

**HONORABLE CORNELIO BALMACEDA, NOW LEONIDES VIRATA, IN HIS CAPACITY AS SECRETARY OF COMMERCE AND INDUSTRY, PETITIONER, VS. UNION CARBIDE PHILIPPINES, INC., HONORABLE FEDERICO C. ...***G.R. No. L-30442. September 30, 1983*

Ponente: FERNANDO, C.J.

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The question raised in this petition filed by the Solicitor General to review the decision of then respondent Judge, the late Federico C. Alikpala declaring that private respondent Union Carbide of the Philippines is not engaged in the retail business does not pose any difficulty. The answer is supplied by the case of *B. F. Goodrich Philippines, Inc. v. Teofilo Reyes, Sr.*,<sup>[1]</sup> *Goodyear Tire and Rubber Co. v. Teofilo Reyes, Sr.*,<sup>[2]</sup> and *Mobil Oil Philippines, Inc. v. Teofilo Reyes, Sr.*<sup>[3]</sup> The doctrine therein announced applying the Presidential Decree<sup>[4]</sup> amend-ing the Retail Trade Act<sup>[5]</sup> is directly in point. The decision calls for affirmance.

The amendatory Presidential Decree added two more paragraphs, the first of which was the basis for the three previous decisions of this Court. The entire section 4 was reproduced. The Section starts with an opening statement as to what the term "retail business" shall mean, namely, "occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption."<sup>[6]</sup> It excludes, according to the amendment, "(c) a manu-facturer or processor selling to the industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or produce or manufacture goods which are in turn sold to them; \* \* \*."<sup>[7]</sup> The appealed decision, which is quite comprehensive and scholarly, could be commended for in the main anticipating that the above category should be excluded from "retail business." Thus: "In the field of economics, in the area of marketing, the interpretation given by Government agencies, and by common acceptance, the term 'retail', is associated with and limited to goods for personal, family or household use, consumption and utilization. This is also in accord with the ruling of the Supreme Court in the *Ichong* case regarding the nature and kind of goods a retailer handles. Under the situation, the Court is persuaded to hold that the goods for consump-tion mentioned in Republic Act No. 1180 should be construed to refer to the final and end [uses] of a product which directly satisfy human wants and desires and are needed for home and daily life. Accordingly, the goods which petitioner's Industrial Products Division handle (commonly referred to as intermediate goods), do not fall and cannot be classified as consumption goods."<sup>[8]</sup>

There was a need for such clarification. Private respondent has two divisions, the Consumer Products Division and the Industrial Products Division. As to the former, it effected its sales through retail out-lets, dealers and distributors. Thus there was no question as to the character of its business. It was not embraced in the category of retail. As to the Industrial Products Division, its Agricultural Chemicals Department sold its products through exclusive distri-butors. Again, it could be concluded that such Depart-ment was not covered by the Act even before its amendment. The products handled by the five other departments of the Industrial Products Division, namely, the Metals and Carbide; Plastics; Industrial Chemicals; Linde, Haynes Stellite and Carbon Products and

Polyethylene Bags were generally sold to producers, processors, fabricators and to industries. While these departments had a limited fixed clientele, still there was no prohibition as to the general public making similar purchases from them. What removed these departments from the operation of the Retail Trade Act was pointed out in the appealed decision in these words: "The goods handled by the five remaining departments of petitioner's Industrial Products Division are generally raw materials used in the manufacture of other goods, or if not, as one of the component raw materials, or at the least as elements utilized in the process of production or manufacturing." [9] After considering the statutory definition in the Retail Trade Act itself, its definition by economists, and in judicial opinions, as well as the view of former Central Bank Governor Cuaderno as to the adverse consequences in terms of increased cost to consumers, loss of financial assistance from producers, elimination of much needed foreign capital and loss of technical assistance, the lower court held it was not engaged in the retail business. The amendatory Decree removes whatever doubt there could have been as to the correctness of the conclusion reached by the lower court.

WHEREFORE, the Court affirms the lower court decision holding that Union Carbide Philippines, Inc. is not engaged in the "retail business" as this term is defined in Section 4 of Republic Act No. 1180 and making permanent the restraining order of June 22, 1964 issued in this case. No costs.

Aquino, Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, and Relova, JJ., concur.

Makasiar, J., no part.

Teehankee and Gutierrez, Jr., JJ., on official leave.

Concepcion, Jr., J., on leave.

De Castro, J., on sick leave.

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[1] G. R. No. L-30067, April 19, 1983, 121 SCRA 363.

[2] G. R. No. L-30063, July 2, 1983.

[3] G. R. No. L-29013, August 31, 1983.

[4] Presidential Decree No. 714 (1975).

[5] Republic Act No. 1180 (1954).

[6] Presidential Decree No. 714, Section 1.

[7] Ibid, Section 1(b).

[8] Decision, Annex C to Petition, 11.

[9] Ibid, 8.

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