REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

- versus -

C.T.A. CASE NO. 5555

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 02 1999

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DECISION

This is a petition for review filed by the petitioner, BANK OF THE PHILIPPINE ISLANDS, against the respondent COMMISSIONER OF INTERNAL REVENUE, for the latter's decision to assess the former the total amount of ₱28,020.00, allegedly representing the petitioner's deficiency documentary stamp tax (DST) and compromise penalty for the year 1985.

Petitioner is a commercial banking corporation duly organized and existing under the laws of the Philippines with address at BPI Bldg., Ayala Ave. corner Paseo de Roxas, Makati City.

On June 6, 1985, petitioner sold to the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas) US$500,000.00. On June 14 of the same year, it again sold to said institution another US$500,000.00.

On October 10, 1989, respondent issued Assessment Notice No. FAS-5-35-89-002054, assessing petitioner of deficiency documentary stamp taxes on the above transactions, in the amount of ₱27,720.00 plus ₱300.00

compromise penalty or a total amount of P28,020.00. The same was received by petitioner on October 20, 1989 (Exhibit "A").

On November 17, 1989, petitioner filed with respondent its protest against the subject assessment (Exhibit "B"). It anchored its protest on the premise that under established market practice in the sales of foreign exchange, it is the buyer who pays the documentary stamp tax on the transaction, hence, it is the Central Bank of the Philippines that should have paid the tax. However, it expounded that since the Central Bank at that time was exempt from taxes, then no documentary stamp taxes were due on the two transactions. Further it said that while it is true that under P.D. 1994, a proviso was added to Section 222 (now Section 173) 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", the same is not applicable in the case at bar since the questioned transactions took place before January 1, 1986, the date when P.D. 1994 took effect.

Seven (7) years and nine (9) months thereafter, or on September 11, 1997, petitioner received a letter from respondent dated August 13, 1997, denying the protest it filed last November 17, 1989, prompting the petitioner to

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file with this Court the instant petition for review on October 10, 1997.

Petitioner repleads its stance *a quo* in the instant petition for review with the additional argument that the respondent's right to collect the assessment has prescribed.

On the other hand, respondent in his answer rationalized that while industry practice or market convention has the force of law between members of a particular industry, it does not bind respondent's bureau which has never been a party thereto, and therefore, should not prejudice the latter in its task of collecting revenues necessary and vital to the operations of the different and various agencies of the government. Further, he said that even before the amendment of Sec. 222 (now Sec. 173) of the Tax Code, it was already held that the other party who is not exempt from payment of DST is liable for the tax, citing BIR Unnumbered Ruling dated May 30, 1977 and BIR Ruling No. 144-84 dated September 3, 1984.

The issues to be resolved by the Court are (1) whether or not the right of respondent to collect from petitioner the alleged deficiency DST for 1985 has prescribed and (2) whether or not petitioner's total sale of US$1,000,000.00 last June 6, 1985 and June 14, 1985 to the Central Bank are subject to documentary stamp tax.

We disagree with the petitioner that respondent's right to collect the alleged deficiency DST for 1985 has already prescribed. Under Section 318 (now 203) of the 1985 Tax Code, quoted hereunder, the general prescriptive period for collection of internal revenue taxes, fees and charges is three (3) years from date of assessment. The exceptions to said period are set forth in Section 319 (now 222) of the 1985 Tax Code, as well as in decisional rulings. Letter (c) of Section 319 which is applicable in the instant case is also quoted hereunder for easy reference.

> "SEC. 318. ***Period of limitation upon assessment and collection of taxes.*** - Except as provided in the succeeding section, internal revenue taxes shall be assessed <u>within three years</u> after the last day prescribed by law for the filing of the return, and <u>no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period:</u> *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (Underscoring supplied)

> "SEC. 319. ***Exceptions as to period of limitation of assessment and collection of taxes.*** - (a) x x x
>
> (b) x x x
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> "(c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed <u>may be collected within three years following the assessment of the tax.</u> (*ibid*).

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, thus:

> "Settled is the rule that the prescriptive period provided by law to make a collection by distraint or levy or by a proceeding in court is interrupted once a taxpayer requests for reinvestigation or reconsideration of the assessment. In the case of *Commissioner of Internal Revenue vs. Capitol Subdivision, Inc.*, this Court held:
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> > "The period of prescription of action to collect a taxpayer's deficiency income tax assessment is interrupted when the taxpayer requests for a review or reconsideration of said assessment, and starts to run again when said request is denied."
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> x x x x x x x x x
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> Although the protest letters prepared by SGV & Co. in behalf of private respondent did not categorically state or use the words "reinvestigation" and "reconsideration", the same are to be treated as letters of reinvestigation and reconsideration. By virtue of these letters, the Bureau of Internal Revenue ordered its Manufacturing Audit Division to review the assessments made. Furthermore, private respondent's claim that it did not seek reinvestigation or reconsideration of the assessments is belied by the subsequent

correspondence or letters written by its officers, as shown above.

These letters of Wyeth Suaco interrupted the running of the five-year prescriptive period to collect the deficiency taxes. The Bureau of Internal Revenue, after having reviewed the records of Wyeth Suaco, in accordance with its request for reinvestigation, rendered a final assessment. This final assessment issued by then Acting Commissioner Ruben B. Ancheta was dated December 10, 1979 and received by private respondent on January 2, 1980, fixed its tax liability at P1,973,112.86 as deficiency withholding tax at source and P61,155.21 as deficiency sales tax. It was only upon receipt by Wyeth Suaco of this final assessment that the five-year prescriptive period started to run again.

Verily, the original assessments dated December 16 and 17, 1974 were both received by Wyeth Suaco on December 19, 1974. However, when Wyeth Suaco protested the assessments and sought its reconsideration in two (2) letters received by the Bureau of Internal Revenue on January 20 and February 10, 1975, the prescriptive period was interrupted. This period started to run again when the Bureau of Internal Revenue served the final assessment to Wyeth Suaco on January 2, 1980. Since the warrants of distraint and levy were served on Wyeth Suaco on March 12, 1980, then, only about four (4) months of the five-year prescriptive period was used."

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.

Anent the other issue, the same should be ruled in the negative.

On all fours with the case at bar on the second issue, by reason of the close similarity of factual circumstances and the provisions of law involved, is the case of *Consolidated Bank & Trust Co. vs. The Commissioner of Internal Revenue, CTA Case No. 4647, November 21, 1994*, wherein this Court resolved the same issue now brought before us in this proceeding in the following wise:

> "Petitioner further argues that even if these transactions were taxable for DST it could still not be held liable because established banking practice dictates that it

is the buyer of foreign currency who pays the documentary stamp tax.

The above-cited arguments of petitioner negating its liability for the payment of the documentary stamp tax have no merit and this was clearly enunciated by the Court of Appeals in its decision in the case entitled **"China Banking Corporation vs. Commissioner of Internal Revenue"**; CA-G.R. SP No. 33651; September 23, 1994, wherein it categorically ruled that in a situation where the Central Bank is the buyer, it is the seller of foreign currency who is liable for the payment of the documentary stamp tax.

In its decision, the Court of Appeals ruled that the Central Bank from the period of June 11, 1984 until March 9, 1987 had been granted tax exemption privileges by virtue of Resolution No. 35-85 of the Fiscal Incentive Review Board dated March 3, 1985, such that in 1986, the year covered by the assessment in the China Banking case, the Central Bank could not be held liable for its payment. In this situation where the other party is exempt, the liability then automatically falls upon the petitioner bank as seller pursuant to PD 1994 which took effect on January 1, 1986 and brought about an amendment to Section 222 (now Section 173 of the NIRC) which reads, thus:

> "Whenever 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."

Furthermore, the decision of the Court of Appeals in the China Banking case threw out the argument of petitioner that such transactions are not taxable for documentary stamp tax and instead upheld this Court's ruling that the taxability of such sale of foreign exchange finds legal support in Section 51 of Revenue Regulations No. 26 (supra)."

From the abovementioned decision of this Court, it can be gleaned that the Central Bank during the period

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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. 35950. 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.

Petitioner cannot be held liable for DST for transactions held in 1985 because the Central Bank which is the purchaser of the subject foreign currency thereof is tax exempt (*Philippine Commercial International Bank vs. The Commissioner of Internal Revenue, CTA Case No. 4883, April 11, 1996* with Entry of Judgment dated May 9, 1996).

IN THE LIGHT OF ALL THE FOREGOING, judgment is hereby rendered granting the herein petition. Respondent is hereby **ORDERED** to **CANCEL** Assessment Notice No. FAS-5-35-89-002054 which he issued against petitioner on the latter's alleged deficiency DST and compromise penalty for the year 1985. No pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

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CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge