

**THE EARNSHAW DOCKS & HONOLULU IRON WORKS,
PLAINTIFF AND APPELLANT, VS. THE COLLECTOR OF INTERNAL
REVENUE, DEFENDANT AND APPELLEE.**

G. R. No. 32366. March 27, 1930

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

Plaintiff is a domestic corporation, with its principal office and place of business in the City of Manila, and the defendant is the Collector of Internal Revenue.

Plaintiff alleges that during the years 1926 and 1927 it sold in the United States, in the City of New York, certain machineries and materials to different corporations amounting in the aggregate to P191,161.08. Then follows a statement as to whom the property was sold and the amount of the sales. It is then alleged that the defendant, claiming that the sales were made by the plaintiff in the Philippine Islands, and pretending to act under sections 1458 and 1459 of the Administrative Code, the first as amended by section 2 of Act No. 2892 and section 1 of Act No. 3074, and the second as it relates to Act No. 3243, levied and assessed, and demanded the payment from the plaintiff, as a merchant's sales tax and surcharge on the amount of such sales, for the 1 1/2 per cent tax amounting to P2,867.42, and the 25 per cent surcharge amounting to P716.86. That October 4, 1928, and to avoid distraint of its goods and the payment of further fines and penalties, the plaintiff, under a written protest that such tax was illegal, paid the defendant the amount of P3,584.28. That on October 9, 1928, the defendant overruled plaintiff's protest and refused to refund the money.

For a second cause of action the plaintiff alleges that on and between May 31, 1927, and September 30, 1928, it sold in the same City of New York, and in the City of Honolulu, Territory of Hawaii, machineries and materials amounting to P83,506.31. Then follows a list of the persons to whom the property was sold and the amount of sales. That on October 23, 1928, plaintiff was required to pay, and under protest did pay, taxes thereon amounting to P1,565.74. That of that amount P1,252.59 was for 1 1/2 per cent sales tax, upon which P313.15 was the 25 per cent surcharge. That the defendant overruled plaintiff's protest and refused to refund this money, and it prays for judgment for both of said amounts, with interest and costs.

For answer the defendant admits the allegations of paragraphs 1, 3, 4, 5, 6, 8 and 9, and denies the allegations made in paragraphs 2 and 7, of the complaint, and as a special defense alleges that all of the sales mentioned in the complaint were made in the Philippine Islands, and that the taxes thereon were collected in accordance with law, and prays that plaintiff's complaint be dismissed, with costs.

The case was tried and submitted on an agreed statement of facts, the material portions of which are as follows:

"I. That the plaintiff is and was, during all the times hereinafter mentioned, a corporation duly organized and existing under and in virtue of the laws of the Philippine Islands, with its principal place of business in the City

of Manila, Philippine Islands,, and also a manufacturer and merchant doing business in the Philippine Islands; and that the defendant is the Collector of Internal Revenue of the Philippine Islands.

"II. That on October 4th, 1928, this plaintiff, pursuant to a previous demand made by the Collector of Internal Revenue, involuntarily, under duress and written protest, and for the sole purpose of avoiding penalties and distraint, paid the defendant the sum of P3,584.28, as merchant's sales tax of 1 1/2 per cent and 25 per cent surcharge incident to late payment thereof alleged to be due on the transactions described in the subsequent paragraphs under this first cause of action. A true copy of said written protest, marked Exhibit A, is hereunto annexed and hereby made a part hereof.

* * * * *

"IV. That the tax so demanded by the defendant, and paid by the plaintiff under protest, consisted of the 1 1/2 per cent sales tax amounting to P2,867.42, and 25 per cent surcharge thereon amounting to P716.88, on orders for machinery and materials received and accepted by the plaintiff in the Philippine Islands during the years 1926 and 1927, aggregating P191,161.08, and made up as follows:

1926

Compañia General de Tabacos de Filipinas

P17,168.00

Cebu Portland Cement Co.

4,130.76

Do

15,123.72

Pampanga Sugar Mills

82,407.64

Do

54,800.00

1927

Benguet Consolidated Mining Co

2,338.96

Cebu Portland Cement Co

10,000.00

Benguet Consolidated Mining Co

5,192.00

Total

191,161.08

"V. (a) That of the orders listed in the preceding paragraph, that relating to Compañia General de Tabacos de Filipinas was placed with and accepted by the plaintiff in the fetter's place of business in Manila, Philippine Islands, on April 7, 1926, and was executed by the plaintiff by causing its agent in the City of New York, the Honolulu Iron Works Company, to purchase the machinery and materials to fill the same for plaintiff's account from manufacturers thereof in the United States of America. These manufacturers, acting under instructions from said plaintiff's agent, thereunto duly authorized, shipped said materials from the various points of manufacture thereof in the United States to the City of Manila, taking shipping documents from the carriers to the order of themselves, notify Earnshaws Docks & Honolulu Iron Works, Manila, P. I. These shipping documents were thereupon, under instructions from the plaintiff, indorsed in blank and delivered to said plaintiff's agent in New York by said manufacturers, against payment by said agent of the agreed purchase price for account of the plaintiff herein, and said agent thereupon, in turn, indorsed in blank and delivered said shipping documents, in New York, to the agent of said Compañia General de Tabacos de Filipinas in New York, against payment in said city of the purchase price agreed upon in said order, amounting to \$8,584, U. S. currency, or P17,168, Philippine currency. The above-mentioned shipment was made under an insurance policy taken out by and in the name of the manufacturers, the United States Steel Products Company of New York, payable, in case of loss, to the order of the United States Steel Products Company of New York, and said policy was indorsed and delivered to the plaintiff's agent in New York; and to the agent of the Compañia General de Tabacos de Filipinas there, in the same way and at the same time as the other shipping documents, as above cited."

* * * * *

Like stipulations are made as to the Cebu Portland Cement Company, and Pampanga Sugar Mills for the year 1926, and the Benguet Consolidated Mining Company, and the Cebu Portland Cement Company for the year 1927. Then follows a stipulation of the alleged sales amounting to 983,506.31, in which as to the sales to Oliver Brothers, it is stipulated:

* * * * *

"III. (1) That of the orders listed in the preceding paragraph, that relating to Oliver Bros., Inc., was placed with and accepted by the plaintiff in its place of business in the City of Manila, and was executed by the plaintiff by

causing its agent in the City of New York, the Honolulu Iron Works Company, to purchase the machinery and materials to fill the same for plaintiff's account from manufacturers thereof in the United States of America. The manufacturers, acting under instructions from said plaintiff's agent, shipped and forwarded said materials to Oliver Bros., Inc., in the City of New York, where the latter paid the purchase price, amounting to \$38.50, U. S. currency, or P77, Philippine currency, to plaintiff's agent there.

"(2) That the order of the Jolo Power Company was placed with and accepted by plaintiff in the latter's place of business in Manila, Philippine Islands, and was executed by the plaintiff by causing its agent in the City of New York, the Honolulu Iron Works Company, to purchase the machinery and materials to fill the same for plaintiff's account from manufacturers thereof in the United States of America. Plaintiff's agent shipped said materials from the City of New York to the City of Manila, said plaintiff's agent taking shipping documents from the carriers to the order of the plaintiff. The shipping documents, together with the insurance policy taken out by and in the name of plaintiff's agent, payable, in case of loss, to the assured or order, and indorsed in blank by said assured, were forwarded by the plaintiff's agent direct to the plaintiff at Manila."

* * * * *

Like stipulations are made as to the sales to other parties aggregating to P83,506.31.

Exhibits A, B, C, and D, showing the correspondence as to the demands for payment, and the payment under protest, and the refusal to refund, are made part of the stipulation of facts.

From a judgment for the defendant, plaintiff appealed and claims that:

"The lower court erred in holding that the sales here in question are subject to the merchant's sales tax, and in not ordering the refund of the tax paid by the plaintiff to the defendant."

The appellant maintains:

"(1) A sale is not consummated until the delivery of the subject matter thereof from the seller to the purchaser.

"(2) The sales tax accrues only upon a consummated sale and not upon a mere contract to sell.

"(3) Furthermore, the sales tax accrues only upon a sale consummated in the Philippine Islands.

"(4) Therefore, a sale negotiated in the Philippine Islands but consummated in the United States is not subject to the sales tax."

And that "the sales tax is levied not on a contract to sell but on an actual sale, not on an executory but on an executed contract of sale." "That a consummated sale is necessary in order that the sales tax may be levied, for the tax is on sales and, as we have seen, there is no sale until the contract is consummated by the delivery of the subject matter of the sale from the vendor to the buyer." Citing section 1459 of the Administrative Code which provides that:

"All merchants not herein specifically exempted shall pay a tax of 1 per centum on the gross value in money of the commodities, goods, wares, and merchandise sold by them."

It must be conceded that the authority to collect the tax in question should be confined and limited to goods, wares, and merchandise which were sold by the plaintiff in the Philippine Islands, and that, if the taxes in question were not levied on goods, wares, and merchandise sold within the meaning of section 1459, plaintiff should not pay the tax.

It is stipulated that the plaintiff is a domestic corporation, with its principal office in the City of Manila, and that it

is a "manufacturer and merchant doing business in the Philippine Islands." Also, that the listed order "relating to the Compañia General de Tabacps de Filipinas was placed with and accepted by the plaintiff in the latter's place of business in Manila," and that it "was executed by the plaintiff by causing its agent in the City of New York, the Honolulu Iron Works Company, to purchase the machinery and materials to fill the order for plaintiff's account from manufacturers in the United States of America," and that these manufacturers pursuant to such instructions from the plaintiff's duly authorized agent, shipped said materials from the very point of manufacture in the United States to the City of Manila, "taking shipping documents from the carriers to the order of themselves," notify plaintiff. That is to say, the order for the machinery and merchandise was' delivered to and accepted by the plaintiff at its office here in the City of Manila which on its receipt authorized its agent in the United States to, purchase the specified machinery and supplies from the manufacturers in the open market there and to ship them here to Manila in the manner in which it was done.

Article 1450 of the Civil Code provides:

"The sale shall be perfected between vendor and vendee and shall be binding on both of them if they have agreed upon the thing which is the subject-matter of the contract and upon the price, even if neither has been delivered."

In the instant case, it must be conceded that the vendor and vendee agreed upon the thing which is the subject matter of the contract and upon the price to be paid when delivered, even though delivery of the thing was not made at the time of the contract. It must also be conceded that after the contract was made and before the tax in question was levied, the sales in question were actually consummated by the delivery of the machinery and materials to the purchaser for and on account of, and through, the plaintiff to whom in legal effect the purchase price was paid. It is important to note that this is not a case between seller and buyer in which the validity of the sale is in question, for the simple reason that in all things and respects it involves sales which have been consummated, and the validity of which are not questioned by either seller or buyer. That is to say, it appears from the stipulation of facts that the different companies specified placed their respective orders with, and they were accepted by, the plaintiff in its place of business in the City of Manila, and that it filled the orders by and through its agent in the United States, and that after the orders were given and accepted, the sales were actually consummated by the plaintiff when it delivered or caused to be delivered the machinery and merchandise specified in the listed orders. It must be conceded that any machinery or material which was manufactured in and shipped from the United States to Manila was manufactured for and shipped on account of the plaintiff and at its instance and request, and in legal effect it was sold to the plaintiff and by it delivered under the terms and provisions of its respective contracts with the purchasers here. It must be conceded that the only contracts which the manufacturers or shippers in the United States ever had were made with the plaintiff, and that they did not have any contracts of any kind or nature with the different firms which gave the orders to the plaintiff for the machinery and materials in question.

As stated, we are dealing here with contracts made between the plaintiff and the firms or corporations specified in the agreed statement of facts, in which the contracts were consummated by the plaintiff, and the machinery and materials were taken and accepted by the respective firms under the contracts between them and the plaintiff. Upon the stipulated facts, we are clearly of the opinion that the contracts in question were not only made within the Philippine Islands, but that they were actually consummated here, and that upon such facts it is even a stronger case for the defendant than *Compañia General de Tabacos de Filipinas vs. Collector of Internal Revenue* (U. S. Advance Opinions, No. 10, p. 313, May 1, 1929).

In its opinion, the lower court says:

"Since its invention (attributed to Spain in the 11th century) the sale tax has had many critics. It may be a bad

tax. But it will be infinitely worse if discriminations are made in favor of sellers who are allowed to avoid it by consigning purchasers to local buyers. If the law is such that the discrimination must be made, well and good; but if there exists good authority to the contrary, the latter should be followed. The sacrifices of taxpayers should be uniform. The profits from sales of goods brought from the United States unquestionably are entered in the books of merchants here who take order for them, whether they bring them out to themselves or have them sent directly to customers. In view of the decisions in Louisiana where the law of sales is more like our own than that of any other state; no reason is seen for taking the harder road to reach a palpably inequitable conclusion."

And the Attorney-General in his brief says:

"In the light of the foregoing doctrine, it is evident that the sales now in question are also subject to tax in the Philippines, for though the goods sold here by the plaintiff were obtained by it abroad and, pursuant to an understanding had with the purchasers, were delivered there in a manner calculated to pass title to said purchasers, it cannot be doubted that said sales are a part of, and a necessary incident to, the business of the plaintiff in the Philippines. This is but a fair and wise interpretation of the law herein involved. Any other interpretation would lend to an easy evasion of the tax and should be avoided."

The underlying, fundamental fact in this case is that the contracts for the sale and purchase of the machinery and materials in question were not only made in the Philippine Islands, but that the sales were actually consummated here, and that all of the machineries and materials in question were purchased in the United States for and on account of the plaintiff, by and through the plaintiff, and were delivered to the purchasers under their respective contracts with the plaintiff.

The judgment of the lower court is affirmed, with costs. So ordered.

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

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