

**CENTRAL AZUCARERA DE DON PEDRO, PLAINTIFF AND APPELLEE,
VS. CITY OF MANILA AND M. SARMIENTO, AS CITY TREASURER OF
MANILA, DEFENDANTS AND APPELLANTS.***G.R. No. L-7679. September 29, 1955*

Ponente: LABRADOR, J.

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This is an appeal from a judgment of the Court of First Instance of Manila, ordering the defendant-appellant City Treasurer of Manila to refund to the plaintiff-appellee the sum of P6,208.40, with interest at the legal rate from May 8, 1952 until the said amount shall have been paid. The sum ordered to be refunded was assessed and collected from the plaintiff-appellee partly under Section 1, Municipal Ordinance No. 3420, imposing a municipal tax on wholesale dealers, and partly under Section 1, Municipal Ordinance No. 1925, as amended by Ordinance No. 3364, imposing a tax on retailers.

According to the stipulation of facts, plaintiff-appellee is engaged in milling and manufacturing sugar from sugar cane, for which purpose it operates and maintains a sugar mill where sugar cane is processed, warehouses where manufactured sugar is stored, a main office in Manila and a branch office in the Municipality of Nasugbu, Batangas. In November, 1950, plaintiff-appellee agreed to sell sugar to Kim Kee, Chua Yu & Co., Inc., and pursuant thereto deliveries of sugar were made to the purchaser on different dates in 1951. In November, 1950, plaintiff-appellee also agreed to sell sugar to the San Miguel Brewery, and in the year 1951 deliveries of the sugar so sold were made to the purchaser. Kim Kee Chua Yu & Co., Inc. purchased the sugar for resale, while the San Miguel Brewery, for the manufacture of soft drinks. The sugar sold and delivered was taken from warehouses of the plaintiff-appellee and was delivered partly in the City of Manila, partly in Pasay City, and partly in Nasugbu, Batangas.

The defendant-appellant claims that the plaintiff-appellee is a dealer in sugar in the City of Manila. Plaintiff-appellee claimed the refund of the amounts, which it had paid under protest, contending that it has never been engaged in the wholesale business or in the retail business in the City of Manila or elsewhere. The Court of First Instance of Manila found that plaintiff-appellee is not a wholesale or a retail dealer at all, but is a manufacturer of sugar from sugar cane in its sugar central and that the sale of the sugar from its mills does not make it a dealer in sugar. Defendant has appealed from this decision.

It is argued that when the plaintiff-appellee made the sales to Kim Kee, Chua Yu & Co., Inc. it made a wholesale sale and when it made sales to the San Miguel Brewery for the manufacture of soft drinks said sales were in retail; that as the sales were made in the City of Manila because the contracts of sale were apparently made in Manila, the letter offering the sugar for sale having been written from plaintiff's office in Soriano Building, Manila, plaintiff-appellee is taxable not as a manufacturer of sugar, but as a dealer of sugar in the City. The case of *Atlantic Refining Co. vs. Van Valkenburg*, 109 A. 208, 209, 265 Pa. 456, cited in 11 Words and Phrases, pp. 155-156, is cited in support of the above contention.

The citation does not support appellants' contention. The citation says "One who carries on business of selling goods, wares and merchandise, manufactured by him at a store or warehouse apart from his own shop, or manufactory, is a dealer therein subject to tax * * *." It may be admitted that the manufacturer becomes a dealer if he 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. But plaintiff-appellee 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.

A dealer is defined "as a person who makes a business of buying and selling goods, especially as distinguished from a manufacturer, without altering their condition * * *." (Webster's International Dictionary) It has also been held that a dealer as used in a law taxing wholesale liquor dealers "cannot be construed to mean a manufacturer who sells articles manufactured by him; * * *. A manufacturer of whisky or other spirituous liquors, who sells from his place of manufacture in unbroken packages, or as a manufacturer, is not a wholesale dealer in whisky. A dealer is a middleman between the producer and the consumer. A dealer, in the popular acceptance or sense of the word, is one who buys to sell again. He stands immediately between the producer and consumer, and depends for his profits' not on the labor he bestows on his commodities, but on the skill and foresight with which he watches the markets. Taylor vs. Vincent, 80 Tenn. (12 Lea) 282, 285, 47 Am. Rep. 338." (11 Words and Phrases, pp. 158-159) Again it has been held that the word dealer "does not comprehend a person who merely buys a commodity in one form and converts it by his skill and labor into an entirely different commodity, and then sells it, such, for example, as one who buys lumber, with which he manufactures furniture or any other useful commodity that he sells, cannot be termed a 'dealer in lumber.' * * *." (11 Words and Phrases, p. 159)

In the case at bar, plaintiff-appellee receives sugar cane which it mills and converts into sugar. In making the sale of the sugar it has manufactured, it may be liable for the manufacturer's tax, or the producer's tax. But the mere fact that it sells the sugar it manufactures does not thereby make it a dealer in sugar.

"* * *. The right to manufacture necessarily implies the right to sell the manufactured product at the manufactory. One who thus sells the liquors mentioned in the statute, manufactured by him, is not a 'wholesaler' of liquors, within the popular or legal definition of that word. The provision that 'no person paying a manufacturer's tax on brewed or malt liquors under this Act shall be liable to pay a wholesale dealer's tax on the same' neither enlarges nor restricts the right of the manufacturer to sell his product. The statute, without this language, would give him the same right of sale that he has with it, viz., the right to sell his product at his brewery. The manufacturer is entitled to keep his goods in store at the place of manufacture for the purpose of sale when receiving orders, and in so doing is not a 'wholesaler,' within the popular or legal definition of that word. 'Articles which the consumer recognizes as single the retailer keeps wrapped up in dozens, the wholesaler sends by the gross, and the manufacturer supplies the packages.' 8 Cent. Diet. Enc, under definition of the word 'wholesaler.'" (People vs. Voarhis, 91 NW 624, 626)

We, therefore, find that the judgment appealed from is in accord with law and we hereby affirm it, with costs against the defendant-appellant.

Bengzon, Acting C. J. Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

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