

THE ASIATIC PETROLEUM COMPANY (LTD.), PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 12687. August 27, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

For the reason that the facts were analogous, this case was heard and decided with cause No. 13400 [of the Court of First Instance of Manila], entitled "The Asiatic Petroleum Company (Ltd.) vs. The Collector of Customs and The Collector of Internal Revenue."

The only question presented by this appeal is whether or not a dealer is required to pay the internal revenue tax, provided for under section 17, (paragraph 72a) of Act No. 2432, upon mineral oils, composed of kerosene and gasoline which had been sold, but not delivered, prior to the first day of January, 1915.

The facts in this case are not in dispute. They are:

The defendant, under threat of penalty, compelled the plaintiff to pay the internal revenue tax provided for under above said section of Act No. 2432 upon all such oils which the plaintiff had on hand on the first day of January, 1915, whether or not the same had been sold theretofore or not. The tax was paid under protest.

The plaintiff contends that the tax collected was illegal, for the reason that the law had expressly relieved him from the necessity of paying the same on all such oils which he had "disposed of to consumers or persons other than manufacturers or wholesale dealers, prior to January 1, 1915"; that inasmuch as he had made a valid and legal sale of such oils before January 1, 1915, even though the same had not been actually delivered, they had been "disposed of," and he was therefore relieved from the necessity of paying the tax imposed by said Act (No. 2432, section 17). No contention is made that the oils "disposed of" had been "disposed of" to "manufacturers or wholesale dealers."

Section 17 (paragraph 72a) of Act No. 2432, among other things, provides that "no tax (imposed by this law) shall be collected on such articles which, before the taking effect of this Act, shall have been disposed of to consumers or persons other than manufacturers or wholesale dealers." Said Act took effect upon the first day of January, 1915.

Considering the provisions of said quoted section, it is clear that the plaintiff could not be compelled to pay the tax imposed by said Act upon mineral oils which had been disposed of to consumers or persons, etc., prior to the first day of January, 1915. That being true, the question is presented; Were the oils in question which plaintiff had sold, but which he had not delivered, prior to the first day of January, 1915, "disposed of" so as to relieve him from the necessity of paying the tax? No question is raised as to oils sold and delivered prior to January 1, 1915.

This question involves an interpretation of the phrase "disposed of" as used in said section. If it means that the vendor must "sell and deliver," then the oils in question were not "disposed of." If, upon the other hand, the phrase

means simply that the vendor has "sold," then the oils in question were "disposed of." If the Legislature had intended that the phrase "disposed of" meant "sold and delivered," it is strange that it did not use the latter phrase. The Legislature evidently took into consideration the custom of merchants in their use of the phrase "disposed of." That phrase is used in the law evidently in its commercial sense and not in a technical sense. Words and phrases, which are in common use among merchants and are found in a law, should not be given a new and strange interpretation, but should be given that meaning which generally is given and accepted, in the community where the law applies and where the word or phrase has been in common use.

If A should step into the store of B and say to B that he desired to purchase 5 sacks of rice, and should then and there pay for the same, even though they were not then and there delivered, B would be perfectly justified, in taking an inventory of his business, in noting that the 5 sacks of rice had been "disposed of." We believe that this is the signification which the Legislature intended to give the phrase. Of course, subsequent events, or change of circumstances might alter the situation and give rise to other questions relating to the rice.

Merchandise may be "disposed of" even though the price has not been paid nor the same delivered. A sale may be perfected between vendor and vendee and may be binding on both of them, if they have agreed upon the thing, the object of the contract and the price, even though the price had not been paid nor the merchandise delivered. (Art. 1450, Civil Code.)

The Legislature, by Act No. 2445, fully recognized that the phrase "disposed of" meant nothing more or less than a contract whereby the vendor was bound to furnish an article, because in said Act (No. 2445) it provided that "whenever any person has prior to the enactment of this law (2432) entered into a contract whereby he has bound himself to furnish to another an article subject to the tax or increased rate of tax * * *," the purchaser, and not the vendor, was subject to pay such tax in the absence of stipulations to the contrary.

We are of opinion that the plaintiff had "disposed of" the mineral oils in question before the first day of January, 1915, and was therefore relieved from the necessity of paying the internal revenue tax imposed by the defendant.

Therefore, it is hereby ordered and decreed that the judgment of the lower court should be and is hereby affirmed, with costs. Let a judgment be entered in accordance herewith. So ordered.

Arellano, C. J., Torres, Street, Malcolm, and Fisher, JJ., concur.

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