

PHILIPPINE NATIONAL BANK, ET AL., PLAINTIFFS, CENTRAL BANK OF THE PHILIPPINES, APPELLANT VS. UNION BOOKS INCORPORATED, DEFENDANT AND APPELLEE.*G.R. No. L-8490. August 30, 1957*

Ponente: FELIX, J.

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Union Books, Incorporated, is a domestic corporation with business, address at Arlegui, Quiapo, Manila. On April 15, 1950, said corporation applied for and was granted a commercial letter of credit No. 40926 by the Philippine National Bank in favor of Frank C. Rachal, Jr., of Chicago, Illinois, U.S.A., for \$15,000 (Exhibit A). Against this letter of credit, the beneficiary named therein drew a sight draft in the amount of \$13,712.94 (Exhibit B) to cover the cost of 46 cases of books, which draft was duly presented to and accepted by the Union Books, Inc., on June 16, 1950. This obligation should have matured on August 15, 1950, but as requested by the corporation, the maturity date was extended to January 12, 1951. The merchandise was thereafter released by the bank under a trust receipt (Exhibit C).

On June 14, 1950, the corporation again applied for and was granted another letter of credit, No. 41740, in favor of Frank C. Rachal, Jr., this time for \$2,650 (Exhibit E). Against this letter of credit, a sight draft for \$2,357.73 was drawn by its beneficiary to cover the cost of 16 cases of books which the corporation purchased from him (Exhibit F). That draft was duly presented to and accepted by the Union Books, Inc., on September 16, 1950, which should have matured on November 15, 1950, but an extension until February 13, 1951, was granted within which to pay said obligation. This shipment of articles was also released after the corporation had signed another trust receipt therefor (Exhibit G).

The obligations contracted by defendant Union Books, Inc., begun with the acceptance of these drafts making it liable to pay to the Philippine National Bank in the City of Manila upon their respective dates of maturity, as extended, the corresponding value thereof in Philippine pesos. However, as defendant corporation was unable to meet and settle said liabilities on the dates of their maturity, i.e., January 12 and February 13, 1951, the Philippine National Bank filed a complaint with the Court of First Instance of Manila (Civil Case No. 18151) seeking to recover, under the first cause of action, the amount of P23,520.97, the obligation allegedly due from the corporation as of October 15, 1952, including interest and other charges but exclusive of attorney's fees, plus a daily interest of P2.4826 from October 16, 1952 until fully paid; and on the second cause of action—the sum of P4,704.58, the alleged obligation of the corporation as of October 15, 1952, including interest and other charges but exclusive of attorney's fees, plus a daily interest of P0.6208 from October 16, 1952, until fully paid. Plaintiff further prayed for an amount equivalent to 10 per cent of the combined obligation which was P28,225.55, as attorney's fees, for costs, and for such other relief as the court may deem just and equitable in the premises.

After the plaintiff had submitted an itemized statement of the alleged accounts as ordered by the court, defendant Union Books, Inc., filed its answer admitting some of the averments of the complaint under the first cause of

action, but denied that it was ever liable for the payment of the 17 per cent excise tax because the letter of credit involved therein was applied for and approved a year before the effectivity of the law imposing said tax. As to the second cause of action, defendant corporation while admitting 'some of the allegations therein contended, that it had not refused to pay its obligation, the truth being that it was paying the principal obligation including interests thereon up to that date, it was, therefore, prayed that an order be issued to effect a true liquidation of the payments made by the defendant to the Philippine National Bank, that said corporation be allowed one year within which to pay its obligations, that the complaint be dismissed, and that it be granted such other relief as may be deemed just and proper under the circumstances.

On April 16, 1953, an amended complaint was filed including" the Central Bank of the Philippines as party-plaintiff for the reason that the subject matter of the action concerned foreign exchanges sold or authorized to be sold by said Bank. This amended complaint was duly admitted by the Court and after the defendant corporation had filed the corresponding answer thereto, the parties entered into a stipulation which reads as follows:

AS TO THE FIRST CAUSE OF ACTION

1. That in order to cover the purchase price of several cases of books which the defendant purchased from its supplier, Frank C. Rachal, Jr., in the United States, the defendant applied for and was granted by the plaintiff, Philippine National Bank, on April 15, 1950, Letter of Credit No. 40926 in favor of said Frank C. Radial, Jr. for \$15,000 (U.S. currency), which Letter of Credit is attached hereto and made an integral part hereof as Exhibit "A";
2. That on May 31, 1950, the beneficiary of the said Letter of Credit, Exhibit "A", Frank C. Radial, Jr. drew against said Letter of Credit, Exhibit "A", a draft for United States \$13,712.94 covering cost of 46 cases of books, which draft is attached hereto and made an integral part hereof as Exhibit "B". This draft was duly presented to and accepted by the defendant on June 16, 1950, and became due on August 15, 1950;
3. That upon the request of the defendant, the plaintiff, Philippine National Bank, released to the defendant the covering documents of the shipment of books sent by Frank C. Rachal Jr., the purchase price of which was covered by draft for United States \$13,712.94, "B", upon the defendant's signing a trust receipt which trust receipt is attached hereto and made an integral part hereof as Exhibit "C";
4. That the said draft for "United States \$13,712.94 Exhibit "B" matured and became payable on August 15, 1950, but upon request of the defendant, said maturity date was extended to January 12, 1951;
5. That the said draft has not been paid up to the present time and the amount due thereon in Philippine -pesos is P25,094.77 including accrued interest, charges, etc., as of September 18, 1953, as shown in the statement of account attached hereto and made an integral part hereof as Exhibit "D";
6. Defendant admits the amount stated on Exhibit "D" as its obligation to the Philippine National Bank except the sum of P3,080.90 representing the 17% special excise tax on the total amount due from the defendant to the, plaintiff, Philippine National Bank, as required by R. A. No. 601;
7. The defendant admits the veracity of the following Exhibits:
 - a. Exhibit "A—Central Bank", a certified true copy of the original of a letter date April 19, 1951, addressed to the Monetary Board of the Central Bank by Mr. Aurelio Periquet, President of the Chamber of Commerce of the Philippines;
 - b. Exhibit "B—Central Bank", a certified true copy of the original of the reply signed by Governor M. Cuaderno, Sr., dated May 25, 1951, and addressed to the Chamber of Commerce of the Philippines;
 - c. Exhibit "C—Central Bank", a certified true copy of the original of the memorandum of Governor M. Cuaderno, Sr., to the Monetary Board on April 28, 1951;

d. Exhibit "D—Central Bank", a certified true copy of the original of the resolution of the Monetary Board of the Central Bank of the Philippines No. 254 adopted on April 23, 1951;

e. Exhibit "E—Central Bank", another resolution of the Monetary Board of the Central Bank of the Philippines No. 286 and adopted on May 3, 1951;

ON THE SECOND CAUSE OF ACTION

1. That on June 14, 1950, the defendant again applied for and was granted Letter of Credit No. 41740 in favor of Frank C. Radial, Jr., for United States \$2,650, which Letter of Credit is attached hereto and made an integral part hereof as Exhibit "E";

2. That the beneficiary of the said Letter of Credit, Exhibit "E", Frank C. Rachal, Jr., drew a draft against said Letter of Credit for United States \$2,357.73, covering the cost of 16 cases of books which the defendant purchased from the said beneficiary, which draft is attached hereto and made an integral part hereof as Exhibit "F". Said draft was duly presented and accepted by the defendant on September 16, 1950, and matured on November 15, 1950, which maturity date, upon request of the defendant, was extended by the plaintiff to February 13, 1951;

3. That upon the request of the defendant, the plaintiff, Philippine National Bank, released to the defendant the covering documents of the shipment of books sent by Frank C. Radial, Jr., the purchase price of which was covered by draft for United States \$2,313.73, Exhibit "F", upon the defendant's signing; a trust receipt which trust receipt is attached hereto and made an integral part hereof as Exhibit "G";

4. That the total obligation of the defendant on the aforesaid draft, Exhibit "F" as of September 18, 1953, amounted in Philippine pesos to P3,857.07 including; interests, charges, etc., in accordance with statement of account attached hereto and made part hereof as Exhibit "H"; the 17 per cent exchange tax due the Central Bank on the amount of the draft in this second cause of action has already been paid by the defendant to the plaintiff, Philippine National Bank;

5. Defendant confesses judgment to the claims of the Philippine National Bank as stated in the statements of account, Exhibits "D" and "H" but contests the right of the plaintiff, Central Bank of the Philippines, to collect the 17 per cent exchange tax mentioned therein under the first cause of action.

Based on this stipulation of facts, the lower court rendered judgment on August 16, 1954, holding that taking into consideration that the liability of the Union Books, Inc., in favor of the Philippine National Bank became definite and certain upon the acceptance of the draft and the goods by said corporation in 1950, the imposition of the 17 per cent excise tax, which was imposed in 1951, would interfere with its contract with the bank and would deprive said defendant of a vested right. Defendant Union Books, Inc., was thereby condemned to pay only the sums mentioned in the statements of accounts (Exhibits D and H) which are copied hereunder:

(Exhibit "D")

STATEMENT OF ACCOUNT

UNION BOOKS INC.

IE 82120

LC 40926

AMOUNT OF DRAFT

P13,712.94

Rem. Charges

14.46

\$13,727.40

3/4 %

P27,660.71

5% int. 5-31-50 to 8-24-50, 85 days

322.08

1/2 % commission

138.15

Airmail

2.00

P28.122.94

Loss: Part payment 8-24-50

10,000.00

P18,122.94

5% int. 8-22-50 to 4-15-53, 967 days

2,400.67

8 1/4 % comm. on balance

1,495.14

17% exchange tax on P18,122.94

3,080.90

P25,099.66

Less: Vart payments

P500.00

355.01

865.01

P24,244.64

5% int. on P25,099.65 from 4-15-53 to 9-18-58, 156 days

536.38

1 1/4% commission on P25,099.65

313.75

Net due on 9-18-53

P25.094.77

STATEMENT OF ACCOUNT
as of September 18, 1953

(Exhibit "H")

AMOUNT OF DRAFT

\$2,357.73

Remitters charges

3.25

\$2,360.98

at 3/4% prl

P4.757.37

5% int. 8-14-60 to 5-1-52, 626 days

407.96

Commission on draft 5%

237.65

17% excise tax

808.75

Airmail

2.00

P6,213.63

Less: Part payments:

8-2-51

P500.00

9-4-61

P500.00

2-16-51

181.94

4-29-52

500.00

P1,681.94

P4,531 .69

5% int. 4-29-52 to 10-1-52, 155 days

96.22

Commission on balance 1 1/4%

56.65

P4,684.56

Less: Part payment 10-1-52

200.00

P4,484.56

5% int. 10-1-52 to 10-17-52, 16 days

9.83

Commission on balance 1/4%

11.21

P4,505.60

Less: Part payment 10-17-52

200.00

P4,505.50

5% int. 10-17-52 to 11-24-52, 7 days

4.13

P4,309.73

Less: Part payment 11-24-53

509.73

P3,800.00

5% int. 11-24-52 to 2-25-53

48.41

Commission on balance

38.00

P3,886.41

5% int. 2-26-53 to 4-15-53, 18 days

9.09

Commission on balance 1/4 %

18.43

P3,713.03

5% int. from 1-16-53 to 9-18-53, 156 days

78.93

Commission on balance P3,686.41, 1 1/4%

16.08

5% int. on P4,305.60 FOR 31 days

11-24-62

10-17-62

38 days.

18.28

Total due 9-18-53

P3,857.07

Daily interest: P0.505

The motion to reconsider said decision, filed by the Central Bank of the Philippines, having been denied, said plaintiff brought the matter to this Court on appeal. The interrelated issues raised by appellant can be boiled down to the following: Was there any sale of foreign exchange in the case at bar and, if so, could the 17% special excise tax be imposed upon drafts like Exhibits D and H executed and accepted before the effectivity of Republic Act No. 601?

The stipulation of facts shows that Union Books, Inc., was able to secure two letters of credit, Nos. 40926 for \$15,000.00 on April 15, 1950, and No. 41740 for \$2,650.00 on June 14, 1950. It also appears on record that defendant appellee on several occasions made partial payments on the first draft amounting to P10,855.01 and the total sum of P2,691.67 on the second draft (Exhs. D and H), and it is not denied that at the time Republic Act No. 601 imposing the 17% excise tax on foreign exchange was approved on March 28, 1951, the Philippine National Bank had already paid Prank C. Rachal, Jr., of Chicago, Illinois, U. S. A., through the South Shore National Bank of Chicago the import of said drafts, (Exhs. B and E), chargeable against the letters of credit (Exhs. A and E) and, consequently, does not have to pay them again to the beneficiary of said drafts, although defendant-appellee still have pending obligations with the Philippine National Bank in connection "with said transactions.

The controversy, however, arose when the Governor of the Central Bank of the Philippines, in answer to a letter of the President of the Chamber of Commerce of the Philippines, opined that "sales of exchange takes place neither on the establishment of the letters of credit, nor on the negotiations by the correspondent banks of drafts drawn against such letters of credit, but upon payment by the importer of said drafts", and that "until such payment is effected no sale of foreign exchange takes place" (Exh. B—Central Bank). This view obtained the full support of the Monetary Board when in its meeting of May 3, 1953, it unanimously adopted the policy that the 17% special excise tax on sales of foreign exchange should be collected on the day the bill or statement is paid by the importer (Exh. E—Central Bank). As a consequence thereof, the statements of accounts sent to defendant included the amounts of P3,080.90 as the 17% exchange tax on the first draft and P808.75 on the second draft. This imposition was ruled by the lower court as improper for it would be an impairment of an existing obligation and would deprive said defendant of a vested right.

Alleging that a letter of credit is not a contract of sale but a contract of loan, appellant maintained that it is only at the time that the draft drawn under said letter of credit is actually paid by the importer to the accommodating bank (Philippine National Bank) that the foreign exchange is sold. It is the Bank's assertion that neither the establishment of the letter of credit nor the negotiation by the correspondent Bank of the draft drawn against said letter of credit, or the release of the goods under trust receipt that the sale of foreign exchange show that the sale of foreign exchange has taken place, for although the goods had been released, until the accepted draft is fully liquidated and paid, title to the goods or proceeds thereof remains with the bank opening the letter of credit.

The drafts in the case at bar are foreign bills of exchange drawn in Chicago, Illinois, and payable in the Philippines by the corporation against whose credit they were charged. As such negotiable instruments, when the drafts (Exhs. B and F) were unconditionally accepted by defendant as drawee, the latter became primarily liable thereon for their respective values (Sec. 62, Negotiable Instruments Law; *Union Guaranty Co. vs. Jing Kee & Co.*, 44 Phil. 533). The liabilities of the defendant corporation, therefore, became fixed and liquidated in favor of the bank on June 16, 1950, for the first draft and on September 16, 1950, on the second, although they were collectible on the respective dates they were to become due. But before said corporation was able to settle these obligations fully, in the interim, Republic Act No. 601 was enacted which prescribes:

"SECTION 1. Except as herein otherwise provided, there shall be assessed, collected and paid a special excise tax of seventeen per centum: (17%) on the value in Philippine peso of foreign exchange sold and/or authorized to be sold by the Central Bank of the Philippines or any of its agents during the period of two years counted from the date of the approval of this Act."

As provided by Section 7 thereof, the Monetary Board of the Central Bank of the Philippines in enforcing said special excise tax, laid down the policy of charging 17% thereof on all foreign exchanges not yet paid 'at the time said law was approved, without distinction as to whether the obligation matured before or after the effectivity of that measure.

As defendant Union Books, Inc., agreed to the condition that:

"1. For sight draft (s) drawn under or purporting to be drawn under the Credit: to pay on demand in Philippine legal currency, THE EQUIVALENT OF THE AMOUNT (s) OF SUCH DRAFT (S) AT THE RATE OF EXCHANGE YOU MAY FIX."

when it applied for those two commercial letters of credit, appellant Bank now claims that since a foreign exchange is only considered sold or liquidated after it is fully paid, and as defendant admittedly has not yet satisfied its afore-mentioned obligations, said remaining liabilities become subject to the imposition of this tax.

Due to bad financial situation, defendant Union Books, Inc., failed to pay its attorney of record the necessary fees for his professional services so this case was submitted for decision without appellee's brief. From the pleadings and records on hand, We find that there is no question that defendant Union Books, Inc., is bound to pay to the Philippine National Bank the equivalent of \$13,712.94 and \$2,357.73 drawn by Frank C. Rachal, Jr. under the drafts Exhibits B and F after deducting the part payments made by said corporation, in Philippine pesos.

We will now proceed to consider the only question at issue in this case, which has been propounded in preceding pages, to wit: Was there a sale of foreign exchange in the case at bar and, if so, could the 17% special excise tax be imposed upon drafts Exhibits B and F, duly executed and accepted before the effectivity of Republic Act No. 601?

This Court already made a ruling on this point when in the case of the Philippine National Bank vs. Jose C. Zulueta (*supra*, p. 1071), it was said:

"There are decisions in America to the effect that, 'the rate of exchange in effect at the time the bill should have been paid' controls. (11 C. J. S. p. 264,)

"Such decisions agree with the provisions of the Bills of Exchange Act of England and could be taken as enunciating the correct principle, inasmuch as our Negotiable Instruments Law practically copies the American Uniform Negotiable Instruments Law, which in turn was based largely on the Bills of Exchange Act of England of 1882. In fact we practically followed this rule in *Westminster Bank vs. K. Nassoor*, 58 Phil. 855.

* * * * *

"Now then, Zulueta's obligation having been incurred before the creation of the 17% tax, it may not be validly burdened with such tax, because the law imposing it could not be deemed to have impaired obligations already existing at the time of its approval".

In the case at bar, defendant was similarly situated, its obligations having been incurred and had matured before the enactment of the law, and, therefore, must also be exonerated from the liabilities imposed thereon. But appellant argued that to allow such exemption would defeat the purpose of that law for the proponents of the measure intended this impost to cover all obligations not yet fully paid at the time of the enactment. The same discussions on the then proposed measure appearing in the Congressional Records also contain the following:

"Mr. ZOSA. The gentleman from Tarlac is proposing an amendment which would make this Act applicable to the sale of foreign exchange from the date of its approval, is that the idea?

"Mr. ROY. Right.

"Mr. ZOSA. Now, take the case of a license to import a certain article which was issued before the approval of this Act. Does that case fall within the purview of the amendment proposed by the gentleman from Tarlac, so that the tax which is sought to be collected under this measure may not be collected therefrom?

"Mr. ROY. The proposed measure, if approved, will not cover foreign exchanges that have been sold by the Central Bank prior to the approval of this Act or prior to the signing of this Act by the Chief Executive." (Congressional Record, Vol. I, No. 8, p. 1095).

and the statements quoted by appellant in its brief refer to articles the import license of which was issued before the approval of the Act. Certainly, the import license which only carries with it the authority to buy foreign exchange and the foreign exchange itself are two different things.

We may agree with appellant Central Bank that the transactions entered into between the Philippine National Bank and the defendant Union Books, Inc., present the characteristics of contracts of loan, but in the case at bar, We cannot subscribe to appellant's assertion that it is only at the time that the drafts were actually paid by the importer to the accommodating Bank (Philippine National Bank), that the foreign exchange is sold, because we find that in the instant case there was no sale of foreign currency as defendant corporation never bound itself to purchase any foreign currency to settle the obligations it contracted with the Philippine National Bank which were only to pay in the City of Manila, at the time of maturity of said drafts (Exhs. D and H) and at a time when Republic Act No. 601 was not yet in force, the equivalent in Philippine pesos of the amounts involved in said 2 drafts, a liability which did not require from said defendant to purchase any foreign currency. In his concurring opinion in said case of Philippine National Bank vs. Zulueta, (supra, p. 1071) the writer of this decision already stated:

"The obligation contracted by the defendant was not to pay \$14,419.15 in dollars, but the equivalent of 14,419.15 dollars in Philippine currency. So when defendant's obligation matured on October 4, 1949, (before the enactment of Republic Act No. 601), the defendant had to pay to the Bank not the sum of \$14,467.15 representing the face value of the draft Exhibit A, plus \$18.06 and 1/8 of 1% commission, but its equivalent in pesos at the time of such maturity, and had the defendant failed to satisfy then his obligation, he could be liable to pay in addition thereof, the corresponding interest for the period of default and nothing else".

Wherefore, and in the light of the foregoing considerations, the decision appealed from is hereby affirmed, with the understanding that the defendant corporation is also sentenced to pay the Philippine National Bank, the corresponding interests on the amounts due by the Union Books, Inc., at the time of the maturity of the drafts, Exhibits B and F, for the whole period of default in the payment of the same. Without pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, and Bautista Angelo, JJ., concur.

REYES, A., J.:

I concur for the reasons stated in my concurring opinion in G. R. No. L-7271 Philippine National Bank vs. Jose C. Zulueta supra, p. 1071.

D I S S E N T I N G

REYES, J. B. L., J.,

For the reasons already expressed in the dissenting opinion to Philippine National Bank vs. Zulueta, supra, p. 1071, I am constrained to differ from the majority opinion in this case. It is only necessary to add that, according to the majority opinion itself (p.10), the appellee Union Books, Inc., agreed to pay on demand in Philippine legal currency, the equivalent amount of the drafts "at the rate of exchange you (i. e., the Bank) may fix". If that is the agreement, then the Bank had the right to charge the exchange tax, since in reality its imposition represents an alteration of the exchange rate between the dollar and the peso, as pointed out in the dissent to Bank vs. Zulueta, supra.

Endencia and Labrador, JJ., concur.

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