102 Phil. 653

[G. R. No. L-9549. December 21, 1957]

MANILA TOBACCO ASSOCIATION, INC., PLAINTIFF AND APPELLANT, VS. THE CITY OF MANILA, AND M. SARMIENTO, IN HIS CAPACITY AS CITY TREASURER OF THE CITY OF MANILA, DEFENDANTS AND APPELLEES.

D E C I S I O N

BENGZON, J.:

Assailing the validity of Ordinance No. 3634 of the City of Manila and the Regulations complementary thereto, the plaintiff association composed of manufacturers of or dealers in cigars, cigarrettes and other tobacco products filed this action for declaratory relief in the Manila Court of First Instance, asking for their annulment in so far as they affected its business activities.

The defendants opposed the request, asserted the City's power to tax and pleaded for dismissal of the complaint.

The Hon. Rafael Amparo, Judge, after hearing the parties dismissed the case. Wherefore this appeal perfected in due time.

The ordinance in question imposes a municipal tax on those "engaging in the business as wholesale dealer in general merchandise," and provides that "the term 'general merchandise' shall include all articles subject to the payment of percentage taxes, graduated fixed taxes and specific taxes. It shall also include poultry and livestock, fish and other allied products."

This ordinance amended Ordinance No. 3420 imposing the same tax, but expressly excluding from the definition of "general merchandise" all articles *subject to the *payment of specific taxes* under the Internal Revenue Code. Inasmuch as cigars and cigarrettes are subject to specific taxes, the amended ordinance necessarily touched the pockets of cigar dealers and merchants. Hence this suit, resting on the proposition that although the City of

Manila has, by its Charter (Republic Act 409, Sec. 18, par. O) power to tax dealers in general merchandise the term “general merchandise” does not include dealer in articles—like cigars—s*ubject to specific taxes.*

The text;of such legislative authority reads as follows:

> “(o) To tax and fix the license fee on dealers in general merchandise, including importers and indentors, except those dealers who may be expressly subject to the payment of some other municipal tax, under the provisions of this section,”
>
> “Dealers in general merchandise shall be classified as (a) whole- sale dealers and (6) classified into four main classes:* * *.”
>
> “For purposes of this section, the term ‘General merchandise’ shall include poultry and livestock, agricultural products, fish and other allied products.”

Inviting particular attention to the last paragraph, the plaintiff association presents an argument which, in short, amounts to this: Except for this paragraph the word “general merchandise” would not have included poultry and livestock, etc.; the latter would not have been included, because they were exempt from the payment of taxes ordinarily paid by merchants (like percentage taxes) by virtue of Sec. 188 of the National Revenue Code; therefore other articles exempt under sec. 188—like cigars— are not included within the scope of the word “general merchandise.”

The reasoning although clever, can not stand a separate examination of its component propositions. The first can not fully be accepted; poultry is “merchandise or personal property or whatever character.” The Legislature might have made express reference to poultry and livestock out of extreme caution[1] in a needless effort to make comprehensive the scope of the term.

However, admitting the validity of such proposition, we find no indication that poultry and livestock would have been excluded from the term simply because of section 188. Appellant quotes no authority to support such second proposition. The reason for their express mention lay in their very nature, the possibility that, as living or growing objects, they might not be regarded as merchandise.

And other articles subject to specific taxes—like cigars, matches and firecrackers—were not

expressly included because there was no such possibility. If the Legislature had intended not to include articles subject to specific taxes in the power to tax granted to the City of Manila, it would have said so clearly, as it did in Commonwealth Act No. 472 when it ordered, the municipal councils shall have no power to impose "specific taxes," nor taxes "on the business of * * * tobacco dealers etc." (Secs. 1 and 3)

Petitioner asks, why should cities like Manila be permitted to tax goods that other municipalities cannot tax? The answer is easy to find: The need for greater revenue, in view of the City's expanded services and activities.

The other argument of appellant runs along this line: "Dealers in general merchandise" are, ordinarily, merchants; merchants under the Internal Revenue Code pay fixed and percentage taxes; consequently "general merchandise" should mean articles subject to fixed and percentage taxes—not those subject to specific taxes. This process of reasoning does not sound convincing[2]; in fact, it is inconclusive, for it does assert as a premise— it cannot assert—that merchants *do not pay* specific taxes. Logically, from the two premises above stated the inference should be: dealers in general merchandise pay fixed and percentage taxes.

Furthermore, appellant itself admits to a difference between "dealer" and "merchant" in the light of internal revenue laws; and the City Charter speaks of "dealers."

As a result we perceive no valid reason to bestow on the term "general merchandise," any other meaning than the ordinary one, which includes all articles usually bought and sold in trade (40 Corpus Juris p. 641-642) either wholesale or retail (Bouvier's Law Dictionary Vol. II- 2195.) Cigars and cigarrettes are unquestionably of that kind; therefore dealers in cigars and cigarrettes are dealers in general merchandise, subject to tax under the City Charter and the Ordinance.

A second point remains to be considered. Implementing the Ordinance in question the City Treasurer issued Regulations which provide, among other things, that "wholesale 2 One might as well argue: Merchants pay real estate taxes; consequently "general merchandise" means real estate dealers" shall include "manufacturers in Manila who conduct the business of selling their own products at wholesale at places in the City other than their factories" * * *.

This is erroneous, suggests the association, because "manufacturers" are not "dealers," "manufacturers of cigars" differ from "wholesale tobacco dealers"; and the Charter

authorized no tax on manufacturers. It relies on Central Azucarera Don Pedro vs. City of Manila8 wherein this Court held that “the mere fact that a manufacturer sells the Sugar that it manufactures does not thereby make it a dealer in sugar.” Precisely, that case also holds that such manufacturer becomes a dealer if he carries on the business of selling his goods or his products at a store or warehouse apart from his own shop or manufactory.

The order of dismissal is therefore affirmed with costs against appellant.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia and *Felix, JJ.,* concur.

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[1] See generally 82 Corpus Juris Secundum p. 670.

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