

THE STANDARD OIL COMPANY OF NEW YORK, PLAINTIFF AND APPELLANT, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLEE.

G. R. No. 34029. February 26, 1931

Ponente: MALCOLM, J.

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MALCOLM, J.:

This test case presents for decision the question of whether sales of merchandise made in the Philippines to the United States Army and the United States Navy are subject to the sales tax. In the lower court, the demurrer to the complaint was sustained, and the plaintiff having elected not to amend its complaint, judgment was rendered upon the subject matter involved in the pleadings, adjudging that the plaintiff take nothing by the action and the defendant recover costs.

The Standard Oil Company of New York is a foreign corporation duly authorized to do business in the Philippines. During the period from October 1, 1929, to December 31, 1929, the Standard Oil Company sold and delivered in the Philippines to the Quartermaster Department of the United States Army, for the use of the Army, fuel oil and asphalt of the value of P6,832.84. The Collector of Internal Revenue of the Philippine Government, acting under authority of section 1459 of the Administrative Code and Act No. 3243 of the Philippine Legislature as ratified by the Congress of the United States, demanded a tax of one and one-half per cent upon the value of the merchandise, amounting to P102.49. During the identical period of time above-mentioned, the Standard Oil Company likewise made delivery in the Philippines to the United States Navy, under a contract executed in New York, United States, for the use of the Navy, of fuel oil of the value of P172,059.36, which was paid in New York, and which contract provided that all internal revenue taxes and charges under the laws of the Philippine Islands were to be assumed and paid by the United States Navy. The Collector of Internal Revenue required payment of the sales tax upon the value of the fuel oil, in the amount of P2,580.89. The Standard Oil Company paid the taxes assessed under protest and is now suing to recover the corresponding refunds.

This court has recently decided the case entitled, *Thirty- First Infantry Post Exchange and First Lieutenant David L. Hardee, Thirty-First Infantry, United States Army, plaintiffs, vs. Juan Posadas, jr., Collector of Internal Revenue, Philippine Islands, defendant* ([1930], 54 Phil., 866). There it was held that a tax may be levied by the Government of the Philippine Islands on sales made by merchants to Post Exchanges of the United States Army in the Philippines. It was ruled that the Acts of the Philippine Legislature imposing the sales tax, which have been confirmed by Acts of Congress, form a part of the Philippine Organic Law. That same principle would again apply to the facts before us. However, it was indicated that the waiver must be clear and that every well-grounded doubt should be resolved in favor of the exemption, citing *Austin vs. Aldermen of Boston* ([1869], 7 Wall., 694). That principle would likewise govern here.

In the course of the decision in the Post Exchange case, the United States Army was mentioned, and properly so,

as an instrumentality of the United States Government. Regarding the correctness of this proposition, there could, of course, be no real dispute. The United States Army and the United States Navy derive their powers from the Constitution of the United States. The Congress of the United States has created two agencies, or more correctly stated, three agencies to serve the United States in the Philippine Islands. Two of these agencies are the United States Army and the United States Navy, and the third is the Government of the Philippine Islands. The military establishment and the civil government stand side by side but independent of each other in the Philippines. The tax collected from the plaintiff by one of these agencies, the Philippine Government, is in reality a tax on the United States Army and the United States Navy—in other words, on the United States Government—for the consumer pays the tax as part of the purchase price. (*Tan Te vs. Bell* [1914], 27 Phil., 354; *U. S. vs. Smith* [1919], 39 Phil., 533.)

It would further appear perfectly clear that the principle which prohibits a State from taxing the instrumentalities of the Federal Government applies with equal force to the Philippine Islands. At least, that was our holding in the *Post Exchange* case. Nevertheless the Attorney-General persists in assuming a difference in tax powers between the relations of the Philippine Government to the National Government and of a State Government to the National Government. We are frank to say that we are unable to see eye to eye with the Attorney-General. It would be absurd to think that a derivative sovereignty like the Government of the Philippine Islands, could tax the instrumentalities of the very Government which brought it into existence. If a sovereign State of the American Union cannot abridge or restrict the activities of the United States Government, much less can a creature of that Government, as the Philippine Government is, do so. (Note the well-considered opinion of Attorney-General Wickersham of June 8, 1912, appearing in 29 Opinions, Attorneys-General, United States, 442.)

The case before us is readily distinguishable on the facts from the *Post Exchange* case. The theory of the *Post Exchange* case was that a tax on sales, which ultimately passed on to the consumers, individuals in the Army, was not a tax on the United States and did not interfere with the supremacy of the United States Government or with the operations of the United States Army to such an extent or in such a manner as to render the tax illegal. There is no such condition in this case. The goods which were claimed to be subject to tax are for the use of the United States itself in its own operations in the Philippines.

The case at bar is more nearly analogous to the case of *Panhandle Oil Co. vs. Knox* ([1928], 277 U. S., 218), than was the *Post Exchange* case. The *Panhandle Oil* case and the case at bar differ in that in the *Panhandle Oil* case, the United States Supreme Court dealt with a State law that had never been ratified by Congress, whereas there is now to be applied an Act of the Philippine Legislature which had been ratified by Congress. On the other hand, the *Panhandle Oil* case and the case at bar are similar in that both concern privilege taxes the amount of which is measured by the amount of the sale; in that in both cases the sales were made to instrumentalities of the Federal Government; and in that in both cases, the party to the suit was the merchant and not the United States Government or an agency within the United States Army like a *Post Exchange*. Inasmuch, however, as the distinction between a State law and an Act of a territorial legislature is no distinction at all, and inasmuch as the ratification by Congress failed to grant any express waiver of the exemption in favor of the United States Government, it would require more than ordinary ingenuity to avoid the consequences of the decision of the United States Supreme Court in the *Panhandle Oil* Case.

Not long since, the District of Columbia endeavored to recover taxes on gasoline imported into the District of Columbia by the American Oil Company, under a contract with the Secretary of the Treasury, for use by the executive departments and governmental agencies. In both the Supreme Court of the District of Columbia and the Court of Appeals, the seller was held not liable for the tax. In the opinion of the appellate court, it was said: "While, for convenience, the tax is levied upon the importer, it is apparent that the tax is really to be paid by the

consumer. * * * To sustain the contention of appellant, it must clearly appear that the United States intended to tax itself. See *Dollar Savings Bank vs. United States*, 19 Wall., 227; 22 L. ed., 80." (*District of Columbia vs. American Oil Co.* [1930], 39 Fed. 2nd., 510.)

The Asiatic Petroleum Company began suit in the Court of Claims against the United States for the recovery of more than \$100,000 due on the purchase price of fuel oil sold by the company for the use of the Navy. The defendant admitted the claim but interposed a counterclaim for the same amount, alleged to be due and owing to the Philippine Government as customs duties on oil under this contract. In the Philippines the Tariff Act in force was the Act of Congress of August 5, 1909, which was silent on the question. It was the holding of the Court of Claims that this Act of Congress did not require the United States to pay duty on oil owned by it and imported into the Philippine Islands for use in the Military or Naval Establishments. The court said: "The purpose of the statute providing for customs duties on importations into the Philippine Islands was to provide revenue for the use of the Philippine Government, for the protection, and partial support of which the United States held itself responsible. It is inconceivable that Congress in the enactment of the said statute should have intended that the United States would be required to pay duty on its own oil imported into the Philippine Islands, for its own use, in supplying its Navy vessels used in the protection of the Philippine Government, as well as for the maintenance of its own Military and Naval Establishments in the national defense." (*Asiatic Petroleum Co. vs. U. S.* [1928], 65 Ot. of CL Rep., 100.)

We sustain the first, second, third, and fifth errors assigned, going to the proposition that the lower court erred in not deciding that sales made in the Philippines to the United States Army and the United States Navy are made to instrumentalities of the United States Government, and, therefore, are not subject to tax by the Philippine Government. This holding makes unnecessary any reference to the fourth error assigned, relating to the additional question having to do with the contract with the United States Navy, and to the point that this question was not mentioned in the protest filed with the Bureau of Internal Revenue and so may not be raised on appeal. It is sufficient to state that, in our opinion, the assessment and collection by the Philippine Government of the tax on sales of merchandise made in the Philippines to the United States Army and the United States Navy is illegal.

Judgment reversed, and the record ordered returned to the court of origin for further proceedings, without express finding as to costs in either instance.

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

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