lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLANTERS PRODUCTS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2967

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

10/15/80

D E C I S I O N

This is a suit by petitioner Planters Products, Inc. to reach and apply to the refund or tax credit of the amount of ₱63,365.60 representing alleged erroneous payment of documentary and science stamp taxes due from respondent Commissioner of Internal Revenue.

In this case petitioner, a domestic corporation, duly engaged in the business of importing, manufacturing and selling fertilizers and agriculturals chemicals, during the period of June 14, 1976 through May 29, 1978, made importations from various foreign-based suppliers: Humm International; C. Itoh & Co., Ltd.; Canpotex Limited; Mitsubishi Corporation, Ltd.; Mitsui & Co., Limited, for which corresponding letters of credit were opened through the domestic bank, The Chartered Bank.

Subsequently, bills of exchange or foreign drafts were drawn by said foreign suppliers to petitioner for amounts equal to the value of each of the importations and made payable to the said suppliers through the foreign correspondent banks, to wit: (1) Bank of the Orient, San Francisco, USA; (2) Kyowa Bank, Tokyo, Japan; (3) Canadian Imperial Bank of Commerce, Canada; (4) Taiyo Kobe Bank Ltd., Tokyo, Japan; (5) Sanwa Bank Ltd., Tokyo, Japan; (6) Hokkaido Takushohh Bank Ltd., Tokyo, Japan; (7) Mitsubishi Trust & Banking Corporation, Tokyo, Japan; and (8) Mitsubishi International Corporation, New York, USA; (9) Mitsui Trust & Banking Co., Ltd.

Petitioner met the prescribed payments of documentary and science stamp taxes upon the (1) opening of letters of credit, (2) acceptance, and (3) payment on maturity of the bills of exchange. The stamp taxes on the latter two transactions amounting to ₱31,561.12 and ₱31,804.48, respectively, or a total of ₱63,365.60, are the subject of the present claim for refund or tax credit.

There are no genuine issues to any material fact in this suit, but the parties do, however, differ about the proper application of the pertinent provisions of Sections 230 and 231 of the National Internal Revenue Code, as amended, which read as follows:

> "Sec. 230. Stamp tax acceptance of bills of exchange and others. - Upon acceptance or payment of any bill of

exchange or order for the payment of money purporting to be drawn in a foreign country but payable in the Philippines, there shall be collected a documentary stamp of six centavos on each two hundred pesos, or factional part thereof, of the face value of any such of exchange, or order, or the Philippine equivalent of such value, if expressed in foreign currency." (Formerly Sec. 218) (Underscoring supplied)

"Sec. 231. 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 expressed 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 customs of merchants and bankers, there shall be collected a documentary stamp tax of eight centavos on each ₱200.00 or fractional part thereof, of the face value of any such bill of exchange or letter of credit, or the Philippine quivalent of such face value, if expressed in foreign currency." (Formerly Sec. 219) (Underscoring supplied)

NOTE: Republic Act No. 5448 prescribed an additional imposition of an equal amount of science stamp tax to be collected at the same time and same manner as the documentary stamp tax.

Petitioner holds itself out as entitled to an exemption from the payment of documentary and science stamp taxes imposed on the bills of exchange upon their acceptance and/or payment at maturity, as it contends that Section 230, supra. applies to bills of exchange purporting to be drawn in a foreign country but payable in the Philippines, while Section 231, supra, refers to those drawn in but payable out of the Philippines. The subject bills of exchange or drafts were both drawn abroad and made payable abroad.

Respondent maintains, however, that the bills of exchange are deemed payable in the Philippines as their acceptance and final liquidation by petitioner took place in the Philippines. The law only requires that the foreign drafts drawn abroad be deemed payable in the Philippines in order to be subject to the stamp taxes.

The single issue as to whether the subject bills or drafts are payable in the Philippine is at its core a question of situs of the obligation, its performance and governing law thereof.

The circumstances of this case disclose that the bills of exchange were drawn by the foreign suppliers (Drawer) to the petitioner (Drawee) for such amounts corresponding to the value of each of the importations committed under the letters of credit and made payable to the foreign correspondent banks (Payee) or order.

The bills were duly presented to and accordingly accepted by petitioner at its place of business in the Philippines. As a legal consequence, under Sec. 62 of the Negotiable Instruments Law, petitioner, assumed the primary liability of the obligation by the terms of the instruments. Thus, "its acceptance of the drafts ipso facto placed a legal liability on the acceptor for its payment." (Union Guarantee Co. v. Jing Kee & Co., 44 Phil. 533.) The general doctrine seems to be that "The contract of the acceptor, by his acceptance, is that he will pay the bill, upon presentation thereof, at its maturity or its becoming due." (Deen et al. v. De Soto National Bank of Arcadia, 122 So. 105, 9 Fla. 862).

Any breach in the performance of the obligation imposed, assumed and to be undertaken can be legally enforced against petitioner at its place of business. We have learned from Mr. Judge Hand in the Louis-Dreyfus v. Peterson Steamships, Ltd. case that, "When the time comes for him to perform, if he fails, the law requires him to give the equivalent of the neglected performance; that compulsion is the sanction imposed by the state and the measure of the obligation and default must indeed be at the place of performance." (U.S. Circuit Court of Appeals, 43 F2d 824, cited in Conflict of Laws by Cheetam, Greswald, Reese and Rosenberg). The same view prevails in Jacobs, Marcus & Co. v. The Credit Lyonnais. "The law of the place of fulfilment not merely governs the mode of performance of the particular contract, but governs also the obligations in respect of the performance and the liabilities in respect of non-performance of it." (Court of Appeals, Q.B. 589, discussed in 29 Michigan L. Rev. 773; 26 III. L. Rev. 441; 72 A.L.R. 250). It will suffice to point out that the object to be accomplished and the means it could be carried into execution, without posing any limitation upon or impairing the terms of the instruments, reside with and become enforceable against petitioner in the Philippines. Plainly and without loss of analytical rigor, we find no threat of ambiguity arising from the tenor of the bills of exchange not to have the same considered payable in the Philippines.

It is perhaps hardly necessary to stress that matters involving foreign exchange are subject to restraints and require validating acts which apply with equal force on petitioner's undertaking under the subject bills of exchange. Petitioner's liquidation or full payment of its obligation can only be effective to the extent permitted under existing foreign exchange regulations and/or restrictions. "The law of the place of performance generally governs the contract and its discharge." (Restatement, Conflict of Laws, Sec. 385; Zimmerman v. Sutherland, 274 U.S. 253; 2 Wharton On Conflict of Laws, 467b; 1 Joyce on Insurance Sec. 225). The point is that, however, the obligation is put, finality can, in the nature of the case, never be effectively attained unless the appropriate governing law essential to the validity of petitioner's obligation has been complied with. The circumstance that actual receipt of payment had to take place abroad should not preclude the fact that the liquidation in full satisfaction of the obligation "have for some legal purpose a situs at the residence or place of business of the debtor (petitioner in this case) though the creditor be far away." (Sokoloff v. National City Bank of New York, 239 NY 158, 169, 145 NE 917, 920, 37 A.L.R. 712).

Thus, the validity of any enforcement of legal rights or redress of legal wrongs on the obligation under the instrument rests with the domiciliary law of the petitioner. "It is generally recognized that the law of the place of performance regulates matters involving the mode of performance as for example the proper medium of payment and in case of negotiable instruments the time and form of presentment, protest and notice." (Goodrich, Conflict of Laws 344 (3d ed. 1949); Nussbaum, "Conflict Theories of Contracts; Cases vs. Restatement". 51 Yale L.J. 893, 915-918 (1942). It is no mere ingenuous sophistry therefore that the bills of exchange which gave rise to petitioner's obligation were deemed payable in the Philippines.

Again, we find illogic the impression precipitately broached by petitioner that the bills both drawn and payable abroad are beyond the pale of the applicable scope of the statute. If, as seems to be claimed, we take the bills to mean what it literally say, then, the same have to be treated as "inland bills" within the same foreign State of both drawer and payee. Be it so, but then, such a case will run the risk of denegating the direct and affirmative participation of the drawee-petitioner outside said State, whose written acceptance on the bills fixed the primary liability to the obligation imposed by the terms of the instruments. "It should be noted, however, that a draft has no primary party until the drawee accepts the instrument, and, if the drawee does not accept, there is never a primary party. Once, the instrument is accepted, the drawee becomes an acceptor and is obligated to pay the instrument according to the tenor at the time of acceptance." (Dow and Votaw on Legal Aspects of BUsiness Administration). In Federal Reserve Bank v. Livestock and Agricultural Loan Co., 31 Ariz. 116, the Court said that the bill is deemed payable and enforceable at the place of residence or business of the acceptor; Or, as observed in Yarrigue v. Kellar, 164 Ind. 676 case, may be enforced at the place where jurisdiction over the person or property may be acquired. No less important than the emphasis on the law, are the operative acts of acceptance and payment, of and by themselves, resulted in the discharge of petitioner's obligation, had taken place in the Philippines. This is simply what Section 230, supra contemplates and requires for purposes of the imposition of the documentary and science stamp taxes.

Likewise, we can not agree to the proposition that the documentary and science stamp taxes should be imposed only once, i.e., either on acceptance or payment. The intendment of Section 230 has foreclosed that possibility of a disjunctive application. As generally recognized, stamp taxes are in the nature of an excise upon the privilege, opportunity or facility for the transaction, (40 Am. Jur. 207) such that they are substantially taxes on the transaction rather than on the document. (Secretary of Justice Opinion No. 177, S. 1939; Commissioner v. Heald Lumber Co. 10 SCRA 372). "Documentary stamp taxes are levied, collected, and paid for in respect of the transaction so had or accomplished by the person, making, signing, issuing, accepting or transfering the same and at the time such act is done or the transaction had." (BIR Ruling No. 63-080).

We conclude that Section 230, supra. in its entirety applied to the bills of exchange or foreign drafts in this case.

So it appears and we so hold that there is no error in the imposition and collection of the documentary and science stamp taxes claimed by petitioner. Accordingly, petitioner is not entitled to the refund or tax credit of documentary and science stamp taxes in the amount of ₱63,365.60 it paid upon acceptance and/or payment of the bills of exchange pursuant to Section 230 of the Tax Code.

WHEREFORE, the petition for review is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 15, 1980.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge