

THE CITY OF MANILA, PLAINTIFF AND APPELLEE VS. THE INTER-ISLAND GAS SERVICE, INC., DEFENDANT AND APPELLANT.

G.R. No. L-8799. August 31, 1956

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The City of Manila instituted this action for the collection of a sum of money allegedly due from the defendant Inter-Island Gas Service, Inc., by way of deficiency municipal tax. The main issue is whether liquefied flammable gas comes within the purview of section 1, Group 2, of Ordinance No. 1925 of the City of Manila, as amended by Ordinance No. 3364 thereof, which provides that:

"* * * there shall be paid to the City Treasurer for engaging in any of the businesses or occupations below enumerated, quarterly license fees based on gross sales or receipts realized during the preceding quarter, in accordance with the rates herein prescribed: Provided, however, That a person engaging in any business or occupation for the first time shall pay the initial license fee based on the probable gross sales or receipts for the first quarter beginning from the date of the opening of the business as indicated herein for the corresponding business or occupation.

* * * * *

"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 construction materials; papers; books, including stationary." Both parties stipulated:

" 1. That the plaintiff is a municipal corporation created and existing under the laws of the Philippines and that the defendant is a corporation likewise created by and existing under the laws of the Philippines;

" 2. That the defendant sold at retail in the City of Manila from the 4th quarter of 1949 to the 4th quarter of 1951, inclusive, cooking appliances and liquefied petroleum gas in cylinders in the following amounts:

Period of sales

Amount of sales

4th quarter 1949

.....

P207,651.53

1st quarter 1950

.....

190,936.92

2nd quarter 1950

.....

188,796.79

3rd quarter 1950

.....

212,542.53

4th quarter 1950

.....

206,696.26

1st quarter 1951

.....

216,346.69

2nd quarter 1951

.....

219,283.45

3rd quarter 1951

.....

184,290.85

4th quarter 1951

.....

191,138.62

" '3. That the defendant paid the different amounts alleged in paragraph 4 of the complaint corresponding to the quarters therein stated under Ordinance No. 1925, as last amended by Ordinance No. 3364, based on its sales of cooking appliances only;

"'4. That the total claim of the plaintiff against the defendant under section 1, Group 2, of Ordinance No. 1925, as last amended by Ordinance No. 3364 is P11,250.00, based on the defendant's sales alleged in paragraph 2 of the complaint computed at the rate of P1,250.00 quarterly corresponding to the first, second, third and fourth quarters of 1951, and the first quarter of 1952; and

" '5. That the defendant has paid the prescribed fees under Ordinance No. 3259 of the City of Manila, 'An Ordinance prescribing regulations for storage, installations, use and transportation of compressed and liquefied inflammable gases other than acetylene, and providing fees therefor', covering the same quarters mentioned in paragraph 4 of the complaint."

Then the case was submitted for decision, whereupon the Court of First Instance of Manila rendered judgment for the plaintiff, the dispositive part of which, as amended, reads as follows:

"Therefore, this Court is of the opinion and so holds, that the City Government of Manila has the right to impose tax on liquefied flammable gas under Ordinance No. 1925, as amended by Ordinance No. 3364. And for this reason, the defendant Inter-Island Gas Service, Inc., is hereby sentenced to pay to the City of Manila the sum of P8,361 as deficiency tax due from the year 1952, inclusive, including the amount of P50 as surcharge thereon, and the payment of the costs * * *"

The defendant has appealed from this decision and now maintains that:

- "The lower court erred in not holding and declaring that the No. 1925 as amended (imposing a tax for purposes of revenue), does not clearly provided that it applies to the sale of liquefied flammable gas.

- "The lower court erred in not holding and declaring that the provisions of section 1, Group 2, of Ordinance No. 1925, as amended by Ordinance No. 3364, are and clearly within the legislative powers granted to the Municipal Board of Manila, if said Ordinance is applied to the sale of liquefied flammable gas.

- "That assuming arguendo that under the provisions of section 1, Group 2, of Ordinance No. 1925, as last amended by Ordinance No. 3364, liquefied flammable gas is included, still the lower court erred in not finding and declaring that said Ordinance No. 1925, as amended, is a percentage tax; hence, the complaint does not state a cause of action because no allegation has been made that the ordinance in question had previously been approved by the President of the Philippines.

- "Further assuming arguendo that Ordinance No. 1925, as amended, is valid, yet the lower court erred in not finding that to apply it to the liquefied gas business of the defendant will constitute double taxation; hence, unconstitutional and void.

- "The lower court erred in ordering the defendant to pay the City of Manila the sum of P8,861.00 as deficiency tax due under Ordinance No. 1925, as amended by Ordinance No. 3364, and to pay the costs."

In support of the first two assignments of error appellant cites paragraphs (m) and (o) of section 18 of the Revised Charter of Manila (Republic Act No. 409) authorizing said city:

""(m) To tax, fix the license fee, and regulate the * * * storage and sale of * * * petroleum or any of the products thereof and of all other highly combustible or explosive materials

* * * * *

" '(o) To tax and fix the license fee on dealers in general merchandise * * *."

Then appellant argues that liquefied flammable gas is included in said paragraph (m) and, hence, excluded from the connotation of the word "merchandise," as used in paragraph (o). This argument at first impressed the court, but, upon further reflection, we are persuaded that it is not decisive on the issue before us. Indeed, although the clause "petroleum or any of the products thereof and all other highly combustible or explosive material," appearing in said paragraph (m) may indicate the intent of Congress of the Philippines to include liquefied flammable gas within the purview of said paragraph, it does not follow necessarily that in using the word

"merchandise", in Municipal Ordinance No. 1925, as amended, the Municipal Board of Manila intended to convey thereto the restricted meaning allegedly given to the term "merchandise" in paragraph (o) of Section 18 of its Revised Charter, or to exclude liquefied flammable gas from the operation of said ordinance. In this connection, it should be noted that the authority of the City of Manila to tax dealers in liquefied flammable gas under its Revised Charter, is conceded. Accordingly, the question whether the grant of power appears in paragraph (m) or in paragraph (o) of the aforementioned Section 18, is immaterial to the exercise of said authority.

As already adverted to, the case hinges on the connotation of the term "merchandise" as used in said ordinance, or the interest of the Municipal Board in connection therewith. Referring to the meaning of said word, Corpus Juris Secundum has the following to say:

"The word 'merchandise, employed as a noun, is defined as meaning the objects of commerce; the subjects of commerce and traffic; whatever is usually bought and sold in trade, or market, or by merchants; goods; wares; commodities; commodities, goods, or wares bought and sold for gain; commodities or goods to trade with; a commercial commodity or commercial commodities in general,

"The term is also defined as meaning things which are ordinarily bought and sold; anything' movable, anything customarily bought and sold for profit; any movable object of trade or traffic; any article which is the object of commerce, or which may be bought or sold in trade; the staple of a mercantile business; that which is passed from hand to hand by purchase and sale." (Vol. 57 pp. 1056-1057.)

Inasmuch as, admittedly, liquefied gas may be, and is being, bought and sold in trade, it clearly is a merchandise, and comes within the purview of the ordinary import of this world. Was it used in this sense in Ordinance No. 1925, as amended, as, in effect, held by the lower court, or did the Municipal Board intend to convey therewith the meaning allegedly given thereto in paragraph (o) of Section 18 of Republic Act No. 409, as contended by defendant-appellant? We find ourselves unable to accept the latter view, not only because the former is more in accord with the simple and usual connotation of said term, but, also, because it appears that said ordinance has not followed the classification made in Section 18 of Republic Act No. 109. Thus, for instance, although the word "merchandise" appears in paragraph (o) of said Section 18, it is included in Group 2 of said ordinance, together with electrical supplies, sporting goods, textiles, hardwares, including glasswares, and cooking utensils, which are found in paragraph (n) of said Article 18. Moreover, said Group 2 refers to "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 * * * Obviously, the enumeration made in said Group 2 is not all inclusive. It merely illustrates some of the objects the dealers in which are taxed under its provision. The word "merchandise" as used therein has not restrictive meaning. Said group taxes dealers in all "new (not yet used) merchandise, which dealers are not yet subject to the payment of any municipal tax." Liquefied flammable gas is a "new" object of commerce, and hence, merchandise, and, at the time of the passage of said ordinance, dealers therein were not, as yet, subject to the payment of any municipal tax. In short, the first and second assignments of error are untenable.

Under the third assignment of error, it is claimed that the tax imposed under the ordinance in question is in the nature of a percentage tax. The schedule of taxes under the aforementioned Group 2 is as follows:

Class

Quarterly gross sales

Quarterly license fee

1.....

Over to

P125,000.00

P1,250.00

2.....

P100,000.00 to

125,000.00

P1,125.00

3.....

90,000.00 to

99,999.99

1,000.00

4.....

80,000.00 to

89,999.99

900.00

5.....

70,000.00 to

79,999.99

800.00

6.....

60,000.00 to

69,999.99

700,00

7.....

50,000.00 to

59,999.99

600.00

8.....

45,000.00 to

49,999.99

500.00

9.....

40,000.00 to

44,999.99

450.00

10.....

36,000.00 to

39,999.99

400.00

11.....

33,000.00 to

35,999.99

360.00

12.....

30,000.00 to

32,999.99

330.00

13.....

27,500.00 to.

29,999.99

300.00

14.....

25,750.00 to

27,499.99

275.00

15.....

22,500.00 to

24,999.99

250.00

16.....

20,500.00 to

22,499.99

225.00

17.....

18,700.00 to

20,499.99

205.00

18.....

17,200.00 to

18,699.99

187.00

19.....

15,500.00 to

17,199.99

172.00

20.....

14,100.00 to

15,499.99

155.00

21.....

12,700.00 to

14,099.99

141.00

22.....

11,500.00 to

12,699.99

127.00

23.....

10,500.00 to

11,499.99

115.00

24.....

9,500.00 to

10,499.99

105.00

25.....

8,700.00 to

9,499.99

95.00

26.....

8,000.00 to

8,699.99

87.00

27.....

7,200.00 to

7,999.99

80.00

28.....

6,300.00 to

7,199.99

72.00

29.....

5,500.00 to

6,299.99

63.00

30.....

5,000.00 to

5,499.99

55.00

31.....

4,500.00 to

4,999.99

50.00

32.....

4,400.00 to

4,999.99

45.00

33.....

3,500.00 to

3,999.99

40.00

34.....

Less than to

3,500.00

35.00

PROVIDED, That retail dealers selling only rice, whose quarterly sales do not exceed two thousand pesos (P2,000) shall only pay a quarterly license fee of eighteen pesos (P18)." (Appellee's Brief, pp. 2-3.)

This is not a percentage tax. It is a graduated tax, not based on a given ratio between the gross income and the burden imposed upon the taxpayer.

The fourth assignment of error is even more devoid of merit because: (1) the fees paid by the defendant under Ordinance No. 3259—for the storage, installation, use and transportation of compressed inflammable gases—was charged by way of license fees, in the exercise of the police power of the State, not under its inherent power of taxation; and (2) double taxation is not prohibited in our Constitution.

Being a mere consequence of the previous assignments of error, the last one needs no discussion.

Wherefore, the decision appealed from is hereby affirmed, with costs against the defendant-appellant. It is so ordered.

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

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