

THE CITY OF MANILA, PLAINTIFF-APPELLEE, VS. MANILA BLUE PRINTING CO., INC., DEFENDANT-APPELLANT.*G.R. No. 48466. August 30, 1943*

Ponente: OZAETA, J.

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The City of Manila sues the Manila Blue Printing Co., Inc., for unpaid license fees as a retailer of stationery and office supplies corresponding to the years 1938, 1939, and the first quarter of 1940. During the said period the gross sales made by the defendant to various persons and entities other than the Commonwealth of the Philippines ranged from one thousand odd pesos to seven thousand odd pesos per quarter; and the gross sales made by it to the Commonwealth of the Philippines thru the Division of Purchase and Supply ranged from thirty-one thousand odd pesos to fifty-two thousand odd pesos per quarter.[1]

City Ordinance No. 1925 as amended by No. 2529 fixes the amount of quarterly license fees to be paid by retail dealers according to the amount of the gross sales made during each quarter. The defendant reported only its sales to various persons and entities other than the Government and paid only the license fees corresponding to those sales, claiming that its sales to the Government were exempt from the operation of the said ordinance because they were wholesale and not retail.

The trial court held that defendant's sales to the Government, having been made to the consumer and not to a dealer for the purpose of resale, must be considered retail sales and not wholesale and hence subject to the license fee imposed by said ordinance.

The question to determine is the definition of the phrase "retail dealers" used in the enabling Act and in the ordinance, in relation to the sales made by the defendant to the Government. Section 2444 of the Revised Administrative Code, as amended by Act No. 3669 and Commonwealth Act No. 76, in its subsection (m-2), empowers the Municipal Board of the City of Manila "to tax and fix the license fee on * * * retail dealer in new 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 textiles * * *; hardwares * * *; groceries ' * * *; drugs * * *; books, including stationery, paper, and office supplies; jewelry; slippers; arms, ammunition; and sporting goods."

The pertinent provisions of the ordinance in question read as follows :

"Section 1.—Fee.—There shall be paid to the City Treasurer the quarterly license fees hereinafter provided for any calendar quarter for engaging in any of the businesses or occupations below enumerated, on the basis of the actual gross sales or receipts thereof during such quarter. Said payment shall be made at the end of the quarter or as soon thereafter as possible, but not later than the twenty-fifth day of the first month of the following quarter:

"* * * * *

"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 electrical supplies; sporting goods; office equipments and materials; rice; textiles including knitted wares; hardwares, including glasswares, cooking utensils and construction materials; groceries;, papers; books, including stationery:

"Class

Gross Sales

License Fee

1

Over

P125,000.00

P450.00

2

P113,055.00

to

125,000.00

407.00

3

103,885.00

to

113,054.99

374.00

4

94,165.00

to

103,884.99

339.00

5

85,830.00

to

94,164.99

309.00

6

78,055.00

to

85,829.99

281.00

7

70,830.00

to

78,054.99

255.00

8

64,445.00

to

70,829.99

232.00

9

58,610.00

to

64,444.99

211.00

10

53,330.00

to

58,609.99

192.00

11

48,610.00

to

53,329.99

175.00

12

43,885.00

to

48,609.99

158.00

13

40,000.00

to

43,884.99

140.00

14

36,385.00

to

39,999.99

137.00

15

33,330.00

to

36,384.99

120.00

16

30,275.00

to

33,329.99

109.00

"* * * * *

It is not denied that the defendant is a retail dealer—it buys stationery and office supplies in large quantities and resells them to consumers at a profit. The Government is a large consumer of stationery and office supplies, and bought them from the defendant in large quantities during the period in question at prices ranging from 10% to 50% lower than the prices at which the defendant sold them to the public or to private purchasers.

Were the sales thus made by the defendant to the Government retail, or wholesale, within the purview of the city ordinance above quoted? The plaintiff-appellee contends that they were retail because they were made directly to the consumer and not to a dealer for the purpose of resale. The defendant-appellant, on the other hand, contends that they were wholesale because they were made in large quantities.

Funk and Wagnalls New Standard Dictionary of the English language defines the word "retail" as "the selling of goods in small quantities, especially by those who have bought in large quantities to resell at a profit." Words and Phrases, volume 4 (2d series), page 370, is quoted by appellant on the subject as follows: "The definition of the word 'retail,' as applied to sales is to sell in small quantities as by the yard, pound, gallon, etc.; to sell directly to the consumer in small quantities, such as are immediately called for by consumers. 'Wholesale' means sale made in large quantities, as distinguished from those made in small quantities which are to be regarded as sales at retail."

There are two criteria by which to determine whether a sale is retail or wholesale. One is by the quantity, whether small or large; and the other is by the nature of the buyer, whether he is a consumer or a merchant who resells at a profit. Which of these two criteria was intended by the Legislature when it used the phrase "retail dealers" in the enabling Act above quoted and by the Municipal Board when it used the same phrase in the ordinance it passed by virtue of said enabling Act?

We are inclined to believe, and so hold, that both the Legislature and the Municipal Board had the second criterion in mind, for the following reasons:

- Merchants engaged in the sale of goods are generally classified as either wholesalers or retailers. Wholesalers are those who sell goods in large quantities to retailers, while retailers are those who sell them directly to the consumers. All sales made by merchants classified as retailers or retail dealers are presumed to be sales at retail. When the enabling Act empowered the Municipal Board to tax and fix the license fee on retail dealers, and when the Municipal Board by virtue thereof fixed the license fee on retail dealers according to the amount of their gross sales, both legislative bodies had in mind all the sales of such retail dealers, because they are all presumed to be retail and not wholesale, regardless of the quantity of each sale.

- We cannot assume that in approving the ordinance in question the Municipal Board intended to exclude from its operation all sales made in large quantities and to include only those made in small quantities, because there is no way of determining what sales are large and what small. Both adjectives are relative terms. The sale, for instance, of one package of cigarettes by a corner store may be considered large when compared with its sale of one cigarette, and the sale of one package by a larger store may be considered small when compared with its sale of one carton; yet there can be no question but that the sale of one package by the corner store and of one carton by the larger store to the customer are retail sales. Likewise, no distinction can be drawn between the sale by the defendant, for instance, of 100 reams of paper to a private office and 1,000 reams to the Government, both sales being made directly to the consumer ; and neither the one nor the other may be considered small or large from the point of view of the needs and capacities of the purchaser. To adopt the criterion by the quantity would make the ordinance in question illusory and impracticable because the taxpayer and licensee could exclude from its operation all sales he considers large in comparison with other sales, altho all of them were made directly to the consumers. Had it been the intention of the Municipality Board to exclude large sales and include only small ones, it should and would have fixed a definite amount in pesos by which to gauge the smallness or largeness of each sale. It would have provided, for instance, that any sale amounting to P200 or more shall be considered wholesale and those amounting to less than that shall be considered retail.

- The license fee or tax in question is not on the sales but on the sellers. The amount of each sale is immaterial. What is material is the nature of the business of the seller, whether he is a retail dealer or a wholesaler. If he is a retail dealer, he comes under the operation of the ordinance and all sales made by him must be included in his return for the purpose of paying the license fee. That is obviously the reason why the ordinance makes no distinction whatever between small and large sales and fixes no amount by which to determine their smallness or largeness.

It is possible that a merchant may do business both as a wholesaler and as a retailer, for there is no law which prohibits him from engaging in both businesses at the same time. But as a matter of common knowledge, it is not customary for a wholesaler to engage in the retail business because his customers are the retailers, with whom as a matter of good business policy he does not want to compete. The defendant does not pretend to have been engaged in business both as a retailer and as a wholesaler. What it pretends is that its sales to the Government should be considered wholesale because they were made in large quantities and therefore should be excluded from the operation of the ordinance. We have seen that such contention is untenable. Being a retailer, all its sales to the consumers, no matter how large, fall within the operation of the ordinance in question.

- In the case of *Buenaventura vs. Collector of Internal Revenue* (G. R. No. 22175), this court, interpreting the word "retail" used in paragraph (a) of section 1457 of the Administrative Code in connection with sale of food products in public market places, said that the sales mentioned in said section should be considered wholesale if made for the purpose of resale, and retail if made to the consumer. In adopting that criterion this Court took into consideration the same criterion established by the Administrative Code in taxing the retail dealers and wholesale dealers of alcoholic liquors and tobacco. The enabling Act by virtue of which the ordinance in question was passed, forms part of the Administrative Code. Hence, in the absence of a definition of "retail dealers" in said enabling Act, we are justified in adopting the criterion established in other parts of the Code to determine the meaning intended by the Legislature in using said phrase. Moreover, as we have seen, that is the only reasonable and practicable criterion that can be adopted for the purpose of enforcing the ordinance in question.

As a last refuge appellant suggests that its sales to the Government should be considered wholesale because the Division of Purchase and Supply makes a surcharge to the different offices and branches of the Government which requisition the supplies; that is to say, the Division of Purchase and Supply resells them to the different

offices and branches of the Government. We dismiss the suggestion with the mere observation that the Division of Purchase and Supply is but an office of the Government charged with the duty of purchasing its supplies. It is not an independent mercantile establishment engaged in the purchase and sale of goods for profit. The purchases made by it are purchases made by the Government as consumer.

The foregoing disposes of appellant's contentions. The appellee, however, asks that the judgment of the trial court be modified by increasing its amount from P1,107.70 to P1,489.40. In its complaint the plaintiff-appellee alleged that the amount due from the defendant for unpaid license fees was P1,467.95; but in submitting the case to the trial court for decision upon a stipulation of facts, the plaintiff agreed to reduce its claim to P1,107.70 according to the trial court, which said in its decision:

"La demandante conviene en que el impuesto que se debe cobrar a la demandada esta fijado por la ley en P500 al ano, de modo que la suma total que debe pagar, por sus ventas al por menor en los arios de 1938, 1939 y primer trimestre de 1940, es P1,192, de la cual se debe deducir su pago de P185, quedando un remanente de P1,007, al que se debe agregar la cantidad de P100.70 como recargo."

The reduced amount awarded by the trial court turns out to be erroneous because Commonwealth Act No. 76 has eliminated the maximum limit of P500 formerly fixed by Act No. 3669; but since the reduction was agreed to by the plaintiff and, moreover, since the latter did not appeal, but only claims for the first time in its brief in this Court as appellee an amount even greater than that alleged in its complaint, we cannot accede to the appellee's prayer.

The judgment is affirmed, with costs.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

[1] The exact figures are given in the stipulation of facts, but for the purpose of this decision it is unnecessary to specify them.

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