

THE EARNSHAW'S DOCKS & HONOLULU IRON WORKS, PETITIONER, VS. PEDRO GIMENEZ, AS AUDITOR GENERAL, RESPONDENT.

G.R. No. L-14814. December 30, 1961

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by the Earnshaws "Docks a Honolulu Iron Works, hereinafter referred to simply as Earnshaws Docks, from the decision of the Auditor General denying its claim for refund of the amount of P198,695.61, representing the 17 per cent special excise tax levied by the levied Central Bank of the Philippines, hereinafter referred to simply as Central Bank, on its dollar earnings abroad utilized to purchase shares of the Hawaiian-Philippine common stock and of the San Carlos Milling Co., Ltd., and for other purposes.

The Earnshaws Docks is a business name and style of the Honolulu Iron Works, a corporation duly organized and existing under the laws of Hawaii, U.S.A., and duly licensed to engage in business in the Philippines. During the effectivity of Republic Act No. 601 (the 17 per cent foreign exchange tax law, which took effect on March 28, 1951 and was repealed by Republic Act No. 1394 on December 31, 1955), the Earnshaws Docks received in its New York office dollar commissions from foreign manufacturers totalling \$580,048.475.

On May 26, 1954, Theo. H. Davies & Co., Far East, Ltd., for itself and on behalf of Edward J. Nell Co. and Earnshaws Docks, requested the Central Bank for authority to utilize their respective dollar accounts abroad to purchase and repatriate to Philippine ownership 138,000 shares of Hawaiian-Philippine common stock at \$3.55 per share. The Monetary Board of the Central Bank granted the request (Resolution No. 843 dated June 1, 1954) and the Earnshaws Docks utilized \$163,012.00 of its dollar funds abroad to buy 46,000 shares of Hawaiian—Philippine common stocks. In August, 1955, San Carlos Planters and San Carlos Corporation, for themselves and on behalf of Theo. H. Davies & Co., Far East, Ltd., Edward J. Nell & Co. and Earnshaws Docks also requested the Central Bank for authority to purchase from non-residents 60,153 shares of San Carlos Milling Co. Ltd. at \$10.00 per share amounting to approximately \$600,000, of which \$200,000 would be paid by the San Carlos Corporation from the dollars it would purchase for said purpose from the Central Bank and the balance of \$400,000 to be paid by Theo. H. Davies & Co., Far East, Ltd., Edward J. Nell & Co. and Earnshaws Docks out of their respective dollar funds abroad. This request was likewise granted by the Central Bank. For the purchase of shares of the San Carlos Milling Co. Ltd., the Earnshaws Docks utilized \$125,000 of its dollar commissions abroad, bringing the total foreign exchange funds used by it for the two transactions mentioned above to \$288,012.00. EarnshWs Docks used the balance of its foreign funds during the same period for other purposes in furtherance of its business.

On December 22, 1955, the Central Bank demanded of Earnshaws Docks the payment of the 17 per cent foreign exchange tax on its dollar earnings abroad utilized to purchase the Hawaiian-Philippine .and San Carlos Milling Co. shares mentioned heretofore, as well as those utilized by it for other purposes after the effectivity of the

foreign exchange tax law (Republic Act No. 601) totalling \$580,048.475 or P1,160,797.65 converted at the rate of P2.015 to the dollar. The demand was reiterated by the Central Bank in a letter dated February 29, 1956, wherein Earnshaws Docks was specifically required to pay the sum of P198,695.61 as foreign exchange tax within thirty days from receipt of said letter. In a letter of March 26, 1956, the Earnshaws Docks requested the Central Bank to reconsider its demand on the ground that the imposition of said tax was illegal for the reason that there was no foreign exchange purchased by the Earnshaws Docks from the Central Bank or its agents in the consummation of the transactions in question. After a denial of its request, Earnshaws Docks paid the Central Bank the amount of the tax in two installments — June 12, 1956 and August 31, 1956, and on June 25, 1957 filed a claim with the latter for the return of the amount of P198,695.61. This was denied on December 10, 1957.

On March 7, 1958., Earnshaws Docks filed a claim with the General Auditing Office for the return of said tax. Because no action was taken by the General Auditing Office on its claim for more than two months after its filing, the Earnshaws Docks instituted on May 26, 1958 an action in the Court of First Instance of Manila for the recovery of the claim in question (Civil Case No. 36358) It later withdraw the action upon being notified by the General Auditing Office that the Central Bank had commented on its claim filed with said office. Thereafter Earnshaws Docks requested the General Auditing Office to rule on its claim, on the merits, which said Office did on October 20, 1958, the same being now the decision appealed from.

The questions raised by petitioner in the second, third, fourth and sixth assignments of error—which we deem to be decisive of this appeal—are related to each other. We shall, therefore, take them up jointly. The questions they pose are whether or not petitioner's dollar earnings mentioned heretofore were subject to the 17 per cent excise tax imposed by Republic Act No. 601, and consummate the two transactions involved in this case, petitioner may be deemed to have surrendered or sold to the Central Bank its dollar earnings aforesaid and then purchased from the same entity the dollars needed to pay for the shares it purchased.

It is not disputed that between March 28, 1951 and December 31, 1955 petitioner received at its New York office as commissions the total sum of \$580,048.475 (equivalent to P168,797.68 at the conversion rate of P2.015 to the dollar). nor is it denied that said commissions were earned during the effectivity of Republic Act No. 601.

Section 1 of Republic Act No. 601, insofar as pertinent, provides:

"Except as herein otherwise provided, there shall be assessed, collected and paid a special excise tax of seventeen per centum (17%) on the value in Philippine peso of foreign exchange sold and/or authorized to be sold by the Central Bank of the Philippines or any of its agents * * *."

The pertinent provisions of Section 5 of the same Act read as follows:

"The tax imposed under section one hereof shall be paid to the Central Bank of the Philippines by the purchaser of the foreign exchange and the Central Bank shall not sell any foreign exchange without the payment of the said tax. * * *."

The Central Bank predicates its right to assess and collect the questioned tax upon the provisions of law quoted above and those of Section 4(a) of its Circular No. 20, dated December 9, 1949 (47 Off. Gaz., November, 1951), and Section 2(h) of its Circular No. 42 (49 Off. Gaz., May, 1950) to the following effect:

"SEC. 4(a). All receipts of foreign exchange shall be sold daily to the Central Bank by those authorized to deal in exchange. All receipts of foreign exchange by person, firm, partnership, association, branch office, agency company or other unincorporated body or corporation shall be sold to the authorized agents of the Central Bank by the recipients within one business day following the receipt of such foreign exchange. Any person, firm, partnership, association, branch office, agency, company or other unincorporated body or corporation, residing or located within the Philippines, who acquires foreign exchange on and after the date of this Circular

Foreign Exchange shall not, unless licensed by the Central Bank, dispose of such foreign exchange in whole or in part, nor receive less than its full value, nor delay taking ownership thereof except as such delay is customary; provided, further, that within one day upon taking ownership, or receiving payment, of foreign exchange the aforementioned persons and entities shall sell such foreign exchange to designated agents of the Central Bank (Circular No. 20; Italics ours).

"SEC. 2(h). The following are foreign exchange transactions and as required by Central Bank Circular No. 20, are subject to prior licensing by or on behalf of the Central Bank.

"* * * * *

"(h) all collections of residents made abroad through their overseas branch offices, agents of representatives. Such collections shall be, brought or ordered to be brought by such residents into the Philippines in U.S. currency or in other currency acceptable to the Central Bank after deducting normal business expenses incurred by such overseas branch offices, agents or representatives." (Central Bank Circular 42, Italics ours).

Petitioner's position is that the 17% special excise tax accrues only when an actual sale of foreign exchange is made by the Central Bank or its authorized agents, such sale of foreign exchange being the operative fact or the condition that gives rise to the excise tax; that the two transactions mentioned above did not involve any sale or actual transfer of dollars by the Central Bank or any of its agents to petitioner, because the latter had not, in fact, purchased any dollar from the Central Bank to consummate said transactions; and that it was not nor could it have been the intention of Congress to impose the tax upon a transaction that did not involve an actual purchase of foreign exchange.

Upon the other hand, the Central is that under the legal provisions quoted above and its Circulars Nos. 20 and 42, petitioner was under obligation to transfer and sell to the Central Bank, for pesos, its dollar earnings abroad; that to purchase the shares involved in the transactions already mentioned, petitioner should have filed an application for a foreign exchange license and, if such license was granted, it would have then purchased foreign exchange and paid—as petitioner admits in its brief (p. 31)—the corresponding 17 per cent exchange tax. In this connection the Central Bank claims that if petitioner was not required to follow this procedure literally or strictly by making an actual surrender or sale to the Central Bank of its dollar earnings abroad prior to the approval of the transactions herein involved, it was solely for the purpose of avoiding red-tape or paperwork and save trouble and time.

In the light of the facts before Us and the legal provisions applicable thereto, we are constrained to agree with the contention of the Central Bank and, consequently, with the decision of the respondent subject of this appeal.

Under the Central Bank circulars already referred to petitioner was under obligation to surrender or sell to the Central Bank its dollar earnings abroad, within one day after their acquisition or receipt. By applying for a Central Bank license or authority before utilizing said dollar earnings abroad, petitioner undoubtedly admitted this to be true and is now estopped to contend otherwise.

That the Central Bank had no lawful authority to waive or agree to dispense with this surrender or sale seems to be too obvious for argument. Much less could it waive in favor of any party the collection of the 17 per cent excess tax provided by law. It can be logically presumed, therefore, that the Central Bank chose not to compel petitioner to first make such actual surrender or sale of its dollar earnings abroad and instead gave petitioner authority to utilize the same for the purposes already referred to, solely for the purpose of expediting the transactions by avoiding the red-tape and paper-work involved. It cannot be denied that this was for the benefit and convenience of petitioner as well as of the parties from whom it purchased the shares of stock. It can not now take advantage of the accommodation thus granted to it by claiming that, because it retained ownership and

possession all the time of its dollar earnings abroad and it had made no actual surrender or sale thereof to the Central Bank, it is not liable for the payment of the 17 per cent exchange tax on the amounts utilized by it for the purchase of the shares of stock and for other purposes already mentioned above. As already stated, before purchasing the shares of Hawaiian—Philippine and San Carlos Milling Co., Ltd., petitioner applied for authority from the Central Bank to utilize its dollar earnings abroad for that purpose. Petitioner would not have asked for such authority if it did not consider itself bound firstly, to surrender or sell such dollar earnings to the Central Bank and secondly, to purchase, thereafter, the dollars it needed to consummate the proposed transactions. Consequently, its request or petition for authority to utilize its dollar earnings; the leave granted by the Central Bank, and the subsequent use by petitioner of said dollar earnings must be deemed equivalent to, and involving first, the surrender or sale of such dollar earnings to the Central Bank and then the purchase by petitioner of the dollars it needed to consummate the transactions; for otherwise we would be sanctioning an arrangement violative of the provisions of law and of the dispositions contained in the Central Bank Circulars mentioned heretofore.

In the first assignment of error it is contended that respondent should have ruled that petitioner and the other parties to the two transactions involved in this case were made to understand that no taxes would be imposed on them by the Central Bank. We find this to be without merit. The record does not disclose affirmatively any promise made by the Central Bank in the sense claimed by petitioner and, as stated heretofore, any such promise made by the Central Bank would have been void for lack of legal authority to make it. The State cannot be precluded or barred from collecting the tax due simply by reason of the unlawful acts of its agents.

In the view we take of the case, we deem it unnecessary to resolve the question involved in the first assignment of error.

Wherefore, finding the decision of respondent subject of the present appeal to be in accordance with law, the same is hereby affirmed, with costs.

Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and De Leon, JJ., concur.

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