

Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

PHILIPPINE BANK OF G.R. No. 194065
COMMUNICATIONS,

Petitioner, Present:

- versus -

SERENO, *CJ*, Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, *JJ*.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:
JUN 20 2016

X ----- X

DECISION

SERENO, *CJ*:

This is a Petition for Review¹ filed by the Philippine Bank of Communications (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Tax Appeals *en banc* (CTA *en banc*) Decision² dated 13 May 2010 and Resolution³ dated 14 October 2010 in C.T.A. EB Nos. 555 and 556.

THE FACTS

Pursuant to Revenue Regulations (RR) No. 7-92, the Bureau of Internal Revenue (BIR) issued Certificate No. 08-0434 on 31 July 2001 authorizing petitioner to operate and use the On-line Electronic Documentary Stamp Metering Machine (DS metering machine) with Serial No. SN363 1711.

¹ *Rollo*, pp. 17-38.

² *Id.* at 43-66; penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by then Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Erlinda P. Uy, and Olga Palanca-Enriquez.

³ *Id.* at 67-77.

Petitioner purchased documentary stamps from the BIR and loaded them to its DS metering machine. During the period 23 March 2004 to 23 December 2004, petitioner executed several repurchase agreements with the *Bangko Sentral ng Pilipinas* (BSP). The documentary stamps were imprinted on the Confirmation Letters corresponding to those repurchase agreements through petitioner's DS metering machine.

Petitioner claimed that the repurchase agreements were not subject to the documentary stamp tax (DST). Thus, on 12 May 2006, it filed with the BIR an administrative claim for the issuance of tax credit certificates for the alleged erroneous payment of the DST in the total amount of ₱11,063,866.67.

Alleging the inaction of the BIR on the administrative claim of petitioner, the latter filed a Petition for Review with the CTA on 18 May 2006. Petitioner reiterated its claim for the refund or issuance of its tax credit certificate for the amount of ₱11,063,866.67 representing the erroneously paid DST for several repurchase agreements it had executed with the BSP.

THE CTA SECOND DIVISION RULING⁴

The CTA Division found that the evidence adduced by petitioner showed that the latter had duly executed various repurchase agreements with the BSP from 23 March 2004 to 23 December 2004. It further held that the repurchase agreements were exempt from the imposition of the DST pursuant to Section 9 of Republic Act (R.A.) No. 9243,⁵ which provides:

SECTION 9. Section 199 of the National Internal Revenue Code of 1997, as amended 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:

x x x x

(h) Derivatives: *Provided*, That for purposes of this exemption, repurchase agreements and reverse repurchase agreements shall be treated similarly as derivatives.

x x x x

⁴ Id. at 93-112; CTA Second Division Decision dated 13 July 2009, penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez.

⁵ An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as amended, and for other purposes

(l) All contracts, deeds, documents and transactions related to the conduct of business of the Banko Sentral ng Pilipinas.

Although the DST on the repurchase agreements were paid, the CTA Division found that petitioner had substantiated only ₱10,633,881.20. Out of that amount, ₱3,072,521.60 was barred by prescription, and only the claim for the remaining ₱7,561,359.60 fell within the two-year prescriptive period. The CTA Division reckoned the counting of the two-year period from the date of the Confirmation Letters of the repurchase agreements. Considering that petitioner filed its administrative claim on 12 May 2006 and the judicial claim on 18 May 2006, the DST paid on the repurchase agreements earlier than 18 May 2004 was disallowed due to prescription.

THE CTA *en banc* RULING⁶

The CTA *en banc* ruled that insofar as the taxpayers using the DS metering machine were concerned, the DST was deemed paid upon the purchase of documentary stamps for loading and reloading on the DS metering machine, through the filing of the DST Declaration under BIR Form No. 2000. Thus, the two-year prescriptive period for taxpayers using DS metering machine started to run from the date of filing of the DST Declaration under BIR Form No. 2000, and not from the date appearing on the documentary stamp imprinted through the DS metering machine. Consequently, the refundable amount was further reduced to ₱5,238,495.40 representing the erroneously paid DST that had not yet been barred by prescription.

ISSUE


The arguments raised by petitioner boil down to the sole issue of whether the date of imprinting the documentary stamps on the document or the date of purchase of documentary stamps for loading and reloading on the DS metering machine should be deemed as payment of the DST contemplated under Section 200 (D) of the NIRC for the purpose of counting the two-year prescriptive period for filing a claim for a refund or tax credit.

THE COURT'S RULING

Under Section 229⁷ of the NIRC of 1997, the claim for a refund of erroneously paid DST must be within two years from the date of payment of

⁶ Supra note 2.

⁷ 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



the DST. When read in conjunction with Section 200⁸ of the same Code, Section 229 shows that payment of the DST may be done by imprinting the stamps on the taxable document through a DS metering machine, in the manner as may be prescribed by rules and regulations.

In relation thereto, the BIR has issued the following regulations:

REVENUE REGULATIONS NO. 05-97⁹

SUBJECT: *Revised Regulations Prescribing the New Procedure on the Purchase and Affixture of Documentary Stamp on Taxable Documents/Transactions*

x x x x

SECTION 4. *New Procedure on Purchase of a Documentary Stamp for Use in BIR Registered Metering Machine.* — Purchase of Documentary Stamps for future applications not covered by Sections 2 and 3 of these Regulations shall be allowed only to persons authorized to use BIR Registered Metering Machine under Revenue Regulations No. 7-92, dated September 7, 1992.

SECTION 5. *Documentary Stamp Tax Declaration.* — The following persons are required to accomplish and file a documentary stamp tax declaration under BIR Form 2000;

cont...

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)

⁸ SEC. 200. *Payment of Documentary Stamp Tax.* -


(A) *In General.* - The provisions of Presidential Decree No. 1045 notwithstanding, any person liable to pay documentary stamp tax upon any document subject to tax under Title VII of this Code shall file a tax return and pay the tax in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

(B) *Time for Filing and Payment of the Tax.* - Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.

(C) *Where to File.* - Except in cases where the Commissioner otherwise permits, the aforesaid tax return shall be filed with and the tax due shall be paid through the authorized agent bank within the territorial jurisdiction of the Revenue District Office which has jurisdiction over the residence or principal place of business of the taxpayer. In places where there is no authorized agent bank, the return shall be filed with the Revenue District Officer, collection agent, or duly authorized Treasurer of the city or municipality in which the taxpayer has his legal residence or principal place of business.

(D) *Exception.* - **In lieu of the foregoing provisions of this Section, the tax may be paid either through purchase and actual affixture; or by imprinting the stamps through a documentary stamp metering machine, on the taxable document, in the manner as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.** (Emphasis supplied)

⁹ Dated 31 January 1997.



x x x x

5.3 Any person duly authorized to use DST Metering Machine shall file a DST Declaration under BIR Form No. 2000 each time documentary stamps are purchased for loading or reloading on the said machine. This declaration shall be filed with any duly Authorized Agent Bank, Revenue Recollection Officer, or duly authorized City or Municipal Treasurer in the Philippines. The amount of documentary stamps to be reloaded on the Metering Machine should be equal to the amount of documentary stamps consumed from previous purchase. The details of usage or consumption of documentary stamps should be indicated on the declaration.

On the basis of these provisions, the CTA *en banc* ruled in this case that payment of the DST was done when the documentary stamps were loaded/reloaded on the DS metering machine and the corresponding DST Declaration was filed. Thus, the two-year prescriptive period for the claim for a refund of petitioner's erroneously paid DST was reckoned from the date the DS metering machine was reloaded.

The CTA *en banc*, in ruling on the particular issue of prescription, said that RR No. 05-97 should govern the payment of the DST considering that petitioner is a DS metering machine user. The DST is deemed paid upon the purchase of documentary stamps for loading/reloading on the DS metering machine through the filing of the DST Declaration (BIR Form No. 2000) as required by the said regulation.

We do not agree.

The DS metering machine was developed and used for businesses with material DST transactions like banks and insurance companies for their regular transactions. These businesses authorized by the BIR may load documentary stamps on their DS metering machine in accordance with the rules and regulations. In other words, this system allows advanced payment of the DST for future applications.

However, for purposes of determining the prescriptive period for a claim for a refund or tax credit, this Court finds it imperative to emphasize the nature of the DST.

A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, because it is imposed on the transaction rather than on the document.¹⁰

¹⁰ *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*, 607 Phil 227 (2009).

The rule is that the date of payment is when the tax liability falls due. Jurisprudence has made exceptions for reckoning the period of prescription from the actual date of payment of tax by instead reckoning that date from the filing of the final adjusted returns, i.e. income tax and other withholding taxes.¹¹ These exceptions are nevertheless grounded on the same rationale that payment of the tax is deemed made when it falls due.

In *Gibbs v. Commissioner of Internal Revenue*,¹² this Court ruled that “[p]ayment is a mode of extinguishing obligations (Art. 1231, Civil Code) and it means not only the delivery of money but also the performance, in any other manner, of an obligation. A taxpayer, resident or non-resident, does so not really to deposit an amount to the Commissioner of Internal Revenue, but, in truth, to perform and extinguish his tax obligation for the year concerned. In other words, he is paying his tax liabilities for that year. Consequently, a taxpayer whose income is withheld at source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is from this latter date then, or when the tax liability falls due, that the two-year prescriptive period under Section 306 (now part of Section 230) of the Revenue Code starts to run with respect to payments effected through the withholding tax system.” The aforementioned ruling presents two alternative reckoning dates: (1) the end of the tax year; and (2) the date when the tax liability falls due.¹³

Applying the same rationale to this case, the payment of the DST and the filing of the DST Declaration Return upon loading/reloading of the DS metering machine must not be considered as the “date of payment” when the prescriptive period to file a claim for a refund/credit must commence. For DS metering machine users, the payment of the DST upon loading/reloading is merely an advance payment for future application. The liability for the payment of the DST falls due only upon the occurrence of a taxable transaction. Therefore, it is only then that payment may be considered for the purpose of filing a claim for a refund or tax credit. Since actual payment was already made upon loading/reloading of the DS metering machine and the filing of the DST Declaration Return, the date of imprinting the documentary stamp on the taxable document must be considered as the date of payment contemplated under Section 229 of the NIRC.

This interpretation is more logical and consistent with Section 200 (D) that “the tax may be paid xxx by imprinting the stamps through a documentary stamp metering machine, on the taxable document, in the manner as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.” The

¹¹ *Commissioner of Internal Revenue v. TMX Sales, Inc.*, G.R. No. 83736, 15 January 1992, 205 SCRA 184; *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil 916 (1999); *ACCRA Investments Corp. v. Court of Appeals*, G.R. No. 96322, 20 December 1991, 204 SCRA 957.

¹² 122 Phil 714 (1965).

¹³ *ACCRA Investments Corp. v. Court of Appeals*, supra.

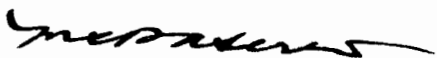
policies issued by the Secretary of Finance were made to regulate the use of the DS metering machine, but they cannot be interpreted to limit the prescriptive period for claims for a refund. In fact, the details attached to the DST Declaration Return are those of usage or consumption of the DST from the previous purchase. It is in effect a final return of the DST previously purchased, but advances the payment for the new purchase. Thus, to cure the ambiguity caused by the uniqueness of this system, we must bear in mind the nature of the tax for the purpose of determining prescription.

Applying the foregoing to this case, the DST fell due when petitioner entered into repurchase agreements with the BSP and the corresponding documentary stamps were imprinted on the Confirmation Letters. Considering, however, that this transaction is exempt from tax, petitioner is entitled to a refund. The prescriptive period for the filing of a claim for a refund or tax credit under Section 229 must be reckoned from the date when the documentary stamps were imprinted on the Confirmation Letters.

Consequently, the CTA Division's counting of the prescriptive period from the date when the documentary stamps were imprinted on the Confirmation Letters of the repurchase agreements is more in accord with the rationale of Section 229. Since we also find that the evidence presented by petitioner was carefully considered, we find no reason to overturn the factual finding of the CTA Division. Accordingly, the Decision in C.T.A. Case No.7486 dated 13 July 2009¹⁴ must be reinstated.

WHEREFORE, premises considered, the Petition is **PARTLY GRANTED**. The CTA *en banc* Decision dated 13 May 2010 and Resolution dated 14 October 2010 in C.T.A. EB Nos. 555 and 556 are hereby **SET ASIDE**, and the Decision in C.T.A. Case No.7486 dated 13 July 2009 is **REINSTATED**.

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

¹⁴ *Rollo*, pp. 93-112.

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice