

EXEQUIEL FLORO, PLAINTIFF AND APPELLEE, VS. PHILIPPINE NATIONAL BANK AND CENTRAL BANK OF THE PHILIPPINES, DEFENDANTS. CENTRAL BANK OF THE PHILIPPINES, DEFENDANT AND APPELLANT.

G.R. No. L-15206. August 30, 1962

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Upon complaint for the refund of P25,010.49 levied by the Central Bank as 17% special excise tax on dollar remittances by plaintiff-appellee in connection with certain importations from the United States, the Court of First Instance of Manila rendered judgment in his favor. The levies were made by virtue of Republic Act No. 601, approved March 28, 1951, imposing the said tax on all sales of foreign exchange.

The case was submitted upon a written stipulation of facts. On various dates between July 15, 1949 and December 11, 1950 plaintiff applied for and was granted letters of credit by the Philippine National Bank in favor of different business firms in the United States. These firms, from which plaintiff had ordered merchandise, drew the corresponding dollar drafts against the letters of credit, and the same were paid by the New York agency of the Philippine National Bank between August 18, 1949 and March 14, 1951, all before the effectivity of Republic Act No. 601. Upon arrival of each shipment of the merchandise in Manila (there were eight of them) plaintiff secured a trust receipt and paid the Philippine National Bank the full amount of the covering draft, including the excise tax of 17%. All such payments were made between April 17 and September 14, 1951.

The total sum of P25,010.49 collected as special excise tax was remitted by the Philippine National Bank to the Central Bank and subsequently credited to the "demand deposit" account therein of the Treasurer of the Philippines. On May 3, 1951 the Monetary Board of the Central Bank issued Board Resolution No. 286, interpreting section 1 of Republic Act No. 601 to the effect "that the Bank should collect the 17% special excise tax on sales of foreign exchange on the day the bill or statement is paid by the importer."

In 1955 Republic Act No. 1394 was enacted, shortening the life of Republic Act No. 601 by advancing the termination of its effectivity from June 30, 1956 to December 31, 1955. In view of the change and presumably because many importers, who had been granted letters of credit in 1955 and whose goods were already at the pier, delayed payment of their obligations by asking for extensions well into 1956, when the exchange tax law would no longer be in force, the Central Bank issued Resolution No. 2180 on December 10, 1955, stating as follows: "The exchange tax is due and collectible on or before December 31, 1955, but extended beyond December 31, 1955, covering imports under letters of credit opened on or before December 31, 1955."

In the meantime the legality of the imposition of the 17% excise tax, as implemented by Central Bank resolution No. 286, was being tested in court in several cases, namely, P.N.B. vs. Zulueta, 101 Phil., 1071; P.N.B. & Central Bank, vs. Union Books, 101 Phil, 1084; and P.N.B. vs. F. Arrozal & Co., Inc., 103 Phil., 213. On August 30, 1957 this Court decided the Zulueta and Union Books cases, holding in effect that the tax imposed by Republic Act No.

601 on the value in Philippine pesos of foreign exchange sold by the Central Bank or its authorized agents did not apply to the obligation of a drawee-acceptor to pay the Philippine National Bank the amount of a foreign draft drawn under a letter of credit granted by the bank, where the bank had remitted to its New York agency the amount the latter had paid to the drawer, and the draft had matured, before the approval of the law. The ruling was reiterated in the Arrozal case on March 28, 1958. And on the following November 29 this Court decided still another case involving the same issue, *Belman Cia, Inc. vs. Central Bank*, 104 Phil., 877; 55 Off. Gaz. [33] 6665, wherein it was stated:

"The payment of the amount in foreign currency to the creditor by the bank or its agent or correspondent is necessary to consummate the contract. Hence the date of such payment or delivery of the amount in foreign currency to the creditor determines whether such amount of foreign currency is subject to the tax imposed by the Government of the country where such letter of credit was granted."

Conceding, in the light of the decisions just cited, that the amounts of the tax collected from plaintiff-appellee were not really due because the transactions in connection with which they were imposed took place before Republic Act No. 601 took effect, defendant-appellant nevertheless raised a number of legal defenses, of which that of prescription of action is, in our judgment, decisive of this case. The parties are agreed that actions for the recovery of taxes illegally collected are subject to prescription and that since Republic Act No. 601 does not contain any provision on the point the rules in the Civil Code should be applied. The controversy lies in the determination of when the prescriptive period—whether five years under Article 1149 or six years under Article 1145—should be deemed to have begun. Appellee contends, and the contention was upheld by the court below, that the reckoning point is the promulgation of our decision in the case of *Philippine National Bank vs. Zulueta* on August 30, 1957, 101 Phil., 1071; 55 Off. Gaz. 222, because it was only then that this Court in effect overruled the Central Bank resolution of 1951, pursuant to which the tax in question was levied upon him. On the other hand, appellant argues that the prescriptive period started to run on the dates the different payments of such tax were made, because it was then that the right of action to recover accrued.

The same contentions as those here advanced have already been passed upon and resolved by this Court in the case of *Nazario & Sons vs. Central Bank*, 111 Phil., 906 where it was stated:

"The defense of prescription is the more important issue to be resolved, as the other issue could be avoided by including the National Treasurer as a principal party-defendant in the action. On this issue appellant argues that Republic Act No. 601, which imposed the 17% foreign exchange tax, was erroneously interpreted by the Monetary Board; that said act is indeed so difficult of interpretation that its application could not be definitely understood until the decision of the Court in the case of *Philippine National Bank vs. Zulueta*; that the plaintiff's cause of action accrued only upon the promulgation of said decision around August 1957, so that the presentation was actually filed within one year and four months from date of its accrual. We cannot subscribe to the above theory. If the tax is unlawfully collected, the action to recover the same should accrue from the date of collection. (Article 1150, Civil Code). The error of the Monetary Board in the interpretation of the law may not change or extend the time of the accrual of the action. Mistakes of officers in the collection of taxes cannot prejudice the Government.

"The period within which the action for refund should have been brought is that fixed in Article 1145 of the Civil Code, which provides:

"The following actions must be commenced within six years:

(1) * * *

(2) Upon a quasi-contract.' (*Belman Compania Incorporada vs. Central Bank of the Philippines*, 108 Phil., 478).

"As the tax was paid in the year 1951 and the action brought in 1958, the action is clearly barred."

The complaint in the present case was filed on August 7, 1958. That was more than six years from the dates plaintiff-appellee paid different sums now sought to be recovered, the latest of which was on September 14, 1951. This action, therefore, is already barred. The same result holds even if the period be computed only up to January 18, 1958, when plaintiff-appellee filed through the Philippine National Bank application for refund of the excise tax involved here, as it appears in the stipulation of facts submitted by the parties. Having thus resolved this point, we consider it unnecessary to pass upon the other issues raised by appellant.

The judgment appealed from is set aside and the complaint dismissed, without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

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