528 Phil. 993

FIRST DIVISION

[G. R. NO. 137002, July 27, 2006]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Court, as amended, seeking to set aside a Decision[1] of the Court of Appeals dated 14 August 2004 ordering the petitioner to pay respondent Commissioner of Internal Revenue (CIR) deficiency documentary stamp tax of P690,030 for the year 1986, inclusive of surcharge and compromise penalty, plus 20% annual interest until fully paid. The Court of Appeals in its assailed Decision affirmed the Decision[2] of the Court of Tax Appeals (CTA) dated 31 May 1994.

From 28 February 1986 to 8 October 1986, petitioner Bank of the Philippine Islands (BPI) sold to the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas) U.S. dollars for P1,608,541,900.00. BPI instructed, by cable, its correspondent bank in New York to transfer U.S. dollars deposited in BPI's account therein to the Federal Reserve Bank in New York for credit to the Central Bank's account therein. Thereafter, the Federal Reserve Bank sent to the Central Bank confirmation that such funds had been credited to its account and the Central Bank promptly transferred to the petitioner's account in the Philippines the corresponding amount in Philippine pesos.[3]

During the period starting 11 June 1985 until 9 March 1987, the Central Bank enjoyed tax exemption privileges pursuant to Resolution No. 35-85 dated 3 May 1985 of the Fiscal Incentive Review Board. However, in 1985, Presidential Decree No. 1994 -- An Act Further Amending Certain Provisions of the National Internal Revenue Code was enacted. This law amended Section 222 (now 173) of the National Internal Revenue Code (NIRC), by adding the foregoing:

> [W]henever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

In 1988, respondent CIR ordered an investigation to be made on BPI's sale of foreign currency. As a result thereof, the CIR issued a pre-assessment notice informing BPI that in accordance with Section 195 (now Section 182)[4] of the NIRC, BPI was liable for documentary stamp tax at the rate of P0.30 per P200.00 on all foreign exchange sold to the Central Bank. Total tax liability was assessed at P3,016,316.06, which consists of a documentary stamp tax liability of P2,412,812.85, a 25% surcharge of P603,203.21, and a compromise penalty of P300.00.[5]

BPI disputed the findings contained in the pre-assessment notice. Nevertheless, the CIR issued Assessment No. FAS-5-86-88-003022, dated 30 September 1988, which BPI received on 11 October 1988. BPI formally protested the assessment, but the protest was denied. On 10 July 1990, BPI received the final notice and demand for payment of its 1986 assessment for deficiency documentary stamp tax in the amount of P3,016,316.06. Consequently, a petition for review was filed with the CTA on 9 August 1990.[6]

On 31 May 1994, the CTA rendered the Decision holding BPI liable for documentary stamp tax in connection with the sale of foreign exchange to the Central Bank from the period 29 July 1986 to 8 October 1986 only, thus substantially reducing the CIR's original assessment. The dispositive portion of the said Decision reads:

> WHEREFORE, premises considered, petitioner is hereby ordered to pay respondent Commissioner of Internal Revenue, the amount of P690,030 inclusive of surcharge and compromise penalty, plus 20% annual interest until fully paid pursuant to Section 249 (cc) (sic) (3) of the Tax Code.[7]

The CTA ruled that BPI's instructions to its correspondent bank in the U.S. to pay to the Federal Reserve Bank in New York, for the account of the Central Bank, a sum of money falls squarely within the scope of Section 51 of The Revised Documentary Stamp Tax Regulations (Regulations No. 26), dated 26 March 1924, the implementing rules to the earlier provisions on documentary stamp tax, which provides that: [8]

> *What may be regarded as telegraphic transfer*.-a local bank cables to a certain bank in a foreign country with which bank said local bank has a credit, and directs that foreign bank to pay to another bank or person in the same locality a certain sum of money, the document for and in respect such transaction will be regarded as a telegraphic transfer, taxable under the provisions of Section 1449(i) of the Administrative Code.

Nevertheless, the CTA also noted that although Presidential Decree No. 1994, the law which passes the liability on to the non-exempt party, was published in the Official Gazette issue of 2 December 1985, the same was released to the public only on 18 June 1986, as certified by the National Printing Office. Therefore, Presidential Decree No. 1994 took effect only in July 1986 or 15 days after the issue of Official Gazette where the law was actually published, that is, circulated to the public. As a result of the delay, BPI's transactions prior to the effectivity of Presidential Decree No. 1994 were not subject to documentary stamp tax. Hence, the CTA reduced the assessment from P3,016,316.06 to P690,030.00, plus 20% annual interest until fully paid pursuant to Section 249(c) of the NIRC.[9]

Both parties filed their respective Motions for Reconsideration, which the CTA denied in a Resolution dated 26 September 1994. BPI filed a Petition for Review with the Court of Appeals on 11 November 1994. On 14 August 1998, the Court of Appeals affirmed the Decision of the CTA. The Court of Appeals ruled that the documentary stamp tax imposed under Section 195 (now Section 182) is not limited only to foreign bills of exchange and letters of credit but also includes the orders made by telegraph or by any other means for the payment of money made by any person drawn in but payable out of the Philippines. The Court of Appeals also maintained that telegraphic transfers, such as the one BPI sent to its correspondent bank in the U.S., are proper subjects for the imposition of documentary stamp tax under Section 195 (now Section 182) and Section 51 of Revenue Regulation No. 26. The Court of Appeals likewise affirmed the CTA's Decision imposing a 20% delinquency on the reduced assessment, in accordance with Section 24(c)(3) of the NIRC and the case of *Philippine Refining Company v. Court of Appeals*.[10]

Petitioner filed a Partial Motion for Reconsideration on 9 September 1998, which the Court of Appeals denied on 29 December 1998.[11]

Hence this petition, wherein the petitioner raised the following issues:

I

> WHETHER OR NOT, THE COURT OF APPEALS GRIEVOUSLY ERRED IN HOLDING THAT SALES OF FOREIGN EXCHANGE (SPOT CASH), AS DISTINGUISHED FROM SALES OF FOREIGN BILLS OF EXCHANGE, ARE SUBJECT TO DOCUMENTARY STAMP TAX UNDER SECTION 182 OF THE TAX CODE

II

> WHETHER OR NOT, THE COURT OF APPEALS GRIEVOUSLY ERRED IN AFFIRMING THE IMPOSITION OF A DELINQUENCY INTEREST OF 20% ON THE REVISED DEFICIENCY STAMP ASSESSMENT DESPITE A REDUCTION THEREOF BY THE COUR T OF TAX APPEALS WHICH ERRED IN ITS ORIGINAL ASSESSMENT.[12]

The first issue raised by the petitioner is whether BPI is liable for documentary stamp taxes in connection with its sale of foreign exchange to the Central Bank in 1986 under Section 195 (now Section 182) of the NIRC, quoted hereunder:

> Sec. 182. *Stamp tax on foreign bills of exchange and letters of credit.* On all

> foreign bills of exchange and letters of credit (including orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons) drawn in but payable out of the Philippines in a set of three or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of thirty centavos on each two hundred pesos, or fractional part thereof, of the face value of such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign country.

To determine what is being taxed under this section, a discussion on the nature of the acts covered by Section 195 (now Section 182) of the NIRC is indispensable. This section imposes a documentary stamp tax on (1) foreign bills of exchange, (2) letters of credit, and (3) orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons. This enumeration is further limited by the qualification that they should be drawn in the Philippines and payable outside of the Philippines.

A definition of a "bill of exchange" is provided by Section 39 of Regulations No. 26, the rules governing documentary taxes promulgated by the Bureau of Internal Revenue (BIR) in 1924:

> Sec. 39. Definition of "bill of exchange". The term bill of exchange denotes checks, drafts, and all other kinds of orders for the payment of money, payable at sight, or on demand or after a specific period after sight or from a stated date.

Section 126 of The Negotiable Instruments Law (Act No. 2031) reiterates that it is an "order for the payment of money" and specifies the particular requisites that make it negotiable.

> Sec. 126. Bill of exchange defined. - A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at fixed or determinable future time a sum certain in money to order or to bearer.

Section 129 of the same law classifies bills of exchange as inland and foreign, the distinction is laid down by where the bills are drawn and paid. Thus, a "foreign bill of exchange" may be drawn outside the Philippines, payable outside the Philippines, or both drawn and payable outside of the Philippines.

> Sec. 129. Inland and foreign bills of exchange. -- An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within the Philippines. Any other bill is a foreign bill. x x

The Code of Commerce loosely defines a "letter of credit" and provides for its essential conditions, thus:

> Art. 567. Letters of credit are those issued by one merchant to another or for the purpose of attending to a commercial transaction.
>
> Art 568. The essential conditions of letters of credit shall be:
>
> 1. To be issued in favor of a definite person and not to order.
>
> 2. To be limited to a fixed and specified amount, or to one or more undetermined amounts, but within a maximum the limits of which has to be stated exactly.

A more explicit definition of a letter of credit can be found in the commentaries:

> A letter of credit is one whereby one person requests some other person to advance money or give credit to a third person, and promises that he will repay the same to the person making the advancement, or accept the bills drawn upon himself for the like amount.[13]

A bill of exchange and a letter of credit may differ as to their negotiability, and as to who owns the funds used for the payment at the time payment is made. However, in both bills of exchange and letters of credit, a person orders another to pay money to a third person.

The phrase "orders, by telegraph or otherwise, for the payment of money" used in reference to documentary stamp taxes may be found in an earlier documentary tax provision, Section 1449(i) of the Administrative Code of 1917, which was substantially reproduced in Section 195 (now Section 182) of the NIRC. Regulations No. 26, which provided the rules and guidelines for the documentary stamp tax imposed under the Administrative Code of 1917, contains an explanation for the phrase "orders, by telegraph or otherwise, for the payment of money":

> *What may be regarded as telegraphic transfer*.-a local bank cables to a certain bank in a foreign country with which bank said local bank has a credit, and directs that foreign bank to pay to another bank or person in the same locality a certain sum of money, the document for and in respect such transaction will be regarded as a telegraphic transfer, taxable under the provisions of Section 1449(i) of the Administrative Code.

In this case, BPI ordered its correspondent bank in the U.S. to pay the Federal Reserve Bank in New York a sum of money, which is to be credited to the account of the Central Bank. These are the same acts described under Section 51 of Regulations No. 26, interpreting the documentary stamp tax provision in the Administrative Code of 1917, which is substantially identical to Section 195 (now Section 182) of the NIRC. These acts performed by BPI incidental to its sale of foreign exchange to the Central Bank are included among those taxed under Section 195 (now Section 182) of the NIRC.

BPI alleges that the assailed decision must be reversed since the sale between BPI and the

Central Bank of foreign exchange, as distinguished from foreign bills of exchange, is not subject to the documentary stamp taxes prescribed in Section 195 (now Section 182) of the NIRC. This argument leaves much to be desired. In this case, it is not the sale of foreign exchange per se that is being taxed under Section 195 of the NIRC. This section refers to a documentary stamp tax, which is an excise upon the facilities used in the transaction of the business separate and apart from the business itself.[14] It is not a tax upon the business itself which is so transacted, but it is a duty upon the facilities made use of and actually employed in the transaction of the business, and separate and apart from the business itself.[15]

Section 195 (now Section 182) of the NIRC covers foreign bills of exchange, letters of credit, and orders of payment for money, drawn in Philippines, but payable outside the Philippines. From this enumeration, two common elements need to be present: (1) drawing the instrument or ordering a drawee, within the Philippines; and (2) ordering that drawee to pay another person a specified amount of money outside the Philippines. What is being taxed is the facility that allows a party to draw the draft or make the order to pay within the Philippines and have the payment made in another country.

A perusal of the facts contained in the record in this case shows that BPI, while in the Philippines, ordered its correspondent bank by cable to make a payment, and that payment is to be made to the Federal Reserve Bank in New York. Thus, BPI made use of the aforementioned facility. As a result, BPI need not have sent a representative to New York, nor did the Federal Reserve Bank have to go to the Philippines to collect the funds which were to be credited to the Central Bank's account with them. The transaction was made at the shortest time possible and at the greatest convenience to the parties. The tax was laid upon this privilege or facility used by the parties in their transactions, transactions which they may effect through our courts, and which are regulated and protected by our government.

BPI further alleges that since the funds transferred to the Federal Reserve Bank were taken from BPI's account with the correspondent bank, this is not the transaction contemplated under Section 51 of Regulations No. 26. BPI argues that Section 51 of Regulations No. 26, in using the phrase "with which local bank has credit," involves transactions wherein the drawee bank pays with its own funds and excludes from the coverage of the law situations wherein the funds paid out by the correspondent bank are owned by the drawer. In the case *of Republic of the Philippines v. Philippine National Bank,*[16] the Court equated "credit" with the term "deposits," and identified the depositor as the creditor and the bank as the debtor.

> And as correctly stated by the trial court, the term "credit" in its usual meaning is a sum credited on the books of a company to a person who appears to be entitled to it. It presupposes a creditor-debtor relationship, and may be said to imply ability, by reason of property or estates, to make a promised payment. It is the correlative to debt or indebtedness, and that which is due to any person, as distinguished from that which he owes. The same is true with the term

> "deposits" in banks where the relationship created between the depositor and the bank is that of creditor and debtor.

By this definition of "credit," BPI's deposit account with its correspondent bank is much the same as the "credit" referred to in Section 51 of Regulations No. 26. Thus, the fact that the funds transferred to the Central Bank's account with the Federal Reserve Bank are from BPI's deposit account with the correspondent bank can only underline that the present case is the same situation described under Section 51 of Regulations No. 26.

Moreover, the fact that the funds belong to BPI and were not advanced by the correspondent bank will not remove the transaction from the coverage of Section 195 (now Section 182) of the NIRC. There are transactions covered by this section wherein funds belonging to the drawer are used for payment. A bill of exchange, when drawn in the Philippines but payable in another country, would surely be covered by this section. And in the case of a bill of exchange, the funds may belong to the drawer and need not be advanced by the drawee, as in the case of a check or a draft. In the description of a draft provided hereunder, the drawee is in possession of funds belonging to the drawer of the bill:

> A draft is a form of a bill of exchange used mainly in transactions between persons physically remote from each other. It is an order made by one person, say the buyer of goods, addressed to a person having in his possession funds of such buyer ordering the addressee to pay the purchase price to the seller of the goods. Where the order is made by one bank to another, it is referred to as a bank draft.[17]

BPI argues that the foreign exchange sold was deposited and transferred within the U.S. and is therefore outside Philippine territory. This argument is unsubstantial. The documentary stamp tax is not imposed on the sale of foreign exchange, rather it is an excise tax on the privilege or facility which the parties used in their transaction. In the case of *Allied Thread Co., Inc. v. City Mayor of Manila,*[18] the Court explained the scope encompassed by the power to levy an excise tax:

> The tax imposition here is upon the performance of an act, enjoyment of a privilege, or the engaging in an occupation, and hence is in the nature of an excise tax.
>
> The power to levy an excise upon the performance of an act or the engaging in an occupation does not depend upon the domicile of the person subject to the excise, nor upon the physical location of the property and in connection with the act or occupation taxed, **but depends upon the place in which the act is performed or occupation engaged in** (Emphasis supplied).

In this case, the act of BPI instructing the correspondent bank to transfer the funds to the Federal Reserve Bank was performed in the Philippines. Therefore, the excise tax may be levied by the Philippine government. Section 195 (now Section 182) of the NIRC would be rendered invalid if the fact that the payment was made outside of the country can be used as a basis for nonpayment of the tax.

The second issue is whether the delinquency interest of 20% per annum, as provided under Section 249(c)(3) of the NIRC, is applicable in this case.

In the case of *Philippine Refining Company v. Court of Appeals,*[19] this Court categorically ruled that even if an assessment was later reduced by the courts, a delinquency interest should still be imposed from the time demand was made by the CIR.

> As correctly pointed out by the Solicitor General, the deficiency tax assessment in this case, which was the subject of the demand letter of respondent Commissioner dated April 11, 1989, should have been paid within thirty (30) days from receipt thereof. By reason of petitioner's default thereon, the delinquency penalties of 25% surcharge and interest of 20% accrued from April 11, 1989. The fact that petitioner appealed the assessment to the CTA and that the same was modified does not relieve petitioner of the penalties incident to delinquency. The reduced amount of P237,381.25 is but a part of the original assessment of P1,892,584.00.

This doctrine is consistent with the earlier decisions of this Court justifying the imposition of additional charges and interests incident to delinquency by explaining that the nature of additional charges is compensatory and not a penalty.

> The above legal provision makes no distinctions nor does it establish exceptions. It directs the collection of the surcharge and interest at the stated rate upon any sum or sums due and unpaid after the dates prescribed in subsections (b), (c), and (d) of the Act for the payment of the amounts due. The provision therefore is mandatory in case of delinquency. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature - they are compensation to the State for the delay in payment, or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State.[20]

The same principle was used in *Ross v. U.S.*[21] when the U.S. Supreme Court ruled that it was only equitable for the government to collect interest from a taxpayer who, by the government's error, received a refund which was not due him.

> Even though [the] taxpayer here did not request the refund made to him, and the situation is entirely due to an error on the part of the government, taxpayer and not the government has had the use of the money during the period involved and it is not unjustly penalizing taxpayer to require him to pay compensation for this use of money.

Based on established doctrine, these charges incident to delinquency are compensatory in nature and are imposed for the taxpayers' use of the funds at the time when the State should have control of said funds. Collecting such charges is mandatory. Therefore, the Decision of the Court of Appeals imposing a 20% delinquency interest over the assessment reduced by the CTA was justified and in accordance with Section 249(c)(3) of the NIRC.

WHEREFORE, premises considered, this Court **DENIES** this petition and **AFFIRMS** the Decision of the Court of Appeals in CA-G.R. SP No. 57362 dated 14 August 1998, ordering that petitioner Bank of the Philippine Islands to pay Respondent Commissioner of Internal Revenue the deficiency documentary stamp tax in the amount of P690,030.00 inclusive of surcharge and compromise penalty, plus 20% annual interest from 7 June 1990 until fully paid. Costs against the petitioner.

SO ORDERED.

Panganiban, C.J., (Chairman), Ynares-Santiago, Austria-Martinez, and *Callejo, Sr., JJ.,* concur

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[1] Penned by Associate Justice Arturo B. Buena with Associate Justice Ramon Mabutas, Jr. and Associate Justice Hilarion L. Aquino, concurring; *Rollo*, pp. 42-51.

[2] CA *rollo*, pp. 52-64.

[3] *Rollo*, p. 42

[4] Sec. 182. *Stamp tax on foreign bills of exchange and letters of credit.* On all foreign bills of exchange and letters of credit (including orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons) drawn in but payable out of the Philippines in a set of three or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of thirty centavos on each two hundred pesos, or fractional part thereof, of the face value of such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign country.

[5] CA *rollo*, p. 53.

[6] Id.

[7] Id. at 63-64.

[8] Id. at 54-55.

[9] Id. at 60-63.

[10] 326 Phil. 680 (1996).

[11] *Rollo*, p. 54.

[12] Id. at 5.

[13] Jose Campos, Jr. and Maria Clara Lopez-Campos, *Notes and Selected Cases on Negotiable Instruments Law, Fifth Edition.* Quezon City: Central Professional Books, Inc, 1994, p. 878.

[14] *DuPont v. U.S.,* 300 U.S. 150 (1937)

[15] *Lincoln Philippine Life Insurance Company, Inc. v. Court of Appeals,* 354 Phil. 896, 904 (1998); *Nicol v. Ames,* 173 US 509 (1899).

[16] 113 Phil. 828, 830-831 (1961).

[17] Supra note 13 at 3.

[18] 218 Phil. 308, 313-314 (1984).

[19] Supra note 10 at 691.

[20] *Republic v. Philippine Bank of Commerce,* 145 Phil. 81, 89 (1970).

[21] 148 F. Supp. 330 (1957), p. 333.