

**A. T. HASHIM, PLAINTIFF AND APPELLANT, VS.. JUAN POSADAS, JR..
COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.**

G.R. No. 24402. February 19, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

This action is brought to recover back internal revenue taxes in the sum of P1,236.56 paid under protest by the plaintiff.

There is no dispute as to the facts. The plaintiff is a merchant and, in addition to his ordinary business, maintains an establishment on Rizal Avenue,, in Manila, where he, under contract, makes uniforms and other garments for the Philippine Constabulary, the United States Army, the Hawaiian Planters Association, and the Philippine Chapter of the American Red Cross. He keeps a separate set of books for this establishment and, with reference thereto, has in the past been classified by the Bureau of Internal Revenue as a contractor and has paid the contractor's percentage tax of 1 per cent on his gross receipts under the original section 1462 of the Administrative Code which read as follows:

"Contractors, warehousemen, proprietors of dockyards, and persons selling light, heat, or power, as well as persons engaged in conducting telephone or telegraph lines, or exchanges, and proprietors of steam laundries, and of shops for the construction and repair of bicycles or vehicles of any kind, and keepers of hotels and restaurants shall pay a tax equivalent to one per centum of their gross receipts."

On March 16,1923, the Legislature passed Act No. 3065 placing an additional tax of one-half of 1 per centum on the gross value in money of the "commodities, goods, wares, and merchandise sold, bartered, exchanged or consigned abroad by merchants, manufacturers, and commission merchants not otherwise specifically exempted."

On the same date, section 1462, *supra*, was amended by Act No. 3082 so as to read as follows:

"SEC. 1462. Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors, or operators of dockyards, and others,—Road, building, irrigation, artesian well, waterworks, and other construction work contractors, and persons engaged in the installation of gas, or electric light, heat, or power; proprietors or operators of dockyards, telephone or telegraph lines or exchanges, broadcasting or wireless stations, steam laundries, drycleaning or dyeing establishments, tailor shops, shops for the construction or repair of bicycles or vehicles of any kind, mechanical devices, instruments, apparatus, or furniture of any kind, sugar centrals, and rice mills; persons selling light, heat, or power; keepers of hotels, restaurants, cafes, or refreshment parlors; and warehousemen, stevedores, dressmakers, milliners, hatters, plumbers, smith, house of sign painters, and bookbinders shall pay a tax equivalent to one per centum of their gross receipts: Provided, That contractors or others whose gross receipts do not exceed two hundred pesos each quarter shall be exempt from the payment of the one per centum tax provided for in this section."

Subsequently to the enactment of the two Acts mentioned, the defendant required the plaintiff to pay the additional half per cent tax upon the gross receipts of the establishment on Rizal Avenue, in accordance with Act

No. 3065. The plaintiff objected to the payment of the additional tax maintaining that he, in connection with that business, was a contractor and could not be required to pay more than the 1 per cent tax provided for by section 1462 of the Administrative Code as amended by Act No. 3082. The objection was overruled by the Collector of Internal Revenue and the plaintiff thereupon paid under protest the sum of P1,055.74 being one-half per cent of his receipts for the period from February 26, 1923, to March 31, 1924, and the sum of P180 for the period from April 1 to June 20, 1924, plus a penalty of 25 per cent on the P180. This action was thereupon brought.

At the trial of the case, the plaintiff contended that in relation to the establishment on Rizal Avenue, he was either a contractor or a tailor and that he in either event could only be required to pay the tax of 1 per cent prescribed by section 1462 and was exempted from the additional half per cent tax provided for in Act No. 3065. The court below held that he was not a contractor within the meaning of section 1462 as amended by Act No. 3082 and that he was a merchant subject to the payment of the additional half per cent tax. The complaint was therefore dismissed without costs and the plaintiff appealed to this court.

We agree with the trial court that the plaintiff is not the kind of contractor defined in section 1462, but we think that his contention that the establishment on Rizal Avenue should be classified as a tailor shop is correct. The Standard Dictionary gives the following definition of the word "tailor:" "One who makes or repairs men's outer garments, or makes cloaks, heavy-close-fitting gowns, etc., for women; usually restricted to one who makes clothes to order." The appellee maintains that under this definition, the plaintiff cannot be regarded as a tailor and that his business is rather that of a clothier which is defined as "one who makes or sells cloths or clothing; especially, one who sells ready-made clothing."

As will be seen, the terms "clothier" and "tailor" are almost synonymous, but in the ordinary acceptance of the word, a tailor is one who makes clothes to order. In the present case it is not disputed that the plaintiff made no clothes except on previous orders and, if so, the Rizal Avenue establishment must be regarded as a tailor shop and the proper percentage tax on the business is that prescribed by section 1462 as amended. The fact that the garments were made under contract is of no special significance; the contracts were in effect orders for the making of the goods. Neither is it important that the clothes were manufactured in accordance with specifications instead of individual measurements; they were none the less made to order.

The judgment appealed from is therefore reversed and it is hereby ordered that the plaintiff have and recover judgment against the defendant for the sum of P1,236.56 without interest and without costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Johns, and Romualdez, JJ., concur.
Villa-Real, J., did not take part.

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