

YEO LOBY AND YEO SENG, PARTNERS DOING BUSINESS UNDER THE FIRM NAME OF “HEO CHEO TONG Y CO.,” ET AL., PLAINTIFFS AND APPELLEES, VS. THE MUNICIPALITY OF ZAMBOANGA AND CARLOS DOMIN...

G. R. No. 33750. February 18, 1931

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of Zamboanga by two Chinese firms, namely, Heo Cheo Tong y Co., composed of the partners Yeo Loby and Yeo Seng, and the firm of Yeo Boon Cheong & Company, for the purpose of recovering from the defendant municipality of Zamboanga, of which the codefendant Carlos Dominguez is acting municipal treasurer, the sum of P1,440, with interest and costs. Upon hearing the cause the trial court gave judgment in favor of the plaintiffs to recover the amount sued for with interest from the date of the filing of the complaint, but without costs. From this judgment the defendants appealed.

The two concerns which are plaintiffs in this action have been conducting for years in the municipality of Zamboanga two pawnshops, during which time they have paid the annual license tax imposed by the city ordinances upon the businesses conducted by them as pawnbrokers. On December 12, 1927, the municipal council of Zamboanga passed an ordinance (No. 210) effective January 1, 1928, among other things imposing upon pawnbrokers who devote themselves exclusively to loans an annual license tax in the amount of P1,800, and upon pawnbrokers who engage in the making of loans and the selling of jewelry or other effects the higher annual tax of P2,400. The license tax of P1,800 thus imposed upon pawnbrokers is in effect a mere republication of the former provision taxing pawn-brokers; while the provision imposing the larger tax of P2,400 upon pawnbrokers who sell jewelry or other effects is new.

It appears that both the partnerships with which we are here concerned are engaged in selling jewelry from their shops in addition to making loans as pawnbrokers. Accordingly, the defendant municipal treasurer made demand for the payment of the increased tax imposed by the new ordinance. In response to this demand the plaintiffs paid without question the sum of P1,800 imposed upon them respectively for conducting the business of pawnbrokers, but as to the further sum of ^600 demanded of them in respect to the additional activity of selling jewelry, payment was made under protest. The amount thus paid under protest, including the surcharge resulting from their failure to pay the tax within the time required, was P1,440.

The basic tax of P1,800 per annum imposed on pawn-brokers in general by the ordinance (No. 210) is clearly valid, as pawnbrokers are expressly mentioned in subsection (d) of section 2625 of the Administrative Code as one of the classes of persons that may be lawfully taxed. As to the excess above the sum, of P1,800, we concur with the trial court in the opinion that the tax is invalid. Those who engage in selling jewelry are subject to the internal-revenue tax upon their sales, but jewelers are not mentioned among the classes of persons upon whom license taxes may be imposed by a municipal council. Moreover, where the Legislature has clearly withheld the

power to impose license taxes upon persons engaged in a particular activity, such as the selling of jewelry, the act of engaging in this activity cannot be used as a criterion for establishing a class which shall be subject to a higher tax than that imposed generally upon persons engaging in a taxable activity. To permit this would be merely to sanction an evasion of the immunity from the license tax conferred by law. It is true that under the power to tax pawnbrokers it is competent for a municipal council to discriminate between pawnbrokers of different sorts, but the criterion taken for such discrimination, or division of pawnbrokers into classes, must be reasonable. This cannot be said of the classification here adopted, for it violates the rule requiring uniformity in taxation, in this, that some persons engaged in selling jewelry are taxed while others are not. It is suggested, however, that the additional tax imposed upon the pawnbroker in respect to the selling of jewelry or other effects can be sustained as a tax imposed upon dealers in second-hand merchandise. It is true that, under subsection (d) of section 2625 of the Administrative Code, municipal councils are authorized to impose a tax upon dealers in second-hand merchandise. But it does not appear that the selling of merchandise by the plaintiffs in this case is limited to second-hand jewelry; and even if such fact had appeared, it is doubtful whether a person selling jewelry at second-hand should be classed as a dealer in second-hand merchandise. By universal usage the expression "dealer in second-hand merchandise" has reference more particularly to persons who buy and sell clothing and household effects at second-hand.

Our conclusion is that the tax in question is invalid, and the judgment appealed from will be affirmed. So ordered, with costs against the municipality of Zamboanga.

Avanceña, C. J., Johnson, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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