

SANTIAGO M. BERMEJO, PLAINTIFF AND APPELLANT, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. L-3029. July 25, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

Action by Santiago M. Bermejo to recover the sums which he has paid the Collector of Internal Revenue for taxes.

On June 25, 1946, said officer determined, and so informed Bermejo, that for sales of nipa shingles and charcoal made in the third quarter of 1945 and from October to November of 1945, the latter owed the Government the sum of P1,083.75. He objected to the assessment, contending mainly that the products were agricultural, and as such, free from taxation; but after the exchange of some correspondence he at last proposed to pay the tax by installments, without prejudice to whatever action he may take on the matter. His request was granted. After paying the first installment, he sued for recovery.

The defendant made answer maintaining the validity of the assessment and levy. But before the trial, he submitted a motion for dismissal of the complaint on the ground that the plaintiff had not complied with the provisions of section 306 of the Internal Revenue Law, inasmuch as said plaintiff had not, before suing, filed a claim with the Collector for the refund of the amount he had delivered. The court postponed decision on the motion and heard the case. Afterwards, the Honorable Fernando Hernandez, Judge, absolved the defendant on two grounds, to wit: (a) plaintiff failed to comply with section 306; and (b) the tax had been properly imposed.

The plaintiff appealed.

Refuting the first ground of dismissal, he argues that section 306 had been substantially complied with, because previous to the institution of this proceeding, there were letters sent to the Collector protesting against the tax. Section 306 reads as follows:

"Sec. 306. Recovery of tax erroneously or illegally collected.—No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; * * *." (Com. Act No. 466)

The law clearly stipulates that after paying the tax, the citizen must submit a claim for refund before resorting to the courts. The idea probably is, first, to afford the Collector an opportunity to correct the action of subordinate officers; and second, to notify the Government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure. Previous objections to the tax may not take the place of that claim for refund, because there may be some reason to believe that, in paying, the taxpayer has finally come to realize the validity of the assessment. Anyway, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied here and in the United States[1]

Going into the merits of the controversy, we notice that the issue is the application of section 194(x) of the National Internal Revenue Code to a person who, for profit, makes nipa shingles or produces charcoal.

For convenience, said provision of law is reproduced:

"(x) 'Manufacturer' includes every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or product of the same or of different kinds and in such manner that the finished product of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption. (Sec. 194[x], Com. Act No. 466)

Nipa shingles are made in this manner: Nipa leaves (the compound leaves) are cut from nipa trees, which are grown and cultivated like other plants. The small long leaflets are then removed from the stem or stalk. These leaflets are folded over a bamboo stick of convenient length and then sewed together with nipa midribs locally known as "pipis". Then the shingle is ready for the market, for use as roofing material. Unless converted into shingles, nipa leaves may not be used, and are not used, for roofing; although they may be utilized for partitions, windows and doors.

In the light of section 194(x), it seems clear that in making nipa shingles, the plaintiff altered by physical process the exterior form of the nipa leaves in such manner as to prepare them for special use (as roofing material), to which the leaves could not be dedicated in their original condition. He also combined nipa raw materials with other materials (bamboo sticks) in such manner that the finished product (nipa shingle) may be put to a special use (roofing) to which neither the bamboo nor the nipa could have been destined.

In principle, the nipa shingle industry could not be distinguished from hat-weaving or mat-weaving or the making of sawali. These are admittedly Philippine "manufactures". (See Miller, Principles of Economics Applied to the Philippines, pp. 466 et seq.)

On the other hand, charcoal is produced by plaintiff as follows: Trees growing in the swamps are felled and cut into pieces of a certain length and size. The pieces are piled in a pit or oven. They are covered with cogon and earth. Then fire is set on them for several days. When the smoke becomes clear, the pit or oven is closed, the fire is extinguished and the wood has become charcoal.

It is common knowledge that charcoal is locally used for ironing clothes. Firewood would not do. Charcoal has also some scientific usefulness which is not possessed by firewood.

" * * * Charcoal is used in the arts as * * *; a filter, a defecator and decolorizer of solutions and water; an absorbent of gases and aqueous vapors; a non-conducting packing in ice houses, safes and refrigerators; an ingredient in gunpowder and fireworks; and in the galvanic battery and the electric light, * * *" (The Encyclopedia Americana, Vol. 6, p. 303.)

The application of section 194(x) to charcoal is more easily perceivable. The process is a chemical or physical process altering the exterior texture and inner substance of the firewood in such manner as to prepare it for special uses to which firewood may not be dedicated. Wherefore, in making charcoal for the market, plaintiff

became a manufacturer within the meaning of the law.

Judgment affirmed, with costs.

Ozaeta, Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

[1] Wee Poco vs. Posadas, 64 Phil., 640.

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