

FRANCISCO S. OLIZON, PLAINTIFF AND APPELLEE, VS. CENTRAL BANK OF THE PHILIPPINES, DEFENDANT AND APPELLANT.

G.R. No. 16524. June 30, 1964

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the decision of the Court of First Instance of Manila, rendered in Case No. 40215, ordering the appellant Central Bank to refund to the herein appellee the sum of P9,713.94 plus interest, cost and attorney's fees.

The facts giving rise to this suit, as recited in the lower court decision and borne by the records transmitted to Us, are as follows:

"x x x The defendant on March 21, 1952, December 4, 1952(November 25, 1953, and January 4, 1955, collected from the plaintiff (herein appellee) the amounts of P3,186.24, P840.65, P2,488.98, and F2,734.53, under Central Bank Official Receipt Nos. 047895, 052279, 491743, and 663339, respectively, in payment of Special Excise Tax on Foreign Exchange covering transactions, the details of which are described in said receipts; that these amounts, as admitted by the defendant, were collected pursuant to its Monetary Board Resolution No. 286, dated May 3, 1951 (Answer to Request for Admission, par. 1); That on March 10, 1958, plaintiff requested the defendant to refund to him the amounts above-stated, plus the sum of P463.54, which is supported by a statement from the Philippine National Bank; subsequently, requests were made by the plaintiff citing various rulings of the Supreme Court in support thereof but the Central Bank refused to accede to these requests."

The Central Bank concedes the illegality of the resolution under which it made the levy. It expressly adverts to the cases of PNB vs. Zulueta, 101 Phil., 1071; 53 Off. Gaz., pp. 222-231 and PNB and Central Bank vs. Union Books, Inc., 101 Phil., 1081; and says that "there was no longer any necessity for this Honorable Court (the lower court) to declare Monetary Board Resolution No. 286 dated May 3, 1951, as illegal. There is no dispute about this."

Despite the above admission, however, the Bank still refused to grant the refund on the ground that the claim for the same had already prescribed. It vigorously argued the theory that "for purposes of recovering a tax paid illegally or erroneously * * * the action should be filed within five (5) years, from the date of payment of the tax." It arrived at the said period on the reasoning that since the tax code does not provide for the same, the deficiency should be governed by Article 1149 of the Civil Code which says:

"All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues." After the dispute was tried in the lower court, the trial Judge rejected the appellant's theory and ruled that the prescriptive period was ten (10) years, holding that the obligation to refund was one created by law and which therefore, under Article 1144 of the Civil Code, prescribed in ten years, Hence, this appeal.

During the pendency of the appeal, however, this Court handed down its decision in the case of Belman Cia. Inc.

vs. Central Bank, 108 Phil., 478, expressly ruling (in the Resolution to a Motion for Reconsideration filed thereto by the same Central Bank herein) that the prescriptive period is six (6) years.

"Plaintiff-appellee has filed a motion for reconsideration arguing that this 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 1144.—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 2151 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 in-debit which are expressly classified as quasi-contracts under Section 2, Chapter I of Title XVII of the new Civil Code. Consequently, the law regarding prescription applicable to the action herein involved is not Article 1144(2) cited by the movant, but Article 1145(2) of the new Civil Code providing:

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

(1) * * *

(2) Upon a quasi-contract."

In view of the ruling in the above-mentioned case, the Central Bank filed a memorandum conceding the refundability of all the claims that "there is no way to determine whether the action for refund of this amount has already "prescribed or not" as the papers necessary for its proper processing were no longer available or have been lost. Furthermore, however, of the claims it concedes to have been filed within the prescriptive period and of which it. Accepts the obligation to refund, the Bank asserts that it "should be refunded" only "upon presentation of satisfactory proof."

We do not understand just what exactly the appellant Bank means by the "presentation of satisfactory proof." It admits it received from the appellee the sum of P9,713.94.

"On various dates and under Central Bank Official Receipts hereunder indicated, plaintiff-appellee, paid as 17% special excise tax through the Philippine National Bank, in settlement of various collection bills, due to foreign suppliers from plaintiff-appellee, the total turn of P9, 713.91. itemized as follows:" (Statement of Facts, Appellant's Brief, p. 5.) (Italics supplied)

It likewise admits that the Monetary Board Resolution on the authority of which it exacted the said amount is illegal.

"We respectfully contend that there was no longer any necessity for this Honorable Court (the lower court) to declare Monetary Board Res. 286 dated May 8, 1951, as illegal. There is no dispute about this. No allegation can be found in defendant's pleading. (Answer to Request for Admission, and Answer to Interrogatories) to the effect that defendant still upholds the validity of said resolution. xxx) (pp. 230-240, Record on Appeal).

Lastly, it admits its obligation to refund as well as the timeliness of the claim for the same.

"As shown by the letter of the Philippine National Bank to the Legal Counsel of the Central Bank dated June

15, 1959, the remittances of the foreign exchange involved in the collection bills with respect the seven items were made on various dates between August 23, 1940 and November 28, 1949. the account of Francisco Olison were all made in 1949, before the effectivity of the special excise tax law (March 28, 1951), therefore, the assessment and collection of the exchange rates in question were erroneous and illegal. In accordance with Arts. 2154 and 2155 of the new Civil Code of the Philippines, there would be an obligation on the part of defendant Central Bank to refund the said amounts received by reason of a mistake in the construction or application of a doubtful question of law." (p. 6, Memorandum in lieu of Oral Argument.)

"It has been verified from, the Foreign Department, Philippine National Bank, that all foreign exchange (US. dollars) involved in said collection bills were remitted to the United States on the various dates between August 23, 1949 and November 28, 1949, before March 23, 1951, when the Exchange Tax law took effect, (pp. 6-7, Statement of Facts, Appellant's Brief. (Italics in the above two paragraphs supplied.)

In the face of all those admissions, we do not see what else needs be proved. This case was submitted on the issue of prescription, the appellant contending that the period was five (5) years. It now admits its error and accepts the correct period to be six years. Therefore, insofar as this suit is concerned, the inquiry need not go beyond determining whether the claim for refund was filed within the six year period or not. And, since the Bank explicitly and unequivocally confirms that the claims were made within that time, it ought not be too technical, but, on the contrary, it should earnestly endeavor to remove or overcome the minor technicalities that might stand in the way of a prompt refund.

It is next urged that inasmuch as the amounts here involved have already been turned over to the national treasury the present action may no longer be maintained since it would, in effect, be a suit against the State without its consent.

We cannot agree to the proposition. This suit is brought against the Central Bank of the Philippines, an entity authorized by its charter to sue and be sued. The consent of the State to thus be sued, therefore, has been given. As said in the case of *Central Azucarera San Pedro vs. Central Bank*, 104 Phil., 598, in suits for refund, "being a corporation that may sue and be sued, 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."

In the memorandum submitted in lieu of oral argument, the appellant Bank represented for the first time that the "plaintiff-appellee has an outstanding liability of P4.963.62 by way of unpaid 17 % special excise tax on the remittance of foreign exchange to import cotton goods and gladiolus bulbs." It then urged that whatever items this Court should order to be refunded should be set off against the said "outstanding liability" of the appellee.

The representation impresses Us as untenable. The matter of appellee's outstanding unpaid accounts with the Bank is a fit subject for a counterclaim and the Rules of Court provide for the manner by which they may be impleaded or raised in this suit. Those rules were devised not only to provide a more adequate and elastic procedure for the prompt dispatch of litigation, but more importantly, to fully protect the rights of the parties. Verily, therefore, the public policy involved in the observance of those rules should not be lightly estimated. Within the perspective of the foregoing discussion, therefore, it would seem that the appellant has not only withhold proper deference for the rules; it has been unfair to the appellee as well. For in raising a counterclaim at so late a stage in the proceeding as the period for oral argument, it denies to the appellee full and complete protection of his rights since by then the proceedings in the court have practically terminated and the appellee would hardly have time to explain or defend himself from the countersuit.

IN VIEW OF THE FOREGOING, the judgment appealed from and the awards made thereunder are hereby affirmed.

Costs against the appellant.

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

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