

**CENTRAL AZUCARERA DON PEDRO, PLAINTIFF AND APPELLEE, VS.
CENTRAL BANK OF THE PHILIPPINES, DEFENDANT AND APPELLANT.***G. R. No. L-7731. September 29, 1958*

Ponente: PADILLA, J.

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On 30 May 1951, the Central Azucarera Don Pedro, hereafter named Sugar Central, imported from Calcutta, India, 325 bales of Hessian (Fiji) cloth measuring 325,000 yards, made into 304,525 bags, for which it purchased from the Chartered Bank of India, Australia & China, the agent of the Central Bank, and remitted to Calcutta, India, foreign exchange in the sum of \$196,625, United States currency. All the bags containing centrifugal sugar produced or manufactured by the Sugar Central were exported to the United States for its account and for the account of its planters. In July 1951, the Sugar Central imported from the same country 200 bales of the same kind of cloth measuring 199,199 yards, made into 187,400 bags, for which it purchased from the same agent bank of the Central Bank and remitted to Calcutta, India, foreign exchange in the sum of \$119,099.42, United States currency. Of 187,400 bags 155,852 bags containing centrifugal sugar produced or manufactured by the Sugar Central were exported to the United States for its account and for that of its planters. The Central Bank assessed and the Sugar Central paid 17 % special excise tax on the foreign exchange it purchased amounting to P67,353.89 on the first importation and to P40,797.50 on the second. On 23 April 1952 the latter asked the former to refund the sum of P67,353.89. This was denied as well as a petition for reconsideration of the denial. In view thereof, the Sugar Central did not file a formal petition for the refund of the sum of P33,929.42, the excise tax on 155,852 bags containing the centrifugal sugar that, as stated above, were exported to the United States. Instead it brought suit in the Court of First Instance of Manila to recover from or to compel the Central Bank to refund to it the sums it paid as excise tax on the two importations of Hessian (Fiji) cloth.

The foregoing are substantially the facts agreed upon by the parties in a stipulation submitted to the Court. Upon such stipulation the Court rendered judgment denying the defendant's motion to dismiss and—

* * * ordering defendant The Central Bank of the Philippines to refund to plaintiff Central Azucarera Don Pedro the sum of sixty-seven thousand three hundred fifty three pesos and eighty nine centavos (P67,353.89) on its first cause of action, and the sum of thirty-three thousand nine hundred twenty-nine pesos and forty two centavos (P33.929.42) on its second cause of action..

The defendant has appealed.

At the time of the importation of the Hessian (Fiji) cloth in question, section 3, Republic Act No. 601,[1] was the law in force. It provided:

The tax collected on foreign exchange used for the payment of the cost, transportation and/or other charges incident to importation into the Philippines of articles or containers used by the importer himself in the manufacture or preparation of local products for consignment or export abroad shall likewise be refunded upon satisfactory proof under said rules and regulations that said imported articles or containers were actually used in the manufacture or preparation of such local products, forming part thereof, and that said local products

have been actually exported.

Under the aforequoted provision of law, a manufacturer seeking a refund of the 17% special excise "tax collected on foreign exchange used for the payment of the cost, transportation and/or other charges incident to transportation into the Philippines of articles or containers used by the importer in the manufacture or preparation of local products for consignment or export abroad" must show (1) that the articles or containers were imported into the Philippines by the importer-manufacturer; (2) that the articles or containers were used by the importer in the manufacture or preparation of local products; (3) that the local products manufactured or prepared must have been actually consigned or exported abroad; (4) that the imported articles or containers actually «used by the importer-manufacturer form part of the manufactured products; (5) that the foreign exchange purchased, upon which the special excise tax was assessed and paid by the importer-manufacturer, was to defray the cost, transportation and/or other charges incident to importation into the Philippines of the articles or containers used; and (6) that the importer-manufacturer had actually paid the 17% special excise tax assessed or imposed.

Whether the provisions of Republic Act No. 601, the law in force at the time of the importations made by the Sugar Central, was enacted to raise revenue, as contended by the appellant, or to conserve or protect our dollar reserve, or both, as held by the trial court, the intent of the Congress or the purpose of the law is not determinative of the issue involved in the case, if the law itself makes an exception to the general rule imposing the special excise tax. Hence the question to determine is whether under the provisions of section 3, Republic Act No. 601, the Hessian (Fiji) cloth, upon which a special excise tax was assessed and imposed, when converted into bags to contain centrifugal sugar exported to the United States, comes under the exception to the general intent and purpose of the law. If the imported Hessian (Fiji) cloths in question were not containers because cutting and sewing were to be done to convert them into bags, then the same could be deemed as articles used by the importer in the manufacture or preparation of the centrifugal sugar to be exported abroad, as Jong as said articles "formed part" of the centrifugal sugar which was actually exported. Even if the imported Hessian (Fiji) cloths were not used by the importer in the manufacture of the centrifugal sugar, yet it was used in the preparation of such sugar for consignment or export abroad. The term "forming part thereof" does not mean that the imported article should be merged into the local product by mechanical process, or physically or materially mixed, or chemically combined, so as to lose its identity. It means that the imported article is needed to accomplish the export abroad of the product locally manufactured. Until bottoms are built or space or room is provided in ocean-going ships to carry in bulk the sugar to be exported, the bags of whatever fiber used to contain the centrifugal sugar forms part of the centrifugal sugar locally manufactured to be consigned or shipped abroad.

On the failure of the appellee to exhaust administrative remedies to secure the refund of the special excise tax on the second importation sought to be recovered, we are of the same opinion as the trial court that it would have been an idle ceremony to make a demand on the administrative officer and after denial thereof to appeal to the Monetary Board of the Central Bank after the refund of the first excise tax had been denied.

We also agree with the trial court that, being a corporation^[1] that may sue and be sued,^[2]^[2]the Central Bank is the proper party defendant pursuant to section 5 of Republic Act No. 601, which provides that " * * * The refund of taxes pursuant to sections two and three of this Act shall be made by the Central Bank of the Philippines.

The judgment appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

[1] Repealed by Republic Act No. 814 on 14 July 1952.

[1]Section 1, Republic Act No. 265.

[2]Section 4, *ibid.*; Santos vs. Santos, 48 Off. Gaz., 4815, 4817 92 Phil., 281

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