Lib.

MANILA ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 1700

ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - x

MANILA ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 1713

ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

4/25/78

x - - - - - - - - - - - - x

D E C I S I O N

The decisive question tendered for resolution in these cases- whether the use of conversion rates and inclusion of the margin fee in determining the tax base of imported articles which were financed through ordinary commercial letters of credit or telegraphic transfers and by direct U.S. dollar loans are legal- is not one of first impression. In Manila Electric Company vs. Acting Commissioner of Internal Revenue, CTA Case No. 1464 and CTA Case No. 1548, March 22, 1978, where the factual setting and issues of which, including the parties, are on all fours with the cases at bar, this Court ruled that in the computation of the tax base for the purpose of the assessment and collection of the compensating tax due on the importation of articles purchased from the proceeds of direct U.S. dollar loans, or financed through ordinary commercial letters of credit or telegraphic transfers, the values of the imported articles quoted in U.S. dollars should be converted into Philippine pesos at the rate of exchange prevailing at the time of importation, including the margin fee, pursuant to the provisions of Section 204 of the Tariff and Customs Code in relation to Republic Act No. 2609 and implemented by Finance Department Order No. 22.

The relevant facts of these cases as borne out by the pleadings submitted by the parties may be stated as follows:

Petitioner is a corporation organized and existing under the laws of the Philippines, and is engaged in the business of generating and distributing electric power to customers in Manila and suburbs.

1. As First Cause of Action in CTA Case No. 1700.- During the period covering July 10, 1964 to April 2, 1965, several shipments of various items

2. As Second Cause of Action in CTA Case No. 1700.- Petitioner contracted for a direct U.S. dollar loan from Marubeni-Ilida Co., Ltd., of Tokyo, Japan, to finance the dollar costs of one additional generating unit for its power plant. Under the loan agreement, Marubeni-Ilida Co., Ltd., would from time to time make advances to petitioner for the purchase abroad and transportation to the Philippines of one additional generating unit for its power plant, petitioner to repay the advances in various installments as provided therein.

During the period covering December 11, 1963 to January 11, 1965, several shipments of various items of electrical equipment, accessories and parts imported by petitioner and financed by it from the advances or loans extended by Marubeni-Ilida Co., Ltd., with a total C.I.F. value of US $4,805,950.10 arrived at Manila. Respondent, through the Collector of Customs of Manila, converted such dollar value to pesos for determining the tax base of thb imported articles to the equivalent sum of P18,768,670.00, and levied and collected thereon as compensating tax pursuant to Section 190 of the National Internal Revenue Code the total sum of P1,504,872.00. In determining the tax base of the imported articles, respondent, thru the Bureau of

Customs, used the conversion rate of ₱3.905 to a US dollar and included the 25% margin fee prescribed in Republic Act No. 2609, pursuant to Department of Finance Order No. 22 which took effect as of April 25, 1960.

Claiming that the conversion rate and the margin fee should not have been used and included in the tax base, and the correct amount of compensating tax that should be assessed and levied thereon is ₱1,409,458.00 and not ₱1,504,872.00, petitioner computed an overpayment of ₱95,414.00. On August 2, 1965, petitioner filed with respondent a claim for refund of the alleged excess compensating tax but the same was denied by the latter in his letter dated August 31, 1965.

3. As First Cause of Action in CTA Case No. 1713.- During the period covering October 16, 1961 to July 24, 1962, several shipments of various items of electrical equipment, accessories and parts imported by petitioner and financed by it through ordinary commercial letters of credit or telegraphic transfers with a total C.I.F. value of US$203,980.11 arrived at Manila. Respondent, through the Collector of Customs of Manila, converted such dollar value to pesos

for determining the tax base of the imported articles to the equivalent sum of ₱746,390.12, and levied and collected thereon as compensating tax pursuant to Section 190 of the National Internal Revenue Code the total sum of ₱60,917.00. In determining the tax base of the imported articles, it appears that respondent, through the Bureau of Customs, used the conversion rate of ₱3.905 to a US dollar and included the 25% margin fee prescribed in Republic Act No. 2609, pursuant to Department of Finance Order No. 22 which took effect as of April 25, 1960.

Averring that the conversion rate and the margin fee should not have been used and included in the tax base, and the correct amount of compensating tax that should be assessed and levied thereon is ₱42,758.00 and not ₱60,917.00, petitioner computed an overpayment of ₱18,159.00. On September 17, 1962, petitioner filed with respondent a claim for refund of the alleged excess compensating tax but the same was denied by the latter in his letter dated October 7, 1965.

4. <u>As Second Cause of Action in CTA Case 1713</u>.- Petitioner contracted for a direct U.S.

dollar loan from the Export-Import Bank in Washington, U.S.A., and with a syndicate of United States banks to finance the dollar costs of its additional Rockwell Units Nos. 7 and 8, respectively. Under the loan agreement, the Export-Import Bank and syndicate of United States banks would from time to time make advances to petitioner for the purchase abroad and transportation to the Philippines of the additional generating units for its power plant, petitioner to repay the advances in various installments as provided therein.

During the period covering August 4, 1960 to August 21, 1962, several shipments of various items of electrical equipment, accessories and parts imported by petitioner and financed by it from the advances or loans extended by the Export-Import Bank and by the syndicate of United States banks, with a total C.I.F. value of US$1,558,256.93 arrived at Manila. Respondent, through the Collector of Customs of Manila, converted such dollar value to pesos for determining the tax base of the imported articles to the equivalent sum of ₱5,536,730.94, and levied and collected thereon as compensating tax pursuant to Section 190 of the National Internal

Revenue Code the total sum of ₱435,010.00. In determining the tax base of the imported articles, it appears that respondent, through the Bureau of Customs, used the conversion rate of ₱3.905 to a US dollar and included the margin fee prescribed in Republic Act No. 2609, pursuant to Department of Finance Order No. 22 which took effect as of April 25, 1960.

Alleging that the conversion rate and the margin fee should not have been used and included in the tax base, and the correct amount of compensating tax that should be assessed and levied thereon is ₱302,319.00 and not ₱435,010.00, petitioner computed an overpayment of ₱132,691.00. On September 17, 1962, petitioner filed with respondent a claim for refund of the alleged excess compensating tax but the same was denied by the latter in his letter of October 7, 1965.

The questions for determination in these appeals as posed by the parties are:

1. Whether or not the conversion rate of ₱3.905 to a US dollar should be used in determining the tax base of the imported articles for compensating the tax purposes.

2. Whether or not the 25% margin fee imposed under Republic Act No. 2609 should be added as part of the basis for the computation of the compensating tax on the imported articles.

At the outset, it should be stated that "due to the pressure on the international reserve of the country and the threat to economic stability," as well as "the rate of exchange crisis", the Monetary Board availed of the emergency power granted by Section 74 of Republic Act No. 265, otherwise known as the Central Bank Act, and issued, on December 9, 1949, Circular No. 20 restricting "sales of exchange by the Central Bank", subjecting "all transactions in gold and foreign exchange to licensing" by the same, and requiring the surrender thereto of 100% of all foreign exchange receipts at the official parity rate of ₱2.00 to a U.S. dollar, (See Commissioner of Internal Revenue vs. Royal Interocean Lines, No. L-26806, July 30, 1970, 34 SCRA 9.) Section 2 of Circular No. 22 of the Central Bank, dated May 21, 1953, provided, inter alia:

> "The following are foreign exchange transactions and as required by Central Bank Circular No. 20 are subject to prior licensing by or on behalf of the Central Bank:

"(a) Transactions in or with respect to, assets situated abroad belonging to Philippine residents, whether or not such assets are held through, in or with Philippine Banks or banking institutions;

x x x x x

"(c) Any transaction by which a resident incurs, assumes or acknowledges a debt or guarantees or gives security for a debt payable to a non-resident either in Philippine pesos or foreign currency;

"(d) Any act by which a resident debits or credits the account of a non-resident in any currency or the account of a resident in foreign currency;

x x x x x

"(m) Any other transactions involving international financial implications."

As long as the Central Bank of the Philippines subjects all transactions in gold and foreign exchange to licensing in accordance with the provisions of Section 74 of Republic Act No. 265, the Central Bank, in respect of all sales of foreign exchange by the said Bank and its agent banks, was authorized on July 16, 1959 under Republic Act No. 2609 to establish a uniform margin of not more than forty per cent over the banks' selling rates stipulated by the Monetary Board under Section 79 of Republic Act No. 265. The policy incorporated in Circular No. 20 and implemented in subsequent circulars, was also relaxed with the enactment of Republic Act No. 2609, which directed the monetary authorities to take steps for the adoption of a four-year program of gradual decontrol, during which the Monetary Board, with the approval of the President, could and did fix the conversion rate of the Philippine peso to the U.S. dollar at a ratio other than that prescribed in Section 48 of Republic Act No. 265. During the periods involved in the instant cases, it appears that the free market conversion rate was ₱3.905 to a U.S. dollar, at which rate the values and prices of the various importations of petitioner quoted in U.S. dollars were converted into Philippine pesos, including the margin then fixed at 25% for the purpose of the computation of the tax base in the assessment and collection of the compensating tax due on the shipments. (Manila Electric Company vs. Acting Commissioner of Internal Revenue, CTA Cases Nos. 1464 & 1548, March 22, 1978.)

The transactions from which the different importations of petitioner arose involved the following operations:

<u>Transaction No. 1</u>

As stated earlier, petitioner contracted for a direct U.S. dollar loan from Marubeni-Iiida Co. Ltd., of Tokyo, Japan, to finance the dollar costs of one additional generating unit for its power plant. Under the loan agreement, Marubeni-Iiida Co.

Ltd. would from time to time make advances to petitioner for the purchase abroad and transportation to the Philippines of one additional generating unit for its power plant, petitioner to repay the advances in various installments as provided therein.

During the period covering December 11, 1963 to January 11, 1965, several shipments of various items of electrical equipment, accessories and parts imported by petitioner and financed by it from the advances or loans extended by Marubeni-Ilida Co., Ltd., with a total C.I.F. value of US$4,805,950.10 arrived at Manila. Respondent, through the Collector of Customs of Manila, converted such dollar value to pesos for determining the tax base of the imported articles to the equivalent sum of ₱18,768,670.00, and levied and collected thereon as compensating tax pursuant to Section 190 of the National Internal Revenue Code the total sum of ₱1,504,872.00. In determining the tax base of the imported articles, respondent, thru the Bureau of Customs, used the conversion rate of ₱3.905 to a US dollar and included the 25% margin fee prescribed in Republic Act No. 2609, pursuant to Department of Finance Order No. 22 which took effect on April 25, 1960.

Similarly, petitioner contracted for a direct

U.S. dollar loan from the Export-Import Bank in Washington, U.S.A., and with a syndicate of United States banks to finance the dollar costs of its additional Rockwell Units Nos. 7 and 8, respectively. Under the loan agreement, the Export-Import Bank and syndicate of United States banks would from time to time make advances to petitioner for the purchase abroad and transportation to the Philippines of the additional generating units for its power plant, petitioner to repay the advances in various installments as provided therein.

During the period covering August 4, 1960 to August 21, 1962, several shipments of various items of electrical equipment, accessories and parts imported by petitioner and financed by it from the advances or loans extended by the Export-Import Bank and by the Syndicate of United States banks with a total C.I.F. Value of US$1,558,256.93 arrived at Manila. Respondent, through the Collector of Customs of Manila, converted such dollar value to pesos for determining the tax base of the imported articles to the equivalent sum of ₱5,536,730.94, and levied and collected thereon as compensating tax pursuant to Section 190 of the National Internal Revenue Code the total sum of ₱435,010.00. Again, in determining the tax base of the imported articles, respondent, through the Bureau of Customs, used the conversion rate of ₱3.905 to a US dollar and included the 25% margin fee prescribed in Republic Act No. 2609, pursuant to Department of Finance Order No. 22 which took effect on April 25, 1960.

Transaction No. 2

During the periods covering October 16, 1961 to July 24, 1962 and July 10, 1964 to April 2, 1965, several shipments of various items of electrical equipment, accessories and parts imported by petitioner and financed by it through ordinary commercial letters of credit or telegraphic transfers with a total C.I.F. value of US$203,980.11 and US$1,051,838.56, respectively, arrived at Manila. Respondent, through the Collector of Customs of Manila, converted such dollar values to pesos for determining the tax base of the imported articles to the equivalent amounts of ₱746,390.12 and ₱4,100,618.93, and levied and collected thereon as compensating tax pursuant to Section 190 of the National Internal Revenue Code the total sums of ₱60,917.00 and ₱337,266.00. In determining the tax base of the imported articles, respondent, through the Bureau of Customs, used the conversion rate of ₱3.905 to a US dollar and included the 25% margin fee prescribed in Republic Act No. 2609 pursuant to Department of Finance Order No. 22 which took effect on April 25, 1960.

With reference to Transaction No. 1, we held, under analogous conditions, in Manila Electric Company vs. Acting Commissioner of Internal Revenue, CTA Cases Nos. 1464 and 1548, March 22, 1978, where the parties, factual setting and issues are identical to those in the instant cases:

> With respect to Transaction No. 1, it might be safe to say that in line with the ordinary course of business, adherence to which is presumed, in the absence of proof to the contrary -- upon approval and grant of the U.S. dollar loan of petitioner by the syndicate of United States banks, acting through the First National City Bank in New York, the amounts or proceeds of the same had been debited to the account of, or set apart for, petitioner and which could be drawn upon by it, and in fact used by petitioner in financing the U.S. dollar costs and transportation to the Philippines of the electrical equipment, accessories and parts imported for use in the construction of its additional generating unit for its power plant. And that, upon notice of the payment of such purchases and grant of said loan to petitioner in the Philippines, the latter in turn must have credited the accounts of the syndicate of United States banks, acting through the First National City Bank in New York. Such processes of bookkeeping and accounting are, for all legal intents and purposes, equivalent to delivery, receipt or remittance, in much the same way as petitioner would have received the dollar loan directly from the syndicate of United States banks, acting through the First National City Bank in New York. Incidentally, this is in accord with established practice especially among banks the world over, which seldom bring or send money physically from one country to another, but generally, resort to bills, notes or other conventional forms of transacting business in the manner they may deem most practical and suitable to their respective interests. (See Commissioner of Internal Revenue vs. Royal Interocean Lines, No. L-26806, July 30, 1970, 34 SCRA 9)

As stated by petitioner in paragraph 2 under its Second Cause of Action in both CTA Cases Nos. 1464 & 1548: "Under the loan agreement, the syndicate of United States banks extended a credit of not exceeding US$9,400,000.00 to petitioner wherein the syndicate of United States banks would make advances from time to time to petitioner for the purchase in the United States and transportation to the Philippines of one additional generating unit for its power plant, petitioner to repay the advances in 14 approximately equal semi-annual installments commencing on March 31, 1964." (Emphasis supplied.) Needless to say, the repayments or remittances in fourteen (14) approximately equal semi-annual installments in terms of U.S. dollars by petitioner from the Philippines, which necessarily must involve the purchase of foreign exchange in the Philippines, should be credited in its books of accounts and in turn debited by the syndicate of United States banks, acting through the First National City Bank in New York, against the U.S. dollar loan of petitioner, and, hence deducted from said loan. (See Manila Electric Company vs. Acting Commissioner of Customs, C.T.A. Case No. 2487, August 16, 1977)

In short, the incurrence of petitioner of the U.S. dollar loan with a syndicate of United States banks, acting through the First National City Bank in New York, the proceeds of which were used to finance the dollar costs of its importations mentioned in Transaction No. 1, above, and the repayments or remittances in terms of U.S. dollars from the Philippines of the payments of such loan not only involved the purchase and sale of foreign exchange in the Philippines but also are foreign exchange transactions under Central Bank Circular No. 20. They are not only transactions by which a resident incurred a debt payable to a non-resident either in Philippine pesos or foreign currency, or acts by which a resident debits or credits the account of a non-resident in any currency, but transactions involving international financial implications. Consequently, in the computation of the tax-base for the purpose of the assessment and collection of the compensating tax due on the importations of the articles purchased from the dollar proceeds of the loan, the values

> of said articles quoted in U.S. dollars should be converted into Philippine pesos at the rate of exchange prevailing at the time of importations, including the margin fee, pursuant to the provisions of Sections 204 of the Tariff and Customs Code in relation to Republic Act No. 2609 and implemented by Finance Department Order No. 22. (Manila Electric Company vs. Acting Commissioner of Customs, supra.)

And with respect to Transaction No. 2 of the instant appeals, which is on all four with Transaction No. 2, also of Manila Electric Company vs. Acting Commissioner of Internal Revenue, supra, this Court disposed of the same problem in the following wise:

> Coming to Transaction No. 2, petitioner states that the several shipments of various items of electrical equipment, accessories and parts imported by it were financed by petitioner through ordinary commercial letters of credit or telegraphic transfers. Clearly, therefore, the importations involved not only the purchase and sale of foreign exchange in the Philippines, but also are transactions involving international financial implications entailing foreign exchange transactions under Central Bank Circular No. 20, and in the computation of the tax-base for the purpose of the assessment and collection of the compensating tax due thereon, the values of said shipments quoted in U.S. dollars should be converted into Philippine pesos at the rate of exchange prevailing at the respective time of importation, including the 25% margin fee, pursuant to the provisions of Section 204 of the Tariff and Customs Code in relation to Republic Act No. 2609 and implemented by Finance Department Order No. 22. Paragraph II of Department of Finance Order No. 22 provides:
>
> "Paragraph II. Importations financed through commercial letters of credit and/or effected under barter arrangement with back-to back letters of credit.- The conversion rates of foreign exchange to be used as tax base for the computation of customs

duties, internal revenue taxes and special import tax on imported or brought into the Philippines, referred to in Paragraph I(a) and (b) above, shall be effective rates (either the preferred rate or free market rate depending on the commodity classification of the Central Bank, plus, the margin fee prevailing on the date of liquidation abroad of the draft covering the particular shipment or importation.

The Central Bank or through its authorized agent bank shall indicate in the corresponding release certificate the date of liquidation abroad of the covering draft and effective rate of exchange at which the draft was liquidated."

The case of Commissioner of Customs and Commissioner of Internal Revenue vs. Miguel Fortich Celdran and Court of Tax Appeals, No. L-23425, February 26, 1968, 22 SCRA 742, cited by petitioner in support of its stand that the margin fee of 25% should not be added as part of the basis for the computation of the compensating tax, is not applicable to the instant cases because the "Impala" car involved therein had been bought by Miguel Fortich Celdran with savings from his earnings as a physician working in a hospital in the United States, and that no agent bank of the Central Bank of the Philippines had made any sale of foreign exchange in connection therewith. Unlike in the cases at bar wherein the shipments of various items of electrical equipment, accessories and parts imported by petitioner involved sales of foreign exchange (or transactions involving international financial implications) under Central Bank Circular No. 20, supra, there has been neither such sale of foreign exchange nor the intervention of any agent bank of the Central Bank in the Celdran case.

We find no cogent and valid reason to modify, much less depart from the conclusion reached in Manila

Electric Company vs. Acting Commissioner of Internal Revenue, CTA Cases Nos. 1464 and 1548, March 22, 1978, as expressed in the above-quoted opinion of the Court there, and the same should resolve the same questions now brought before us in these proceedings.

Consequently, no error was committed by respondent Commissioner of Internal Revenue in converting, through the Bureau of Customs, the dollar values of the imported articles of petitioner into Philippine pesos at the conversion rate of ₱3.905 to a US dollar and in adding thereto the margin fee of 25% of the value of the articles, as the basis for the computation of the compensating tax due on the importations, pursuant to the provisions of Section 204 of the Tariff and Customs Code in relation to Republic Act No. 2609 and implemented by Finance Department Order No. 22. The decisions of respondent denying the claims of petitioner Manila Electric Company for the refund of the amounts of ₱18,159.00, ₱132,691.00, ₱25,139.00 and ₱95,414.00, representing alleged compensating tax on imported articles during the period covering October 16, 1961 to July 24, 1962; August 4, 1960 to August 21, 1962; July 10, 1964 to April 2, 1965 and December 11, 1963 to January 11, 1965 involved in CTA Cases Nos. 1713 and 1700 should therefore be affirmed.

WHEREFORE, we find no merit in these Petitions For Review and the same are hereby dismissed at petitioner's costs in both instances.

SO ORDERED.

Quezon City, April 25, 1978.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge