

LEE CHAN LAM, PLAINTIFF AND APPELLEE, VS. W. TRINIDAD, AS COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. L-21590. August 25, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an appeal from the judgment of the Court of First Instance of Manila rendered in this case, ordering the Collector of Internal Revenue to return to plaintiff Lee Chan Lam the sum of P1,548.76 which he had collected from the latter as merchant's fixed tax for the years 1921 and 1922, at the rate of 1 per cent upon certain sales of merchandise, plus 25 per cent of surcharge for delinquency.

The Collector of Internal Revenue appealed from this judgment and now assigns as errors of the lower court: (1) The holding that the term "merchant" used in section 1459 of the Administrative Code is not applicable to plaintiff; (2) the finding that the plaintiff is not a commission merchant subject to the tax provided in said section; (3) the rendering of judgment in favor of the plaintiff and against the defendant.

According to the facts agreed upon by the parties, the plaintiff is of age and resident of Manila. He was on September 3, 1921, appointed attorney-in-fact of Sy Yoco, a merchant residing in Tabaco, Albay, for the purpose, among others, of buying and selling hemp, copra, and sundry goods from Europe, America, and the country in the name, and as representative, of Sy Yoco with a monthly compensation of P200. The plaintiff is a member and manager of the firm of Lee Chan Lam & Co., merchants and commission merchants engaged in business in Manila, and paid the fixed tax provided in section 1457 of the Administrative Code for the years 1921, 1922, and 1923.

The plaintiff is owner of house No. 405 on Calle Jaboneros, Manila. Of this house a large space downstairs is leased to Lee Chan Lam & Co. and Sy Yoco, both of whom had their office furniture there, Sy Yoco paying for the portion occupied by him an annual rent of P400. The employees of Sy Yoco are the herein plaintiff and Sy Piaoco, brother of Sy Yoco.

From September, 1921, up to June, 1922, the plaintiff received from Sy Yoco copra and hemp for the sale thereof in Manila, and which the plaintiff sold to persons and companies engaged in business in these Islands. These transactions were effected by the plaintiff in the name and on behalf of Sy Yoco. Said copra and hemp sent by Sy Yoco from Albay reached the City of Manila in the name of Sy Yoco as consignor and consignee, and were, with the exception of those which were immediately sold, kept by the plaintiff in a Warehouse, the plaintiff receiving the warehouse receipts in the name of Sy Yoco. In the sale of these goods it was made known to the purchasers that it was in the name of Sy Yoco, the plaintiff making the sales of the merchandise in the warehouse by endorsing the respective receipts to the purchasers, and signing the same as follows: "Sy Yoco—p. p. Lee Chan Lam—attorney-in- fact."

These sales amounted to P123,581.07 upon which the merchant's tax of 1 per cent is the sum above-mentioned,

which was paid by the plaintiff to the defendant under written protest overruled by the latter.

The trial court holds in the judgment appealed from that the word "merchant" used in the last paragraph of section 1459 of the Administrative Code is not applicable to plaintiff because while he was a commission merchant, yet he had no establishment of his own for the keeping and disposal of goods. And with reference to the phrase "kept in a warehouse" found in paragraph 8 of the agreed statement of facts, it says the following:

"It must be noted that in paragraph 3 of the agreed statement of facts, the parties clearly admit that the hemp and the copra which the plaintiff had received from his principal were invariably kept in a warehouse with the exception of those parcels which were sold as soon as they arrived in this city. This naturally implies the admission by the defendant that the plaintiff did not deposit nor keep those goods in any warehouse or establishment of the private property of the plaintiff and specially used by the latter for keeping said merchandise. And this admitted fact leads us consequently to the conclusion that under the definition contained in the last paragraph of section 1459 of the Administrative Code, the plaintiff was not, at least at the times in which he is required to pay the taxes levied by the defendant, a commission merchant or consignee 'with an establishment of his own for the keeping and disposal' of the goods which he was selling in the name of his principal. According to law, it is not sufficient that one be a commission merchant in order to be bound to pay the tax imposed upon merchants; it is necessary that besides he have an establishment of his own for the keeping and disposal of goods. Consequently, it appearing from the facts proven that the plaintiff did not have such establishment of his own for the keeping and disposal of goods, it is evident that the tax provided is not applicable to him and he is not, therefore, bound to pay the tax levied by the defendant."

We think that the establishment for the keeping and disposal of goods referred to in the last paragraph of section 1459 of the Administrative Code, and which a commission merchant must have of his own in order to be included in the word "merchant" used in said section, and held subject to the percentage tax upon sales, need not belong to the commission merchant in fee simple, but it is sufficient that for the keeping and disposal of the goods which he sells or exchanges, the commission merchant should use an establishment or premises or a part of an establishment or premises destined by him for said purpose of keeping and disposing of goods for sale, although said establishment or premises or part of establishment or premises is owned by another. This is, to our mind, the import of the phrase under discussion which in the English text is "establishment of their own for the keeping and disposal of goods of which sales or exchanges are effected."

It was not proven that the warehouse used by the plaintiff for the keeping and disposal of the merchandise in question was a warehouse used by his principal Sy Yoco. The fact that the receipts for the goods kept in said warehouse were in the name of Sy Yoco only shows that such goods were Sy Yoco's, but not that the warehouse was at the disposal of Sy Yoco, nor used by him. The large room in the ground floor of house No. 405 Calle Jaboneros, Manila, used partly as the office of Sy Yoco, according to paragraph 5 of the agreed statement of facts, does not appear to be, nor can it be, the aforesaid warehouse.

By analogy, the following doctrine may be applied to the instant case.

"If a turnpike corporation which exercises its franchise in several counties has in one of them a tollhouse where it keeps an agent to collect tolls and sell tickets, and where its treasurer sometimes pays workmen whom it employs, it 'has' in that county such 'an established or usual place of business', that, under the Gen. Sts. c. 123, sec. 5, actions may there be brought by or against it, although it has an office in another county, where its books are kept, and its meetings are held, and which is used by its treasurer and superintendent." (Rhodes vs. Salem Turnpike & Chelsea Bridge Corporation, 98 Mass. [2 Browne], 95.)

That the plaintiff is a commission merchant, there can be no doubt, although he had a fixed salary. (Perez vs.

Rafferty, 41 Phil., 74.)

The judgment appealed from is reversed, the plaintiff's complaint dismissed, and the defendant absolved therefrom, without special pronouncement as to costs. So ordered.

Johnson, Street, Malcolm, Avancena, Villamor, and Ostrand, JJ., concur.

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