45 Phil. 1

[G.R. No. 20101. July 12, 1923]

EL DORADO OIL WORKS, PLAINTIFF AND APPELLEE, VS. THE COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNS, J.:

The plaintiff is a corporation organized and existing under the laws of the State of California, with its principal office and place of business in the City of San Francisco, and there engaged solely in the manufacture and sale of cocoanut oil, and is duly licensed to transact business in the Philippine Islands, where it has a resident agent engaged solely in the purchase of copra.

The defendant is the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands.

The complaint alleges that during the year 1921, the plaintiff purchased copra from various merchants residing in the Philippine Islands of the value of P1,022,209.93, under the terms and conditions of which purchase the resident merchants sold and consigned the copra to plaintiff f. o. b. ship in Manila Bay, on all of which a merchant's tax of 1 per cent, under section 1459 of the Administrative Code of 1917, was paid by the respective sellers and consignors; that the defendant, acting under the pretended authority of section 1459, on April 4, 1922, levied and assessed against the plaintiff a merchant's tax of P10,222.08 which, with the surcharge of 25 per cent for delinquency, made a total tax, with the penalty, of P12,777.64, claiming that amount was due on the copra so purchased, which it demanded from plaintiff's resident purchasing agent in the Philippine Islands under the threat of a more severe penalty; that the tax was paid under protest and is unjust and illegal, for the reasons, first, it

was not due; second, it is invalid; and third, that the merchandise upon which it was demanded was not exported or consigned abroad by the plaintiff. Plaintiff's written protest was overruled, and the defendant still refuses the return of the money, wherefore, plaintiff prays for judgment for the amount with interest.

For answer, the defendant admits all of the allegations of paragraph one of the complaint and makes a specific denial of all other matters alleged, and, as a special defense, pleads (*a*) that during the year 1921, plaintiff, through its purchasing agent, consigned abroad the merchandise in question; (*b*) that the defendant in his official capacity demanded from plaintiff an internal revenue tax of 1 per cent on the amount, plus 25 per cent for delay in the payment; (*c*) that in compliance therewith plaintiff paid the money under protest; and (*d*) that the collection of the tax is authorized by law.

The case was tried and submitted on "an agreed statement of facts," as follows:

> "I. That the plaintiff is a foreign corporation organized and existing under and by virtue of the laws of the State of California, United States of America, wherein it is engaged solely in the manufacture and sale of cocoanut and other oils, with its principal place of business in the City of San Francisco, California, and having only a resident purchasing agent in the Philippine Islands, at the City of Manila, although duly licensed to transact business in said Islands; that the defendant is the duly appointed and acting Collector of Internal Revenue for the Philippine Islands.
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> "II. That during the year 1921, the said El Dorado Oil Works of San Francisco, California, United States of America, through its resident purchasing agent in the Philippine Islands, purchased from various merchants resident m the Philippine Islands copra of the value of one million twenty-two thousand two hundred and nine pesos and ninety-three centavos (P1,022,209.93) under the terms
> and conditions of which purchases said merchants, resident in the Philippine Islands, sold the same to plaintiff, El Dorado Oil Works, of San Francisco,

California, United States of America, f. o. b. (free on board) ship Manila Bay; that said merchants, upon delivering said copra as aforesaid, obtained, signed and executed all bills of lading pertaining to said shipments of copra; that said bills of lading directed shipment of said copra to plaintiff, at San Francisco, California; that upon presenting said bills of lading thus made out and signed, as aforesaid, said merchants were paid for said copra by plaintiff's resident purchasing agent.

"III. That on all of said copra so purchased the percentage tax of one per cent (1%), payable under section 1459 of the Administrative Code of 1917, was paid by the respective sellers prior to the date of the demand made upon plaintiff's resident purchasing agent by defendant.

"IV. That the defendant, in his capacity, as Collector of Internal Revenue, and acting under the alleged authority of section 1459 of the Administrative Code of 1917, on the fourth day of April, 1922, levied and assessed against plaintiff as tax due on the consignments of the copra set forth in the last preceding paragraph the sum of ten thousand two hundred twenty-two pesos and eight centavos (P10,222.08), together with a surcharge of twenty-five per cent (25%) thereof for delinquency in the further sum of two thousand five hundred fifty-five pesos and fifty-five centavos (P2,555.55), making a total tax and penalties of twelve thousand seven hundred seventy-seven pesos and sixty-three centavos (P12,777.63), and demanded same from the plaintiff's resident purchasing agent in the Philippine Islands; that plaintiff is not and never has been engaged in the sale, barter or exchange of personal property of any character whatsoever in the Philippine Islands, it being engaged solely through its said purchasing agent in the purchase of copra in the Philippine Islands which is shipped to the head office of plaintiff in the United States cf America as aforesaid.

"V. That plaintiff's said resident purchasing agent in the Philippine Islands for and on behalf of plaintiff, involuntarily and to prevent the exaction of further penalties, on the 11th day of April, 1922, paid under protest to defendant the sum of twelve thousand seven hundred seventy-seven pesos and sixty-three centavos (P12,777.63).

"VI. That plaintiff's protest was overruled and denied by defendant, who

> refused and still refuses to refund the sum above mentioned."

Exhibits B and C, in the form of letters, are attached to and made a part of the stipulation.

The lower court rendered judgment for the plaintiff as prayed for in the complaint, from which the defendant appeals, claiming (1) that the court erred in holding that the plaintiff was not subject to the tax under section 1459; (2) in allowing interest in favor of the plaintiff; and (3) in rendering the judgment.

Under the "agreed statement of facts," the question involved is the construction of section 1459 of the Administrative Code of 1917. It will be noted that the plaintiff is a foreign corporation organized under the laws of the State of California, with its principal office and place of business in the City of San Francisco, where it is engaged in the manufacture and sale of cocoanut oil and its by-products. Although it is duly licensed to transact business in the Philippine Islands, it has a resident purchasing agent only here. That under the terms and conditions by which the agent made all of the purchases in question, the copra was sold to the plaintiff, a foreign corporation, f. o. b. ship, Manila Bay. That the merchants from whom it was purchased signed and executed all bills of lading for its shipment, and directed the shipment of the copra to the plaintiff at San Francisco, and that upon presenting the bills of lading thus prepared and signed, the merchants were then, and not before, paid for the copra by the resident purchasing agent. On all such copra the percentage tax of 1 per cent, payable under section 1459, was paid by the respective owners and sellers prior to the date of the demand which was made by the defendant upon the resident purchasing agent for the tax in question. Notwithstanding the payment of the tax by the merchants who sold the copra, the defendant contends that the plaintiff should pay another sales tax upon the same copra because it was purchased here by its agent.

The following are the material provisions of section 1459:

> "*Percentage tax on merchants' sales*.—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in

> money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold. * * *
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> " 'Merchant,' as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

At or about the time the instant case was submitted, this Court rendered a decision in Murphy *vs*. Trinidad (44 Phil., 649), in which the writer, though standing alone, vigorously dissented.

In paragraph one of the syllabus in that case, it is said:

> "1. INTERNAL REVENUE; MERCHANTS' TAX; EMBROIDERY MATERIAL SENT FROM
> ABROAD.—The merchants' tax imposed by section 1459 of the Administrative Code
> must be paid by a person who sends material to the Philippine Islands to be embroidered under the supervision of its local agent by whom the finished product is returned to the owner. The person so sending material to be embroidered and returned is engaged in the business of manufacture in these Islands and is a manufacturing merchant within the meaning of the Internal Revenue Law."

The opinion says:

> "The term 'merchant' is there defined as a person engaged in the sale,

> barter, or exchange of personal property of whatever character, and it is declared that tiie term includes manufacturers who sell articles of their own production. The American Import Company fulfills every requirement of this definition because it is engaged in the manufacture of Philippine embroideries and exports the finished product for sale in the United States.
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> "* * * and there is no reason why a foreign company, buying its material in a foreign market, should not be required to carry the weight of the investment, when such material is sent to this country to be converted into a finished product, the same as a local manufacturer who buys his material here, or in any market."

The decision in that case is now the law of this Court, but upon the facts there is a very important distinction between the two cases. In the instant case, there is no claim or pretense that the plaintiff ever shipped any raw material to the Philippine Islands to be manufactured into a finished product, or that it ever manufactured anything in the Philippine Islands, or that it ever sold any of its manufactured products in the Philippine Islands. The very most that can be said is that, through its agent, it purchased raw material here in the form of copra to be shipped to its plant in San Francisco, there to be manufactured into oil and its by-products, and the stipulation expressly recites that the shipper paid the sales tax prior to the shipment of the copra as a condition precedent and as one of the considerations of the payment of the purchase price.

In other words, under the contract of purchase, the copra was to be delivered to the plaintiff f. o. b. ship, Manila Bay, with the sales tax paid thereon by the seller who made the delivery.

The appellant's brief says:

> "The lower court held that the plaintiff was not subject to the tax on consignments abroad, because it was not a merchant according to the definition of same given in section 1459 of the Revised Administrative Code. It is true that the plaintiff is not and never has been engaged in the sale, barter, or exchange of personal property of any character in the Philippine Islands

> (paragraph IV of Agreed Statement of Facts). It should be taken into consideration, however, that the plaintiff is a manufacturing corporation, licensed to transact business in this country and is engaged in the manufacture and sale of cocoanut and other oils in the United States (paragraph I of Agreed Statement of Facts). Inasmuch as plaintiff manufactures and sells oil, it comes within the definition of a merchant given in section 1459 above mentioned, which includes manufacturers who sell articles of their own production."

The last statement is not tenable. The record shows that the plaintiff never did manufacture or sell oil in the Philippine Islands. That it only manufactures and sells oil in the United States. It is further contended that the plaintiff is the consignor of the copra and, as such, is liable for the payment of the tax. That contention is in direct conflict with clause two of the "Agreed Statement of Facts," above quoted.

We agree with the Attorney-General that it is the policy of the law to uphold rather than defeat revenue laws. But upon the stipulated facts, to require the plaintiff to pay a sales tax would violate every rule of statutory construction and would require a foreign purchaser of goods to pay as sales tax for the privilege of making the purchase, and, in legal effect, would be a tax on exports. Upon that question, a case square in point is A. G. Spalding & Bros. *vs*. Edwards, Advance Opinions of the Supreme Court of the United States, No. 14, May 15, 1923, page 539; 67 L. ed., 865. It is there held:

> "A sale by a manufacturer to a broker to fill an order from a foreign merchant is a step in the export, where the title passes when the property is delivered to the carrier, so that, under the terms of the Federal Constitution, it is not subject to tax, where the broker sends the manufacturer what is termed an export order, with directions to deliver the goods on board ship, marked for the foreign merchant, although the invoice is sent to the broker to enable him to secure a license and clearance at the customhouse, and the manufacturer secures a receipt from the carrier, which is sent to the broker, and by him exchanged for an export bill of lading in his own name."

In the instant case, the record is conclusive that the plaintiff never "sold, bartered, exchanged or consigned abroad" any copra within the meaning of section 1459 of the Administrative Code.

The judgment of the lower court includes both costs and interest in favor of the plaintiff. This was error. The judgment of the lower court is modified so as to eliminate both costs and interest, and in all other respects is affirmed, without costs in this court. So ordered.

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

Date created: June 09, 2014