



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 June 2021** which reads as follows:*

“G.R. Nos. 252627 and 252630 (*Commissioner of Internal Revenue v. South Premiere Power Corp.*) — In this petition, the Commissioner of Internal Revenue (CIR) assails the Court of Tax Appeals (CTA) *En Banc*’s October 14, 2019 Decision¹ and March 11, 2020 Resolution² in CTA EB Nos. 1898 & 1899, which affirmed the CTA Division’s February 27, 2018 Decision³ and July 12, 2018 Resolution⁴ in CTA Case No. 9337, ordering the refund or issuance of tax credit certificate in favor of South Premiere Power Corp. (SPPC) in the amount of ₱1,359,773.48, representing surcharge, interest, and compromise penalty.

ANTECEDENTS

SPPC is a domestic corporation engaged in the production and generation of electricity and the supply and consolidation of the electric power demand of end-users and other related ancillary services.⁵

¹ *Rollo*, pp. 65-82. Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Gruña, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro; Presiding Justice Roman G. Del Rosario wrote a Concurring and Dissenting Opinion, *id.* at 83-87; and Associate Justice Catherine T. Manahan reiterated her Concurring and Dissenting Opinion, *id.* at 81.

² *Id.* at 89-91.

³ *Id.* at 202-230. Penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justice Caesar A. Casanova; Associate Justice Catherine T. Manahan wrote a Concurring and Dissenting Opinion, *id.* at 231-233.

⁴ *Id.* at 250-260.

⁵ *Id.* at 11-12.

On April 21, 2014, SPPC received a Preliminary Assessment Notice (PAN) from the Bureau of Internal Revenue (BIR) assessing it for deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax (DST) for the period covering January 1, 2010 to December 31, 2010.⁶ SPPC filed a reply to the PAN and informed the BIR that it paid the sum of ₱2,741,511.48, representing the deficiency DST plus surcharge, interest, and compromise penalty under protest on April 30, 2014. Thereafter, the BIR issued a Formal Letter of Demand assessing SPPC for deficiency income tax. SPPC paid the income tax assessment on July 31, 2014.⁷

On February 2, 2016, SPPC instituted an administrative claim for refund or issuance of tax credit certificate in the amount of ₱2,741,511.48, representing erroneously and/or illegally collected DST and penalties. The CIR failed to act on the application; hence, SPPC filed a petition for review before the CTA Division.⁸

On February 27, 2018, the CTA Division issued its Decision partly granting SPPC's claim. The CTA Division held that the deficiency DST paid on April 30, 2014, is not a tax that has been erroneously or illegally collected; hence, SPPC is not entitled to a refund. However, SPPC is not liable for surcharge, interest, and penalty since it merely relied in good faith on existing court decisions and BIR rulings that inter-company loans and advances covered by inter-office memoranda were not loan agreements subject to DST. The CTA Division ordered the CIR to refund or issue a tax credit certificate in favor of SPPC in the amount of ₱1,359,773.48, representing surcharge, interest, and compromise penalty on the DST paid under protest.⁹ The *fallo* of the Decision reads:¹⁰

WHEREFORE, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent [CIR] is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner [SPPC] in the aggregate amount of ₱1,359,773.48, representing the following amounts:

PENALTIES ERRONEOUSLY PAID BY PETITIONER [SPPC]	AMOUNT
Surcharge	₱345,434.50
Interest up to April 30, 2014	₱989,338.98

⁶ Pursuant to a Letter of Authority dated April 12, 2012 and received by SPPC on April 16, 2012; see *id.* at 12.

⁷ *Rollo*, p. 13.

⁸ *Id.* at 13-14.

⁹ *Id.* at 154-180.

¹⁰ *Id.* at 180.

Compromise Penalty	₱25,000.00
TOTAL	₱1,359,773.48

SO ORDERED.¹¹ (Emphasis in the original.)

SPPC and the CIR separately moved for a reconsideration but were denied on July 12, 2018. Consequently, both parties filed separate petitions for review before the CTA *En Banc*.

On October 14, 2019, the CTA *En Banc* issued the assailed Decision adopting the findings and conclusion of the CTA Division that, *first*, *Commissioner of Internal Revenue v. Filinvest Development Corporation*¹² and Revenue Memorandum Circular No. 48-2011 may be applied retroactively to SPPC's case; *second*, the DST assessment based on the Notes to the 2010 Audited Financial Statements is valid since DST may be imposed even in the absence of a debt instrument as long as the transactions are distinctly established; *third*, SPPC is not liable to pay surcharge and interest because SPPC merely relied in good faith on court decisions¹³ and previous BIR issuances that inter-company loans and advances covered by inter-office memoranda are not subject to DST; and *lastly*, SPPC is not liable to pay the compromise penalty, which is mutual in nature. Since the surcharge, interest, and compromise penalty were wrongfully collected, SPPC is entitled to the refund of ₱1,359,773.48.¹⁴

The CTA *En Banc* denied the CIR's motion for reconsideration on March 11, 2020. Hence, this petition.¹⁵

The CIR, through the Office of the Solicitor General, avers that SPPC is liable for surcharge, interest, and compromise penalty because it failed to pay DST in various transactions within the prescribed period. SPPC did not also file the pertinent DST returns. Lastly, the CIR claims that the CTA *En Banc*'s finding that SPPC acted in good faith is erroneous and without basis.¹⁶

THE COURT'S RULING

The petition is partly meritorious.

¹¹ *Rollo*, pp. 228-229.

¹² 669 Phil. 323 (2011).

¹³ SPPC relied on the cases of *Commissioner of Internal Revenue v. APC Group, Inc.*, CA-G.R. SP No. 69869, November 29, 2002 and *Commissioner of Internal Revenue v. Belle Corporation*, CTA EB No. 147, October 13, 2006 and on BIR Ruling [DA (C-035) 127-2008]⁵⁵ dated August 8, 2008, BIR Ruling No. 116-98 dated July 30, 1998, and BIR Ruling No. DAO 16-2008 dated January 17, 2008; see *rollo*, p. 24.

¹⁴ *Rollo*, pp. 19-25.

¹⁵ *Id.* at 43-56.

¹⁶ *Id.* at 50-55.

Section 248¹⁷ of the 1997 National Internal Revenue Code, as amended¹⁸ (Tax Code) plainly provides that the delay in the payment of the deficiency tax justifies the imposition of a twenty-five percent (25%) surcharge. Meanwhile, Section 249¹⁹ imposes deficiency interest of twenty percent (20%) *per annum* on any deficiency in the amount of tax due computed from the date prescribed for its payment until the full payment, and delinquency interest of twenty percent (20%) *per annum* on the unpaid amount until full payment. It is not disputed that SPPC did not pay the DST on various transactions and did not file the related DST returns for the taxable year 2010.

Good faith and mistaken reliance on decisions of the CTA and the Court of Appeals²⁰ declaring inter-company loans and advances covered by inter-office memoranda not subject to DST could not excuse SPPC from the civil

¹⁷ SEC. 248. *Civil Penalties.* —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

- (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
- (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
- (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
- (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

x x x x

¹⁸ Republic Act No. 8424, entitled "TAX REFORM ACT OF 1997, Republic Act No. 8424," approved on December 11, 1997.

¹⁹ SEC. 249. *Interest.* —

- (A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
- (B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* — In case of failure to pay:

- (1) The amount of the tax due on any return required to be filed, or
- (2) The amount of the tax due for which no return is required, or
- (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

x x x x

²⁰ *Commissioner of Internal Revenue v. APC Group, Inc.*, CA-G.R. SP No. 69869, November 29, 2002 and *Commissioner of Internal Revenue v. Belle Corporation*, CTA EB No. 147, October 13, 2006; see *rollo*, p. 24.

penalties. We reiterate that decisions of the lower and appellate courts do not constitute a precedent and do not bind this Court or the public.²¹ Only decisions of this Court are binding precedents, forming part of the Philippine legal system.²²

SPPC cannot also rely on BIR issuances²³ that were not issued in its favor. Indeed, this Court deleted the imposition of surcharge and interest based on the taxpayer's good faith and honest belief that it is exempt from income tax in *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*²⁴ In that case, the taxpayer relied on a BIR letter confirming its exempt status being a corporation for purely charitable and social welfare purposes.²⁵ On the other hand, in the recent case of *E.E. Black Ltd. – Philippine Branch v. The Commissioner of Internal Revenue*,²⁶ the Court upheld the 25% surcharge and the deficiency and delinquency interests imposed upon the taxpayer and ruled that good faith cannot be appreciated in its favor because the BIR rulings relied upon were issued to a different entity.²⁷ Similarly, in the present case, SPPC did not secure a favorable ruling from the BIR that would categorically state or pronounce that its loan agreements or intercompany advances for the taxable year 2010 are not subject to DST. Accordingly, SPPC is not entitled to the refund of the ₱345,434.50 surcharge and ₱989,338.98 interest.

However, the compromise penalty could not be imposed on SPPC since a compromise is, by its nature, mutual in essence.²⁸ There is paucity of evidence in the records to show that SPPC consented to the compromise penalty. To be sure, the payment made under protest by SPPC signifies that no agreement had been reached between the parties.²⁹ As early as in the case of *Wonder Mechanical Engineering Corp. v. Court of Tax Appeals*,³⁰ the Court clarified that the compromise penalty could only be collected or imposed by agreement or conformity of the taxpayer.³¹ The imposition of the compromise without the conformity of the taxpayer is illegal and unauthorized.³² Besides, under Revenue Memorandum Order No. 7-2015,³³ compromise penalties are only amounts suggested in settlement of criminal liability. SPPC is not being charged for a criminal case for violation of the Tax Code, and in lieu of instituting a criminal action, SPPC has to pay a

²¹ *Visayas Geothermal Power Co. v. Commissioner of Internal Revenue*, 735 Phil. 321, 337 (2014).

²² *Id.*, citing *Nippon Express (Philippines) Corporation v. CIR*, 706 Phil. 442, 451 (2013).

²³ BIR Ruling [DA (C-035) 127-2008]55 dated August 8, 2008, BIR Ruling No. 116-98 dated July 30, 1998, and BIR Ruling No. DAO 16-2008 dated January 17, 2008; see *Rollo*, p. 24.

²⁴ See 695 Phil. 867, 895 (2012), citing *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue* (Resolution) 533 Phil. 101 (2006).

²⁵ See *id.*

²⁶ G.R. No. 221655, January 20, 2021, <<https://sc.judiciary.gov.ph/17691/>>; last accessed: June 4, 2021.

²⁷ See *id.*

²⁸ *Vda. de San Agustin v. Commissioner of Internal Revenue*, 417 Phil. 292, 302 (2001).

²⁹ See *id.* at 302.

³⁰ 159-A Phil. 808, 812 (1975).

³¹ See *id.*

³² *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc.*, 271 Phil. 82, 89 (1991).

³³ Entitled "THE REVISED CONSOLIDATED SCHEDULE OF COMPROMISE PENALTIES FOR VIOLATIONS OF THE NATIONAL INTERNAL REVENUE CODE," issued on January 22, 2015.

compromise penalty. Accordingly, SPPC is entitled to the refund of ₱25,000.00 that was illegally collected.

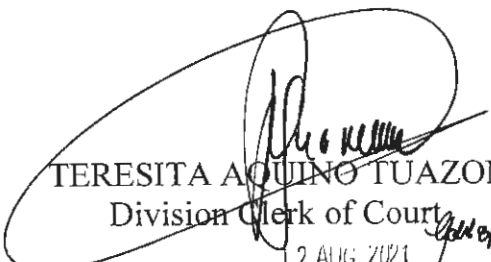
FOR THE STATED REASONS, the petition is **PARTLY GRANTED**. The Court of Tax Appeals *En Banc*'s October 14, 2019 Decision and March 11, 2020 Resolution in CTA EB Nos. 1898 & 1899 are **MODIFIED** in that the Commissioner of Internal Revenue is ordered to refund or issue a tax credit certificate in favor of South Premiere Power Corp. in the amount of ₱25,000.00, representing the compromise penalty.

FURTHER, the Court resolves to:

- 1) **NOTE** the compliance dated March 8, 2021 with the Resolution dated January 13, 2021 by the Office of the Solicitor General, submitting a proper verification with additional attestations required under the 2019 Amended Rules of Court;
- 2) **GRANT** the motion of respondents for extension of twenty (20) days from March 12, 2021 within which to file comment on the petition for review on certiorari; and
- 3) **NOTE** aforesaid comment dated March 22, 2021 in compliance with the Resolution dated January 13, 2021.

SO ORDERED." (Lopez, J.Y., J., designated additional member *per* Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
12 AUG 2021

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(CTA Case No. 9337)

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Supreme Court, Manila

*with copy of CTA Decision and Resolution dated
14 October 2019 and 11 March 2020, respectively.
Please notify the Court of any change in your address.
GR252627 & 252630. 06/16/2021(152)URES

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