

## FIRST DIVISION

[ G. R. NO. 137002, July 27, 2006 ]

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS.  
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Court, as amended, seeking to set aside a Decision<sup>[1]</sup> of the Court of Appeals dated 14 August 2004 ordering the petitioner to pay respondent Commissioner of Internal Revenue (CIR) deficiency documentary stamp tax of P690,030 for the year 1986, inclusive of surcharge and compromise penalty, plus 20% annual interest until fully paid. The Court of Appeals in its assailed Decision affirmed the Decision<sup>[2]</sup> of the Court of Tax Appeals (CTA) dated 31 May 1994.

From 28 February 1986 to 8 October 1986, petitioner Bank of the Philippine Islands (BPI) sold to the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas) U.S. dollars for P1,608,541,900.00. BPI instructed, by cable, its correspondent bank in New York to transfer U.S. dollars deposited in BPI's account therein to the Federal Reserve Bank in New York for credit to the Central Bank's account therein. Thereafter, the Federal Reserve Bank sent to the Central Bank confirmation that such funds had been credited to its account and the Central Bank promptly transferred to the petitioner's account in the Philippines the corresponding amount in Philippine pesos.<sup>[3]</sup>

During the period starting 11 June 1985 until 9 March 1987, the Central Bank enjoyed tax exemption privileges pursuant to Resolution No. 35-85 dated 3 May 1985 of the Fiscal Incentive Review Board. However, in 1985, Presidential Decree No. 1994 -- An Act Further Amending Certain Provisions of the National Internal Revenue Code was enacted. This law amended Section 222 (now 173) of the National Internal Revenue Code (NIRC), by adding the foregoing:

[W]henever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

In 1988, respondent CIR ordered an investigation to be made on BPI's sale of foreign currency. As a result thereof, the CIR issued a pre-assessment notice informing BPI that in accordance with Section 195 (now Section 182)<sup>[4]</sup> of the NIRC, BPI was liable for documentary stamp tax at the rate of P0.30 per P200.00 on all foreign exchange sold to the Central Bank. Total tax liability was assessed at P3,016,316.06, which consists of a documentary stamp tax liability of P2,412,812.85, a 25% surcharge of P603,203.21, and a compromise penalty of P300.00.<sup>[5]</sup>

BPI disputed the findings contained in the pre-assessment notice. Nevertheless, the CIR issued Assessment No. FAS-5-86-88-003022, dated 30 September 1988, which BPI received on 11 October 1988. BPI formally protested the assessment, but the protest was denied. On 10 July 1990, BPI received the final notice and demand for payment of its 1986 assessment for deficiency documentary stamp tax in the amount of P3,016,316.06. Consequently, a petition for review was filed with the CTA on 9 August 1990.<sup>[6]</sup>

On 31 May 1994, the CTA rendered the Decision holding BPI liable for documentary stamp tax in connection with the sale of foreign exchange to the Central Bank from the period 29 July 1986 to 8 October 1986 only, thus substantially reducing the CIR's original assessment. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, petitioner is hereby ordered to pay respondent Commissioner of Internal Revenue, the amount of P690,030 inclusive of surcharge and compromise penalty, plus 20% annual interest until fully paid pursuant to Section 249 (cc) (sic) (3) of the Tax Code.<sup>[7]</sup>

The CTA ruled that BPI's instructions to its correspondent bank in the U.S. to pay to the Federal Reserve Bank in New York, for the account of the Central Bank, a sum of money falls squarely within the scope of Section 51 of The Revised Documentary Stamp Tax Regulations (Regulations No. 26), dated 26 March 1924, the implementing rules to the earlier provisions on documentary stamp tax, which provides that: <sup>[8]</sup>

*What may be regarded as telegraphic transfer.*-a local bank cables to a certain bank in a foreign country with which bank said local bank has a credit, and directs that foreign bank to pay to another bank or person in the same locality a certain sum of money, the document for and in respect such transaction will be regarded as a telegraphic transfer, taxable under the provisions of Section 1449(i) of the Administrative Code.

Nevertheless, the CTA also noted that although Presidential Decree No. 1994, the law which passes the liability on to the non-exempt party, was published in the Official Gazette issue of 2 December 1985, the same was released to the public only on 18 June 1986, as certified by the National Printing Office. Therefore, Presidential Decree No. 1994 took effect only in July 1986 or 15 days after the issue of Official Gazette where the law was actually published, that is, circulated to the public. As a result of the delay, BPI's transactions prior to the effectivity of Presidential Decree No. 1994 were not subject to documentary stamp tax. Hence, the CTA reduced the assessment from P3,016,316.06 to P690,030.00, plus 20% annual interest until fully paid pursuant to Section 249(c) of the NIRC.<sup>[9]</sup>

Both parties filed their respective Motions for Reconsideration, which the CTA denied in a Resolution dated 26 September 1994. BPI filed a Petition for Review with the Court of Appeals on 11 November 1994. On 14 August 1998, the Court of Appeals affirmed the Decision of the CTA. The Court of Appeals ruled that the documentary stamp tax imposed under Section 195 (now Section 182) is not limited only to foreign bills of exchange and letters of credit but also includes the orders made by telegraph or by any other means for the payment of money made by any person

drawn in but payable out of the Philippines. The Court of Appeals also maintained that telegraphic transfers, such as the one BPI sent to its correspondent bank in the U.S., are proper subjects for the imposition of documentary stamp tax under Section 195 (now Section 182) and Section 51 of Revenue Regulation No. 26. The Court of Appeals likewise affirmed the CTA's Decision imposing a 20% delinquency on the reduced assessment, in accordance with Section 24(c)(3) of the NIRC and the case of *Philippine Refining Company v. Court of Appeals*.<sup>[10]</sup>

Petitioner filed a Partial Motion for Reconsideration on 9 September 1998, which the Court of Appeals denied on 29 December 1998.<sup>[11]</sup>

Hence this petition, wherein the petitioner raised the following issues:

## I

WHETHER OR NOT, THE COURT OF APPEALS GRIEVOUSLY ERRED IN HOLDING THAT SALES OF FOREIGN EXCHANGE (SPOT CASH), AS DISTINGUISHED FROM SALES OF FOREIGN BILLS OF EXCHANGE, ARE SUBJECT TO DOCUMENTARY STAMP TAX UNDER SECTION 182 OF THE TAX CODE

## II

WHETHER OR NOT, THE COURT OF APPEALS GRIEVOUSLY ERRED IN AFFIRMING THE IMPOSITION OF A DELINQUENCY INTEREST OF 20% ON THE REVISED DEFICIENCY STAMP ASSESSMENT DESPITE A REDUCTION THEREOF BY THE COURT OF TAX APPEALS WHICH ERRED IN ITS ORIGINAL ASSESSMENT.<sup>[12]</sup>

The first issue raised by the petitioner is whether BPI is liable for documentary stamp taxes in connection with its sale of foreign exchange to the Central Bank in 1986 under Section 195 (now Section 182) of the NIRC, quoted hereunder:

*Sec. 182. Stamp tax on foreign bills of exchange and letters of credit.* On all foreign bills of exchange and letters of credit (including orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons) drawn in but payable out of the Philippines in a set of three or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of thirty centavos on each two hundred pesos, or fractional part thereof, of the face value of such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign country.

To determine what is being taxed under this section, a discussion on the nature of the acts covered by Section 195 (now Section 182) of the NIRC is indispensable. This section imposes a documentary stamp tax on (1) foreign bills of exchange, (2) letters of credit, and (3) orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons. This enumeration is further limited by the qualification that they should be drawn in the Philippines and payable outside of the Philippines.

A definition of a "bill of exchange" is provided by Section 39 of Regulations No. 26, the rules governing documentary taxes promulgated by the Bureau of Internal Revenue (BIR) in 1924:

Sec. 39. Definition of "bill of exchange". The term bill of exchange denotes checks, drafts, and all other kinds of orders for the payment of money, payable at sight, or on demand or after a specific period after sight or from a stated date.

Section 126 of The Negotiable Instruments Law (Act No. 2031) reiterates that it is an "order for the payment of money" and specifies the particular requisites that make it negotiable.

Sec. 126. Bill of exchange defined. - A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at fixed or determinable future time a sum certain in money to order or to bearer.

Section 129 of the same law classifies bills of exchange as inland and foreign, the distinction is laid down by where the bills are drawn and paid. Thus, a "foreign bill of exchange" may be drawn outside the Philippines, payable outside the Philippines, or both drawn and payable outside of the Philippines.

Sec. 129. Inland and foreign bills of exchange. -- An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within the Philippines. Any other bill is a foreign bill. x x

The Code of Commerce loosely defines a "letter of credit" and provides for its essential conditions, thus:

Art. 567. Letters of credit are those issued by one merchant to another or for the purpose of attending to a commercial transaction.

Art 568. The essential conditions of letters of credit shall be:

1. To be issued in favor of a definite person and not to order.
2. To be limited to a fixed and specified amount, or to one or more undetermined amounts, but within a maximum the limits of which has to be stated exactly.

A more explicit definition of a letter of credit can be found in the commentaries:

A letter of credit is one whereby one person requests some other person to advance money or give credit to a third person, and promises that he will repay the same to the person making the advancement, or accept the bills drawn upon himself for the like amount.<sup>[13]</sup>

A bill of exchange and a letter of credit may differ as to their negotiability, and as to who owns the funds used for the payment at the time payment is made. However, in both bills of exchange and letters of credit, a person orders another to pay money to a third person.