

**&#8220;LA GERMINAL,&#8221; PLAINTIFF AND APPELLEE, VS. A. B. POWELL, AS ACTING COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.**

*G. R. No. 15227. October 26, 1920*

Ponente: JOHNSON, J.

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**JOHNSON, J.:**

The only question presented by this appeal is, whether a manufacturer of cigars and cigarettes who establishes, outside his factory, stores in which he sells his cigars and cigarettes must pay the internal revenue duty on such cigars and cigarettes on the basis of the price at which said stores are debited at the time of removal from the factory, or on the basis at which the same are sold by said stores. In other words, A is a manufacturer of cigars and cigarettes. Outside of his factory he establishes stores in different parts of the city or state, in which he sells his cigars and cigarettes. Each of said stores is debited, at the time the cigars and cigarettes are removed from the factory, with the regular price of the same plus the internal revenue duty. At the time the cigars and cigarettes are removed from the factory the duty is paid by the manufacturer and the same is added to the regular price of the cigars and cigarettes. The stores are debited at the regular price of the cigars and cigarettes, i. e., the price at which the same are sold to the trade generally. The cigars and cigarettes are sold in the stores either at wholesale or retail. Is the manufacturer required to pay the internal revenue duty on the basis of the regular price at the factory, or on the basis of the price received in said stores?

The lower court held that the basis on which the internal revenue tax should be collected was the regular price of said tobacco at the factory, and gave the following reasons for its conclusion:

"It must not be overlooked that the branch store is a establishment situated in a building separate and distant from the factory, a fact which naturally occasions expenses of rent, personnel, light, water, telephone, etc., and it would therefore be against all notions of justice and equity to require a branch store to pay for the duty. This interpretation can not be upheld because:

"First. The burden of the duty should be equal and uniform as to all those who are obliged to bear it. This equality and uniformity could not exist if the Germinal should pay for the duty according to the prices of resale at the branch store, because while the other factories who have sold to the various branch stores in Manila and in the provinces belonging to other persons, have paid the duty only in accordance with the prices for which they have sold their products to said branch stores, the Germinal on the other hand would pay more than those factories merely because it has its own branch store. If this could be maintained the result would be either that the Germinal should be ruined or that its branch store should sell its products at higher prices than the other branch stores sell, and such would be a competition that would bring it also to ruin.

"Secondly. On the other hand the court is of the opinion that it is practically impossible that the specific duty on cigars and cigarettes should be laid upon the branch establishment and not upon the factory for the reason that while in the factory the sales are on a wholesale scale, at the branch store they are on a retail scale without any invoice, a fact which would result in the easy evasion of the payment of the duty within the bounds of the

law.

"Thirdly. Should this interpretation which we impugn prevail, instead of stimulating and encouraging the growth of the prosperity of industry and commerce, the Government would convert itself into the worst enemy of the development and wealth of the country, because in the case at bar it would indirectly place the Germinal upon the necessity of closing its branch store."

With the conclusion of the" lower court we fully agree for the following reasons:

- There is nothing in the law which prohibits the manufacturer of cigars and cigarettes from becoming also a vendor of cigars and cigarettes; or, in other words, there is nothing in the law which prohibits the manufacturer from also being a vendor of his products at places outside of his factory.
- When the manufacturer becomes a vendor or a merchant, he must pay the regular merchant's tax based upon the amount or value of his sales, the amount of the internal revenue tax having been already added to the value or price of his merchandise.
- It was not, in our opinion, the intention of the Legislature to impose upon the vendor of merchandise upon which an internal revenue duty had "been paid, the burden of paying an internal revenue duty upon the basis of his sales, in addition to the regular merchant's tax upon said sales.
- If a tobacco manufacturer may also become a vendor of his products at established places of business outside his factory, then it would be unjust and inequitable to require him to pay an internal revenue tax in addition to that required of other vendors under similar conditions.

We do not believe that the theory of the appellant was contemplated by the Legislature. The purpose of governments and laws is to protect and encourage business rather than to retard or hamper it.

For all of the foregoing reasons, the judgment of the lower court ordering and directing the defendant to return to the plaintiff the sum of P9,581.23, the amount collected from the said stores, is hereby affirmed, with costs. So ordered.

Mapa, C. J., Araullo, Malcolm, Avanceña and Villamor, JJ., concur.

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