

**INDIAN COMMERCIAL CO., PLAINTIFF AND APPELLANT, VS.
CENTRAL BANK OF THE PHILIPPINES, DEFENDANT AND APPELLEE.***G.R. No. L-19157. June 30, 1965*

Ponente: CONCEPCION, J.

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Appeal from a decision of the Court of First Instance of Manila dismissing the complaint of plaintiff, Indian Commercial Co., with costs.

Plaintiff, a mercantile partnership duly authorized to do business in the Philippines, seeks the refund of P27,013.04, representing the aggregate sum it had paid to defendant Central Bank of the Philippines, through the latter's agent, the Bank of America (Manila), from January 9 to 23, 1956, as 17% specific tax on remittances in foreign exchange, for the importation of goods consigned to plaintiff from the United States. Plaintiff's claim is predicated upon the fact that, although the letters of credit for said remittances had been opened during the period from June 3 to November 18, 1955, while the law imposing said tax (Republic Act No. 601, as amended by Republic Act Nos. 814, 871, 1175 and 1375) was in force, the collection of said taxes was made after January 1, 1956, when the law (Republic Act No. 1394) abolishing said tax became effective.

After appropriate proceedings, the Court of First Instance of Manila rendered judgment against the plaintiff, upon the ground that the right to refund is dependent, not upon the date of payment by the plaintiff to defendant's agent bank, but upon the time at which said defendant's agent had paid the creditors abroad; that plaintiff's claim for refund refers to 13 letters of credit, twelve (12) of which (the taxes on which aggregate P22,812.45) had been actually paid by defendant's agent to the creditors abroad from October 19 to December 14, 1955, or prior to the effectivity of the Act repealing the tax in question; and that, although the 13th or last letter of credit involved in this case was paid by defendant's agent to the creditor abroad on January 5, 1956, or after the abolition of the tax in question, the defendant had always been willing to refund the tax paid by plaintiff thereon, amounting to P4,200.59, the same has not been refunded as yet to plaintiff, owing to its failure to present the pertinent documents to the defendant.

The question raised in this appeal is whether the right to a refund of the sums collected from the plaintiff in satisfaction of the aforementioned tax hinges upon the date of payment by plaintiff to defendant's agent in the Philippines of said sums, as claimed by plaintiff herein, or upon the date of payment by defendant's agent bank to the creditors abroad, as contended by the defendant. Such question has already been settled, however, by this Court in favor of defendant's pretense, in *Belman Compañia, Inc. vs. Central Bank* (104 Phil., 877), in which we held:

"An irrevocable letter of credit granted by a bank, which authorizes a creditor in a foreign country to draw upon a debtor or another and to negotiate the draft through the agent or correspondent bank or any bank in the country of the creditor, is a consummated contract, when the agent or correspondent bank or any bank in the country of the creditor pays or delivers to the latter the amount, in foreign currency, as authorized by the bank in the country of the debtor in compliance with the letter of credit granted by it. It is the date of the payment of

the amount in foreign currency to the creditor, 'v his country by the at/cut or correspondent bank of the bank in the country of the debtor that turns from executory to executed or consummated contract. It is not the date of payment by the debtor to the bank in his country of the amount of foreign exchange sold that makes the contract: executed or consummated, because the bank may grant the debtor extension of time to pay such debt. The contention of the appellee that as there was a meeting of the minds of the contracting parties as to price and object of the contract (Articles 1458 and 1475, new Civil Code) upon the approval or grant of an application for a letter of credit for an amount Payable in foreign currency, the contract was a valid and executed contract of sale of foreign exchange. True, there was such a contract in the sense that one party who has performed his part may compel the other to perform his (Article 1475, new Civil Code). Still until payment be made in foreign currency of the amount applied for in the letter of credit and approved and granted by the bank, the same is not an executed or consummated contract. 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. (Italics ours).

On May 31, 1960, this view was reiterated in *Marsman Company, Inc. vs. Central Bank* (108 Phil. 595) in the following language:

"The 17% excise tax collectible under Republic Act 601, as amended, is imposed on the foreign exchange sold or authorized to be sold by the Central Bank of the Philippines or any of its agents (Section 1, Republic Act No. 601) during the effectivity of said law. As already held by this Court (*Belman Cia, Inc. vs. Central Bank*, 104 Phil. 877; *Belman Cia, Inc. vs. Central Bank*, 108, Phil. 478; See also *PNB vs. F. Arroza & Co.*, 103 Phil. 213; *Central Bank vs. Union Books, Inc.*, 101 Phil. 1084; *PNB vs. Zulueta*, 101 Phil. 1071), the sale of foreign exchange is effected or consummated upon payment or delivery to the creditors (in whose favor the letter of credit was drawn) by the agent or correspondent bank, of the amount in foreign currency authorized by the transmitting bank to be paid or drawing under the letter of credit. The determinative factor for purposes of imposing the aforementioned 17% excise tax, therefore, is not the date of maturity of the obligation to pay for the foreign currency involved, which is extendible, but the date the foreign currency allowed under the draft is delivered to the drawee or becomes obligated or committed upon acceptance of the draft. As, admittedly, with the exception of those covered by Letters of Credit Nos. 23689 and 6938-55 (as to which refund of the excise tax collected is proper), the drafts involved herein were all accepted during the effectivity of Republic Act 601, it is clear that they are subject to the imposition of the excise tax on foreign exchange."

Finding no plausible reason to reverse or modify the doctrine thus laid down by this Court, the decision appealed from is hereby affirmed, with costs against the plaintiff. It is so ordered.

Bautista Angelo, Reyes, J.B.L., Paredes, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

Judgment affirmed.

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