43 Phil. 803

[G. R. No. 18316. September 23, 1922]

LUZON STEVEDORING COMPANY, PLAINTIFF AND APPELLEE, VS. WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

This action was commenced in the Court of First Instance of the City of Manila on the 18th day of May, 1921. Its purpose was to recover of the defendant as Internal Revenue Collector, the sum of P2,422.81, which sum had been paid by the plaintiff to the defendant under protest. The defendant presented a demurrer to the complaint, which was overruled, and later answered. The answer contained a general and special defense. In his special defense the defendant alleged that during the first quarter of the year 1921 the plaintiff was engaged in business as a contractor, its gross receipts from said business during said quarter amounting to P242,281.33, and that the defendant, under the provisions of section 1462 of Act No. 2711, levied and assessed on the above-mentioned amount the percentage tax amounting to P2,422.81, which the plaintiff paid on April 18, 1921, under protest, this protest having been duly overruled by the defendant.

Upon the issue thus presented, the Honorable Pedro Concepcion, judge, for the reasons given in his decision, rendered a judgment in favor of the plaintiff and against the defendant for the said sum of P2,422.81, without any finding as to" costs or interest. From that judgment the defendant appealed. The appellant contends that the lower court committed an error in holding that the plaintiff is not a contractor and in rendering a judgment in favor of the plaintiff.

From an examination of the evidence adduced during the trial of the cause and from the agreement of the parties, it appears that the plaintiff is and was a corporation duly organized under the laws of the Philippine Islands and doing business in the City of Manila; that it was engaged in the stevedoring business in said city, said business consisting of

loading and unloading cargo from vessels in port, at certain rates of charge per unit of cargo; that all the work done by it is conducted under the direct supervision of the officers of the ships and under the instruction given to plaintiff's men by the captain and officers of said ships; that no liability attaches to the plaintiff for the improper loading or unloading of vessels, the captain being responsible for said work; that the captain answers for all the cargo placed on board and for the manner in which said cargo is loaded; that, while it is true that the plaintiff undertakes to work in the loading or unloading of cargo from any vessel in port, yet it always does the work under the direct supervision of the officers of the vessel; that said supervision is so effective that, while the loading is made, plaintiff's laborers are under the direct control of the officers of the ship; and that said supervision is so direct, that no the trial that the provisions of section 1462 of Act No. 2711 had been in force for a period of eight years (section 43, Act No. 2339; section 1617, Act No. 2657; section 1462, Act No. 2711) before the defendant made any effort to collect the taxes in question.

The only question presented by the appellant upon the foregoing facts is: Is the plaintiff a contractor? Generally speaking, every person who enters into a contract may be denominated a contractor, but evidently the Legislature did not mean to apply the word "contractor," as used in said section 1462, to every person, partnership or corporation who entered into a contract; or, otherwise, it would not have been necessary to have mentioned in the same section other classes of business, such as warehousemen, proprietors of dockyards and persons selling light, heat, or power, as well as persons engaged in conducting telephone or telegraph line or exchanges, and proprietors of steam laundries and of shops for the construction and repair of bicycles or vehicles of any kind, and keepers of hotels and restaurants, etc. If the word "contractor" in said section 1462 meant every person who entered into a contract, then it would have included warehousemen, and the other classes of business mentioned in said section, for the reason that every transaction by the other persons mentioned in said section is by virtue of an express or implied contract. The same thing might be said with reference to section 1463, where keepers of livery stables and garages, transportation contractors, persons who transport passengers or freight for hire, and common carriers, etc., are also subject to an internal revenue tax. If the Legislature had intended the word "contractor," as used in section 1462, to cover all persons who entered into a contract then it would have been unnecessary to have mentioned the other persons referred to in sections 1462 and 1463.

Moreover, if the general and broad meaning is to be given to the word "contractor" as used in said section 1462, it would include bankers, merchants, brokers, lawyers, farmers in the

sale of their product, and every person who enter into a contract of whatever nature or character. It would also include school-teachers in the public and private schools as well as common laborers who work by the day under a contract. It would also apply to all persons loaning money upon promissory notes, for the reason that their transaction is a contract and the parties thereto, broadly speaking, are contractors.

From all of the foregoing it does appear that the word "contractor," as used in said section 1462, must have a limited and a very restricted meaning. It cannot have the broad meaning which would include every person who entered into a contract. The lower court in holding that the plaintiff was not a contractor in the sense that that word is used in said section, relied upon the definition given in vol. 13 Corpus Juris, page 211, where we find a "contractor" defined. The definition is: "One who agrees to do anything for another; one who executes plans under a contract; one who contracts or covenants, whether with a government or other public body or with private parties, to furnish supplies, or to construct works, or to erect buildings, or to perform any work or service, at a certain price or rate, as a paving contractor, or a labor contractor; one who contracts to perform work, or supply articles on a large scale, at a certain price or rate, as in building houses or provisioning troops, or constructing a railroad. (Although, in a general sense, every person who enters into a contract may be called a contractor, yet the word, for want of a better one, has come to be used with special reference to a person who, in the pursuit of an independent business, undertakes to do a specific piece or job of work for other persons, *using his own means and methods without submitting himself to control as to the petty details*. The true test of a 'contractor' would seem to be that he renders the service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished." (*In re* Unger, 22 Okla., 755; State vs. McNally, 45 La. Ann., 44, 46; Ney vs. Dubuque, etc., Railroad Co., 20 Iowa, 347, 352; Lehigh, etc. Co. vs. Central Railroad Co. of New Jersey, 29 N. J. Equity, 252, 255; State vs. Emerson, 72 Me., 455, 456; Todd vs. Kentucky Union Ry. Co., 52 Fed. Rep., 241, 247 [18 L. R. A., 305]; Hale vs. Jonhson, 80 Ill., 185.)

The general rule, variously stated, is that when a person lets out work to another, the contractee reserving no control over the work or workmen, the relation of contractor and contractee exists and not that of master and servant, and the contractee is not liable for the negligence or improper execution of the work by the contractor. (Laffery vs. United States Gypsum Co., 83 Kan;, 349, 354.)

If the one rendering service submits himself to the direction of his employer as to the details

of the work, fulfilling his will not merely as to the result but also as to the means by which that result is to be attained, the contractor becomes a servant and is not a contractor in respect to that work. (Shearman and R. on Negligence, sec. 77; Knoxville Iron Co. vs. Dobson, 7 Lea [Tenn. Rep.], 367, 374.)

If on the other hand a person is engaged under a contract in an independent operation not subject to the direction and control of his employer, the relation is not regarded as that of master and servant, but is said, in modem phrase, to be that of contractor and contractee. (Campfield vs. Lang, 25 Fed. Rep., 128, 131.)

The case of Brown vs. German-American, etc. Co. (174 Pa., 443) gave a definition for a contractor, which was adopted with approval in the case of *In re* Unger (22 Okla., 755) "as one who contracts or covenants either with * * * a public body or private parties * * * to * * * construct works or erect buildings * * * at a certain price or rate." Said definition was adopted from the Century Dictionary, The definition of lexicographers, however, cannot always be adopted as a correct meaning for statutory words and phrases. The intention of the Legislature and the object which it intended to attain must be taken into consideration for the purpose of determining the meaning of words and phrases used, rather than the set definition of lexicographers. Moreover, revenue laws imposing taxes on business must be strictly construed in favor of the citizen. In construing a word or expression in the statute susceptible of two or more meanings, the court will adopt that interpretation most in accord with the manifest purpose of the statute as gathered from the context. Where a particular word is obscure or of doubtful meaning, taken by itself, its obscurity or doubt may be removed by reference to associate words. (25 Ruling Case Law, 994, 995.)

If the question presented in the interpretation of a tariff law is one of doubt, the doubt would be resolved in favor of the importer, as duties are never imposed upon citizens upon vague and doubtful interpretation. (Hart Ranft vs. Wiegman, 129 U. S., 609, 616; Zamboanga Mutual Bldg. & Loan Association vs. Rafferty, 42 Phil., 408.)

A very instructive decision on the question of who is a contractor, is found in the very well reasoned case of Caldwell vs. Atlantic B. & A. Ry. Co. (161 Ala., 395). In the course of that decision the Supreme Court of Alabama said : " 'The true test of a "Contractor" would seem to be that he renders the service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished.' " (Halstead vs. Stahl, 47 Ind. App., 600; John's Admr., etc. vs. Wm. H. McKnight & Co., 117 Ky., 655; Pittsburg Construction Co. vs. West Side, etc. R. Co., 232

Pa., 578; Freidman vs. Hampden County, 204 Mass., 494; Attorney-General vs. Detroit Board of Education, 154 Mich., 584.)

The appellant lays great stress upon the decision in the case of Murray vs. Currie (65 L. R. A., 470) as well as the case of Rankin vs. Merchants, etc. Co. (54 Am. Rep., 874, 876). In the first case, however, from a reading of the decision it will appear that "Kennedy, the stevedore, undertook to execute the work of unloading the ship, and for that purpose a steam winch belonging to the ship was placed at his disposal. The work of unloading was done by Kennedy under a special contract. He was acting on his own behalf, and did not in any sense stand in the relation of servant to the defendant. He had entire control over the work which he was doing." In the second case (Rankin vs. Merchants, etc. Co., *supra*) there is nothing in the case which does not show that the stevedore was not acting under the ship's order. The case of Haas vs. Philadelphia, etc. Co. (32 Am. Rep., 462) shows that the ship's company had no control over the stevedore or his men or their work. The cases therefore relied upon as authority by the appellant do not support his contention in view of the definition of a "contractor" which is, by a large weight of authority, accepted.

From all of the foregoing it seems clear to us that the plaintiff is not a contractor in the sense that that word is used in said section 1462 of Act No. 2711, and therefore the tax paid by the plaintiff under protest was illegally collected and should be repaid. For all of the foregoing reasons, we are of the opinion, and so declare, that the judgment appealed from should be affirmed. So ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Ostrand, Johns, and *Romualdez, JJ.*, concur.

Date created: June 06, 2014