

THE EASTERN EXTENSION AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LTD., PLAINTIFF AND APPELLEE, VS. JOHN S. HORD, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 4588. September 17, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

This case relates to the right of the Government to compel the payment by the plaintiff company of the internal revenue tax provided by section 139 of Act No. 1189.

By a royal decree dated on the 10th day of April, 1897, the plaintiff company was given by the Government of Spain a concession for the construction and operation of what are known as the "Visayan cables." It was provided in the concession that one of the cables should start from a point off the coast of Tayabas, in the Island of Luzon, and terminate, if practicable, at the town of Capiz, in the Island of Panay; that the second should start from the Port of Iloilo and terminate at that of Bacolod, in the Island of Negros; and the third from the town of Escalante, on the east coast of Negros, and terminate at the town of Tuburan, on the west coast of Cebu. These cables were constructed in accordance with the terms of the concession and are now operated by the plaintiff company.

In 1879 the Spanish Government gave to the plaintiff company a concession for the construction and operation of a cable from Hongkong to Bolinao, in the Province of Zambales. The terms of this concession do not appear in the record of this case, but by a royal decree dated the 28th of March, 1898, that Government gave to the plaintiff a new concession for the maintenance of a cable from Hongkong to Manila, authorizing the company to cut the original cable near Bolinao. The new line was constructed by the company and it has been, and now is operating a cable from Hongkong to Manila.

The entire gross receipts of the company in the Philippine Islands from January 1, 1905, to June 30, 1906, amounted to P608,162.16. Of this amount, the sum of P510,250.10 was collected for traffic between the Philippine Islands and foreign countries, and P97,912.06 was collected for domestic traffic. We assume that all of the foreign business was done over the Hongkong line, and all of the domestic business over the Visayan cables, and the first question which we consider is the liability of the company to taxation for its foreign business.

Section 139 of the Internal Revenue Law originally read as follows:

"Except as hereinafter specifically exempted, there shall be paid by each merchant and manufacturer a tax at the rate of one-third of one per centum on the gross value in money of all goods, wares, and merchandise sold, bartered, or exchanged for domestic consumption in the Philippine Islands, and this tax shall be paid whether such commodities consist of raw materials or manufactured or partially manufactured products, and whether of domestic production or imported. This tax shall be assessed on the actual selling price at which every such merchant or manufacturer disposes of his commodities, and shall be paid at the end of each quarter in the sum lawfully due on the gross amount in money of the sales made by every such merchant or manufacturer during

each such quarter. And each such merchant or manufacturer shall, on the first, day of January; nineteen hundred and five, or on the date thereafter on which any such merchant or manufacturer engages in any such mercantile or manufacturing pursuit, pay a tax of two pesos."

The last part of section 141 and a part of section 142 are as follows:"SEC. 141. Persons, associations, or corporations engaged in the manufacture and sale of electric light, power, or heat, or in conducting telephone or telegraph lines or exchanges, or in the building or repair of ships or boats, or in conducting dockyards, shall also be regarded as manufacturers within the meaning of this article.

"SEC. 142. The following persons shall be exempted from the payment of the taxes imposed in section one hundred and thirty-nine:

* * * * *

"(b) Exporters, on the raw material and manufactured or partially manufactured products actually exported by them."

While the law was in this condition, and on the 31st day of March, 1905, the then Attorney-General of the Islands delivered" an opinion in which he stated that foreign cable messages sent or received were not subject to the tax imposed in said section 139. The grounds of his decision were, in substance, as follows: By the terms of the law, in order to subject the business in question to a tax, the articles must be sold or exchanged in the Philippine Islands and must be for domestic consumption. Messages received from abroad were not sold in the Philippine Islands, but abroad. Messages sent from here abroad, while sold in the Philippine Islands, were not sold for domestic consumption. He further held that outgoing messages must be classed as exports under section 142, above quoted, and that they were, therefore, exempt from taxation.

We quite agree with the views thus expressed by the Attorney-General. After the above-mentioned opinion was given, and on July 7, 1905, the Commission amended section 139 by striking therefrom the words "for domestic consumption." (Act No. 1370.)

As to the period herein in question, running from the first of January, 1905, to the 7th of July, 1905, the original section 139 must govern, and as to the period from the 7th of July, 1905, to the 30th of January, 1906, the amended section must govern, but in neither case is the company subject to taxation for its foreign business, as indicated in the said opinion.

The Attorney General says in his brief in this case that in reality a cable message is not a manufactured article and that nothing material is exported when a foreign message is sent not even the paper on- which it is written. This is true, but it is also true that in reality a cable company is not a manufacturer. It makes nothing material. The legislature has, however, declared that for the purposes of the internal-revenue tax law it is a manufacturer. If for the purposes of that law it is a manufacturer, then for the purposes of the same law the articles which it deals in must be manufactured articles and the articles thus manufactured by it, when sent abroad are exported articles within the meaning of section 142.

We therefore hold that the company was under no obligation to pay the tax in question upon the sum of P510,250.10, the amount of its receipts for its foreign traffic, and that the tax which was paid by it under protest on that amount must be returned.

In determining the question of its liability on account of its receipts for domestic business, it is necessary to consider the terms of the concessions. The articles of the Visayan concession which are material, are as follows:

"ART. 10. The concessionaire shall enjoy an annual subsidy of four thousand, five hundred pounds sterling, payable monthly in twelve installments, during the whole term of the working of the cables, the said payments

being made at Manila by the chief treasury office of those Islands.

"ART. 16. The company holding the concession shall pay the State ten per cent, which tax in its application to cablegrams is fixed after first deducting the amount of the expenses for the maintenance of the stations calculated at six thousand pounds per annum, the said expenses not to exceed the amount specified.

"ART. 18. The tax applicable to telegrams passing over the said cables shall be uniformly fifty centimes of a franc per word, no transit or terminal rate being charged for the telegraphic transmission over the land lines belonging to the Government in the Islands of Panay, Negros, and Cebu. There is a surtax of five centimes of a franc per word on telegrams passing "between the above-mentioned islands and the others of the Archipelago."

One of the claims of the company is that it is exempt from taxation by the terms of its concessions. The tax imposed by section 139 is not a tax upon property, but upon business or occupation. (Gil Hermanos vs. Hord, 10 Phil. Rep., 218.) In the Visayan concession there is no express exemption from taxation. There is, to be sure, the provision in article 16 that the company shall pay the State 10 per cent of its receipts, after deducting 6,000 for expenses, but there is nothing in this article, nor in any other article in the concession, which says that this payment shall be in lieu of all other taxes upon the property. Under such circumstances the Government is not prohibited from levying additional imposts. (Met. St. By. Go. vs. New York State Board of Tax Commissioners, 199 U. S., 1.) The part of the decision in that case applicable to the present case is quoted in Casanovas vs. Hord (8 Phil. Rep., 125, 132). The fact that under the concession the Spanish Government agreed to pay a subsidy of £4,500 per annum would not, in view of the decision above cited, prevent the American Government from taxing the company, even if the latter had accepted and ratified the concession.

It is said, however, by the company, that although there may be no exemption from taxation in the Visayan concession, there is one in the Hongkong concession which is applicable not only to that concession, but to the Visayan concession. That exemption is found in article 3, paragraph 3, of the royal decree, and is as follows:

"ART. 3. The laying of the cable, its landing at Manila, and its working, shall be carried out at the expense and risk of the above-mentioned company, in exchange for the concession to the same of the following privileges;

* * * * *

"3. The assimilation of the company's employees to those of the State telegraphs, so that the former may enjoy the same privileges; and the exemption of the company's property from taxes and local imposts."

There is no evidence to show that any of the property used by the company in the operation of its Hongkong cable is used in the operation of the Visayan cables; in fact, it is apparent that as far as the cables themselves are concerned and their landing places, there is no connection whatever between the two systems. The only thing that perhaps appears is that the same officers manage both. To our minds the two concessions constitute two separate and distinct contracts between the Spanish Government and the company. There is no connection between them, except, first, the fact that they were granted to the same company, and, second, a clause in the Hongkong concession relating to the deposit which the company was required to make when the concession was granted. By the terms of the Visayan concession, which was prior in date, the company was bound to deposit 100,000 pesetas with the Government. In the Hongkong concession there is a similar requirement, but in the contract made between the Government and the company it was provided that in view of the fact that the work of the Visayan cables had been practically completed when the Hongkong concession was made the deposit of 100,000 pesetas made in conformity with the provisions of the Visayan concession might be considered as the deposit required by the Hongkong concession.

It can not be said that this agreement in regard to the deposit, or the fact that the concessionaire was the same in both cases, or both facts, would make the terms of the Hongkong contract applicable to the Visayan contract. The

proper construction of the exemption of the Hongkong concession is that, the property of the company used in connection with that concession should be exempt, but that the property used by: the same company in connection with another contract entered into between it and the Government should not be exempt. Whether the company would be exempt from this tax if the article in the Hongkong concession were applicable to the Visayan concession, we do not decide. The receipts of the company for the business transacted over the Visayan cables come clearly within the terms of section 139, and the company is liable for the tax thereby imposed. It is alleged in the complaint that of the sum of P97,912.Q6 collected for domestic traffic, P6,539.70 was collected as surtaxes, in accordance with the provisions of article 18 of the Visayan concession, above quoted. There was testimony showing that for every word sent over the Visayan cables to the Islands of Panay, Negros, and Cebu from other islands in the Archipelago, there was collected 55 centimes of a franc, of which 50 centimes belonged to the company and 5 centimes to the Government. In other words, this surtax of 5 centimes of a franc never belonged to the company and in its collection it acted merely as an agent Of the Government. We, therefore, think that the amount thereof can not be considered as a part of the gross receipts of the business of the plaintiff, and that it should be deducted from the sum of P97,912.06, leaving a balance of P91,372.36.

It is claimed by the company, and some evidence was presented to prove, that the American Government ha4 accepted and ratified these concessions and was bound by their terms, including the payment of the subsidy of £4,500 per annum for the Visayan cables. We do not see how this question concerning the acceptance of the concessions by the American Government can in any way affect the decision in this case. If the company has any claims against the Government by reason of the subsidy, it must seek relief in some other way. In fact, in the complaint in this action no reference whatever is made thereto and no relief is sought on that ground.

The court below ordered the repayment to the plaintiff of the entire amount paid by it as taxes, namely, P2,027.18. In accordance with the views above stated, recovery should not have been had for all of the taxes paid, but only for those paid on account of the foreign business and on account of the surtax, and that judgment is modified by reducing the recovery from P2,027.18 to P1,722.60, and interest thereon as stated in the said judgment. As thus modified, the judgment of the court below is affirmed, with the costs of the first instance. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, and Tracey, JJ., concur.

Carson, J., did not sit in this case.

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