

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

SPECIAL FIRST DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus -

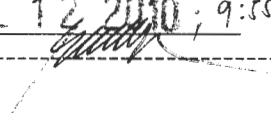
**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

C.T.A. CASE NOS. 7355 & 7588

Members:

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.

Promulgated:

JUL 12 2010 ; 9:55am


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DECISION

CASANOVA, J.:

The instant Petitions for Review are consolidated cases claiming for refund of excess withholding tax in the amount of P12,400,004.70 and surcharges, interests, and penalties in the amount of P77,172,555.28, both claimed to be erroneously paid by the petitioner.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at the PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City¹.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue who is vested with authority to administer and enforce national internal revenue laws, including, inter alia, the power to grant claims for refund

¹ Petition for Review, CTA Case No. 7355, Docket, p. 2

of any internal revenue taxes erroneously or excessively paid, assessed or collected².

CTA CASE NO. 7355

On April 7, 1995, Gotesco Tyan Ming Development, Inc. (GOTESCO) entered into a loan agreement³ with several banks, i.e., herein petitioner, Metropolitan Bank and Trust Company, United Coconut Planters Bank, and Citytrust (now Bank of the Philippine Islands), for the amount of P800,000,000.00. The loan was secured by a Mortgage Trust Indenture Agreement⁴ (MTIA) in favor of petitioner through its Trust Banking Group as Trustee. The property used as security is a six-hectare commercial center known as Ever Ortigas Commercial Complex located in Ortigas Avenue, Pasig City and covered by Certificate of Title No. PT-97306.

Allegedly, GOTESCO defaulted on its loan obligations that on July 30, 1999 petitioner foreclosed the mortgaged property through a notarial foreclosure sale⁵. On August 4, 1999, a Certificate of Sale⁶ was issued in favor of petitioner subject to the right of GOTESCO to redeem the mortgaged property within one year from the date of inscription of the Certificate of Sale with the Register of Deeds of Pasig City or on November 9, 1999.

On October 20, 2000, prior to the expiration of the one-year redemption period, GOTESCO filed a civil case⁷ against petitioner at the Regional Trial Court of Pasig City, Branch 168 (RTC) docketed as Civil Case No. 68139, for the annulment of foreclosure proceedings, specific performance and damages with prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction. On 

² Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 7355, p. 144

³ Exhibit "J"

⁴ Exhibit "I"

⁵ Petition for Review, CTA Case No. 7355, par. 11, Docket, p. 7

⁶ Exhibit "R"

⁷ Petition for Review, CTA Case No. 7355, Docket, p. 7

November 9, 2000, the RTC issued a TRO⁸ preventing the consolidation of ownership of the mortgaged property. On December 21, 2000, the RTC issued a Writ of Preliminary Injunction.

Petitioner filed a Motion for Reconsideration dated December 21, 2000 which was subsequently denied by the RTC. On July 6, 2001, petitioner went to the Court of Appeals *via* a Petition for Certiorari. The Court of Appeals ruled in favor of petitioner by issuing an order, reversing and setting aside the Writ of Preliminary Injunction issued by the RTC. On August 27, 2003, GOTESCO filed a Motion for Reconsideration which the Court of Appeals denied in its Resolution⁹ dated December 22, 2003.

In preparation for the consolidation of its ownership over the Mortgaged Property, petitioner paid the Documentary Stamp Taxes in the amount of P18,615,000.00 on October 31, 2003. It also withheld and remitted to the BIR, on October 31, 2003 and November 11, 2003, the creditable withholding tax equivalent to six percent (6%) of the bid price of P1,240,000,469.82, or P74,400,028.49 pursuant to Section 2.57.2 (J)(C) of Revenue Regulations No. 2-98 as amended by Revenue Regulations No. 6-01¹⁰.

Nonetheless, of the amount remitted to the BIR, petitioner now claims that it erroneously withheld 6% when the rate applicable should have been 5% for the sale of real property classified as ordinary assets, where the transferors are habitually engaged in real estate leasing pursuant to Section 2.57.2 (J)(B) of Revenue Regulations No. 2-98 as amended by Revenue Regulations No. 6-01. Considering this incident, the excess payment of the tax to the BIR amounted to P12,400,004.70¹¹. 

⁸ Exhibit "C"

⁹ CTA Case No. 7355, par. 5 & 6, Docket, p. 251

¹⁰ *Ibid*, par. 7, p. 251

¹¹ *Ibid*, par. 8, pp. 251-252

CTA CASE NO. 7588

Petitioner alleges that, pursuant to consolidating its ownership over the mortgaged property and processing of the Certificate Authorizing Registration (CAR), it filed the Withholding Tax Returns and Documentary Stamp Tax Returns with the respondent on October 31, 2003 and November 12, 2003. On even dates, petitioner paid the taxes due on said returns. However, pending the issuance of the CAR, the BIR informed petitioner that it is imposing interests, penalties and surcharges of P61,678,490.28 on Capital Gains Tax and P15,494,065.00 on Documentary Stamp Tax¹². In order to facilitate the release of the CAR, petitioner paid all the surcharges, interests, and penalties against it in the total amount of P77,172,555.28 on April 1, 2005.

On October 27, 2005, petitioner filed its administrative claim for the refund of excess creditable withholding tax. On October 28, 2005, it filed its Petition for Review before this Court docketed as CTA Case No. 7355.

Pre-trial ensued and after the submission of Joint Stipulation of Facts and Issues, the Court admitted the same and terminated the Pre-trial proceedings on March 10, 2006.

After several hearings, on November 30, 2006, counsel for the petitioner manifested¹³ that it will file its Formal Offer of Evidence within thirty (30) days from December 14, 2006 or until January 13, 2007. However, on December 28, 2006, petitioner filed an "Urgent Motion to (1) Defer filing of Formal Offer of Exhibits, (2) Set case for hearing for presentation of testimony of witnesses, and (3) Issue Subpoena Duces Tecum and Ad Testificandum" which was granted on January 29, 2007¹⁴. 

¹² Exhibit "U"

¹³ CTA Case No. 7355, Docket, p. 230

¹⁴ Resolution, CTA Case No. 7355, Docket, p. 245

Upon presentation of additional evidence, petitioner committed to file its Formal Offer of Evidence within thirty (30) days from March 13, 2007¹⁵.

On March 22, 2007, petitioner filed with the respondent a claim for refund claiming erroneous assessment and payment of the surcharges, penalties and interests. Petitioner filed its corresponding Petition for Review on March 30, 2007, docketed as CTA Case No. 7588.

On April 11, 2007, petitioner filed an Urgent Motion to Consolidate Cases (CTA Case Nos. 7355 and 7588) which was granted on May 9, 2007 *via* a Resolution¹⁶. The consolidated cases were set for pre-trial conference. However, despite several resetting, respondent failed to make an appearance. Thus, on September 21, 2007, respondent was declared to be in default¹⁷.

On October 17, 2007, respondent filed a Motion for Reconsideration¹⁸ on the declaration of default. On October 26, 2007, petitioner filed its Opposition (To the Motion for Reconsideration of Resolution dated 28 September 2007)¹⁹. Respondent filed its Reply (To Petitioner's Opposition dated October 24, 2007)²⁰ on November 7, 2007. Respondent's Motion for Reconsideration was denied on December 18, 2007²¹.

After several hearings, petitioner filed its Formal Offer of Evidence²² on August 15, 2008 for the consolidated cases. Respondent filed a Comment (To Petitioner's Formal Offer of Evidence)²³ on August 29, 2008. The Court resolved²⁴ petitioner's Formal Offer of Evidence on September 29, 2008.

¹⁵ Ibid, p. 247

¹⁶ Ibid, p. 263

¹⁷ Ibid, p. 283

¹⁸ Ibid, pp. 408-413

¹⁹ Ibid, pp. 419-426

²⁰ Ibid, pp. 432-438

²¹ Ibid, pp. 441-443

²² Ibid, pp. 482-495

²³ Ibid, pp. 497-501

²⁴ Ibid, pp. 518-519

On September 23, 2008, petitioner filed an "Urgent Motion to Reopen Trial To Allow Petitioner to Present Additional Evidence with Omnibus Motion to 1) Defer Resolution on Petitioner's Formal Offer of Evidence and 2) To allow Petitioner to file Amended Formal Offer of Evidence after completion of additional trial²⁵. Considering the resolution of petitioner's Formal Offer of Evidence, on October 15, 2008, the Court granted²⁶ petitioner's prayer to reopen trial and submit supplemental FOE.

Respondent filed a Motion for Reconsideration²⁷ on October 20, 2008 on the Resolution dated September 29, 2008 alleging that the admitted documents should have been denied by the Court. Petitioner opposed said Motion on November 10, 2008 via an Opposition to Respondent's Motion for Reconsideration²⁸. On February 17, 2009, the Court issued a Resolution²⁹ denying the Motion for Reconsideration considering that respondent was already declared in default.

On June 4, 2009, petitioner filed a Supplement to Formal Offer of Evidence³⁰ which this Court resolved³¹ on June 22, 2009 by admitting additional documentary exhibits. Upon submission of the petitioner's Memorandum³² on August 25, 2009, the consolidated cases were submitted for decision³³ on August 27, 2009.

In CTA Case No. 7355, the jointly admitted issues of the parties are as follows: 

²⁵ Ibid, pp. 507-516

²⁶ Ibid, pp. 526-527

²⁷ Ibid, pp. 536-540

²⁸ Ibid, pp. 542-549

²⁹ Ibid, pp. 557-560

³⁰ Ibid, pp. 577-579

³¹ Ibid, pp. 696-697

³² Ibid, pp. 702-743

³³ Ibid, p. 744

1. Whether or not the administrative and judicial claims for tax refund of petitioner were filed within the two-year statutory period;
2. Whether or not petitioner remitted to the BIR the alleged 6% creditable withholding tax on October 31, 2003 and November 12, 2003 in the total amount of P74,400,028.19;
3. Assuming the same amount was remitted to the BIR, whether or not the same was made pursuant to the provision of existing laws and regulations;
4. Whether or not the alleged real properties subjected to the withholding tax are considered ordinary assets of the seller/transferor;
5. Whether the seller or transferor is habitually engaged in the real estate business;
6. Whether or not the proper withholding tax rate is 5% as alleged by petitioner;
7. Assuming that the proper withholding tax rate is only 5%, whether petitioner is the proper party that may ask for a refund;
8. Whether or not the ruling in the case of Procter and Gamble (*Proctor* (sic) and *Gamble Philippines v. Commissioner of Internal Revenue*, G.R. No. 66838 dated 02 December 1991) as alleged by the petitioner is applicable in the instant case;
9. Whether or not petitioner is entitled to a refund in the amount of P12,400,004.70 allegedly representing year 2003 erroneously paid taxes;
10. Whether the fact of withholding is established by copies of statements duly issued showing the amount paid of tax withheld therefrom;
11. Whether or not the application of the six percent (6%) rate of withholding on the transfer or conveyance of the real properties considered as ordinary assets of the seller considered as habitually engaged in business is erroneous. 

In CTA Case No. 7588, petitioner presented the following issues in its Pre-Trial Brief:

1. Whether or not petitioner was legally prevented from paying the taxes by virtue of the Writ of Preliminary Injunction issued by the Regional Trial Court in the Annulment of Foreclosure case; and
2. Whether or not petitioner was delayed in the payment of creditable withholding tax and documentary stamp tax, which delay may warrant the imposition of charges, interests and penalties in the amount of P77,172,555.28.

CTA Case No. 7355

On the issue of the timeliness of the filing of the administrative and judicial claims, this Court rules in the affirmative.

Sections 204 (C) and 229 of the National Internal Revenue Code of 1997 (The NIRC of 1997) provides a two-year prescriptive period more specifically discussed below:

"SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. -
The Commissioner may –

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund and value of internal revenue stamps, when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund.

within two (2) years after the payment of the tax or penalty: *Provided*, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

xxx xxx xxx."

"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 authority, of any sum alleged to have been excessively or in any manner wrongfully collected without 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 therefore, 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."

From the evidence presented, petitioner filed its withholding tax returns for excess withholding tax, administrative and judicial claims on the following dates:

Exh.	Date of Filing of Return	Withholding Tax	Exh.	Date of Admin. Claim	Date of Petition for Review
"V"	October 31, 2003	P43,747,467.64	"A"	October 27, 2005	October 28, 2005 (CTA Case No. 7355)
"X"	October 31, 2003	P24,944,987.05	"A"	October 27, 2005	
"Z"	November 12, 2003	P 5,707,573.50	"A"	October 27, 2005	

From the filing of returns, petitioner had until October 30, 2005 for the first two returns, and November 11, 2005, for the last return, within which to file its administrative and judicial claims. Considering that the claim with the respondent was filed on October 27, 2005 and with this Court on October 28, 2005, petitioner's claim is well within the two-year reglementary period.

The fourth, fifth, sixth and eleventh issues shall be resolved together.

Petitioner claims that pursuant to Section 2.57.2 (J)(B) of Revenue Regulations No. 2-98 as amended by Revenue Regulations No. 6-01, it should not have withheld the rate of 6% but 5% considering that GOTESCO is a corporation habitually engaged in real estate business and that the property foreclosed is an ordinary asset.

This Court finds for petitioner.

As correctly cited by petitioner, Section 2 of Revenue Regulations 7-2003 is applicable in this case, to wit:

"SEC. 2. Definition of Terms. — For purposes of these Regulations, the following terms shall be defined as follows:

XXX

XXX

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d. Real estate dealer shall refer to any person engaged in the business of buying and selling or exchanging real properties on his own account as a principal and holding himself out as a full or part-time dealer in real estate.

e. **Real estate developer shall refer to any person engaged in the business of developing real properties into subdivisions, or building houses on subdivided lots, or constructing residential or commercial units, townhouses and other similar units for his own account and offering them for sale or lease.**

XXX

XXX

XXX

g. **Taxpayers engaged in the real estate business shall refer collectively to real estate dealers, real estate developers, and/or real estate lessors.** Conversely, the term 'taxpayers not engaged in the real estate business' shall refer to persons other than real estate dealers, real estate developers and/or real estate lessors. A taxpayer whose primary purpose of engaging in business, or whose Articles of Incorporation states that its primary purpose is to engage in the real estate business shall be deemed to be engaged in the real estate business for purposes of these Regulations."

Petitioner submitted lease contracts³⁴ entered into by GOTESCO with several companies such as National Bookstore, Time Castle Emporium, Millenium Internet Café, AOWA Electronic Philippines, Incorporated, Micromedia, Juicy Squeeze, Victoria's Jewelry Centre and Cross Roads Travel and Tours. In addition, petitioner likewise submitted the Articles of Incorporation of GOTESCO, the primary purpose of which reads as follows:

"To acquire by purchase, lease, donation or otherwise, and to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise dispose of buildings, houses, apartments and other structures of whatever kind, together with their appurtenances."

Based from the above, it is clear that GOTESCO is a company that can be deemed to be a real estate lessor, being as such, it should now be determined whether the property subject of foreclosure is deemed a capital asset or an ordinary asset. Section 39 (A)(1) of the NIRC of 1997 defines that a capital or ordinary assets are, to wit: 

³⁴ Exhibits "L", "M", "N", "O", "P", "Q", "CC", "DD" and "EE"

"SEC. 39. Capital Gains and Losses. –

(A) Definitions. – As used in this Title –

1. Capital Assets. – The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer."

In the case of Tomas Calasanz, et al. vs. Commissioner of Internal Revenue, et al.,³⁵ the Supreme Court defined "capital assets" as described in the NIRC of 1997, as one of exclusion, to wit:

"The statutory definition of capital assets is negative in nature. If the asset is not among the exceptions, it is a capital asset; conversely, assets falling within the exceptions are ordinary assets. And necessarily, any gain resulting from the sale or exchange of an asset is a capital gain or an ordinary gain depending on the kind of asset involved in the transaction."

Based on the said rule of exclusion, Section 39 of the NIRC of 1997 enumerates what are considered as ordinary assets, namely:

1. stocks in trade or inventorable items;
2. property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

³⁵ G.R. No. L-26284, October 9, 1986

3. property used in trade or business of the taxpayer of a character which is subject to the allowance for depreciation provided in subsection (F) of Section 34; and
4. real property used in trade or business.

Petitioner offered as evidence the audited financial statements³⁶ of GOTESCO for the year 2003 to prove that the property foreclosed was reported by the company as an ordinary asset. Upon perusal of the statements, this Court finds it proper to agree with petitioner.

In the Notes³⁷ to the Financial Statements, the auditor reported that under "Property and Equipment", the foreclosed building was reported as "Commercial Complex and Improvements" and was subjected to depreciation, while the property upon which it stands was reported as "Land". Both were still being operated by GOTESCO pending consolidation. From the treatment of the property in GOTESCO's accounting books, and from the rental income derived from it, it can be concluded that the property is an ordinary asset under the third classification above.

From the above discussion, it is clear that the applicable withholding rate is 5%, not 6%.

The seventh, eighth and ninth issues all point to the question of whether petitioner is a proper party to claim for a refund.

In support of its argument, petitioner cited *Proctor (sic) and Gamble Philippines v. Commissioner of Internal Revenue, G.R. No. 66838 dated 02 December 1991* which states in sum that as a withholding agent, petitioner has the personality to file the present claim.

We agree with petitioner.

It has been established that a withholding agent is entitled to claim for a refund or credit of excess withholding taxes erroneously paid. By the nature of 

³⁶ Exhibit "H"

³⁷ Exhibit "H-3"

its obligation, a withholding agent is both the agent of the government and of the taxpayer. With respect to the filing of the necessary income tax return and the actual payment of the tax which includes the authority to file a claim for refund and to bring an action for recovery of such claim, he is the agent of the taxpayer, and with respect to the collection and/or withholding, he is the Government's agent.³⁸

The withholding agent has such direct and independent liability under the withholding tax system, that in the event of non-payment of the tax, the tax shall be collected from the withholding agent. With such burden to pay tax not withheld, the withholding agent has the same personality to claim for refund in the event of overpayment.

We now resolve the second, third and tenth issues.

As proof of payment, petitioner submitted BIR tax payment deposit slips bearing the following details:

Exh.	Date of Payment	Amount Paid	WH Tax Return
"W"	October 31, 2003	P43,747,467.64	Exh. "V"
"Y"	October 31, 2003	P24,944,987.05	Exh. "X"
"AA"	November 12, 2003	P 5,707,573.50	Exh. "Z"

With the above proof of payments, this Court finds that the fact of withholding and payment of the withholding tax due were properly established by petitioner. Hence, this Court decides the second, third and tenth issues in favor of petitioner.

However, it must be noted that although petitioner duly paid the withholding taxes, there was no evidence presented to this Court showing that 

³⁸ *Smart Communications Inc., vs. Commissioner of Internal Revenue*, C.T.A. CASE NO. 6782, February 23, 2006

GOTESCO utilized the taxes withheld to settle its own tax liability for the year 2003. Being creditable in nature, petitioner should have likewise offered as evidence the 2003 Income Tax Return of GOTESCO to convince the Court that indeed the excess withholding tax payments were not used by GOTESCO. The absence of such relevant evidence is fatal to petitioner's action preventing this Court from granting its claim. To allow petitioner its claim may cause jeopardy to the Government if it be required to refund the claim already utilized.

CTA Case No. 7588

The two issues under this case can be summarized to whether or not petitioner was rightfully charged with surcharges, penalties and interests.

On February 2, 2005, petitioner was assessed with penalties, surcharges and interests on the Capital Gains Tax and Documentary Stamp Tax on the basis that the redemption period ended November 9, 2000. The assessment amounted to P61,678,490.28 for Capital Gains Tax and P15,494,065.00 for Documentary Stamp Tax. In order to facilitate the release of the CAR, petitioner paid the assessments against it in the total amount of P77,172,555.28 on April 1, 2005.

Petitioner argues that since it was legally barred from initiating consolidation proceedings over the Mortgaged Property after the one year redemption period ending on November 9, 2000, its obligation to pay the related transfer taxes due on the foreclosure sale did not arise.

We find for petitioner.

In *Unionbank of the Philippines v. Court of Appeals, et. al.,* G.R. No. 133366, August 5, 1999, the Supreme Court decided in the wise that: 

"Two main issues can be gleaned from the posturing and claims of the parties, to wit, was the consolidation of title in UNIONBANK's name proper, and 

was the dismissal of the application for preliminary prohibitory injunction valid.

The issues must be answered in the affirmative.

UNIONBANK's consolidation of title over the property on 24 October 1994 was proper, though precipitate. Contrary to private respondents' allegation UNIONBANK violated no standing court order. **The only bar to consolidation was the temporary restraining order issued by Justice Lipana-Reyes on 10 October 1994 which effectively halted the tolling of the redemption period 7 days short of its expiration. When private respondents' original complaint was dismissed on 17 October 1994 for failure to append a certification of non-forum shopping, the TRO, as an ancillary order that cannot stand independent of the main proceeding, became *functus officio*. Thus the tolling of the 12-month redemption period, interrupted by the filing of the complaint and the TRO, recommenced and eventually expired 7 days thereafter or on 24 October 1994, the date of the disputed consolidation.**" (Emphasis supplied)

The suspension of the redemption period and consolidation of ownership by a TRO was again affirmed in an earlier case entitled *LKZ Holdings and Development Corporation vs. Planters Development Bank*, G.R. No. 167998, April 27, 2007, when the Supreme Court ruled that, "[t]he temporary restraining order issued on March 13, 2000 and the writ of injunction that followed effectively halted the tolling of the redemption period three days short of its expiration".

Looking at the facts of the case, on October 26, 2000, GOTESCO filed a Complaint for Annulment of Foreclosure Proceedings, Specific Performance and Damages with prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction. The RTC issued a TRO³⁹ on November 9, 2000, ordering petitioner to maintain the status quo and prevent the consolidation of ownership of the 

³⁹ Exhibit "C"

foreclosed property. Then on December 21, 2000, another Order⁴⁰ was issued by the RTC for the issuance of a Writ of Preliminary Injunction restraining petitioner from consolidating its ownership/title over the subject property and from taking possession of said property upon plaintiff's posting of a bond.

On July 31, 2003, the Court of Appeals issued a Decision⁴¹ reversing the Orders of the RTC. On October 31, 2003⁴² and November 12, 2003⁴³, petitioner paid the corresponding Capital Gains Tax and Documentary Stamp Taxes, respectively. GOTESCO filed a Motion for Reconsideration⁴⁴ on August 27, 2003, which the Court of Appeals denied on December 22, 2003⁴⁵. With the decision of the Court of Appeals finally affirming the right of petitioner over the foreclosed property on December 22, 2003, it is only then that petitioner's right to consolidate was fully established and only then that the duty to pay the corresponding taxes arose.

Since petitioner paid the Capital Gains and Documentary Stamp Taxes on October 31, 2003 and November 12, 2003, it cannot be said that it was delayed in the payment of its obligation. Hence, the imposition of the penalties, surcharges and interests was improper.

Finally, as to the right to claim for the refund of such erroneously paid penalties, surcharges and interests, we find that petitioner has likewise filed its administrative and judicial claim for refund within the two-year prescriptive period. Thus, petitioner's right over the amount of P77,172,555,28 was fully established.

WHEREFORE, in view of the foregoing, the Petition for Review in CTA Case No. 7355 is hereby **DENIED** for insufficiency of evidence, while CTA Case 

⁴⁰ Exhibit "D"

⁴¹ Exhibit "E"

⁴² Exhibits "W", "Y"

⁴³ Exhibit "AA"

⁴⁴ Exhibit "G"

⁴⁵ Exhibit "GGG"

No. 7588 is hereby **GRANTED**. Accordingly, respondent is **ORDERED** to refund petitioner the amount of P77,172,555.28, representing its claim for refund of interests, surcharges and penalties on Capital Gains Tax and Documentary Stamp Tax for the year 2003.

SO ORDERED.

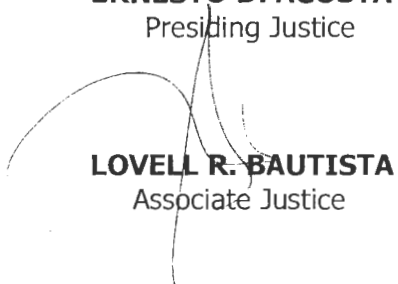


CAESAR A. CASANOVA
Associate Justice

WE CONCUR:



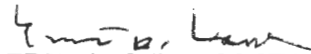
ERNESTO D. ACOSTA
Presiding Justice



LOVELL R. BAUTISTA
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.



ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division