THE ASIATIC PETROLEUM COMPANY (PHILIPPINE ISLANDS), LTD., PLAINTIFF AND APPELLANT, VS. WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. L-21320. March 04, 1924

Ponente: JOHNS, J.

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JOHNS, J.:

The complaint alleges that the plaintiff is a foreign corporation, duly licensed to transact business in the Philippine Islands, domiciled in the City of Manila, and therein engaged in the business of selling petroleum products. The defendant is the duly appointed and acting Collector of Internal Revenue of the Philippine Islands. The Asiatic Petroleum Company (Straits Settlements), Limited, is a foreign corporation, affiliated with the plaintiff, engaged in the business of selling and transporting petroleum products in the Straits Settlements; that the Johnson-Pickett Rope Company is a domestic corporation engaged in the business of manufacturing rope in the City of Manila; that between October 1, 1917, to June 1, 1921, the Asiatic Petroleum Company (Straits Settlements), Limited, purchased from the Johnson-Pickett Rope Company rope of the total value of P363,709.37, which rope from time to time, as required, was delivered by the rope company upon instructions of the plaintiff on board vessels owned or controlled by the Asiatic Petroleum Company (Straits Settlements), Limited, plying between Manila and Singapore; that the bills of lading and other shipping documents were signed by the plaintiff; that it paid for the rope for and on account of the Asiatic Petroleum Company (Straits Settlements), Limited; that the rope company paid the 1 per cent merchant's tax provided for under section 1459 of Act No. 2711; that about July 25, 1921, the defendant made a demand upon the plaintiff for the payment of P3,637.09, together with the penalty of ?909.27, claiming that it was liable as a merchant for a sales tax under the provisions of section 1459; that to protect its interest and to avoid further penalties, plaintiff paid the amount under protest, and prays judgment for P4,546.36, with interest and costs. For answer, the defendant denies all of the material allegations of the complaint, and, as a special defense, alleges that the plaintiff is a merchant, and that it consigned rope abroad to the value of P363,709.37, and that the tax was collected and paid under protest, and prays that the complaint be dismissed.

The parties made the following agreed statement of facts:

"The parties hereto have agreed, and do agree, that the following facts shall be considered as having been proven in the above cause:

"I. Plaintiff is a foreign corporation, duly licensed to transact business in the Philippine Islands, domiciled therein in the City of Manila, and engaged therein in the business of selling petroleum products. Defendant is the duly appointed and acting Collector of Internal Revenue of the Philippine Islands. The Asiatic Petroleum Company (Straits Settlements), Limited, is a foreign corporation, affiliated with the plaintiff, engaged in the business of selling and transporting petroleum products in the Straits Settlements. The Johnson-Pickett Rope Company is a corporation organized under the laws of the Philippine Islands, and engaged in the business of manufacturing rope in the City of Manila.

"II. During the period from October 1, 1917, to June 1, 1921, The Asiatic Petroleum Company (Straits Settlements), Limited, purchased from the said Johnson-Pickett Rope Company rope of the total* value of three hundred sixty-three thousand seven hundred and nine pesos and thirty-seven centavos (P363,709.37), which said rope was from time to time, as required by the said The Asiatic Petroleum Company (Straits Settlements), Limited, delivered by the said Johnson-Pickett Rope Company, upon the instruction of the plaintiff, on board vessels owned or controlled by said The Asiatic Petroleum Company (Straits Settlements), Limited, plying between Manila and Singapore. The bills of lading and other shipping documents covering the said shipments were signed by the plaintiff, and plaintiff paid said manufacturers for the said rope for the account of said The Asiatic Petroleum Company (Straits Settlements), Limited.

"III. The said Johnson-Pickett Rope Company paid to defendant the one per cent merchant's tax levied on said sales by virtue of section 1459 of Act No. 2711.

"IV. On or about the 25th day of July, 1921, the defendant, under the alleged authority of section 1459 of Act No. 2711, made demand upon plaintiff for the payment of a tax of three thousand six hundred and thirty-seven pesos and nine centavos (P3,637.09) on the sales and shipments of rope made as set out in paragraph II hereof, together with a penalty of nine hundred and nine pesos and twenty-seven centavos (P909.27) for delay in payment, a total of four thousand five hundred and forty-six pesos and thirty- six centavos (P4,546.36).

"V. Plaintiff, on or about the 29th day of July, 1921, to avoid further penalties and forfeitures for non-payment, paid to defendant, under written protest, the said sum of four thousand five hundred and forty-six pesos and thirty-six centavos (P4,546.36) demanded by defendant. The defendant on or about the 3d day of August, 1921, overruled and denied plaintiff's protest, and refused, and still refuses to return the said sum of four thousand five hundred and forty-six pesos and thirty-six centavos (P4,546.36) to the plaintiff."

Upon which the case was tried and submitted, and judgment rendered in favor of the defendant, from which the plaintiff appeals, claiming that "the trial court erred in holding that the shipments of rope were consignments abroad made by the plaintiff," in rendering judgment for the defendant, and in overruling plaintiff's motion for a new trial.

JOHNS, J.:

The question involved is the construction of section 1459 of the Administrative Code, which, among other things, provides:

"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. * * *

" 'Merchant,' as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. * * *"

The agreed statement of facts recites that the plaintiff is a foreign corporation, domiciled in the City of Manila, "and engaged there in the business of selling petroleum products." That "the Asiatic Petroleum Company (Straits Settlements), Limited, is a foreign corporation, affiliated with the plaintiff, engaged in the business of selling and transporting petroleum products in the Straits Settlements." That between October 1, 1917, to June 1, 1921, the Asiatic Petroleum Company (Straits Settlements), Limited, purchased from the rope company the rope in question, which, upon the instructions of plaintiff, was delivered by the rope company on board the vessels owned or controlled by the Asiatic Petroleum Company (Straits Settlements), Limited, plying between Manila and

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Singapore. That "the bills of lading and other shipping documents covering the said shipment were signed by the plaintiff, and it paid the manufacturers for the rope for the account of said The Asiatic Petroleum Company (Straits Settlements), Limited."

Section 1459 is entitled "Percentage tax on merchants' sales," and specifically provides that all merchants not otherwise exempt shall pay a tax on all goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them. It also provides that "merchant," as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character.

The complaint alleges and the agreed statement of facts admits that the plaintiff is engaged in the selling of petroleum products in the Philippine Islands. Hence, it must follow that the plaintiff is a merchant and is doing business as a merchant within the Philippine Islands, as the word is defined by section 1459. It is also stipulated that the bills of lading and other shipping documents of the rope were signed by the plaintiff, which paid the manufacturers of the rope for and on account of the Asiatic Petroleum Company (Straits Settlements), Limited, and section 1459 provides for the payment of a "percentage tax on merchants' sales" of one per cent, by all merchants on the gross value in money or any goods, wares, and merchandise "sold, bartered, exchanged or consigned abroad by them." The plaintiff, being a merchant, as the word is defined in the Act, and having consigned the rope abroad and signed the bills of lading and other shipping documents, it must follow that it is liable for the tax. The Act defines the word "merchant,' and when the fact is once established that a person is a merchant within the meaning of the Act, he is liable for the merchant's tax for any goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by him. The plaintiff, having alleged and admitted that it is engaged in the selling of petroleum within the Philippine Islands, it is a merchant within the meaning of the word as defined in the Act, and the fact that it is a merchant makes it liable for the tax in question. The judgment of the lower court is affirmed, with costs. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, and Romualdez, JJ., concur.

CONCURRING

OSTRAND, J.:

I concur. There are, however, certain statements in the decision of the court which might possibly lead to the conclusion that only the merchants who sell their wares in the Philippine Islands are merchants within the meaning of section 1459 of the Administrative Code, and I therefore feel justified in drawing attention to the fact that such is not the view of the majority of the members of the court, if I have correctly interpreted their votes.

The statute makes no distinction between local and foreign merchants. If a person engages in "the sale, barter or exchange of personal property," he is a merchant as the term is defined in the section mentioned and there is not a word in the statute to indicate that in order to be considered such a merchant he must sell, barter, or exchange within the Philippine Islands. But if the merchant, be he foreign or be he local, sells merchandise in the Philippine Islands, he must pay the percentage tax on the sales so made, and if he consigns merchandise abroad from the Philippine Islands he must pay the percentage tax on the consignment. Neither the local nor the foreign merchant is required to pay the tax on consignments made abroad nor on sales there consummated. Such is the plain language of the statute and we can only give it a different interpretation by reading into it non-existent provisions, or by doing violence to the language.

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DISSENTING

JOHNSON, J.:

The judgment appealed from should be revoked. Laws affecting commerce should be construed so as to aid and not hinder the commerce of the country.

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