

LIM CO CHUI, PETITIONER, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE, RESPONDENT.*G.R. No. 23487. February 11, 1925*

Ponente: MALCOLM, J.

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These are original proceedings in mandamus brought by the Chinese merchant Lim Co Chui, hereafter referred to as the petitioner, against Juan Posadas, Collector of Internal Revenue, hereafter referred to as the respondent, which have arisen out of the riots directed against the Chinese between October 18 and October 20, 1924, and which have for their purpose the remission of the penalties imposed on the Chinese for failure to pay their sales taxes on time. The demurrer interposed by the Attorney-General rests on the statutory ground that the complaint does not state facts sufficient to constitute a cause of action.

The petitioner is a Chinese alien residing in the City of Manila, Philippines. He is the owner of three dry goods stores located in Manila. During the quarter comprising the months of July, August, and September, 1924, the gross value of the merchandise sold in these establishments amounted to P33,808.34. The tax of one and one-half per cent on the business transacted during this calendar quarter was P507.13.

On October 18, 19, and 20, 1924, there existed in the City of Manila a riot against the Chinese. Under such conditions, they were forced to stay in their homes, especially on October 20th when the riot was at its height. As alleged in the complaint, "in order to end said riot it was thought proper and expedient on the part of the Chinese citizens to close their homes and stores and in fact they did close them as a result of a mutual agreement had thereon."

On account of the conditions above described, the petitioner was prevented from making a return on October 20, 1924, the last day for paying the taxes due. Instead, on that day a representative of the Chinese Chamber of Commerce acting for and on behalf of all Chinese citizens, requested the respondent to extend the time prescribed for the payment of the taxes. This request was denied by the respondent on the ground that he had no authority to grant it. Subsequently, the same representative of the Chinese asked the respondent to accept payment of taxes due on the business conducted by all Chinese citizens which they were not able to pay on October 20, 1924, without requiring the additional increase of twenty-five per cent as a penalty.

On October 21, 1924, the petitioner tendered payment to the respondent of the tax due on his business, stating at the same time that his delay was due to the riot. On November 3, 1924, the respondent refused to accept said payment saying that according to existing law, he had neither power nor discretion to accept the tax without the additional penalty of twenty-five per cent. On request for reconsideration, the respondent again declared that he lacked power to grant the request, although admitting that the additional tax of twenty-five per cent "seems unjust and excessive."

On the above facts taken from the allegations of the complaint as admitted by the respondent, we are asked to declare that the Collector of Internal Revenue has discretionary power to remit additional percentage taxes and are

asked to require the said Collector to exercise his discretion. Two provisions of law, sections 1458 and 1582 of the Administrative Code as amended, are cited in support of the petition.

Section 1458 of the Administrative Code, as last amended by Act No. 3074, provides the following: "The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter * * *. If the percentage tax on any business is not paid within the time prescribed above the amount of the tax shall be increased by twenty-five per centum, the increment to be a part of the tax." This provision is mandatory. It provides a plan which works out automatically. It confers no discretion on the Collector of Internal Revenue. That official may not disregard the law and substitute therefor his own personal judgment.

Section 1582 of the Administrative Code, as amended by Act No. 2835, provides the following; "The Collector of Internal Revenue * * * may remit before payment any tax that appears to be unjustly assessed or excessive." This provision confers discretion on the Collector of Internal Revenue in certain cases but not in the instant case. The twenty-five per cent penalty for non-payment is not "unjustly assessed" because it is not assessed at all, and is not "excessive" because it is merely the amount specifically fixed by the law. The Collector of Internal Revenue simply collects that which the law has said that he must collect. He is not authorized to refund taxes as a matter of gratuity.

It may possibly be, as intimated by Judge Cooley in his standard treatise on Taxation, volume 2, page 901, that "there might be excuses for non-payment which would justify the interference of the courts." The maxim is: *Impossibilium nulla obligatio est*. There is no obligation to do impossible things. But here, there is no allegation in the complaint that the inability of the Chinese to pay their taxes on time was due to any order by the Government or to any action taken by the Government, and no allegation that the delay in payment was caused by the fault of him to whom it was to be paid. On the contrary, the averment in the complaint is that the Chinese closed their homes and stores and stayed therein "as a result of a mutual agreement had thereon."

The demurrer is sustained, and unless the petitioner shall within a period of five days so amend his complaint as to state a cause of action, it shall be dismissed with costs against him. So ordered.

Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

CONCURRING

JOHNSON, ACTING CHIEF JUSTICE:

I agree that the writ of mandamus should not issue in the present case. I am of the opinion, however, in the interest of justice, that the discretion conferred upon the respondent should have been exercised in favor of the petitioner. It is clear to my mind that, by reason of the existence of a riot in the City of Manila at the time the taxes became due and payable, it was impossible for the petitioner to have left his house or place of business. It was not his fault. He did all he could to pay his taxes when due, and should not have been penalized for things which he could not prevent. The respondent had a discretion to grant relief to the petitioner and should have done so as a matter of simple justice.

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