

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS.
PHILIPPINE SURETY & INSURANCE COMPANY, INC.,
DEFENDANT AND APPELLANT.**

G.R. No. 12698. March 23, 1959

Ponente: REYES, J.B.L., J.

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

The defendant, Philippine Surety & Insurance Co., Inc. appeals from a decision of the Court of First Instance of Manila, the dispositive portion of which reads:

"WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendant, ordering the latter to pay to the plaintiff the sum of seventy-six thousand eight hundred thirty-two pesos and fifty-five centavos (P76,832.55) as of November 18, 1955, which includes the sum of P8,392.48 representing the 17% excise tax. The defendant is also ordered to pay daily interest of P6.76 from and after November 18, 1955 until the full amount is paid. With costs against the defendant." (Case No. 19677)

The appeal was originally interposed to the Court of Appeals; but in view of the amount involved in the case, which is more than P50,000, the same was elevated to this Court.

The records show that the Union Garment Co., Inc., represented by its President, Celso Icasiano, imported for the Armed Forces of the Philippines (hereinafter referred to as the AFP) textile goods to be manufactured into soldiers' uniforms. The importation was made under an irrevocable letter of credit opened in favor of the importer by the appellee Philippine National Bank for the total sum of \$147,000, U. S. currency. The drafts authorized by this letter of credit were required, under the terms of the instrument, to be drawn and presented not later than the 31st of December 1950. Said letter of credit was negotiated on November 21, 1950, and four "sight" drafts were drawn against it by the Wingsan Textile Co., Ltd. for the amounts of \$31,500, \$24,500, \$31,000 and \$60,000 covering the aggregate sum of \$147,000 which drafts were later accepted by the AFP. Upon the execution of a 90-day Trust Receipt Agreement, subject to a joint and several guaranty of the importer and defendant-appellant Philippine Surety & Insurance Co., Inc. to the extent of P73,400, the imported items were released to the AFP (Armed Forces of the Philippines).

On March 12, 1951, the appellee sent to the AFP a statement of account for P301,638.50 covering the four drafts, and on August 22, 1951, the AFP sent to the appellee a check, Treasury Warrant No. V-421774, in the amount of P301,638. While the payment was awaited by the Philippine National Bank, Republic Act No. 601 imposing a 17% special excise tax on foreign exchanges was approved and took effect on March 28, 1951. The bank, maintaining that no sale of foreign exchange was deemed to have been consummated until payment is received by it from the AFP, made adjustments with additional interest and bank charges occasioned by the imposition of the new tax, and applied the payment represented by the said Treasury Warrant to only three drafts covering the amounts of \$31,500, \$31,000 and \$60,000 leaving a balance of P557.68 which was credited to the remaining account of \$24,500 (fourth bank draft). A demand was accordingly made, but was refused by the defendant.

The whole issue in the case, and in this appeal, ultimately centers on whether or not the 17 per cent special excise tax could properly be imposed upon the drafts in question, admittedly executed and accepted before the effectivity of Republic Act No. 601 as later amended (see Rep. Act Nos. 814, 871, 1175 and 1375).

"SEC. 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." (Rep. Act 601).

This question is not new and has been squarely resolved in the recent case of *Belman Compania Incorporada vs. Central Bank of the Philippines*, 104 Phil., 877, wherein this Court in holding that they could not be so subjected, said:

"An irrevocable letter of credit granted by a bank, which authorizes a creditor in a foreign country to draw upon a debtor of another and to negotiate the draft through the agent or correspondent bank or any bank in the country of the creditor is a consummated contract, when the agent or correspondent bank or any bank in the country of the creditor pays or delivers to the latter the amount in foreign currency, as authorized by the bank in the country of the debtor in compliance with the letter of credit granted by it. It is the date of the payment of the amount in foreign currency to the creditor in his country by the agent or correspondent bank of the bank in the country of the debtor that turns from executory to executed or consummated contract. It is not the date of payment by the debtor to the bank in his country of the amount of foreign exchange sold that makes the contract executed or consummated, because the bank may grant the debtor extension of time to pay such debt. The contention of the appellee that as there was a meeting of the minds of the contracting parties as to price and object of the contract upon the approval or grant of an application for a letter of credit for an amount payable in foreign currency, the contract was a valid and executed contract in the sense that one party who has performed his part may compel the other to perform his. Still until payment be made in foreign currency of the amount applied for in the letter of credit and approved and granted by the bank, the same is not an executed or consummated contract. The payment of the amount in foreign currency to the creditor by the bank or its agent or correspondent is necessary to consummate the contract. Hence, the date of such payment or delivery of the amount in foreign currency to the creditor determines whether such amount of foreign currency is subject to the tax imposed by the Government of the country where such letter of credit was granted.

It appearing that the draft authorized by the letter of credit applied for by the appellee and granted by the appellant must be drawn and presented or negotiated in San Francisco, California, U. S. A., not later than 19 October 1950 (Exhibit H), it may be presumed that the payment of \$4,300 in favor of Getz Bros., Inc. in San Francisco, California, U. S. A., for the account of the appellee was paid by the Crocker First National Bank, as agent or correspondent of the Philippine National Bank, on or before 19 October 1950. Such being the case, the excise tax at the rate of 17 per cent on the amount to be paid by the appellant in Philippine currency for the foreign exchange sold is not subject to such tax because Republic Act No. 601 imposing such tax took effect only on 28 March 1951." (See also *Philippine National Bank vs. Zulueta*, 101 Phil., 1071; and *Philippine National Bank, et al., vs. Union Books, Incorporated*, 101 Phil., 1084).

It will be noted in the instant case that the letter of credit specifies that drafts must be drawn and presented or negotiated before December 31, 1950, and that the statement of account was sent on March 12, 1951. It follows that the drafts were executed, presented and became payable before the effectivity of Rep. Act 601 (see *PNB vs. Arrozal*, 103 Phil., 213; 54 Off. Gaz., [2] 5698).

Wherefore, the judgment appealed from is reversed and complaint ordered dismissed, without pronouncement as to costs. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia,

JJ., concur.

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