

PACIFIC COMMERCIAL COMPANY, PLAINTIFF AND APPELLANT, VS. ALFREDO L. YATCO, DEFENDANT AND APPELLEE.*G.R. No. 45976. July 20, 1939*

Ponente: AVANCEÑA, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45976/>**AVANCEÑA, C.J.:**

The plaintiff, a corporation engaged in business as a merchant, with offices in Manila, Cebu and Iloilo, during the period from April 1, 1934 to December 31, 1935, sold in the Philippines, for the account of Victorias Milling Co., another Philippine corporation, refined sugar, manufactured by the said corporation, up to the total amount of P1,126,135.96, having received by way of commission for this sale the amount of P29,534.29. The corporation Victorias Milling Co., paid to the Collector of Internal Revenue for this sale the amount of P16,944.90 as merchant sales tax in its capacity as manufacturer and owner of the sugar sold. Notwithstanding this payment made by Victorias Milling Co., the Collector of Internal Revenue also collected from the plaintiff the same tax for the same amount of P16,944.90.

The sales of this sugar were made by the plaintiff in two ways. The plaintiff looked for purchasers of the sugar, and once the corresponding purchase order is obtained from them, the same is sent to the office, of Victorias Milling Co., in Manila, which, in turn, endorsed the order to its office in Negros, with instructions to ship the sugar thus ordered to Manila, Cebu or Iloilo, as the case may be. At times, the purchase is made for the delivery of the sugar ex-warehouse of the plaintiff and at other times for delivery ex-ship. In all cases, the bill of lading is sent to the plaintiff. If the sugar was to be delivered ex-ship, all that the plaintiff did was to hand over the bill of lading to the purchaser and collect the price. If it was for delivery ex-warehouse, the sugar is first deposited in the warehouse of the plaintiff before delivery to the purchaser.

The court found that of the price of sugar sold by the plaintiff, the amount of P558,550.41 corresponds to sugar sold for delivery ex-warehouse and that of P567,585.55 corresponds to sugar sold for delivery ex-ship, and considering that in the first case the plaintiff acted as a commission merchant, and in the second case as a broker, it ordered the defendant to return to the plaintiff the amount collected from it, by way of tax on the sale of sugar to be delivered ex-ship, and denied the prayer in the complaint for the return of the amount paid for the sales of sugar to be delivered ex-warehouse.

Both parties appealed from this decision.

The appeal raises three questions: (a) whether there is double taxation in the present case; (b) whether the plaintiff acted as a commission merchant as to the sugar delivered ex-warehouse; (c) whether the plaintiff acted as a mere commercial broker as to the sugar delivered ex-ship.

As to the first question, it should be borne in mind that Victorias Milling Co. already paid the merchant sales tax for the sales of sugar, in its capacity as manufacturer and owner of the sugar sold. It is said that the payment of another tax by the plaintiff, who effected the sale, constitutes double taxation, there having been only one sale. In *Gil Hermanos vs. Hord* (10 Phil., 218), this question was already decided in the sense that there is no double

taxation. In that case, Aldecoa & Co., remitted abaca to Gil Hermanos, which the latter sold on commission for the account of the former. Aldecoa & Co. paid the tax of one-third of 1 per cent upon the value of the abaca sold by Gil Hermanos, and the latter also paid another one-third of 1 per cent for the same sale. It was held that, although there was only one sale, this is not a case of double taxation, because the tax is not upon property or products, but upon occupation or industry. The tax was paid by Aldecoa & Co. and Gil Hermanos in consideration of the occupation or industry in which each is engaged. The value of the thing sold is taken into account only as a basis for the fixing of the amount of the tax and not as the reason and purpose thereof. The case at bar is identical in all respects.

It is said that this decision was reversed in *Atkins, Kroll & Co. vs. Posadas* (48 Phil., 352), and other cases. This, however, is not correct. Neither in *Atkins, Kroll & Co. vs. Posadas*, nor in the other cases mentioned by the plaintiff, has the decision in *Gil Hermanos vs. Hord* been reversed. Although a distinct result was reached in these cases, this was only because they have been found to be different from the case of *Gil Hermanos vs. Hord*. On the contrary, in *F. E. Zuellig, Inc. vs. Collector of Internal Revenue* (51 Phil, 629), the doctrine in *Gil Hermanos* was followed.

The question of whether the appellant, in connection with the sugar delivered ex-warehouse and thereafter sold to the purchasers, acted as a commission merchant, presents no doubt. A commission merchant is one engaged in the purchase or sale for another of personal property which, for this purpose, is placed in his possession and at his disposal. He maintains a relation not only with his principal and the purchasers or vendors, but also with the property which is the subject matter of the transaction. In the present case, the sugar was shipped by Victorias Milling Co., and upon arrival at the port of destination, the plaintiff received and transferred it for deposit in its warehouses until the purchaser called for it. The deposit of the sugar in the warehouses of the plaintiff was made upon its own account and at its own risk until it was sold and taken by the purchaser. There is, therefore, no doubt that the plaintiff, after taking the sugar on board until it was sold, had it in its possession and at its own risk, circumstances determinative of its status as a commission merchant in connection with the sale of sugar under these conditions.

There is also no doubt on the question of whether the plaintiff merely acted as a commercial broker as to the sale of the sugar delivered to the purchaser ex-ship. The broker, unlike the commission merchant, has no relation with the thing he sells or buys. He is merely an intermediary between the purchaser and the vendor. He acquires neither the possession nor the custody of the things sold. His only office is to bring together the parties to the transaction. These circumstances are present in connection with the plaintiff's sale of the sugar which was delivered to the purchaser ex-ship. The sugar sold under these conditions was shipped by the plaintiff at its expense and risk until it reached its destination, where it was later taken ex-ship by the purchaser. The plaintiff never had possession of the sugar at any time. The circumstance that the bill of lading was sent to the plaintiff does not alter its character of being merely a broker, or constitute possession by it of the sugar shipped, inasmuch as the same was sent to it for the sole purpose of turning it over to the purchaser for the collection of the price. The sugar did not come to its possession in any sense.

In view of the foregoing, the appealed decision is affirmed, without special pronouncement as to the costs. So ordered.

Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.
Moran, J., see dissenting opinion.

DISSENTING OPINION

MORAN, J.:

I regret to dissent from the majority opinion penned by our illustrious and beloved Chief Justice.

The tax on the sale made by the plaintiff Pacific Commercial Company, for the account of Victorias Milling Company, has already been paid by the latter, as the majority admits. Hence, to require the Pacific Commercial Company to pay the same tax is clearly to impose double taxation upon one and the same sale.

But the majority maintains that this is not a case of double taxation, because the tax in question is not a tax "upon property or products, but upon occupation or industry." Although, in my opinion, the tax, according to the language of the law, is imposed upon the transaction rather than upon the occupation, or, at most, upon both, I would say that the distinction made by the majority is not of much importance. The important thing is, as the majority holds, that the value of the transaction "is taken into account only as a basis for the fixing of the amount of the tax"; which means, in the last analysis, that the transaction is the basis of the tax and that, as a consequence, where there is only one transaction, there is no more basis but for a single tax. In the present case, there is only one sale, that made by the plaintiff in the name of Victorias Milling Company, and two taxes cannot be demanded of these two companies because they have brought about only one basis for the payment of one tax. To impose two taxes upon them would be like holding that the plaintiff has effected one sale and the Victorias Milling Company another, which is not true, as both have realized but one sale. To make this sale twice as a basis for the collection of two taxes is unjust and unlawful, because a single transaction is thereby pluralized and, moreover, in such case, the proportion between the amount of the total tax collected and the true value of the only transaction made would exceed the rate fixed by law. The Government is not entitled to receive more than one tax for a single transaction.

Note that the law imposes the tax upon the vendor of merchandise. In the present case, who sold the merchandise? Was it the Victorias Milling Company or the Pacific Commercial Company? As to this, there is no controversy on the facts. The Victorias Milling Company sold the merchandise through the Pacific Commercial Company, or, otherwise stated, the latter sold the merchandise in the former's name. The Victorias Milling Company is the vendor in law, and the Pacific Commercial Company is the vendor in fact; one completes the personality of the other and both constitute one efficient subject of the sale. In reality, therefore, there is but one vendor and but one sale and only one thing sold, hence, only one tax may be collected, which may be paid by Victorias Milling Company or by the Pacific Commercial Company, alternatively.

It is true that the doctrine laid down in *Gil Hermanos vs. Hord* (10 Phil., 218), and *F. E. Zuellig, Inc. vs. Collector of Internal Revenue* (51 Phil., 629), supports the theory held by the majority; but this doctrine runs counter to that established in *Atkins, Krol & Co. vs. Posadas* (48 Phil., 352). In this case, *Atkins, Kroll & Co., through Macleod & Co., Inc.*, a commission merchant, shipped a certain amount of copra to the United States. The Government sought to collect the total tax on the consignment both from the owner of the copra as well as from the commission merchant, and this court held 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" (page 359). In other words, this court held that for a single consignment, the Government is not entitled to collect two taxes, one from the owner of the merchandise and the other from the commission merchant. It is true that it had to do with a consignment and not a sale; but both transactions are governed by the same legal provision, namely section 1459 of the Administrative Code.

Upon the question at issue, our jurisprudence is wavering, if not confusing and contradictory, and I had wished that the court make a revision thereof to lay down clearly and definitely a more just and equitable doctrine for the

good of commerce. In my opinion, the Government has no right to receive more than one tax for a single transaction. A contrary doctrine would be detrimental to local merchants. If a foreign merchant sells his merchandise through a resident commission merchant, the Government will not collect more than one tax, and will do so from the commission merchant. But if a resident merchant makes a similar transaction, the Government will collect the tax twice, from the merchant and from the commission merchant. I do not believe that the legislator intended a measure so unjust to the merchants of the country.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.