

ERLANGER & GALINGER, INC., PLAINTIFF AND APPELLEE, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.*G.R. No. 30495. August 24, 1929*

Ponente: JOHNSON, J.

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This action was commenced in the Court of First Instance of the City of Manila on October 8, 1926. Its purpose was to recover the sum of P5,213.54, representing internal-revenue taxes paid in Manila, under protest, by plaintiff as merchant, on its goods sold in Cebu during the years, 1922, 1923, 1924 and up to June 30, 1925. There was included in said amount a surcharge of 25 per cent for plaintiff's alleged failure to pay said taxes when they became due.

The plaintiff alleged that the internal-revenue taxes on said merchandise had already been paid by it in Cebu as and when they became due and payable, and prayed that a judgment be rendered in its favor and against the defendant, ordering the latter to return to the plaintiff said sum of P5,213.54, with legal interest and costs.

The defendant answered denying each and all of the allegations of the complaint. As a special defense he alleged that plaintiff's goods were sold in Cebu by Wm. H. Anderson & Co., acting as a commission merchant for the plaintiff; and that the sum of P5,213.54 was legally due as internal-revenue tax from the plaintiff in its capacity of principal merchant. The defendant prayed that the complaint be dismissed, with costs against the plaintiff.

On October 3, 1927, the parties agreed upon the following:

"STATEMENT OF FACTS

"Now come the plaintiff, Erlanger & Galinger, Inc., and the defendant, Juan Posadas, jr., as Collector of Internal Revenue, through their respective undersigned attorneys, and hereby submit to this Honorable Court the following agreed statement of facts, with the understanding that any of the said parties may present additional evidence at the trial of this cause in support of their respective pleadings, to wit:

"1. That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands and having its principal office therein in the City of Manila, and that the defendant was at all times hereinafter mentioned and at the time of the inception of these proceedings, and still is, the duly appointed, qualified, and Acting Collector of Internal Revenue of the Philippine Islands.

"2. That William H. Anderson & Co. is also a corporation organized under the laws of the Philippine Islands, having its principal office therein in the City of Manila and maintaining a branch establishment in Cebu, Cebu.

"3. That the transactions involved in this case consisted of sales of plaintiff's goods, wares, and merchandise effected in Cebu, Cebu, during the years 1922, 1923, 1924, and up to June 30, 1925, the aggregate sales value of which goods, wares, and merchandise amounted to P304,462.

"4. That on November 21, 1925, and under the authority of sections 1458 and 1459 of the Administrative

Code, the first section as amended by section 2 of Act No. 2892 and section 1 of Act No. 3074, and the second section in relation to Acts Nos. 3065 and 3183, the defendant demanded of plaintiff the payment of the merchant's sales tax of one per cent on such portion of the sales in question as was effected during the period from the year 1922 up to and including February 26, 1923, and the merchants' sales tax of one and one-half per cent on such portion of the sales in question as was effected during the period from February 26, 1923, up to and including June 30, 1925, plus a surcharge of 25 per centum of the total taxes demanded, or a total of P5,213.54.

"5. That on the 15th day of April, 1925, the plaintiff did pay under protest the said sum of P5,213.54, and that plaintiff's protest against the payment has been overruled by the defendant."

After trial, during which both parties presented evidence on points not covered by the agreed statement of facts, the Honorable Simplicio del Rosario, judge, in a very carefully prepared opinion containing a brief analysis of the evidence, arrived at the conclusion that the plaintiff had paid in Cebu, through Win. H. Anderson & Co., the internal-revenue taxes, as and when they became due, on its merchandise sold in Cebu during the years 1922, 1923, 1924 and up to June 30, 1925, the sales value of which amounted to P304,462, and that the sum of P5,213.54 paid in Manila by plaintiff under protest represented double payment of said internal-revenue taxes; and rendered a judgment in favor of the plaintiff and against the defendant, ordering the latter to return to the plaintiff said sum of P5,213.54. From said judgment the defendant appealed and now makes the following assignments of error:

"I. The court below erred in not holding that William H. Anderson & Co., Inc., effected the sales mentioned in the complaint in this case, as a commission merchant for the plaintiff Erlanger & Galinger, Inc., as principal.

"II. The court below erred in not holding that the sum of P5,213.54, mentioned in the complaint, which plaintiff seeks to recover in this case, was legally due, as internal-revenue tax, from the plaintiff in its above-mentioned capacity of principal merchant.

"III. The court below erred in condemning the defendant to return to the plaintiff the sum of P5,213.54."

In addition to the facts agreed upon by the parties, a careful examination of the evidence discloses the following facts:

- Wm. H. Anderson was the majority stockholder of the corporation known as Wm. H. Anderson & Co., Inc., and also of the plaintiff corporation, Erlanger & Galinger Inc.
- Prior to the year 1922 Anderson & Co., Inc., had been acting in Cebu as agent for the plaintiff, selling the latter's merchandise on commission.
- In January, 1922, the demand in Cebu for merchandise of Erlanger & Galinger had so increased that said company had to open and did open a branch or office in Cebu in said month and year, with its own personnel. However, the management, supervision and control of said office was entrusted to Anderson & Co., Inc. Said branch or office was located in the same building with Anderson & Co., Inc., though both companies occupied separate quarters. Each company kept separate records or accounts of its transactions.
- Upon the organization of said branch in Cebu, Erlanger & Galinger, Inc., and Wm. H. Anderson & Co., Inc., entered into an agreement relative to the common or overhead expenses of both, such as rents, salaries of common manager, messenger and bodeguero. According to said agreement Erlanger & Galinger, Inc., was to pay 80 per cent and Anderson & Co. 20 per cent of said expenses. The latter received no commission, nor any other form of compensation from Erlanger & Galinger. All of the other expenses, however, were to be borne separately by each company.

- During the period to which this action relates, or from January, 1922, up to June 30, 1925, the plaintiff paid the freight, transportation and other handling charges of its goods sent from Manila to Cebu.
- Due, however, to plaintiff's lack of banking facilities in Cebu and to the circumstance that the branch or office in Cebu was under the management of Anderson & Co., the latter paid, for and in the name of the plaintiff, the internal-revenue taxes on plaintiff's goods sold by its office in Cebu, amounting to P4,170.83. Said amount was later refunded to Anderson & Co. by the plaintiff.
- Upon demand of the defendant, the plaintiff had to pay and did pay in Manila, under protest, the internal-revenue taxes on said goods sold in Cebu, plus a surcharge of 25 per cent for plaintiff's alleged failure to pay them on time, or a total of P5,213.54, the plaintiff having thus paid double taxes.

Now the theory of the defendant is (a) that Anderson & Co. acted as commission merchant for the plaintiff in Cebu; (b) that it sold plaintiff's goods in Cebu in its capacity as commission merchant for the plaintiff; (c) that the internal-revenue taxes paid in Cebu by Anderson & Co., was paid in its own name as commission merchant and not in the name of Erlanger & Galinger, Inc.; and (d) that the plaintiff, as principal merchant did not pay taxes on its goods sold in Cebu until required so to do by the defendant, and that the amount which plaintiff now seeks to recover represents said taxes which are legally due and owing to the Government by the plaintiff.

In support of his theory the defendant contends :

- (1) That Anderson & Co. sold plaintiff's goods in Cebu and indirectly received commission on the sales, through the arrangement that the overhead expenses in Cebu of both companies were paid, 80 per cent by Erlanger & Galinger and 20 per cent by Anderson & Co.; and
- (2) That the internal-revenue tax receipts for taxes paid in Cebu were issued and appear in the name of Anderson & Co. and not in the name of Erlanger & Galinger. (Exhibits C to F.)

The defendant's theory cannot be sustained. The arrangement whereby Erlanger & Galinger paid 80 per cent and Anderson & Co. 20 per cent of their overhead expenses (rents, salaries of common manager, messenger and bodeguero) was made because Anderson & Co. had to hire, for the accommodation of Erlanger & Galinger, a new building in the heart of the business center of the City of Cebu; Erlanger & Galinger occupied the basement floor of the building for the greater convenience of its retail business; due to the very nature of its business Erlanger & Galinger required more time, more room space, more storage conveniences and more work on the part of their common employees than Anderson & Co. Explaining this arrangement, plaintiff's witness testified:

"R. Tomabamos primeramente en cuenta el alquiler. Si no hubiera sido por Erlanger & Galinger, Inc., Anderson & Co. hubiera podido estar en cualquiera habitation, en una habitaci6n de cualquiera clase ordinaria. El haberse tornado esta finca en una calle central, fue unica y exclusivamente por el negocio de Erlanger & Galinger. Inc., lo mismo hay que decir acerca de las luces, telefonos, etc., poco mas o menos. Los gastos generales de empleados, sueldos y de cobradores, los cuales tenian que dedicar mucho tiempo al cobro de las cuentas de Erlanger & Galinger, Inc., que a las cuentas de Anderson & Co., porque nuestro negocio ea mucho mas amplio y es a plazos. El mensajero y el cargador estaban considerados en la misma clase, por que tenian que encargarse de la tienda y, ademas, llevar mensajes."

The fact that the tax receipts (Exhibits C to F) appear in the name of Anderson & Co. is satisfactorily explained in the record. The taxes were paid by Anderson & Co. for convenience. Said taxes were later reimbursed by the plaintiff to Anderson & Co. Had there been bad faith on the part of plaintiff, Anderson & Co. could easily have had said receipts issued in the name of Erlanger & Galinger.

Appellant insists that the instant case is in substance similar to the case of *F. E. Zuellig vs. Collector of Internal*

Revenue (51 Phil., 629). We cannot accept the appellant's view. In the case of Zuellig, Inc., the plaintiff was held to be a commission merchant because it received commission on the value of the goods sold by it for the principal merchant, and because it had a building of its own where said goods were stored and kept until delivered to the customers. In the instant case Anderson & Co. received no commission whatsoever, provided no facilities for the storage of plaintiff's goods, and paid no expenses for the freight, transportation, handling and storage of said goods.

We are of the opinion that the judgment appealed from is in accordance with the facts and the law, and the same should be and is hereby affirmed, without costs. It is so ordered.

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

CONCURRING

JOHNS and VILLA-REAL, JJ.:

For want of proof to sustain the Government's contention, we concur in the result.

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