

[WITH RESOLUTIONS MAY 30, 1963 AND MARCH 21, 1964]*G.R. No. L-18354. December 29, 1962*

Ponente: BAUTISTA ANGELO, J.

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Cheng Ban Yek Co., Inc., a domestic corporation, is the owner and operator of the International Oil Factory engaged in the manufacture of vegetable lard out of locally produced coconut oil. During the years 1953-1955, it imported to Manila cottonseed and fish oils for use in the manufacture of lard, and upon arrival of the shipment the Central Bank of the Philippines, thru its Office of Exchange Tax Administration, held that the importation was not subject to the 17% special excise tax under the provisions of Republic Act 601, as amended. Apparently, this exemption was granted in view of an opinion rendered by the legal counsel of the Central Bank holding that hydrogenated cottonseed oil is included in the term stabilizer used in the Act. As a consequence, the Central Bank approved the application for exemption filed by the company and even refunded the taxes which had already been collected, but paid under protest, in the amount of P113,219.25.

However, in two letters dated March 6, 1958 sent to the International Oil Factory, the auditor of the Central Bank demanded the payment of the total amount of P185,884.09 representing the 17% special excise tax allegedly due the government on the aforesaid importation of hydrogenated cottonseed and fish oils, of which the sum of P113,219.25 representing the taxes paid by the company under protest, which was later refunded, is included, while the balance of P72,664.84 represents the tax which according to the auditor should have been paid by the company but which the Office of Exchange Tax Administration had already found not to be due in view of the opinion of its legal counsel.

In view of the refusal of the company to comply with the demand, the auditor of the Central Bank, who disagreed with the opinion of the legal counsel, referred the matter to the Auditor General for a definite ruling on "whether or not hydrogenated cottonseed oil (stearine) used in the manufacture or preparation of lard (shortening) may be considered as 'stabilizer' under Section 2 of Republic Act No. 601." This latter official, however, before giving his own opinion, endorsed the letter of the Central Bank auditor to the Secretary of Finance for comment who, in an endorsement dated June 29, 1960, stated that, in the light of the facts obtaining, the importation in question which is used mainly as component in the manufacture of vegetable lard may not be considered as falling under the category of stabilizer contemplated in Republic Act No. 601, as amended, and so the foreign exchange used in connection therewith is subject to the special excise tax. And in reaching this conclusion, the Secretary took into account the fundamental principle in taxation that exemption provisos in tax laws must be strictly construed and not unduly enlarged or extended.

The Auditor General, in his indorsement of February 15, 1960, after consolidating the different opinions given by the successive Heads of the National Institute of Science and Technology, together with that of the Chairman of the National Science Development Board, who cited the opinion of the Acting Deputy Commissioner of the former office, gave the following opinion: "It appearing from this last opinion of the National Institute of Science and Technology that hydrogenated seed oil (stearine) is used as a component in the manufacture of vegetable oil

lard, but not as stabilizer, this Office concurs in the opinion of that Office and of the Secretary of Finance that the hydrogenated seed oil (stearine) imported by claimants may not be considered as falling under the category of 'stabilizer' contemplated in Republic Act No. 601, as amended. Accordingly, the foreign exchange used in importing such hydrogenated cotton seed oil is subject to the special excise tax."

Acting upon this view, the Central Bank again demanded from the company the payment of the amount of P185,884.90 representing the 17% special excise tax due on its importation of hydrogenated cottonseed oil with the warning that, if not paid, it will deny the clearance requested. Whereupon, the company filed the instant petition for review by way of appeal from the decision of the Auditor General.

The main issue to be determined is whether or not the hydrogenated cottonseed oil in question when added to coconut oil in the making or preparation of vegetable lard plays the role of a component or ingredient, or merely of a stabilizer, as contemplated in Republic Act 601, as amended. If it constitutes a component or ingredient then the foreign exchange used in its importation is subject to the special excise tax, but if it is used as a stabilizer it may come under the exemption enumerated in the law.

On this question three divergent opinions were given by three successive Heads of the National Institute of Technology. Dr. A. S. Arguelles held that 13% of cottonseed oil or stearine to be added to the coconut oil is too high to be considered as purely stabilizer, and in order that stearine can be considered as an stabilizer the amount to be added to the coconut oil for the manufacture of vegetable lard should not be more than 2%; Commissioner Joaquin Marañon maintained that hydrogenated cottonseed oil, or stearine, may serve as a component or ingredient as well as stabilizer but without giving any qualification as to the amount to be used to produce the desired effect; while Acting Commissioner Canuto Manuel gave the opinion that 2% cottonseed oil will not affect the stability of vegetable lard. Because of this divergence of opinion, the Auditor General referred the three opinions of these three scientists to the Chairman of the National Science Development Board for clarification and definite ruling, and said Chairman, in reply to the inquiry, cited the following opinion of the Acting Deputy Commissioner Flaviano M. Yencko of the National Institute of Science and Technology:

"1. In the manufacture of vegetable lard hydrogenated cottonseed oil is added to coconut oil so as to produce a mixture with high plasticity giving the oil the characteristic structure of a plastic solid. The amount of hydrogenated cottonseed oil usually added ranges from 10 to 15%. In other words, the hydrogenated cottonseed oil becomes a component part of the plastic mixture.

"2. A stabilizer is defined as a retarding agent or a substance that counteracts the effect of a vigorous accelerator and preserves a chemical equilibrium. It is employed to render the product more stable by preventing the occurrence of undesirable changes in the product. For vegetable oils, stabilizers are added in very small amounts, usually less than 2%, e. g. the addition of an antioxidant to prevent rancidity.

"Although hydrogenated cottonseed oil when added to coconut oil in sufficient quantities may change the physical state of the oil by rendering it semi-solid, hydrogenated cottonseed oil does not affect the chemical stability of the oil to which it is added. Hence in the manufacture of vegetable lard, hydrogenated cottonseed oil serves as a component and not as a stabilizer."

And on the basis of the opinion above-quoted, which was endorsed by the Chairman of the National Science Development Board, the Auditor General made the following conclusion:

"It appearing from this last opinion of the National Institute of Science and Technology that hydrogenated seed oil (stearine) is used as a component in the manufacture of vegetable lard, but not as stabilizer, this office concurs in the opinion of that Office and of the Secretary of Finance that the hydrogenated seed oil (stearine) imported by claimants may not be considered as falling under the category of 'stabilizer' contemplated in Republic Act No. 601, as amended. Accordingly, the foreign exchange used in importing such hydrogenated

cotton seed oil is subject to the special excise tax."

Considering that the term stabilizer is used in the law under consideration in its technical sense and as such reliance must be placed on the meaning attached to it by technical or scientific men, and considering further that the opinion of the Auditor General is predicated upon the opinion expressed by the Chairman of the National Science Development Board which is the highest scientific institution in the Philippines, we have no other alternative than to conclude that the importation in question when used in the manufacture of vegetable lard out of the locally produced coconut oil is deemed to be a component or ingredient and not merely a stabilizer that may come under the exemption of the law.

Wherefore, petition is dismissed. The decision of the Auditor General is hereby affirmed. Costs against appellant.

Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

RESOLUTION

BAUTISTA ANGELO, J.:

Petitioner seeks to reconsider our decision rendered on December 29, 1962 on several grounds, among which, is that it is contrary to the legislative intent and runs counter to general welfare and principles of equity which may work hardship and injustice against petitioner and other lard manufacturers.

In support of his motion, petitioner submitted a certificate under oath of Senate President Eulogio Rodriguez, marked as Annex A, the letter of the Chairman of the National Science Development Board, marked as Annex B, the latest opinion of the Deputy Commissioner of the National Institute of Science and Technology, marked as Annex B-1, and the opinion of the American Consultant to said Board from the Armor Research Foundation of the United States, marked as Annex B-2. In addition, petitioner also asked that photostatic copies of pertinent pages of the scientific book entitled "Industrial Oil and Fat Products" by Alton E. Bailey, from which Deputy Commissioner Flaviano M. Yenko of the National Institute of Science and Technology quoted the authority for his opinion that "commercial shortening cannot be made out of coconut oil by using 2% or less of hydrogenated cottonseed oil as sterine" which was given in his memorandum to the Chairman of the National Science Development Board dated January 23, 1963, be admitted as evidence in connection with this motion for reconsideration. And during the oral argument held on April 24, 1963, counsel for petitioner also asked for leave to submit certain documents which he marked as Exhibits AA, BB, X and Y which are all attached to the record.

The main issue that was submitted to us for consideration is whether or not the hydrogenated cottonseed oil when added to coconut oil in the making or preparation of vegetable lard plays the role of a component or ingredient, or merely of a stabilizer as contemplated in Republic Act 601, as amended.

On this question three divergent opinions were given by three successive heads of the National Institute of Science and Technology, but the opinion which was given weight by respondent Auditor General, which was upheld by this Court, is that of Acting Deputy Commissioner Flaviano M. Yenko of the National Institute of Science and Technology, which was epitomized as follows:

"Although hydrogenated cottonseed oil when added to coconut oil in sufficient quantities may change the physical state of the oil by rendering it semi-solid, hydrogenated cottonseed oil does not affect the chemical stability of the oil to which it is added. Hence in the manufacture of vegetable lard, hydrogenated cottonseed oil serves as component and not as a stabilizer."

In the motion for reconsideration, petitioner now disputes the above opinion by submitting the documents

abovementioned, particularly the new opinion of Deputy Commissioner Yenke from which we quote the following.

"Coconut oil yields a shortening of rather poor plastic range. If coconut oil is to be used in a shortening in large proportions, the product is best made by blending unhydrogenated coconut oil with about 8 to 12% of vegetable steaming and as much cottonseed oil or other liquid oil as may be permissible to use."

" 'Industrial Oil and Fat Products', by Alton B. Bailey 2nd Edition Interscience Publishers, Inc., New York 1951, p.241."

Since the aforesaid documents are in the nature of new evidence submitted in the case and respondent has not been given an opportunity to examine them or nor to cross-examine the persons or officials who appear to be the authors or writers thereof, in order to test their credibility, the Court resolved that, without acting for the present on said motion, the case be remanded to respondent for whatever action he may deem proper to take in the premises.

Bengzon, C. J., Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

March 31, 1964

BAUTISTA ANGELO, J.:

Petitioner moves this Court to reconsider its decision rendered on December 29, 1962 wherein it held that the cottonseed oil it imported in the years 1953-1955 for use in the manufacture of lard from coconut oil is a component and not a stabilizer and, therefore, is subject to the 17% special excise tax. In support of its motion, petitioner submitted Annexes A, B, B-1, and B-2.

On February 12, 1963, respondent was required to comment on the motion for reconsideration. Respondent submitted his comment on February 28, 1963 and therein he prayed that the motion be denied for lack of merit. He reiterated the arguments already advanced in his original brief.

In the meantime, petitioner prayed that Annexes A, A-1 to A-3, which are photostatic copies of pertinent pages of Alton E. Bailey's book "Industrial Oil and Fat Products" be admitted as part of his motion for reconsideration and, in its reply to respondent's comment, it also attached certain annexes representing photostatic copies of pertinent pages of books and journals of some authorities to bolster up the arguments advanced therein in refutation of respondent's comment.

During the oral argument held on April 24, 1963 on the motion for reconsideration, petitioner again asked for leave to submit certain documents which counsel marked as Exhibits AA, BB, X and Y, which petition was granted, and because said documents partake of the nature of new evidence which was submitted in the absence of respondent, the Court in its resolution of May 30, 1963 resolved to remand the case to respondent to give him and opportunity to examine and cross-examine the persons or officials who appear to be the authors or writers thereof and to take whatever action he may deem proper in the premises.

On December 13, 1963, respondent filed his compliance with this Court's resolution, and therein he quoted a memorandum submitted by Deputy Commissioner Flaviano M. Yenke of the National Institute of Science and Technology, which was concurred in by the Chairman of the National Science Development Board, wherein said official made a categorical statement that the views expressed by him as contained in the letter sent to petitioner's counsel dated January 30, 1963 did not constitute a reversal of the previous opinion rendered by him on the matter under consideration.

The contents of said memorandum reads as follows:

"We have your memorandum dated September 23, 1963 regarding a query from the Auditor General on the use of hydrogenated cottonseed oil.

"In this connection, please be informed that the views expressed by Mr. Charles Schuh and the undersigned which were endorsed by the Chairman in his letter to Atty. Dinglasan, dated January 30 do not constitute a reversal of the previous technical opinion rendered by this office that in the manufacture of vegetable lard, hydrogenated cottonseed oil serves as component and not as a stabilizer.

"In the manufacture of vegetable lard, stearine (hydrogenated cottonseed oil) is added to the already liquid coconut oil in order to form a plastic mixture and afterwards air is incorporated into this stearine-coconut oil mixture to improve its blending properties. From this point of view, stearine cannot be considered a stabilizer.

"While it is true that stearine forms with coconut oil a plastic mass that can keep the entrapped air, the stearine primarily serves to solidify or plasticize this liquid coconut oil, thereby forming a component part of the coconut-stearine plastic mixture.

"The stearine (hydrogenated cottonseed oil) therefore when used in the manufacture of shortening is to be considered as component and not stabilizer."

It should be noted that in said memorandum Commissioner Yenko merely states that the views expressed by him and Mr. Charles Schuh do not constitute a reversal of the previous opinion rendered by him that in the manufacture of vegetable lard hydrogenated cottonseed oil serves as a component and not as stabilizer, but does not refute nor comment on the views expressed by the authors mentioned in the new evidence submitted by petitioner. Some of these views follows:

"If an all-vegetable shortening is to be made a minimum amount of hardening oil, the latter is usually hydrogenated to an iodine value of 15 or less. In the case of shortening which is to be made entirely of cottonseed oil, about 10% to 15% of hardened oil or vegetable stearine is required in the mixture, the exact amount depending upon the iodine value and titer of the stearine.

"Coconut oil, as stated previously yields a shortening of rather poor plastic range. If coconut oil is to be used in a shortening in large proportions, the product is best made by blending unhydrogenated coconut oil with about 8% to 12% of vegetable stearine and as much cottonseed oil or other liquid oil as may be permissible to use. Completely hydrogenated coconut oil has a melting point of but 110 deg. F., hence vegetable stearine cannot be made from this oil." (Industrial Oil and Fat Products by Alton E. Bailey, pp. 237-238, Annex "A-3", Petition)

"Stabilizers. In general, any substance which makes a solution, mixture, suspension, or state, etc, more stable. Specifically, there are stabilizers which may retard a reaction rate or preserve a chemical equilibrium, act as antioxidants, keep pigments and other components in emulsion form in an emulsion paint, or prevent the particles in a colloidal suspension from precipitating." (Exh. X)

"Coconut oil consists of complex mixture of the glyceride esters of fatty acids. Analysis show that the amount of unsaturation is low. This may be interpreted as giving the oil a high degree of resistance to the development of oxidative rancidity. This has been verified experimentally by Roduta and Dyogi (2) who found coconut oil 2531 days old to give a negative Kreis test." (Exh. Y)

"2.0% hydrogenated cottonseed oil to be used as a stabilizer is not enough to plasticize liquid coconut oil. The general limits for the solid particles shall generally be within the range of 5.0% to 25.0%. In the case of shortening produced in the United States which is to be made entirely of cottonseed oil about 10.0% to 15.0% of hardoil or vegetable stearine is required in the mixture. In the United States the most commonly used oil for cooking is cottonseed oil in place of coconut in the Philippines. If coconut oil is to be used in a shortening in

large proportion, the product is best made by blending unhydrogenated coconut oil with 8.0% to 12.0% vegetable stearine." (As explained by Alton E. Bailey in his book, *Industrial Oil and Fat Products*, pp. 209, 237-238)

On the other hand, on August 24, 1961, respondent filed a motion to dismiss this appeal on the ground that the decision from which petitioner has appealed to this Court as contained in an indorsement sent by respondent to the Auditor of the Central Bank is not really a decision in the legal sense but merely an opinion which respondent has rendered on the question whether the use of hydrogenated cottonseed oil in the manufacture of lard may be considered as stabilizer within the meaning of the law. It is not a decision or order on any money claim which petitioner had filed with the Central Bank concerning the refund of a particular duty or exchange tax, which was adverse to petitioner. The nature of this appeal, it is claimed, is merely in the form of a declaratory judgment which cannot be the subject of an appeal of this nature. To this motion petitioner filed an opposition, and this court deferred action thereon until the case is decided on the merits.

We find this motion meritorious, for really the alleged decision appealed from is merely an opinion rendered by respondent on the matter under consideration for guidance of the Foreign Department of the Central Bank. It was not rendered in connection with a specific claim for refund by petitioner or any other company for that matter, and so is not appealable under Section 1, Rule 44, of our Rules of Court.

Considering that the views expressed by the authors mentioned in the new evidence submitted by petitioner do not appear controverted, clarified, nor commented in any manner by respondent, and the issue herein involved is important and far-reaching, the Court is of the opinion that this is not the appropriate occasion to pass upon it but when the same is raised in an appropriate case if and when the amount of exchange tax which the Central Bank seeks to collect from petitioner is actually pressed in court, when an opportunity for examination of the evidence may be given to both parties. Meanwhile, this appeal should be dismissed, as prayed for by respondent, there being no final order or decision that may be the subject of appeal under Section 1, Rule 44, of our Rules of Court.

Wherefore, the decision rendered by this Court on December 29, 1960 is hereby set aside. The Court orders the dismissal of this appeal, without costs.

Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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