

MACONDRY & CO., INC. DEMANDANTE Y APELANTE CONTRA, EL ADMINISTRADOR DE RENTAS INTERNAS, DEMANDADO Y APELADO.

G. R. No. L-2624. September 29, 1951

Ponente: PABLO, J.

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PABLO, J.:

Se trata de una apelación interpuesta por la demandante contra una decisión del Juzgado de Primera Instancia de Manila que sobreseyó su demanda.

En la vista de la causa ambas partes sometieron un convenio de hechos, cuya parte esencial es la siguiente:

"3. During the first and second quarters of 1946, plaintiff received from its customers as 'port charges' P87,075.60.

"4. The so-called 'port charges' were separately itemized and billed against plaintiff's customers.

"5. The corresponding sales, tax on the costs, insurance and freight were duly paid by the plaintiff to the defendant.

"6. On August 16, 1946, the defendant wrote the plaintiff advising that the said 'port charges' formed a part of the purchase price of the goods and as such plaintiff must pay 3 1/2 % additional sales tax, plus 25% surcharge and P50.00 as a compromise, or a total of P3,859.58, copy of said letter being as follows:

" 'Macondray & Co., Inc.,

827 R. Hidalgo,

Manila

Gentlemen:

I have the honor to advise that upon investigation conducted by an agent of this office it was ascertained that you failed to pay the full amount of percentage tax from you for the first and second quarters of 1946, in violation of section 186 of the National Internal Revenue Code, in view of the fact that port charges collected from your customers as forming part of the selling price of the articles sold by you, were not declared for taxation.

It is informed in this connection that 'gross selling price' or 'gross value in money' of the articles sold, bartered, exchanged, or transferred, as the term is used in sections 184, 185 and 186 of the said Code is the total amount of money or its equivalent which the purchaser pays to the vendor to receive or get the goods. As port charges were collected from your customers, the same should have been declared for the purposes of the 3 1/2 % tax. There is, therefore due from you the sum of P3,809.58 computed as follows:

Port charges appearing in the

sales invoices and collected from

your customers not declared for

taxation

P91,178.54

Port charges representing addi-

tional expenses for laborers

which formed part of the selling

price of the articles but not de-

clared for taxation

1,624.14

Total untaxed port charges.....

P92,802.68

Less allowances given to customers

due to shortage or damage to

articles gold

5,727.08

Untaxed port charges or sales

P87,075.60

3 1/2 % on P87,075.60

P3,047.66

25 % surcharge.....

761.92

TAX AND SURCHARGE DUE

P3,809.58

'Demand is, therefore, made upon you to pay the said sum of P3,809.58 -within ten (10) days from your receipt of this letter.

Please be further advised that your failure to pay the full amount of percentage tax in violation of section 186 of the National Internal Revenue Code is penalized under section 209 of the same Code, which violation however, be settled extrajudicially by the payment of the sum of P50 as compromise, in addition to the amount of P3,809.58 due from you.

Very respectfully,

BIBIANO L. MEER

Collector of Internal Revenue'

By

(Sgd.) ALFREDO V. JACINTO

Deputy Collector of Internal Revenue

"7. On September 2, 1946, plaintiff answered the defendant as follows:

"The Collector of Internal Revenue

Manila

Dear Sir:

We have your letter of the 16th ultimo demanding payment of the amount of P3,859.58 as alleged additional sales tax, surcharge and compromise due to the government.

Our books show that the amount collected by us for port charges on which the additional tax is assessed amounted to P87,069.60 and not P87,069.60 as stated in your communication and, therefore, the basic computation of the tax is Incorrect.

When we paid the sales tax we considered, and still, that under the terms of our sales contracts port charges are not a part of the selling prices, so that we excluded them in figuring out our liability. As stated in our letter to you of August 8, 1946, these were merely payments incurred by us in taking the goods from the piers and delivering the articles to our customers. Before the arrival of our goods from the United States, contracts were made with our customers whereby they agreed to buy the articles C. I. F. Manila. Naturally, all port charges are for their account. As these charges were paid, by us merely for the convenience of the customers, and were repaid by them, we believe that these amounts should not be included in the selling prices. Had we let the buyers take delivery of their purchases from the piers and they engaged another firm to do the job of getting

the goods for them, we should not be liable for the additional tax now demanded by you. As the case now stands, just because we happened to do a favor for our customers we stand to lose and be penalized in accordance with your ruling.

We hereby reiterate our previous request to exclude the port charges in the computation of the sales tax payable by us.

Yours very truly,

MACONDRAY & CO., INC.

By

(Sgd.) CARLOS YOUNG

General Manager

"8. On January 29, 1947, defendant insisted in collecting the sum of P3,809.58, plus the amount of P50 and surcharge writing the following letter:

'Macondray & Co., Inc.,

827 R. Hidalgo

Manila

Gentlemen:

With further reference to your pending internal revenue case, and in answer to your letter of September 2, 1946, I have the honor to inform you that the correct amount of port charges is P87,075.60 as previously communicated to you. This discrepancy was a result of a clerical error by the investigating agent.

Relative to the question raised in the third paragraph of your letter of September 2, 1946, you are further advised that, in the opinion of this office, the port charges and other expenses incurred in connection with the importation and delivery of merchandise sold to your customers are part of the gross selling price subject to the sales tax. The word 'price' signifies the sum stipulated as¹ the equivalent of the thing sold and also every incident taken into consideration for the fixing of the price, , put to the debit of the vendee and agreed to by him. (Ynchausti & Co., vs. Cromwell, 20 Phil., 245). Inasmuch as you undertook the clearing of the goods from the Bureau of Customs and delivered them to your customers and for which services you charged your customers including port charges and all other expenses, all said expenses are part of the gross selling price.

In view of the foregoing, you are again requested to pay the amount of P3,809.58 within five-(5) days from your receipt of this letter, and to compromise your violation of the National Internal Revenue Code mentioned in our letter to you of August 16, 1946, by the payment of the sum of P50.00 in addition to the tax and surcharge due from you.

Very respectfully,

BIBIANO L. MEER

Collector of Internal Revenue

By

(Sgd.) ALFIEDO V. JACINTO

Deputy Collector of Internal Revenue' "

En apelacion, el Secretario de Hacienda desestimo la contention de la demandante. Para evitar ultteriores raultas, ella pag6 en 22 de marzo de 1947, el impuesto bajo el recibo No. J-37042, y en mayo del mismo aflo presento su demanda pidiendo la devolution de la cantidad pagada.

La cuestion a resolver es si lo que la demandante llama "port charges" cobrados por ella de sus parroquianos, constituyen parte del precio de venta bruta. "Port charges" o gastos de puerto son las cantidades que la demandante cobro de sus parroquianos por valor de los sellos doeumentales quo se adhiricron a los conocimientos de embarque y gastos de transportation desde el "pier" hasta su casa de las mercancías vendidas a ellos.

La demandante contiende que los gastos de puerto no son parte del precio de venta bruta de las mercancías, por la razon de que las vendio bajo un contrato C. I. F. Manila; que el precio de las mismas, de acuerdo con tal convenio, es una cantidad igual a su costo, seguro y flete hasta el puerto de Manila,

En los contratos C. I. F. el comprador paga solamente el costo de la mercaneia y los gastos de seguro y flete. (38 Jur. Fil., 639.)

Dichas letras signiflcan "cost, insurance and freight charges." (55 C. J., 227.)

Esta clase de contrato se celebra generalmente entre el fabricante y sus compradores directos. Es que quiere facilitar la venta de sus productos, sin intervention de un comerciante revendedor. Pero un comerciante que se dedica al negocio de compra y venta—importa efectos y los revende—no ha de hacer esto a menos que quiera negociar sin ganancia. El que negocia espera obtener un margen razonable de beneficio.

Si el importador, demos por caso, revende un automovil a su parroquiano bajo un contrato c. i. f., Normal 0 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";} ¿que ganaria? Absolutamente nada, a menos que aiiada al costo de adquisicion su ganancia razonable mas los gastos de seguro y flete. El costo, en este caso, es el de reventa. Si la demandante ha tenido semejante contrato son sus parroquianos, no queda, sin embargo, librado de costear los gastos del puerto, porque la importacion no termina sino "cuando los derechos que gravan las mercaneias han sido satiafechos o asegurados en un puerto habilitado y coneedido el permiso legal de salida, y en el caso de estar las mercaneias exentas de derechos, cuando estas hayan salido legalmente de la jurisdiction de la aduana." (Go Cheng Tee contra Meer, como Admor. de Eentas Internas, 87 Phil., 18.) Corren a cuenta, por tanto, del importador los gastos indispensables desde el "pier" hasta la entrega de la mercancía, como los "port charges."

En Gee Coal Company vs. Department of Finance, se declaro que el flete es parte del "selling price". Parte de la decision dice asi:

"Appellee conducts a retail coal business in Chicago. It buys f.o.b. the mines and ships it by rail to its yard in Chicago. It pays the mining company for the coal and the railroads their freight charges. It then sells the coal to consumers.

* * * * *

"Appellee contends that under the terms of the act it properly excluded from the amount of its gross receipts', in computing its tax, amount paid by customers to reimburse it for such freight charges. If this contention is

sound, the. ruling of the superior court is correct. If, on the other hand, appellant's contention is correct that such freight charges are a part of the sale price of the coal, although made a separate item in billing customers, that ruling was erroneous, and the judgment of the trial court should be reversed.

* * * * *

"The question before us is whether the charges paid by appellee for freight on coal shipped from the mine to its Chicago yard constitute a part of the selling price to its customers. The answer must be in the affirmative." (102 A, L. E. 766)

Y en el asunto de State vs. Menefee Motor Co., se discutió la extensión del "gross sales". La decisión dice en parte:

"Defendant is a retail dealer engaged in the sale of automobiles.

"Under section 8 of Act 205 of 1924 it is required of retail dealers that they pay a license tax predicated upon annual gross sales.

* * * * *

"The agreed statement of fact on which this rule was submitted shows: 'That in selling cars to its customers, the defendant adds a profit fixed by the manufacturer to the f.o.b. price, and also divides the freight charged by the manufacturer and paid by the defendant company so as to prorate it equally to each car and adds said proration to the customer's bill.'

"It is argued that thus, in the case of each sale, the amount paid by the customer includes freight money, in which defendant is in no way interested, but which it merely collects from the customer to reimburse it for the amount already remitted to the manufacturer.

"The contention is ingenious, but, if sound, would enable all dealers, who sell in one city goods manufactured in another, or who transport from one point in one city to another point in the same city goods for sale, to deduct for license tax purposes the freight or transportation charges and thus reduce the amount on which is based the license tax.

"Why could not a grocer, who receives a carload of flour, apportion to each barrel or to each sack of flour its pro rata of the total freight, and then, for the purpose of determining his gross sales for license tax purposes, deduct the entire freight paid. Why could not every retail dealer adopt the same method? "

"That defendant sets up on its books a special account, in which it keeps a record, of the freight paid and balances the amount paid to the manufacturer by the amounts paid by the customers, is merely a convenient method of bookkeeping, and cannot be permitted to interfere with the legal situation which actually exists where a retailer sells to a customer an article for a gross price, which gross price is made up of many component parts, such as amount paid to manufacturer, pro rata of salary of clerks, pro rata of rents, etc. Why should the retailer not deduct the salaries of his clerks and the rent of his building; as well as the freight paid? All go to make up the price which must be charged the purchaser.

"When the Legislature based license taxes due by retailers on gross sales, it evidenced an intention to adopt, as the basis for the tax, the total amount paid by the purchasers, without considering the component parts making up the total sale price and without deducting therefrom any of those items." (139 Southern Reporter 61)

El artículo 186 del Código Nacional de Rentas Internas es del tenor siguiente:

"SEC. 186. Percentage tax on sales of other articles.—There is levied, assessed, and collected once only on every original sale, * * * a tax equivalent to three and one-half per centum of the gross selling price or gross value in money of the articles so sold, * * *."

La palabra "precio"—dijo este Tribunal en *Ynchausti y Cia. contra Cromwell*—significa la cantidad estipulada como equivalente de la cosa vendida y tambien cualquiera circunstancia accidental considerada en relacion con la fijacion del precio cargado al comprador y aceptado por el (20 Jur. Fil., 353).

"Price. The sum stipulated as the equivalent of the thing sold, and also every incident taken into consideration for the fixing of the price to the debit of the vendee, and agreed to by him." (Corpus Juris, Vol. 49, p. 1345).

Al revender sus mercancías importadas el comerciante, cobra una cantidad que le restituye el costo, los gastos de seguro y flete, otros gastos incidentales necesarios como los "port charges", la parte alícuota en los gastos del establecimiento, sueldo del personal, alumbrado y ventilación, ganancia razonable, impuesto, etc. Todo eso es el precio de venta bruta, "gross selling price".

Los "port charges" o gastos de puerto están sujetos, por tanto, al impuesto previsto por el Artículo 186 del Código Nacional de Rentas Internas, como parte del precio.

Se confirma la decisión. apelada con costas contra la apelante.

Paras, Pres., Feria, Bengzon, Padilla, Tuason y Jugo, MM., están conformes.

CONCURRING

REYES, J.,

I concur. But in doing so I must not be understood as subscribing to the theory apparently entertained by the majority that a "C. I. F." sale is, as a general rule, made by a manufacturer and never by an importer who is on business for profit—a notion born of the mistaken belief that the letter "C" in the abbreviated expression refers to cost of manufacturer. I may add that the law involved in this case assesses the sales tax on the basis of "the gross selling price or gross value in money of the articles * * * Sold." And it is obvious that the gross value in money of the imported articles sold here would include the cost of importation of which insurance, freight and port charges form an important item.

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