

THE BACHRACH MOTOR CO., INC., PLAINTIFF AND APPELLANT, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLEE.

G.R. No. 30029, February 15, 1929

Ponente: OSTRAND, J.

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OSTRAND, J.:

This action is brought to recover back sales tax in the sum of P3,113.67 paid under protest to the Collector of Internal Revenue. The principal facts of the case are set forth in the following stipulation:

"AGREED STATEMENT OF FACTS

"The plaintiff and defendant herein, thru their undersigned attorneys respectfully appear before this Honorable Court and submit the following statement of facts on which they have agreed and reserving to each party the right to introduce evidence and rebuttal evidence on other facts pertinent to the case, and on which an agreement has not been possible:

"1. That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, maintaining its principal place of business in the City of Manila, P. I., and that the defendant Juan Posadas, jr., is now and at all times, after March 27, 1925, the duly appointed, qualified and acting Collector of Internal Revenue of the Philippine Islands.

"2. That from and after the year 1921 to date the plaintiff has been transacting business in the Philippine Islands principally on the sales of automobiles and auto-trucks.

"3. That the plaintiff effects the sales of automobiles and auto-trucks either for cash or under the installment plan, principally on the latter basis.

"4. That during the period from 1921 to February 25, 1923, the herein plaintiff has sold automobiles and auto-trucks on the installment plan, in which the interest due on the deferred payment amounted to P39,511.76. That from February 26, 1923, to September 30, 1925, inclusive, the herein plaintiff has also sold automobiles and auto-trucks on the installment plan, in which the interest due on the deferred payments amounted to P139,721.84.

"5. That defendant under date of December 31, 1925, demanded of the plaintiff the payment of the total sum of P2,490.94 as percentage taxes on the aforesaid interests plus the additional sum of P622.73 as a surcharge of 25 per cent for the non-payment of the said taxes in due time.

"6. That by reason of said demand, plaintiff paid under instant protest the sum of P3,113.67 on August 20, 1926, and immediately requested defendant to refund the same.

"7. That on September 6, 1926, defendant overruled and denied plaintiff's protest and has refused and still refuses to refund to the plaintiff the said sum of P3,113.67 or any part thereof."

In addition to the stipulation quoted, the record contains oral and documentary evidence explanatory of the

practice followed by the plaintiff in selling automobiles and trucks on the installment plan or on partial credit.

Upon trial the Court of First Instance held that the interest upon which the tax was collected formed part of the purchase price of the automobiles and trucks and that, therefore, the tax was properly collected. From this judgment the plaintiff appealed.

The statutory provisions relating to the case are found in section 1459 of the Administrative Code and section 1 of Act No. 3242. The pertinent part of 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 * * *"

Section 1 of Act No. 3243 provides that:

"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 * * *" (Italics supplied.)

In both sections it will be noted that the tax is to be based on the "actual selling price or value of the things in question at the time they are disposed of."

In the light of the statutory provisions quoted, the case becomes very clear and simple. During the period from 1921 to September 30, 1925, the plaintiff sold a large number of trucks and automobiles, and it appears from the evidence that the sales system followed was approximately the same in all cases.

As an example, we shall take the sale evidenced by Exhibits A, B, C, D, and D-1. On June 19, 1923, the plaintiff and delivered a two-ton White truck to Jose Lahoz, Iligan, Ilocos Sur. The price of the truck at that time was 8,500 of which the purchaser paid only P4,000 in cash, the balance of P4,500 to be paid in successive monthly installments of P500 each, with interest at the rate of 9 per cent per annum beginning with August 19, 1923. For each installment the purchaser Lahoz executed a promissory note for P500 with the interest agreed upon. The first note, maturing one month after August 19, 1923, drew only P3.75 as interest. On the other hand, the interest on the last note, maturing on May 19, 1924, amounted to P33.75. The total amount of the interest on the various notes was P168.75, so that in all the purchaser paid P8,668.75 instead of P8,500, and the Collector of Internal Revenue therefore demanded payment of the percentage sales tax on the P8,668.75 actually paid.

The Collector evidently overlooked the fact that the truck as "disposed of" and that the title then issued to the purchase value or selling price of the truck at that time was P8,500, and following the language the statute, that must be value upon which the tax to be based. The plaintiff corporation paid the sales tax on that amount without objection, but it did, of course, protest against paying sales tax on the interest which accrued subsequent to the sale and, in effect, was interest on the capital tied up in furnishing credit to the purchaser. Such interest might be subject to income taxes, but cannot, from any point of view, be considered subject to the sales tax.

The case of *Inchausti & Co. vs. Cromwell* (20 Phil., 345), is not in point. In that case (quoting from the syllabus) this court held:

"Where it is admitted by the parties that it is customary to sell hemp in the market baled and not loose, it will be presumed that the price at which hemp is quoted in the market is the price of baled hemp; and that prices stipulated in contracts for the purchase and sale of hemp include the cost and expense of baling where the

contracts are silent upon that subject."

There can be no question as to the correctness of this ruling; naturally, the expense of baling enters into the cost and value of baled hemp. But that is widely different from the collection of interest on outstanding credits.

The appealed judgment is reversed, and it is hereby ordered that the defendant refund to the plaintiff the sum of P3,113.67 collected as percentage sales tax on the interest herein before mentioned. Without interests and costs. So ordered.

Johnson, Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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