

FIRST DIVISION

[G.R. No. 194065, June 20, 2016]

PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

SERENO, C.J.:

This is a Petition for Review^[1] 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*) Decision^[2] dated 13 May 2010 and Resolution^[3] 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.

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 P11,063,866.67.

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 P11,063,866.67 representing the erroneously paid DST for several repurchase agreements it had executed with the BSP.

THE CTA SECOND DIVISION RULING^[4]

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

(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 P10,633,881.20. Out of that amount, P3,072,521.60 was barred by prescription, and only the claim for the remaining P7,561,359.60 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* RULING^[6]

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 P5,238,495.40 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 229^[7] 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 the DST. When read in conjunction with Section 200^[8] 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. 05-97^[9]

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;

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