

JOSE TAN, PLAINTIFF AND APPELLEE VS. HON. MANUEL DE LA FUENTE, MAYOR OF THE CITY OF MANILA, AND MARCELINO SARMIENTO, TREASURER OF THE CITY OF MANILA, DEFENDANTS AND APPELLANTS.

G.R. No. L-3925. December 14, 1951

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a judgment ordering the defendants to refund to the plaintiff the sum of P914.10 for license fees levied and collected under and pursuant to Ordinance No. 3028.

The case was submitted for decision upon a stipulation of facts which reads as follows:

1. That the plaintiff is of age and a resident of the City of Manila, and the defendants Hon. Manuel de la Fuente and M. Sarmiento are the Mayor and the Treasurer, respectively, of this City, both of whom are of legal age and also residents of this City;
2. That the plaintiff is a merchant engaged in the importation and sale of dry goods and has a store located at 712 Ilaya of this City which has been in operation since January, 1947, and is licensed to engage as a wholesale dealer in dry goods in said store belonging to him;
3. That during the period of time from January, 1947, to September, 1948, the plaintiff sold to different tailors, shirt factories, taxicab companies and schools textile goods in the following wise:

Amount of Sales

1st quarter, 1947

P13,732.45

4th quarter, 1947

40,261.20

1st quarter, 1948

19,922.85

2nd quarter, 1948

9,101.20

3rd quarter, 1948

11,273.74

4. That the said sales were made in big quantities beyond the usual needs of an ordinary consumer in the same form and condition as the textiles were imported and received from the respective foreign countries where they were produced, manufactured, and packed for export;

5. That the plaintiff during the same period of time sold textiles also in big quantities to entities and individuals for resale to the public which were excluded from the items listed in paragraph 3 above;

6. That the defendants, the City Mayor and the City Treasurer, through their agents, after inspecting the sales books of the plaintiff, held that the sales referred to in paragraphs 3 and 4 above were retail sales, and pursuant to the provisions of City Ordinance No. 3028, demanded and exacted from the plaintiff, under threats of closing his business establishment if he failed to do so, the payment of the following amounts as municipal license fees plus the penalty therefor:

1st quarter, 1947

P141.00

4th quarter, 1947

450.00

1st quarter, 1948

205.00

2nd quarter, 1948

95.00

3rd quarter, 1948

115.00

P1,006.00

Less amount paid to City Treasurer

P175.00

Difference

P831.00

Compromise

83.10

Total amount collectible

P914.10

7. That the plaintiff having no other recourse in the matter and to avoid the closing of his business establishment, paid on December 11, 1948, under protest, said amount of P914.10 to the defendant Treasurer of the City of Manila who issued therefor Official Receipt No. A-23966107.

The question to be decided is whether the sale of textile goods by the appellee to tailors, shirt factories, taxicab companies and schools, upon which the license fee was levied and collected, was wholesale or retail.

The appellee was a merchant licensed to import and sell dry goods at wholesale and ran a store at No. 712 Ilaya, Manila, where he sold dry goods at retail and paid the minimum quarterly license fee imposed upon retailers, as provided for in Ordinance No. 3028 for the first and fourth quarters of 1947 and for the first, second and third quarters of 1948, amounting to P175.

The quantity of goods sold by a merchant, the habitual sale of such goods made by him and the license issued to him to engage in business may be indicative but are not determinative of the character of a particular sale of goods made by him. The test to determine whether a particular sale of goods or merchandise is wholesale or retail is the use made or to be made by the purchaser of such goods or merchandise. If it be for resale at profit, the goods being unaltered when resold, the quantity of the goods sold being large not to be used by the purchaser or in excess of the requirements of his business and the merchant selling the goods being habitually engaged in the sale

of such goods in large quantities to his customers, then it may be deemed wholesale. Otherwise, it is retail. The fact that the purchaser resells the goods after altering them by using his skill or a process to secure better price for the altered goods or manufactured products does not make the previous sale a wholesale. It is still retail. The fact that the purchasers—the tailors, shirt factories, taxicab companies and schools—transformed such dry goods bought from the appellee into suits, shirts and other garments, used them for seat covers, or sold them to their employees and to their teachers and students does not convert the sale made by the appellee into wholesale and the tailors, shirt factories, taxicab companies and schools into retailers. They were consumers in legal contemplation because they used the goods purchased by them. The retail sale of copra for the manufacture of soap or oleomargarine, of hemp used to make twine or rope and in general of raw materials that are used or enter into the manufacture of finished products, cannot be deemed wholesale by the mere fact that the copra, hemp and raw materials are sold in altered form to the ultimate consumer.

Moreover, it appears from the fifth paragraph of the stipulation that during the same period for which the license fee was levied and collected, the appellee sold textiles in large quantities in firms and individuals for resale upon which no license fee was levied and collected. This fact is an additional proof and reason for holding that the sale of textile goods made by the appellee to tailors, shirt factories, taxicab companies and schools during the first and fourth quarters of 1947 and from the first to the third quarter of 1948, upon which the license fee was levied and collected pursuant to Ordinance No. 3028, was not wholesale but retail.

The court below found that the appellee's wholesale business was subject to the payment of a municipal license fee and concluded that the sale of goods upon which the tax or license fee was imposed was not authorized by the very provisions of section 1 of Ordinance No. 3028. Such finding is not supported by the stipulation of facts. If the court below had in mind the percentage tax on sales of dry goods, as provided for in section 186 of Commonwealth Act No. 466, as amended by Republic Act No. 41, it is not municipal but national. If it had in mind the fee of P5 for permit to run a store in the city, as required by Ordinance No. 3000, such fee is not a municipal tax which would prevent the levy and collection of the municipal tax or license fee provided for in Ordinance No. 3028, as authorized by the enabling statute—section 2444 of the Revised Administrative Code, as amended by Act No. 3669 and Commonwealth Act No. 76.

Although not raised by the appellants the question of the real parties in interest crops up. The appellants are not the real parties in interest in this case. Section 2429 of the Revised Administrative Code, which was reenacted in section 3 of Republic Act No. 409, grants the City of Manila the authority to sue and be sued. We have not run across any Act of Congress which gives any one the authority to sue the City Mayor and Treasurer in lieu of the City of Manila as a public corporation. Any judgment that could be rendered against them for refund of license fees unlawfully levied and collected would be unenforceable against the City of Manila, and the funds of the latter in the possession or control of said officers could not be paid or disbursed by them to satisfy such judgment.

The judgment appealed from is reversed, the complaint dismissed, with costs against the appellee.

Paras, C.J., Feria, Pablo, Bengzon, Jugo, and Bautista Angelo, JJ., concur.

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