorandum filed on February 4, 2009 and respondent's Memorandum filed on March 31, 2009.

The following are parties' jointly stipulated issues submitted for this Court's resolution:⁶

1. Whether petitioner erroneously paid excess documentary stamp tax in the amount of P92,565,408.61;
2. Whether the Omnibus Agreement (Tranche A) in the amount of US\$170,053,200 (P9,579,266,809.00) and the First Mortgage Bonds and Mortgage Trust Indenture securing the same constitute a single and entire transaction which is subject to one documentary stamp tax;
3. Whether the Omnibus Agreement (Tranche B) in the amount of P3,230,963,995.00 and the First Mortgage Bonds and Mortgage Trust Indenture securing the same constitute a single and entire transaction which is subject to one documentary stamp tax;
4. Whether the Omnibus Loan and Security Agreement in the amount of P413,397,290.50 and the First Mortgage Bonds and Mortgage Trust Indenture securing the same constitute a single and entire transaction which is subject to one documentary stamp tax; and
5. Whether petitioner is entitled to a refund or tax credit in the total amount of P92,565,408.61, representing excess documentary stamp tax erroneously paid.

Simply put, whether petitioner is entitled to a refund or tax credit in the total amount of P92,565,408.61, representing the documentary stamp taxes it purportedly paid for the Loan Agreements, Supplemental Mortgage Trust Indenture, and First Mortgage Bonds.

⁵ Resolution dated January 5, 2009, docket, p. 162

⁶ Issues, Joint Stipulation of Facts and Issues, docket, pp. 62-63



Petitioner submits that the above issues should be answered in the affirmative. It argues that it paid the BIR excess documentary stamp taxes in the total amount of P92,565,408.61. The First Mortgage Bonds and the Supplemental Indenture were issued by petitioner only as security for the payment of its obligations under the two Loan Agreements. The execution and the delivery of the First Mortgage Bonds and the Supplemental Indenture were not separate and independent transactions, but merely formed integral parts of the two Loan Agreements. Each Loan Agreement, secured by the First Mortgage Bonds and the Supplemental Indenture, constitute a single and entire taxable transaction; thus, subject to one documentary stamp tax.

On the other hand, respondent counters that petitioner did not pay excess documentary stamp taxes because the law imposes the obligation to pay taxes for the privilege of using commercial documents in transactions. For purposes of taxation, the Loan Agreements, the First Mortgage Bonds, and the Supplemental Mortgage Trust Indenture are separate transactions subject to DST. Therefore, petitioner is not entitled to a refund.

This Court rules in favor of respondent.

Section 173 of the National Internal Revenue Code of 1997, as amended, imposes documentary stamp taxes on certain documents, loan agreements, instruments, and papers, as follows:

"SEC. 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. - Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time



such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax."

The nature of the imposition of documentary stamp tax was explained by the Supreme Court in **Philippine Home Assurance Corporation, et al. vs. Court of Appeals, et al.**⁷, in the following manner:

"In general, documentary stamp taxes are 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. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges, and trusts, and conveyances of real property.

Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto. The documentary stamp taxes must be paid upon the issuance of the said instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. As the Supreme Court of the United States held in *Du Pont v. United States*:

The tax is not upon the business transacted but is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. In this view it is immaterial whether the transfer of the account constituted a sale."

This Court has consistently ruled that documentary stamp tax is due and payable at the time the transaction is had or accomplished, *i.e.*, at the time of the issuance of the document.⁸

⁷ G.R. No. 119446, January 21, 1999

⁸ Construction Resources of Asia, Inc. vs. The Commissioner of Internal Revenue, C.T.A. Case No. 3307, November 25, 1983



The Omnibus Agreement⁹ was executed to provide loan facilities to petitioner “for the purpose of the Refinancing under the terms and conditions set out in the Finance Documents” and as regards the DBP-Tranche B Lenders, “to revise and redocument the terms and conditions governing the DBP-JBIC Syndicated Facility in accordance with and to conform to the terms and conditions set out in the Finance Documents.”¹⁰ Also, under the Omnibus Agreement, petitioner agreed to issue the First Mortgage Bonds to the Security Agent acting as trustee for the Finance Parties, under the terms of the Security Agreement and the Mortgage Trust Indenture as supplemented by the Supplemental Indenture, to serve as security for the obligations of petitioner under the Finance Documents.¹¹

Tranche A Facility Agreement¹² and Tranche B Facility Agreement¹³ constitute Volume “B” and Volume “C” of the Omnibus Agreement. Tranche A Facility Agreement was executed to make a loan facility available to petitioner. On the other hand, Tranche B Facility Agreement was executed to pursue a comprehensive liability management program, the implementation of which will include, among others, the revision and re-documentation of the terms and conditions governing the DBP-JBIC Syndicated Facility; and to make available peso loan facilities to petitioner.

This Court notes that the parties therein agreed to the provisions of all the Volumes¹⁴ of the Omnibus Agreement as if they were separately executed and delivered;¹⁵ and confirmed and acknowledged that the Omnibus Agreement and each of the Volumes were executed contemporaneously for the purpose of refinancing (or with respect to the DBP-Tranche B Lenders, the revision and re-documentation of the

⁹ Exhibit “A”

¹⁰ Par. “A” of the Whereas Clause

¹¹ Par. “B” of the Whereas Clause

¹² Volume “B” of the Omnibus Agreement

¹³ Volume “C” of the Omnibus Agreement

¹⁴ Volume “A” (Common Terms Agreement), Volume “B” (Tranche A Facility Agreement), Volume “C” (Tranche B Facility Agreement), Volume “D” (Security Agreement), and Volume “E” (Signature Pages and Notarial Acknowledgment)

¹⁵ Section 2, Agreement and Binding Effect, Exhibit “A”



DBP-JBIC Syndicated Facility) and security, and shall constitute and continue to be part of a single integrated financing transaction.¹⁶ Similarly, as provided in the Tranche A and Tranche B Facility Agreements, each Agreement shall be subject to the terms and conditions set out therein and in the Common Terms Agreement.

In other words, while Tranche A Facility Agreement and Tranche B Facility Agreement constitute a single integrated financing transaction, each Facility Agreement is treated as separate and distinct from the other; *ergo*, each is subject to documentary stamp tax. Section 179 of the NIRC of 1997, as amended, reads:

"SEC. 179. *Stamp Tax on All Debt Instruments.* - On every original issue of debt instruments, there shall be collected a documentary stamp tax on 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.

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."

As regards the One Hundred Second Supplemental Indenture¹⁷, petitioner executed the same in favor of the Bank of the Philippine Islands, as Trustee, to secure the principal of, the interest and premium (if any) on, and (to the maximum

¹⁶ Section 3, Exhibit "A"

¹⁷ Exhibit "B"



extent allowed under the Indenture) all other amounts payable under, all bonds at any time issued and outstanding under the **Original Indenture dated December 31, 1957**, to declare the terms and conditions upon which bonds are to be issued thereunder and to subject to the lien thereof certain property therein described. And pursuant to said Indenture, petitioner has duly determined to create several series of bonds to be designated as First Mortgage Bonds Series 5H, First Mortgage Bonds Series 5I, First Mortgage Bonds Series 5J, First Mortgage Bonds Series 5K, First Mortgage Bonds Series 5L, and First Mortgage Bonds Series 5M.

From the foregoing, the One Hundred Second Supplemental Indenture is clearly separate from the Tranche A and Tranche B Facility Agreements, and is subject to separate documentary stamp tax as provided in Section 198 of the NIRC of 1997, which reads:

*"SEC. 198. Stamp Tax on Assignments and Renewals of Certain Instruments. - Upon each and every assignment or transfer of any mortgage, lease or policy of insurance, or the renewal or **continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness** by altering or otherwise, there shall be levied, collected and paid a documentary stamp tax, at the same rate as that imposed on the original instrument." (Emphasis supplied)*

Petitioner and Meralco Employees Savings and Loan Association, Inc. (MESALA) executed the Omnibus Loan and Security Agreement¹⁸, wherein the MESALA agreed to make a loan facility available to petitioner to refinance the existing unsecured loan by MESALA to petitioner; and, in turn, petitioner agreed to issue First Mortgage Bonds to MESALA as security for the prompt payment, when due, of all liabilities and indebtedness of petitioner under the Loan Agreements. Clearly, the Omnibus Loan and the Security Agreement are distinct and separate from the Tranche A and Tranche B Facility Agreements. And under the previously

¹⁸ Exhibit "C"



quoted Section 179 of the NIRC of 1997, the same are subject to separate documentary stamp tax.

Anent the First Mortgage Bonds Series 5K¹⁹, First Mortgage Bonds Series 5L – DBP-Tranche B Loans²⁰, First Mortgage Bonds Series 5L – LBP-Tranche B Loans²¹, First Mortgage Bonds Series 5L – Tranche B3 Loans²², and First Mortgage Bonds Series 5M²³, this Court disagrees with petitioner's argument that said bonds are not subject to documentary stamp tax.

Each of these bonds was issued as part of petitioner's undertaking in the Security Agreement for a principal amount equivalent to the aggregate principal amount of the **relevant loans**, bearing final maturity date which shall coincide with the final maturity of such loans; and included a covenant by petitioner to pay, whenever due, interest on such principal amount and all other amounts payable by it under the Finance Documents.²⁴

Under Section 180 of the NIRC of 1997, each First Mortgage Bonds is subject to documentary stamp, to wit:

"SEC. 180. Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand. - On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos

¹⁹ Exhibit "D"

²⁰ Exhibit "E"

²¹ Exhibit "F"

²² Exhibit "G"

²³ Exhibits "H" to "HH"

²⁴ Section 1.01, Part C of Exhibit "C"



(P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: *Provided*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided, however*, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section."

Proceeding from the above discussions, while the Omnibus Agreement, containing the Tranche A Facility Agreement and the Tranche B Facility Agreement, One Hundred Second Supplemental Indenture, the Omnibus Loan and Security Agreement, and the First Mortgage Bonds were executed primarily to provide loan facility in favor of petitioner, the parties therein clearly intended to treat each document as one instrument severable from the rest. Consequently, the instant Petition for Review must fail.

Taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim for refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption therefrom is the exception.²⁵

²⁵ Paseo Realty and Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 119286, October 13, 2004



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

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ON LEAVE
ERNESTO D. ACOSTA
Presiding Justice



CAESAR A. CASANOVA
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's Division.



JUANITO C. CASTANEDA, JR.
Acting Presiding Justice