

EUGENIO BUENAVENTURA, PLAINTIFF AND APPELLANT, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. 22175. November 13, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The Collector of Internal Revenue collected from the herein plaintiff Eugenio Buenaventura, who paid under protest, the sum of ₱596.04, being 1 per cent on sales from the year 1920 to the third quarter of 1922 (P472.03); a penalty of 25 per cent for delinquency (P118.01) and the fixed tax C-1 (P6). The Collector based his action on section 1459 of the Administrative Code.

Eugenio Buenaventura claims exemption from said tax under the provisions of paragraph (a) of section 1457 of the Administrative Code and instituted this action for the recovery of said sum from the Collector, plus ₱1,500 as damages.

After trial, the Court of First Instance of Manila found that the plaintiff was not entitled to recover said sums and dismissed the action without costs.

The appellant appeals from said judgment and makes various assignments of error.

The facts are that the plaintiff bought fish and resold it in the Quinta Market of Manila, his sales fluctuating from ₱15 to ₱30 per day. During a certain period he sold fish to the Hotel de Francia, the value of which ranged from ₱10 to ₱20 daily, and on one or two extraordinary occasions he sold said hotel fish worth between ₱80 and ₱90.

The question presented for our consideration in the assignments of error, simmers down to whether or not the plaintiff is exempt from the tax provided for in paragraph (a) of section 1457 of the Administrative Code in force, the text of which is as follows:

"Persons engaged in public market places in the sale of food products at retail, and other small merchants whose gross quarterly sale do not exceed two hundred pesos."

Of the two classes of vendors exempt under this paragraph, namely, first, the vendors of food products, and second, merchants whose quarterly sales do not exceed ₱200, the plaintiff alleges that he belongs to the first. Let us see if such is the case. There is no question that the plaintiff is engaged in the sale of food products in a public market. The main point in question is whether or not the sales thus made by him were at retail. If they were, all of the conditions enumerated in the law for his exemption, in accordance with paragraph (a) of section 1457 of the Administrative Code above quoted, were present.

This section does not define a retail sale; but upon referring to the definition of words and phrases given in section 1465, which is within the same chapter and section of this Code, we find there that the difference between wholesale and retail trading in the case of wines, liquors and fermented drinks is made to depend, disjunctively, either upon the amount of each sale, or upon the latter's character, or if it is for resale, as may be seen from

paragraphs (f), (g), (h), (i), (j) and (k).

We also observe that when not dealing with wines, liquors or drinks, the quantity of each sale is not taken into consideration, but that in the case of leaf tobacco (paragraph [m] of said section 1465) what is taken into consideration is the character of each sale, or whether or not the sale is made "to persons who are not registered dealers in leaf tobacco or manufacturers of cigars, cigarettes or manufactured tobacco."

Finally, we find in these definitions of said section 1465 of the Administrative Code that when dealing with peddlers of general merchandise, the text of the law says:

"Whether a peddler is a wholesale peddler or a retail peddler of a particular commodity, shall be determined from the definitions of wholesale dealer and retail dealer, as above given, in connection with the particular commodity peddled. A wholesale peddler of manufactured tobacco is one who sells for the purpose of resale." (Section 1465, subsection [n], last paragraph, Administrative Code.) Interpreting this last provision, it may be said that a wholesale peddler of general merchandise other than wines, liquors and fermented drinks, is one who sells merchandise for resale.

As may be seen, the distinguishing characteristic which the law takes into account in differentiating between a wholesaler and a retailer, except in the case of wines, liquors and fermented drinks, is the character of the sale, that is, whether or not it is for resale.

Applying this view to the phrase "sale of food products at retail in public markets," used in paragraph (a) of section 1457 of the Administrative Code, invoked by the plaintiff, it may be said, following the intention of the law, that the sales of fish here in question made by said plaintiff in the public market must be considered to have been made at wholesale if they were for resale, and, at retail if they were not made for resale.

It has not been proved that said sales of fish made by the plaintiff were for resale. Even the isolated case of those made to the Hotel de Francia cannot be considered as transactions for resale of fish, because it has not been proved, nor is it probable, that said hotel, as such, although it supplies food for payment and among it fish, cannot be said or considered to be a reseller of fish.

For the purpose, then, of the interpretation of paragraph (a) of section 1457 of the Administrative Code, we are of the opinion and so hold that the sales of fish made by the plaintiff to the Hotel de Francia cannot be considered as sales for resale and, therefore, must be held to be sales at retail.

We hold that in view of the facts contained in the record and in accordance with the spirit of the law found in the Administrative Code, the herein plaintiff, in the sale of the fish in question,, was and is exempt from the tax provided in section 1457 of the Administrative Code.

The judgment appealed from is reversed and it is ordered that the defendant return to the plaintiff the sum of P596.04, the subject-matter of this action, without express finding as to costs. So ordered.

Johnson, Street, Malcolm, Avanceña, and Ostrand, JJ.concur.

D I S S E N T I N G :

VILLAMOR, J.

In my opinion the judgment appealed from should be affirmed for the reason that the plaintiff himself admits that his sales exceed P200 quarterly.

DISSENTING :

JOHNS, J,

I dissent. The judgment of the lower court should be affirmed.

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