REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITIBANK, N.A.
Petitioner,

- versus - **C.T.A. CASE NO. 4069**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - x

6/26/92

D E C I S I O N

Involved in the instant case is a claim for refund or tax credit of allegedly overpaid 10% excise tax on the sale of foreign exchange, in the amount of P186,936.37.

The facts as found by the Court are:

1. Petitioner, a foreign corporation duly licensed to engage in banking activities in the Philippines, is authorized by the Central Bank to operate a Foreign Currency Deposit Unit or FCDU. Among the customers of petitioner's FCDU is the Philippine Long Distance and Telephone Company (PLDT);

2. In its letter to the Central Bank (CB) dated May 23, 1984 (Rollo, pp. 62-63), PLDT requested that it be provided, through petitioner, with foreign exchange in the amount of

Can$169,903.98, to be used for the partial payment of its Can$2.7M loan from the Export Development Corporation (EDC);

3. The CB, in a letter, dated June 5, 1984, authorized petitioner "to remit the amount of Can$169,903.98 to the Royal Bank of Canada, Ottawa, Canada, for credit to the account of Export Development Corporation xxx to cover payment of the principal and interest due on captioned loan xxx" (Id., p. 65);

4. Armed with the CB authorization, petitioner, sometime in June, 1984, sold to PLDT US$130,690.14, which was the equivalent of Can$169,903.98 per the conversion rate prevailing at that time;

5. On June 15, 1984, pursuant to P.D. No. 1928 as implemented by Rev. Regs. No. 7-84 and Ministry Order No. 17-84, petitioner collected in behalf of the Bureau of Internal Revenue (BIR) a total of P235,268.39 as 10% excise tax on the sale of foreign exchange to PLDT. This amount was reached using the following computation:

Foreign exchange sold		
Principal	US$103,842.00	
Interest	26,848.14	US$130,690.14
Multiply: US$ - P		
Exchange Rate		18.002
		P2,352,683.93
10% Thereof (Excise Tax)		P 235,268.39

The payment of this tax is evidenced by Confirmation Receipt No. B3214829 (Id., p. 58);

6. On November 11, 1984, petitioner filed with respondent's Appellate Division a letter-request for tax refund or credit of P186,936.37 in allegedly overpaid excise tax on its sale of US$130,690.14 to PLDT, therein contending that:

> "xxx xxx xxx
>
> In determining, however, the tax base for computing the 10 percent excise tax, (petitioner) included the principal of the loan in the amount of US$103,842.00. However, Ministry Order NO. 17-84 specifically provides:
>
> xxx xxx xxx
>
> > 3. Exceptions. - The Special Excise Tax shall not be levied, assessed or collected on the following sales of foreign exchange:
> >
> > xxx xxx xxx
> >
> > d. for capital transaction such as repatriation of capital and <u>repayment of the principal foreign loans</u> but not including interest portion.
> >
> > xxx xxx xxx
>
> Revenue Regulations No. 7-84 likewise provides:
>
> > "Sec. 4. Exceptions. - The Special Excise Tax shall not be levied, assessed or collected on the following sales of foreign exchange:
> >
> > xxx xxx xxx
> >
> > d. for capital transactions such as repatriation of capital

and repayment of the principal of foreign loans but not including interests portion.

Thus, under both the Ministry Order and the Revenue Regulations, sales of foreign exchange for the repayment of principal of foreign loans, except for the payment of interest thereon, are exempt from the 10 percent excise tax.

Hence, (petitioner) should have used as the tax base not the principal amount of the loan but rather the interest thereon for purposes of computing the 10 percent excise tax. Accordingly, (petitioner) should have paid the amount of P48,332.02 representing the 10 percent excise tax computed as follows:

Foreign exchange sold

Interest	US$ 26,848.14
Exchange rate	18.002
Peso value	483,320.21
Excise Tax (10 percent)	48,332.02

(Petitioner), therefore, overpaid the 10 percent excise tax in the amount of P186,936.37 computed as follows:

Excise tax paid	P235,268.39
Excise tax that should have been paid	48,332.02
Overpaid excise tax	186,936.37

xxx xxx xxx"

(Id., pp. 59-60);

7. On June 13, 1986, as respondent had not yet acted on petitioner's request for refund, and in order to toll the running of the prescriptive period, petitioner instituted the instant case by filing a petition for review with the Court.

The issue presented before the Court for determination is whether a tax refund or credit is proper in the case at bar.

Before the Court proceeds to discuss the merits of this case, We must first address the prejudicial issue raised by respondent regarding petitioner's standing. Respondent contends that petitioner herein is not the real party in interest vested by law to institute the instant action for refund or tax credit, notwithstanding the fact that it was petitioner which withheld and remitted to the CB the 10% special excise tax pursuant to P.D. 1928, and refunded to PLDT the amount it is now claiming as allegedly overpaid tax. On this point, respondent argues, thus:

> "True, petitioner which withheld and remitted to the Central Bank of the Philippines the 10% special excise tax pursuant to the mandates fof (sic) P.D. No. 1928, refunded to PLDT the corresponding amount of P186,936.37 as overpaid 10% excise tax. However, nowhere is there evidence adduced by petitioner showing that PLDT assigned its right to the former the right to claim the refund of the overpaid excise tax. The letter dated August 14, 1984 by PLDT's Vice President, Dalisay C. Cadiz, addressed to the petitioner (Exh "F-2") is not the deed of assignment contemplated by law which could confer upon petitioner the right and authority to claim the refund of the overpaid taxes). It must be one appearing in a public instrument as required by Article 1625 of the Civil Code xxx." (Id., p. 113)

Respondent further cited the Supreme Court decision in the case of **Commissioner of Internal Revenue v. Procter & Gamble Manufacturing Corp.** (160 SCRA 560 [1988]), particularly this portion:

> "The submission of the Commissioner of Internal Revenue, that PMC-Phil. is but a withholding agent of the government and therefore cannot claim reimbursement of the alleged overpaid taxes, is completely meritorious. The real party in interest being the mother corporation in the United States, it follows that American entity is the real party in interest, and should have been the claimant in this case." (Page 566)

The Court notes, as petitioner states in its "Reply To Memorandum Of Respondent" (Id., pp. 118 to 120), that the Supreme Court rendered an en banc resolution on December 2, 1991, setting aside the said decision by allowing P&G-Phil. the tax refund or tax credit it sought. The resolution reads in part:

> "xxx Since the claim for refund was filed by P&G-Phil., the question which arises is: is P&G-Phil. a 'taxpayer' under Section 309 (3) of the NIRC? The term 'taxpayer' is defined in our NIRC as referring to 'any person subject to tax imposed by the Title (on Tax on Income).' It thus becomes important to note that under Section 53 (c) of the NIRC, the withholding agent who is 'required to deduct and withhold any tax' is made 'personally liable for such tax' and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.

> A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer.' The terms 'liable for tax' and 'subject to tax' both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person which is statutorily made 'liable for tax' as not 'subject to tax.' By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.
>
> In Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:
>
> xxx xxx xxx
>
> If, as pointed out in Philippine Guaranty, the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim. xxx."

Although the Procter & Gamble case involves the withholding of taxes on dividends by a wholly-owned subsidiary of the mother corporation, while the instant action involves the withholding of taxes from CB-approved outward foreign exchange remittances by an agent bank, We believe that the guiding principle behind Procter & Gamble is applicable.

As in the Procter & Gamble case, respondent did not raise the question of petitioner's capacity to bring the instant claim for refund at the administrative level, meaning, with the BIR. The records of the case show that respondent received petitioner's request for refund dated November 5, 1984 (Id., pp. 59-61) on November 8, 1984, while the instant action was commenced by petitioner on June 13, 1986, just before the two-year prescriptive period was about to expire. All throughout that nineteen-month interval, respondent did not act on petitioner's request, much less ask for documentary proof of its right to claim for the refund of the allegedly overpaid taxes. In point is the pronouncement of the Supreme Court in its December 2, 1991 Procter & Gamble resolution, to wit:

> "We believe that, even now, there is nothing to preclude the BIR from requiring P&G-Phil. to show some written or telexed confirmation by P&G-USA of the subsidiary's authority to claim the refund or tax credit and to remit the proceeds of the refund, or to apply the tax credit to some Philippine tax obligation of P&G-USA before actual payment of the refund or issuance of a tax credit certificate. What appears to be vitiated by basic unfairness is petitioner's position that, although P&G-Phil. is directly and personally liable to the Government for the taxes and any deficiency assessments to be collected, the Government is not legally liable for a refund simply because it did not demand a written confirmation of P&G-Phil's implied authority from the

> very beginning. A sovereign government should act honorably and fairly at all times, even vis-a-vis taxpayers."

True, unlike in the Procter & Gamble case wherein the issue of petitioner's standing was first raised on appeal with the Supreme Court, respondent in the present case raised such issue in its memorandum filed with this Court. However, the Court believes that this does not affect the applicability of the above-quoted pronouncements of the Supreme Court, more so in the light of the fact that PLDT wrote a letter to petitioner, dated August 14, 1984, as follows:

> " 14 August 1984
>
> Citibank, N.A.
> Citibank Bldg., Paseo de Roxas
> Makati, Metro Manila
>
> Attention: Ms. Daisy S. Yao
> Manager
>
> Subject: Purchase of Foreign Exchange to Service the Principal of Can$135,000.00 and Interest of Can$34,903.98 Due June 15, 1984
>
> Sirs:
>
> In connection with captioned subject, this is to confirm our verbal agreement for the crediting to our account with you of the excess payment of the excise tax in the amount of P186,936.37. Per our Statement of Bank Account for the month of July 1984, the credited amount has been duly noted.

> We understand that you will now have to file the corresponding claim for refund with the tax authorities on your own behalf and account. At our end, we consider the matter closed.
>
> Regards.
>
> Very truly yours,
>
> (sgd)
> DALISAY C. CADIZ
> Vice President"

(Exhibit "F-2", Rollo, p. 67, emphasis supplied)

It is clear in the letter that the excess payment of the excise tax amounting to P186,936.37 had already been refunded by petitioner to PLDT, and PLDT through its Vice-President, Dalisay C. Cadiz, then considered "the matter closed" as it allowed petitioner "to file the corresponding claim for refund with the authorities on your own behalf and account" (Emphasis supplied.) If the Supreme Court deemed it fair and just in the Procter & Gamble case to consider P&G-Phil., which it found to have merely an unconfirmed implied authority to claim for refund of the overpaid withholding tax, as capacitated to file such a claim, with more reason should petitioner in the instant case be found to have the same capacity.

The Court finds Section 2, Rule 3 of the Rules of Court likewise relevant:

> "Sec. 2. Parties in interest. -- Every action must be prosecuted and defended in the name of the real party in

> interest. <u>All persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs</u>. All persons who claim an interest in the controversy or the subject thereof adverse to the plaintiff, or who are necessary to a complete determination or settlement of the questions involved therein shall be joined as defendants." (Underscoring supplied)

Certainly, petitioner has an interest in the subject of the present action and in obtaining the relief demanded, for, having already returned to PLDT the amount of P186,936.37 herein sought to be refunded or credited, petitioner is the one which stands to suffer the loss of the said amount if the instant claim is rejected.

In regard to the main issue, petitioner submitted the following documentary evidence: Exhibit "A", which is a CB-certified true copy of petitioner's "Abstract of Daily Collection Of Internal Revenue Taxes" for June 15, 1984, showing the amount of P235,268.39 collected from PLDT (<u>Id</u>., p. 56); Exhibit "B", which is the acknowledgement copy of petitioner's "Consolidated Report On Daily Collections Of Internal Revenue Taxes" for June 15, 1984, showing the amount of P235,268.39 collected by it as taxes under Confirmation Receipt No. 3214879 (<u>Id</u>., p.57); Exhibit "C", which is Confirmation Receipt No. B-3214879, dated June 15, 1984 (<u>Id</u>., p. 58); Exhibit "D", which is a letter dated November 5, 1984, addressed to respondent's Appellate Division Chief, embodying petitioner's formal claim for refund of allegedly overpaid excise tax in the amount of P186,936.39 (Id., pp. 59-61); Exhibit "E", which is a letter addressed to the CB, dated May 23, 1984 from PLDT's First Vice President, requesting for allocation, through petitioner, of the total amount of Can$169,903.98 to be used for the payment of part of the principal and interest on its foreign loan to fall due on June 15, 1984 (Id., pp. 62-63); Exhibit "E-1", which is a certified true copy of a cable dated April 13, 1984 from EDC (Ottawa), PLDT's foreign creditor, to PLDT, advising it that the total amount of Can$169,903.98 was payable on June 15, 1984 (Id., p. 64); Exhibit "E-2", which is a letter from the CB to the petitioner, dated June 5, 1984, authorizing petitioner to remit the amount of Can$169,903.98 for the credit of PLDT's foreign creditor (Id., p. 65); Exhibit "F", which is the Statement of PLDT's Bank Account with petitioner for the month of July, 1984 showing, among other things, the crediting of the amount of P186,936.37 to PLDT's account during the month covered thereby; and Exhibit "F-2", which is a letter, dated August 14, 1984, from PLDT to petitioner, confirming the crediting to PLDT's account the amount of P186,936.37, and reminding petitioner to "file the corresponding claim for refund with the tax authorities on your (petitioner's) own behalf and account", as PLDT thereby considered "the matter closed" at their end (Id., p. 67). Petitioner also presented in evidence the testimony of Julie Pua.

Respondent offered neither testamentary nor documentary evidence to disprove petitioner's claim.

This Court finds petitioner's cause to be meritorious.

Presidential Decree No. 1928, dated June 6, 1984 imposed, among other things, a special excise tax on foreign exchange sold by the CB and its agents within the period from June 6, 1984 to December 31, 1985. Two regulations implement PD No. 1928, namely, Rev. Regs. No. 7-84, dated June 27, 1984, and Ministry Order No. 17-84 (entitled "PRESCRIBING RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1928"), effective June 6, 1984.

Both Section 4(d) of Rev. Regs. No. 7-84 and Section 3(d) of Ministry Order No. 17-84 read the same, and are quoted:

> "**Exceptions.** -- The Special Excise Tax shall not be levied, assessed or collected on the following sales of foreign exchange:

a. for payment of imports to the Philippines;

b. by the Central Bank of the Philippines to banking institutions or interbank trading;

c. as a consequence of forward contracts consumated prior to June 6, 1984;

d. for capital transactions such as repatriation of capital and repayment of the principal of foreign loans **but not including interests portion**;

e. to departing tourists or other temporary visitors to the Philippines, covering the unspent pesos converted from foreign exchange at the time of their arrival;

f. conversion of the face value of foreign exchange denominated securities." (Emphasis supplied.)

It is clear from the common provisions that while interests on foreign loans were subject to the 10% special excise tax, the portion representing repayment of the principal of the foreign loan is not subject to the same tax. Respondent had not likewise refuted this stand.

We thus find that petitioner committed an error in computing the 10% special excise tax on the basis of the Philippine peso equivalent of the entire amount of foreign exchange sold to PLDT, which amount includes both the partial repayment of a foreign loan (US$103,842.00) and the interest (US$26,848.14) due thereon. Hence, there was an overpayment of the special excise tax in the amount of P186,936.37 which is ten percent of the peso equivalent of the foreign exchange sold corresponding to the portion repaid as foreign loan (or US$103,842.00).

WHEREFORE, finding the instant petition for review meritorious, respondent is hereby ordered to refund to petitioner or issue a tax credit in its favor the amount of P186,936.37, representing overpaid 10% special excise tax on the sale of foreign exchange.

SO ORDERED.

Quezon City, Metro Manila, June 26, 1992.

STELLA DADIVAS-FARRALES
Acting Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals