

HARRIE S. EVERETT, PLAINTIFF, VS. FEDERICO T. BAUTISTA ET AL., DEFENDANTS AND APPELLANTS. COMMONWEALTH OF THE PHILIPPINES, INTERVENOR AND APPELLEE.

G.R. No. 46505. November 07, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

The question raised by the appeal of the defendants and appellants from the order of the Court of First Instance of Manila, dated June 8, 1938 and rendered in civil case No. 50972 of said court, directing the payment of the sum of P992.59 by the partnership Everett-Bautista to the Commonwealth of the Philippines, as percentage tax on the gross receipts of the cinematograph business of said partnership at the "Queen's Theater" during the first quarter of the year 1937, is whether the collection of said tax is in accordance with law.

The facts which must be taken into account and are not disputed by the parties, are the following: The partnership Everett-Bautista, which is formed by Harrie S. Everett and by the appellant Federico T. Bautista and which is now in liquidation, was the owner or, at least, it directed and managed the cinematograph business called "Queen's Theater," during the first quarter of 1937. Its gross receipts during that period were P15,881.41. The admission fees which had been collected were not at the same rate, because at times less than P0.40 per seat was charged, while at other times more than P0.40 but not exceeding P0.70 per seat were charged. Since it did not pay in due time the tax fixed by law, which is 5 per cent of the receipts, the Collector of Internal Revenue required it to pay the sum of P992.59, which represents the following items and amounts:

Five per cent of P15,881.41 which were its gross receipts during the first quarter of 1937, as tax

P794.07

Twenty-five per cent surcharge on P794.07 for delay in payment of this tax

198.52

Total 992.59

Everett-Bautista refused to pay this sum of P992.59, alleging that the "Queen's Theater" did not collect more than P0.40 per seat, except from February 1 to 4, 1937, and from March 8, to 11, of the same year, on which days it admitted to have collected more than P0.40. It also alleged that within the same first quarter of 1937, it leased the "Queen's Theater" to CONSUMERS TRADING CORPORATION under the condition that the latter would pay the corresponding taxes, according to the gross receipts realized; and that said receipts did not amount to more than P1,406.80.

Commonwealth Act No. 128 which imposes the tax to be paid, computed on the basis of 5 per cent of the gross receipts of theaters, cinematographs, etc., in its sections 1 and 3, says the following:

"SECTION 1. In addition to the fixed tax prescribed in Act Numbered Twenty-nine hundred and eighty-four,

as amend- ed by Act Numbered Thirty-eight hundred and sixty-five, and section fourteen hundred and sixty-four of the Administrative Code, as amended by section three of Act Numbered Twenty-eight hundred and thirty-five, section one of Act Numbered Twenty-nine hundred and twenty-five, and section one of Act Numbered Thirty-nine hundred and sixty-three, there is hereby imposed a tax equivalent to five per centum of the gross receipts of theaters, cinematographs, concert halls, circuses, boxing exhibitions, cabarets, race tracks, cockpits and other places of amusement whose admission prices exceed forty centavos, but not including the receipts from the sale of liquors, beverages or other articles subject to the specific tax for the conduct of which business the corresponding fixed internal-revenue tax has been paid. The tax on gross receipts herein imposed, shall be collected in the same manner, at the same time, and subject to the same penalties, as the internal-revenue percentage taxes imposed under Article V, Chapter forty, of the Revised Administrative Code.

"SEC. 3. The collection of the tax provided for in this Act shall be made by the Collector of Internal Revenue or his deputies under such rules and regulations as may be prescribed by the Secretary of Finance."

The law aforesaid does not say clearly how the tax in question should be imposed in cases where the daily receipts are not made at the same rate, that is, at less than P0.40 or more than P0.40 per seat. However, the Collector of Internal Revenue, by virtue of the authority conferred on him by section 3, has prescribed Regulations No. 94, which, in our opinion, clearly resolves the question. Said Regulations provide:

"* * * Owners, proprietors, lessees, concessionaires, and operators of theatres, cinematographs, cockpits, etc., which have two or more admission prices, such as an admission price of 40 centavos or less, and an admission price in excess of 40 centavos, or a general admission of less than 40 centavos but who charge or collect other amounts in excess of 40 centavos for the privilege of occupying more desirable place or accommodation, shall return for taxation not only the receipts from the admission price in excess of 40 centavos but also the receipts from the admission price of 40 centavos or less. * * *" (34 Official Gazette, No. 157, page 2626.)

If any effect is to be given to the regulations referred to, it seems clear that the obligation to pay the tax imposed by Act No. 128, does not arise only in the cases where the receipts from any of the business enterprises enumerated therein are for collections at the uniform rate of P0.40 per seat for a whole quarter; said obligation also arises and becomes imperative in the cases where the receipts are for collections of less than P0.40 per seat, made for a portion of a given quarter, and for collections of more than P0.40 per seat during another portion, either long or short, of the same quarter. It may be inferred from said regulations, that in order to make the computation of the amount of the tax to be collected in accordance with the law referred to, there must be jointly taken into account all the receipts during one quarter, which have been realized not only upon collections made at more than P0.40 per seat, but also upon those made at a lower rate, without considering the use in said law of the phrase "whose admission prices exceed forty centavos," because that phrase serves no more than to establish a basis for the classification of the enterprises referred to in said Act No. 128. This would be in perfect accord with the aforementioned law, for according to section 4 thereof the provisions of section 1458 of the Administrative Code are supplementary to it. Said section 1458 provides:

"SEC. 1458. The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter; and it shall be the duty of every person conducting a business subject to such tax, within the same period as is allowed for the payment of the quarterly instalments of the fixed taxes without penalty, to make a true and complete return of the amount of the receipts or earnings of his business during the preceding quarter and pay the tax due thereon: Provided, however, That it shall be the duty of any person retiring from a business subject to the percentage tax before the expiration of the calendar quarter to notify the nearest internal-revenue officer thereof, file his declaration, and pay the tax due on his business immediately after closing the same.

"If the percentage tax on any business is not paid within the time prescribed above the amount of the tax shall be increased by twenty-five per centum, the increment to be a part of the tax."

* * * * *

There ought to be no doubt that effect must be given to Regulations No. 94 referred to, because its promulgation is authorized by law. It is not in conflict therewith, and is for this reason valid and binding upon everyone falling under its provisions. This opinion is supported by the reasons set forth in the case of *United States vs. Tupasi Molina*, 29 Phil., 119, and in the decisions therein cited, in addition to those expressed in the case of *De Villata vs. Stanley* (32 Phil., 541). In those cases it was said:

"In the very nature of things in many cases it becomes impracticable for the legislative department of the Government to provide general regulations for the various and varying details for the management of a particular department of the Government. It therefore become convenient for the legislative department of the Government, by law, in a most general way, to provide for the conduct, control, and management of the work of the particular department of the Government; to authorize certain persons, in charge of the management, control, and direction of the particular department, to adopt certain rules and regulations providing for the detail of the management and control of such department. Such regulations have uniformly been held to have the force of law, whenever they are found to be in consonance and in harmony with the general purposes and objects of the law. Many illustrations might be given. For instance, the Civil Service Board is given authority to examine applicants for various positions within the Government service. The law generally provides the conditions in a most general way, authorizing the chief of such Bureau to provide rules and regulations for the management of the conduct of examinations, etc. The law provides that the Collector of Customs shall examine persons who become applicants to act as captains of ships for the coastwise trade, providing at the same time that the Collector of Customs shall establish rules and regulations for such examinations. Such regulations, once established and found to be in conformity with the general purposes of the law, are just as binding upon all of the parties, as if the regulations had been written in the original law itself. (*United States v. Grimaud*, 220 U. S., 506; *Williamson v. United States*, 207 U. S., 425; *United States v. United Verde Copper Co.*, 196 U. S., 207.)" (*United States vs. Tupasi Molina*, *supra*.)

"The judiciary ought not to interfere with regulations established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public, that is, judicial interference should never occur unless the case presents, clearly and beyond all doubt such a flagrant attack upon the rights and property under the guise of regulations as to compel the court to say that the regulations in question will have the effect to deny just compensation for private property taken for the public use." (*De Villata v. Stanley*, *supra*.)

We are unaware of and our attention has not been called to any explanatory note of the bill upon its submission to the National Assembly and before it was finally approved as Act No. 128, or to any other evidentiary information as to what the said National Assembly had in mind with respect to the computation of the receipts upon which the five per cent tax was to be collected. In these circumstances the rule should be that the interpretation given to a law by an officer charged by reason of his office to carry out its provisions, should be respected whenever it is assailed by someone who alleges no reasons of weight to contradict or weaken it.

"Where the language of a series of statutes is dubious, and open to different interpretations, the construction put upon them by the Executive Department charged with their execution has great and general controlling force with this court. (*St. Paul, Minneapolis, etc., Railway Co. v. Phelps*, 137 U. S., 528; 34 L. ed., 767.) It is a rule well established that the construction given to a statute by those charged with the duty of executing it will be given great weight by the courts if the true construction be doubtful. *U. S. v. Hill*, 120 U. S., 169; 30 L. ed., 627.) In case of ambiguity in a statute, contemporaneous and uniform executive construction is regarded as decisive. (*Brown v. U. S.*, 113 U. S., 568.)" (*Munoz & Co. vs. Hord*, 12 Phil., 624.)

(*Pennoyer v. McConnaughy*, 140 U. S., 1, 25; 35 L. ed., 363; *Matter of Breslin*, 45 Hun. N. Y., 210.)

"* * * It has come to be a well-settled rule that great weight should be given to the construction placed upon a revenue law, whose meaning is doubtful, by the department charged with its execution. (U. S. v. Cerecedo Hermanos y Cia. [1907], 209 U. S., 338; In re Allen [1903], 2 Phil., 630; Government of the Philippine Islands vs. Municipality of Binalonan, and Roman Catholic Bishop of Nueva Segovia [1915], 32 Phil., 634.)" (Madrigal vs. Rafferty and Concepcion, 38 Phil., 414.)

By virtue of the provisions of the aforementioned section 1458 of the Administrative Code, which, as above stated, are supplementary to section 1 of Act No. 128, it was the duty of the partnership EVERETT-BAUTISTA of which the only members were the plaintiff Everett and the defendant Federico T. Bautista, to pay the Commonwealth Government the tax of P794.07 referred to upon the termination of the first quarter of 1937. As it has not complied with that duty, in spite of the demand made by the Collector of Internal Revenue, it has become undoubtedly liable to the penalty provided in said section, consisting in the payment of a surcharge of 25 per cent of P794.07, or P198.52 additional.

In view of all the foregoing, the order appealed from is affirmed, with costs against the appellants. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, Concepcion, and Moran, JJ., concur.

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