

**ASIATIC PETROLEUM COMPANY (PHILIPPINE ISLANDS), LIMITED,
PLAINTIFF AND APPELLEE, VS. JUAN POSADAS, JR., COLLECTOR OF
INTERNAL REVENUE, DEFENDANT AND APPELLANT.**

G.R. No. 30136. February 04, 1929

Ponente: JOHNS, J.

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JOHNS, J.:

The questions presented by assignments of error Nos. 1, 2 and 5 are both novel and interesting, and involve the legal construction to be placed upon sections 1478 and 1480 of the Administrative Code, which are as follows:

"SEC. 1478. Articles subject to specific tax.—Specific internal-revenue taxes apply to things manufactured or produced in the Philippine Islands for domestic sale or consumption and to things imported from the United States or foreign countries, but not to any thing produced or manufactured here which shall be removed for exportation and is actually exported without returning to the Islands, whether so exported in its original state or as an ingredient or part of any manufactured article or product.

"In case of importations the internal-revenue tax shall be in addition to the customs duties, if any.

"No specific tax shall be collected on any articles sold and delivered directly to the United States Army or Navy for actual use or issue by the Army or Navy, or on any article sold to the Bureau of Coast and Geodetic Survey, purchased with funds furnished by the Government of the United States, and any taxes which have been paid on articles so sold and delivered for such use or issue shall be refunded upon such sale and delivery."

"SEC. 1480. Payment of specific tax on imported articles.—Internal-revenue taxes on imported articles shall be paid by the owner or importer to the customs officers, conformably with regulations of the Bureau of Internal Revenue and before the release of such articles from the customhouse."

The defendant contends that the tax on the 300 tons of kerosene now in dispute accrued upon the importation of the kerosene in question, and that it became due and payable upon its transfer from the bonded tank to the supply tank of the plaintiff. That it then became a part of the mass of the property of the state, and that its subsequent disposition is immaterial to this decision, citing the case of *Asiatic Petroleum Co. vs. Rafferty* (38 Phil., 475-479), in which this court said:

"The theory of the law, with reference to the internal-revenue tax upon such merchandise, seems to be that the tax is not due and payable until it is about to be put into the commerce or trade of the country."

And submits that the kerosene in question was not only "about to be put into the commerce or trade of the country," but that it was actually put into the commerce and trade of the country by its removal from plaintiff's bonded tank No. 1 to its supply tank, and defendant then says:

"But even granting, for the sake of argument, that the tax on said kerosene was not legally due, the same cannot be recovered, for the reason that no protest accompanied its payment, as will be shown later."

He also says that while it is true that the 259.0118 tons were not actually put into the commerce and trade of the

country, because they were not removed to plaintiff's supply tank, yet the fact that the plaintiff procured customs withdrawal permit No. 8495 for that kerosene conclusively shows that it was about to be removed therefrom, and that for such reason, the tax thereon became legally due and collectible, again citing the case of *Asiatic Petroleum Co. vs. Rafferty*, where it is said:

"While the law permits the producer of taxable merchandise to delay the payment of the internal-revenue tax until 'immediately before removal of the same from the place of production,' the duly authorized and promulgated regulation of the defendant himself permits the importer of taxable merchandise to deposit the same in a bonded warehouse and to delay the payment of the internal-revenue tax until the same is about to be removed therefrom."

From which he contends that "the moment a withdrawal permit is obtained, the tax becomes due and collectible."

The plaintiff contends that from the use of the words "for domestic sale or consumption" in section 1478, it is apparent that it was the intention of the Legislature that the tax should be collected only upon those things "which are sold or consumed locally," citing section 1460 which says:

"In computing the tax above imposed transactions in the following commodities shall be excluded:

"(a) Things subject to a specific tax.

"(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not."

It then points out that the merchant's sales tax is not collectible upon things subject to a specific tax, and that the specific tax is collected before sale, and the merchant's sales tax after sale. That the one is on quantity or measure, and the other on value, and appellee then says:

"But aside from these differences, they are intended for the same purpose, that is, a tax on 'things for domestic sales or consumption otherwise why should the Legislature have exempted those things covered by the specific tax from the provisions of the law covering tax on sales? It is essentially the same tax but collected in a different manner and at a different time. The reason for this in all probability, is that on certain commodities it was deemed more expedient to collect the tax before sale than after sale."

And also cites the *Rafferty* case in which this court says:

"The theory of the law, with reference to the internal-revenue tax upon such merchandise, seems to be that the tax is not due and payable until it is about to be put into the commerce or trade of the country. The condition of the market at a particular time, or the situation in business generally, might cause the producer to withhold his merchandise and not allow it to be removed from the place of production for months, or even years; could he, under the above quoted provision of the law, be required to pay the internal revenue taxes until he saw fit to place his product upon the market?"

The decision in the *Rafferty* case was founded upon the following material facts: Plaintiff there, with the approval of the defendant, entered the oils in bond, for storage in Internal Revenue Bonded Warehouse No. 59, in the City of Manila, and furnished the bond for the payment of all taxes that might accrue on the oils, and the defendant issued a permit for the discharge of the oils from the ship into the bonded Warehouse. During the removal of the oils from the ship to the bonded warehouse 2,485 cases of gasoline and 500 cases of kerosene were totally destroyed by fire and never reached the bonded warehouse. The defendant required the plaintiff to make applications for withdrawal from the bonded warehouse of the oils which had been destroyed and to pay a specific tax of P3,033.20, which was paid under protest. Upon those facts the court held that the plaintiff was entitled to have its money refunded.

The decision in the Rafferty case was well written and is legally sound, and although the facts are somewhat different, the underlying fundamental law laid down in that case by inference at least tends to support plaintiff's contention in this case.

The very purpose and intent of the plaintiff here in removing the kerosene in question from the bonded warehouse to its supply tank was to place it on the market; otherwise, it would not have removed it or paid the tax, and the removal was made on the assumption that the kerosene was in a fit and suitable condition to sell to plaintiff's customers. At once upon the discovery that it was not, plaintiff called attention of that fact to the Collector of Customs and asked for and obtained a permit from him to ship the discolored kerosene out of the Philippine Islands to its plant in Singapore, to have it there refined and made suitable for the market. In the very nature of things, plaintiff would not want to sell the discolored kerosene in the Philippine Islands and could not do so without a substantial injury to its business reputation. It was for such reason that upon making the discovery, plaintiff applied for and obtained the permits and went to a large amount of trouble and expense in removing the kerosene from the Philippine Islands to its Singapore plant.

The real purpose and intent of the law in question is to require the payment of the specific tax on things imported from foreign countries for the purpose of domestic sale or consumption in the Philippine Islands. It is very apparent that the discolored kerosene in question was never imported by the plaintiff for domestic sale or consumption in the Philippine Islands; otherwise, it never would have gone to the trouble and heavy expense of removing it from the Islands to its Singapore plant for the purpose of having it refined and made suitable for the market. It never was the purpose or intent of the plaintiff to ship to the Philippine Islands discolored kerosene to be there sold and distributed to its customers, as there is no evidence that the plaintiff was ever engaged in the sale or distribution of colored kerosene. That is to say, it was the purpose and intent of the plaintiff to import into the Philippine Islands kerosene which was fit and suitable for sale on the market, and that it never was its intention to import discolored kerosene. That when it discovered that it had done so, it at once applied for and obtained a permit from the Government to reship it to its Singapore plant for refining purposes, which involved much trouble and a heavy expense, from all of which it is very apparent that the plaintiff never imported into the Philippine Islands discolored kerosene for domestic sale or consumption. If that had been its purpose and intent, it never would have applied for and obtained a permit for its removal, and would never have reshipped the kerosene to its refining plant in Singapore, so as to have it refined and put in a fit and suitable condition for sale.

The defendant contends that the plaintiff should have made its discovery before it paid the tax, and that having paid the tax before the discovery, it is now estopped to claim or assert that the kerosene was not imported for domestic sale or consumption. That is not tenable. There is no evidence that, in the ordinary course of business, the plaintiff could have made the discovery before it paid the tax or that it was negligent in making the discovery. In the very nature of things, plaintiff could not make the discovery until after the oil in question was removed from the bonded tank to its supply tank, and when it was removed, the discovery was made. How then could the plaintiff be charged with negligence?

The net result of defendant's contention would be to collect a double specific tax on the quantity of kerosene in question. The discolored oil on which the tax was paid was removed with the consent of the government, and in the very nature of things, the plaintiff would have to again import that same amount of kerosene, and to do so, it would have to pay the same amount of specific tax as a condition precedent to its consumption or domestic sale in the Philippine Islands. In legal effect that would amount to the payment of two specific taxes on that amount of oil.

We attach importance to the language in the third paragraph of section 1478, not cited in either brief, which provides that no specific tax shall be collected on any articles sold and delivered directly to the United States

Army, etc., and any taxes "which have been paid on articles so sold and delivered for such use or issue shall be refunded upon such sale and delivery."

It will be noted that this paragraph, which is a part of section 1478, uses the words "sold and delivered," and provides for a refund on all of such articles "so sold and delivered."

The defendant also relies on section 1579 of the Administrative Code, which provides:

"When the validity of any tax is questioned, or its amount disputed, or other question raised as to liability therefor, the person against whom or against whose property the same is sought to be enforced shall pay the tax under instant protest, or upon protest within ten days, and shall thereupon request the decision of the Collector of Internal Revenue. * * * * *

But in the instant case, when the plaintiff paid the tax there was no occasion to question the validity of the tax or the amount of it, for the simple reason that its validity never arose until after the discovery of the discolored kerosene, and in the final analysis the tax was paid under a mistake of fact and not of law, between which there is a very marked difference in the authorities.

Proceedings of this kind are more or less of an equitable nature and are to be decided upon and are governed by rules of equity. Tested by that rule, why should the plaintiff be required to pay two specific taxes on the same amount of kerosene, of and for which, in the very nature of things, there was not and could not be but one domestic sale or consumption?

It appears from the stipulation of facts that withdrawal permit No. 8443 was issued on March 23, 1927; that permit No. 8495 was issued on March 30, 1927; and that on April 1, 1927, the plaintiff wrote a letter to the Insular Collector of Customs in which, among other things, it is said:

"Under the circumstances, we shall be glad of favorable consideration of our application and, when liquidation of the entries on which we have already paid duties and taxes are made, we shall be glad to receive refunds for the amount shipped out."

It is conceded that this letter was written within the ten-day limit, but the defendant contends that it was not a protest within the meaning of section 1579 above quoted. If the question involved here were one of law and not a mistake of fact, there would be much force in that contention. But even so plaintiff in that letter specifically says that when the proper liquidations on the entries on which we have already paid duties and taxes, "we shall be glad to receive refunds for the amount shipped out." In the ordinary course of business, that language should be construed to mean that the plaintiff, even then, claimed and asserted that it was entitled to a refund of its money. This letter was followed by another of April 12, 1927, in which specific application was made "for refund of internal revenue taxes amounting to P10,338.33". The defendant says: "This letter may be considered a protest because it is sufficiently clear and specific." The letter of April 1st was also clear and specific, except as to the amount in pesos and the number of tons on which the refund was requested. But that was a mere question of mathematics and computation, all the data for which was in the possession and knowledge of the defendant.

In its final analysis, the letter of April first should be construed as a polite and courteous demand and request for the refund of the tax in question, to be paid at such time as the correct amount was ascertained and determined.

The case of *Shevango Furnace Co. vs. Fairfield Township* (78 Atl., 937), is not in point under the facts in this case. There, it appeared that the vice-president of the company wrote a letter after the payment of the tax, showing that at that time the company did not intend to contest the amount of the tax on certain grounds which were afterwards urged, and it was held that the tax there was not paid by a mistake of fact. Here, the condition is just the reverse. Upon making the discovery, the plaintiff promptly notified the defendant that when the amount of the

refund was ascertained, "we shall be glad to receive refunds for the amount shipped out."

The case of *Wright vs. Blakeslee*, (101 U. S., 174; 25 Law. ed., 1048), lays down the rule that under the internal revenue laws, it is not necessary that the protest be reduced to writing. A verbal protest is sufficient to give notice that the legality of the demand is disputed.

If the letter of April 1st was not intended as a demand and a request for the refund of money, why was that portion of the letter ever written ? The mere fact that it was couched in polite and courteous language ought not to be construed against the plaintiff. To deny the plaintiff's right of recovery, upon the undisputed facts, would be to compel it to pay a double tax upon the amount of kerosene in question, which equity and good conscience will not permit.

The learned and well written opinion of the trial court is affirmed, without costs. So ordered.

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

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