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. 4466

Promulgated : JAN 05 1995

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D E C I S I O N

This is a petition for review presented to this Court aimed to set aside the decision of respondent Commissioner assessing the petitioner for alleged deficiency documentary stamp tax in the amount of P775,366.50 for the taxable year 1985.

The facts are undisputed.

Petitioner is a commercial banking institution organized and existing under and by virtue of the laws of the Philippines. During the taxable year 1985, the Central Bank purchased foreign currency from the petitioner in the total amount of US$27,927,980.40 with a peso equivalent of P516,710,999.95. No documentary stamp tax were paid on these transactions. Consequently, in a letter received by petitioner on June 20, 1988, respondent assessed petitioner for deficiency documentary stamp tax in the amount of P775,366.50 attributing this amount to the documentary stamp tax that should have been paid for the foreign currency purchases made by Central Bank in 1985, computed thus;

Total Currency Purchases	-	US$ 27,927,980.40
Peso equivalent	-	P 516,710,999.95
Documentary Stamp Tax Due thereon :		
$\frac{P516,710,999.95}{200}$ x P0.30		775,066.50
Add: Compromise Penalty x		300.00
Total amount Due and Collectible		P 775,366.50

On July 7, 1988, petitioner through its legal counsel made a formal protest against the assessment insisting that it is not liable for documentary stamp tax. This protest was subsequently denied by respondent and made known to petitioner on June 8, 1990. Petitioner then elevated this case to this court on June 28, 1990 asking that said decision be set aside. Meanwhile, in an effort to collect payment for the deficiency Documentary stamp tax, respondent issued and served a warrant of distraint and levy upon petitioner on May 27, 1991. Petitioner then executed a bond to guarantee payment in the event that the petition for review be denied.

The petition is anchored on four propositions, to wit:

(1) Foreign currency purchases made by Central Bank is for the purpose of maintaining an adequate level of the country's international reserve position such that the imposition of documentary stamp tax resulting in the diminution of the purchased funds defeats that purpose, hence, documentary stamp tax should not be imposed.

(2) When Central Bank purchases dollars from petitioner, petitioner then communicates to its correspondent bank abroad to charge their account and remit the dollars purchased to the foreign bank where the Central Bank has an account, therefore these transfers having taken place abroad should not be taxed because documentary stamp tax is imposed in a situation where money has been drawn on an existing account in the Philippines and made payable abroad.

(3) That even if these transactions require the payment of documentary stamp tax, petitioner is not liable to pay them because according to established market convention, it is the buyer of foreign currency who shoulders such payment. Furthermore an earlier ruling of the CTA (**Sta. Clara Lumber Co., Inc. vs. Jose Arañas**; CTA Case No. 502, June 12, 1959) held that Section 222 (now Section 173) of the Tax Code "places the burden of paying the tax upon the parties to the contract and leaves the tax to be paid indifferently by either party, and, accordingly, the party assuming payment of said taxes becomes directly liable therefore". So it is the contention of the petitioner that since Central Bank as buyer assumed the payment of the Documentary stamp tax as dictated by market convention, then it is the one liable for its payment.

(4) Petitioner even went further to claim that such transactions are no longer subject to documentary stamp tax because PD 1827 exempted

the Central Bank from the payment of all national, provincial, municipal and city taxes, fees, charges and assessments. Petitioner cannot even be made liable under PD 1994 which amended Sec. 173 of the Tax Code which places the burden of paying the tax to the party not exempt in a situation where the other party to the transaction has been granted an exemption because such amendment took effect on January 1, 1986 and the transactions in question took place in 1985. Section 173 as amended by PD 1994 is herein quoted:

> **SECTION 173.** *Stamp taxes upon documents, instruments, and papers.* - upon documents, instruments and papers, and upon acceptances, assignments, sales, and transfer of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding Documentary stamp tax prescribed in the following section of this title, by the person, making, signing, issuing, accepting, or transferring the same, and at the same time such act is done or transaction had: Provided, that 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. (as amended by Presidential Decree No. 1994).

Respondent in his answer brushes aside the arguments of petitioner as being mere opinions and erroneous conclusions of fact and law and asserts the following special and affirmative defenses:

> 4. The deficiency documentary stamp tax in question was imposed against herein petitioner pursuant to Sec. 222 (now Section 173) of the Tax Code;

5. Under this provision, the purpose of the transaction is not a factor in determining liability for the tax. As petitioner is the seller it is liable for the deficiency documentary stamp tax pursuant to Sec. 222 of the Tax Code;

6. The assessment was issued in accordance with law.

The issue to be resolved is simple. Whether or not petitioner as seller of foreign currency is liable for the payment of documentary stamp tax in a situation where the Central Bank is the buyer.

A conclusion based on the foregoing facts is best arrived at by individually dealing with the points raised by petitioner.

Petitioner subscribes to the belief that documentary stamp tax should not be imposed because it would defeat the purpose of the acquisition which is to maintain an adequate level of the country's international dollar reserve. This Court acknowledges the wisdom of this assertion, however it is not within our jurisdiction to grant tax exemptions because such is the prerogative of the legislative department of our Government. Furthermore, the Supreme Court has ruled that for a tax exemption to exist it must be so categorically declared in words that admit of no doubt (**Commissioner of Internal Revenue vs. Guerrero**, 21 SCRA 183). In the instant case, there is no such law exempting foreign currency purchases from documentary stamp tax, what the law provides is clear:

> **SEC. 231 (now Section 182 of the Tax Code)** *Stamp tax on foreign bills of exchange and letter of credit.* - 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 twenty 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. (National Internal Revenue Code).

The aforecited provision has also been put into issue in the light of the second point raised by petitioner where it maintains that such transactions do not fall within the ambit of Section 231 of the 1985 Tax Code (now Section 182). It proposes that when Central Bank purchases dollars from petitioner, petitioner merely communicates to its correspondent bank abroad to charge their account and remit the dollars purchased to the foreign bank where the Central Bank has an account, hence there is no actual drawing of money in the Philippines as contemplated by the said provision therefore no documentary stamp tax is payable.

We are unwilling to concede to this argument as Section 51 of Revenue Regulation No. 26 issued in implementation of Section 231 (now Section 182) of the Tax Code considers cabled instructions to a foreign bank to pay another bank a certain sum of money as a transaction subject to documentary stamp tax, when it provides thus:

> **SECTION 51** - *What may be considered as 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 182 of the Tax Code).

Furthermore petitioner asserts that there was no actual drawing of money in the Philippines in such transactions. We find no merit in this proposition as such contention was properly considered in our decision entitled **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**, CTA Case No. 4481, May 31, 1994 where it was ruled thus:

> "Obviously, it is not money that is being drawn in the Philippines, as the Petitioner would have it, but bills of exchange and letters of credit. It is hard to imagine how the law could contemplate bills of exchange and letters of credit being drawn "from a place of deposit in the Philippines" in relation to DST liability under Section 182.

It is more logical to consider that what the law means with "drawn in" is "executed in". In fact the Centennial 6th edition of Black's Law Dictionary defines "draw" as:

> "The act of a drawer in creating a draft. To draw a bill of exchange, check, or draft, is to write (or cause it to be written) and sign it; to make, as a note."
>
> Thus to draw bills of exchange and letters of credit in the Philippines is to write, sign, or otherwise execute such bills of exchange and letters of credit in the Philippines.

Moreover, the issue of whether documentary stamp tax is imposable on these transactions has already been settled by the decision of the Court of Appeals in the case entitled **China Banking Corporation vs. Commissioner of Internal Revenue**, CA-G.R. SP No. 33651 promulgated on September 23, 1994, where it ruled thus:

> "As correctly pointed out by the CTA, the liability of petitioner for documentary stamp tax on the sale of foreign bill of exchange through telegraphic orders or transfers, finds support under Section 51 of Revenue Regulation No. 26, which reads:
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> **Section 51** - *what maybe considered as 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).
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> Furthermore, "a documentary stamp tax is in the nature of an excise tax imposed not on the business transacted but upon the privilege, opportunity or facility offered at exchanges for the transaction of business." (**Commissioner of Internal Revenue vs. Heald Lumber Co.**, 10 SCRA 372). In other words, the tax herein is imposed not on business transactions but on the privilege to enter into such transactions."

As a fallback position, the petitioner presents the argument that even if these transactions are subject to documentary stamp tax, it still could not be held liable for its payment because market convention dictates that it is the buyer of foreign currency who shoulders such payment. In support of this contention, the petitioner attempts to provide a logical framework by citing the case of **Sta. Clara Lumber Co., Inc. vs. Jose Arañas**, (CTA Case No. 502, June 12, 1959) in relation to established banking practice. In the aforementioned case, this Court ruled thus:

> **Section 210** of the Tax Code provides that the corresponding documentary stamp tax upon documents, instruments and papers, and upon acceptances, assignments, sales and transfer of the obligation, right or properties incident thereto shall be paid by the person making, signing, issuing, accepting or transferring the same. It would seem from this Codal provision that where the document, instrument or paper subject to the documentary stamp tax is made and signed by two or more persons or partners, the burden of paying the tax is shouldered by said persons or parties. The provision leaves

the tax to be paid indifferently by either party."

Based on the foregoing, petitioner contends that since the Central Bank as buyer assumed the payment of the documentary stamp tax as dictated by established banking practice, then it is the Central Bank which should be the one liable for its payment, however since PD 1827 exempted the CB from the payment of all national, provincial, municipal and city taxes, fees, charges and assessments, then it cannot be made to pay. In an attempt to stretch this argument further, petitioner contends that the last sentence in Section 173 of the Tax Code which states that "Whenever one party to the taxable document enjoys exemption from the tax imposed, the other party, who is not exempt shall be the one directly liable" does not apply to this situation as this statement was added only to the foregoing provision in the year 1986 whereas the taxable year in question was only in 1985. To sum it all up, it is the petitioner's theory that in 1985, neither party could be held liable to pay the documentary stamp tax.

We find merit in the final conclusion of the petitioner that no one is liable for the payment of documentary stamp tax for foreign currency purchases made by the Central Bank in 1985.

To better understand the position of the petitioner it is best to trace the evolution of the provision of Section 173 (formerly Section 222) of the Tax Code as it relates to the present case. Prior to January 1, 1986, the said provision of the National Internal Revenue Code merely provides as follows:

> Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid, for and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following section of this Title, by the person making, signing, issuing, accepting or transferring the same, and at the time such act is done or transaction had.

However, due to Presidential Decree 1994 which took effect on January 1, 1986, a new statement was added to the said provision thus:

> "Provided, that 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 (as amended by PD 1994)."

It is the contention of the petitioner that when these transactions took place in 1985, the tax provision in question did not have that safety net of placing the burden of paying the documentary stamp tax upon the other party when one party to the transaction is exempt in the absence of the aforecited amendment during that period.

Moreover, petitioner asserts that due to established banking practice, Central Bank as buyer assumes payment of DST but since CB was exempt from paying the taxes in 1985, the other party, referring to petitioner, cannot be held liable.

We agree with this line of reasoning but it is important to point out that this holds true only to transactions which took place prior to January 1, 1986 because it was only on that date that the aforementioned amendment to Section 173 (formerly Section 222) of the Tax Code took effect.

This interpretation finds support in the aforecited case of **Sta. Clara Lumber Co., Inc. vs. Jose Arañas** interpreting Section 210 (now Section 173) of the National Internal Revenue Code prior to its amendment by P.D. 1994.

To continue what has been quoted above, this Court stated:

> "there is nothing in the provisions of Section 210 of the Tax Code which, in cases of documents, instruments or papers required to be stamped, can be construed as expressly forbidding the person upon which the stamp taxes are imposed from shifting the same by contract or by any other lawful means. In the case at bar, the banks have contractually shifted the payment of the stamp taxes to petitioner, the other party in the Agreement, Annex "B". The contractual shifting of the

> burden of paying the stamp tax in question does not contravene any public policy. xxx"

This has been the established jurisprudence prior to the amendment by P.D. 1994 of Section 210 of the Tax Code and in fact was followed by the Bureau of Internal Revenue in several of its issuances, such as BIR Ruling No. 233-82 dated August 11, 1982 which adopted the doctrine laid down in the said Sta. Clara Lumber case, wherein the documentary stamp tax can be paid by either party and the party who assumes payment shall be the one directly liable. This ruling places the burden on the Government of the Republic of the Philippines as the one directly liable for the payment of documentary stamp tax. This ruling even provides the mechanics of effecting payment where the payor and the payee are both government entities thus:

> "In the instant case, therefore, the buyer, Government of the Republic of the Philippines, has become directly liable for the tax and although it is a government unit it is subject to the documentary stamp in question, pursuant to Section 23 of P.D. No. 1177. However, it is entitled to either a tax subsidy or payments constituting equity contributions in which case, it shall not be required to pay cash or its equivalent. The revenue collecting agencies shall instead issue a "Payment Compliance Certificate" indicating the nature of the assessment and amount due. The subsidy shall be effected through journal vouchers or their equivalent. (See Joint Budget Circular No. 89 and paragraphs 4, 6 and 9, Finance Circular No. 2-78, implementing Section 28, P.D. 1177).

We find no basis to deviate from the said established jurisprudence considering that the year involved in the instant case likewise involved a taxable year prior to the amendment of the said provision of law, Section 210 (now Section 173) of the Tax Code.

Having thus established that it is the buyer of foreign currency who is directly liable for the payment of the DST, the Central Bank should have been made to pay the assessed amount had it not in fact been exempted from the said tax pursuant to its charter.

WHEREFORE, in view of the foregoing, the disputed assessment in the amount of P775,366.50 for alleged deficiency documentary stamps taxes for the year 1985 is hereby set aside and respondent Commissioner of Internal Revenue is ordered to desist from collecting said deficiency stamps taxes from petitioner.

SO ORDERED.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge