

RAMON MIRANDA, PLAINTIFF-APPELLANT VS. COLLECTOR OF INTERNAL REVENUE, DEFENDANT-APPELLEE.

R-CA-7496. October 25, 1949

Ponente: TUASON, J.

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TUASON, J.:

The record of this case was destroyed. Reconstitution thereof having been ordered on motion of counsel for the plaintiff-appellant, only copies of the record on appeal, the brief for appellant, the brief for appellee, and of the resolution of the Court of Appeals certifying the case to this court, were submitted. The evidence is missing.

This is an appeal from a judgment dismissing the complaint without special pronouncement as to costs rendered by the Court of First Instance of Negros Occidental on October 25, 1940. The action sought the refund of the sum of P2,640.31 which he had paid under protest to the Collector of Internal Revenue as fixed and percentage tax, with surcharge, on P138,150.20 sales of sugar he allegedly made from 1928 to the third quarter of 1934. The issue was whether the plaintiff was a merchant. Defendant says he was; plaintiff says he was not.

Plaintiff denies that he bought the 16,930.74 piculs of centrifugal sugar of which the above amount was the proceeds for resale. He claims that this sugar was assigned and mortgaged to him as security for loans at interest to a few debtors. The debtors, he alleges, were the ones who decided as to the date when and the price at which the sugar was to be disposed of. The sugar, according to him, was bought by local sugar firms at the current market price, and the proceeds of sale were applied to the payment of his debtors' indebtedness.

The Attorney General states in his brief that from the evidence it appears that from 1928 to 1934 plaintiff actually sold no less than 16,930.74 piculs of sugar for a total estimated price of P138,150.20; that plaintiff's sugar purchases from Pedro Garrucha in August, November, and December, 1933, are shown by receipts Exhibits 13, 14 and 15; those from Juana Zaldivar and/or Alfredo Esmeralda from 1929 to 1930 are shown by ten receipts, and those from Isidro Villar during the years 1932, 1933 and 1934 are evidenced by Exhibits 29 to 39. It is also alleged that the government was able to prove without contradiction that in some instances plaintiff resold sugar bought by him at a considerable profit. Other alleged evidences are pointed out which, if believed, would prove that the plaintiff was a sugar merchant.

The case can be reviewed only in relation to the evidence. It can not be decided on the pleadings. It is therefore ordered that this case be remanded to the Court of First Instance with instruction to hold a rehearing upon proper notice to the parties and to render a new judgment on the basis of the new evidence to be adduced. The parties will be allowed to introduce evidence as though this were the first trial.

Moran, C.J., Ozaeta, Paras, Feria, Padilla, Montemayor, Reyes, and Torres, JJ. concur.

Moran, C.J., Mr. Justice Bengzon voted in conformity with this decision.

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