

PHILIPPINE MANUFACTURING COMPANY, PLAINTIFF AND APPELLANT, VS. BIBIANO L. MEER, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. 48483. March 29, 1946

Ponente: MORAN, C.J.

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MORAN, C.J.:

In 1939, the herein appellant, Philippine Manufacturing Company, proprietor and operator of a coconut oil mill, was levied a three and one-half percentage sales tax on its sales of lard, margarine and soap during the third quarter (July to September) of 1939, by the Collector of Internal Revenue, in accordance with section 186 of Commonwealth Act No. 466 known as the Internal Revenue Code. Appellant paid the taxes levied, namely, P34,561.85, but under protest, claiming that it should have been levied only the one and one-half percentage tax under section 189 of the law, or the amount of P4,812.22. It filed a claim with appellee for the difference between the two sums, namely, P19,749.63, and upon denial of its claim, filed the corresponding action for recovery in the Court of First Instance of Manila. The lower court held for defendant and appellee; hence, this appeal.

The issue then: Were the lard, margarine and soap manufactured and sold by plaintiff and appellant subject to the three and one-half percentage tax on sales under section 186 of the Internal Revenue Code, or to the one and one-half percentage tax under section 189 of said law?

Section 186 of the Internal Revenue Code reads:

"Percentage tax on sales of other articles.—There is levied, assessed, and collected once only on every original sale barter, exchange, and similar transaction intended to transfer ownership of, or title to, the articles not enumerated in sections 184 and 185 a tax equivalent to three and one-half per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer, or importer: Provided, That where the articles are manufactured out of materials subject to tax under this section, the total cost of such materials as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles: And provided, further, That while the said articles are consigned abroad by the manufacturer or producer thereof, the shipment shall be subject to the tax established in section 187 and not to the tax imposed by this section."

This section provides for three and one-half percentage tax on sales of "other articles" which are "not enumerated in sections 184 and 185," and the articles in question are not within that enumeration.

It is maintained, however, that the case is governed by section 189 which reads:

"Percentage tax upon proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and desiccated coconut factories.— Proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and desiccated coconut factories shall pay a tax equivalent to one and one-half per centum of the gross value in money of all the rope, sugar, rice, coconut oil, grounded or milled corn, and

desiccated coconut manufactured or milled by them, including the derivatives, products, and by products of the raw materials from which the said articles are produced or manufactured, when these derivatives, products, and by products constitute sixty per centum or more by weight or value of the raw materials mentioned above, such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse: Provided, however, That in case the raw materials are manufactured or milled in pursuance of a contract whereby the factory, central, or mill receives a share of the finished product, the tax on the share pertaining to the planter or owner of the raw materials shall be charged to the planter or owner and withheld by the proprietor or operator of the factory, central, or mill and paid by him to the Collector of Internal Revenue: And provided, further, That on sugar sold to the refinery mill for the production of refined sugar, 'washesugar,' or beet sugar, the tax shall not be paid by the central but shall be paid by the refinery mill upon local sale or consignment abroad."

The articles in question are covered, according to appellant, by the following words of this section:

"* * * including the derivatives, products, and by-products of the raw materials from which, the said articles are produced or manufactured * * *."

The words "said articles" can have no reference but to coconut oil and the other things previously mentioned in said section, and "raw materials" can have no other meaning in the instant case than "copra" from which coconut oil is produced. Thus, said provision, as applied to the present case, would read: "Including the derivatives, products, and by products of copra from which said coconut oil is produced or manufactured."

Are lard, margarine, and soap manufactured and sold by appellant derivatives, products and by-products of copra. The word "by-products" refers to those materials which in the cultivation or manufacture of any given commodity remain over, and which possess or can be brought to possess a market value of their own. By "derivatives" is meant anything obtained or deduced from another, or is substantially so related to another by modification or substitution, as to be regarded as theoretically derived from it even when not obtainable from it in practice; thus, the amino compounds are derivatives of ammonia. And the word "products" means a substance produced from another substance. (See Webster International Dictionary.) Under these definitions, the lard, margarine and soap manufactured and sold by appellant cannot be considered as by-products of copra, because they are not the remnants of copra in the manufacture of coconut oil. Neither can they be considered as derivatives or products of copra because in fact they are manufactured from coconut oil as the basic raw material.

The term "derivative" or "product" can only mean the immediate derivative, or immediate, product, of a next preceding object or composition, which in this case is not copra, but coconut oil. It is admitted by appellant that coconut oil must first be produced before the lard, margarine and soap can be manufactured. From the copra itself, appellant cannot manufacture these three products, though it can directly manufacture coconut oil, copra cake, or copra meal; and these, properly, are the derivatives, products and by products of copra. From the product coconut oil, the lard, margarine and soap are made, and by such specific manufacturing processes as are proper for that purpose. Evidence of appellant shows that lard is produced after coconut oil is compressed, heated at certain temperature, mixed with some caustic soda, all to the end of refining, and to this refined composition is added some hydrogenated fat, some cotton seed, soya bean or palm oil, and further refined, bleached and deodorized until ready for marketing. "Purico" or lard is used for frying or cooking purposes for which crude coconut oil is not fit. Margarine undergoes a more or less similar process with the modifications of churning, salting, flavoring and coloring. It is used as substitute for butter and also for frying for which coconut oil cannot be used. The soap is made from crude coconut oil, added with some caustic soda, heated numerous times and cooled. All this goes to show that lard, margarine and soap are all manufactured from coconut oil, by specific manufacturing processes uniquely to produce these articles to be marketed for specific uses for which the base material, coconut oil as

such, cannot be employed, and, therefore, they are, under section 189 of the Internal Revenue Code, the direct derivatives or products of coconut oil, and not of copra.

Proof of the intent of the law-makers to exclude the further possibility of an extensive interpretation of section 189 as suggested by appellant, is the subsequent amendment of this section deleting the words "derivatives" and "products" (cf. Commonwealth Act No. 503). The words "derivatives" and "products" are highly expansive, hence they must be interpreted with accuracy. A loose, unfettered interpretation would leave open a vast elastic interval between the immediate and remotest derivative or product, contracting and expanding in the interminable struggle of imposition and avoidance, between the hand that levies the tax and the hand that pays it. The questions will arise: Derivative of which? The immediate antecedent? Or the remotest antecedent? Products of which? The immediate preceding articles? Or the second, or third, or fourth preceding? Perhaps, the last preceding. Thus, rendering the taxing power either futile or overbearing.

It can not be maintained that these three articles come within, the application of section 189 by reason of the following phrase of said section "when these derivatives, products, and by products constitute sixty per centum or more by weight or value of the raw materials mentioned above." Appellant argues that its three products are constituted sixty-five per centum or more of coconut oil, and coconut oil coming entirely from copra, its products, therefore, constitute sixty-five per centum or more of the copra. This is a mistaken view of the law. The phrase "of the raw materials mentioned above" as applied to this case, refers to copra, as such. And, certainly, lard, margarine and soap are not constituted sixty per centum or more of copra, as such. Nor is copra constituted sixty per centum or more of lard, margarine and soap.

Furthermore, this phrase relied upon by appellant is not a test given by the law by which to determine what are and what are not the derivatives, products and by products subject to tax under section 189. It provides merely an added requirement for the taxability of derivatives, products and by products after they are found to be such. For it is possible that an article be truly a derivative, product, or by product as meant by this section and yet be constituted of less than sixty per centum of the raw material from which it is made, in which case the law feels that to scoop it within this section is inequitable.

And, finally, we have noticed that plaintiff in the sale of the articles in question has charged its customers the three and one-half percentage tax and it does not seem proper for said plaintiff to claim now that it should pay the government only one and one-half per cent. Judgment is affirmed, with costs against appellant.

Paras, Jaranilla, Feria, De Joya, Pablo, Perfecto, Hilado, Bengzon, and Briones, JJ., concur.
Judgment affirmed.

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