101 Phil. 859

[G. R. No. L-8255. July 11, 1957]

CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. BUGSUK LUMBER CO., DEFENDANT AND APPELLANT.

D E C I S I O N

CONCEPCION, J.:

Bugsuk Lumber Company, Inc., a domestic corporation with *field* office at Balabak, Palawan, and *principal* office at 703 San Fernando, Binondo, Manila, "was organized to:

> (a) Comprar y vender maderas y para dedicarse, en general :i toda clase de negoeios sobre maderas;
> (To buy and sell lumber and to engage In general, in any kind of business concerning lumber) ;
> (b) Solicitor del Gobierno o adquirir, en la forma permitia por la ley, concessiones madereras si el negoeio asi lo exige;
> (To apply from the Government or to acquire in any manner permitted by law, lumber concessions if the business would so require) ;
> (c) Aserrar maderas y comprar trozos de madera, en caso de que el negocio de la eorporacion lo exija; y
> (To saw lumber and to buy logs, in ease the business of the corporation would so demand; and)
> (d) Hacer toda clase de nogoews relacionados directa o indi rectamente con los fines para los euales se ha creado esta corporacion (Exhibit "A"),
> (To make all kinds of business that may be directly or indirectly in line with the purposes for which this corporation has been created).

In 1951 and during the 1st, 2nd and 3rd quarters of 1952, the Bugsuk Lumber Company made sales of lumber to several firms including Pio Barreto & Sons, Inc., Go- tamco &

Sons, Co., Basilan Lumber Co., Dy Pac & Co., Inc., Central Sawmill, Woodart Inc., Felipe Yupangeo & Sons, Inc., Jacinto Music Store and P. E. Domingo & Co., Inc. (Exhibits B to B-23).

On October 10, 1952, the Office of the Treasurer of the City of Manila sent a demand to the Company for the payment of the amount of P544.50 for license fees corresponding to the years 1951 and 1952, and P40.00 for the necessary mayor's permit, on the ground that said business firm was found to be engaged in the sales of timber products without first securing the required licenses and permits pursuant to City Ordinances Nos. 3420, 3364 and 3000. (Exhibit C). The Company must have refused or failed to pay said imposts because on June 11, 1953, the City Fiscal of Manila filed a complaint against the Bugsuk Lumber Co., Inc., with the Municipal Court of Manila alleging, among others, that defendant Company sold at *wholesal*e to different lumber dealers in Manila during the 1st, 2nd, 3rd and 4th quarters of

1951 and the 1st, 2nd and 3rd quarters of 1952 different kinds of lumber for which it should have paid a quarterly license tax of P40.00 or a total of F280.00 as provided by Ordnance No. 3000, as amended; that during the 2nd, 3rd and 4th quarters of 1951 and the 1st, 2nd, 3rd and 4th quarters of 1952, defendant Company sold at retail to different firms lumber for which it should have paid a total amount of P215.00 for license fees and the mayor's permit of P20.00; that despite repeated demands, defendant Company refused and failed to pay the same and therefore, prayed that judgment be rendered ordering the defendant Company to pay the City of Manila the amount of P584.50 representing license fees and mayor's permit fees, with legal interests thereon and surcharges and for such other relief as may be deemed just and equitable in the premises.

Defendant Bugsuk Lumber Co., Inc., filed an answer on October 12, 1953, contesting plaintiff's allegation that it sold lumber at wholesale transactions because what it actually sold were unprocessed logs; neither did it sell at retail because the timbers were delivered directly from the vessel to the lumber dealers, and set up the affirmative defenses that the Bugsuk Lumber Company was essentially a producer, having no lumber yard of any kind in Manila or elsewhere, nor kept a store where lumber or logs could be sold, and that its products (logs) were sold directly from the lumber concession to the dealers in Manila; that as such producer, it had paid the taxes required by law such as the ordinary Timber License fee, Privilege tax (producer), sales tax, forestry charges, reforestation fees, residence taxes, and the municipal licenses in Bugsuk, Palawan; that the taxes in the form of license and permit fees sought to be collected by the City would constitute

double taxation, and prayed for the dismissal of the complaint.

The record shows that the Municipal Court of Manila rendered judgment in favor of plaintiff and defendant Company appealed the case to the Court of First Instance of Manila based practically in the same arguments. On July 18, 1954, the Court of First Instance rendered decision holding that the Company sold logs to various firms in wholesale and retail transactions and although defendant had no store or lumber yard in the City, this fact alone cannot destroy the findings of the inspector of the City Treasurer's Office that it sold logs to different buyers, in Manila; that the imposition of the taxes in question did. not constitute double taxation and that. the municipal taxes sought to be collected by the City authorities were not excessive and, consequently, ordered the defendant Company to pay the sum of P584.50 plus legal interests and costs.

From this decision, therein defendant took the matter to this Court and in this instance alleged that the lower Court erred:

1. In holding that appellant is a wholesale dealer and.not a producer within the meaning of the tax ordinance;
2. In holding that appellant is a retail dealer and not a producer within the meaning of the tax ordinance; and
3. In holding that appellant is liable under the municipal or dinances imposing taxes in wholesale and retail dealers because defendant is not a dealer but a producer.

We could see from the foregoing set of facts that the only question at issue in this case is whether or not appellant, maintaining a principal office in Manila, receiving orders for its products and accepting in said office payments thereto, can be considered a dealer in this City and is, therefore, subject to the payment of the license tax and permit fees in question.

Appellant does not dispute the power of the Municipal Board of the City of Manila to enact Ordinance No. 3000 requiring wholesale and retail dealers to secure and pay the mayor's permit annually, neither does it contest the validity of Ordinance No. 3364 which contains the following provision:

"Group 2. Retail dealers in new (not' yet used) merchandise, which dealers

> are not yet subject to the payment of any municipal tax, such as; (1) Retail dealers in *General Merchandise* and (2) retail dealers exclusively engaged in the sale of electrical supplies; sporting goods; office equipment and materials; rice; textile including' knitted wares; hardwares, including glasswares; cooking utensils and' *consttaction material*; papers; books including' stationery:" (Ordinance No. 3364);

nor of Ordinance No. 3420 which provides:

> "SEC. 1. *Municipal Tax on wholesalers in General Merehandise*.— There shall be paid by every person, firm or corporation *engaging in business as wholesale dealer in general merchandise*, a municipal tax based on wholesales, or on the receipts of exchange value of goods sold, exchanged or transferred, in accordance with the following:" (Ordinance No. 3420.)

A dealer has been defined as:

> A dealer, in the common acceptation and, therefore, in the legal meaning of the word, is not one who buys to keep or makes to sell, but one who buys to sell again; the middleman between the producer and the consumer of the commodity (In re Hemming, 51 F. 2d 850).
>
> It has been said that a dealer stands immediately between the producer and the consumer, and depends for his profit, not upon the labor he bestows on his commodities, but upon the skill and foresight with which he watches the markets (State vs. J. Watts Kearny & Sons, 160 So. 77).

In the light of the above definitions, appellant certainly does not fall within the common and ordinary acceptation of the word "dealer" for there" is no controversy as to the fact that what appellant sold was the produce of its concession in Palawan.' Even conceding1, therefore, that the lumber which appellant disposed of comes within the connotation of 'construction materials" (Group 2, Ordinance No. 3364) and of the term "general merchandise" (used in Ordinances Nos. 3364 and 3420),; which was, defined as:

> "All articles subject to the payment of percentage taxes or graduated fixed taxes, but not articles subject to the payment of specific taxes under the provisions of the Internal Revenue Code. It shall also include poultry, livestock, fish and other allied products" (Ordinance No. 3420).

We see no reason why a producer or manufacturer selling its own produce or manufactured goods would be considered a dealer just to make it liable for the corresponding dealer's tax, as is the case in the instant appeal.

Appellee, however, in asserting that appellant Company is a dealer relied on the case of Atlantic Refining Co. vs. Van Valkenburg, 265 Pa. 456; 109 A. 208, wherein it was held that the term dealer includes "one who carries on the business of selling- goods, wares and merchandise manufactured by him at a *store or warehouse apart from his own manufactory*", and it was the contention of the City Fiscal that the office at 703 San Fernando, Binondo, Manila, where appellant received orders and receipted payment for such orders is actually a store.

Appellant admittedly maintained said principal office but averred that it was used merely to facilitate the payment cf the tax obligations of said Company, to receive orders of its timber produce and accept payments therefor, and not for any purpose connected with the business of buying" and selling. Did the fact that appellant received orders of its goods and accepted payments thereto in said office make such office a store?

Lexicographers defined a store as:

> Any plate where goods are kept for sale, whether by wholesale or retail; a shop (Webster's New International Dictionary, 2nd ed., p. 248G).
>
> Any place where goods are deposited and sold by one engaged in buying and selling . them (Black's Law Dictionary, 4th ed., p. 1589). It was also said that:
>
> A store is any place where goods are kept for sale or sold, whether by wholesale or retail (Standard Oil Co. vs. Green., 34 F. Supp. 30). It also applies to a building or room in which goods of any kind or in which goods, wares and merchandise are kept for sale, or to any building" used for the sale of goods of any kind (Jackson. V. Lane, 59 A. 2d 662; 3 42 N. J. Eq. 193).

It could be seen that the placing of an order for goods and the making of payment thereto at a principal office does not transform said office into a store, for it is a necessary element that there must also be goods or wares stored therein or on display, and provided also that the firm or person maintaining that office is actually engaged in the business of buying and selling. These elements are wanting in the case at bar for it needs no further clarification that the principal office alluded to as a store only serves to facilitate the transactions relative to the sale of its produce, but does not act as a dealer or intermediary between its field office and its customers.

We may further add that this matter was already passed upon by this Court when, through Mr. Justice Alejo Labrador, it held that:

> "It may be admitted that the manufacturer becomes a dealer if he carries on the business of selling goods or the products manufactured by him at a store or warehouse apart from his own shop or manufactory. But plaintiff-appellee did not carry on the business of selling sugar at stores or at its warehouses. It entered into the contracts of sale at its central office in Manila and made deliveries of the sugar sold from its warehouses. It does not appear that the plaintiff keeps stores at its warehouses and engages in selling sugar in said stores. Neither does it appear that any one who desires to purchase sugar from it may .go to the warehouses and there purchase sugar. All that it does was to sell the sugar it manufactured; it does not open stores for the sale of such sugar. Plaintiff-appellee did not, therefore, engage in the business of selling sugar". (Central Azucarera de Don Pedro vs. City of Manila et al., 97 Phil., 627).

Wherefore, the decision appealed from is hereby reversed and appellant declared exempt from the liabilities sought to be charged against it under the provisions of the aforementioned ordinances, without pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A,, Bautista, Labrador, Conception, Reyes, J. B L., and *Endencia, JJ.*, concur.

Date created: October 13, 2014