

MANILA TRADING AND SUPPLY CO., PLAINTIFF AND APPELLEE, VS. CITY OF MANILA, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-12156. April 29, 1959*

Ponente: BAUTISTA ANGELO, J.

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On December 5, 1950, the Municipal Board of Manila approved Ordinance No. 3420 which imposes a quarterly municipal tax on wholesale dealers in general merchandise based on their quarterly sales from the preceding quarter. This ordinance was amended on May 4, 1954 by Ordinance No. 3634 by including among the wholesale dealers subject to tax wholesale dealers of automobiles and other motor vehicles. Pursuant to the provisions of Section 8 of Ordinance No. 3420, the city treasurer promulgated on May 31, 1954, with the approval of the City Mayor, certain regulations for the purpose of implementing the provisions of Ordinance No. 3420, as amended by Ordinance No. 3634.

On March 17, 1955, plaintiff received from the city treasurer a demand for payment of the tax imposed by Ordinance No. 3634 on the ground that it is a wholesale dealer within the purview of said ordinance. On March 22, 1955, plaintiff contested this assessment on the following grounds: (1) that it is not wholesale dealer under Ordinance No. 3420, as amended by Ordinance No. 3634; and (2) that it is a manufacturer and not a dealer of cars and trucks and does not sell its products at a store but at its main office. This protest was denied by the city treasurer and consequently plaintiff paid the tax demanded. Hence plaintiff commenced the present action before the Court of First Instance of Manila for the recovery of the tax.

After defendant had filed a written answer to the complaint, and in the course of the trial of the case, plaintiff asked that it be allowed to amend its complaint claiming that it was not entitled to the refund of the rental and wholesale taxes it paid except the amount of P121,983.47 representing the wholesale taxes covering its wholesale sales of motor vehicles assembled by it during the quarters included in the assessment. After trial, the lower court rendered judgment in favor of plaintiff ordering defendants to pay the said amount of P121,983.47, with legal interest from the date of the filing of the complaint, and the costs. Defendants interposed the present appeal.

Plaintiff is a domestic corporation and has its principal office and establishment in Port Area, Manila. Its establishment consists of four buildings constructed on four parcels of land leased by it from the National Government. The four lots are adjacent to each other except for the 19th, 20th and 21st streets which run across them. The four lots are designated as Blocks Nos. 168, 173, 174 and 179 of the cadastral plan of the City of Manila.

The building constructed on Block No. 168 is designated as Building No. 1 and houses plaintiff's assembly plant. The building on Block No. 173 is designated as Building No. 2 and is used as a warehouse. The building on Block No. 174 is designated as Building No. 3 and houses plaintiff's executive, sales and accounting offices and supply department. The building on Block No. 179 is designated as Building No. 4 and houses its service department.

Previously, plaintiff was engaged in the importation and sale of finished cars and trucks. Upon the construction of

its assembly plant, it ceased to import finished cars and trucks and began importing the necessary spare parts to be assembled into motor vehicles. Plaintiff was given a foreign exchange allocation as producer by the Central Bank in order to import the raw materials needed for its assembly plant. Most of the raw materials are imported from the United States, which are shipped and packed in groups, that is, one case containing crankshafts, another case containing axles, etc. The metal parts imported by plaintiff such as axles, fenders, hoods, frame assembly, are shipped in completely knock-down condition. The body parts which are also imported from the United States are of bare metals and are also in knock-down condition. The engine and its component parts such as cylinders, pistons, crankshafts are also imported in knock-down condition. The same is true with the seats which consist only of the framework and springs. The raw materials which are purchased locally are the tires and tubes, batteries, grease, oil, and kapok.

The procedure followed by plaintiff in the production of the motor cars and trucks assembled by it is described by the trial court as follows:

" 'The steps taken by plaintiff in the manufacture and production of cars and trucks are manifold and complicated. The principal operations are as follows' (t.s.n., pp. 34-37, August 10, 1956): Upon opening the boxes, the body parts are taken out and welded together in a jig. After the bodies are constructed, they are taken to the metal finishing' section where they are sandfilled, art-welded and glass-welded in order to reinforce the crystal joints on the body. They are latter transferred to the whetting section where they are cleaned with acid and water to remove all rust, grease and dirt; then to the steam cleaning area so as to eliminate the remaining oil or grease. Thereafter, they are dried, treated with a rust-proofing process and taken to the paint booth for painting. After painting they are placed for about thirty minutes in an oven with a temperature ranging from 246 degrees to 265 degrees Fahrenheit. Then they go to a tram where the gadgets are installed.

" 'The frames which also come in completely knock-down condition are at this time riveted by a hydraulic riveter which delivers a pressure of 171/3 tons. The axles are also put together and mounted on the frames. The frames are later taken to the engine area where the engines are being assembled. In the tram, the engines are mounted on the chassis and are followed by the bodies. They are later taken to the front-end area where the fenders and grills are attached. Finally, they undergo inspection and testing. After inspection, they are placed in Building No. 2 ready for shipment. Some of the finished cars or trucks which cannot be accommodated in Building No. 2 are placed in front of that building' (t.s.n., p. 21, August 10, 1956) or in Building No. 3 (t.s.n.(p. 35, November 7, 1956.)"

Plaintiff does not have a wholesale store for selling the cars and trucks assembled by it and neither does it display them. Plaintiff takes steps to import raw materials and other spare parts for motor cars and trucks only after it receives the purchase orders of its customers. It does not undertake the assembling of cars and trucks to keep stock on hand for wholesale sale.

Section 1 of Ordinance No. 3420, as amended by Ordinance No. 3634, under which plaintiff was required to pay the tax in question, provides:

"SECTION 1. Municipal taxes on wholesalers in general merchandise; Mayor's Permit required.—There shall be paid by every person, firm or corporation engaging in the business as wholesale dealer in general merchandise, a municipal tax based on wholesale sales or on the receipts or exchange or transfer in accordance with the following * * *".

The authority relied upon by the Municipal Board of Manila to tax wholesale dealers in general merchandise is Section 18 (o) of the Revised Charter of the City (Republic Act No. 409), which gives the municipal board the power, among others, "to tax and fix the license fees 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."

It should be noted that the above quoted provision, in speaking of dealers in general merchandise, expressly includes "importers and indentors" within its scope, but does not include "manufacturers." Nowhere in the Charter are manufacturers expressly included within the purview of the term "dealers." Neither could it be inferred or assumed that it was the intention of Congress to consider manufacturers as dealers because these two terms are not similar or synonymous. The distinction between the two are clearly defined by jurisprudence[1] and needs no further elaboration.

"A dealer is defined as 'a person who makes a business of buying and selling goods, especially as distinguished from a manufacturer, without altering their condition * * *.' (Webster's International Dictionary) * * * A dealer, in the popular acceptance or sense of the word, is one who buys to sell again. He stands immediately between the producer and the consumer, and depends for his profits not on the labor he bestows on his commodities, but on the skill and foresight with which he watches the markets. Taylor vs. Vincent, 80 Tenn. (12 Lea) 282, 285, 47 Am. Rep. 338 (11 Words and Phrases, pp. 158-159). Again it has been held that the word dealer 'does not comprehend a person who merely buys a commodity in one form and converts it by his skill and labor into an entirely different commodity, and then sells it, such for example, as one who buys lumber, with which he manufactures furniture or any other useful commodity that he sells, cannot be termed a dealer in lumber,' (11 Words and Phrases, p. 159)." (Central Azucarera Don Pedro vs. City of Manila, et al., G. R. No. L-7679, September 29, 1955).

The issue now to be determined is: Should plaintiff be considered as a wholesale dealer in motor vehicles within the purview of the Charter of the City of Manila, or can it only be considered as a "manufacturer" insofar as the assembling and converting into finished products the motor cars and trucks it sells to its customers?

To answer this question it is necessary to determine the true nature and character of the work being undertaken by plaintiff in importing raw materials and in assembling them later to turn them into finished products. To this end, suffice it to quote some representative authorities.

In the case of City of Louisville vs. Louisville Tin & Stove Co., 186 S. W. 124, 125, the court stated:

"We do not understand that in order for a business enterprise to be a manufactory it is necessary for it to be engaged in the business of making completed articles from materials that are altogether raw. It is none the less a manufactory if, as in this case, it combines separate parts manufactured and completed by others with raw materials which it itself cuts and fashions into proper shape, and thus produces an entirely new article suitable for use. * * *"

In the case of United States vs. Armature Exchange, Inc., 116 F. 2d. 969, 971, the court declared:

"We cannot find any justification for reading into the statute involved here, as taxpayer would have us do, the qualification that the articles 'manufactured or produced' must have been so manufactured or produced entirely from new or virgin raw materials. * * *"

And in the case of City of Henderson vs. George Delker Co., 235 S. W. 732, 735, the court said:

"* * * It is not necessary, for a business enterprise to be a manufactory, that it should make completed articles from materials that are altogether raw, and we may add, as intimated in that opinion that by the term 'raw material', as used in the statute, is not necessarily meant crude material in its natural state, but there may be included in the term a product made from the crude material, and which has undergone manufacturing processes and converted into a distinct product from which an entirely different one may be made by the application of additional scientific processes, in which case the converted or prepared product may be regarded as 'raw material' within the meaning of the statute."

It would therefore appear that the word "manufacturer" in its plain and ordinary meaning includes "the process of assembling articles which, while complete and finished, have no independent utility, but are designed to be used in combination as parts of some other article, such as a typewriter, an automobile, or the like, but when so used the process of assembling usually, if not always, involves the exercise of manual or mechanical skill and labor and the more or less extensive use of auxiliary machinery" M. H. Rowe Co. vs. Beck, 131 A. 509, 511-512).

The foregoing definition of the nature of the work of plaintiff is further confirmed by the very definition given to a "manufacturer" by our National Internal Revenue Code when in its Section 194 (x) it defines said terms as follows:

"(x) 'Manufacturer' includes every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished product of such process of manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption."

Tested under the above authorities, it is clear that plaintiff is a manufacturer and not a dealer of the cars and trucks it assembles and produces in its plant. It appearing that plaintiff does not have a store independent and separate from its assembly plant wherein it displays and sells the cars and trucks it manufactures but delivers them after they had been assembled direct to its customers who had placed before hand their orders for said cars and trucks, and it further appearing that it does not manufacture cars and trucks to keep stock on hand for wholesale but only after receiving orders to buy them from its customers, plaintiff cannot be considered as dealer insofar as said cars and trucks are concerned but merely as manufacturer as interpreted by this Court in a recent case.

***** It may be admitted that the manufacturer becomes a dealer if he carries on the business of selling goods or his products manufactured by him at a store or warehouse apart from his own shop or manufactory. But plaintiff-appellee did not carry on the business of selling sugar at stores or at its warehouses. It entered into the contracts of sale at its central office in Manila and made deliveries of sugar sold from its warehouses. It does not appear that the plaintiff keeps stores at its warehouses and engages in selling sugar in said stores. Neither does it appear that any one who desires to purchase sugar from it may go to the warehouses and there purchase sugar. All that it does was to sell the sugar it manufactured, it does not open stores for the sale of such sugar. Plaintiff-appellee did not, therefore, engage in the business of selling sugar." (Central Azucarera Don Pedro vs. City of Manila, et al., G. R. No. L-7679, September 29, 1955).

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C J., Bengzon, Padilla, Montemayor, Labrador, and Endencia, JJ., concur.

Reyes, J., concurs in the result.

[1] American Fruit Growers' Inc. V. Brogdex Company, 283 U. S. 1, 75 L. ed. 801; City of New Orleans 4 Le Blanc, 34 La Ann. 596; Egan 4. State, 63 S. SW. 273, Charles E. Russell Co. 4 Carrol, 74 S. E. 2d. 685, 687.

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