THE GOODYEAR TIRE & RUBBER CO.
OF THE PHILIPPINES, LTD.,
Petitioner,

- versus - C.T.A. CASE NO. 2466

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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11/9/77

D E C I S I O N

When this case was called for hearing on October 26, 1977, counsel for petitioner The Goodyear Tire & Rubber Company of the Philippines, Ltd., failed to appear. However, counsel for respondent Commissioner of Internal Revenue manifested that he and petitioner's counsel, after the latter has called him up by telephone, have agreed to submit this case for the resolution of the Court based on the decision of this Court in CTA Case No. 2595, The Goodyear Tire & Rubber Company of the Philippines, Ltd., vs. Commissioner of Customs and the Secretary of Finance, dated July 13, 1977. As stated by the parties in their joint motion for postponement of the hearing set on May 13, 1977, CTA Case No. 2595 has the same set of facts and raises the same issue involved in this case.

Briefly stated, CTA Case No. 2595 refers to Customs Protests Nos. 4148 to 4158 filed by herein petitioner against the assessment and collection by the Bureau of Customs of taxes and duties based on the conversion rate prevailing at the time of the respective arrival of its eleven importations. Petitioner made various importations and paid the same through letters of credit opened with the Chartered Bank and the First National City Bank in favor of its foreign suppliers. With the exception of the shipments covered by Protests Nos. 4152, 4155 and 4157, all of the letters of credit were covered by forward exchange contfacts.

On February 21, 1970, before the arrival of petitioner's shipments, the Central Bank of the Philippides promulgated its Circular No. 289 instituting the floating rate of exchange, except, insofar as maybe pertinent hereto, foreign exchange payments for outstanding foreign obligations and letters of credit covered by forward exchange contracts. In order to enforce and implement the said Circular of the Central Bank, the Bureau of Customs issued its Customs Administrative Order No. 6-70 (CAO-6-70) which in part provides that all importations which arrived within the limits of the port of entry after February 21, 1970 shall be subject to the free market rate prevailing at the time of arrival of the goods.

Since all the importations of petitioner arrived after February 21, 1970, the latter was accordingly made to pay the internal revenue taxes and customs duties due thereon based on the floating rate of exchange and not at the contracted rate in accordance with the forward exchange contracts.

Parenthetically, it may be stated that for the collection of the national internal revenue on imported articles, the Commissioner of Customs and his subordinates are constituted agents of the Commissioner of Internal Revenue. (Sec. 6, National Internal Revenue Code.)

Petitioner paid to the Bureau of Customs the customs duties and internal revenue taxes due on its importations on the basis of the floating rate of exchange. However, petitioner later filed with the Bureau of Customs its formal protests against the assessment and collection of the additional customs duties; and with the Bureau of Internal Revenue, its claims for refund and/or tax credit of excess internal revenue taxes paid on the importations based on the floating rate of exchange. It may therefore be added that the case at bar is merely a sequence to CTA Case No. 2595, in the sense that the latter involves the protests of petitioner filed in the Bureau of Customs and the former pertains to the claims for refund and/or tax credit of excess internal revenue taxes filed with respondent Commissioner of Internal Revenue. The computations of the internal revenue taxes paid by, or amount refundable to, petitioner as the case may be, are not disputed by the parties.

There is no question as to the facts of the case. As summarized by petitioner from the stipulation of facts submitted by both parties in CTA Case No. 2595 and the records of the case, the pertinent facts are as follows:

From April 2, 1969 to January 27, 1970, petitioner purchased several raw materials from foreign sources in eight (8) separate importations. These imported materials left their country of origin during the period from December 10, 1969 to January 29, 1970. These importations were paid through letters of credit which were opened as early as February 2, 1969 and as late as January 12, 1970, and all these letters of credit were covered by Forward Exchange Contracts which stipulated a rate of exchange ranging from ₱3.968 to a U.S. dollar to ₱3.996 to a U.S. dollar. Petitioner correspondingly paid for these letters of credit at the rate of exchange agreed upon in the respective forward exchange contracts.

Petitioner also made three purchases of foreign raw materials prior to February 21, 1970, namely: on January 20, February 12 and 14, 1970. These imported materials were exported from the country of origin on January 29, 1970, February 12, 1970 and February 14, 1970, respectively, and were paid through letters of credit which were opened as early as December 26, 1969 and on January 30, 1970 at the latest but were not covered by any forward exchange contracts. However, these letters of credit were liquidated or negotiated by the foreign supplier prior to February 21, 1970 and were paid for by petitioner on the basis of the parity rate of exchange, namely: ₱3.939, ₱3.90 and ₱3.90 to a U.S. dollar, respectively.

On February 21, 1970, before the arrival in the Philippines of the aforementioned goods, the Central Bank of the Philippines promulgated C.B. Circular No. 289 which regulated foreign exchange transactions by specifying the instances when the par value or the prevailing free market rate of exchange shall apply. Section 8 thereof provides that "The free market rate shall not be administratively fixed but shall be determined through transactions in the foreign exchange market on a day-to-day basis. The authorities shall not intervene in the market except to the extent necessary to compensate for excessive fluctuations but shall not operate against the trend in the market."

Correspondingly, on February 23, 1970, the Bureau of Customs promulgated Customs Administrative Order No. 6-70 which provided, among others, that:

> "2. All importations which arrived within the limits of the port of entry after February 21, 1970 shall be subject to the free market rate prevailing at the time of arrival of the goods."

Consequently, since the aforementioned importations made by petitioner arrived in the Philippines after February 21, 1970, the Bureau of Customs computed the customs duties and, as agent of respondent Commissioner of Internal Revenue, the internal revenue taxes due on said importations on the basis of the free market rate of exchange prevailing on the dates of their respective arrivals in the Philippines. Petitioner paid under protest the additional customs duties and internal revenue taxes over and above those which would have been due and payable had the common rate used been the parity rate or the rates stipulated in the forward exchange contracts.

On December 28, 1972, petitioner filed with respondent the necessary claims for refund or tax credit of excess internal revenue taxes paid on its importations. However, without waiting for the decision of respondent on its claims for refund and/or tax credit, petitioner filed the instant petition for review with this Court on December 29, 1972.

The main issue to be resolved in this case, as a sequence to CTA Case No. 2595, is whether the internal revenue taxes on the eleven importations of petitioner should be based on the value of the imported goods converted into Philippine currency at the free market rate prevailing at the time of importations pursuant to Centfal Bank Circular No. 289, as implemented by Customs Administrative Order No. 6-70, or at the parity rates, or at the rates of exchanges stipulated in the respective forward exchange contracts.

In CTA Case No. 2595, The Goodyear Tire & Rubber Company of the Philippines, Ltd., vs. Commissioner of Customs and the Secretary of Finance, July 19, 1977, upon which this instant case was submitted for decision by the parties, this Court unequivocally held that since Central Bank Circular No. 289 instituted the "floating rate of exchange" starting February 21, 1970, the value and prices of imported articles quoted in foreign currency, for purposes of the assessment and collection of internal revenue taxes and customs duties due thereon, should be converted into the currency of the Philippines at the floating rate of exchange. The exception to the application of the floating rate of exchange as provided for by the Central Bank in Circular No. 289 refers only to the rate of exchange applicable in cases of foreign payments for outstanding foreign obligations and foreign exchange payments for letters of credit covered by forward exchange contracts; but certainly not to the rate of exchange to be applied in determining the basis of assessment and collection of internal revenue taxes and customs duties upon imported articles; otherwise, said Central Bank Circular might enroached upon the provisions of the Tariff and Customs Code.

As to the argument of petitioner that its forward exchange contracts had to be respected by the Central Bank, otherwise Central Bank Circular No. 289 would be unconstitutional as impairing the obligation of contracts, this Court stated, following the ruling of the Supreme Court in the cases of La Insular vs. Machuca Go-Tanco and Nubla Co-Siong, 39 Phil. 567; Philippine American Life Insurance Co. vs. Auditor General, L-19255, January 18, 1968, 22 SCRA 135, that the imposition of a tax which affects an existing contract so as to increase the debt of one party or lessen the security of another, or impose additional burdens upon one class and release the burdens of the other class does not impair the obligation of contracts. Furthermore, under the Civil Code of the Philippines, only parties to the contract are bound by the provision of said contract. Petitioner and its foreign suppliers cannot, therefore, bind the Bureau of Internal Revenue and the Bureau of Customs on the alleged forward exchange contracts.

We find no plausible reason to depart therefrom. Accordingly, no error was committed by the Bureau of Customs, as agent of respondent Commissioner of Internal Revenue for the collection of the national internal revenue on imported articles, in computing the internal revenue taxes due on the eleven importations of petitioner The Goodyear Tire & Rubber Company of the Philippines, Ltd., on the basis of the value or price of the imported goods converted into Philippine currency at the free market rate prevailing at the time of the respective arrival of its eleven importations. The claims for refund and/or tax credit of petitioner involved in this case are therefore denied.

WHEREFORE, we find no merit in this petition for review and the above-entitled case is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, November 9, 1977.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge