

**AMERICAN MACHINERY & PARTS MANUFACTURING, INC.,
INTERNATIONAL CHEMICAL INDUSTRIES, INC., AND YUPANGCO
COTTON MILLS, INC., PETITIONERS, VS. ISMAEL MATHAY, SR., AS
AUDITOR GENERAL...***G.R. Nos. L-30998, L-31021, L-31022. October 28, 1987*

Ponente: PADILLA, J.

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Petitions for review, certiorari and mandamus, to annul and set aside the decisions of the Auditor General, dated 4 September 1969, and of the Executive Secretary, dated 27 August 1969, as well as the Memorandum of the Auditor of the Central Bank, dated 10 September 1969, which served as the bases for the denial of the petitioners' claims for refund of margin fees paid on purchases of foreign exchange used in payment of machinery, spare parts and equipment, and to order the respondents to approve said claims for refund. These cases, although separate and distinct from each other, are considered and decided jointly in view of identical issues therein raised.

Petitioners claim that respondents committed grave abuse of discretion in denying their requests for refund of margin fees paid to the Central Bank of the Philippines on foreign exchange they had purchased to liquidate drafts drawn against letters of credit earlier opened at their respective instances.

1. G.R. NO. L-30998, AMERICAN MACHINERY & PARTS MANUFACTURING, INC. VS. MATHAY, ET AL.

On various dates in 1961, the Philippine Trust Company, Manila, opened letters of credit for the account of the petitioner American Machinery & Parts Manufacturing, Inc., (Amparts, for short). One of these was Letter of Credit No. 27497 in the amount of U.S. \$17,006.00 against which the beneficiary drew a draft which was negotiated abroad on 9 May 1961. For the sale of the foreign exchange to cover the importation, a foreign exchange margin fee of P5,304.81 was assessed by the Central Bank, which Amparts paid on 19 January 1962. On 2 October 1961, Amparts filed an application for tax exemption pursuant to the provisions of Republic Act No. 3127 and was issued Board of Industries Certificate of Tax Exemption No. 36 dated 15 June 1964[1]. On the basis thereof, it filed a claim on 12 December 1964, for the refund of the foreign exchange margin fee collected[2]. The application was approved and Amparts was refunded the foreign exchange margin fee.

However, on 12 August 1966, the Auditor of the Central Bank made a demand on Amparts for the payment of the amount refunded representing margin fees on foreign exchange purchased before 17 June 1961, the date of effectivity of the Basic Industries Law (Rep Act No. 3127). Amparts complied but again requested for its refund. The Central Bank Auditor recommended the approval of the request for refund in line with the decision of the Office of the President in a similar claim for refund of foreign exchange margin fees filed by the Bautista Brothers, Lumber Company[3]. The Auditor General, however, instead of affirming the recommendation, asked the Office of the President whether or not the ruling in the Bautista case may be applied to and invoked in the claim of Amparts[4].

The Office of the President, through the Assistant Executive Secretary, in an Indorsement, answered that the ruling in the Bautista case applies with equal appositeness and force to the claim of Amparts[5]. This decision, however, was not enforced because on 27 August 1969, the respondent Executive Secretary, in another Indorsement, reversed the said decision, holding instead that the ruling in the Bautista case cannot be applied to the claim of Amparts, since the shipment for which a refund was requested by Amparts had arrived in the Philippines before the Basic Industries Law took effect[6]. In view thereof, the Auditor General denied the claim of Amparts [7].

Then, on 10 September 1969, the Auditor of the Central Bank, in a memorandum, notified the Central Bank Accountant of the denial of Amparts' claim and directed that, henceforth, "all margin refund vouchers covering similar claims are to be acted upon accordingly and disallowed in audit"[8]. Whereupon, Amparts filed the instant petition.

2. G.R. NO. L-31021, INTERNATIONAL CHEMICAL INDUSTRIES, INC. VS. MATHAY, ET AL.

On 8 April 1960, the Security Bank and Trust Co., Manila, opened letters of credit for the account of International Chemical Industries, Inc. (Inchem, for short). Against such letters of credit the beneficiaries thereof drew and negotiated drafts abroad, for which Inchem paid margin fees to the Central Bank totalling P128,260.28. On 2 October 1961, Inchem applied for tax exemption under the Basic Industries Act and was subsequently issued Board of Industries Certificate of Tax Exemption No. 110 dated 2 July 1965[9]. Thereafter, on 8 July 1965[10]. Inchem asked for a refund of P342,304.01. On 28 September 1965, the Central Bank informed Inchem that of the amount of P128,260.28 approved by the Accounting department for refund, only the amount of P123,773.96 had been allowed in audit, the difference of P4,486.32 being the margin fee corresponding to foreign exchange negotiated prior to 2 October 1961, the date of the filing of its application for tax exemption privilege under the Basic Industries Law[11].

Inchem asked for reconsideration of the disallowance of certain items amounting to P90,270.47 but only a portion thereof, amounting to P49,368.35, was approved for payment[12]. All told, the Central Bank refunded P73,704.05 but disallowed the refund of P48,094.76 representing margin fees on foreign exchange purchased prior to the date of effectivity of the Basic Industries Law. Hence, this petition.

3. G.R. NO. L-31022, YUPANGCO COTTON MILLS, INC. VS. MATHAY, ET AL.

On various dates in 1960, the Philippine Banking Corporation, Manila, opened various letters of credit for the account of Yupangco Cotton Mills, Inc. (Yupangco, for short) against which the beneficiaries thereof drew and negotiated drafts abroad. For said negotiations, Yupangco for was assessed by the Central Bank margin fees of P220,847.66[13], of which the sum of P38,843.36 corresponded to margin fees on foreign exchange purchased to finance importations which arrived in the Philippines before the date of effectivity of the Basic Industries Law[14]. On 9 October 1961, Yupangco filed an application for tax exemption and was issued Board of Industries Certificate of Tax Exemption No. 98, dated 8 September 1965[15]. Thereafter, Yupangco filed for refund of the margin fees paid but its request was denied in line with the ruling in Amparts[16]. Hence, Yupangco joined in the filing of these petitions.

Petitioners, domestic corporations, all engaged in basic industries as defined in Rep. Act No. 3127, the Basic Industries Law, claim that the margin fees paid by them are refundable as these were paid for importations that were removed from customs custody when the Basic Industries Law was already in force. They further assert that these fees accrued only when the goods for which they purchased foreign exchange had already been released from customs custody, in line with the ruling of the Office of the President in Bautista Brothers Lumber Co.

On the other hand, the respondents claim that the benefits of exemption from the margin fees, granted by the Basic Industries Law, cannot be availed of by petitioners as their importations were made during the effectivity of Rep. Act No. 2609, the Margin Fee Law, and before the enactment of the Basic Industries Law, and, in view of the final ruling of the Office of the President, through the Executive Secretary, that the Bautista decision "cannot be invoked as an applicable and controlling precedent vis-avis the claim of American Machinery & Parts Manufacturing Corporation"[17].

The main issue in these cases is whether or not the sale of foreign exchange made before the effectivity of Republic Act No. 3127, for importations landed before but released after such effectivity, is exempted from the payment of foreign exchange margin fees; stated differently, when did the margin fees levied upon and paid by petitioners on their purchases of foreign exchange become legally due?

Petitioners base their claims for exemption from foreign exchange margin fees on Republic Act No. 3127 approved 17 June 1961, and entitled "An Act Authorizing the Exemption of Basic Industries from the Payment of Certain Taxes and For Other Purposes", the pertinent provisions of which are as follows:

Exemption from taxes and period of exemption of basic industries. - Any person partnership, company or corporation who or which is now engaged or shall engage in a basic industry shall be exempted from payment of special import tax, compensating tax, foreign exchange margin fee and tariff duties in respect of the importation of machinery, spare parts and equipment as follows:

(a) One hundred per centum of the taxes due during the period from the date of approval of this Act to December thirty-first, nineteen hundred sixty-six;

(b) Seventy-five per centum of the taxes due during the period from January first to December thirty-first, nineteen hundred sixty-seven;

(c) Fifty per centum of the taxes due during the period from January first to December thirty-first nineteen hundred sixty-eight, after which such person, partnership, company or corporation shall be liable in full to all taxes: Provided, That packaging and assembly plants shall not be entitled to the benefits granted in this Act: Provided, further, That exemptions from taxes for spare parts as mentioned in this section shall only apply to spare parts imported at the time of the original importation of the machinery and equipment[18].

Determination of period of exemption. - For the purpose of determining the commencement of exemption, provided for in Section six of this Act, the benefits of exemption of basic industries from the payment of taxes under this Act shall, upon approval of the application for exemption by the Board, retroact as of the date of the filing of the application for exemption"[19].

It is not denied that when petitioners purchased foreign exchange for the importation of machineries needed for their respective enterprises, and involved in the instant petitions, the Basic Industries Law, which grants exemption from margin fees on foreign exchange purchased, still had not come into effect. However, petitioners would base their exemption from such fees not as of the time of purchase of foreign exchange but as of the time of landing and release from customs custody of their importations. In consonance with the Bautista ruling of the Office of the President.

In the Bautista case, the Bautista Brothers Lumber Company was exempted from the payment of margin fees on foreign exchange purchased before the effectivity of the Basic Industries Law for machineries which were landed and withdrawn from customs custody after the effectivity of said law. In approving such exemption, the Office of the President held that since the machineries were still in the process of importation when the Basic Industries Law was already in force, Bautista Brothers Lumber Co. could rightfully ask for exemption from margin fees. The ruling used as its basis the definition of "importation" in the Tariff and Customs Code which provides:

"When Importation Begins and Deemed Terminated - Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intent to unload therein. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs"[20].

As importation is completed only when the imported goods are legally removed from customs custody, and since the removal of the imported goods took place when the Basic Industries Law was already in force, the Bautista Brothers Lumber Co. could, according to the Office of the President, be validly exempted from payment of taxes, customs duties and margin fees. Importation was consummated already under the aegis of the Basic Industries Law.

The Office of the President, however, held in its 27 August 1969 Indorsement in the Amparts case, now questioned, that its ruling in the Bautista case involved a factual setting different from that in petitioners' cases. In Bautista, according to the Office of the President, the importation commenced on 26 June 1961 when the imported goods landed in the Philippines -- that is, some nine (9) days after the effectivity of the Basic Industries Law -- and terminated on 10 January 1962 when the goods were released from the customs zone. On the other hand, in Amparts, the importations landed on 21 May 1961, when the Basic Industries law had not yet been approved, although released from customs after the approval of said law.

We hold, however, that both rulings of the Office of the President (Bautista and Amparts) lost sight of the essential act which is at the base of the issue in said cases: the purchase of foreign exchange which, by provision of law, gave rise to the obligation to pay the margin fee. The Margin Fee Law states:

"The provisions of any law to the contrary notwithstanding, when and as long as the Central Bank of the Philippines subjects all transactions in gold and foreign exchange to licensing xxx the Central Bank, in respect of all sales of foreign exchange by the Central Bank and its authorized agent banks, shall have the authority to establish a uniform margin of not more than forty per cent over the Banks' selling rates stipulated by the Monetary Board x x x which margin shall not be changed oftener than once a year except upon the recommendation of the National Economic Council and the approval of the President. The Monetary Board shall fix the margin at such rate as it may deem necessary to effectively curtail any excessive demand upon the international reserve" [21]. (Emphasis supplied)

It is clear from the above-quoted provision of Rep. Act No. 2609 that margin fees are imposed on the sale of foreign exchange by the Central Bank or its agent banks, as a form of regulation to curb excessive demands on the international reserve. As held in *Caltex (Phil.), Inc. vs. Acting Commissioner of Customs*:

"A margin levy on foreign exchange is a form of exchange control or restriction designed to discourage imports and encourage exports, and ultimately "curtail any excessive demand upon the international reserve" in order to stabilize the currency"[22].

Thus, it is the act of selling and the correlative purchasing of foreign exchange which the Margin Fee Law sought to regulate through the imposition of the margin fee, regardless of the period when such foreign exchange was utilized. In *Pacific Oxygen & Acetylene Co. vs. Central Bank*[23], where petitioners sought a refund of margin fees, this Court held that as plaintiff company had purchased its forward exchange on 17 January 1962, when the Margin Fee Law was still in force, although subsequently suspended on 21 January 1962, it was liable for the payment of margin fees. The Court said:

"xxx The language of the law is clear. A margin fee may be collected from "all sales of foreign exchange by the Central Bank and its authorized agent banks xxx." It was expressly found by the lower court: 'On January 17, 1962, the Philippine Trust Co. applied for the purchase of forward exchange with the Central Bank in the

amount of \$71,617.02, of which \$67,874.50 [was] to cover its U.S. dollar commitments against the letter of credit opened under the free market rate for the plaintiff, and on the next day the Central Bank executed the corresponding forward exchange contract (No. 12145) for the same amount to be delivered on March 17, 1962 x x x.

It is well-settled in our law that a contract of sale exists from the moment 'one of the contracting parties obligate himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefore a price certain in money or its equivalent'. There is a perfection of such a contract 'at the moment there is a meeting of minds upon the thing, which is the object of the contract and upon the price' from which moment, 'the parties may reciprocally demand performance, subject to the provisions of law governing the form of contracts.' It is a fair restatement of the prevailing principle in American law that an agreement by one party to sell and deliver, and by the other to purchase at a mentioned price and terms certain personal property on or before a specified future date is a contract of sale and not an option.

With the categorical finding in the decision appealed from that the purchase of the forward exchange by the Central Bank occurred on January 17, 1962, prior to the suspension of the margin levy on January 21, 1962, it cannot be denied that deference must be paid to the legal provision calling for a margin fee "in respect of all sales of foreign exchange of the Central Bank and its authorized agents xxx." From *Lizaraga Hermanos vs. Yap Tico*, this Court has steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible.

As thus viewed, the fact that it was not until February 9 and 12, 1962 that the Continental Illinois National Bank & Trust Co. honored the above drafts cannot therefore be controlling. The plain and explicit command of the law is too categorical to be misinterpreted[24].

Petitioners may not invoke the benefit of exemption from margin fees granted by Rep. Act No. 3127, because when they purchased the foreign exchange to finance their importations, there was as yet no Basic Industries Law granting them such exemption. Laws are prospective in operation, unless there is clear provision therein to the contrary[25]. Thus, even if a tax law is repealed, taxes assessed before repeal of the law may still be collected unless the repealing law is made retroactive[26]. Moreover, exemption provisions are strictly construed against one who claims exemption[27].

Petitioners have likewise raised as an issue the nature of the Auditor General's power to review their application for refund. They argue that it was the Auditor General's ministerial duty to follow the initial recommendation of the Central Bank Auditor granting exemption based on the Bautista ruling instead of seeking a review from the Office of the President of Bautista and even apparently moving for reconsideration with the Executive Secretary, when the Assistant Executive Secretary's earlier ruling already upheld the applicability of Bautista to petitioners' cases.

A perusal of the constitutional provision in force at the time of the dispute would, however, show that petitioners' contentions are untenable.

The relevant provision in the 1935 Constitution then in force states:

"Sec. 2. The Auditor General shall examine, audit and settle all accounts pertaining to the revenues and receipts from whatever source, including trust funds derived from bond issues; and audit in accordance with law and administrative regulations, all expenditures of funds and property pertaining to or held in trust by the government or the provinces or municipalities thereof. He shall keep the general accounts of the government and preserve the vouchers pertaining thereto. It shall be the duty of the Auditor General to bring to the attention of the proper administrative officials expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive or extravagant. He shall also perform such other functions as may be

prescribed by law"[28]. (Emphasis supplied.)

To enforce such power of the Auditor General, the Revised Administrative Code provides:

"The authority and powers of the General Auditing Office extend to and comprehend all matters relating to accounting procedures, including the keeping of the accounts of the Government, the preservation of vouchers, the methods of accounting, the examination and inspection of the books, records and papers relating to such accounts of all persons respecting funds or property received or held by them as well as to the examination and audit of all debts and claims of any sort due from or coming to the government of the Philippines in any of its branches, xxx"[29].

Under the aforecited provisions, it is clear that the Auditor General may scrutinize and bring to the attention of proper administrative officials expenditures which may be irregular or unnecessary and rule on claims due from or against the government. As has been noted:

"The Constitution makes the Auditor General not merely an examiner of the receipts, expenditures, and accounts of the government to determine their correctness and legality, but also a critic of the wisdom and propriety of the expenditures of public funds and property by administrative officers. It is in this role of commentator and critic that the Auditor General may become an active, not merely a passive, constructive force. The constitutional provision that permits him to act as such runs as follows: "It shall be the duty of the Auditor General to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant"[30].

Certainly, the refund of a fee which properly belongs to the government is a matter which the Auditor General, in his discretion, may disallow[31] as he has correctly done in these cases.

WHEREFORE, the petitions should be, as they are, hereby DISMISSED. No costs.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[1] Rollo at 15

[2] Id. at 76

[3] Id. at 16-a

[4] Id. at 17-a

[5] Id. at 19

[6] Id. at 20

[7] Id. at 25

[8] Id. at 78

[9] Id. at 82

[10] Id. at 79-a

[11] Id. at 67

[12] Id. at 68

[13] Id. at 69

[14] Id. at 29-a

[15] Id. at 52

[16] Id. at 95

[17] Id. at 25

[18] Rep. Act No. 3127 (1961), Sec. 6

[19] Id., Sec. 7

[20] Tariff Code, Sec. 1202 (Rep. Act No. 1937 [1957])

[21] Rep. Act No. 2609 (1959), Sec. 1.

[22] G.R. No. L-24619, 26 February 1968, 22 SCRA 779, 783

[23] G.R. No. L-21881, 1 March 1968, 22 SCRA 917, 920

[24] Id., at 920-922

[25] *Lorenzo v. Posadas*, 64 Phil. 353 [1937]; *Castro v. Collector*, 6 SCRA 886 (1962); *Cebu Portland Cement Co. vs. Collector of Internal Revenue*, 25 SCRA 789 (1968)

[26] *Co v. Collector*, 100 Phil. 465 [1956]

[27] *Union Garment Co., Inc. vs. Court of Appeals*, 114 Phil. 245 [1962]; *Manila Electric Co. v. Vera*, 67 SCRA 353 (1975)

[28] Const. (1935), Art. XI, Sec. 2, Cf: Const. (1987), Art. IX (D), Sec. 2 (1) (2).

[29] Revised Adm. Code (1917), Sec. 584, as amended.

[30] Sinco, *PHILIPPINE POLITICAL LAW* (11th ed.) 403-404 (1962)

[31] "The right to allow or disallow a claim against the government or any of its branches is within the discretion of the Auditor General". Tanada and Fernando, *THE CONSTITUTION OF THE PHILIPPINES* 1191 (1953).

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