

## SECOND DIVISION

**[ G.R. NO. 139736, October 17, 2005 ]**

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

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This Petition for Review on *Certiorari*, under Rule 45 of the 1997 Rules of Civil Procedure, assails the Decision of the Court of Appeals in CA-G.R. SP No. 51271, dated 11 August 1999,<sup>[1]</sup> which reversed and set aside the Decision of the Court of Tax Appeals (CTA), dated 02 February 1999,<sup>[2]</sup> and which reinstated Assessment No. FAS-5-85-89-002054 requiring petitioner Bank of the Philippine Islands (BPI) to pay the amount of P28,020.00 as deficiency documentary stamp tax (DST) for the taxable year 1985, inclusive of the compromise penalty.

There is hardly any controversy as to the factual antecedents of this Petition.

Petitioner BPI is a commercial banking corporation organized and existing under the laws of the Philippines. On two separate occasions, particularly on 06 June 1985 and 14 June 1985, it sold United States (US) \$500,000.00 to the Central Bank of the Philippines (Central Bank), for the total sales amount of US\$1,000,000.00.

On 10 October 1989, the Bureau of Internal Revenue (BIR) issued Assessment No. FAS-5-85-89-002054,<sup>[3]</sup> finding petitioner BPI liable for deficiency DST on its aforementioned sales of foreign bills of exchange to the Central Bank, computed as follows -

#### 1985 Deficiency Documentary Stamp Tax

Foreign	Bills	of	Exchange.....	P
				<u>18,480,000.00</u>

Tax Due Thereon:

P18,480,000.00 x P0.30 (Sec. 182 NIRC). 27,720.00  
P200.00

Add: Suggested compromise penalty..... 300.00

TOTAL AMOUNT DUE AND COLLECTIBLE.... P 28,020.00

Petitioner BPI received the Assessment, together with the attached Assessment Notice,<sup>[4]</sup> on 20 October 1989.

Petitioner BPI, through its counsel, protested the Assessment in a letter dated 16 November 1989, and filed with the BIR on 17 November 1989. The said protest letter is reproduced in full below -

November 16, 1989

The Commissioner of Internal Revenue  
Quezon City

Attention of: Mr. Pedro C. Aguillon  
Asst. Commissioner for Collection

Sir:

On behalf of our client, Bank of the Philippine Islands (BPI), we have the honor to protest your assessment against it for deficiency documentary stamp tax for the year 1985 in the amount of P28,020.00, arising from its sale to the Central Bank of U.S. \$500,000.00 on June 6, 1985 and another U.S. \$500,000.00 on June 14, 1985.

1. Under established market practice, the documentary stamp tax on telegraphic transfers or sales of foreign exchange is paid by the buyer. Thus, when BPI sells to any party, the cost of documentary stamp tax is added to the total price or charge to the buyer and the seller affixes the corresponding documentary stamp on the document. Similarly, when the Central Bank sells foreign exchange to BPI, it charges BPI for the cost of the documentary stamp on the transaction.
2. In the two transactions subject of your assessment, no documentary stamps were affixed because the buyer, Central Bank of the Philippines, was exempt from such tax. And while it is true that under P.D. 1994, a proviso was added to sec. 222 (now sec. 186) of the Tax Code "that whenever one party to a 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," this proviso (and the other amendments of P.D. 1994) took effect only on January 1, 1986, according to sec. 49 of P.D. 1994. Hence, the liability for the documentary stamp tax could not be shifted to the seller.

In view of the foregoing, we request that the assessment be revoked and cancelled.

Very truly yours,

PADILLA LAW OFFICE  
By:

(signed)  
SABINO PADILLA, JR. <sup>[5]</sup>

Petitioner BPI did not receive any immediate reply to its protest letter. However, on

15 October 1992, the BIR issued a Warrant of Dstraint and/or Levy<sup>[6]</sup> against petitioner BPI for the assessed deficiency DST for taxable year 1985, in the amount of P27,720.00 (excluding the compromise penalty of P300.00). It served the Warrant on petitioner BPI only on 23 October 1992.<sup>[7]</sup>

Then again, petitioner BPI did not hear from the BIR until 11 September 1997, when its counsel received a letter, dated 13 August 1997, signed by then BIR Commissioner Liwayway Vinzons-Chato, denying its "request for reconsideration," and addressing the points raised by petitioner BPI in its protest letter, dated 16 November 1989, thus -

In reply, please be informed that after a thorough and careful study of the facts of the case as well as the law and jurisprudence pertinent thereto, this Office finds the above argument to be legally untenable. It is admitted that while industry practice or market convention has the force of law between the members of a particular industry, it is not binding with the BIR since it is not a party thereto. The same should, therefore, not be allowed to prejudice the Bureau of its lawful task of collecting revenues necessary to defray the expenses of the government. (Art. 11 in relation to Art. 1306 of the New Civil Code.)

Moreover, let it be stated that even before the amendment of Sec. 222 (now Sec. 173) of the Tax Code, as amended, the same was already interpreted to hold that the other party who is not exempt from the payment of documentary stamp tax liable from the tax. This interpretation was further strengthened by the following BIR Rulings which in substance state:

1. BIR Unnumbered Ruling dated May 30, 1977 -

"x x x Documentary stamp taxes are payable by either person, signing, issuing, accepting, or transferring the instrument, document or paper. It is now settled that where one party to the instrument is exempt from said taxes, the other party who is not exempt should be liable."

2. BIR Ruling No. 144-84 dated September 3, 1984 -

"x x x Thus, where one party to the contract is exempt from said tax, the other party, who is not exempt, shall be liable therefore. Accordingly, since A.J.L. Construction Corporation, the other party to the contract and the one assuming the payment of the expenses incidental to the registration in the vendee's name of the property sold, is not exempt from said tax, then it is the one liable therefore, pursuant to Sec. 245 (now Sec. 196), in relation to Sec. 222 (now Sec. 173), both of the Tax Code of 1977, as amended."

Premised on all the foregoing considerations, your request for reconsideration is hereby DENIED.<sup>[8]</sup>

Upon receipt of the above-cited letter from the BIR, petitioner BPI proceeded to file a Petition for Review with the CTA on 10 October 1997;<sup>[9]</sup> to which respondent BIR Commissioner, represented by the Office of the Solicitor General, filed an Answer on

08 December 1997.<sup>[10]</sup>

Petitioner BPI raised in its Petition for Review before the CTA, in addition to the arguments presented in its protest letter, dated 16 November 1989, the defense of prescription of the right of respondent BIR Commissioner to enforce collection of the assessed amount. It alleged that respondent BIR Commissioner only had three years to collect on Assessment No. FAS-5-85-89-002054, but she waited for seven years and nine months to deny the protest. In her Answer and subsequent Memorandum, respondent BIR Commissioner merely reiterated her position, as stated in her letter to petitioner BPI, dated 13 August 1997, which denied the latter's protest; and remained silent as to the expiration of the prescriptive period for collection of the assessed deficiency DST.

After due trial, the CTA rendered a Decision on 02 February 1999, in which it identified two primary issues in the controversy between petitioner BPI and respondent BIR Commissioner: (1) whether or not the right of respondent BIR Commissioner to collect from petitioner BPI the alleged deficiency DST for taxable year 1985 had prescribed; and (2) whether or not the sales of US\$1,000,000.00 on 06 June 1985 and 14 June 1985 by petitioner BPI to the Central Bank were subject to DST.

The CTA answered the first issue in the negative and held that the statute of limitations for respondent BIR Commissioner to collect on the Assessment had not yet prescribed. In resolving the issue of prescription, the CTA reasoned that -

In the case of **Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc., G.R. No. 76281, September 30, 1991, 202 SCRA 125**, the Supreme Court laid to rest the first issue. It categorically ruled that a "protest" is to be treated as request for reinvestigation or reconsideration and a mere request for reexamination or reinvestigation tolls the prescriptive period of the Commissioner to collect on an assessment. . .

. . .

In the case at bar, there being no dispute that petitioner filed its protest on the subject assessment on November 17, 1989, there can be no conclusion other than that said protest stopped the running of the prescriptive period of the Commissioner to collect.

Section 320 (now 223) of the Tax Code, clearly states that a request for reinvestigation which is granted by the Commissioner, shall suspend the prescriptive period to collect. The underscored portion above does not mean that the Commissioner will cancel the subject assessment but should be construed as when the same was entertained by the Commissioner by not issuing any warrant of distraint or levy on the properties of the taxpayer or any action prejudicial to the latter unless and until the request for reinvestigation is finally given due course. Taking into consideration this provision of law and the aforementioned ruling of the Supreme Court in *Wyeth Suaco* which specifically and categorically states that a protest could be considered as a request for

reinvestigation, We rule that prescription has not set in against the government.<sup>[11]</sup>

The CTA had likewise resolved the second issue in the negative. Referring to its own decision in an earlier case, *Consolidated Bank & Trust Co. v. The Commissioner of Internal Revenue*,<sup>[12]</sup> the CTA reached the conclusion that the sales of foreign currency by petitioner BPI to the Central Bank in taxable year 1985 were not subject to DST -

From the abovementioned decision of this Court, it can be gleaned that the Central Bank, during the period June 11, 1984 to March 9, 1987 enjoyed tax exemption privilege, including the payment of documentary stamp tax (DST) pursuant to Resolution No. 35-85 dated May 3, 1985 of the Fiscal Incentive Review Board. As such, the Central Bank, as buyer of the foreign currency, is exempt from paying the documentary stamp tax for the period above-mentioned. This Court further expounded that said tax exemption of the Central Bank was modified beginning January 1, 1986 when Presidential Decree (P.D.) 1994 took effect. Under this decree, the liability for DST on sales of foreign currency to the Central Bank is shifted to the seller.

Applying the above decision to the case at bar, petitioner cannot be held liable for DST on its 1985 sales of foreign currencies to the Central Bank, as the latter who is the purchaser of the subject currencies is the one liable thereof. However, since the Central Bank is exempt from all taxes during 1985 by virtue of Resolution No. 35-85 of the Fiscal Incentive Review Board dated March 3, 1985, neither the petitioner nor the Central Bank is liable for the payment of the documentary stamp tax for the former's 1985 sales of foreign currencies to the latter. This aforecited case of *Consolidated Bank vs. Commissioner of Internal Revenue* was affirmed by the Court of Appeals in its decision dated March 31, 1995, CA-GR Sp. No. 35930. Said decision was in turn affirmed by the Supreme Court in its resolution denying the petition filed by Consolidated Bank dated November 20, 1995 with the Supreme Court under Entry of Judgment dated March 1, 1996.<sup>[13]</sup>

In sum, the CTA decided that the statute of limitations for respondent BIR Commissioner to collect on Assessment No. FAS-5-85-89-002054 had not yet prescribed; nonetheless, it still ordered the cancellation of the said Assessment because the sales of foreign currency by petitioner BPI to the Central Bank in taxable year 1985 were tax-exempt.

Herein respondent BIR Commissioner appealed the Decision of the CTA to the Court of Appeals. In its Decision dated 11 August 1999,<sup>[14]</sup> the Court of Appeals sustained the finding of the CTA on the first issue, that the running of the prescriptive period for collection on Assessment No. FAS-5-85-89-002054 was suspended when herein petitioner BPI filed a protest on 17 November 1989 and, therefore, the prescriptive period for collection on the Assessment had not yet lapsed. In the same Decision, however, the Court of Appeals reversed the CTA on the second issue and basically adopted the position of the respondent BIR Commissioner that the sales of foreign currency by petitioner BPI to the Central Bank in taxable year 1985 were subject to DST. The Court of Appeals, thus, ordered the reinstatement of Assessment No. FAS-