Library

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

- versus - C.T.A. CASE NO. 4481

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

5/31/94

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

D E C I S I O N

This is a petition to review the respondent's assessment for 1986 deficiency documentary stamp taxes in the amount of ₱3,106,316.06.

The facts are simple.

In 1986 the Petitioner Bank of the Philippine Islands sold to the Central Bank of the Philippines United States dollars for ₱1,608,541,900.00. The dollars involved were deposited with the BPI's correspondent bank in the United States. The correspondent bank in turn transferred said dollars to the Federal Reserve Bank for credit to the account of the Central Bank. Upon the receipt of the confirmation that such had been credited to its account, the Central Bank then credited the Petitioner with the corresponding amount in pesos.

In 1986, the Respondent caused an investigation of the Petitioner's sales of foreign exchange, and as a result thereof, the Respondent issued a pre-assessment notice informing the Petitioner that under Sec. 195 (now 182) of the NIRC, as amended in 1986, Petitioner was liable for DST at the rate of ₱.30 per ₱200.00 on all foreign exchange sold to the Central Bank. Tax liability was assessed at ₱2,412,812.85 plus 25% surcharge of ₱603,203.21 and compromise penalty of ₱300 or a total of ₱3,016,316.06.

The Petitioner disputed the findings but despite this, the Respondent issued Assessment No. FAS-5-86-88-003022 dated 30 September 1988 for ₱3,016,316.06, which was received by the Petitioner on 11 October 1988. The Petitioner formally protested the assessment, which was denied by the Respondent. Hence, this petition.

The Petitioner contends that the transactions are not subject to DST under Section 182 of the NIRC. It also insists that under a market convention in the banking industry, it is not liable to pay the DST. Finally, the Petitioner argues that even if it were liable for DST, it is only liable for those taxes corresponding to transactions after 18 June 1994.

The Petitioner's contentions are the issues we are going to address.

The Petitioner contends that the sale could not be subject to DST because although Sec. 182 mentions only *foreign bills of exchange and letters of credit*, no such foreign bill of exchange or letter of credit was ever issued by the Petitioner in this case.

Sec. 182 states:

> ***Stamp tax on foreign bills of exchange and letters 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 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 a foreign currency.

This contention has no merit. Sec. 51 of Revenue Regulation No. 26 states:

> *What may be regarded as telegraphic transfer.* -- a local bank cables to a

> certain bank in a foreign country with which bank said local bank has a credit, and directs that foreign bank to pay to another bank or person in the same locality a certain sum of money, the document for and in respect such transaction will be regarded as a telegraphic transfer, taxable under the provisions of Section 1449(i) of the Administrative Code.

BPI itself admitted that it advises its foreign correspondent bank by cable to remit the dollar amount to the Federal Reserve Bank for credit to the account of the Central Bank of the Philippines. Such an advice squarely falls within the ambit of the foregoing Section 51.

The Petitioner also contends that the transaction does not fall under Section 195 (now 182) of the Tax Code because Section 195 contemplates a situation where money has been drawn on an existing account here in the Philippines and made payable abroad, while the transactions at bar merely involve instructions to a correspondent abroad to pay money, but without any actual drawings in the Philippines.

In support of this argument, the Petitioner in its letter to the Respondent dated 12 August 1988, quotes Webster's New Collegiate Dictionary as defining "drawn in" as "to take money from a place of deposit". The Petitioner implies that "drawn in the Philippines" means "money taken out from a place of deposit in the Philippines". Since such a taking did not take place, then the DST under Section 195(now Section 182) does not apply.

This contention has no merit. It has been shown above that by virtue of Sec. 51 of Revenue Regulations No. 26, mere cabled instructions to a foreign correspondent to pay money would fall within the ambit of Section 182.

Even if such instructions were not covered, Petitioner's argument would still not stand. Section 182 mentions "foreign bills of exchange and letters of credit" that are "drawn in but payable out of the Philippines". 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 laws 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.

The Petitioner further argues that Section 182 does not apply because the Petitioner was acting as a mere agent of the Central Bank and therefore *no sale* of foreign exchange could have occurred between the Central Bank and the Petitioner.

This argument is immaterial to the issue on hand. Section 182 does not speak of any sale, much less tax said sale. Instead, it taxes the issuance of bills of exchange and letters of credit drawn in the Philippines but payable abroad.

It is therefore clear from the foregoing that Petitioner is liable for DST under Section 182. (*China Banking Corporation vs. CIR,* **CTA Case No. 4361, December 22, 1993)**

Let us now move to the issue of whether or not the market convention should be recognized.

The Petitioner contends that it is settled practice in the banking community that in sales of foreign exchange, it is the buyer who pays for the DST that is due. The Respondent itself presented before this court a memorandum (Exhibit "3") of the Bankers Association of the Philippines to its member banks evidencing the market convention that the cost of DST is for the buyer.

Our Civil Code provides:

> **Article 1315** -- Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, **usage** and law.
>
> **Article 1376** -- The usage or customs of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established. (Emphasis provided)

Our own Supreme Court said "Law writes custom into the contract" (Hongkong and Shanghai Bank v. Peters, 16 Phil. 284).

This market convention in the banking industry may therefore be recognized by this court.

Using the market convention as basis, however, the Petitioner now contends that since the CB is the buyer of the foreign exchange, it should be the party liable for DST. And since the CB was exempt from the payment of taxes at the time, then no DST is collectible.

This argument goes against the amendment made by PD 1994 to the NIRC Section 222 (now Sec.173) to wit:

> 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.

The Petitioner attacks the above rule with the argument that the government in taxing the Central Bank, taxes itself. There is no merit in this argument. The Central Bank, now the Bangko Sentral, is a government corporation with its own charter. It has a personality distinct from that of the government. As such, it is subject to tax just like any other corporate entity. In fact, the law creating the new Bangko Sentral had to be specific as to its tax exemption privileges. Otherwise, there would be no reason why it would not be taxed just like any other juridical person.

The Petitioner also contends that PD 1994's amendment is self-defeating because the seller, still pursuant to the market convention, will simply seek reimbursement from the CB of whatever amount it has paid as taxes. This contention likewise has no merit. This amendment is a provision of law whose wisdom could not be passed upon by this court.

Finally, the Petitioner argues that the amendment was published only in June 1986. In support thereof, the Petitioner has presented a certification by the National Printing Office that the pertinent issue of the Official Gazette was only released for circulation on 18 June 1986. Therefore, if it should be liable for the DST, then it should be liable for only that portion corresponding to the transactions from 18 June 1986 up to 31 December 1986.

This position is meritorious. The Supreme Court in the landmark case of Tanada et.al. v. Tuvera et. al., 146 SCRA 446, 453-454, stated that:

> We hold therefore that *all* statutes, including those of local application and private laws, shall be published *as a condition for their effectivity,* which shall begin fifteen days after publication unless a different effectivity dates is fixed by the legislature.

> Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. xxx

The Supreme Court further said in the same case that:

> Consequently, we have no choice but to pronounce that under Article 2 of the Civil Code, the publication of laws must be made in the Official Gazette, and not elsewhere, as a requirement for their effectivity after fifteen days from such publication or after a different period provided by law.

Furthermore, in the case of People of the Philippines v. Hon. Regino Veridiano II, et al., GR No. L-62243, October 12, 1984, the Supreme Court said:

> The Solicitor General admitted the certification issued by Ms. Charito A. Mangubat, Copy Editor of the Official Gazette Section of the Government Printing Office, stating:
>
> > This is to certify that Volume 75, No. 15, of April 9, 1979 issue of the Official Gazette was *officially* released for circulation on June 14, 1979. (p.138, Rollo)

> It is, therefore, certain that the penal statute in question as made public only on June 14, 1979 and not on the printed date April 9, 1979. Differently stated, June 14, 1979 was the date of publication of Batas Pambansa Bilang, 22. Before the public may be bound by its contents especially its penal provisions, the law must be published and the people officially informed of its contents and/or its penalties. For, if a statute had not been published before its violation, then in the eyes of the law there was no such law to be violated and, consequently, the accused could not have committed the alleged crime.

We accept that the certification from the National Printing Office marked as Exhibit "C" for the Petitioner proves that the issue of the Official Gazette dated December 2, 1993, containing the text of Presidential Decree No. 1994, was only released for circulation on June 18, 1986. Therefore, the proven fact that said issue of the Official Gazette was only released for circulation on June 18, 1986 means that the date of publication for purposes of its effectivity was June 18, 1986.

Although publication in a newspaper of general circulation was later allowed by law, the abqve rule was the one in effect at the time PD 1994 was promulgated.

Therefore BPI should only be liable for the DST that corresponds to those transactions after June 1986. As shown in the worksheet prepared by the BIR examiners, Petitioner should be liable for the DST corresponding to the sale of US$18 million for ₱367,856,000, or ₱551,784, in addition to the 25% surcharge and ₱300 compromise penalty.

The computation of deficiency documentary stamp tax for the year 1986 only includes those foreign exchange sold by the petitioner to Central Bank after the effectivity of PD 1994 or from June 18, 1986 to December 31, 1986, which is as follows: (see Exh. "A", for petitioner)

Date	BPI Del. Slip No.	CB Advice No.	Dollar Value	Rate of Exchange	Peso Value
07-29-86	8394	005365	3,000,000	20.426	61,278,000
09-30-86	8852	005504	2,000,000	20.44	40,880,000
10-01-86	8861	005516	2,000,000	20.44	40,880,000
10-03-86	8870	005466	4,000,000	20.438	81,752,000
10-07-86	8880	005553	2,000,000	20.438	40,876,000
	8877	005553	3,000,000		61,314,000
10-08-86	8893	005525	2,000,000	20.438	40,876,000
	T O T A L		$18,000,000		P367,856,000

Documentary Stamp Tax Due:		
[(367,856,000 / 200) x 0.30)]		₱ 551,784.00
Add: 25% Surcharge		
[551,784.00 x 25%]	₱ 137,946.00	
Compromise Penalty	300.00	138,246.00
Total Amount Due		₱ 690,030.00

WHEREFORE, premises considered, Petitioner is hereby ordered to pay Respondent Commissioner of Internal Revenue, the amount of ₱690,030 inclusive of surcharge and compromise penalty, plus 20% annual interest until fully paid pursuant to Section 249 (cc)(3) of the Tax Code.

SO ORDERED.

Quezon City, Metro Manila, 31 May 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(on leave)
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, Article VIII, of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals