

MINDANAO BUS COMPANY, PETITIONER, VS. THE CITY ASSESSOR & TREASURER AND THE BOARD OF TAX APPEALS OF CAGAYAN DE ORO CITY, RESPONDENTS.

G.R. No. L-17870. September 29, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a petition for the review of the decision of the Court of Tax Appeals in C.T.A. Case No. 710 holding that the petitioner Mindanao Bus Company is liable to the payment of the realty tax on its maintenance and repair equipment hereunder referred to.

Respondent City Assessor of Cagayan de Oro City assessed at P4,400 petitioner's above-mentioned equipment. Petitioner appealed the assessment to the respondent Board of Tax Appeals on the ground that the same are not realty. The Board of Tax Appeals of the City sustained the city assessor, so petitioner herein filed with the Court of Tax Appeals a petition for the review of the assessment.

In the Court of Tax Appeals the parties submitted the following stipulation of facts:

"Petitioner and respondents, thru their respective counsels agreed to the following stipulation of facts:

"1. That petitioner is a public utility solely engaged in transporting passengers and cargoes by motor trucks, over its authorized lines in the Island of Mindanao, collecting rates approved by the Public Service Commission;

"2. That petitioner has its main office and shop at Cagayan de Oro City. It maintains Branch Offices and/or stations at Iligan City, Lanao; Pagadian, Zamboanga del Sur; Davao City and Kibawe, Bukidnon Province;

"3. That the machineries sought to be assessed by the respondent as real properties are the following:

"(a) Hobart Electric Welder Machine, appearing in the attached photograph, marked Annex 'A';

"(b) Storm Boring machine, appearing in the attached photograph, marked Annex 'B';

"(c) Lathe machine with motor, appearing in the attached photograph, marked Annex 'C';

"(d) Black and Decker Grinder, appearing in the attached photograph, marked Annex 'D';

"(e) PEMCO Hydraulic Press, appearing in the attached photograph, marked Annex 'E';

"(f) Battery charger (Tungar charge machine) appearing in the attached photograph, marked Annex 'F'; and

"(g) D-Engine Waukesha-M-Fuel, appearing in the attached photograph, marked Annex 'G'.

"4. That these machineries are sitting on cement or wooden platforms as may be seen in the attached photographs which form part of this agreed stipulation of facts;

"5. That petitioner is the owner of the land where it maintains and operates a garage for its TPU motor trucks; a repair shop; blacksmith and carpentry shops, and with these machineries which are placed therein, its TPU trucks are made; body constructed; and same are repaired in a condition to be serviceable in the TPU land transportation business it operates;

"6. That these machineries have never been or were never used as industrial equipments to produce finished products for sale, nor to repair machineries, parts and the like offered to the general public indiscriminately for business or commercial purposes for which petitioner has never engaged in, to date."

The Court of Tax Appeals having sustained the respondent city assessor's ruling, and having denied a motion for reconsideration, petitioner brought the case to this Court assigning the following errors:

"1. The Honorable Court of Tax Appeals erred in upholding respondents' contention that the questioned assessments are valid; and that said tools, equipments or machineries are immovable taxable real properties.

"2. The Tax Court erred in its interpretation of paragraph 5 of Article 415 of the New Civil Code, and holding that pursuant thereto, the movable equipments are taxable realties, by reason of their being intended or destined for use in an industry.

"3. The Court of Tax Appeals erred in denying petitioner's contention that the respondent City Assessor's power to assess and levy real estate taxes on machineries is further restricted by section 31, paragraph (c) of Republic Act No. 521; and

"4. The Tax Court erred in denying petitioner's motion for reconsideration."

Respondents contend that said equipments, the movable, are immobilized by destination, in accordance with paragraph 5 of Article 415 of the New Civil Code which provides:

"ART. 415.—The following are immovable properties:

* * * * *

"(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which maybe carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works." (Italics ours.)

* * * * *

Note that the stipulation expressly states that the equipment are placed on wooden or cement platforms. They can be moved around and about in petitioner's repair shop. In the case of *B. H. Berkenkotter vs. Cu Unjieng*, 61 Phil. 663, the Supreme Court said:

"Article 344 (Now Art. 415), paragraph (5) of the Civil Code, gives the character of real property to 'machinery, liquid containers, instruments or implements intended by the owner of any building or land for use in connection with any industry or trade being carried on therein and which are expressly adapted to meet the requirements of such trade or industry.'

"If the installation of the machinery and equipment in question in the central of the Mabalacat Sugar Co., Inc., in lieu of the other of less capacity existing therein, for its sugar industry, converted them into real property by reason of their purpose, it cannot be said that their incorporation therewith was not permanent in character because, as essential and principal elements of a sugar central, without them the sugar central would be unable to function or carry on the industrial purpose for which it was established. Inasmuch as the central is permanent in character, the necessary machinery and equipment installed for carrying on the sugar industry for which it has been established must necessarily be permanent." (Italics ours.)

So that movable equipments to be immobilized in contemplation of the law must first be "essential and principal elements" of an industry or works without which such industry or works would be "unable to function or carry on the industrial purpose for which it was established." We may here distinguish, therefore, those movables which become immobilized by destination because they are essential and principal elements in the industry from those which may not be so considered immobilized because they are merely incidental, not essential and principal. Thus, cash registers, typewriters, etc., usually found and used in hotels, restaurants, theaters, etc. are merely incidentals and are not and should not be considered immobilized by destination, for these businesses can continue or carry on their functions without these equipments. Airline companies use forklifts, jeep-wagons, pressure pumps, IMB machines, etc. which are incidentals, not essentials, and thus retain their movable nature. On the other hand, machineries of breweries used in the manufacture of liquor and soft drinks, though movable in nature, are immobilized because they are essential to said industries; but the delivery trucks and adding machines which they usually own and use and are found within their industrial compounds are merely incidentals and retain their movable nature.

Similarly, the tools and equipments in question in this instant case are, by their nature, not essential and principal elements of petitioner's business of transporting passengers and cargoes by motor trucks. They are merely incidentals—acquired as movables and used only for expediency to facilitate and/or improve its service. Even without such tools and equipments, its business may be carried on, as petitioner has carried on, without such equipments, before the war. The transportation business could be carried on without the repair or service shop if its rolling equipment is repaired or serviced in another shop belonging to another.

The law that governs the determination of the question at issue is as follows:

" * * * * *

ART. 415. The following are immovable property:

"(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;" (Civil Code of the Phil.)

Aside from the element of essentiality the above-quoted provision also requires that the industry or works be carried on in a building or on a piece of land. Thus in the case of *Berkenkotter vs. Cu Unjieng*, supra, the "machinery, liquid containers, and instruments or implements" are found in a building constructed on the land. A saw-mill would also be installed in a building on land more or less permanently, and the sawing is conducted in the land or building.

But in the case at bar the equipments in question are destined only to repair or service the transportation business, which is not carried on in a building or permanently on a piece of land, as demanded by the law. Said equipments may not, therefore, be deemed real property.

Resuming what we have set forth above, we hold that the equipments in question are not absolutely essential to the petitioner's transportation business, and petitioner's business is not carried on in a building, tenement or on a specified land, so said equipment may not be considered real estate within the meaning of Article 415 (c) of the Civil Code.

Wherefore, the decision subject of the petition for review is hereby set aside and the equipment in question declared not subject to assessment as real estate for the purposes of the real estate tax. Without costs. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Reyes, J. B. L., Paredes, Dizon, and Makalintal, JJ., concur.

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