

VICTORIAS MILLING CO., INC., PLAINTIFF AND APPELLEE, VS. CENTRAL BANK OF THE PHILIPPINES, DEFENDANT AND APPELLANT.

G. R. No. L-17798. March 31, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from a decision of the Court of First Instance of Manila ordering the defendant-appellant Central Bank to refund to the plaintiff-appellee the sum of P194,058.62, with 6% interest per annum from the date of filing of the complaint.

The parties to this suit do not dispute the facts. The appellee imported from abroad a number of bales of Fiji cloth and subsequently made sugar bags or containers out of them. For the transaction, it secured from the appellant Bank the corresponding foreign exchange and for which the Bank collected a 17% special excise tax on the authority of Section 1, Republic Act No. 601, as originally enacted, which provided:

"SECTION I. 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 the 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."

Of the sugar bags made from the imported Fiji cloth, some were exported abroad as containers of sugar manufactured by the appellee during the periods recited in the complaint. Accordingly, the appellee demanded from the appellant Bank the refund of the excise tax corresponding to the sugar bags used for the export, pursuant to the provision of Section 3 of the same Republic Act, to wit:

"SECTION 3. 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 container⁹ 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."

The appellant does not deny that the bags for which the refund is demanded were actually used and exports by the appellee. Nevertheless, however, it rejects most of the claims for refund on the ground that the appellee's right to demand the same had already prescribed. It insists that of the total claim "for P194,058.62, the amount of P151,756.06 is no longer refundable by reason of prescription."

The principal issue to be resolved in this case is, therefore, the prescriptive period for claims for refund under Section 3 of Republic Act No. 601 as originally enacted.[1] The defendant-appellant invokes this Court's ruling in the case of *Belman Cia Inc. vs. Central Bank*, G.R. No. L-15044, May 30, 1960 and the Resolution on the motion for reconsideration filed therefor, and maintains that the prescriptive period is six years. On the other hand, plaintiff-appellee contends that the ruling in the case cited is inapplicable to the present suit and that the

prescriptive period applicable is ten years.

The appellee is correct.

For a clear understanding of what We said in the case of *Belman vs. Central Bank*, supra, on the two occasions that it came for our consideration, We are reproducing hereunder the points thereon germane to the controversy under review.

On May 30, 1960, in the main decision for that case, We said:

"Defendant's collection of the Exchange Tax on April 20, 1951 and May 26, 1951, when plaintiff paid its obligations under Credits Nos. 43729 and 41347 is erroneous and without any legal basis because the plaintiff on these dates did not purchase any foreign exchange from the Central Bank but merely liquidated its existing accounts under the Credits. The sale of foreign exchange in the Present case took place at the moment when the applications for Letters of Credit were approved and given due course, that is, on May 29, 1950 and January 2, 1951, at which time, Republic Act No. 601 imposing a tax on the sale of Foreign Exchange was not, as yet, in existence. (Underlying supplied.)

x x x x x x

"Defendant-appellant urges in this appeal that the lower court erred in not dismissing plaintiff-appellee's complaint on the ground that it has prescribed.

"The contention is correct. It is to be noted that the excise tax law (Rep. Act No. 601) contains no provision regarding the period within which a taxpayer must bring his action to recover an excise tax erroneously or illegally collected. Accordingly, Articles 18 and 1149 of the New Civil Code, should be applied in order to determine the said period. x x x x ." (Underlying supplied.)

And, on the basis of the provisions of the said Civil Code provisions, We ruled that the period of prescription was five years.

On July 14, 1960, however, We modified the above holding in resolving the motion for reconsideration filed therefor. So far as relevant, We then said:

"Plaintiff-appellee has filed a motion for reconsideration urging that his action was still timely because, it is argued, the period of prescription applicable to the case is ten (10) years from date of payment. To support this contention, Article 1144, paragraph (2) is cited, which provides:

"Article 1145.—The following actions must be brought within ten years from the time the right of action accrues:

'(1) x x x;

'(2) Upon an obligation created by law;"

Since, it is claimed, the payment here was made by reason of a mistake in the interpretation of Republic Act 601, the obligation to return arises by virtue of Article 2155, in relation to Article 2154 of the New Civil Code and is, therefore, one created by law.

"Movant-appellee is partly correct. However, Articles 2154 and 2155 relied upon, specifically refer to obligations of the nature of solutio indebiti which are expressly classified as quasi-contracts under Section 2, Chapter 1 of Title VII of the New Civil Code Consequently, the law regarding prescription applicable to the action herein involved is not Article 1144-(2) cited by movant, but Article 1145(2) of the New Civil Code providing:

"Article 1145.—The following actions must be commenced within six years:

- (1) x x x;
- (2) Upon a quasi-contract."

That was how We arrived at the 6-year prescripts period in the Belman case.

Clearly, then, what We ruled on in the Belman case was not the prescriptive period applicable to Republic Act No. 601, but rather, the prescriptive period for claims arising from an erroneous application of the said law. Our ruling was that since the application of Republic Act No. 601 was erroneous, the collection made thereunder was illegal, and, pursuing the reasoning to its logical termination, since the collection was illegal, the obligation to return or refund the same would be in the nature of solutio indebiti, which* by the Civil Code, prescribes in 6 years.

The above observations, however, are not in point to the case at bar. For the case on hand involves not an illegal collection, but on the contrary, a proper and authorized collection. The plaintiff herein demands the refund not on the principle and consequences of solution indebiti, but, on the authority of a positive provision of law, Section 3, Republic Act No. 601. Doubtless, therefore, as the Central Bank is truly obliged to make the refund, the obligation is a creation of law and not of the rules on quasi contract. Consequently, reference must be made to Article 1144 of the New Civil Code for the applicable prescriptive period. Under this last mentioned Article, the period is ten years.

Upon the appellant's own computation and on the basis of which it argued prescription, the longest period that has elapsed in respect of the various claims for refund by the plaintiff-appellee is 7 years, nine months and twelve days. Obviously, therefore, on our holding here that the right under Section 3 prescribes in ten years, none of appellee's claim for refund has prescribed.

Upon the appellant's own computation, the prescriptive Periods that have elapsed with respect to the several causes of action in this suit, based on the date of payment of the foreign exchange and not from the date of exportation, the following:

First cause of Action:

Item A--4 years, 3 months and 28 days

Item B--7 years, 4 months and 7 days

Second Cause of Action:

Item A--4 years, 8 months and 28 days

Item B--7 years, 3 months

Third Cause of Action:

Item A--4 years, 1 month and 27 days

Item B--7 years, 1 month and 28 days

Fourth cause of action:

Item A--7 years, 9 months and 12 days

Item B--7 years, 9 months and 12 days

Fifth cause of Action:

Item A--7 years and 15 days

Item B--7 years and 24 days

Sixth cause of action:

Item A—7 years and 14 days

Seventh cause of action:

Item A—7 years and 12 days

Item B—7 years and 15 days

Eight cause of action:

Item A—6 years, 7 months and 14 days

Ninth cause of action:

Item A—5 years, 2 months and 8 days

In connection with the foregoing, the Court notices that the appellant Bank counted the prescriptive period from the date of payment or collection to the date of the filing of the claim for refund. In this too, We cannot agree. Section 3 of the law under consideration plainly authorizes refund only upon the exportation of the containers. Therefore, the period must be counted from such exportation date as it is only then that the right to refund accrues and prescription should be counted from the time the right of action accrues.

If, therefore, the appellee's right to refund could not have been lost by prescription even if the same had been counted from the date of payment of the foreign exchange, with more reason could it not have expired if the period were counted from the date of exportation as We here rule. For in all the instances material to this suit, the actual date of exportation were always subsequent to the date of payment.

Finally, the appellant contends that the lower court should not have ordered it to make the refund inasmuch as it has already turned over to the National Treasurer the proceeds from the, tax collected. The appellant maintains that after the collections have been turned over to the National Treasurer, it could no longer be liable and the action for refund "should be brought against the entity into whose hands the tax has been delivered."

The last contention is barren of merit. We have already decided in the case of *Central Azucarera de Don Pedro vs. Central Bank*, 104 Phil. 598 that suits under Section 3 of Republic Act No. 601 may be instituted against the Central Bank alone without the necessity of bringing in the National Treasurer since the latter is not an indispensable party. Furthermore, Section 5 of the same Act, which provides:

"SEC. 5. The tax imposed under section one hereof shall be paid to the Central Bank of the Philippines by the purchaser of the foreign exchange, and the Central Bank of the Philippines and/or its agents shall not sell any foreign exchange without the Payment of the said tax. The refund of taxes pursuant to see-irons two and three of this Act shall be made by the Central Hank of the Philippines. The monies collected shall accrue to the General Fund in the National Treasury. (Underlying supplied.)

leaves no room whatsoever for argument on the point raised by the appellant.

FOR ALL THE FOREGOING, judgment is hereby rendered affirming in full the decision appealed from. The prescriptive period applicable to the case at bar is ten years and tile Central Bank is hereby ordered to render the refund. Costs against the appellant.

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

[1]There were subsequent amendments to R.A. No.601 but they need not be considered here because all the events and transactions involved in the present suit occurred when R.A. No. 601 was the effective legislation.

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