

SY YOCO, PLAINTIFF AND APPELLEE, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.*G. R. No. 24942. July 12, 1926*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the Province of Albay by Sy Yoco, a Chinese merchant, for the purpose of recovering from the Collector of Internal Revenue the sum of P313.57, paid by the plaintiff to the defendant under protest as an internal-revenue tax upon certain transactions involving the buying and selling of copra in the town of Tabaco, Province of Albay, during the quarter ending December 31, 1922. Upon hearing the cause the trial court held that the tax had been illegally exacted and gave judgment in favor of the plaintiff to recover of the defendant the amount claimed in the complaint, without special pronouncement as to costs. From this judgment the Collector of Internal Revenue appealed.

The facts of the case are simple and may briefly be stated as follows: In the year 1922 the plaintiff was engaged in business as a merchant in the town of Tabaco, Province of Albay; and as such he was accustomed to deal in the buying and selling of abaca, rice, copra, and other products of the country. In connection with this business Sy Yoco maintained warehouses which were used for the deposit of merchandise. In the month of July of the year mentioned one C. T. Williams began buying copra in the town of Tabaco for the purpose of selling the same to the El Dorado Oil Works, an American corporation duly authorized to do business in the Philippine Islands. As Williams lived in Romblon, he could not personally be present at all times in Tabaco, and he therefore entered into a written contract with Sy Yoco by which the latter was constituted his agent in Tabaco for the purpose of assisting in the purchase of copra under the following conditions: Sy Yoco agreed no longer to buy copra upon his own account, and his transactions in copra thereafter were limited to the purchase of copra for Williams at prices fixed by the latter. The copra thus acquired was stored in a bodega which Williams rented from Sy Yoco, the key to the bodega being kept at all times in the possession of an employee of Williams, who attended to the reception and storing of the copra during the ordinary hours of business. When persons having copra for sale presented themselves at the establishment, the copra was directly delivered by the seller to the weigher and keeper of the bodega, who received the same and issued the corresponding receipt in the name of Williams. This receipt was then presented to Sy Yoco, who paid for the amount of copra therein indicated from funds already placed in the bank by Williams at Sy Yoco's disposition. When, as sometimes happened, copra was brought to Sy Yoco's establishment after Williams' bodega had been closed for the day, Sy Yoco was accustomed to receive and pay for the same upon account of Williams; and upon such occasions he stored the copra in another bodega and there kept it until Williams' keeper returned, whereupon the copra was transferred to Williams' bodega.

The copra purchased in the manner above stated was sold by Williams to the El Dorado Oil Works in accordance with an agreement existing between Williams and the said company, and was thereafter exported to America. The plaintiff Sy Yoco had no intervention whatever in the sale or exportation of the copra, and the internal-revenue tax corresponding to the sale or consignment of the copra to El Dorado Oil Works was paid by Williams.

For his services in connection with the purchase of copra, as above stated, and for the rental of his bodega, Sy Yoco was paid 25 centavos for each picul of copra so purchased.

Upon the facts above stated we are of the opinion that the plaintiff, Sy Yoco, was not liable for the tax which has been exacted of him, and the trial court therefore committed no error in requiring the Collector of Internal Revenue to return the money. The law under which the plaintiff is supposed to be liable for the tax in question is the familiar section 1459 of the Administrative Code, as amended, which (subject to certain exemptions not necessary to be here noted) imposes on merchants a tax of 1 per centum on the gross value in money of merchandise "sold, bartered, exchanged, or consigned abroad by them;" and the term "merchant" as used in said section is therein defined so as to include commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected. The steps in the chain of argument of the Attorney-General, representing the appellant Collector of Internal Revenue; are these: namely, first, that the plaintiff, Sy Yoco, acted, in the transactions with which we are here concerned, in the character of an agent for Williams; secondly, that, having an establishment of his own for the keeping and disposal of goods of which sales were effected, he must be considered a commission merchant within the meaning of section 1459 of the Administrative Code; thirdly, that the various transactions by which copra was purchased by Sy Yoco and turned over to Williams were in effect sales from Sy Yoco to Williams; and, lastly, as a consequence of the foregoing three propositions, that Sy Yoco is liable for the tax imposed on merchants by the section cited. In this connection reliance is placed by the Attorney-General upon the decisions in *Gil Hermanos vs. Hord* (10 Phil., 218), and *Muñoz & Co. vs. Hord* (12 Phil., 624), as well as later cases in which the rules there announced have been applied.

In support of the appealed judgment the attorneys for the plaintiff-appellee insist, first, that the plaintiff has not intervened in any sale of copra in respect to which he might be subject to taxation; secondly, that the copra in question was consigned by Williams to the El Dorado Oil Works in the United States, upon which consignment the tax has been once paid by Williams; and, lastly, that, even viewing the transactions in question merely in the light of sales, the tax cannot be collected twice. In this connection reliance is placed upon the decision of this court in *Atkins, Kroll & Co. vs. Posadas* (48 Phil., 352).

Before beginning a discussion of the legal questions involved in the case we note that the point presented in the pleadings and agreed statement of facts is properly this, namely, whether the plaintiff-appellee, Sy Yoco, is liable for the merchant's tax upon copra purchased by him for C. T. Williams during the quarter ending December 31, 1922, and sold by Williams to El Dorado Oil Works. In other words the question is over the plaintiff's liability for the tax on sales of copra and not over his liability for the tax on consignments abroad of copra. It is true that it appears from the testimony of Williams that the copra in question was in fact shipped out of the Philippine Islands, and the attorneys for the appellee have seized upon this fact to bring the case within the doctrine stated in *Atkins, Kroll & Co. vs. Posadas*, supra; but, so far as appears, the tax with which we are concerned was assessed as a sales tax, and as such it will be here treated. It will thus be seen that the case before us raises the same question with respect to the liability of a commission merchant for the tax on sales that was raised in the case last mentioned with respect to his liability for the tax on consignments of merchandise abroad.

Passing to a discussion of what appears to us to be the vital point in the case we note that the law under which this tax was exacted declares, among other things, that merchants shall be liable for a tax calculated at a certain per centum on the value of merchandise sold by them. It is not the purchase but the sale that is intended to be the subject of taxation. With this point in mind we proceed to inquire what sale or sales of the copra with which we are here concerned have in fact been effected. The answer is that, so far as the record shows, two sales, and two sales only, of this copra have been made, namely, first, when the original producer (or owner) brought the product

to Sy Yoco's establishment and sold it to Williams, or to Sy Yoco as Williams' agent; and, secondly, when Williams later sold the same copra to El Dorado Oil Works. We note in passing that the argument for the Collector of Internal Revenue supposes that there was really a third sale, that is to say, a sale from Sy Yoco to Williams. In our opinion this assumption does manifest violence to the facts and is utterly at variance with the real nature of the transaction. As we view the situation, when the copra was delivered by the producer or prior owner into the warehouse where Williams caused it to be stored, the title passed at once directly to Williams, without being vested for a moment in the person of Sy Yoco.

The question then occurs, did Sy Yoco have a taxable relation to either of the two sales that actually occurred? The answer must in our opinion be in the negative as to each of said sales. As to the first, when the producer parted with his product and received his pay from Sy Yoco, the latter certainly did not intervene in the transaction in the character of seller. He intervened exclusively in the character of purchaser or agent of the purchaser, and hence as to him the transaction was not taxable in any sense. Indeed it is not insisted for the Collector that Sy Yoco is taxable with respect to the transaction by which the copra was acquired by him as Williams' agent.

With respect to the sales of the copra to the El Dorado Oil Works, it is admitted that these transactions were not made by Sy Yoco but by Williams, without any intervention whatever on the part of Sy Yoco. It follows that the latter cannot by any possibility be liable for the tax on said sales. Besides, this tax has been paid by Williams, and it cannot be collected again from Sy Yoco. It is insisted, however, for the appellant, that the decision in *Gil Hermanos vs. Hord* (10 Phil., 218), supplies authority for collecting the tax on a sale of this kind from both the agent (or commission merchant) and the owner of the commodity which is sold. We consider the decision cited to be of doubtful application, since the sale was in fact actually there made by the commission merchant, while in the case before us the commission merchant (Sy Yoco) intervened only in the purchase of the copra and had nothing whatever to do with the sale which alone is the subject of taxation. In addition to this the force of said decision has been impaired by the decision of this court in the case of *Atkins, Kroll & Co. vs. Posadas* (48 Phil., 352), wherein we held that upon a consignment of merchandise abroad, effected by a commission merchant in behalf of another, the tax can be collected only once; and it seems obvious that every consideration pertinent to the taxation of consignments of merchandise abroad is equally applicable to domestic sales. But in the present case it is unnecessary to declare *Gil Hermanos vs. Hord*, supra, overruled, since the situation here involved is distinguished from that with which that decision is concerned by the circumstance that in the present case the commission merchant who intervened in the purchase of the copra had nothing whatever to do with the sale, which was effected exclusively by the owner.

For the reasons stated the judgment appealed from will be affirmed, and it is so ordered, without express pronouncement as to costs.

Avanceña, C. J., Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ, concur.

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