

CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. LYRIC MUSIC HOUSE,. INC., DEFENDANT AND APPELLANT.

G.R. No. 42236. September 24, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

This action was instituted by the plaintiff for the purpose of recovering from the defendant the sum of P525 as license fees and penalty alleged to be due the plaintiff for the period of time from July 1, 1930, to June 30, 1932.

The parties submitted the case to the trial court on the following agreed statement of facts:

"Plaintiff and defendant, by their respective undersigned attorneys, hereby stipulate and agree that the material facts involved and admitted in this litigation are as follows:

"I. Plaintiff is, and at all times herein mentioned has been, a municipal corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, with office at the City Hall, Manila; and defendant is, and at all times herein mentioned has been, a private corporation duly organized and existing under and by virtue of the laws of the Philippine Islands and doing business throughout the Philippine Islands, with main offices in the City of Manila.

"II. Defendant is, and at all times herein mentioned has been, engaged in the sale and distribution throughout the Philippine Islands at wholesale and retail, of various musical instruments and merchandise, to wit: pianos, phonographs, radios, sousaphones, saxophones, trombones, music sheets, methods, and musical accessories necessary to and used by musicians.

"III. Defendant is not, and at all times herein mentioned has never been, engaged in the sale and distribution for sale anywhere in the Philippine Islands of any wares, goods and merchandise of any kind, class, nature or description other than those specified and enumerated in paragraph 2 hereof.

"IV. The gross sales of defendant for and during the period covered by plaintiff's complaint herein are as follows:

January 1st, 1930 to Dec. 31,1930 P96,653.61

January 1st, 1931 to Dec. 31,1931 318,283.12

no portion of which has been paid by defendant to plaintiff in spite of plaintiff's demand for payment.

"V. The said Municipal Ordinance No. JL925, as amended, imposing the tax aforesaid was never submitted for approval to either the Honorable Secretary of the Interior or the Honorable Secretary of Finance.

"VI. That defendant is subject to and has been paying the annual privilege tax of P2 imposed by section 457 of the Administrative Code, otherwise known as a fixed tax upon business subject to the percentage tax.

"VII. Defendant is subject to and has been paying the percentage tax, otherwise known as the sales tax, of 10 Per cent of its annual gross sales, imposed by the Insular Government of the Philippine Islands.

"SUPPLEMENTAL STIPULATION OF FACTS

"1. Come now plaintiff and defendant, by their respective undersigned attorneys, and for the convenience of this Honorable Court, respectfully agree and submit that the pamphlet hereto attached and incorporated herein and marked as Exhibit A contains a true and correct copy of Municipal Ordinance No. 1925 passed and approved by the Municipal Board of the City of Manila;

"2. That the said Municipal Ordinance No. 1925 is the sole and only basis of plaintiff's present action against defendant."

The trial court rendered judgment against the defendant and sentenced it to pay the plaintiff the sum of P25 with costs. The defendant appealed to this court and now makes the following assignments of error:

"I The trial court erred in not holding that 3669 of the Philippine Legislature under and by virtue of which Municipal Ordinance No. 1925, Exhibit A, was passed by plaintiff, does not include the business of the defendant in its provisions and does not authorize the Municipal Board of Manila to extend the scope and meaning of the term 'General Merchandise' so as to include thereunder the musical merchandise business of the defendant.

"II. The trial court erred in not holding that Municipal Ordinance No. 1925, Exhibit A, contravenes the 'uniform tax' provision of section 3 of the Jones Law and hence is unconstitutional, null and void.

"III. The trial court erred in not holding that the 'license fees' imposed by the plaintiff under and by virtue of Municipal Ordinance No. 1925, Exhibit A, are exorbitant, excessive, and out of proportion to the purposes for which license fees are collected.

"IV. The trial court erred in not holding that the license fees imposed by Municipal Ordinance No. 1925, Exhibit A, are unreasonable, unjust, oppressive and against public policy, and hence null and void.

"V. The trial court, in sustaining the plaintiff's claim, erred in tacitly allowing the plaintiff to base the license fees not only on defendant's gross sales made in the City of Manila but also on the gross sales made in the provinces by the defendant.

"VI. The trial court erred in laying undue stress on defendant's second special defense and in not considering the first, third and fourth special defenses in defendant's answer.

"VII. The trial court erred in ordering defendant to pay the plaintiff the sum of P525 and costs."

Under its first assignment of error it is contended by the defendant that Ordinance No. 1925 upon which the action of the plaintiff is based is *tdtra vires*, illegal, null and void in so far as it attempts to tax the business of the defendant, for the reason that Act No. 3669 of the Philippine Legislature, upon which Ordinance No. 1925 is based, does not authorize the municipal board of the City of Manila to extend the scope and meaning of the term "general merchandise" so as to include thereunder the business of the defendant.

The pertinent provisions of Ordinance No. 1925 read:

"SECTION 1. Fees.—There shall be paid in advance to the city treasurer the following annual license fees on the businesses, occupations and manufactures, below enumerated, the rates of which should be based on the gross sales or receipts realized from said businesses, occupations and manufactures during each immediately preceding year, ending December thirty-first:

* * * * *

"Group 1-A.—Retail dealers in new (not yet used) merchandise, which dealers are not yet subject to the payment of any municipal tax such as: (1) Retail dealers in general merchandise, and (2) retail dealers exclusively engaged in the sale of rice, textiles, including knitted wares; hardwares, including glasswares,

cooking utensils, and construction materials; groceries, including toilet articles except perfumery; paper, books including stationery.

"Class

Gross sale

License fee

A

P250,000 or more

P250.00

B

125,000 to P249, 999

125.00

C

62,500 to 124, 999

63.00

D

31,250 to 62,499

32.00

E

Less than 31,250

20.00

* * * * * "Sec. 3. Establishments for miscellaneous articles.— Establishments engaging in more than one kind of business as named above (§p> selling articles not enumerated in this Ordinance, will be considered a general merchandise store, for the purpose of this Ordinance, and the municipal license fee therefore will be based on the gross sales or receipts of all the articles sold or disposed of in the said establishments: Provided, that the businesses, occupations, and manufactures, enumerated in group one of this Ordinance are hereby excepted from the provisions of this section."

By virtue of this ordinance the business of the defendant was classified as a general merchandise store in view of the fact that it was dealing in articles, not mentioned in the ordinance, i, e., those listed in paragraph two of the agreed statement of facts.

Ordinance No. 1925 was enacted upon the authority of Act No. 3669 of the Philippine Legislature, the pertinent provisions of which read: irf+fr >fWi %y^j7^(h' "An Act to amend sections^twenty-four hundred fortyfour, twenty-five hundred fourteen, twenty-five hundred twenty-six, twenty-five hundred twenty-eight, and twentyfive hundred thirty-three^If the Revised Administrative Code, conferring authority upon the Municipal Board of the City of Manila, subject to certain limitations, to tax and to fix the amount of license fees upon certain industries, bujinesaes or occupations which up to date are not yet subject to the payment of such license fees or tax, and which increases the authority of such Board to such an extent that its power to fix the amount of the license fees

for certain industries and occupations would be substituted by the power to tax and that it likewise grants the authority to fix the amount of license fees for the sale of wine and liquors as provided for in the articles of the Administrative Code above referred to, and for other purposes."

* * * * *

"Sec. 2. Two new subsections are hereby inserted between subsections (m) and (n) of section twenty-four hundred forty-four of the Revised Administrative Code, which shall be known as subsections (m-1) and (m-2) and shall read as follows:

* * * * *

" (m-2) To tax and fix the license fee on (a) dealers in new automobile or accessories or both, and (b) retail dealers in new (not yet used) merchandise, which dealers are not yet subject to the payment of any municipal tax.

"For the purpose of taxation, these retail dealers shall be classified as (1) retail dealers in general merchandise and (2) retail dealers exclusively engaged in the sale of (a) textiles including Knitted wares, (b) hardwares including glasswares, cooking utensils, electrical goods and construction materials, (c) groceries including toilet articles except perfumery, (d) drugs including medicines and perfumeries, (e) books, including stationery, paper and office supplies, (f) jewelry, (g) slippers, (h) arms, ammunitions, and sporting goods: Provided, however, That the combined total tax of any dealer, or manufacturer, or both, enumerated under these subsections (m-1) and (m-2) whether dealing in one or all of the articles mentioned herein,, shall not be in excess of five hundred pesos per annum."

The defendant contends that as "musical merchandise" is not mentioned in paragraph (m-2) of the ordinance, its business cannot be taxed by the City of Manila in view of its further contention that it is not dealing in "general merchandise." This paragraph provides in part that "for the purpose of taxation, these retail dealers shall be classified as (1) retail dealers in general merchandise," etc. The principal object of Act No. 3669 is to confer authority upon the municipal board of the City of Manila "to tax and to fix the amount of license fees upon certain * * * businesses * * *" which on the date of its enactment were not subject to the payment of such a fee. Under this authority that board adopted the questioned ordinance which also provides, under Group 1-A, that "Retail dealers in new (not yet used) merchandise, which dealers are not yet subject to the payment of any municipal tax such as (1) Retail dealers in general merchandise * * *," shall pay certain license fees and provides further, under section 3, that "establishments engaging in more than one kind of business as named above or selling articles not enumerated in this Ordinance, will be considered a general merchandise store, for the purpose of this Ordinance and the municipal license fee therefore will be based on the gross sales or receipts from all the articles sold or disposed of in the said establishments: * * * "

It must be admitted that musical merchandise is not specifically mentioned in Act No. 3669, but does that omission prevent the municipal board of the City of Manila from providing, for the purposes of the questioned ordinance, that establishments engaging in more than one kind of business or those selling articles not enumerated in the ordinance will be considered as general merchandise store?

The first paragraph of subsection (m-2) of Act No. 3669 authorizes that board to tax all retail dealers in new (not yet used) merchandise. The only limitation that paragraph puts upon the board's taxing power is that the dealers to be taxed are those dealing in new merchandise not yet subject to any municipal tax at the time Act No. 3669 became effective. In view of this broad authority it would be absurd to hold that it was the intention of the Legislature to limit the board's power to tax as "new (not yet used) merchandise" only those articles enumerated in paragraph 2 of subsection (m-2). To do this it must be presumed that the Legislature, without any apparent reason, deliberately exempted from taxation musical merchandise and all other merchandise not specifically mentioned in

that paragraph. This would be rank discrimination. Such an exemption from taxation might be excused if done to aid or encourage a new and struggling industry which the Government wished to foster for the good of the country. A dealer in musical merchandise certainly does not need such aid or encouragement in the Philippines where not only every town, no matter how small, but practically every barrio has a band or orchestra or both.

The rule of ejusdem generis is resorted to merely in aid of the construction of a statute, and not where, on consideration of the whole law on the subject and the purpose sought, it appears that the legislature intended the general words to go beyond the class specifically designated. (*State vs. Smith*, 135 S. W., 465; 233 Mo., 242; *Kansas City Southern Ry. Co. vs. Wallace*, 132 Pac, 908; 38 Okla., 233.)

In view of the evident purpose the Legislature sought when it adopted Act No. 3669, which was to tax all dealers in "new (not yet used) merchandise", it would not be logical to restrict the meaning of the words "retail dealers in general merchandise" to the narrow definition which the appellant urges upon this court. It must be held, in view of the evident purpose sought by the Legislature in adopting Act No. 3669, that the municipal board of the City of Manila had a perfect right to consider as general merchandise stores, for the purpose of Ordinance No. 1925, those establishments engaging in more than one kind of business, or those selling articles not enumerated in that ordinance.

The above conclusion is further strengthened by an examination of the title of Act No. 3669, the purpose of which was to grant authority to the municipal board of the City of Manila "to tax and to fix the amount of license fees upon certain industries, businesses or occupations which up to date are not yet subject to the payment of such license fees or' tax, and which increases the authority of such board to such an extent that its power to fix the amount of the license fees for certain industries and occupations would be substituted by the power to tax * * *." What plausible reason could there be for the Legislature to deny the municipal board the right to tax a dealer in musical merchandise and authorize it to tax a dealer in sporting goods? To uphold the contention of the defendant-appellant would make Act No. 3669 unreasonable and inconsistent. The courts do not sanction an interpretation that would make a law unreasonable and lead to an absurdity where a reasonable interpretation can be adopted.

"Where a statute appears upon its face to limit the operation of its provisions to particular persons or things by enumerating them, but no reason exists why other persons or things not so enumerated should not have been included, and manifest injustice will follow by not so including them, the maxim, 'Expressio unius est exclusio alterius, should not be invoked, * * *'" (*Blevins vs. Mullally*, 135 Pac, 307; 22 Cal. App., 519.)

The first assignment of error of the defendant-appellant is overruled.

Under the second assignment of error the defendant-appellant contends that Ordinance No. 1925 contravenes the rule of uniformity in taxation provided for in the Jones Law. The uniformity rule is not violated by classifying businesses for taxation purposes. In *United States vs. Sumulong* (30 Phil., 381), this fundamental principle is sustained and supported with numerous cases, among which appears the following:

"The ordinance imposes a license tax upon persons who carry on certain occupations in the city. Persons in different occupations pay different amounts, and persons in the same occupation are classified by maximum and minimum amount of sales. * * *

* * * * *

"The objection that plaintiff makes to the ordinance is that it classifies by amount or value with the result (1) that the lowest amount or value of property of a class 'is required to pay the same amount of taxes with the highest amount or value of property therein'; (2) that the differences are not in kind, but only in amount, or value, and that the taxes decrease in rate or ratio as the value of the class increases; (3) that the so-called

classes are subdivisions of a class, and taxes are imposed upon such subdivisions without regard to a common ratio, either as between the several subdivisions, or as between the members of each of the subdivisions. These objections are but the expression of the effect of classification by amount, and have been made before and considered before by this court, and the judgment has been adverse to the contention of plaintiff in error. We do not think that it is necessary to review the cases or enter again into the reasoning upon which they were based.

* * * * *

"Plaintiff in error, however, contends that the tax in the case at bar is a tax on property, not on the privilege to do business, because the final incidence of the tax is on the merchant, and is paid by him. But every tax has its final incidence on some individual. That effect, therefore, cannot be urged to destroy well-recognized distinctions. The tax in the case at bar is a tax on the privilege of doing business, regulated by the amount of sales, and is not repugnant to the Constitution of the United States." (Clark vs. Titusville, 184 U. S., 329, 330; 46 Law. ed., 569.)

In Churchill and Tait vs. Concepcion (34 Phil., 969, 976), this court quoted with approval the following from Black on Constitutional Law, page 292:

"Uniformity in taxation means that all taxable articles or kinds of property, of the same class, shall be taxed at the same rate. It does not mean that lands, chattels, securities, incomes, occupations, franchises, privileges, necessities, and luxuries, shall all be assessed at the same rate. Different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times."

Under its third and fourth assignments of error the defendant contends that the license fees exacted by Ordinance No. 1925 from retail dealers are exorbitant, excessive and out of proportion to the purposes for which license fees are collected. As may be seen from the title of Act No. 3669, one of its purposes is to increase the "authority of such Board (Municipal Board of the City of Manila) to such an extent that its power to fix the amount of the license fees for certain industries and occupations would be substituted by the power to tax." Therefore, the license fees imposed by Ordinance No. 1925 are for revenue purposes.

"* * * where under undoubted charter power, the tax is imposed for revenue alone, or for police regulation and revenue, the amount thereof is usually a matter for determination by the legislative branch of the municipal government. Ordinarily the courts will decline to interfere on the ground that the amount is oppressive or unreasonably large. They incline to defer to the judgment and discretion of the corporate authorities, and frequently presume that the amount demanded is reasonable, particularly in the absence of evidence to the contrary." (3 McQuillin's Municipal Corporations, sec. 1102, p. 485, 2d ed.)

"* * * If the fee or tax is imposed for revenue purposes, the amount thereof is particularly within the discretion and judgment of the legislative authority, state or municipal, and ordinarily will not be interfered with by the courts, unless the tax imposed amounts to a prohibition of a useful or legitimate occupation, or unless in case of an ordinance the tax imposed is manifestly in excess of the needs of the municipality and out of proportion of other taxes." (37 C. J., 193, 194.)

The second, third and fourth assignments of error of the defendant-appellant are overruled.

In its fifth assignment of error the defendant contends that the gross sales on which the license fee fixed by the plaintiff was based were sales made by the defendant both in the City of Manila and the provinces. The agreed statement of facts copied above does not bear out defendant's contention.

The judgment of the trial court is affirmed with costs in both instances against the defendant-appellant.

Malcolm, Villa-Real, Imperial, and Butte, JJ., concur.

Judgment affirmed.

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