

CEBU PORTLAND CEMENT COMPANY, PLAINTIFF AND APPELLEE, VS. CITY OF MANILA AND THE CITY TREASURER OF MANILA, DEFENDANTS AND APPELLANTS.

G.R. No. 14229. July 26, 1960

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

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

This action was brought in the Court of First Instance of Manila by the Cebu Portland Cement Company against the City of Manila and the City Treasurer, seeking to recover the sum of P41,864.85, representing the alleged liability of the said company for retailer's tax under City Ordinance No. 3816, plus the penalty for late payments and which were paid under protest by the plaintiff.

The parties do not dispute the correctness of the lower court's findings of fact, stated as follows:

"The plaintiff is a manufacturer of Apo Portland Cement with two cement factories outside of the City of Manila, to wit: The Naga Cement Plant, located at Naga, Cebu and the Bacnotan Cement Plant, located at Bacnotan, La Union. It has its principal office and & warehouse in the City of Manila from which it distributes and disposes of its manufactured cement to consumers. For the period from July 1, 1956 to September 30, 1956, the plaintiff company made retail sales of cement in the total amount of P3,805,895.60. On or about October 10, 1956, defendant City Treasurer of Manila assessed and demanded from the plaintiff the sum of P38,058.95 as retailer's tax for the quarter ending December 31, 1956, on the basis of said sales made during the preceding quarter. On December 8, 1956, the plaintiff company paid under protest the sum of P41,864.84, as such tax, including the 10 per cent surcharge penalty for late payment."

Plaintiff contested the imposition of the tax on the ground that as a manufacturer selling its own products, it was not subject to the dealer's tax prescribed under the ordinance in question. Defendants, on the other hand, contended that "although the plaintiff is a manufacturer, since it has its factories outside Manila and maintains and operates apart from such factories a warehouse in said city 'from which it distributes and disposes of its manufactured cement to consumers', the plaintiff is a retail dealer subject to the tax" aforementioned to the extent of its retail sales.

The court below rendered a decision sustaining plaintiff's view and ordering the refund of the amount claimed by it. Not agreeable to the judgment, defendants interposed their appeal to the Court of Appeals, but, upon appellants' own motion, the case was elevated to this Court. In this instance, the parties reiterate their respective contentions below.

There is merit in appellants' argument that City Ordinance No. 3816 of the City of Manila, which seeks to impose a dealer's tax on the sale of general merchandise, was enacted pursuant to paragraph (o) of Section 18 of Republic Act No. 409, otherwise known as the Charter of the City of Manila, rather than under paragraph (n) thereof as mistakenly believed by the lower court. The pertinent provisions of the said paragraphs read, and we quote:

"Sec. 18. Legislative Powers.—The Municipal Board shall have the following legislative powers:

* * * * *

(n) To tax and fix the license fees on * * * manufacturers of * * * cement products * * * and construction materials.

"Manufacturers above mentioned shall not be subject to the payment of any municipal tax or license as retail dealers of their own products * * *."

(o) To tax and fix the license fee on dealers in general merchandise, including importers and indentors, except those dealers who may be expressly subject to the payment of some other municipal tax under the provisions of this Section."

As it may be observed, paragraph (n) refers to the authority to impose taxes and license fees on manufacturers, while the other has reference to the authority to make similar impositions on dealers of general commodities.

The question then arises as to whether the plaintiff-appellee may be considered a dealer within the meaning of the taxing ordinance. Neither the charter nor City Ordinance 3816 provides much clarification on the matter. On the other hand, authorities seem not to conflict in excluding a manufacturer from coming within the term "dealer" for purposes of the imposition of a dealer's tax or license fee where it only deals on or sells its own products (see 55 C.J.S. 672-674, 702-703; 37 C.J. 224, and cases cited therein; *City of Manila vs. Bugsuk Lumber Co.*, 101 Phil., 859; 53 Off. Gaz., 6111). The sole exception to this rule appears to be when the manufacturer carries on business of selling its own products at stores or warehouses apart from its place of manufacture (see authorities cited, *supra*; *Atlantic Refining Co. vs. Van Valkenburg*, 109 A. 208; *Manila Tobacco Association, Inc. vs. City of Manila, et al.*, 102 Phil., 653; 54 Off. Gaz. [38] 8613). Construing such exception, however, this Court held that the same would apply only where the manufacturer engages in the selling of its products at its very stores or warehouses, but not where the manufacturer maintains the warehouses merely for storage purposes, and from where it makes deliveries of the goods when sold. In the words of the Court—

"The citation does not support appellant's contentions. The citation says 'One who carries on the 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 manufactures; it does not open stores for the sale of such sugar. Plaintiff-appellee did not, therefore, engage in the business of selling sugar." (*Central Azucarera Don Pedro vs. City of Manila, et al.*, 97 Phil., 627).

In the case at bar, while it is not disputed that the appellee maintains a warehouse in Manila apart from its factories at Naga, Cebu and Bacnotan, La Union, as in the aforecited case of *Central Azucarera Don Pedro vs. City of Manila, supra*, it does not appear, however, that the company keeps a store at the said warehouse nor makes its sales thereat. Upon the other hand, it seems that contracts of sale are perfected at appellee's central office in Manila, which thereafter makes the deliveries of the cement sold from its warehouse. Accordingly, we cannot consider appellee a dealer within the taxing ordinance in question.

The city's thesis that a manufacturer must sell at the place of its factory in order to escape being held to be a dealer does not take into account the difference in the controlling factors that determine the selection of production and marketing sites. Factories are established where cheap material and labor are obtained; sales centers, on the other hand, are sited where the demand for the finished product is greatest. No one expects a plywood or fruit canning

factory to be established at urban centers where no raw material is accessible. Should we expect the manufacturer to sell plywood only at the forest, or canned fruit only at the plantation? To exact that sales be made at the production site is to deny access to adequate markets and discourage volume production. The law recognizes this situation when it provides that—

"Manufacturers shall not be subject to the payment of any municipal tax or license as retail dealers of their own products." (Sec. 18 (n), R. A. 409)

With the foregoing conclusion, it becomes unnecessary for us to discuss the other questions raised in the appeal.

Wherefore, the appeal is dismissed and the judgment appealed from is hereby affirmed.

Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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