

MITHI NG BAYAN COOPERATIVE MARKETING ASSOCIATION INC., PETITIONER, VS. J. ANTONIO ARANETA, COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-14575. July 31, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal under section 18, Republic Act No. 1125, by the Mithi Ng Bayan Cooperative Marketing Association, Inc., from that part of a judgment dated 14 August 1948 rendered by the Court of Tax Appeal upholding the decision of the Collector of Internal Revenue that denied the petitioner's claim for refund of the sum of P3,590.53 paid by it as privilege or fixed tax upon business and percentage tax, and surcharge due (Annex A) and the resolution dated 8 October 1958, denying its motion for reconsideration.

On 3 July 1953, Pedro Guevarra, an agent of the Bureau of Internal Revenue, assigned in San Pablo City, reported to the provincial revenue agent that the petitioner, an association of persons organized and incorporated as a cooperative marketing association under the provisions of the Cooperative Marketing Law, Act No. 3425, as amended, and the Cooperative Law, Act No. 1459, as amended, has been operating a rice mill in barrio Calios, Santa Cruz, Laguna, where palay owned by members and non-members are milled; that a fee is charged and collected by the petitioner from the owners for milling their palay; and that the petitioner paid the fixed tax of P10 due for the year 1952 and the percentage tax of 2 per cent due on the total value of rice milled during the first and second quarters of 1952 but did not pay the fixed tax due for the year 1953 and the percentage tax of 2 per cent due on the total value of rice milled during the third quarter of 1952 to the first quarter of 1953. The agent recommended that a letter be sent to the petitioner demanding payment of the total sum of P3,610.53, computed as follows:

Fix tax C-19 for 1953

P10.00

2% of P143,220.92 (value of rice removed from 3rd qtr. 1952 to 1st qtr. of 1953)

2,864.42

25% surcharge thereon

716.11

Compromise

20.00

TOTAL TAX LIABILITY

P3,610.53

(Exhibit 1, pp. 2-3, BIR rec.). Acting upon the recommendation of the agent, on 19 December 1953 the respondent Collector of Internal Revenue demanded from the petitioner payment of the sum of P3,590.53 (less P20 for compromise) , within 30 days from receipt of the letter of demand and informed it that if it be not agreeable to the assessment, it could take up the matter with the Conference Staff of the Bureau of Internal Revenue by filing within the same period of time a written notice of its intention to appear before the Staff either in person or by an attorney-at-law or a certified public accountant as counsel and that if it be agreeable to extra judicially settled the penal liabilities arising from violations of the National Internal Revenue Code, as amended, it could pay the sum of P100 as penalty in addition to the sum of P3,590.53, or a total of P3,690.53 (Exhibit E). On 13 January 1954 the petitioner wrote to the respondent Collector informing him that it was not agreeable to his proposal and filed its notice of intention to appear before the Conference Staff (Exhibit F). After hearing, on December 1954 the Conference Staff recommended to the respondent Collector the enforcement of the assessment dated 19 December 1953 for taxes and surcharge in the sum of P3,590.53 and suggested the imposition upon the petitioner of a compromise penalty in the sum of P100 (Exhibit 9). The respondent Collector approved the recommendation of the Conference Staff and on 4 January 1955 demanded payment of the total sum of P3,690.53 within ten days from receipt of the letter, otherwise it would enforce collection through the summary remedies provided for by law (Exhibit G).

On 14 February 1955 the petitioner appealed under the provisions of section 11, Republic Act No. 1125, to the Court of Tax Appeals to have the decision of the Collector of Internal Revenue reviewed. On 16 March 1955 the respondent Collector filed under the provisions of Rule 7 of the Rules of the Court of Tax Appeals his answer to the petition for review of the decision of the respondent Collector.

On 6 December 1955 the respondent issued a warrant of distraint and levy ordering the deputy provincial treasurer, through the provincial treasurer, "to distrain the goods, chattels, or effects and other personal property of whatever character, and levy upon the real property and interest in or rights to real property of the delinquent taxpayer, and sell so much of such personal or real property as may be necessary to satisfy in full the sum or sums due as set forth above (P3,690.53), and to cover such expenses as may be incurred in making this distraint and levy." (Exhibit H.). On 14 March 1956 the petitioner filed in the Court of Tax Appeals an "urgent motion to suspend execution of warrant of distraint and levy and collection of tax," on the ground that the enforcement of the said warrant of distraint and levy and collection of tax would jeopardize the interest of the petitioner because it is exempt from the payment of the taxes sought to be collected. It offered to file a bond for that purpose. On 21 March 1956 the respondent filed an objection to the petitioner's motion. After hearing, the Court denied the petitioner's motion.

On 20 June 1956 the petitioner paid to the deputy provincial treasurer in the municipality of Santa Cruz, province of Laguna, the sum of P2,000 as partial payment and on 10 July 1956 the sum of P1,690.53 as full payment of the taxes and surcharge sought to be collected by the respondent (Exhibits 1,1-1 and 1-2). On 27 March 1957 the petitioner wrote to the respondent requesting that the sum of P3,690.53 paid by it for taxes and surcharge assessed and sought to be collected by the latter be refunded to the former (Exhibit J). The respondent did not act upon the petitioner's request.

On 4 April 1957 the petitioner filed an amended petition to review the decision of the respondent, alleging the fact of payment of the sum of P3,690.53 and request for its refund. On 16 May 1957 the respondent filed an amended answer to the amended petition.

On 11 December 1957 the parties entered into a stipulation of facts and submitted it to the Court, the said

stipulation provides:

Come now the herein parties thru their respective undersigned counsel, and to this Honorable Court respectfully submit the following Statement of Facts, to wit;

- That attached hereto are the lists of names of persons who brought and milled palay in the petitioner's ricemill between March 2 to 31, 1953, copied from Exhs. D and D11, together with their respective identification or relation to the members of the petitioner-organization;
- That said lists of names were copied from Exhs. D and D-1, which formed part of the Bureau of Internal Revenue records, embodied in the records of this case;
- That the column opposite or following the lists of names identify said persons, whether they are members, brothers, sisters, sons, daughters or close relatives, or helpers of members of the petitioner-organization;
- That said persons will, respectively testify that they were known and/or called in the community by the names or nicknames appearing in the attached lists; that they brought their palay to be milled themselves being members of the petitioner-organization, or that they were respectively requested by members, who are their fathers, mothers, brothers, sisters, or close relatives or their land-lords or employers to bring his or her palay to the ricemill of the petitioner-organization to be milled between March 2 to 31, 1953 and that they were given receipts which were placed in the names with which they were commonly known or called in the community ;
- That they know Fermin Domingo who is the Checker and the one in-charge of the petitioner-organization's ricemill and that they were in turn known to him; that they were issued receipts which they kept, being members, or which they surrendered and delivered to their fathers, mothers, brothers, sisters, or close relatives, or employers, who are members of the said petitioner-organization and who requested them to mill their palay in the ricemill of said petitioner;
- That the testimonies of the said persons appearing in the attached lists will merely be the same and/or corroborative to those that have already testified;
- That in order to abbreviate this proceedings and to avoid a lengthy and costly litigation, said persons appearing in the attached lists will no longer be presented to testify in this case.

Wherefore, it is respectively prayed that this Stipulation of Facts be approved by this Honorable Court.

After hearing and after the parties had filed their respective memoranda and the petitioner a reply to the respondent's memorandum, on 14 August 1958 the Court rendered judgment declaring that the "petitioner can not be considered as having been organized in accordance with Act No. 3425, and its claim for exemption under Section 48 of said Act can not be sustained." The dispositive part of the judgment provides:

For the foregoing considerations, we are of the opinion that the sum of P3,590.53, representing the fixed and percentage taxes, plus surcharge, was validly collected from petitioner as operator of a rice mill, and its claim for refund thereof must be, as the same is hereby, denied. With respect, to the sum of P100 as compromise penalty, the collection thereof being unauthorized and illegal, respondent is ordered to refund the said amount, plus interest at the legal rate. No pronouncement as to costs. (Annex A.)

On 3 September 1958 the petitioner filed a motion for reconsideration, on 29 September 1958 the respondent, an objection thereto, and on 2 October 1958 the petitioner, a reply to the respondent's objection. On 8 October 1958 the Court denied the petitioner's motion for reconsideration. Hence this appeal. The petitioner's appeal only with respect to that part of the judgment upholding the legality of the imposition of the sum of P3,590.53 as taxes and surcharge due and denying its claim for refund of the said amount.

Is the petitioner an association organized under the provisions of the Cooperative Marketing Law, Act No. 3425,

as amended, exempt from the payment of privilege tax or fixed tax upon business and percentage tax, imposed by sections 178, 182, 183 and 189, of the National Internal Revenue Code, as amended, is the question to be resolved in this appeal.

Section 48, Act No. 3425, as amended by Republic Act No. 702, exempting cooperative associations organized under the said Law from payment of merchant's sales tax income tax and other percentage taxes, provides:

Any association organized under this Act shall not be subject to the payment of the merchant's sales tax, the income tax, and all other percentage taxes of whatever nature and description.

Any exemptions under any and all existing laws applying to agricultural products in the possession or under the control of the individual producer, shall apply similarly and completely to agricultural products delivered by the former members to the association, or which are in the possession or under the control of the association.

Sections 1, 3, 6 and 7 of Act No. 3425, as amended, provide:

SECTION 1. This Act shall be known and may be cited as "The Cooperative Marketing Law." Every association incorporated under this law shall be operated primarily for the mutual benefit of the members thereof, as producers, and should aim to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation; to make the distribution of agricultural products between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of agricultural products.

SEC. 3. Fifteen or more persons, a majority of whom are residents of the Philippines Islands, engaged in the production of agricultural products, may form a cooperative marketing association, with or without capital stock, under the provisions of this Act, by the adoption of and filing with the Bureau of Commerce and Industry articles of incorporation and by-laws in the same manner as is required of other corporations organized under the Corporation Law, Act Numbered One thousand four hundred fifty-nine as amended, except as herein provided.

SEC. 6. * * * (a) * * * No association, organized under this Act, shall handle the agricultural products of any non-member except for storage.

SEC. 7. Under the terms and conditions prescribed in the by-laws adopted by it, an association shall admit as members, or issue common stock only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who received as rent all or part of the crop raised on the leased premises.

It is plain from the foregoing provisions of the Cooperative Marketing Law that a cooperative marketing association should be organized by and composed of persons engage in the production of agricultural products for the benefits of producers-members and the association "should aim to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation; to make the distribution of agricultural products between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of agricultural products." If the association fails to comply with these requirements, it cannot be considered as an association organized under the Cooperative Marketing Law. It cannot be gainsaid that once the association admits as members persons who are not engaged in the production of agricultural products, the reasons for its existence under the law ceases to operate and the privilege of exemption from the payment of taxes provided for in section 48 of the Law is withdrawn from it. A person not engaged in the production of agricultural products has no direct relation to and common cause with one who is so engaged to bring about an intelligent and orderly marketing, a direct and efficient distribution between producers and consumers and the stabilization of the

marketing of agricultural products through cooperation with his fellow producers.

Section 1, Article IV, of the unamended by-laws of the petitioner association provides:

Any person, residing in the municipality in which the association is organized (Santa Cruz, Laguna), who pays a membership fee of P1.00 and buys at least a share of stock in his name, may become a member of the Association: Provided, However, That before becoming a member he shall file an application for membership addressed to the Board of Directors of the Association, which shall decide whether or not he is to be accepted as member. (Exhibit A-1, pp. 80-85, BIR rec.)

It goes without saying that any resident of the municipality of Santa Cruz, Laguna, who pays to the petitioner association a membership fee of P1 and buys in his name at least a share of stock of the association, even if he is not engaged in the production of agricultural products, may become a member of the petitioner association. For that reason, the requirement of the law that members of a cooperative marketing association should be engaged in the production of agricultural products is not complied with.

Although the witnesses for the petitioner association, namely, Jose del Mundo, Esteban Dayo, Pedro Calinagan, Jose Reyes, Miguel Carlos, Daniel Panganiban and Fermin Domingo testified that they were members of the petitioner association and were either owners of riceland or farmers who milled their palay in the ricemill of the petitioner association, yet such testimony alone does not establish the fact that all of the members of the petitioner association are engaged in the production of agricultural products. In the stipulation of facts submitted to the Court, the parties merely agreed that the persons who brought and milled their palay in the petitioner's ricemill from 2 to 31 March 1953 listed in Exhibits D, D-1 and 10 and their respective relation to the members of the petitioner-organization stated therein, would testify that they were known or called in the community by the names or nicknames appearing therein; that they themselves brought their palay or had it brought by their respective relatives, landlords or employers to the rice mill for milling; and that to abbreviate the proceeding and avoid a lengthy and costly litigation, the said persons appearing in the list (Exhibit D, D-1 and 10), would no longer be presented to testify at the hearing of the case.

The evidence at hand does not sufficiently establish the fact that all members of the petitioner association are engaged in the production of agricultural products. Hence it cannot be said to have been organized as a cooperative marketing association and entitled to exemption from the payment of taxes provided for in section 48 of the Cooperative Marketing Law, Act No. 3425, as amended.

The judgment under review is affirmed, with costs against the petitioner.

Bengzon, C. J., Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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