

**PHILIPPINE BUTTON CORPORATION, PLAINTIFF AND APPELLANT,
VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE,
DEFENDANT AND APPELLEE.**

G.R. No. 27771. February 24, 1928

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiff Philippine Button Corporation from the judgment of the Court of First Instance of Manila absolving the defendant, Juan Posadas, jr., Collector of Internal Revenue of the Philippine Islands, from the complaint in which the plaintiff corporation prayed that the defendant be ordered to reimburse it in the sum of P14,400.10 paid by it under protest as internal revenue tax on several button shipments made by its local manager to its office in New York, United States of America, on the ground that said corporation is not a "merchant" within the meaning of the law, and that the shipment of said merchandise is not a consignment.

The appellant company assigns the following alleged errors as committed by the lower court in the judgment appealed from, to wit: (1) The lower court erred in admitting the second amended answer of May 4, 1926; (2) the lower court erred in dismissing plaintiff's complaint and in failing to render judgment in favor of plaintiff and against defendant as prayed for in plaintiff's complaint.

The necessary and relevant facts for the solution of the questions raised in the present appeal appear in the following agreement:

"Come now plaintiff and defendant, by their respective undersigned attorneys, and hereby stipulate that the facts in the above-entitled case are as follows:

"1. That the plaintiff is a foreign corporation duly organized and existing under and by virtue of the laws of the State of New York, United States of America, duly licensed to do business in the Philippine Islands, maintaining in the City of Manila a branch and factory in charge of its resident manager, John L. Headington, and that defendant, Juan Posadas, jr., is now and at all times mentioned herein was the duly appointed, qualified and acting Collector of Internal Revenue for the Philippine Islands;

"2. That plaintiff is now and at all times mentioned herein was a holder of a merchants' privilege tax-receipt;

"3. That plaintiff is engaged in the Philippine Islands during all the times mentioned in the complaint until the present time, in purchasing, by its resident manager, raw trochas shells, manufacturing said shells into buttons in its Manila factory, and after the finished buttons are manufactured, said buttons are by plaintiff's resident manager shipped to plaintiff in New York, where they are sold or otherwise disposed of by the plaintiff;

"4. That plaintiff, at its factory in Manila, employs several hundred Filipino workmen and Filipino workwomen and has there set up machinery and paraphernalia for the conversion of raw shells into buttons, plaintiff's investment in plant and machinery being several hundred thousand pesos and its monthly payroll amounting to several thousand pesos;

"5. That the defendant, in his capacity as Collector of Internal Revenue and under the pretended authority of section 1459 of the Administrative Code, 1917, demanded and collected from the plaintiff a tax of one per centum (1%) of the gross value of the buttons directly shipped and sent by the plaintiff in Manila, through its resident manager, John L. Headington, to its head office in New York City, United States of America, from the year 1922 up to and until the first quarter, of the year 1923; and the plaintiff, through its head resident manager, John L. Headington, involuntarily and to avoid the exaction of penalties for non-payment, paid to the defendant Juan Posadas, jr., as Collector of Internal Revenue, under protest, on the ground, among others, that plaintiff does not come within the provisions of section 1459 of the Administrative Code of 1917, and, therefore, is not subject to the tax levied thereunder, taxes in the amounts and on the dates following:

Date paid

Quarter and year

Amount paid

Feb. 15, 1923 Fourth quarter, 1922 P788.24

Apr. 18, 1923 First quarter, 1923 895.44

"6. That the defendant, in his capacity as Collector of Internal Revenue and under the pretended authority of section 1459, of the Administrative Code of 1917, and Act No. 3065, in connection with Act No. 3183, demanded and collected from the plaintiff a tax of one and one-half per centum (1 1/2%) on the gross value of the buttons directly shipped and sent by the plaintiff in Manila, through its resident manager, John L. Headington, to its head office in New York City, United States of America, from the second quarter of the year 1923 up to and until the first quarter of the year 1925; and the plaintiff, through its said resident manager, John L. Headington, involuntarily and to avoid the exaction of penalties for non-payment, paid to the defendant, Juan Posadas, jr., as Collector of Internal Revenue, under protest, on the ground, among others, that plaintiff does not come within the provisions of Act No. 3063, as amended by Act No. 3183, and, therefore, is not subject to the tax levied thereunder, taxes in the amounts and on the dates following:

Date paid

Quarter and year

Amount paid

July 17, 1923

Second quarter, 1923

P1,227.15

Oct. 17, 1923

Third quarter, 1923

1,233.23

Jan. 7, 1923

Fourth quarter, 1923

1,857.27

P4,317.65

Apr. 8, 1924

First quarter, 1924

1,550.09

July 14, 1924

Second quarter, 1924

1,645.55

Oct. 18, 1924

Third quarter, 1924

1,816.40

Jan. 12, 1924

Fourth quarter, 1924

1,558.12

6,570.16

Apr. 17, 1925

First quarter, 1925

1,828.61

with the exception, however, that the defendant does not admit that the payment of P1,816.40 made on October 18, 1924, was made under protest;

"7. That plaintiff's complaint in this case was filed with the court on September 22, 1925.

"The parties hereto reserve their right to present such other and further evidence as they may deem necessary."
(Pp. 13-17 of the bill of exceptions.)

In accordance with the reservation of rights by the parties in the agreement above quoted, the plaintiff corporation presented additional evidence from which it appears that:

The plaintiff company's business in these Islands dates from the month of August, 1922. Most of the buttons manufactured by said company in Manila are sent to its main office in New York, and the rest or about 4 per cent, is sold to embroidery establishments in the City of Manila, upon their orders, because this class of buttons cannot be found anywhere else in the local market. The P1,816.40 was paid by the plaintiff on October 18, 1924 under protest, payment having been made by means of a check attached to a letter, copy of which is Exhibit A, to the office of the treasurer of the City of Manila. Said letter was taken to said office at about 4 o'clock in the afternoon of October 20, 1924, by witness Luis Pigaron, stenographer of the manager, John L. Headington.

The first question to be determined in the present appeal is that raised in the first assignment of error made by the plaintiff-appellant, that is, did the trial court err in permitting the defendant to amend its answer a second time, adding new defenses after the parties had entered into stipulation of facts, but before it was submitted to the court for its approval and before the trial.

The rule regarding the amending of answers by adding new defenses is found on page 425 of volume 31 of the Cyclopaedia of Law and Procedure, which reads:

"(F) Adding new defenses.—Whether an amendment will be allowed which adds a new defense to that already interposed depends largely upon the time at which it is offered, and whether the granting of it will work an injustice to plaintiff, the matter being within the discretion of the court to which the application to amend is made, which discretion will ordinarily not be reviewed by an appellate court unless a clear abuse thereof is shown. When applied for before trial or at the commencement of the trial an amendment adding a new defense

is very generally allowed. And where the matter is governed by code or statute, these uniformly allow this amendment to be made at this time in furtherance of justice. Where, however, defendant has unduly delayed in offering his amendment, leave may be refused, even before trial. Where the matter is governed by code or statute, these generally agree in forbidding an amendment upon the trial introducing a new defense or substantially changing the issue. In the absence of statutory regulation the allowance or rejection of this amendment upon the trial rests in the discretion of the court, according to the circumstances of each case, and the amendment is sometimes allowed at this time, where plaintiff is not injured thereby, and sometimes refused. Courts very generally refuse, after the evidence is all in, to allow an amendment adding a new defense, although in rare cases, if the circumstances warrant, the amendment may be allowed even at this stage of the trial. This amendment is very generally allowed before a new trial granted after appeal or after demurrer."

In the present case, the amendment was made before the trial and before the stipulation of facts was submitted to the court for its approval. Moreover, the presentation of this agreement did not mean that the case was then submitted to the court for final decision, since the parties had reserved the right to present additional evidence, as they did in fact during the trial. The plaintiff appellant having had the opportunity to disprove the new facts alleged in the second amended answer by competent evidence to that effect, its admission in said stage of the proceedings does not constitute an abuse of discretion, since it has not prejudiced any of said plaintiff-appellant's rights.

The first assignment of error, then, is groundless and must be rejected.

The second question to be determined in this appeal is whether or not the herein plaintiff-appellant is subject to the payment of the tax of H per centum on consignments, under the provisions of section 1459 of the Administrative Code of 1917, and of Act No. 3065 in connection with Act No. 3183.

The pertinent part of section 1459 of the Administrative Code of 1917, reads as follows:

"SEC. 1459. 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 * * * 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. * * *

* * * * *

" '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 relevant part of section 1 of Act No. 3065, which became effective February 26, 1923, reads:

"SECTION 1. All merchants, manufacturers, and commission merchants not otherwise specifically exempted according to the provisions of the present Internal Revenue Law shall in addition to similar taxes heretofore imposed pay an additional tax of one-half 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."

And section 1 of Act No. 3183, which became effective November 27, 1924, provides as follows:

"SECTION 1. Section four of Act Numbered Three thousand and sixty-five is hereby amended to read as

follows:

"SEC. 4. The tax established by this Act shall be in force and effect and be collected only upon business transacted from the date of the approval of this Act until December thirty-first, nineteen hundred and twenty-five."

The plaintiff company contends that it is not a merchant, but only a manufacturer of pearl buttons. On the other hand, the appellee maintains that the appellant company is a merchant within the meaning of the word as defined in section 1459 of the Administrative Code of 1917, and in Act No. 3065 in connection with Act No. 3183, and that it is subject to the payment of the tax on consignments imposed by said legal provisions.

It is an admitted fact that about 4 per cent of the buttons manufactured by the plaintiff company in the Philippines are sold to embroidery establishments in the city, through orders, and that the rest are sent to the main office in New York, where they are sold and distributed. For the local sales, the plaintiff company holds a merchant's license, and pays the proper tax on the buttons sold.

Under these facts and the definition of the word "merchant" given in section 1459 of the Administrative Code of 1917, the plaintiff-appellant is a merchant. If it does business in these Islands and holds a license as merchant, the mere fact of shipping buttons of its own manufacture consigned even to its own main office in New York does not prevent it from being a merchant; inasmuch as a manufacturer doing business, whether with its own goods or those of others, is a merchant (38 C. J., 969). The fact that the plaintiff-appellant combines in itself the character of a merchant and a manufacturer does not mean that when selling its manufactured buttons it may strip itself of its character as manufacturer, or that in snipping them, consigned to itself at New York, it may strip itself of its character as a merchant.

This court has gone further, though with respectable dissent, and has held:

"1. INTERNAL REVENUE; MERCHANTS' TAX; EMBROIDERY MATERIAL SENT FROM ABROAD.—The merchants' tax imposed by section 1459 of the Administrative Code must be paid by a person who sends material to the Philippine Islands to be embroidered under the supervision of its local agent by whom the finished product is returned to the owner. The person so sending material to be embroidered and returned is engaged in the business of manufacture in these Islands and is a manufacturing merchant within the meaning of the Internal Revenue Law.

"2. ID.; ID.; VALUE OF BASIC MATERIAL.—In computing the tax which should be paid under the circumstances stated, the value of the basic material should be taken into account to the same extent as in the case of manufacture by domestic establishments." (Murphy vs. Trinidad, 44 Phil., 649.)

In the case just cited, the embroidery manufacturer did not sell any part of its products here, but sent it all to San Francisco, where it was sold and distributed.

In the case of Vegetable Oil Corporation vs. Trinidad (45 Phil., 822), in which the plaintiff had a license to do business in these Islands, bought copra here and shipped it to the United States, where it was converted into oil and sold there, it was held that said plaintiff company was a merchant, and subject to the payment of the tax on consignments or, shipments of the copra sent abroad, in accordance with section 1459 of the Administrative Code of 1917.

Section 1 of Act No. 3065 above quoted is more explicit and expressly mentions manufacturers as bound to the additional payment of one-half of one per centum on the gross value in money of the commodities, goods, merchandise, and wares manufactured and consigned abroad, thus distinguishing between them and merchants. As under the provision of section 1459 of the Administrative Code, in order that a manufacturer may be bound to

pay the internal revenue tax on consignments, it is necessary that he be at the same time a merchant, and in order to be considered a merchant he must sell goods of his own manufacture.

The appellant cites several decisions of this court, which it believes, contains doctrines in conflict with one another. We have examined said decisions one by one, and found no such conflict.

In the case of *Whitaker vs. Rafferty* (38 Phil., 508), the question was whether or not a single sale or exchange, made one a merchant under the provisions of section 40 of Act No. 2339.

The case of *Asiatic Petroleum Co. vs. Collector of Internal Revenue* (38 Phil., 510), dealt with the meaning of the phrase "disposed of" as used in section 17 of Act No. 2432.

In the case of *La Germinal vs. Powell* (41 Phil., 912), the question raised was whether a cigar and cigarette manufacturer who sells his products in a store outside his factory must pay the internal revenue duty on the basis of the selling price in said store or of the selling price in the factory.

In the case of *Zamboanga Mutual Building and Loan Association vs. Rafferty* (42 Phil., 408), the question was whether or not a mutual building and loan association organized under sections 171 et seq. of Act No. 1459, is a real estate broker, as that phrase is defined in subsection (w) of section 1620 of Act No. 2657.

In the case of *Luzon Stevedoring Co. vs. Trinidad* (43 Phil., 803), the question was whether or not a corporation engaged in the business of loading and unloading cargo from vessels in port, under the immediate supervision and direction of the officers of the ships, the captain being responsible for all the cargo placed on board and the manner in which said cargo is loaded and unloaded, is a contractor within the meaning of said word as used in section 1462 of Act No. 2711, for the purposes of the imposition of the internal revenue tax.

In the case of *El Dorado Oil Works vs. Collector of Internal Revenue* (45 Phil., 1), the question was whether or not a corporation organized under the laws of the State of California engaged in the manufacture and sale of coconut oil in said state, and having a resident purchasing agent in the Philippines who buys copra f. o. b. Manila Bay from merchants who send the copra to the corporation in San Francisco, which is authorized to do business in the Philippines, and receive the price upon presentation to the agent of the bills of lading, is subject to the sales tax imposed by section 1459 of the Administrative Code of 1917, when it does not engage in the sale, exchange or purchase of personal property of any description in the Philippine Islands.

In the case of *Facundo vs. Posadas* (47 Phil., 577), the question was whether or not a salaried agent who purchases copra in the name of his principal and with the latter's money, ships it direct to the principal and stores it in his (the principal's) own warehouse, is subject to the payment of the sales tax.

In the case of *Lee Chan Lam vs. Trinidad* (47 Phil., 979), the question was whether or not it is necessary that a commission merchant have an establishment of his own for the storage and disposal of the goods which he sells or exchanges, in order to be included in the word "merchant" and to be subject to the percentage tax upon sales, and whether or not it is sufficient that he use an establishment or premises or a part thereof for this purpose, although said establishment or premises belong to another.

In the case of *Atkins, Kroll & Co. vs. Posadas* (48 Phil., 352), the question was whether or not a domestic corporation which employs a local commission company as its agent in the purchase of copra, supplying the money for it as well as all the incidental expenses, such as taxes, warehouse charges, insurance and freight, which agent consigns said copra abroad to an agent of the corporation, is bound to pay another tax on the sale after its agent has already paid it in its behalf.

In the case of *W. F. Stevenson & Co. vs. Collector of Internal Revenue* (p. 178 ante), the question raised was

whether or not a broker who sells merchandise belonging to a business house, on which the proper sales tax has already been paid, plus the brokerage tax, is subject to the payment of the tax on the sale, such sale not having been made by the agent in his capacity as a merchant but as a broker, and there having been but one sale.

In the case of *Muñoz & Co. vs. Hord* (12 Phil., 624), the question involved was whether or not a company that acted as agent for certain provincial correspondents, from whom it received consignments of agricultural products on commission, and for their account purchased goods, articles and merchandise, sending these to them and charging a commission on each shipment, is subject to the payment of the internal revenue tax on the value of the merchandise sold on commission and shipped abroad.

In the case of *Inchausti & Co. vs. Cromwell* (20 Phil., 345), the question at issue was whether or not the cost and expense of bailing the hemp is a part of the purchase price and subject to the tax imposed by section 139 of Act No. 1189 on the gross amount of sales of the dealer, and whether or not it is a sum paid for work, labor, and materials performed and furnished by the vendor for the vendee.

In the case of *Asiatic Petroleum Co. vs. Trinidad* (45 Phil., 763), the point in controversy was whether or not a company engaged in the sale of petroleum in the Philippine Islands must pay sales tax on rope shipped by it abroad.

In the case of *Vegetable Oil Corporation vs. Trinidad* (45 Phil., 822), the point in controversy was whether or not the term "merchant" is limited to persons engaged in the sale, barter, or exchange of personal property in the Philippine Islands, or extends to those who engage in their sale to foreign countries; and whether or not the phrase "consigned abroad," as used in section 1459 of the Administrative Code is synonymous with the term "enviado al extranjero," and means "sent or shipped abroad."

In the case of *El Dorado Oil Works vs. Collector of Internal Revenue* (46 Phil., 260), the question raised was whether or not, under section 1459 of the Administrative Code, all merchants, whether domestic or foreign, are subject to the payment of the percentage tax on shipments of goods from the Philippine Islands to foreign countries.

In the case of *Camahort vs. Posadas* (49 Phil., 811), the question raised was whether or not sales made in the name of a traveling merchant and for his account, by a licensed broker who receives a fixed monthly salary, are subject to the payment of another sales tax, after said merchant has already paid the sales tax on all the sales.

It should be noted that there is no similarity between the question now before us and those raised in the cases above cited, with the possible exception of *El Dorado Oil Works vs. Collector of Internal Revenue* (45 Phil., 1), *Atkins, Kroll & Co. vs. Posadas* (48 Phil., 352), *Asiatic Petroleum Co. vs. Trinidad* (45 Phil., 763), *El Dorado Oil Works vs. Collector of Internal Revenue* (46 Phil., 260), and *Murphy vs. Trinidad* (44 Phil., 649), in which the questions involved resemble those presented in the instant case and the decisions therein rendered may serve as a guide for the solution of the question under consideration in view of the rules laid down, which are summarized in the case of *Murphy vs. Trinidad* referred to above.

From all of the foregoing, we arrive at the conclusion, and so hold, that a foreign corporation that manufactures buttons in the Philippine Islands, which holds a merchant's license, sells 4 per cent of its products here and sends the remainder to its main office in New York, has the double character of merchant and manufacturer, and as such is subject to the payment of the tax, not only for the sales made here, but also for the shipments or consignments abroad, as provided in section 1459 of the Administrative Code and in Act No. 3065, inasmuch as it cannot dissociate these two characters in such a manner that when it sells it be considered only as a merchant, and when it ships or consigns, it be considered no more than a manufacturer.

In virtue whereof, and finding no error in the judgment appealed from, the same is affirmed in all its parts, with the costs against the appellant. So ordered.

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

Johnson, and Johns, JJ., dissent.

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