

C. G. NAZARIO & SONS, INC., PLAINTIFF AND APPELLANT, VS. CENTRAL BANK OF THE PHILIPPINES AND PHILIPPINE NATIONAL BANK, DEFENDANTS AND APPELLEES.

G.R. No. 15225. April 29, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from an order of the Court of First Instance of Manila, Hon. Froilan Bayona, presiding, dismissing the complaint.

The complaint was filed by C. G. Nazario & Sons, Inc., on December 8, 1958, and seeks to recover from the Central Bank and the Philippine National Bank the sum of P17,287.53, representing the 17% special tax on foreign exchange sold to plaintiff by the Philippine National Bank between May 10, 1951 and May 29, 1951. Said tax was collected by virtue of the provisions of Republic Act No. 601, which took effect on March 28, 1951.

Upon being summoned the Central Bank filed a motion to dismiss on the ground that the court lacks jurisdiction to entertain the case and that the right of action was already barred by the Statute of Limitations. It is shown in the motion that upon the expiration of Republic Act No. 601, as amended, on December 31, 1955, the said special excise tax of 17% collected by the Central Bank which had not yet been turned over or paid to the National Treasurer, were turned over or paid to the Treasurer of the Philippines on June 20, 1956. This claim is supported by official receipts (Annex 6 and Annex 7, Central Bank). Under these facts defendant argues that pursuant to the case of *Salgado vs. Ramos*, 64 Phil., 726, the action to recover the tax in question should be against the National Treasurer and not against the Central Bank.

In support of the defense of prescription, the Central Bank alleged that as the taxes were collected by reason of a mistake of the Monetary Board in the construction of Section 1 of Republic Act No. 601, the action for the return of the amount (as improperly collected) is six years from the accrual of the cause of action as provided in Article 1145 of the Civil Code of the Philippines.

In reply to the claim that the court lacks jurisdiction to entertain the action, for the reason that the money sought to be collected has already been turned over to the National Treasurer defendant argues that at most the defect is not lack of jurisdiction but merely non-joinder of the National Treasurer, which non-joinder may be cured by amendment. As to the defense of prescription, defendant argued that as the payment was made by virtue of a mistake in the construction of a doubtful or difficult question of law as defined in Article 2155 of the Civil Code of the Philippines, the cause of action accrued only when on August 30, 1957, this Court decided the case of *Philippine National Bank vs. Jose C. Zulueta*, 101 Phil., 1071, wherein it was held that an obligation, which was incurred before the creation of the 17% excise tax under Republic Act No. 601, is not subject to tax for the reason that its imposition on an existing obligation would have the effect of impairing the obligation of contracts.

The court below sustained the objections of the defendant Central Bank and dismissed the complaint. It is against this order of dismissal that the present appeal was taken.

The court below sustained the objection that the court lacks jurisdiction over the action because the funds sought to be refunded have already been turned over to the Philippine Government; it held that the action should have been brought not Against the Central Bank and the Philippine National Bank. The defense of prescription was also sustained, the court holding that the action had lapsed because the law applicable is Article 1149 of the Civil Code, which fixes the period in cases where the laws or the Code have not fixed a period. Both resolutions of the court below are subject of this appeal.

The defense of prescription is the more important issue to be resolved, as the other issue could be avoided by including the National Treasurer as a principal party-defendant in the action. On this issue appellant argues that Republic Act No. 601, which imposed the 17% foreign exchange tax, was erroneously interpreted by the Monetary Board; that said act is indeed so difficult of interpretation that its application could not be definitely understood until the decision of the Court in the case of Philippine National Bank vs. Zulueta; that plaintiff's cause of action accrued only upon the promulgation of said decision around August, 1957, so that the presentation was actually filed within one year and four months from date of its accrual. We cannot subscribe to the above theory. If the tax is unlawfully collected, the action to recover the same should accrue from the date of collection. (Article 1150, Civil Code.) The error of the Monetary Board in the interpretation of the law may not change or extend the time of the accrual of the action. Mistakes of officers in the collection of taxes cannot prejudice the Government.

The period within which the action for refund should have been brought is that fixed in Article 1145 of the Civil Code, which provides:

"The following actions must be commenced within six years:

- (1) * * *;
- (2) Upon a quasi-contract." (Belman Compania Incorporada vs. Central Bank of the Philippines, 108 Phil., 478).

As the tax was paid in the year 1951 and the action brought in 1958, the action is clearly barred.

In view of our resolution on the question of prescription, it is unnecessary to consider the other issue.

The order of dismissal is hereby affirmed, with costs against plaintiff-appellant.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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