

CO TUAN, PETITIONER, VS. THE CITY OF MANILA, RESPONDENT.*G.R. No. L-12481. August 31, 1961*

Ponente: REYES, J.B.L., J.

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Co Tuan applied for certiorari against the decision of the Court of Appeals in its case CA-G.R. No. 15341-R, reversing that of the Court of First Instance of Manila and dismissing his complaint for the refund of P2,582.90, that he paid under protest to the City of Manila by way of wholesale dealer's tax under Ordinance No. 3420, enacted pursuant to Section 18 (o) of Republic Act No. 409. Considering, however, that the appeal involved the validity of a tax or impost, and that, pursuant to Section 17 of the Judiciary Act, the case lay within the exclusive jurisdiction of the Supreme Court, our resolution of March 24, 1961 required the Clerk of the Court of Appeals to forward to us the records and papers concerning this case, for an original review of both questions of fact and law involved in the decision of the Court of First Instance that ordered the City to refund the tax collected.[1]

Upon receipt of the records, the parties were required to state if they desired to submit new arguments; but both submitted the case for decision upon the record and briefs already on file.

It is uncontested that Co Tuan owns and operates a soap factory at 349 Caballeros Street, Manila, for which he was issued a manufacturer's license, and has paid the corresponding license fees prescribed in Ordinance No. 3016, conformably with Section 18 (m) of the Revised Charter of the City of Manila. Besides the factory, petitioner maintains a store at 1109 M. de Santos street, in said City, four blocks away, where the soap he manufactures is sold, and for which he has paid the license fee for retail business. The city inspectors, upon examination of the books and invoices kept by this plaintiff at his store in M. de Santos Street, found that they covered wholesale as well as retail sales. As a result, in October, 1951, Co Tuan was assessed by the city a wholesale dealer's tax in the amount of P2,582.90, which he paid under protest. This suit was then filed in the Court of First Instance of Manila to recover said amount.

It is the plaintiff's contention that the wholesale transactions were not made at the store, but at the factory in Caballeros Street, being covered by the manufacturer's tax he pays; that this is evidenced by the rubber stamp mark of the invoices, "Factory Sales Tax Included" (Exhibits P and Q), and that if the invoices were found at the M. de Santos store, it was because the invoices were prepared and kept there due to lack of space at the factory. Plaintiff's lone witness, factory superintendent Caw Bun, testified that wholesale deals were exclusively contracted at the factory, whereas retail sales were made at the store in M. de Santos Street; this witness also pointed out that the invoices issued for the wholesale transactions are distinct and different from those of the retail sales.

"Q.

Will you please tell us the difference between this invoice you are using at 1109 M. de Santos and the invoice you are using at 346 Caballeros?

A.

The invoice for the retail sales is much smaller and also there is no stamp 'factory sales;' while the invoice we use in the factory, it bears the stamp 'factory sales'. In other words, if the sale is conducted in the factory, we have to stamp the invoice with the statement "factory sale" in order to distinguish it from the retail sale which is done at M. de Santos." (t.s.n., p. 8)

In contrast, defendant City of Manila presented Antonio Lopena and Salvador Adao, both licensed inspectors of the City Treasurer's Office, who attested to the fact that only one kind of invoice was used by plaintiff and that when these witnesses conducted their first investigation, the taxpayer's copies of the invoices did not have the words "FACTORY-346 CABALLEROS ST." and "FACTORY SALES TAX INCLUDED " rubber-stamped on them, as they were later made to appear by the plaintiff. Evidently, the latter attempted to pass off his store sales as factory sales; but the scheme was given away by the absence of such stamp on the original invoices (Exhibit 2).

We agree with appellant City of Manila that plaintiff's stand is not supported by the evidence. Not only does the absence of the rubber-stamped words in the original invoices confirm the testimony of the City Inspectors, but the invoices themselves fail to mention the address of the factory at Caballeros Street, and only bear that of the retail store at M. de Santos. If, as testified by Caw Bun, wholesale transactions were made only at the factory, it is logical to expect that the invoices should indicate its address, so that the customers would know where to place repeat orders. But they did not (Exhibit 2). And if, as also testified by Caw Bun, invoices for retail sales at the M. de Santos store differed in size from the invoices for wholesale transactions at the factory, it is strange, to say the least, that plaintiff failed to introduce a sample, much less a booklet, of such retail invoices. To cap it all, the invoices booklets Exhibits P and Q contain invoices for sales for as low as P5.50 (Exhibit P, No. 11915), that could hardly be regarded as representing wholesale transactions, yet bear the "Factory Sales" stamp.

Our conclusion is that, as plaintiff has made sales at wholesale at his factory as he asserts, he unquestionably also did make wholesale and retail sales at his store at M. de Santos Street, covered by the examined invoices, and he is liable for wholesale dealers' tax thereon.

The taxpayer next argues that assuming that such wholesale transactions were made at the "retail" store, still, as a manufacturer, he should not be held taxable as a wholesale dealer if he sells only his own products.

This contention is not novel. The same arguments supporting plaintiff's stand have been raised and overruled in previous cases appealed to this Court. Thus, in *Cebu Portland Cement Co. vs. City of Manila*, 108 Phil., 1063; 60 Off. Gaz., 8589, we held:

"* * *On the other hand, authorities seem not to conflict in excluding a manufacturer from coming within the term 'dealer' for purposes of the imposition of a dealer's tax or license fee where it only deals on or sells its own products (see *C. J. S.* 672-674, 702-703; 37 *C. J.* 224, and cases cited therein; *City of Manila vs. Bugsuk Lumber Co.*, 53 Off. Gaz., 6111). The sole exception to this rule appears to be when the manufacturer carries on the business of selling its own products at stores or warehouses apart from its place of manufacture (see authorities cited, *supra*; *Atlantic Refining Co. vs. Van Walkenburg*, 109 E. 208; *Manila Tobacco Association, Inc. vs. City of Manila, et al.*, G. R. No. L-9549, December 21, 1957). (Italics supplied)

To the same effect is *Central Azucarera Don Pedro vs. City of Manila*, (97 Phil., 627) wherein it was expressly ruled that—

"the manufacturer becomes a dealer if he carries on the business of selling goods or his product manufactured by him at a store or warehouse apart from his own shop or manufactory * * *."

We see no adequate reason for altering the rule thus far consistently applied, particularly since in this case, plaintiff's own witnesses admit that sales at wholesale are also made at the factory site, besides those at the retail store.

Our reliance in previous rulings upon *Atlantic Refining Co. vs. Van Walkenburg* case (supra) is now questioned upon the ground that the statute therein involved expressly provided that a manufacturer "having a store or warehouse apart from his manufactory * * * for the purpose of vending goods" shall be classified and required to pay an annual license and mercantile tax. But, although worded differently, a similar provision exists in the Revised Ordinances of the City of Manila:

"SEC. 585. Separate licenses for different business and locations.—No person shall conduct more than one kind of business requiring a license, or conduct business at more than one place during the term of license, without obtaining a separate license for each business and place of business so licensed. All licenses shall be strictly limited to the time, place, and persons or thing named therein."

The apparent intent of the Manila city council, as expressed in the ordinance, was to treat one aspect (called by the appellee "integral part") of the business (wholesale dealing), as an independent enterprise in itself, if it is carried in on a place separate or apart from the other (manufacturing). It is not pretended that the city has no power to limit licenses "to the time, place and person or thing named therein."

Admittedly, American authorities are in conflict, but the rule is now well settled by our previous decisions. It may be pointed out that in *State vs. Holt*, 38 So. 2d 598, invoked by plaintiff, defendant operated sawmills at his timber stand, and then "all the lumber that was cut at the sawmill * * * was conveyed to its planning plant and there resawed, if required, trimmed, planed, sized and dried. In its finished state, it was for the most part sold at wholesale." It is thus obvious that part of the manufacturing process occurred at the planning plant, and sales therein were actually factory sales covered by the manufacturing tax. The result would be the same under our own rulings.

It may be added that if every manufacturer had the right to maintain separate stores for the sale of its products without paying a wholesaler's tax, then there would be no limit to the number of store outlets it could maintain free from that tax. Yet even the plaintiff concedes that a multiplicity of stores would be taxable.

Plaintiff finally maintains that Section 18 (o) of the Revised Charter of the City of Manila—

"(o) To tax and fix the license fee on dealers in general merchandise, including importers and indentors, except those dealers who may be expressly subject to the payment of some other municipal tax under the provisions of this section,"

exempts him from the payment of the dealer's tax, since he has been already taxed as a manufacturer under the provisions of Section 18 (m) of the city charter. The tax exemption invoked clearly refers to dealers who are previously taxed as such dealers under some other provision of Section 18; for instance, dealer in second-hand merchandize, junk dealers, etc., who are expressly mentioned under Section 18(1), (m) and (p) of said Republic Act No. 409.

Wherefore, the judgment of the Court of First Instance of Manila appealed from is reversed and plaintiff's complaint ordered dismissed, with costs against appellee Co Tuan.

For want of jurisdiction, the decision of the Court of Appeals in C.A.-G.R. No. 15341-R is declared null and void.

Bengzon, C. J., Labrador, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

[1] Not involving an internal revenue tax, a customs duty, or a real estate tax, the case was not cognizable by the Court of Tax Appeals.

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