

JUAN CAMAHORT, PLAINTIFF AND APPELLEE, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 25846. December 24, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

Plaintiff alleges that he is a resident of the City of Manila, and that the defendant is the Collector of Internal Revenue; that on November 4, 1918, he was appointed employee for Dona Marcelina O. Viuda de Monasterio from San Jose, formerly Province of Ambos Camarines, under a written instrument known in the record as Exhibit A; that under the terms of his appointment, and during the years 1918 and 1922, he received from his employer chattels and goods to be sold in Manila which in fact were sold under instructions from his employer; that in the sale of the merchandise in question, plaintiff acted as a mere employee with a fixed compensation, and always disclosing the name of his employer in all of the transactions; that during such period, and as such employee, and under the instructions of his employer, plaintiff sold goods amounting to P217,436.74, on all of which the merchant's percentage tax, due and payable under section 1459 of the Administrative Code of 1917, was paid by the employer, without even a demand for its payment; that the defendant, claiming to act under section 1459, and on October 11, 1922, levied and assessed the following taxes upon the plaintiff: Fixed C-1 taxes for 1918-1922, P10; 1 per cent tax on gross sales, P2,174.37; and 25 per cent surcharge on last item for delinquency thereof, P543.59, making a total of P2,727.96, less P240 which was erroneously paid, leaving a balance of P2,427.96, and that defendant demanded the payment of such taxes and penalties; that in view of such demand, and for fear of other penalties, plaintiff paid such taxes under a written protest, which was overruled, and notwithstanding the demand, defendant refuses to return the money, and plaintiff prays for a corresponding judgment.

For answer the defendant makes a general and specific denial of all of the material allegations of the complaint, and as a special defense alleges:

"That from the fourth quarter of the year 1918 to the first quarter of the year 1922, both inclusive, the plaintiff effected transactions as a commission merchant, the internal revenue fixed and percentage taxes on which, plus the 25 per cent surcharge for delinquency, amounted to P2,427.96, which was paid by the plaintiff to the defendant."

And prays that the complaint be dismissed. At the trial, the parties stipulated upon the following facts:

"Come now the parties to the above-entitled case and hereby agree and stipulate that the following are facts pertinent to the issues involved in the case, and that they may be considered by the court as proven, without the production of evidence for that purpose. It is understood, however, that this shall not be construed so as to

preclude either party from producing legally admissible evidence of other facts that may be deemed by either party and the court to be pertinent to the case.

"I. That the plaintiff is of legal age and resident of the City of Manila, and the defendant is the duly appointed and qualified Collector of Internal Revenue.

"II. That the plaintiff at all of the times referred to in the complaint was not and is not a holder of a merchant's or commission merchant's privilege tax-receipt, but was a holder of a commercial broker's tax-receipt during the years 1919 to 1922, inclusive.

"III. That by virtue of a document executed on January 22, 1919, before notary public Leonard S. Goddard, a regular partnership was organized as shown by the Articles of Copartnership contained in document hereto attached and made a part hereof, marked Exhibit A.

"IV. That on November 4, 1918, the plaintiff was authorized to act under the terms and conditions embodied in a special power of attorney, copy of which is attached hereto and marked Exhibit B.

"V. That the plaintiff acting under the power of attorney above-mentioned sold goods belonging to Dona Marcelina O, Viuda de Monasterio during the period from the fourth quarter of 1918 to the first quarter of 1922 to the value of P217,436.74.

"VI. That the defendant under the authority of sections 1457, 1458, and 1459 of the Administrative Code of 1917 did on October 11, 1922, levy and assess the following taxes upon the plaintiff: Fixed merchants' taxes for 1918-1922, P10; 1 per cent tax on gross sales, P2,174.37; and 25 per cent surcharge on last item for delinquency thereof P543.59; or a total of P2,727.96, minus P240, which were paid by the plaintiff, for effecting said transactions, as commercial broker's taxes, leaving a net balance of P2,427.96, which amount the plaintiff paid under protest on March 17, 1923.

"VII. That the plaintiff has demanded from the defendant the refund of the amount paid and mentioned in the preceding paragraph, but the said defendant refused and still refuses to make the refund."

Each party reserving the right, in his own discretion, to introduce any other testimony which might be legally admissible.

The lower court rendered judgment in favor of the plaintiff for the full amount of plaintiff's claim, without interest or costs.

On appeal the defendant assigns the following errors:

"The trial court erred:

"I. In finding, or concluding that the plaintiff and the defendant agreed during the trial that the former was not a merchant provided with the license required by law, and that he was merely a commercial broker.

"II. In applying the doctrine laid down in *Facundo versus Posadas* (23 Off. Gaz., pp. 1749-1751) to the present case.

"III. In holding that the plaintiff, in selling the goods belonging to Dona Marcelina O. Vda. de Monasterio, acted not as a commission merchant but merely as an 'apoderado asalariado' (a salaried agent).

"IV. In refusing to grant the defendant's motion for a new trial, and in entering judgment in favor of the plaintiff and against the defendant."

JOHNS, J.:

It is admitted that a merchant's sales tax on all of the goods sold by the plaintiff was levied and paid in full by Dona Marcelina O. Viuda de Monasterio.

The question now presented is whether or not plaintiff was doing business as a merchant, and, as such should pay a sales tax on the same goods.

The record is conclusive that Dona Marcelina O. Viuda de Monasterio was the sole and exclusive owner of the goods sold, and that the plaintiff was her agent and legal representative in the selling of the goods, and that there was never but one sale; that the plaintiff did not take the goods from Dona Marcelina O. Viuda de Monasterio on consignment. Neither did he take them on commission. It is also conclusive that at all times in the selling of the goods, plaintiff never claimed to act or represent himself, and that all of such transactions were made in the name of, and for and on behalf of, his principal, who paid him a salary of P300 per month for his services, and that plaintiff did not have or receive any other compensation. It is also stipulated that during all of the times alleged, the plaintiff was the holder of a commercial broker's tax receipt, and that his principal personally paid the full amount of the sales tax on all of the goods which were alleged to have been sold by the plaintiff as a merchant.

In their respective briefs, respective counsel have cited numerous previous decisions of this court construing section 1459, and the meaning of the word "merchant" as it is used in that section.

Without analyzing or seeking to distinguish them, we hold, upon the facts in this case, that in the making of the alleged sales, plaintiff made them as the agent and representative of his principal, and that the goods which he sold belonged to, and were the property of, his principal, and that the sales which plaintiff made were made by him as agent for his principal, and that in the making of them, he was not a merchant within the meaning of section 1459; that in the making of such sales, plaintiff received a salary of P300 per month from his principal in full compensation for his services; that he did not receive or handle the goods on commission or consignment, and that any sale which he made of the goods was the sale of his principal, and that but one sale was ever made of the goods in question, and that was the sale made by his principal, through the plaintiff as her agent; that plaintiff having once paid the sales tax in full on all of such sales, the Government is not entitled to collect a double sales tax on one sale only of the same goods.

The judgment of the lower court is affirmed, without costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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