

**BEHN, MEYER & CO., H. MIJ., PLAINTIFF AND APPELLEE, VS.
THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND
APPELLANT.**

G.R. No. 38131. December 21, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant Collector of Internal Revenue from the judgment rendered by the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, judgment is rendered in favor of the plaintiff sentencing the defendant to refund to said plaintiff the sum of twenty-eight thousand ninety-four pesos and twelve centavos (P28,094.12), plus the legal interest thereon from November 21, 1930, until fully paid, with the costs. So ordered."

In support of his appeal, the appellant assigns six alleged errors as committed by the trial court in its decision, which we shall discuss in the course of this decision.

The pertinent facts necessary for the solution of the questions raised in this appeal are stated in the decision appealed from as follows:

"Upon commencement of the hearing of this case, both parties agreed on their respective personalities as alleged in paragraphs I and II of the complaint and on the correctness of the facts relative to the alleged payment under protest of the two sums of twenty-seven thousand twenty-three pesos and twenty-eight centavos (P27,023.28) and one thousand seventy pesos and eighty-four centavos (P1,070.84), or a total of twenty-eight thousand ninety-four pesos and twelve centavos (P28,094.12), made by the plaintiff to the defendant, as stated in paragraph 6 of the complaint. They likewise agreed that Exhibit A contains a correct statement of all the different transactions which gave rise to the collection by the defendant of taxes paid by the plaintiff under protest, which collection gave rise to the filing of the complaint herein.

"Upon the evidence presented and in view of the facts admitted by both parties, the court finds that the plaintiff is a foreign corporation duly registered and authorized to do business in the Philippines, with its principal office in the City of Manila.

"During the year 1926 and from January to September, 1927, the merchants named in Exhibit A sold one million four hundred ninety-eight thousand three hundred seventy-two pesos and one centavo (P1,498,372.01) worth of copra cake, as itemized in the said Exhibit A, to Arnold Otto Meyer, a commercial firm of Hamburg, Germany, on terms c. i. f. (cost, insurance and freight), Hamburg. The aforesaid merchants paid the corresponding percentage tax on the sales made by them as specified in the aforesaid Exhibit A.

"These facts are admitted by the defendant who claims and maintains the theory that the taxes collected by the Bureau of Internal Revenue from the plaintiff herein were in conformity with law on the ground that two independent sales covering the same merchandise (copra cake) took place and therefore the Bureau of Internal Revenue was in duty bound and had the right to collect the tax in question twice. The Bureau of Internal

Revenue maintains that the merchants named in Exhibit A first sold their merchandise to the plaintiff firm which, in turn, sold the same to Arnold Otto Meyer of Hamburg, Germany.

"Had the facts really happened in accordance with the defendant's theory, he would have the right to collect the required tax twice. However, the evidence does not show that said merchants sold their merchandise to the plaintiff.

"The oral as well as the documentary evidence presented by the plaintiff, under Exhibits B to XXX, clearly shows that the merchants named in said Exhibit A sold their merchandise to Arnold Otto Meyer of Hamburg, Germany, and not to the plaintiff corporation. The greater part of the said exhibits consists of invoices issued by the said merchants to the purchaser Arnold Otto Meyer of Hamburg, Germany. Although all the invoices in question bear the same footnote to the effect that payment thereof should be made through Behn, Meyer & Co., H. Mij., of Manila, which is the plaintiff herein, such footnote is nothing more than a mere indication of the method or procedure to be followed by the purchaser Arnold Otto Meyer of Hamburg, Germany, in making the payment due to the vendors, the merchants named in Exhibit A.

"The court finds no evidence in support of the defendant's allegation that the plaintiff corporation bought the quantities of copra cake specified in Exhibit A from the dealers named therein and that the said plaintiff Behn, Meyer & Co., H. Mij., later sold the same copra cake to Arnold Otto Meyer of Hamburg, Germany.

"The defendant contends that Exhibit 19 (copies of cablegrams exchanged between the plaintiff and Arnold Otto Meyer of Hamburg, Germany) consists of offers to sell certain quantities of copra cake at a certain price a ton. The court does not concur in this opinion of the defendant and holds that the cablegrams constituting Exhibit 19 are mere Quotations on copra cake prevailing in Manila on the respective dates thereof. These support the plaintiff's testimony to the effect that it merely acted as agent or intermediary between the German firm and the copra cake dealers in Manila and explain why the invoices, Exhibits A to XXX issued by the respective vendors bear a footnote to the effect that payments should be made through the plaintiff in Manila, which acted as intermediary between the local vendors and the purchaser in Germany.

"The defendant further contends that the item under the heading 'Arnold Otto Meyer's Suspense Account' found in the plaintiff's account books supports his theory that the said plaintiff sold the copra cake, which it had purchased from the local merchants, to Arnold Otto Meyer of Hamburg, Germany. The court finds that the evidence of the defendant in this case does not support his assertion. Even granting that the books of the plaintiff show that it has realized some profit or was benefited by reason of its intervention in the sale of copra made by the merchants named in Exhibit A to Arnold Otto Meyer of Hamburg, Germany, such alleged profits or benefits, if they actually exist, would not be subject to the percentage tax collected by the defendant from the plaintiff, but to another tax, the Income Tax, for instance.

"Wherefore, the court holds that the evidence in the case at bar shows that there has been only one contract of sale of copra cake entered into by the merchants named in Exhibit A, as vendors, and Arnold Otto Meyer of Hamburg, Germany, as vendee; that there has been no contract of sale of copra cake between the merchants named in Exhibit A, as vendors, and the herein plaintiff, as vendee, and that neither has there been any other contract of sale of the same copra cake between the plaintiff, as vendor, and Arnold Otto Meyer of Hamburg, Germany, as vendee. In conformity with this conclusion, the court declares that the tax collected by the defendant from the plaintiff, which the latter seeks to recover in this action, is illegal."

In the case of *Atkins, Kroll & Co. vs. Posadas* (48 Phil., 352, 359), cited favorably in the case of *Sy Yoco vs. Collector of Internal Revenue* (49 Phil., 136), this court laid down the following doctrine:

"We are clearly of the opinion that the Government has no legal right to levy and collect the same tax from two different persons on one consignment abroad on one shipment of the same copra."

In the case at bar, the defendant-appellant, after having collected a tax from the vendors of copra cake, who

shipped and consigned the same direct to Arnold Otto Meyer at Hamburg, Germany, seeks to collect the same tax on the very same shipment from the herein plaintiff-appellee Behn, Meyer & Co., H. Mij., to which, it is claimed, the merchandise in question had been sold and which, in turn, sold it at a profit to Arnold Otto Meyer at Hamburg, Germany. In other words, he seeks to collect a double tax on the same shipment consigned abroad, from two different persons, which is contrary to the afore-cited doctrine laid down by this court.

With respect to that portion of the judgment allowing interest and costs against the defendant-appellant Collector of Internal Revenue, the plaintiff-appellee itself admits that it is erroneous, according to the doctrine laid down by this court in the cases of *Hongkong & Shanghai Banking Corporation vs. Rafferty* (39 Phil., 145), and *Murphy vs. Trinidad* (44 Phil., 649).

Wherefore, with the sole modification that the pronouncement as to interest and costs be eliminated from the dispositive part of the judgment appealed from, the same is hereby affirmed in all other respects, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Malcolm, Hull, and Imperial, JJ., concur.

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