

**PAMPANGA SUGAR MILLS, PLAINTIFF AND APPELLANT, VS.
WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE FOR
THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLEE.**

G.R. No. 23985. February 02, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

Upon eight causes of action, the plaintiff corporation seeks to recover back from the defendant Collector of Internal Revenue the total sum of P60,911.42 paid by it as merchant's percentage taxes under section 1459 of the Administrative Code of 1917.

The case was submitted to the Court of First Instance for decision on the following agreed statement of facts:

"Now come the plaintiff, Pampanga Sugar Mills, and the defendant, Wenceslao Trinidad, Collector of Internal Revenue of the Philippine Islands, thru their respective undersigned attorneys, and hereby submit to this Honorable Court the following agreed statement of facts covering the issues involved in the present proceeding, to wit:

"1. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, and having its principal office therein in the City of Manila, and that the defendant was, at all times hereinafter mentioned and at the time of the inception of these proceedings, the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands.

"2. That plaintiff is and at all times hereinafter mentioned has been, the legal owner and operator of a sugar mill at Del Carmen, Pampanga, P. I., and as such owner and operator engaged in the production of raw centrifugal sugar and its by-products.

"3. That in the operation of its sugar mill above-mentioned for the production of raw centrifugal sugar, plaintiff mills sugar cane grown by sugar cane growers of lands other than those belonging to plaintiff and delivered to it under so-called milling contracts, and as compensation for its services in milling said sugar cane, plaintiff receives 50 per cent of the resulting centrifugal sugar, and the sugarcane growers receive the remaining 50 per cent of the resulting centrifugal sugar.

"4. That during the times hereinafter set forth, plaintiff received as its share in the milling sugar cane belonging to sugar cane growers, raw centrifugal sugar the sales value of which upon being sold by plaintiff were as follows:

(a) During the third quarter of the year 1920, that is from July 1, 1920, to and including September 30, 1920

P2,059,897.00

(b) During the fourth quarter of the year 1920, that is from October 1, 1920, to and including December 31, 1920

91,608.00

(c) During the first quarter of the year 1921, that is from January 1, 1921, to and including March 31, 1921

540,066.00

(d) During the second quarter of the year 1921, that is from April 1, 1921, to and including June 30, 1921

1,388,011.00

(e) During the third quarter of the year 1921, that is from July 1, 1921, to and including September 30, 1921

450,698.00

During the fourth quarter of the year 1921, that is from October 1, 1921, to and including December 31, 1921

112,761.00

(g) During the first quarter of the year 1922, that is from January 1, 1922, to and including March 31, 1922

616,507.00

(h) During the second quarter of the year 1922, that is from April 1, 1922, to and including June 30, 1922

831,594.00

"5. That the defendant, claiming to act under the authority of section 1459 of Act No. 2711 known as the Administrative Code of 1917, levied and assessed against the plaintiff a percentage tax of one per centum (1%) on the aforesaid sales value of said raw sugar as follows:

(a) 1% of

P2,059,897.00

P20,598.97

(b) 1% of

91,608.00

916.08

(c) 1% of

540,066.00

5,400.66

(d) 1% of

1,388,011.00

13,880.11

(e) 1% of

450,698.00

4,506.98

(f) 1% of.

112,761.00

1,127.61

(g) 1% of

616,507.00

6,165.07

(h) 1% of

831,594.00

8,315.94

and plaintiff in order to avoid the exaction of penalties for nonpayment of the tax, involuntarily and under protest did pay to the defendant in due time all the amounts above specified, making in all the total sum of P60,911.42, Philippine currency.

"6. That plaintiff duly filed its protests against the payment of all of the aforesaid taxes on the grounds that said taxes were illegal and that plaintiff was exempt therefrom by the terms of section 1460 of Act No. 2711 commonly known as the Administrative Code of 1917.

"7. That the defendant overruled and denied the aforesaid protests of plaintiff and refused, on demand, and still persists in refusing to return to plaintiff the total amount of said taxes, or any part thereof.

"8. That thereupon, on the 14th day of September, 1922, plaintiff filed its complaint herein; that on the 11th day of October, 1922, the defendant filed his answer to said complaint, admitting all the allegations contained in said

complaint, but setting up as special defense the fact that plaintiff is not the owner of the land where the cane ground by it was grown, and that plaintiff in grinding said cane was a manufacturer and as such was subject to tax under section 1469 of Act No. 2711, known as the Administrative Code of 1917; whereupon this cause being at issue, the parties have stipulated and agreed to submit this cause for decision upon the within stipulation on an agreed statement of facts."

The court below held that the facts stipulated were practically identical with those agreed upon in the case of *Central Azucarera de Bais vs. Trinidad* (46 Phil, 492) and, in accordance with our decision in that case, rendered judgment in favor of the defendant and dismissed the plaintiff's complaint.

Upon appeal "to this court by the plaintiff, counsel makes the following assignments of error:

"1. The lower court erred in holding that plaintiff is a manufacturer in the sense of constituting it a merchant within the meaning of section 1459 of the Administrative Code of 1917.

"2. The lower court erred in holding that plaintiff is not entitled to the exemption provided for in section 1460, paragraph b of the same Code."

Section 1459 reads as follows: "Percentage tax on merchants' sales.—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 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 own 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."

The pertinent part of section 1460 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 other than a merchant or commission merchant, whether in their original state, or not."

The question as to whether a sugar central functioning under milling contracts with the planters should be regarded as a merchant under section 1459 has been the subject of much discussion, and several theories in regard

thereto have been advanced. At first it was thought that such centrifugal centrals should be considered contractors under section 1462 of the Administrative Code, but this theory was rejected by our decision in the case of *La Carlota Sugar Central vs. Trinidad* (43 Phil., 816). That case was without doubt correctly decided, but the decision contained certain expressions which afterwards led to the contention that the relation between the sugar centrals and the planters is that of partners in the production of sugar; that sugar is an agricultural product; and that consequently both the planters and the sugar centrals are, under subsection (b) of section 1460 exempt from the percentage sales tax. The weakness of this contention is that no consideration is given to the distinction between the production of the raw material, sugar cane, and the manufacture of the finished product, centrifugal sugar. This distinction is well brought out in the case of *Allen vs. Smith* (173 U. S., 389), in which the United States Supreme Court says:

"It is quite evident that Allen himself was not the producer of the sugar: He had planted the crop of cane upon his own plantation. He had given notice and a bond to the Commissioner of Internal Revenue, and had applied for a license; but he had done nothing toward the production of the sugar at the time of his death beyond raising the cane, which certainly would not have entitled him to be considered a producer of the sugar. The word 'producer' does not differ essentially in its legal aspects from the word 'manufacturer' except that it is more commonly used to denote a person who raises agricultural crops and puts them in a condition for the market. In the case of sugar a process of strict manufacture is also involved in converting the cane into its final product. In a number of cases arising in this court under the revenue laws, it is said that the word 'manufacture' is ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. That such product is often the result of several processes, each one of which is a separate and distinct manufacture, and usually receives a separate name; or, as stated in *Tide Water Oil Co. vs. United States*, 171 U. S., 210, 216; 'Raw materials may be and often are subjected to successive processes of manufacture, each one of which is complete in itself, and several of which may be required to make the final product. Thus, logs are first manufactured into boards, planks, joists, scantling, etc., and then by entirely different processes are fashioned into boxes, furniture, doors, window sashes, trimmings, and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for which the article so manufactured receives a different name.' So the one who raises the cane is undoubtedly entitled to be considered the producer of the cane, but he is not the producer of the sugar. That appellation is reserved for him who turns out the finished product." (The italics are ours.)

Though the decision in the case of *Allen vs. Smith* related to bounties for the production of sugar under the tariff act of October 1, 1890, and not to a tax, the underlying principle is the same and the foregoing quotation applies with full force to the question here at issue; the planting and production of sugar cane is one thing and the manufacture or production of sugar is another thing.

In the present case we have this situation: Section 1459 of the Administrative Code imposes a tax of one per cent on sales by manufacturers of "articles of their own production." Section 1460 of the same Code provides that "agricultural products when sold by the producer or owner of the land where grown" shall, in computing the tax, be excluded. The plaintiff sold large quantities of sugar for its own account and admits that it is engaged in the production of centrifugal sugar and that the sugar in question was manufactured or milled by it from sugar cane not grown on its own land. It further admits that it manufactured the sugar under a pre-existing so-called milling contract whereby it was to receive one-half of the resulting centrifugal sugar, the other half going to the growers of the cane. The plaintiff does not pretend to be other than a manufacturer of sugar and admits that the cane from which the sugar was produced belonged to the cane growers or planters. On the other hand, the planters do not claim to have had anything to do with the manufacture of the sugar as distinguished from the production of the cane, nor is it even suggested that they had any control whatever over the manufacturing processes subsequent to the delivery of the cane. In a certain sense the central and the planters may, perhaps, be said to have cooperated

with each other but such cooperation possesses none of the essential elements of a partnership.

Upon the law and facts stated, the defendant Collector of Internal Revenue held that the sugar received by the planters under the milling contract and sold by them or for their account, was exempt from the tax, but that the sugar received and sold by the plaintiff for its own account was its own manufacture from cane not grown on its own land and therefore was subject to the tax. Accordingly, no tax was collected on the sugar received by the planters, but the plaintiff was required to pay the tax on the sale of its own share. That is the tax the plaintiff now seeks to recover back.

Perhaps in realization of the weakness of the partnership theory, the argument is now advanced for the first time that inasmuch as it is admitted that the planters were the owners of the cane from which the sugar was produced, the plaintiff received the cane merely as a bailment and did not acquire title to any part of the sugar until the milling processes were completed; that therefore the plaintiff in producing the sugar acted merely as the agent of the planters, and that consequently the sugar cannot be regarded as the plaintiff's own production.

This argument is clearly another misconception arising from the confusion of the production and ownership of the cane with the production or manufacture of the sugar. We are not here dealing with the legal title to the cane; that question might arise in actions between the planters and the central, but has nothing to do with this case. The plaintiff admits that it manufactured its share of the sugar and sold it for its own account, and that the cane from which the sugar was manufactured was not grown on its own land. That is sufficient to justify the collection of the tax under the statute; there is nothing in the statute requiring the Government to inquire into the legal title to the raw materials from which the articles sold by the manufacturer are produced. It is further to be noted that it is not alleged in the complaint nor stated in the stipulation of facts that the plaintiff produced the sugar as an agent merely.

It may be conceded for the sake of the argument that the delivery of the cane to the plaintiff was a bailment. But if so, that bailment was coupled with the right on the part of the plaintiff to manufacture the cane into sugar of which it, under the pre-existing milling agreement, also had the right to appropriate to itself one-half. It therefore from the beginning of the milling had a direct individual interest in the finished product and to the extent of that interest it did the milling for itself; it held an undivided one-half share in the sugar to be produced, it manufactured the sugar pertaining to its share, and it sold it for its own account. Notwithstanding their ownership of the cane, the planters at no time had the right to dispose of the plaintiff's share of the sugar, nor does it appear that they had any control over the milling of the cane. Surely, in these circumstances, the plaintiff corporation cannot be considered to have been merely the agent of the planters in the production of its own share of the sugar and, as we have already stated, it is only upon that share that the defendant has imposed the sales tax which the plaintiff now seeks to recover back; no tax has been collected on the share belonging to the planters.

The latest theory brought to the attention of the court in connection with the matter under discussion, is that the extraction of the juice of sugar cane and its conversion into centrifugal sugar is not a manufacturing process. This idea is in direct conflict with the opinion of the United States Supreme Court in the case of *Allen vs. Smith*, *supra*, and none of the authorities cited in its support are in point.

The facts are undisputable that the plaintiff corporation, a manufacturer, produced its share of the sugar for its own benefit and from cane grown on land other than its own; that it under its contracts had the legal right to mill the cane as soon as it was delivered to the central; and that it sold its share of the sugar for its own account. That is all there is to the case and is all that is necessary to make the sales taxable under section 1459, *supra*.

The appealed judgment is in accordance with the law and the facts. It is therefore affirmed with the costs against the appellant. So ordered.

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

CONCURRING PRO HAC VICE

JOHNSON, J.:

This action was commenced in the Court of First Instance of the City of Manila on the 14th day of September, 1922. It had its origin in the sugar crop of 1920. It has been pending decision in the Supreme Court since 1925. It has been argued several times. There exists an empate. Considering the length of time since the beginning of the action, in relation with the fact that the court stands equally divided, and in order to obtain a decision so that the defeated party may appeal to the Supreme Court of the United States and obtain an official decision upon the merits, I have decided to concur for that purpose pro hac vice.

I cannot give my consent, however, to the placing of a four-wheel brake upon the principal industry of the country. Sugar is not manufactured. It is simply extracted from the pulp of the sugar cane. The process of extraction is no more a process of manufacture of sugar, except in the machinery used for that purpose, than the making of rice from palay or the digging and hulling of peanuts, or that the coprax becomes a manufactured article by taking it by machinery from the coconut shell.

The plaintiff is a mere employee of the sugar growers. It is employed by them for the purpose of extracting the sugar from the sugar cane at a fixed price. The fact that it receives a portion of the sugar extracted, in lieu of a cash payment, does not make it a manufacturer of sugar. If it received a cash payment for its services, instead of a portion of the sugar, certainly it could not be held to be a manufacturer of sugar under the provisions of the law applied. In the one case it received sugar for its services; in the other case it would receive cash. In the second case it is certainly not a manufacturer of the sugar upon which the revenue in the present case is attempted to be collected. Certainly no revenue could be collected in the second case upon the theory that it is a manufacturer. In the second case it would have no sugar to sell and therefore could not be considered a merchant. (Castle Bros., Wolf & Sons vs. McCoy, 23 Phil., 300; State vs. American Sugar Refg. Co. 51 La. An., 562; State vs. Eckendorf, 46 La. An., 131; Hartranft vs. Wiegmann, 121 U. S., 609; Tide Water Oil Co. vs. United States, 171 U. S., 210; City vs. Coffee Co., 46 La. An., 87; New Orleans vs. Mannessier, 32 La. An., 1075; United States Treasury Decisions Nos. 15404 and 17579; Kuenzle & Streiff vs. Collector of Customs, 32 Phil., 510; People vs. Roberts, 81 N. Y. S., 1138.)

My concurrence is simply pro hac vice.

DISSENTING

JOHNS, J., with whom concurs AVANCEÑA, C. J.:

Again, we are forced to dissent. As stated, this case was decided upon the stipulation of facts, of which the ones material to this dissent are as follows:

"2. That plaintiff is and at all times hereinafter mentioned has been, the legal owner and operator of a sugar mill at Del Carmen, Pampanga, P. I., and as such owner and operator engaged in the production of raw centrifugal sugar and its by products.

"3. That in the operation of its sugar mill above-mentioned for the production of raw centrifugal sugar, plaintiff mills sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff and delivered to

it under so-called milling contracts, and as compensation for its services in milling said sugar cane, plaintiff receives 50 per cent of the resulting centrifugal sugar, and the sugar cane growers receive the remaining 50 per cent of the resulting centrifugal sugar.

"4. That during the times hereinafter set forth, plaintiff received as its share in the milling of sugar cane belonging to sugar cane growers, raw centrifugal sugar the sales values of which upon being sold by plaintiff were as follows:"

Then follows a detailed statement of the amount and value of the centrifugal sugar as stated in the majority opinion.

The decision of the lower court and the majority opinion in this court are based upon the decision in *Central Azucarera de Bais vs. Trinidad* (46 Phil., 492). That decision is predicated upon the following propositions:

"(1) That the sugar central in question is a manufacturer of sugar; (2) that all the sugar manufactured by the central comes from sugar cane delivered by sugar cane growers under milling contracts on a share-to-share basis; (3) that the said sugar central in effect buys its raw material and devotes itself exclusively to converting it into finished merchandise, paying for said raw material with a share in the finished product instead of with money."

Between the two cases, there is this important distinction. Although under that decision plaintiff in the instant case might be construed as a manufacturer, yet, here, the agreed statement of facts further shows that all of the sugar manufactured by the plaintiff does not come from the planters under milling contracts, and that the milling of the cane in question was only incidental to the operation of plaintiff's mill, and that in legal effect, the plaintiff did not "purchase the cane from the planters, but simply renders to them services for which it is paid in sugar."

Analyzing the contracts between the plaintiff and the planters in the instant case and the stipulation of facts, we have this situation: The planters produced the cane in question which after its production was delivered to plaintiff's mill under a contract in and by which after the cane is made into the form of centrifugal sugar, after which the products are then divided, one-half of which goes to the planters and the other half to the plaintiff. That is to say, the cane itself is at all times the sole and exclusive property of the planters, and that the title to the cane and its products in the form of centrifugal sugar continues to exist and remains in the planters until after the cane is made by the plaintiff into the form of centrifugal sugar. When that is completed, a division of the products from the sugar cane in the form of centrifugal sugar is then made. Up to that time the division is actually made, the title to the cane and its products is vested solely and exclusively in the planters, a very important fact which was not decided by this court in the case of *Central Azucarera de Bais vs. Trinidad*, *supra*, and which does not appear from the stipulation of facts in that case.

As appears from the stipulation of facts in the instant case, the plaintiff did not and never did purchase the cane from the planters and never did acquire any right, title or interest in the products of the cane until after it was made into the form of centrifugal sugar and a division of it on a fifty-fifty basis was made, during all of which time, the title to the cane and its products continued to be and remain vested in the planters, an important and decisive point which was never passed upon or decided in the case of *Central Azucarera de Bais vs. Trinidad*, *supra*.

The majority opinion cites and is founded upon the case of *Allen vs. Smith* (173 U. S., 389), from which a partial quotation is made. From an examination of that case, it will be found that the only question presented and decided in that case was as to who was the producer of the sugar and entitled to the government bounty. The syllabus says:

"1. Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be

stimulated, or moral obligations to be recognized.

"2. The manufacturer of the sugar, although not the producer of the cane, is entitled to the bounty given by the Act of Congress of August 28, 1894, to producers and manufacturers who had complied with the provisions of the bounty law of 1890, which had been repealed."

In discussing that question, the opinion of the Supreme Court quotes the following language from the decision of the lower court:

"But there are other clauses of the will which, in our view, extend her right and show that she, was the producer after the death of Mr. Allen. She paid all the expenses of the crop; she was to receive the proceeds under the terms of the will; indeed, she was the owner of the crop. She can well be considered, as we think, the producer. We desire it to be well understood that, in our opinion, the bounty money is no part of the crop or proceeds of the crop. The question was: Who was the owner and producer of the crop after the death of the testator?"

And then says:

"Having thus determined that under the will of Mr. Allen she, through the executors, was entitled to all the proceeds of the manufacture of sugar in the sugar house, the court proceeded to take away from Mrs. Allen a part of these proceeds upon the theory that, by the Act of Congress, the bounty was given, not to the manufacturer of the sugar, but to the producer of the cane. In doing this it necessarily took from Mrs. Allen a part of the bounty belonging to her as manufacturer of sugar under the Act of Congress, and gave it to the legal heirs of Allen, because they had produced the cane from which the sugar had been manufactured."

And further says:

"The theory upon which the court did this is thus stated in the opinion: 'The end of the bounty was to encourage the production of cane. It devolved upon us to determine by whom the cane was produced. In our judgment, after carefully reading the act, it is evident that the producer was to be the first to receive the benefit of the bounty * * *. The act (although it includes the manufacture of cane into sugar as one of the essentials) places the manufacture of the sugar in matter of the bounty scheme in a secondary position. In other words, in our view production was a first and manufacture a secondary consideration. Each, however, was essential in order to enable the producer to recover the bounty. The conclusion of the court was that, as the cost of cultivation was about equal, to the cost of manufacture, the heirs at law were entitled to one-half of the bounty and Mrs. Allen the other half.'"

And in its own discussion of the case, the court says:

"It is quite evident that Allen himself was not the producer of the sugar. He had planted the crop of cane upon his own plantation. He had given notice and a bond to the Commissioner of Internal Revenue, and had applied for a license; but he had done nothing toward the production of the sugar at the time of his death beyond raising the cane, which certainly would not have entitled him to be considered a producer of the sugar."

From all of which, it appears that Allen himself was not the producer of the sugar, and it is very apparent that the only question presented and decided in that case was who was entitled to the government bounty. Yet, in its final analysis, the majority opinion in the instant case is founded on that decision.

Much more could be said. But suffice it to say that we are clearly of the opinion that each one of plaintiff's assignments of error is well taken and should be sustained, and that the judgment ought to be reversed, and for such reasons, we dissent.

DISSENTING

VILLAMOR, J.:

With due respect for the majority opinion, I am constrained to reaffirm my dissent in *Central Azucarera de Bais vs. Trinidad* (46 Phil., 492), in view of the identity of the facts established therein, and those agreed upon in the instant case.

Judgment affirmed.

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