

**MARSMAN AND COMPANY, INC., PLAINTIFF AND APPELLANT, VS.
CENTRAL BANK OF THE PHILIPPINES, SECRETARY OF FINANCE,
AND NATIONAL TREASURER OF THE PHILIPPINES, DEFENDANTS
AND APPELLEES.**

G.R. No. L-13946. May 31, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

On various occasions during the latter part of 1955, Marsman & Company, Inc. imported from the United States goods and merchandise amounting to P1,409,231.05, upon which the Central Bank of the Philippines collected, and said importer paid under protest, the total sum of P239,635.62 as special excise tax under Republic Act 601, as amended, on the foreign exchange utilized for said importations. The corresponding drafts drawn on the letters of credit opened by the importer in favor of its creditors in the United States in connection with said importations were paid for and liquidated by the former on various dates between January 16 and April 6, 1956. As Republic Act 601 under which the excise tax was assessed and paid, was repealed effective December 31, 1955, refund of the amount paid after that date when the law was no longer in force was demanded, and when the demand was not heeded, the present action was filed in the Court of First Instance of Manila against the Central Bank of the Philippines, the Secretary of Finance and the National Treasurer.

Sustaining defendants' contention that plaintiff's amended complaint stated no cause of action, the lower court dismissed the same, concluding that under plaintiff's averments, it was under obligation to pay the 17% excise tax. Hence, this appeal.

The facts appearing in the amended complaint and its annexes are as follows:

For the importations involved in this case, appellant Marsman & Company, Inc., opened, from February 24 to November 15, 1955, with the Philippine National Bank and the Bank of America, letters of credit in favor of its creditors and business associates in the United States. Upon said letters of credit, drafts were drawn and accepted during the period of from June 1, 1955 to December 28, 1955, except with respect to Letters of Credit No. 23689 and No. 6998-55 upon which the corresponding drafts were accepted on January 4 and 19, 1956, respectively. The different amounts in dollars covered by all these drafts, were paid and liquidated in equivalent amounts of pesos to the corresponding banks between January 16 and April 6, 1956, or after the repeal of Republic Act 601. The question now raised in the instant case is whether the Central Bank of the Philippines may still impose and collect the 17% excise tax as required under Republic Act 601, on the amounts covered by the drafts in question.

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^[1] during the effectivity of said law. As already held by this Court,^[2] the sale of foreign exchange is effected or consummated upon payment or delivery to the creditor (in whose favor the letter of credit was drawn) by the agent or corresponding bank, of the amount in foreign currency authorized by the transmitting bank to be paid or drawn 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 6990-55 (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.

Wherefore, with the modification as above indicated, the order appealed from is hereby affirmed, with costs against the plaintiff-appellant. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, JJ., concur.

Padilla, J., took no part.

Reyes, J.B.L., and Endencia, JJ., on leave, took no part.

[1] Section 1, Republic Act 601.

[2] *Belman Cia. Inc. vs. Central Bank* 104 Phil., 877; 55 Off. Gaz. (33) 6665; *Belman Cia. Inc. vs. Central Bank*, supra, p. 478. See also *PNB vs. F. ARROZAL & Co.*, 103 Phil., 213 Off. Gaz. (21) 5698; *Central Bank vs. Union Books, Inc.*, 101 Phil., 1984; *PNB vs. Zulueta*, 101 Phil., 1071; 55 Off. Gaz. (2) 222.

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