

CITY OF MANILA, PLAINTIFF AND APPELLANT, VS. FORTUNE ENTERPRISES, INC., DEFENDANT AND APPELLEE.

G.R. No. 14096. July 26, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

From the judgment of the Court of First Instance of Manila, dismissing the plaintiff's complaint in Civil Case No. 31431, the City of Manila interposed, directly to this Court, the instant appeal on issues of law.

This action was instituted by the plaintiff city, seeking to recover from the defendant, Fortune Enterprises, Inc., the sum of P3,060.00, representing the license fees, mayor's permit fees, and surcharges for the businesses of auto supplies, battery charging and upholstery, for the periods therein contested, imposed pursuant to Ordinances Nos. 3338, 2989, 2678 and 3000 of the City of Manila.

The facts are well-stated in the decision of the court below.

Prior to 1953 up to November, 1954, the defendant had engaged in the business of automobile repairing, with its office and shop located at the corner of Echague and P. Casal Streets, Manila. For said repair business, the company paid all taxes, license fees, and mayor's permit fees required by the National Government and by the City Government of Manila.

When a customer brought a car or vehicle for repair, the defendant would inquire from him the repairs to be done and would make a list thereof in a job list, and if materials were needed to be used, the defendant would ask the car-owner whether the same would be supplied by him or by the defendant. The latter did not carry a stock of automobile spare parts in its establishment for sale to the public. It secured the necessary spare parts by buying them from different automobile supply stores in the City. And every time the defendant installed said automobile spare parts, it was always in connection with a job order. For its auto repair business, the company paid the corresponding contractor's tax of 3% on its gross receipts including labor and materials.

In connection also with its auto repair shop, the defendant has a battery charging unit for the exclusive use of its customers, but the same was not allowed to be used without any repair job to be done. The upholstering, when needed by a customer, was done by outside contractors. Hence, if a customer wanted a new set of seat covers, the defendant arranged the matter with an outside contractor, who is not included in the defendant's payroll nor regularly employed by it. However, the defendant usually advanced the money to the outside contractor for the purchase of the required upholstering materials from outside, which accounts for their cost being included in the receipts of payment issued by the defendant to its customers. Defendant does not carry a stock of upholstering materials for sale to its customers or to the public.

In this appeal, the appellant, City of Manila, urges the reversal of the lower court's opinion that the appellee, Fortune Enterprises, Inc., may not be regarded as a retail dealer of automobile spare parts under the foregoing statement of facts, and that, likewise, it may not be held liable for the payment of the necessary license fees and

mayor's permit fees for its battery charging and upholstering services.

We find no error in the judgment appealed from. In *Manila Press, Inc. vs. Sarmiento, etc.*, 99 Phil., 31; 53 Off. Gaz. (1) 98, this Court, resolving the issue of whether or not the plaintiff, a printing company, should be considered as a retail dealer in paper, stationeries and book supplies in so far as the same were used by it in performing its printing jobs for its customers, held:

"* * * There is no question that as to books, papers, stationeries and office supplies on which no printing work was performed, plaintiff-appellant merely acted as a retail dealer, subject to tax under Group 2. But when it printed on such papers, stationeries and office supplies the names of its customers, it acted merely as a printer and the receipts from them for the stationeries and office supplies on which customers' names were printed were not receipts for the sales of a retail dealer, but receipts of a printer. In doing the work, plaintiff-appellant's principal service was that of a printer, and not that of a retail dealer. The value of the printing work done is considerably more than that of the material used for the printing, and although there is also a sale of the paper and material on which the printing job is done, this a mere incident of the service, the nature of the transaction being determined by the principal purpose, which is that of the printing and not of the incidental sale. This is the consensus of authority."

The foregoing ruling brings out the point that where something is done as a mere incident to, or as a necessary consequence of, the principal business, it is not ordinarily taxed as an independent business in itself; and that what is usually taken as essential is the main activity in which the taxpayer is engaged. All the various transactions tending to better accomplish the principal end in view must be treated as merely incidental to the principal purpose of the business, in the absence of circumstances evidencing a different intent.

In *Standard Vacuum Oil Co. vs. Antigua*, 96 Phil., 909; 51 Off. Gaz., 2405, we likewise held:

"When a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity or work which is merely a part of, incidental to and is necessary to its main business."

In this case, we cannot consider the appellee, besides being engaged in the auto repair business, as having gone into the business of retailing auto supplies, battery charging and upholstery. It does not appear that the appellee company carries or keeps in stock auto spare parts and other supplies for sale or as likewise a part of its regular business. Upon the other hand, the records disclose that said spare parts or supplies are merely procured from different automobile spare parts dealers around the city where the customers prefer it that way and do not wish to secure them themselves, and only when said materials are needed in connection with the repairing job to be done by it. It is not even shown that the company charges an extra profit for the spare parts used or needed in the repair. If at all, the appellee was merely buying the required materials for and in behalf of its customers. Of course, "dealing" is not incompatible with agency, but it has a persuasive effect in negating the fact that the appellee has regularly engaged in that business as to come within the term "dealer" under the taxing ordinances in question.

For similar reasons, the appellee may not be considered as having engaged also in the business of battery charging. In maintaining the battery charging unit in question, it appears that the same was not allowed to be used unless as a part of a repair service. As regards the upholstering business, it is not disclosed that the appellee actually engages in it. On the contrary, it was satisfactorily established that whenever a customer required an upholstering job, the same was done by outside contractors, but that the money is only advanced by the appellee, more as a matter of convenience to its customers, which in a way also tends to promote its goodwill.

That the materials were itemized as separate charges does not evidence an intent to supply them as a separate transaction, since the itemization served to allay any suspicion of the customers that they were being overcharged

for the materials thus supplied.

With the foregoing conclusions, it is unnecessary for us to dwell further into the other issues raised in the appeal.

Wherefore, the judgment of dismissal appealed from is hereby affirmed. No costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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