

CELESTINO CO & COMPANY, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.*G.R. No. L-8506. August 31, 1956*

Ponente: BENGZON, J.

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Appeal from a decision of the Court of Tax Appeals. Celestino Co & Company is a duly registered general copartnership doing business under the trade name of Oriental Sash Factory". From' 1946 to 1951 it paid percentage taxes of 7 per cent on the gross receipts of its sash, door and window factory, in accordance with section one hundred eighty-six of the National Revenue Code imposing taxes on sales of manufactured articles. However in 1952 it began to claim liability only to the contractor's 3 per cent tax (instead of 7 per cent) under section 191 of the same Code; and having failed to convince the Bureau of Internal Revenue, it brought the matter to the Court of Tax Appeals, where it also failed. Said the Court:

"To support his contention that his client is an ordinary contractor * * * counsel presented * * * duplicate copies of letters, sketches of doors and windows and price quotations supposedly sent by the manager of the Oriental Sash Factory to four customers who allegedly made special orders for doors and windows from the said factory. The conclusion that counsel would like us to deduce from these few exhibits is that the Oriental Sash Factory does not manufacture ready made doors, sash and windows for the public but only upon special order of its select customers. * * * I cannot believe' that petitioner company would take, as in fact it has taken, all the trouble and expense of registering a special trade name for its sash business and then orders company stationery carrying the bold print 'Oriental Sash Factory (Celestino Co & Company, Prop.) 926 Raon St. Quiapo, Manila, Tel. No. 33076, Manufacturers of all kinds of doors, windows, sashes, furnitures, etc. used season-dried and kiln-dried lumber, of the best quality workmanship' solely for the purpose of supplying the needs for doors, windows and sash of its special and limited customers. One will note that petitioner has chosen for its trade name and has offered itself to the public as a 'Factory', which means it is out to do business, in its chosen lines on a bigscale. As a general rule, sash factories receive orders for doors and windows of special design only in particular cases but the bulk of their sales is derived from ready made doors and windows of standard sizes for the average home. Moreover, as shown from the investigation of petitioner's books of accounts, during the period from January 1, 1952 to September 30, 1952, it sold sash, doors and windows worth W88,754.69. I find it difficult to believe that this amount which runs to six figures was derived by petitioner entirely from its few customers who made special orders for these items.

"Even if. we were to believe petitioner's claim that it does not manufacture ready-made sash, doors, and windows for the public and that it makes these articles only upon special order of its customers, that does not make it a contractor within the purview of section 191 of the National Internal Revenue Code. There are: no less than fifty occupations enumerated in the aforesaid section' of the National Internal Revenue Code subject to percentage tax and after reading carefully each and every one of them, we cannot find one under which the business enterprise of petitioner could appropriately fall. It would require a stretch of the law and much effort to make the business of manufacturing sash, doors: and windows upon special order of customers fall under the category of road, building, navigation, artesian well, water works and other construction work contractors; filling contractors' as enumerated in the section being invoked by petitioner's counsel. Construction work

contractors are those who alter or repair buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, electric, steam or water plants telegraph. and telephone plants and lines, electric lines or power lines, and includes any other work for the construction altering or repairing for which machinery driven by mechanical power is used. (Payton. vs. City of Anadardo 64 P. 2d 878, 880, 17& Okl. 68).

"Having thus eliminated the feasibility of taxing petitioner as a contractor under section 191 of the National Internal Revenue Code, this leaves us to decide the remaining issue whether or not petitioner could be taxed with lesser strain and more accuracy as seller of its manufactured articles trader section 186 of the same code, as the respondent Collector of Internal Revenue has in fact been doing since the Oriental Sash Factory was established in 1946. "The percentage tax imposed in section 191 of our Tax Code is generally a tax on the sales of services, in contradiction with the tax imposed in section 186 of the same Code which is a tax on the original sales of articles by the manufacturer, producer or importer. (Formilleza's Commentaries and Jurisprudence on the National Internal Revenue Code, Vol II, p. 744). The fact that the articles sold are manufactured by the seller does not exchange the contract from the purview of section 186 of the National Internal Revenue Code as a sale of articles."

There was a strong dissent; but upon careful consideration of the whole matter we are inclined to accept the above statement of the facts and the law. The important thing to remember is that Celestino Go, & Company habitually makes sash, windows and doors, as it has represented in its stationery and advertisements to the public. That it "manufactures" the "same is practically admitted by appellant itself. The fact that windows and doors are made by it only when customers place their orders, does not alter the nature of the establishment, for it is obvious that it only accepted such orders as called for the employment of such materials-moulding, frames, panels-as it ordinarily manufactured or was in a position habitually to manufacture.

Perhaps the following paragraph represents in brief "the appellant's position in this Court:

"Since the petitioner, by clear proof of facts not disputed by the respondent, manufactures sash, windows and doors only for special customers and upon their special orders and in accordance with the desired specifications of the persons ordering the same and not for the general market: since the doors ordered by Don Toribio Teodoro & Sons, Inc., for instance, are not in existence and which never would have existed but for the order of the party desiring it; and since petitioner's contractual relation with his customers is that of a contract for a piece of work or since petitioner is engaged in the sale of services, it follows that the petitioner should be taxed under section 191 of the Tax Code and NOT under section 185 of the same Code." (Appellant's brief, p. 11-12).

But the argument rests on a false foundation. Any builder or homeowner, with sufficient money, may order windows or doors of the kind manufactured by this appellant. Therefore it is not true that it serves special customers only or confines its services to them alone. And anyone who sees, and likes, the doors ordered by Don Toribio Teodoro & Sons Inc. may purchase from appellant doors of the same kind, provided he pays the price. Surely, the appellant will not refuse, for it can easily duplicate or even mass-produce the same doors—it is mechanically equipped to do so.

That the doors and windows must meet desired specifications is neither here nor there. If these specifications do not happen to be of the kind habitually manufactured by appellant—special forms of sash, mouldings or panels— it would not accept the order—and no sale is made. If they do, the transaction would be no different from a purchasers of manufactured goods held in stock for sale; they are bought because they meet the specifications desired by the purchaser.

Nobody will say that when a sawmill cuts lumber in accordance with the peculiar specifications of a customer sizes not previously held in stock for sale to the public thereby becomes an employee or servant of the customer,[1] not the seller of lumber. The same consideration applies to this sash manufacturer.

The Oriental Sash Factory does nothing more than sell the goods that it mass-produces or habitually makes; sash, panels, mouldings, frames, cutting them; to such sizes, and combining them in such forms as its customers may desire.

On the other hand, petitioner's idea of being a contractor doing construction jobs is untenable. Nobody would regard the doing of two window panels as construction work in common parlance.[2]

Appellant invokes Article 1467 of the New Civil Code to bolster its contention that in filing orders for windows and doors according to specifications, it did not sell, but merely contracted for particular pieces of work or "merely sold its services".

Said article reads as follows:

"A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is contract 16c a piece of work."

It is at once apparent that the Oriental Sash Factory did not merely sell its services to Don Toribio Teddoro & Co. (To take one instance) because it also sold the materials. The truth of the matter is that it sold materials ordinarily manufactured by it—sash, panels, mouldings— to Teodoro & Co., although in such form or combination as suited the fancy of the purchaser. Such new form does not divest the Oriental Sash Factory of its character as manufacturer. Neither does it take the transaction out of the category of sales under Article 1467 above quoted, because although the Factory does not, in the ordinary course of its business, manufacture and keep on stock doors of the kind sold to Teodoro, it could stock and/or probably had in stock the sash, mouldings and panels it used therefor (some of them at least).

In our opinion when this Factory accepts a job that requires the use of extraordinary or additional equipment, or involves services not generally performed by it—it thereby contracts for a piece of work—filling special orders within the meaning of Article 1467. The orders herein exhibited were not shown to be special. They were merely orders for work—nothing is shown to call them special .requiring extraordinary service of the factory.

The thought occurs to us that if, as alleged—all the work of appellant is only to fill orders previously made, such orders should not be called special work, but regular work. Would a factory do business performing only special, extraordinary or peculiar merchandise?

Anyway, supposing for the moment that the transactions were not sales, they were neither lease of services nor contract jobs by a contractor. But as the doors and windows had been admittedly "manufactured" by the Oriental Sash Factory, such transactions could be, and should be taxed as "transfers" thereof under section 186 of the National Revenue Code.

The appealed decision is consequently affirmed. So ordered.

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

[1] [2]With all the consequences in Article 1729 New Civil Code and Act No. 3959 (bond of contractor).

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