

REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. PACIFIC EXCHANGE CORPORATION, DEFENDANT-APPELLEE.

G.R. No. L-22735. October 30, 1975

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Appeal taken by the plaintiff from the decision of the Court of First Instance of Manila ordering the defendant to pay the plaintiff the sum of P21,408.61, representing the 17% special excise tax on foreign exchange earned by defendant's branch offices abroad.

The defendant Pacific Exchange Corporation is a domestic corporation engaged in the indent order business and in the importation and exportation of merchandise. To secure the best prices, the defendant maintained branch offices in New York City, City of San Francisco, U.S.A., Tokyo, Japan, and London, England. These branch offices earned foreign exchange in the form of US dollars by overpricing, that is, said branch offices buy and ship goods to local customers in the Philippines secured by and placed with the Manila office of the defendant corporation on drafts drawn to the extent of letters of credit established by customers based on invoices which include profits and/or commissions. During the effectivity of Republic Act No. 601,[1] or from March 28, 1951 to December 31, 1954, the said branch offices of the defendant corporation earned from their business transactions foreign exchange in the sums of US \$208,325.87, which converted at the prevailing rate of P2.015 to a dollar, amounted to P419,776.63. These said earnings of foreign exchange were not remitted to the Central Bank of the Philippines either by the defendant corporation or its branch offices because they were utilized abroad by the defendant and its branch offices without the prior authority of the Central Bank of the Philippines.[2]

On September 6, 1955, the Exchange Control Department of the Central Bank of the Philippines demanded of the defendant the payment of the amount of P70,830.80, representing the 17% foreign exchange tax on its dollar earnings abroad totalling US \$208,325.87, or P416,651.75, converted at the rate of P2.00 to the dollar.[3] The demand was reiterated by the Central Bank in a letter dated December 5, 1955 requiring payment of the sum of P71,362.03, consisting of the amount of P70,830.80, as computed in its letter of September 5, 1955 and the amount of P531.32, representing the difference in computation at the then prevailing rate of P2.015 to \$1.00.[4]

In a letter dated December 15, 1955, the defendant denied liability for the payment of the 17% special excise tax for the reason that it had spent and used all its earnings and collections abroad for the normal business expense incurred by its overseas branch offices which earned those amounts.[5]

On February 1, 1956, the Exchange Control Department again wrote the defendant corporation denying the reasons of defendant corporation and reiterating its demand for the payment of P71,362.03.[6] Whereupon, the defendant corporation appealed to the Chairman of the Monetary Board[7] who, subsequently, advised the defendant corporation that the demand of the Exchange Control Department of the Central Bank for the payment of P71,362.03 was in order.[8]

The defendant corporation sought a reconsideration of this decision,[9] but the Secretary of Finance, as Chairman

of the Monetary Board, denied the same on February 27, 1959.[10]

On September 8, 1960, the office of Exchange Tax Administration advised the defendant corporation to settle its tax liability without further delay, inviting its attention to the decision of the Secretary of Finance dated October 14, 1958, November 14, 1958, and February 27, 1959.[11]

Still, the defendant failed to pay the amount demanded, such that the Monetary Board in its Resolution No. 1671, dated October 18, 1960, cancelled defendant's dollar quota allocation for imports,[12] and on February 20, 1962, instituted the present case demanding payment of the sum of P71,362.03.

After trial, on February 31, 1964, judgment was rendered ordering the defendant to pay the amount of P21,408.61, representing the 17% special excise tax due on 30% of the foreign exchange earnings of the defendant. The other 70% was not considered subject to tax for the reason that said amount was expended for the normal business operation of defendant's overseas branch offices. Hence, the instant appeal.

The plaintiff-appellant contends that the defendant corporation should be made to pay the sum of P71,362.03, representing the 17% special excise tax on the entire amount of P419,776.63 for the reason that the stipulated dollar earnings of US \$208,325.87 are not gross receipts but net profits, and that normal business expenses are also subject to the special excise tax.

The appellant's claim is predicated on the provisions of par. 4(a) of Circular No. 20 which reads as follows:

"Sec. 4(a). All receipts of foreign exchange shall be sold daily to the Central Bank by those authorized to deal in exchange. All receipts of foreign exchange by person, firm, partnership, association, branch office, agency, company or other unincorporated body or corporation shall be sold to the authorized agents of the Central Bank by the recipients within one business day following the receipt of such foreign exchange. Any person, firm, partnership, association, branch office, agency company or other unincorporated body or corporation, residing or located within the Philippines, who acquires foreign exchange on and after the date of this Circular Foreign Exchange shall not, unless licensed by the Central Bank, dispose of such foreign exchange in whole or in part, nor more or less than its full value, nor delay taking ownership thereof except as such delay is customary; provided, further that within one day upon taking ownership, or receiving payment, of foreign exchange the aforementioned persons and entities shall sell such foreign exchange to designated agents of the Central Bank."

From the foregoing, there is no doubt that the defendant corporation was under obligation to surrender or sell to the Central Bank its dollar earnings abroad within one day after their acquisition or receipt. In the instant case, the defendant corporation did not surrender nor sell its dollar earnings to the Central Bank within one day after their acquisition or receipt. Instead the money was utilized by the defendant corporation and its branch offices without the proper authority of the Central Bank. Having utilized the dollar earnings of the branch offices abroad, amounting to \$208,325.67, which utilization is equivalent to a sale of foreign exchange,[13] defendant corporation is, therefore, liable to pay therein the 17% special excise tax imposed by Republic Act No. 601.

The defendant corporation, however, claimed that all its earnings in foreign exchange were spent by the defendant corporation for the operation and maintenance of its overseas branch offices which earned said foreign exchange such that they were disbursed for and as "normal business expenses" which are deductible under the provisions of Sec. 2(h) of Central Bank Circular No. 42.[14]

But, applications for maintenance expenses of the overseas branch offices of corporations doing business in the Philippines are governed by the following regulation:

"IV. REMITTANCES FOR MAINTENANCE OF BRANCH OFFICES.

Remittances for the maintenance of branch offices abroad are allowed at the rate of 60 per cent of the legitimate maintenance expenses of the branch office concerned during 1949 as certified to by an independent certified public accountant.

"The applicant is required to inform the Authorized Agent of the numbers of the previous applications licensed for the same purpose and to submit financial statements of the branch offices abroad during the next preceding year as certified by an independent certified public accountant, certified true copies of income tax returns for the next preceding taxable year of the personnel of the branch office concerned and evidenced of payment of taxes by the branch office to the Government where such branch office is doing business." [15]

Under this obligation, defendant corporation was required to apply for dollar licenses for the maintenance of its branch office and the defendant corporation did, in fact, apply for and was granted dollar licenses in the total amount of US \$109,129.11 for maintenance expenses of its overseas branch offices. [16]

It cannot be said, therefore, that the stipulated earnings of its overseas branch offices in the total sum of US \$208,325.87 are still subject to a deduction for maintenance expenses.

Besides, as pointed out by the Solicitor General, it is admitted by the defendant that from March 28, 1951 to December 31, 1954, its branch offices "earned from their business transaction foreign exchange in the sum of \$208,325.87" consisting of "profits and/or commissions realized by said branch offices of defendant corporation". [17] Since the earnings consist of profits and/or commissions stipulated, it is clear that the said earnings of US \$208,325.87 are not gross receipts but net receipts.

At any rate, the Monetary Board, in its Resolution No. 1924, interpreting Section 2 (h) of Central Bank Circular No. 42, rules that the utilization of indenter's commissions and/or earning to cover normal business expenses of their overseas branch offices, agents or representatives are subject to the payment of the 17% exchange tax. [18]

WHEREFORE, the decision appealed from should be, as it is hereby modified, ordering the defendant Pacific Exchange Corporation to pay the plaintiff the amount of P71,362.03, instead of P21,408.61, and affirmed in all other respects, with costs against the said defendant.

Barredo, (Acting Chairman), Antonio, Aquino, and Martin, JJ., concur.

[1] The 17% foreign exchange tax law which took effect on March 28, 1951 and was repealed by Republic Act No. 1394 on December 31, 1955.

[2] pars. 2, 3, 4, and 5, Stipulation of Facts, pp. 61-63, Record on Appeal.

[3] par. 8, Stipulation of Facts, p. 64, RA

[4] par. 11, Stipulation of Facts, p. 65, RA

[5] par. 12, Stipulation of Facts, p. 66, RA

[6] par. 13, Stipulation of Facts, p. 66, RA

[7] par. 14, Stipulation of Facts, p. 66, RA

[8] par. 15, Stipulation of Facts, p. 67, RA

[9] Par. 20, Stipulation of Facts, p. 68, RA

[10] par. 22, Stipulation of Facts, p. 69, RA

[11] par. 24, Stipulation of Facts, p. 70, RA

[12] par. 30, Stipulation of Facts, p. 72, RA

[13] *Earnshaw Docks & Honolulu Iron Works vs. Gimenez*, G.R. No. L-14814, Dec. 30, 1961, 3 SCRA 799, where this Court upheld the imposition of the 17% special excise tax on the entire dollar commissions received by Earnshaw Docks in its New York office from foreign manufacturers.

[14] Sec. 2. the following are foreign exchange transactions and as required by Central Bank Circular No. 20, are subject to prior licensing by or on behalf of the Central Bank.

xxx xxx xxx

(h) All collections of residents made abroad through their overseas branch offices, agents or representatives. Such collections shall be brought or ordered to be brought by such residents into the Philippines in U.S. currency or in other currency acceptable to the Central Bank after deducting normal business expenses incurred by such overseas branch offices, agents or representatives.

[15] Par. 27, Stipulation of Facts, p. 70, RA

[16] par. 28, Stipulation of Facts, p. 71, RA See also Annexes S, S-I, S-2, S-3, & S-4, pp. 161-165, RA

[17] pars, 4 & 5, Stipulation of Facts, pp. 62-63, RA

[18] Annex R, p. 159, RA.

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