

CALTEX (PHILIPPINES), INC., PLAINTIFF-APPELLEE, VS. THE CITY OF MANILA AND MANUEL CUDIAMAT, IN HIS CAPACITY AS CITY TREASURER, DEFENDANTS-APPELLANTS.

G.R. No. L-22764. July 28, 1969

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the decision of the Court of First Instance of Manila (Branch V) in its Civil Case No. 51867 ordering the defendant City Treasurer of Manila to pay to the plaintiff the sum of P1,100,390.00 with interest at the legal rate from October 10, 1962 until the said amount shall have been paid, and the costs of suit. The principal sum ordered to be paid was earlier assessed and collected from the plaintiff by virtue of Ordinance No. 3420 as amended, which imposes a quarterly tax on wholesale dealers in general merchandise based on their quarterly gross sales or receipts during the preceding quarter. The material facts are not in dispute and are even partially stipulated by the parties. Plaintiff—as holder of Refining Concession No. 1 under Republic Act No. 387 (otherwise known as the Petroleum Act of 1949)—is primarily engaged in scientifically processing crude oil into different finished petroleum products such as gasoline, kerosene, diesel oil, fuel oil, airplane jet fuel and liquid petroleum gas. For this purpose plaintiff maintains a petroleum refinery in Bauan, Batangas, several warehouses in Pandacan, Manila, where manufactured petroleum products are stored, and a main office at 540 Padre Faura, Ermita, Manila. In the past plaintiff used to sell its finished products directly from the Pandacan depot, where deliveries were made simultaneously with the sales. But beginning January 15, 1958 plaintiff adopted a completely revised merchandising system. Since then it has entirely disallowed sales of its products from its warehouses and adopted a new selling procedure whereby a customer may place his order only at plaintiff's main office at Padre Faura, Manila. The sale is then invoiced in the said office, after which the order is teletyped to the Pandacan depot, where actual delivery is made. In other words, the Pandacan depot has ceased to be a selling center; it has simply become a storage site and conveniently utilized as the delivery point of the petroleum products earlier sold.

With this newly-adopted operational set-up, plaintiff contends that it may not be considered a dealer anymore within the meaning of Ordinance No. 3420 as amended. Plaintiff's insistence on its non-liability for the payment of the wholesale dealer's tax is anchored on the premise that it is principally a manufacturer, not a dealer. In support of its argument plaintiff falls back on previous rulings of this Court in similar cases.

In *Central Azucarera Don Pedro vs. City of Manila*, 97 Phil. 627, plaintiff sought recovery of a certain sum collected from it by defendants under the authority also of Ordinance No. 3420 as amended, the same ordinance involved in the present case. Although plaintiff there admittedly sold the sugar that it manufactured, this Court did not consider it a dealer. The jurisprudence in the United States cited in that decision has defined the term "dealer" as a "person who makes a business of buying and selling goods, especially as distinguished from a manufacturer. . . a middleman between the producer and the consumer . . . one who buys to sell again . . . (who) stands between the producer and consumer, and depends for his profit not on the labor he bestows on his commodities, but on the

skill and foresight with which he watches the markets." Undoubtedly herein plaintiff is not a dealer under the foregoing definition, nor does it become one simply because it sells the products it manufactures, since the right to manufacture implies the right to sell the manufactured products. The exception recognized by this Court in the Central Azucarera case is if the manufacturer "carries on the business of selling goods or his products manufactured by him at a store or warehouse apart from his own shop or manufactory." That is not the situation of plaintiff here, to which the following statement in the cited decision is squarely applicable:

"It did not carry on the business of selling sugar at stores or at its warehouses. It entered into the contracts of sale at its central office in Manila and made deliveries of the sugar sold from its warehouses. It does not appear that the plaintiff keeps stores at its warehouses and engages in selling sugar in said stores. Neither does it appear that any one who desires to purchase sugar from it may go to the warehouses and there purchase sugar. All that it does was to sell the sugar it manufactured; it does not open stores for the sale of such sugar. Plaintiff-appellee did not, therefore, engage in the business of selling sugar."

The business set-up of the Central Azucarera de San Pedro and that of herein plaintiff in respect of the point at issue are almost identical. In both cases sales transactions are entered into and perfected at the respective main offices, where orders are received and approved before delivery orders are sent to the warehouses, where in turn actual deliveries are made. It is common policy for both not to permit warehouse sales; nor do they maintain any other separate stores where they may sell their products independently from their main office.

No new argument is raised by defendants which would justify our taking a second look at the established jurisprudence. Save for a blanket charge that herein plaintiff revised its merchandising procedure in order to come within the scope of the Central Azucarera de San Pedro doctrine, thereby availing of the advantageous consequences thereof, defendants have not effectively shown why the operational set-up followed by plaintiff should be treated differently from that involved in the former case. Neither can we subscribe to the thesis that plaintiff deliberately revised its selling procedure in order to avail of the Central: Don Pedro ruling. It must be noted, as plaintiff points out, that if "appellee in the case at bar really wanted to modify the procedure in its sales operations so as to fall within the ambit of the Central Don Pedro ruling, it would have done so shortly after the promulgation of the decision of this (Supreme) Court on September 29, 1955 and not after almost three years, or on January 15, 1958. Such long interval of time clearly shows that the change was brought about because of other factors or considerations, ..." Thus, as shown by plaintiff, the increased volume of its sales necessitated a more effective control and closer supervision in the extension of credit facilities to its customers; certainly in changing its selling procedure, which in its opinion was done to make for greater efficiency, its act can hardly be considered as anomalous just because it enabled plaintiff to reduce, or even totally avoid, a tax liability.

The change adopted by plaintiff in its merchandising procedure is not as insignificant as defendants wish to make it appear. We perceive no relevance in the place where the warehouse utilized as storage by the manufacturer is situated—whether at its manufactory or at some other site—in the case of appellee, whether at its plant in Bauan, Batangas, or in Manila. In either alternative, delivery to customers must necessarily be made at the warehouse, and that fact is immaterial to the question of whether or not the manufacturer should be considered as a dealer. But there is an appreciable difference between a situation in which the warehouse, situated apart from the manufactory, is utilized at the same time as a business store where sales are actually made to whoever may come to buy, and a situation where the sales transactions are entered into in the main office and the warehouse is used only as a convenient site where to make the corresponding deliveries. Thus in *Cebu Portland Cement Company vs. City of Manila*, G. R. L-14229, July 26, 1960, this Court, speaking through Mr. Justice J. B. L. Reyes, said:

"In the case at bar, while it is not disputed that the appellee maintains a warehouse in Manila apart from its factories at Naga, Cebu and Bacnotan, La Union, as in the aforecited case of *Central Azucarera Don Pedro vs. City of Manila*, supra, it does not appear, however, that the company keeps a store at the said warehouse nor makes its sales thereat. Upon the other hand, it seems that contracts of sale are perfected at appellee's central office in Manila, which thereafter makes the deliveries of the cement sold from its warehouse. Accordingly, we cannot consider appellee a dealer within the taxing ordinance in question."

WHEREFORE, the decision is affirmed. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee and Barredo, JJ., concur.

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