

SECOND DIVISION

COMPAGNIE FINANCIERE  
SUCRES ET DENREES,  
Petitioner,

G.R. No. 133834

Present:

PUNO, *J.*, Chairperson,  
SANDOVAL-GUTIERREZ,

- versus -

\*CORONA,  
AZCUNA, and  
GARCIA, *JJ.*

COMMISSIONER OF  
INTERNAL REVENUE,  
Respondent.

Promulgated:

August 28, 2006

X -----X

DECISION

SANDOVAL-GUTIERREZ, *J.*:

For our resolution is the instant Petition for Review on Certiorari assailing the Decision [\[1\]](#) of the Court of Appeals dated October 27, 1997 in CA-G.R. SP No. 39501.

Compagnie Financiere Sucres et Denrees, petitioner, is a non-resident private corporation duly organized and existing under the laws of the Republic of France.

On October 21, 1991, petitioner transferred its eight percent (8%) equity interest in the Makati Shangri-La Hotel and Resort, Incorporated to Kerry Holdings Ltd. (formerly Sligo Holdings Ltd), as shown by a Deed of Sale and Assignment of Subscription and Right of Subscription of the same date. Transferred were (a) 107,929 issued shares of stock

valued at ₱100.00 per share with a total par value of ₱10,792,900.00; (b) 152,031 with a par value of ₱100.00 per share with a total par value of ₱15,203,100.00; (c) deposits on stock subscriptions amounting to ₱43,147,630.28; and (d) petitioner's right of subscription.

On November 29, 1991, petitioner paid the documentary stamps tax and capital gains tax on the transfer under protest.

On October 21, 1993, petitioner filed with the Commissioner of Internal Revenue, herein respondent, a claim for refund of overpaid capital gains tax in the amount of ₱107,869.00 and overpaid documentary stamps taxes in the sum of ₱951,830.00 or a total of ₱1,059,699.00. Petitioner alleged that the transfer of deposits on stock subscriptions is not a sale/assignment of shares of stock subject to documentary stamps tax and capital gains tax.

However, respondent did not act on petitioner's claim for refund. Thus, on November 19, 1993, petitioner filed with the Court of Tax Appeals (CTA) a petition for review, docketed as CTA Case No. 5042.

In its Decision <sup>[2]</sup> dated October 6, 1995, the CTA denied petitioner's claim for refund. The CTA held that it is clear from Section 176 of the Tax Code that sales "to secure the future payment of money or for the future transfer of any bond, due-bill, certificates of obligation or stock" are taxable. Furthermore, petitioner admitted that it profited from the sale of shares of stocks. Such profit is subject to capital gains tax.

Petitioner filed a motion for reconsideration, but in a Resolution dated December 26, 1995, the CTA denied the same. This prompted petitioner to file with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 39501.

On October 27, 1997, the Court of Appeals denied the petition and affirmed the Decision of the CTA. The appellate court ruled that a taxpayer has the *onus probandi* of proving entitlement to a refund or deduction, following the rule that tax exemptions are strictly construed against the taxpayer and liberally in favor of the State. Petitioner failed to meet the requisite burden of proof to support its claim.

Hence, petitioner's recourse to this Court by way of a Petition for Review on Certiorari.

The sole issue for our resolution is whether the Court of Appeals erred in holding that the assignment of deposits on stock subscriptions is subject to documentary stamps tax and capital gains tax.

Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Thus, the State cannot be deprived of this most essential power and attribute of sovereignty by vague implications of law. Rather, being derogatory of sovereignty, the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and **he who claims an exemption must be able to justify his claim by the clearest grant of statute.** [\[3\]](#)

In the instant case, petitioner seeks a refund. Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. [\[4\]](#) Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be

mistaken and too categorical to be misinterpreted. <sup>[5]</sup> **Significantly, petitioner cannot point to any specific provision of the National Internal Revenue Code authorizing its claim for an exemption or refund.** Rather, Section 176 of the National Internal Revenue Code applicable to the issue provides that the future transfer of shares of stocks is subject to documentary stamp tax, thus:

SEC. 176. *Stamp tax on sales, agreements to sell, memoranda of sales, deliveries or transfer of due-bills, certificates of obligation, or shares or certificates of stock.* – On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation, or shares or certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale **whether entitling the holder in any manner to the benefit of such due bills, certificates of obligation or stock**, or to secure the future payment of money, **or for the future transfer of any due-bill, certificates of obligation or stock**, there shall be collected a documentary stamp tax of fifty centavos (₱1.50) on each two hundred pesos (P200.00), or fractional part thereof, of the par value of such due-bill, certificates of obligation or stock: *Provided*, That only one tax shall be collected on each sale or transfer of stock or securities from one person to another, **regardless of whether or not a certificate of stock or obligation is issued, indorsed, or delivered in pursuance of such sale or transfer**; and *Provided, further*, That in case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five *percentum* (25%) of the documentary stamp tax paid upon the original issue of the said stock. (Emphasis supplied).

Clearly, under the above provision, sales to secure “the future transfer of due-bills, certificates of obligation or certificates of stock” are liable for documentary stamp tax. No exemption from such payment of documentary stamp tax is specified therein.

Petitioner contends that the assignment of its “deposits on stock subscription” is not subject to capital gains tax because there is no gain to speak of. In the Capital Gains Tax Return on Stock Transaction, which petitioner filed with the Bureau of Internal Revenue, the acquisition cost of the shares it sold, including the stock subscription is ₱69,143,630.28. The transfer price to Kerry Holdings, Ltd. is ₱70,332,869.92. Obviously, petitioner has a net gain in the amount of ₱1,189,239.64. As the CTA aptly ruled, “ a tax on the profit of

sale on net capital gain is the very essence of the net capital gains tax law. To hold otherwise will ineluctably deprive the government of its due and unduly set free from tax liability persons who profited from said transactions.”

Verily, the Court of Appeals committed no error in affirming the CTA Decision.

We reiterate the well-established doctrine that as a matter of practice and principle, this Court will not set aside the conclusion reached by an agency, like the CTA, especially if affirmed by the Court of Appeals. By the very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part, which is not present here.

**WHEREFORE**, we **DENY** the petition. The Decision of the Court of Appeals in CA-G.R. SP No. 39501 is **AFFIRMED *IN TOTO***. Costs against petitioner.

**SO ORDERED.**

ANGELINA SANDOVAL-GUTIERREZ  
Associate Justice

WE CONCUR:

-

REYNATO S. PUNO  
Associate Justice

Chairperson

(On leave)

RENATO C. CORONA  
Associate Justice

ADOLFO S. AZCUNA  
Associate Justice

CANCIO C. GARCIA  
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.

REYNATO S. PUNO  
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.

ARTEMIO V. PANGANIBAN  
Chief Justice

---

\* On leave.

[1] *Rollo*, pp. 26-31. Penned by Associate Justice Gloria C. Paras (deceased) with Associate Justice Lourdes K. Tayao-Jaguros and Associate Justice Salvador J. Valdez, Jr.(both retired) concurring.

[2] *Rollo*, pp. 34-39.

[3] *Commissioner of Internal Revenue v. General Foods (Phils.) Inc.*, G.R. No. 143672, April 24, 2003, 401 SCRA 545, 550, citing *Commissioner of Internal Revenue v. Visayan Electric Co.*, 23 SCRA 715 (1968); *Davao Light & Power Co. v. Commissioner of Customs*, 44 SCRA 122 (1972).

[4] *Far East Bank & Trust Company v. Court of Appeals*, G.R. No. 129130, December 9, 2005, citing *Paseo Realty & Development Corp. v. Court of Appeals*, 440 SCRA 235 (2004).

[5] *Commissioner of Internal Revenue v. Phil. Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005, citing *Province of Tarlac v. Alcantara*, 216 SCRA 790 (1992).