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[No. L-25424. March 8, 1976]

FIRST DIVISION

PHILIPPINE CONSOLIDATED COCONUT INDUSTRIES, INC., petitioner, *vs.* COLLECTOR OF INTERNAL REVENUE, respondent.

APPEAL from a decision of the Court of Tax Appeals.

SYNOPSIS

Petitioner is registered with the Securities and Exchange Commission (SEC) with an authorized capital of ₱70,000,000 of which ₱14,375,000 was subscribed. Of this worth of shares of stock, upon suggestion of the Secretary of Justice to protect the investing public, petitioner deposited ₱14,000,000 with the SEC, on condition that no sale or transfer shall be made from said deposited shares until such time as the Commission may deem such release justified. Later, under a permit granted by the SEC, shares of stock worth ₱791,400.00 were transferred to various persons. The Collector of Internal Revenue assessed and imposed documentary stamp tax not only on the transfer issues but on the certificate or stock held on mandatory deposit by the Securities and Exchange Commission. The Court of Tax Appeals sustained the assessment. On appeal, the Supreme Court reversed the decision of the Court of Tax Appeals holding that the certificate of stocks deposited with the Securities and Exchange Commission and temporarily subject to the suspensive conditions imposed by the Commission shall be liable to said tax only when released from said conditions, for then and only then shall they truly acquire any practical value for their owners.

Decision reversed.

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SYLLABUS
of the Ruling of the Court

1. TAXATION; CORPORATIONS; DOCUMENTARY STAMP TAX; STAMP TAX ON ORIGINAL ISSUE OF CERTIFICATES OF STOCK.– The documentary stamp tax imposed under Sec. 212 of the National Internal Revenue Code on every original issue of a certificate of stock is an excise tax because it is levied upon the privilege, the opportunity and the facility of issuing certificates of stock. It being a levy on the original issue of a certificate of stock, the documentary stamp tax may be levied only once, that is upon the original issue of the certificate.
2. ID.; ID.; ID.; "ISSUE", LITERAL MEANING OF.– Since the cost of the documentary stamp tax is borne by the corporation originally issuing the stock certificate, a literal interpretation of the word "issue" must necessarily mean at the time of release of the stock certificate (document as properly filled up) to the stockholder, the actual or constructive possession by the stockholder of the certificate of stock being immaterial and of no consequence.
3. ID.; ID.; ID.; ID.; WHEN CERTIFICATE OF STOCK IS DEEMED ISSUED.– Ordinarily, when a corporation issues a certificate of stock, the certificate can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid as imposed by section 212 of the National Internal Revenue Code, as amended.
4. ID.; ID.; ID.; CERTIFICATES OF STOCK DEPOSITED WITH COMMISSION AND SUBJECT TO SUSPENSIVE CONDITIONS NOT LIABLE TO PAY DOCUMENTARY STAMP TAX.– Where the Government itself, thru the Securities and Exchange Commission, upon the suggestion of

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the Secretary of Justice "for the protection of the public investing in similar industrial ventures" required the incorporators-subscribers to deposit with said Commission a portion of the shares outstanding in their names on the condition that until such time as the Commission may release said shares, they cannot be sold or encumbered, and the condition shall continue until such time as the Commission shall release the same, it is manifest that the shares of stock so deposited nominally appear in the names of the incorporators-subscribers appearing therein but actually none of them can exercise any attribute of ownership over said stocks until the Securities and Exchange Commission decides otherwise. Since by an act of the Government the stocks were temporarily deprived of any value in favor of their owners, the same Government cannot consider said certificates issued and with practical value for the purpose of imposing the documentary stamp tax.

APPEARANCES OF COUNSEL

Crispin D. Baizas & Associates for petitioner.

Solicitor General Antonio P. Barredo, Assistant Solicitor General Felicisimo R. Rosete and *Special Attorney Venancia M. Pangilinan* for respondent.

DECISION

ESGUERRA, *J.:*

Appeal from the decision of the Court of Tax Appeals in C.T.A. Case No. 403, entitled, "The Philippine Consolidated Coconut Industries, Inc. *vs.* The Collector of Internal Revenue," holding petitioner corporation liable for documentary stamp tax, as follows:

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"Premises considered, the assessment appealed from is hereby modified in the sense that petitioner shall pay, within 30 days from the date this decision becomes final, only the sum of ₱36,383.00 as documentary stamp tax. With costs against petitioner. So Ordered."

The facts found by the Court of Tax Appeals are as follows:

"Petitioner, a domestic corporation duly organized and existing under the laws of the Philippines, with principal office and place of business in the City of Manila, is engaged in the business of purchasing, manufacturing, producing, importing, exporting, selling or otherwise dealing in coconuts or any of its by-products. It was registered with the Securities and Exchange Commission on October 3, 1950, with an authorized capital of ₱70,000,000, of which P14,375,000 was subscribed. Payment of the subscriptions consisted of the transfer of two patent rights, namely Patent No. 20, for "cocogas" and Patent No. 67, for "bonotex" which with the approval of the Securities and Exchange Commission, were given a fair market value of ₱14,375,000; and in pursuance to the suggestion of the Secretary of Justice for the protection of the public investing in similar industrial ventures, petitioner's incorporators-subscribers deposited with the Securities and Exchange Commission P14,000,000 worth of shares of stock (Certificates of stock Nos. 1 to 15) out of the ₱14,375,000 worth of shares standing and appearing in their names (See Exhibit "B" pp. 65-70 C.T.A. rec.). The deposit was thereby conditioned that "no sale or transfer,

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conveyance, pledge or incumbrance of any kind or nature shall be made on these deposited shares x x x" and "shall continue until such time as the said Securities and Exchange Commission shall release the same or any portion thereof upon the declaration of a dividend in such an amount as the Securities and Exchange Commission may deem adequate, or under conditions and circumstances that the said Commission may deem such release justified". Later, pursuant to a permit granted by the Securities and Exchange Commission, shares of stock worth ₱791,400.00 (Certificate of Stock No. 16 which were originally issued to A.E. Prats), were transferred to various persons. *However, no documentary stamps were affixed on the original and transfer issues of the certificate of stocks in question.*".

"Accordingly, respondent (Collector of Internal Revenue) in a letter dated October 7, 1954 demanded from petitioner the sum of ₱36,383.00, as documentary stamp tax on the original and transfer issues of certificates of stock, plus the sum of ₱3,600.00, as compromise penalty, or a total of ₱39,983.00, computed as follows:

"Documentary stamp tax due on 23 original issues composed of 143, 757 shares at ₱100.00 a share with a total value of ₱14,375,700 at ₱ .50 documentary stamp for every ₱200.00 or fractional part thereof of the par value of such certificates ₱35,941.50

"Documentary stamp tax due on 1,049 transfer issues composed of 7,914 shares at ₱100.00 a share with a total value of ₱791,400 at ₱ .10 documentary stamp for every

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₱200.00 or fractional part thereof of the par value of such certificates	441.50
Total documentary stamp tax due	₱36,383.00
Plus: Compromise Penalty	3,600.00
	₱39,983.00

"Nowhere in the records of the case nor in the memorandum submitted by petitioner in support of its stand do we find that petitioner's liability for stamp tax on the transfer issue of stock certificate No. 16 to various persons is contested. In this circumstance, we sustain the assessment for documentary stamp tax in the amount of ₱441.50 on the transfer issue of stock certificate No. 16."

The only issue raised in this case is whether documentary stamp tax imposed under Section 212 of the National Internal Revenue Code (as amended by Sec. 2, Republic Act No. 40, Sec. 1, Republic Act No. 567) applies to certificates of shares of stock which are held on deposit by the Securities and Exchange Commission. Stated otherwise, in legal contemplation and for the purpose of imposition of documentary stamp tax, shall the certificate of stock be considered as "issued" even if held on mandatory deposit by the Securities and Exchange Commission?

Said Section 212 provides:

"Section 212. Stamp tax on original issue of certificates of stock.– On every *original issue*, whether on organization, reorganization, or for every lawful purpose of *certificates of stock* by any association, company, or corporation, there shall be collected a documentary stamp tax of fifty centavos on each two hundred pesos or

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> fractional part thereof, of the par value of such certificates: * * *". (Italicized for emphasis)

A cursory perusal of the above provision clearly shows that the documentary stamp tax is imposed on every original issue of a certificate of stock (the document evidencing ownership of shares of stock in the corporation), and that a documentary stamp tax is in the nature of an excise tax because it is levied upon the privilege, the opportunity and the facility of issuing certificates of stock. It being a levy on the original issue of a certificate of stock, the documentary stamp tax under this provision of the law may be levied only once, that is upon the original issue of the certificate. The crucial point, therefore, in the case before Us is the proper interpretation of the word "issue". In other words, when is the certificate of stock deemed "issued" for the purpose of imposing the documentary stamp tax? Is it at the time the certificates of stock are printed, at the time they are filled up (in whose name the stocks represented in the certificate appear as certified by the proper officials of the corporation), at the time they are released by the corporation, or at the time they are in the possession (actual or constructive) of the stockholders owning them?

Bearing in mind that the cost of this imposition is borne by the corporation originally issuing the stock certificate, a literal interpretation of the word "issue" must necessarily mean at the time of release of the stock certificate (document as properly filled up) to the stockholder, the actual or constructive possession by the stockholder of the certificate of stock being immaterial and of no consequence. If We interpret in a strictly literal manner the meaning of the word "issue", then it follows that appellant must pay the documentary stamp tax as the

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Court of Tax Appeals ordered him to do.

The appellant's insistent plea that the mandatory deposit with the Securities and Exchange Commission of ₱14,000,000 worth of shares of stock (Certificate of stock No. 1 to 15) out of the ₱14,375,000 worth of shares appearing in the names of petitioner's incorporators-subscribers prevents certificates of stocks Nos. 1 to 15 from being considered "issued" for the purpose of documentary stamp tax payment, compels Us to delve deeper into the real meaning of the word "issue" for the purpose of the tax imposition.

Ordinarily, when a corporation issues a certificate of stock (representing the ownership of stocks in the corporation to fully paid subscription), the certificate of stock can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid as imposed by Section 212 of the National Internal Revenue Code, as amended.

In the case at bar the Government itself, thru the Securities and Exchange Commission, upon the suggestion of the Secretary of Justice "for the protection of the public investing in similar industrial ventures", required the petitioner's incorporators-subscribers to deposit with said Commission ₱14,000,000 worth of shares of stock out of the ₱14,375,000 shares outstanding in their names (Certificates of Stock Nos. 1 to 15) on the condition that until such time as the Securities and Exchange Commission

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may release said shares, they cannot be sold, transferred, conveyed, pledged and encumbered, and the condition shall continue until such time as the Securities and Exchange Commission shall release the same or any portion thereof upon the declaration of a dividend "in such an amount as the Securities and Exchange Commission may deem adequate". It is very manifest that in so far as the fifteen (15) certificates of stocks are concerned, they nominally appear in the names of the incorporators-subscribers appearing therein but actually none among them can exercise any attribute of ownership over said stocks until the Securities and Exchange Commission decides otherwise. If it is an act of the Government that temporarily deprived these fifteen (15) certificates of stocks of any value in favor of their owners, We cannot see Our way clear as to why that same Government shall consider said certificates issued and with practical value for the purpose of imposing the documentary stamp tax. Certainly, the Government cannot declare those fifteen (15) certificates of stocks without value to their owners temporarily to protect the investing public and in the same breath claim that they have value for purposes of taxation. We do agree, however, that at any time those fifteen (15) certificates of stock are released by the Securities and Exchange Commission from the condition imposed which deprives their owners momentarily of the rights of ownership over the stocks appearing therein, then they shall be considered as originally issued and subject to the documentary stamp tax provided for in Section 212 of the National Internal Revenue Code, as amended.

Predicated on the above reasons, We are firmly convinced that the Government stands to lose nothing in imposing the documentary stamp tax only on those stock certificates duly issued, or wherein the stockholders can

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freely exercise the attributes of ownership and with value at the time they are originally issued. As regards those certificates of stocks temporarily subject to suspensive conditions they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire any practical value for their owners.

That portion of the decision of the Court of Tax Appeals holding the imposition of the compromise penalty of ₱3,600 as illegal and unauthorized, (Collector *vs.* University of Sto. Tomas, G.R. Nos. L-11274 and L-11280, November 28, 1958; Collector *vs.* Pedro Bautista, et al., G.R. No. L-12259, May 27, 1959) not having been appealed, the same shall stand.

The appellee's and the Court of Tax Appeal's contention that petitioner-appellant, through its general manager A. E. Prats, admitted having issued the certificates of stocks (Exhibit "B", p. 39, B.I.R. rec.) so that they should be subjected to documentary stamp tax under Sec. 212 of the National Internal Revenue Code, as amended, does not impress Us. It is not a deliberate admission that petitioner issued said certificates of stocks in the legal contemplation of the term "issue" in said Sec. 212. An examination of the pertinent portion of Exhibit "B" merely shows the use of the words "*be issued*" and "*we issued*" for the ordinary meaning of the word "issue" or "discharge", "produce", "to send out", "publish", "put into circulation", "to come out". The use of those words in their ordinary meaning cannot be considered an admission or declaration against interest by the petitioner, and to so construe it would be to apply the principle of estoppel to it in an unfair manner.

In the circumstances of this case, the ₱375,700.00 worth of shares not deposited with the Securities and Exchange Commission (not subject to condition) must be

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the "original issue" subject to the documentary stamp tax at ₱ .50 documentary stamp tax for every ₱200.00 or fractional part thereof at the par value of such certificates, or ₱939.50. The ₱791,400.00 (Certificate of stock No. 16 originally issued to A.E. Prats and released by the Securities and Exchange Commission and subsequently transferred to various persons) must be considered "original issue" subject also to documentary stamp tax at ₱ .50 for every ₱200.00 or fractional part thereof at the par value of such certificate, or a total of ₱1,978.50; and documentary stamp tax due on 1,049 transfer issues composed of 7,814 shares at ₱100.00 a share with a total value of ₱791,400 at ₱ .10 documentary stamp for every ₱200.00 or fractional part thereof of the par value of such certificates, or ₱441.50, must also be collected. The total sum of documentary stamp tax due from appellant is, therefore, ₱939.50 plus ₱1,978.50 plus ₱441.50 or ₱3,359.50. There being no appeal concerning the documentary stamp tax on the transfer issues, the amount of ₱441.50 must be paid by appellant to appellee. The amount of ₱2,918.00 representing the balance of documentary stamp tax due after deducting ₱441.50, if this amount has already been paid to appellee, must be paid by appellant to appellee immediately upon the finality of this decision.

WHEREFORE, the decision of the Court of Tax Appeals is modified as indicated in the above opinion of the Court. The total sum of documentary stamp tax which may be duly assessed against the appellant is the total sum of ₱3,359.50 which must be paid and discharged by appellant to appellee immediately upon finality of this decision as computed in the preceding paragraph. As to the rest of the shares covered by certificates which are deposited with the Securities & Exchange Commission and subject to suspensive conditions and restrictions, they are declared not

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liable for the documentary stamp tax for as long as they are subject to the deposit and suspensive conditions imposed by the Securities & Exchange Commission, and the appellee is directed to impose the documentary stamp tax on original and transfer issues in accordance with law upon such certificates of stock only as and when they may be released by the said Securities & Exchange Commission from the deposit or suspensive conditions and restrictions that render them temporarily without value as stated in the opinion of the Court. Without costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and *Martin, JJ.*, concur.

Decision modified.

[No. L-39763. March 8, 1976]

SECOND DIVISION

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* MARIO ANDAL and ISIDRO ANDAL, accused-appellants.

PETITION FOR REVIEW of a decision of the Court of First Instance of Quezon (Calauag Br.). Mogol, *J.:*

SYNOPSIS

The accused father and son forcibly dragged complainant, a 13-year old girl, to a hill where she was