

**ALICIA O. ARCEGA, ASSISTED BY HER HUSBAND RAF. L. ARCEGA,
DOING BUSINESS UNDER THE FIRM NAME OF FAIRMONT ICE
CREAM CO.; PETITIONER, VS. THE COURT OF APPEALS, THE
CENTRAL BANK ...**

G.R. No. L-20869. August 28, 1975

Ponente: CASTRO, J.

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CASTRO, J.:

On August 17, 1956 the petitioner Alicia O. Arcega, doing business under the firm name "Fairmont Ice Cream Company," filed a complaint with the Court of First Instance of Manila, Branch I, docketed as civil case 30443, against the respondents Central Bank of the Philippines and Philippine National Bank, for the refund, under four causes of action, of the total sum of P18,030.13 representing allegedly unauthorized payments made by her in the concept of the 17% special excise tax on foreign exchange levied under Section 1 of Republic Act 601, as amended by Republic Acts 1175 and 1197.

The refund prayed for involves purchases of foreign exchange from the Philippine National Bank to cover the costs and transportation and other charges incident to the importation into the Philippines (1) under the first cause of action, of coffee roasted, vanilla, fruit cocktail, peaches, butter, and pecan nuts which were used as "flavors" for the petitioner's ice cream product; (2) under the second cause of action, of paper containers and corresponding covers, specially manufactured by her supplier Sealright Pacific, Ltd., which were utilized as containers in the manufacture and distribution of ice cream; (3) under the third cause of action, of ice cream wooden spoons individually wrapped used as accessories to or inseparable articles in the manufacture, sale and distribution in retail of ice cream; and (4) under the fourth cause of action, of machineries, equipment and spare parts which were used by the petitioner in her factory.

The Philippine National Bank moved to dismiss the complaint on the ground that it does not state a sufficient cause of action because, although the PNB is being sued as an agent of the Central Bank, there is no allegation in the complaint that it had contracted in its own name or exceeded its authority as such agent, hence, even assuming that the averments of the complaint could be established, it cannot be held liable for the amount of the special excise tax it had collected from the petitioner. The trial court denied the motion.

The Central Bank also moved to dismiss the complaint on the grounds that (1) the trial court has no jurisdiction over the subject-matter of the action, because the judgment sought will constitute a financial charge against the Government, and therefore the suit is one against the Government, which cannot prosper without its consent, and in this case no such consent has been given; (2) the complaint states no cause of action; and (3) there is a misjoinder of party defendant, for neither the Treasurer of the Philippines nor the Secretary of Finance was impleaded as party defendant, notwithstanding that either of them, representing the Government of the Philippines, is an indispensable party, not only because the foreign exchange tax collected accrued to the National Treasury, but also because, after December 31, 1955, the expiry date of the foreign exchange tax law, the

authority to order the refund of special excise taxes or to approve exemptions under the foreign exchange tax law devolved upon the Secretary of Finance.

After the filing by the petitioner of an opposition to the Central Bank's motion to dismiss, by the Central Bank of a reply thereto, and by the petitioner of a rejoinder to the Central Bank's reply, the trial court, on November 23, 1956, dismissed the complaint on the three grounds set forth in the Central Bank's motion to dismiss.

On December 12, 1956 the petitioner Arcega filed a motion for reconsideration of the resolution of November 23, 1956, to which an opposition was filed by the Central Bank. A certificate dated December 18, 1956 and signed by Jose Carmona, Chief Accountant of the Central Bank, was attached as an annex to the Central Bank's opposition, certifying "that the balance of P7,137,747.71 as of December 29, 1955 of the total amount collected as special excise tax on sales of foreign exchange was turned over to the Treasurer of the Philippines on June 20, 1956." In an order dated December 12, 1955 the court denied the petitioner's motion for reconsideration. She appealed to the Court of Appeals.

Holding that the suit is indirectly against the Republic of the Philippines which cannot be sued without its consent, the Court of Appeals affirmed the dismissal of the complaint.

The petitioner interposed the present appeal by certiorari, presenting for resolution two issues: first, whether the trial court has jurisdiction over the subject-matter of the action, or, stated differently, whether a suit against the Central Bank for refund of the 17% foreign exchange tax collected by it under Republic Act 601, as amended, is actually a suit against the State; and, second, assuming *arguendo* that the trial court has jurisdiction, whether the dismissal of the petitioner's complaint upon a motion to dismiss constitutes a denial of her constitutional right to due process of law in the sense that such dismissal deprived her of the right to present evidence to prove the truth of the essential allegations of her complaint.

1. The suability of the Central Bank for the refund of taxes collected by it under Republic Act 601, as amended, was upheld in *Central Azucarera Don Pedro vs. Central Bank of the Philippines*,^[1] which ruling merited elaboration in *Olizon vs. Central, Bank*,^[2] as follows:

"It is next urged that inasmuch as the amounts here involved have already been turned over to the national treasury the present action may no longer be maintained since it would, in effect, be a suit against the State without its consent.

"We cannot agree to the proposition. This suit is brought against the Central Bank of the Philippines, an entity authorized by its charter to sue and be sued. The consent of the State to thus be sued, therefore, has been given."

This doctrine was reiterated in *Philippine Acetylene Co. vs. Central Bank of the Philippines*^[3] where it was pointedly stated that "sec. 5 of Republic Act No. 601 (as amended) directs that refund of taxes be made by the Central Bank."

The courts below, therefore, erred in dismissing the complaint on the ground that the Central Bank was non-suable for the refund of taxes it had collected under the statute.

2. In resolving the second issue we find it needless to dwell on the alleged denial of constitutional due process.

Upon the first cause of action, the petitioner alleges that she used the coffee roasted, vanilla, fruit cocktail, peaches, butter and pecan nuts as "flavors" for her ice cream product. The respondent Central Bank, in its motion to dismiss, contended that these items are not "flavors," and that what is exempt from the 17% foreign exchange tax under Section 2 of Republic Act 601 is the importation of "flavors." The motion to dismiss, therefore, assails

the correctness of the allegation that the above named commodities were used as "flavors." It was thus improper for the court a quo to grant the motion upon the presumption that the averments in the motion are true and those of the complaint are not. The court should have either denied the motion, without prejudice to the defendant bank's right to plead, as a special defense in its answer, the very issue upon which said motion was predicated, or proceeded to the reception of evidence on the issue of fact thus raised before resolving the same.[4]

The second and third cause of action must however fall. For the importation of containers and ice cream wooden spoons to be exempt from the foreign exchange tax, these articles must be used by the importer in the manufacture or preparation of a local product and the product so manufactured or prepared must be consigned or exported abroad; here there is no allegation in the complaint that the ice cream wooden spoons and paper containers used by the petitioner in her ice cream industry and her ice cream product were consigned or exported abroad.

The fourth cause of action suffers from lack of particularity. Under Republic Act 601, as amended, the cost of importations of "machinery, equipment, accessories and spare parts for the use of industries, miners, mining enterprises, planters and farmers" was exempt from the 17% foreign exchange tax, but the complaint does not allege (a) when the corresponding letters of credit were opened, (b) the kind of "machinery, equipment, accessories and spare parts" imported by the petitioner to be used in her ice cream industry, (c) when the goods arrived, and (d) when the foreign exchange tax was paid. The proper course of action the trial court should have taken was to treat the motion to dismiss as one for a bill of particulars and consequently require the plaintiff to submit a bill of particulars.[5]

ACCORDINGLY, the judgment appealed from is set aside. Another one is hereby entered (a) dismissing the complaint as to the second and third causes of action, and (b) remanding the case to the trial court for further proceedings on the first and fourth causes of action, conformably with this decision and with law, after impleading the National Treasurer and the Secretary of Finance as parties defendants. No pronouncement as to costs.

Makalintal, C.J., Teehankee, Makasiar, and Martin, JJ., concur.

[1] 104 Phil. 598, 603 (1958).

[2] 2 L-16524, June 30, 1964, 11 SCRA 357, 362.

[3] L-17097, September 29, 1964, 12 SCRA 38, 42.

[4] Palma vs. Graciano, et al., 99 Phil. 72; Carreon vs. Province of Pampanga, et al., 99 Phil. 808.

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