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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 1464

ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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MANILA ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 1548

ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

3/22/78

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D E C I S I O N

Manila Electric Company, petitioner in these two cases for the refund of alleged overpaid compensating tax on its various importations during the period 1962 to 1964, poses the issue of whether the use of conversion rates and inclusion of the margin fee in determining the tax base of its imported articles, which were financed by it through ordinary commercial letters of credit or telegraphic transfers and by direct U.S. dollar loans with a syndicate of United States Bank acting through the First National City Bank in New York, are legal.

During the joint hearing of these cases on August 18, 1976, the parties withdrew the partial stipulation of facts filed by them on March 6, 1973 on the ground that the same is not necessary to the resolution of the issue involved in the instant cases. No trial on the merits was, therefore, conducted by the Court as petitioner and respondent merely submitted these cases for decision after they have filed their respective memorandum in support of their positions.

As borne out by the pleadings submitted by the parties, it appears that:

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. 1464.- During the period covering August 13, 1962 to April 30, 1963, 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$1,339,299.66 arrived at Manila, and 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 ₱5,319,410.76, and levied and collected thereon as compensating tax pursuant to Section 190 of the National Internal Revenue Code the total sum of ₱411,759.00. In determining the tax base of the imported articles, respondent, thru the Bureau of Customs, usedtthe conversion rate of ₱3.90 to a US dollar and included the 25% margin fee prescribed in Republic Act No. 2609, pursuant to Department of Finance Order No. 22 dated 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 ₱265,223.00 and not ₱411,759.00, petitioner computed an overpayment of ₱146,536.00. Petitioner filed a claim for refund of this amount dated May 3, 1963 but same was denied by respondent in his letter of July 30, 1963.

2. As Second Cause of Action in CTA Case No. 1464.- In 1962, petitioner contracted for a direct U.S. dollar loan with a syndicate of United States banks, acting through the First National City Bank in New York, to finance the dollar costs of one additional generating unit for its power plant. 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 fourteen (14) approximately equal semi-annual installments commencing on March 31, 1964.

During the period covering June 28, 1962 to April 8, 1963, 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 syndicate of United States banks with a total C.I.F. value of $2,305,685.09, 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 ₱8,992,211.17, and levied and collected thereon as compensating tax pursuant to Section 190 of the National Internal Revenue Code, the total sum of ₱714,136.00 . In determining the tax base of the imported articles respondent, thru the Bureau of Customs, used the conversion rate of ₱3.90 to a US dollar and included the 25% margin fee prescribed in Republic Act No. 2609, pursuant to Department of Finance Order No. 22 dated 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 ₱356,172.00 and not ₱714,136.00 petitioner computed an overpayment of ₱357,964.00. On May 3, 1963, petitioner filed with respondent a claim for refund of the excess compensating tax but the same was denied by the latter in his letter dated July 20, 1963.

3. As First Cause of Action in CTA Case No. 1548.- During the period covering December 26, 1962 to July 9, 1964, 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$1,927,695.05 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 ₱7,536,177.85, and levied and collected thereon as compensating tax pursuant to Section 190 of the National Internal Revenue Code the total sum of ₱593,436.00. In determining the tax base of the imported articles, respondent thru the Bureau of Customs, used the conversion rate of ₱3.90 to a US dollar and included the 25% margin fee prescribed in Republic Act No. 2609, pursuant to Department of Finance Order No. 22 dated 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 ₱496,035.00 and not ₱593,436.00, petitioner computed an overpayment of ₱97,301.00. On August 28, 1964, petitioner filed with respondent a claim for refund of this amount but the same was denied by the latter in his letter dated October 12, 1964.

4. As Second Cause of Action in CTA Case No. 1548.- As has already been stated above, in 1962 petitioner contracted for a direct U.S. dollar loan with a syndicate of United States banks, acting through the First National City Bank in New York, to finance the dollar costs of one additional generating unit for its power plant. 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 fourteen (14) approximately equal semi-annual installments commencing on March 31, 1964.

During the period covering April 16, 1963 to January 9, 1964, 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 syndicate of United States banks with a total C.I.F. value of US$3,171,087.78, 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 ₱12,367,340.17, and levied and collected thereon as compensating tax pursuant to Section 190 of the National Internal Revenue Code the total sum of ₱974,430.00. In determining the tax base of the imported articles respondent, through the Bureau of Customs, used the conversion rate of ₱3.90 to a US dollar and included the 25% margin fee prescribed in Republic Act No. 2609, pursuant to Department of Finance Order No. 22 dated April 25, 1960.

Alleging that the conversion rate and 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 ₱479,935.00 and not ₱974,430.00, petitioner computed an overpayment of ₱494,495.00. On August 28, 1964, petitioner filed with respondent a claim for refund of this amount but the same was denied by the latter in his letter dated October 12, 1964.

The parties now pose the following issues:

1. Whether or not the dollar values of the imported articles should be converted to pesos at the official (parity) rate of ₱2.00 to $1.00; and

2. Whether or not the margin fee should be included in the tax base of the imported articles and should form part of the conversion rate.

Indeed, "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, <u>inter alia</u>:

> "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;

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"(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 ₱3.90 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.

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

1. In 1962, as stated earlier, petitioner contracted for a direct U.S. dollar loan with a

syndicate of United States Banks, acting through the First National City Bank in New York, to finance the dollar costs of one additional generating unit for its power plant. 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 fourteen (14) approximately equal semi-annual installments commencing on March 31, 1964.

During the periods covering June 28, 1962 to April 8, 1963 and April 16, 1963 to January 9, 1964, 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 syndicate of United States banks with a total C.I.F. value of US$2,305,685.09 and US$3,171,087.78, respectively, arrived at Manila.

2. During the periods covering August 13, 1962 to April 30, 1963 and December 26, 1962 to July 9, 1964, 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$1,339,299.66 and US$1,927,695.05, respectively, arrived at Manila.

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*.)

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.

Accordingly, no mistake was committed by respondent Commissioner of Internal Revenue in converting, thru the Bureau of Customs, the dollar values of the imported articles of petitioner into Philippine pesos at the rate of exchange prevailing at the time of importations, and in adding thereto the margin fee of 25% of the values 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 appealed from in CTA Case No. 1464 and CTA Case No. 1548 denying the claims of petitioner Manila Electric Company for the refund of the amounts of P146,536.00, P357,964.00, P97,381.00 and P494,495.00, representing compensating tax on imported articles during the periods covering August 13, 1962 to April 30, 1963, June 28, 1962 to April 8, 1963, December 26, 1962 to July 9, 1964, and April 16, 1963 to January 9, 1964, must therefore be sustained.

WHEREFORE, we find no merit in these Petitions for Review and we hereby AFFIRM the decisions appealed from. With costs against petitioner in both instances.

SO ORDERED.

Quezon City, March 22, 1978.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge