CENTRAL AZUCARERA DE BAIS, PLAINTIFF AND APPELLEE, VS. WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 21490. November 17, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an action to recover back merchants' percentage taxes collected from the plaintiff on consignment abroad under section 1459 of Act No. 2711, the Administrative Code of 1917. the defendant contending that the plaintiff is a "manufacturer" within the meaning of that section. The case went to trial upon the following stipulation of facts:

> "Come now plaintiff, Central Azucarera de Bais, and the defendant, Wenceslao Trinidad, Collector of Internal Revenue, through their respective undersigned attorneys, and submit hereunto an Agreed Statement of Facts involved in the above-entitled cause, as follows:
>
> "I. That plaintiff is a corporation existing under the laws of the Philippine Islands, and having its central office in the City of Manila, Philippine Islands; that the defendant is the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands;
>
> "II. That plaintiff, at all times material to this action, was the owner of a sugar mill located at Bais, Oriental Negros, Philippine Islands, for the production of raw centrifugal sugar from sugar cane delivered to it, for milling, by sugar-cane growers having plantations in the neighborhood of plaintiff's mill;
>
> "III. That all of the sugar produced at plaintiff's mill was made under milling agreements, with the sugar-cane growers, whereby plaintiff received as its share for milling the cane, forty-five per centum (45%) of the sugar produced; that the growers of the sugar cane received the balance or fifty-five per centum (55%) of the sugar so produced;
>
> "IV. That during the times hereinafter set forth, to wit:
>
> A.
>
> The third quarter of the year 1920, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of
>
> P384,495.00
>
> B.
>
> The third quarter of the year 1920, plaintiff shipped from the Philippine Islands for sale abroad, additional sugar of the aggregate value of

412,500.00

C.

The second quarter of the year 1921, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of

192,436.07

D.

The third quarter of the year 1921, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of

699,627.18

E.

The fourth quarter of the year 1921, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of

38,168.16

F.

The second quarter of the year 1922, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of

758,083.00

G.

The third quarter of the year 1922, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of

690.36

that all of the sugar so shipped by plaintiff, as aforesaid, represented and was the share of sugar received by plaintiff from the growers as its part of the product of the sugar-cane milled by plaintiff for said growers at its said mill;

"V. That the defendant, Wenceslao Trinidad, as Collector of Internal Revenue of the Philippine Islands, and claiming to act under authority of section 1459 of Act No. 2711, Administrative Code of 1917, levied and assessed against plaintiff a percentage tax of one per centum (1%) on the value of the sugar set forth in paragraph IV hereof as follows:

A

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P3,844.95

B

4,125.00

C

1,924.36

D

6,996.27

E

381.68

F

7,580.83

G

6.90

———————

24,859.99

a total tax of twenty-four thousand eight hundred fifty-nine pesos and ninety-nine centavos (P24,859.99), Philippine currency;

"VI. That plaintiff in order to avoid the exaction of penalties for delinquency in failing to pay the amounts assessed against it, as set forth in paragarph V hereof, did, in due time and upon the respective dates hereinafter specified, to wit:

A

Oct. 20, 1920

B

Dec. 21, 1920

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C

July 29, 1921

D

Oct. 18, 1921

E

Jan. 19, 1922

F

July 20, 1922

G

Oct. 12, 1922

involuntarily and under instant protest, in writing, pay to defendant the sums set forth in paragraph V hereof, making in all the total sum of twenty-four thousand eight hundred fifty nine pesos and ninety-nine centavos P24,859.99), Philippine currency;

"VII. That plaintiffs protests against the payments of the aforesaid taxes were based upon the grounds that said taxes were illegal and that plaintiff was exempt therefrom by the terms of paragraph (b) of section 1460 of the Administrative Code of 1917 (Act No. 2711);

"VIII. That the defendant overruled and denied the aforesaid protests of plaintiff and refused, on demand, and still persists in his refusal, to return to plaintiff the said sum of twenty-four thousand eight hundred fifty-nine pesos and ninety-nine centavos (P24,859.99) Philippine currency, or any part thereof;

"IX. That thereupon, and on the 1st day of August, 1922, plaintiff filed its complaint herein, which complaint was thereafter amended on November 8, 1922, praying for the return to it of the sum of twenty four thousand eight hundred fifty-nine pesos and ninety-nine centavos (P24,859.99), Philippine currency, with interest and costs;

"X. That on the 31st day of August, 1922, defendant demurred to plaintiff's original complaint upon the ground that the same did not state facts sufficient to constitute a cause of action in that the plaintiff was a contractor within the purview of Act No. 2711, Administrative Code of 1917; that on the 2d day of September, 1922, it was stipulated and agreed, by counsel for both plaintiff and defendant, to suspend further proceedings in said cause pending the final determination by the Supreme Court of the Philippine Islands, of the case of La Central Azucarera de La Carlota vs. Wenceslao Trinidad, R. G. No. 18154; that on the 26th day of September, 1922, the Honorable Supreme Court decided, in said cause No. 18154, that sugar mill owners and operators were not 'contractors' within the purview of section 1462 of Act No. 2711; that thereupon and on the 8th day of November, 1922, plaintiff filed its amended complaint herein, as aforesaid, claiming exemption from the taxes levied by the defendant, Collector of Internal Revenue, under subsection (6) of section 1460 of Act No. 2711;

> that the defendant answered plaintiff's amended complaint on the 16th day of November, 1922, alleging that plaintiff was taxable as a 'manufacturer' under section 1459 of Act No. 2711; whereupon this cause, being at issue, was set for hearing upon the merits on the 7th day of March, 1923, on which day it was stipulated and agreed to submit this cause for decision upon a stipulation and agreed statement of facts."

The court below held that the plaintiff was not a "manufacturer" within the letter and the spirit of said section 1459 and rendered judgment in favor of said plaintiff for recovery back of the sum of P24,859.99, without interest and costs. From this judgment the defendant appealed to this court.

The decision of the case turns upon the determination of two questions: (1) Whether the plaintiff is a manufacturer in the sense of constituting it a merchant within the meaning of section 1459 of the Administrative Code, and (2) whether the plaintiff is entitled to the exemption provided for in subsection (b) of section 1460 of the same Code.

(1) Section 1459, which was expressly ratified by Act of Congress of June 5, 1918, reads as follows:

> "All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon these things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.
>
> "The following shall be exempt from this tax:
>
> "(a) Persons engaged in public market places in the sale of food products at retail, and other small merchants whose gross quarterly sales do not exceed two hundred pesos.
>
> "(b) Peddlers and sellers at fixed stands of fruit, produce, and food, raw or otherwise, the total selling value whereof does not exceed three pesos per day and who do not renew their stock oftener than once every twenty-four hours.
>
> "(c) Producers of commodities of all classes working in their homes, consisting of parents and children living as one family, when the value of each day's production by each person capable of working is not in excess of one peso. " 'Merchant,' as here used; means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

That the plaintiff is, in a general sense, a manufacturer of sugar cannot be successfully disputed.

The Century Dictionary defines a manufacturer as "one who is engaged in the business of manufacturing" and in the case of Allen vs. Smith (173 U. S., 389), the United States Supreme Court draws a clear distinction between the grower of the cane and the manufacturer of the sugar and says: "In the case of sugar a process of strict manufacture is also involved in converting the cane into its final product."

It has been suggested that in its last analysis sugar is a product of the soil and that therefore a manufacturer of sugar must be regarded as a producer of an agricultural product. We might, with equal reason, say that cotton cloth is an agricultural product because it is made from cotton which is a growth of the soil; yet no one would seriously contend that one who buys cotton from the planters and devotes himself to the business of converting it into cotton cloth by means of machinery is a planter and not a manufacturer. And in principal it can make no difference whether he, in buying the cotton, pays for it with merchandise or with money.

It is also suggested that following this argument to its logical conclusion, we would be compelled to hold that a

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sugar planter who has a small trapiche on his plantation wherein he converts his own cane into raw sugar is a manufacturer. We do not think that it would be necessary to so hold. A planter who devotes himself to the production of sugar cane and as an incident to such production works his product into a more convenient and valuable form is primarily a planter; his manufacturing is merely an incident to the management of his plantation. His case is manifestly different from that of the plaintiff corporation which, in effect, buys its raw material and devotes itself exclusively to converting it into finished merchandise. It may, penhaps, not always be easy to draw the line of demarcation between one business and the other, but difficulties of that sort are frequently encountered in the interpretation of the law.

Counsel for plaintiff argues that the term "manufacturer" as used in the last paragraph of section 1459 is synonymous with the term "merchant" as employed in the first paragraph of the same section and applies only to manufacturers who sell the manufactured products in the Philippine Islands and does not refer to manufacturers such as the plaintiff, who sell their products abroad.

We agree with counsel that manufacturers who sell articles of their own manufacture are merchants within the meaning of section 1459; the statute says so expressly. But why limit this class of manufacturers to the ones who do their selling in the Philippine Islands? The statute certainly does not expressly make this distinction and it is only by reading into it words which are not there that we can sustain the plaintiff's contention. Instead of reading "manufacturers who sell articles of their own production," we would have to make the definition read, "manufacturers who sell articles of their own production in the Philippine Islands."

But it is argued that it was so evidently the intention of the Legislature to limit the tax in question to manufacturers who sell their goods here that we would be justified in so construing the law. This might be true if we were dealing with a poll tax or other personal tax, but such is not the case here. The tax we are considering is a tax on certain transactions which are made taxable when carried out by merchants as distinguished from persons who do not devote themselves to commercial operations. It is not merely a tax on sales; it is also, as in the present case, a tax on certain consignments. It is levied on local transactions and has no extra-territorial effect. Thus, in the present case, the plaintiff sells abroad and we collect no tax on such sales; but it makes the consignments of its merchandise here and the statute imposes a tax on such consignment. And if a merchant or manufacturer in Japan consigns his wares from there to the Philippines, we do not undertake to tax that consignment, but when the goods are sold here we collect a tax on the sales. The nationality of the merchant or manufacturer, or the location of his principal place of business has nothing to do with the tax; we are only concerned with the collection of the tax on such sales or consignments as are made in the Philippine Islands and it is a matter of indifference to us where the sales are made when we collect the consignment tax, or where the consignments are made when we exact payment of the sales tax. It can be readily s.een that to hold otherwise would, in effect in many cases, amount to a discrimination against the local manufacturer or merchant, which would be without rhyme or reason and which the legislator cannot have intended to bring about. And, as we have already pointed out, such an intention is not expressly manifested by the statute itself; it can only be read into it by forming conjectures which have no logical basis.

(2) As to the second point raised by the appellee, namely, that it is entitled to the tax exemption provided for in sub- section (b) of section 1460, it is sufficient to quote the pertinent part of that section and which reads as follows:

> "In computing the tax above imposed transactions in the following commodities shall be excluded:
>
> * * * * * * *
>
> "(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person

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> other than a merchant or commission merchant, whether in their original state, or not."

Once it is determined that the plaintiff is a merchant within the meaning of section 1459, it is obvious that it is not entitled to the exemption provided for in section 1460. The term "merchant" must be given the same meaning in both sections and includes manufacturers of the plaintiff's class.

From what has been said it follows that the percentage tax on the consignments in question was legally collected and that the judgment of the court below must be reversed. Whether this tax may be imposed on consignments1 made subsequent to the passage of Act No. 3082 we do not here decide.

The judgment appealed from is hereby reversed and the appellant is absolved from the complaint, without costs. So ordered.

Street, Malcolm, and Romualdez, JJ., concur.

DISSENTING OPINION

VILLAMOR, J., with whom concur JOHNSON, AND AVANCENA, JJ.:

I vote for the affirmance of the appealed judgment. In my opinion the plaintiff, Central Azucarera de Bais, is not a manufacturing merchant within the purview of section 1459 of the Administrative Code, which imposes a tax of one per centum on merchants sale. In the language of the very law, the plaintiff is not a merchant because it is not engaged in the sale, barter, or exchange of personal property. It is neither a manufacturer because manufacturers, under the said section, are those who have fixed places of business of the same nature as, and in competition with, merchants engaged in the sale, barter, or exchange of commodities manufactured by them from raw materials that they purchase, with the object of selling them and, from this commerce and interchange, obtain profits.

The plaintiff Central Azucarera is a cooperator of the sugar-cane planters, or, as has been said in La Carlota Sugar Central vs. Trinidad (43 Phil., 816), is a partner or coparticipant of the sugar cane growers, for, while the latter supply the cane, the central furnishes the means for producing the sugar. And just as the planter of the cane is the producer of the cane, so also he who obtains the finished product called sugar is the producer of the sugar. (Allen vs. Smith, 173 U. S., 389; 43 L. ed., 741.)

If the producer of the sugar, by his work of converting the cane into sugar, obtains a participation in the finished product and sells it, such sales, in accordance with section 1460 (b) of the Administrative Code, are exempt from the tax because, the sugar being an agricultural product, not in its original state, must be deemed to have been sold by the producer himself.

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