

STANDARD-VACUUM OIL COMPANY, PLAINTIFF AND APPELLANT, VS. M. D. ANTIGUA, AS MUNICIPAL TREASURER OF OPON AND THE MUNICIPALITY OF OPON, DEFENDANTS AND APPELLEES.

G.R. No. L-6931. April 30, 1955

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an action to recover from the Municipal Treasurer of Opon, Cebu, the sum of P26,639.50 collected by said town official from the plaintiff-appellant Standard Vacuum Oil Company and paid by the latter under protest. The facts in this case are simple and not disputed. Section 1 of Commonwealth Act 472 known as the Municipality Autonomy Act reads thus:

"Section 1. A municipal council or municipal district council shall have authority to impose municipal license taxes upon person engaged in any occupation or business, or exercising privileges in the municipality or municipal district, by requiring them to secure licenses at rates fixed by the municipal council, or municipal district council, and to collect fees and charges, for service rendered by the municipality or municipal district and shall otherwise have power to levy for public local purposes, and for school purposes, including teacher's salaries, just and uniform taxes other than percentages taxes and taxes on specified articles."

Under the above reproduced legal provision, the municipal council of Opon passed Ordinance No. 9, series of 1949, imposing a graduated license tax on the business of manufacturing tin cans based on the maximum output capacity of the factory. Said ordinance was duly approved by the Department of Finance.

The plaintiff-appellant Standard Vacuum Oil Company, a foreign corporation duly licensed to transact business in the Philippines, having its principal office in the City of Manila and with branch office in the City of Cebu, is engaged in the importation, distribution and sale of gasoline, kerosene and other fuel oils. Some of its products, especially kerosene are placed in 5-gallon tin cans and then distributed and sold throughout the Philippines. The company's branch in Cebu operates and maintains an establishment in the Municipality of Opon known as Opon Terminal where it stores the gasoline, kerosene and other fuel oils it imports from abroad and where it manufactures gallon tin cans. To give an idea of the output of its tin can factory, the evidence shows that for the years 1950 and 1951 appellant company manufactured 2,796,911 and 2,523,975 tin cans, respectively, or a total of 5,320,886. This will explain the relatively large amount of tax collected by the defendant Municipal Treasurer for two years.

Appellant contends that the municipal ordinance is null and void because the graduated license tax imposed is said to partake of the nature of a percentage or specific tax, being an indirect percentage tax on specified articles, namely, the tin cans, and as such percentage tax is outside the powers of a municipal corporation to impose under the above-cited legal provision; and that assuming that it is not a percentage but an occupation" tax, still it does not apply to the tin can factory of plaintiff-appellant because it is not a business operated for profit but is merely incidental to its main business of importing gasoline, kerosene and other fuel oils and later placing them in tin

cans for distribution and sale.

The trial court held that the manufacture of tin cans by plaintiff company to be used as containers of its gasoline, kerosene and other fuel oils¹ is an occupation by itself from which the plaintiff derives benefit by not buying said tin cans from other persons who would otherwise manufacture them; and that were the plaintiff exempted from paying the tax on the cans manufactured and used for the distribution of its commodity while others engaged in the manufacture of tin cans are required to pay the tax, then the said tax ceases to be just and uniform. Plaintiff is now appealing from that decision of the trial court holding that the municipal ordinance was not only valid but was also applicable to the plaintiff and that consequently, the amount of the tax should not be refunded to it.

We are satisfied that the graduated license tax imposed by the ordinance in question is an occupation tax, imposed not under the police or regulatory power of the municipality but by virtue of its taxing power for purposes of revenue, and is in accordance with the last part of section 1 of Commonwealth Act 472. It is, therefore, valid. The question now to be determined is whether it is applicable to the plaintiff corporation. To us, it is clear that if a company manufactures tin cans to be sold to the public or to companies engaged in the sale and distribution of liquids, then said manufacture would be a business or occupation subject to the tax imposed by the ordinance. However, where the manufacture of tin cans as in the present case is conducted not as an independent business, and for profit but merely as an incident to or part of its main business, then it may not be considered as an occupation or business which may be taxed separately. The plaintiff company as already stated, is engaged in the importation, distribution and sale of gasoline, kerosene and other fuel oils and it is already paying the specific tax of two centavos and seven centavos per liter of kerosene and gasoline, respectively, being sold by it. While gasoline may be sold and distributed to its dealers and to the public at gasoline stations and without the use of tin cans this may not be done with kerosene or petroleum which is being sold not only in small towns which have no kerosene stations but in distant barrios; hence the necessity of providing suitable containers such as 5-gallon tin cans. According to the findings of the trial court which we must accept here, because the appeal was made directly to this Tribunal on purely questions of law, the tin cans in question were not manufactured by the appellant company "for sale to the public, but for the purpose of distributing its products which are in liquid form."

The case of *Smith, Bell & Co. vs. Municipality of Zamboanga* reported in 55 Phil., 466, involved a company engaged in the purchase and sale of hemp which operated a motor engine used for baling hemp for shipment. The Municipality of Zamboanga enacted an ordinance requiring payment of a license fee of P100 a year for every motor engine used for baling hemp. The company objected to the payment of the fee saying that the use of its motor engine was an incident to its business of purchase and sale of hemp. After paying the fee under protest, the company brought an action to recover the same from the municipality. This Tribunal affirming the judgment of the lower court which decided in favor of the company said that a company that has already paid taxes or impost for the operation of its main business of purchase and sale of hemp may not be further taxed for its possession and operation of a motor engine to bale hemp for the reason that the baling of hemp is connected with, incidental to and part of plaintiff's business, particularly its sale and shipment of said commodity.

In the case of *Craig vs. Ballard & Ballard Co.*, 196 Sc 238, it was held that:

"Where a person or corporation is engaged in a distinct business and, as a feature thereof, in an activity merely incidental which serves no other person or business, the incidental and restricted activity is not to be considered as intended to be separately or additionally taxed."

In conclusion, we hold that when a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity or work which is merely a part of, incidental to and is necessary to its main business.

In view of the foregoing, the decision appealed from is hereby reversed, and the Municipal Treasurer of Opon Cebu, is hereby ordered to return to the plaintiff-appellant the sum of P26,639.50, without interest, but with costs.

Pablo, Acting C.J., Bengzon, Reyes, A., Bautista Angelo, and Labrador, JJ., concur.

Judgment reversed.

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