

THE PHILIPPINE LONG DISTANCE TELEPHONE CO., PLAINTIFF AND APPELLANT VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. L-3222. January 21, 1952

Ponente: JUGO, J.

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JUGO, J.:

The plaintiff Philippine Long Distance Telephone Company is a corporation organized and carrying on business under a special franchise granted by the Philippine Legislature, Act No. 3436 approved on November 28, 1928, as amended by Commonwealth Act No. 407, and under the franchise contained in Act No. 1368 of the Philippine Commission originally granted to John I. Sabin and Louis Glass on July 6, 1905, and acquired by the plaintiff on August 1, 1930, from its immediate predecessor, the Philippine Telephone and Telegraph Company, with the approval of the Public Service Commission.

Under Act No. 1368, sections 4 and 5, the company was subject to the franchise tax of 2% of all gross receipts. Under Act No. 3436, the franchise tax was reduced to 1%.

The plaintiff paid its franchise tax, but omitted thirteen item as basis of the tax, which may be grouped as follows:

Items

Amount Taxed

Amount of Tax

(a)

Amounts due from customers but uncollected and either written off or carried on plaintiff-appellant's (Items 1, 4, 5, 6, 7, 8, 12, and 13, ...

P167,417.25

P3,066.57

(b)

Amounts received from employees of the plaintiff-appellant for supplies and materials sold to them (Items 3, 9, 10, 11)

P5,401.17

P97.00

(c)

Uncollected amounts due from employees of the plaintiff-appellant for supplies and materials sold them (Item 3)

P1,161.28

P23.23

(d)

Interest on plaintiff-appellant's bank deposits (Item 2)

P448.65

P4.49

P174,428.35

P3,191.29

Some of the amounts of the tax in the above summary have been computed at 1 per cent, others at 2 per cent, and the remainder partly at 2 per cent and partly at 1 per cent, according to the Act under which the items accrued.

The complaint demanded the sum of P3,977.22 instead of P3,191.29 as appears in the above schedule. This is explained by the appellant, with the acquiescence of the appellee, as follows:

"While the amount in controversy as shown above is only P3,191.29, the complaint originally prays for judgment for the sum of P3,977.22 because it included the amount of P543.32 which defendant-appellee admits to have erroneously collected from plaintiff-appellant and, therefore, is obliged to refund to plaintiff-appellant, and the further sum of P242.61 which, is admitted by plaintiff-appellant to have been legally collected and therefore renounced its claim thereto."

The Collector of Internal Revenue demanded the payment of said sum of P3,977.22 and the plaintiff-appellant paid it under protest and asked for the ruling of the officer. The ruling being adverse, the plaintiff-appellant brought action in the Court of First Instance of Manila. The court absolved the defendant-appellee from the

plaintiff's complaint without pronouncement as to costs. The plaintiff appealed and here assigns the following errors:

"I

"The trial court erred in holding that the term 'gross receipts' in plaintiff-appellant's franchises includes amounts due from customers even if uncollected and not actually received by plaintiff-appellant and either written off or carried along on plaintiff-appellant's books.

"II

"The trial court erred in holding that: 'to construe the phrase gross receipts as meaning only actual receipts so as to exclude therefrom amounts which the plaintiff-appellant should have collected but failed to collect, would place a premium on the failure of the plaintiff-appellant to collect amounts receivable through no fault of the government. It would be tantamount to depriving the government of the revenue to which it is entitled, simply because the plaintiff-appellant has failed to collect said amounts.'

"III

"The trial court erred in finding 'that the phrase gross receipts should include all receipts of the plaintiff-appellant, not only in connection with the operation of the telephone and other electrical transmission business, but also all receipts derived from the exercise by the corporation of functions reasonably within its charter powers,' such as amounts received from employees of plaintiff-appellant for supplies and materials; uncollected amounts due from employees of plaintiff-appellant for supplies and materials sold to them; and interest on plaintiff-appellant's bank deposits.'

"IV

"The lower court erred in not ordering the defendant-appellee to refund to the plaintiff-appellant as demanded in the complaint the sum of P3,191.29 as franchise tax erroneously collected on amounts due from customers but uncollected and not received; amounts received from employees of plaintiff-appellant for supplies and materials; and interest on plaintiff-appellant's bank deposits.

"V

"The trial court erred in not granting judgment for the plaintiff-appellant for the sum of P543.32 as franchise taxes admitted by defendant-appellee to have been erroneously collected from plaintiff-appellant."

Referring to group (a) in the above summary, the appellant contends that it should not pay the franchise tax on the amounts due from customers but uncollected or written off or carried on appellant's books; in other words, that appellant should not pay the franchise tax on uncollected fees or amounts due from the regular customers, on the ground that they were not gross receipts. "Receipts" means amounts actually received, for otherwise they would not be receipts. If the words of the franchise were to be construed in their literal sense, independently of the organic act or the Constitution, the theory of the plaintiff-appellant may be plausible; but it should be noted that the Philippine Legislature granted the franchises through Acts Nos. 1368 and 3436 under the authority vested in it by Section 74 of the Philippine Bill of 1902, the first organic act, and by Section 28 of the Jones Law, which respectively reads as follows:

"That all franchises, privileges or concessions granted under this Act shall provide for the effective regulation of the charges thereof, for the official inspection and regulation of the books and accounts of the corporations, and for the payment of a reasonable percentage of gross earnings into the Treasury of Philippine Islands, or of the province or municipality within which such franchises are granted and exercised"

"That all franchises or rights granted under this act shall provide for the payment of a reasonable percentage of gross earnings to the Treasury of the Philippines, or of the province or municipality wherein such franchises are granted and exercised"

The acts of the Legislature granting the franchises should be construed so as not to contravene or violate the organic acts above mentioned, for otherwise said legislative acts would be null and void or unconstitutional. The organic acts use the word "earnings." A person may have earned his salary but may not have collected it, or may be unable to collect it from an insolvent employer. A person cannot demand payment of his unpaid salary unless he has earned it. This would show that to collect is a different act from to earn. Consequently, the uncollected "gross receipts" which should be construed as meaning the same thing as "gross earnings" should be subject to the franchise tax.

Therefore, the amounts above mentioned due from customers which are uncollected or written off or carried in the books are subject to the franchise tax in the amount of P3,066.57.

We pass to group (b). This must refer to some supplies of little value sold to employees for their convenience and that of the company, in connection with their work, considering that except the first amount of P3,572.56 (which is found under item 3 in the more detailed tabulation, pp. 13-15, appellant's brief), accrued for several years, the other amounts are small: P393.11, P943.50, for an old car sold to employee Recio, and P334 (Items 9, 10, and 11, of above-mentioned more detailed tabulation, pp. 13-15, appellant's brief). It does not appear that the company made profits out of these small transactions as mere facilities for its employees, extending over several years. Such being the case, it would seem far-fetched to imagine that they come within the franchise tax. It should be considered that the appellant has paid the regular sales tax on these small sales. Consequently, the franchise tax collected in said group in the amount of P97 should be refunded.

Coming to group (c), which refers to uncollected amounts due from employees of the plaintiff-appellant for supplies and materials sold to them, the same ruling would apply. The amount of P23.23 should be refunded.

Referring to the last group (d), that is, interests on plaintiff-appellant's bank deposits, in the amount of P448.65 the tax on which is P4.49, there is no doubt that said group represents profit of the company made in the course of its regular transactions in connection with its franchises.

The appellant argues that the Collector of Internal Revenue, previous to the transactions herein involved, had never collected the franchise tax on items of the same nature as those herein in question and this is strong evidence that such transactions are not subject to tax on the principle that a prolonged practice on the part of an executive or administrative officer in charge of executing a certain statute is an authoritative construction of great weight. This contention may be granted, but the principle is not absolute and may be overcome by strong reasons to the contrary. If through a misapprehension of law an officer has erroneously executed it for a long time, the error may be corrected when the true construction is ascertained. Such we deem to be the situation in the present case. Incidentally, the doctrine of estoppel does not apply here.

In view of the foregoing, the judgment appealed from is modified by ordering the defendant-appellee to refund to the plaintiff-appellant the sums of P543.32, P97.00, and P23.23 or a total of P663.55, without interest. In all other respects said judgment is affirmed, without pronouncement as to costs. So ordered.

Paras, C. J., Feria, Pablo, Bengson, Padilla, Tuason, and Reyes, JJ., concur.

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