EL DORADO OIL WORKS, PLAINTIFF AND APPELLEE, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 22080. September 27, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This case was submitted to the trial court on the following agreed statement of facts:

"I. That the plaintiff is a foreign corporation organized and existing under and by virtue of the laws of the State of California, United States of America, wherein it is engaged principally in the manufacture and sale of cocoanut and other oils, with its principal place of business in the City of San Francisco, California, and has only a resident purchasing agent in the Philippine Islands, although duly licensed to transact business in said Islands; that the defendant is the duly appointed, qualified and acting Collector of Internal Revenue for the Philippine Islands.

"II. That during the second quarter of the year 1922, plaintiff, said El Dorado Oil Works of San Francisco, California, through its said resident purchasing agent in the Philippine Islands, purchased from various merchants, resident in the Philippine Islands, copra of the value of three hundred eighty-nine thousand seven hundred sixty and 98/100 pesos (P389,760.98).

"III. That plaintiff caused all of the copra, so purchased by it as aforesaid, to be shipped by its aforesaid resident purchasing agent in the Philippine Islands, to itself, the El Dorado Oil Works of San Francisco, California, at San Francisco, California.

"IV. That the said El Dorado Oil Works of San Francisco, California, upon receipt of said copra at San Francisco, California, from its resident purchasing agent in the Philippine Islands as aforesaid, either manufactured or sold the same at San Francisco, California, as market conditions then warranted, and continues so to do.

"V. That, on all of the copra purchased by plaintiff as aforesaid, the percentage tax of one per centum (1%), payable under section 1459 of the Administrative Code of 1917 (Act No. 2711), was paid by the respective sellers thereof, as required by law.

"VI. That the defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, acting under the alleged authority of section 1459 of the Administrative Code of 1917, levied and assessed against plaintiff, as taxes due on the consignments of copra set forth in paragraph two (II) hereof, for the second quarter of the year 1922, the sum of three thousand eight hundred ninety-seven and 61/100 pesos (P3,897.61).

"VII. That plaintiff is not and never has been engaged in the sale, barter or exchange of personal property of any character whatsoever in the Philippine Islands.

"VIII. That plaintiff's activities in the Philippine Islands, through its said resident purchasing agent in the Philippine Islands, are confined solely and exclusively to the purchase of copra in the Philippine Islands, all of

which said copra is thereafter shipped by it to its aforesaid principal office and place of business in the United States of America and is there either manufactured or sold by said El Dorado Oil Works of San Francisco, California, as market conditions warrant.

"IX. That plaintiff's said resident purchasing agent in the Philippine Islands, for and on behalf of plaintiff, involuntarily, to prevent the infliction upon it of heavy fines and penalties and the distraint of its goods, and having no other recourse in the premises, on the 18th day of July, 1922, paid to defendant, under instant protest in writing, of said sum of three thousand eight hundred ninety-seven and 61/100 pesos (P3,897.61) demanded by defendant of plaintiff as aforesaid.

"X. That plaintiff's said protest was based on the grounds, among others, that:

"(1) The tax claimed is not due.

"(2) The assessment of the tax claimed is invalid.

"(3) That the El Dorado Oil Works is not and never has been a merchant engaged in the sale, barter or exchange of p ersonal property of any character whatever in the Philippine Islands.

"(4) That all of the copra, on which the above tax was paid, was purchased by its resident purchasing agent in Manila, Philippine Islands, and was, by him, said resident purchasing agent, shipped to it, said El Dorado Oil Works, at San Francisco, California, for the purpose of manufacture and not otherwise.

"XI. That, on the 11th day of August, 1922, plaintiff's said protest was overruled and denied bjf defendant, who has refused and still refuses to refund to plaintiff the said sum of three thousand eight hundred ninety-seven and 61/100 pesos (P3,897.61), or any part thereof."

The court below, being misled by certain dicta in the case of El Dorado Oil Works vs. Collector of Internal Revenue (45 Phil., 1), and endeavoring to distinguish the present case from that of Murphy vs. Trinidad (44 Phil., 649), held that the plaintiff was not a merchant within the meaning of section 1459 of the Administrative Code and rendered judgment for the return to the said plaintiff of the sum of P3,897.61 collected as percentage tax on consignments abroad. From this judgment the defendant appeals.

The facts are very similar to those in the case of Vegetable Oil Corporation vs. Trinidad (45 Phil., 822) and the arguments in both cases follow the same general lines, except that in the present case counsel for the appellee lays special stress on the contention that where section 1459 provides that all merchants shall pay a percentage tax on consignments it means that only Philippine merchants are required to pay the tax. Aside from the dogmatic assertion that such is the case, we have been offered no rational explanation of this curious misconception. Indeed, there appears to be no valid argument in favor of the contention; the language of the statute is clear and its intent is very obvious. But counsel submits the following illustration by way of argument:

"Because a man is a doctor in the United States and comes over here to gather herbs to ship back to himself for manufacture into medicine in the United States, it would not be pretended that he should take out a doctor's occupational license in the Philippine Islands. Because a man is a lawyer in the United States and comes over here to collect a compilation of our laws and ships them back to himself in the United States, no one would pretend that he would be required to take out a lawyer's occupational license in the Philippine Islands."

That is all very true. But if a Philippine statute should provide that all doctors who came here to collect herbs and all lawyers who came here to collect law books must pay a certain percentage tax on the value of their respective collections, it would certainly be pretended that both the doctor and the lawyer in the illustration should be required to pay that particular percentage tax on their collections. So also will a foreign merchant who comes here

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and makes consignments of merchandise abroad be required to pay the percentage tax on such consignments under the provisions of section 1459 of the Administrative Code. The questions involved in the present case are fully discussed in the Vegetable Oil Corporation case and the arguments there advanced in support of the doctrine laid down by the court have not as yet been answered. To go over the same ground again would only lead to useless repetitions. The judgment appealed from is reversed and the defendant is absolved from the complaint. No costs will be allowed. So ordered.

Street, Avanceña, Villamor, and Romualdez, JJ., concur.

DISSENTING OPINION

JOHNSON, J.:

In my opinion, the judgment of the lower court should be affirmed. I cannot give my assent to the doctrine of the majority opinion. If the statute in question is subject to the interpretation given it, it is then illegal and void. The Philippine Government cannot impose a tax upon merchants who are not engaged in business, as merchants, in the Philippine Islands.

This case was submitted to the lower court upon an agreed statement of facts. In that agreement it is stated: "That plaintiff is not, and never has been, engaged in the sale, barter or exchange of personal property of any character whatsoever in the Philippine Islands" If that agreement means anything, it is, that the plaintiff is not a merchant in the Philippine Islands; and if that is so, then the Government of the Philippine Islands is collecting a tax upon merchants outside of the Philippine territory and who are not engaged and never have been engaged "in the sale, barter or exchange of personal property of any character whatsoever in the Philippine Islands." The engagement in the sale, barter or exchange of personal property are the elements which make a business man a merchant.

And, moreover, we cannot bring ourselves to believe that it was the purpose or intention of the Philippine Legislature to place a handicap upon one of the principal industries of the Philippine Islands, which has been placed upon it by the interpretation given the law by the majority opinion. In my opinion this decision is a complete reversal of the doctrine heretofore announced in the case of El Dorado Oil Works vs. Collector of Internal Revenue (45 Phil., 1). That decision was unanimous.

The judgment appealed from should be affirmed.

DISSENTING OPINION

MALCOLM, J.:

The term "merchant" is clearly defined in the Administrative Code. As there defined, it does not include persons who sell, barter or exchange personal property outside of the Philippine Islands. The statute refers only to acts done in the Philippine Islands and not to acts done beyond the limits of the Philippine Islands by a foreign principal. The statute does not purport to import the activities of El Dorado Oil Works in San Francisco into this jurisdiction, and to tax them as if they were acts done within the Philippines.

The decision of this court in the case of El Dorado Oil Works vs. Collector of Internal Revenue (45 Phil., 1), is its own best advocate, and speaks for itself. Personally, I am willing to stand by my concurrence in that decision and by my dissent in the later case of Vegetable Oil Corporation vs. Trinidad (45 Phil., 822). Judgment should be affirmed.

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