REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CONSOLIDATED BANK AND
TRUST COMPANY,
Petitioner,

- versus -

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4647

Promulgated:
NOV 21 1994

x - x

DECISION

The sole question tendered to this Court for resolution is whether petitioner Consolidated Bank and Trust Company, as seller of foreign currency, is liable to the payment of documentary stamp tax, particularly in a situation where the buyer thereof is the Central Bank of the Philippines.

The facts are undisputed.

Respondent, in a letter dated September 30, 1988, assessed the petitioner for its tax liability in the amount of P638,238.38 representing deficiency documentary stamp tax on the foreign bills of exchange it sold to Central Bank in 1986, computed as follows:

Foreign Exchange Sold to Central Bank	P340,233,800.00
Documentary Stamp Tax Due Thereon	
P340,233,800.00 / P200.00 x 0.30	P 510,350.70
Add: 25% Surcharge	127,587.88
T o t a l	P 637,938.38
Less: Payment	--------
Total Documentary Stamp Tax And Surcharge Due	P 637,938.38
Add: Compromise Penalty	300.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P 638,238.38

In accordance with the procedure outlined in the Tax Code, petitioner duly relayed its protest to the aforementioned assessment in a letter dated October 14, 1988 anchored on two (2) main assertions, to wit:

1) Such transactions should not give rise to the imposition of documentary stamp tax or other taxes as the exercise thereof is mandated under the Central Bank Act;

2) Granting, without conceding, that the transactions require payment of stamp taxes, the liability must be that of the Central Bank not only because it is the real party transferring the funds but also because, as purchaser, it is obligated by the established market convention to shoulder all costs of remittances.

Respondent did not give credence to the foregoing arguments and subsequently denied the protest embodied in a letter received by the petitioner on September 5, 1991.

Petitioner then sought the protection of this Court from what it perceives as an erroneous assessment issued by the respondent without factual and legal bases.

Meanwhile, a warrant of Garnishment was issued by the respondent against petitioner to enforce the collection of the alleged deficiency documentary stamp tax but this was eventually lifted with the filing of a surety bond by petitioner.

Petitioner seeks to destroy the validity of the assessment by first presenting the argument that the transaction between the Central Bank and petitioner in this instance is not taxable for documentary stamp tax because it falls outside the scope of Section 195 (now Section 182) of the Tax Code in relation to Section 51 of Revenue Regulations No. 26 known as the Documentary Stamp Tax Regulations, both provisions are quoted hereunder:

> **Section 195** (now Section 182 of the NIRC) - 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

> any such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign currency.
>
> **Section 51** of Revenue Regulations No. 26 - what may be considered as a Telegraphic Transfer - If a local bank cables to a certain bank said local bank has a credit and directs that foreign bank to pay another bank or person in the same locality a certain sum of money, the documents for and in respect of such transactions will be regarded as a telegraphic transfer, taxable under the provisions of subsection 144 a(i) of the Administrative Code (now Section 195 of the NIRC).

It is the contention of the petitioner that the aforecited provisions of law contemplate a situation where money has been drawn on an existing account in the Philippines and made payable abroad which is different from what actually transpired in the instant case. When Central Bank buys foreign currency from petitioner, petitioner bank merely instructs its foreign correspondent bank to remit the dollar amount to the foreign bank where the Central Bank has an account, as such, there is no actual drawing of money in the Philippines within the meaning of Section 195 of the Tax 1986 Code and Section 51 of Revenue Regulation No. 26.

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).

Inasmuch as the China Banking case which was the subject of the decision of the Court of Appeals is substantially similar to the instant case as it presents an identical issue and refers to the same year of 1986, this Court upholds the liability of the petitioner bank for the payment of the documentary stamp tax for the foreign currency it sold to the Central Bank in 1986.

WHEREFORE, premises considered, petitioner is hereby **ORDERED** to pay respondent Commissioner of Internal Revenue, the amount of P638,238.38 as deficiency documentary stamp tax for the year 1986 plus 20% annual interest from 1986 until fully paid pursuant to Section 283 of the 1986 Tax Code as amended by P.D. 1994, effective January 11, 1986, which provides in part, thus:

> **Section 283.** ***INTEREST. (a) In General*** - there shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by regulations, from

the date prescribed for payment until the amount is fully paid.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge