

ILOILO BOTTLERS, INC., PLAINTIFF-APPELLEE, VS. CITY OF ILOILO, DEFENDANT-APPELLANT.

G.R. No. 52019. August 19, 1988

Ponente: CORTES, J.

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CORTES, J.:

The fundamental issue in this appeal is whether the Iloilo Bottlers, Inc., which had its bottling plant in Pavia, Iloilo, but which sold softdrinks in Iloilo City, is liable under Iloilo City tax Ordinance No. 5, series of 1960, as amended, which imposes a municipal license tax on distributors of softdrinks.

On July 12, 1972, Iloilo Bottlers, Inc. filed a complaint docketed as Civil Case No. 9046 with the Court of First Instance of Iloilo praying for the recovery of the sum of P3,329.20, which amount allegedly constituted payments of municipal license taxes under Ordinance No. 5, series of 1960, as amended, that the company paid under protest.

On November 15, 1972, the parties submitted a partial stipulation of facts, the material portions of which state:

* * *

- That plaintiff is engaged in the business of bottling soft-drinks under the trade name of Pepsi Cola and 7-up and selling the same to its customers, with a bottling plant situated at Barrio Ungca, Municipality of Pavia, Iloilo, Philippines and which is outside the jurisdiction of defendant;

- That defendant enacted an ordinance on January 11, 1960 known as Ordinance No. 5, Series of 1960 which ordinance was successively amended by Ordinance No. 28, Series of 1960; Ordinance No. 15, Series of 1964; and Ordinance No. 45, Series of 1964; which provides as follows:

Section 1. - Any person, firm or corporation engaged in the distribution, manufacture or bottling of coca-cola, pepsi cola, tru-orange, seven-up and other soft drinks within the jurisdiction of the City of Iloilo, shall pay a municipal license tax of ten (P0.10) centavos for every case of twenty-four bottles; PROVIDED, HOWEVER, that soft drinks sold to the public at not more than five (P0.05) centavos per bottle shall pay a tax of one and one half (P0.015) (centavos) per case of twenty four bottles.

Section 1-A. - For purposes of this Ordinance, all deliveries and/or dispatches emanating or made at the plant and all goods or stocks taken out of the plant for distribution, sale or exchange irrespective (of) where it would take place shall be covered by the operation of this Ordinance.

- That prior to September, 1966, Santiago Syjuco Inc., owned and operated a bottling plant at Muelle Loney Street, Iloilo City, which was doing business under the name of Seven-up Bottling Company of the Philippines and bottled the soft-drinks Pepsi-Cola and 7-up; however sometime on September 14, 1966, Santiago Syjuco, Inc., informed all its employees that it (was) closing its Iloilo Plant due to financial losses and in fact closed the same and later sold the plant to the plaintiff Iloilo Bottlers, Inc.

- That thereafter, plaintiff operated the said plant by bottling the soft drinks Pepsi-Cola and 7-up; however,

sometime in July 1968, plaintiff closed said bottling plant at Muelle Loney, Iloilo City, and transferred its bottling operations to its new plant in Barrio Ungca, Municipality of Pavia, Province of Iloilo, and which is outside the jurisdiction of the City of Iloilo;

- That from the time of (the) enactment (of the ordinance), the Seven Up Bottling Company of the Philippines under Santiago Syjuco, Inc., had been religiously paying the defendant City of Iloilo the above-mentioned municipal license tax due therefrom for bottler because its bottling plant was then still situated at Muelle Loney St., Iloilo City; but the plaintiff stopped paying the municipal license tax (after) October 21, 1968 (when) it transferred its plant to Barrio Ungca, Municipality of Pavia, Iloilo which is outside the jurisdiction of the City of Iloilo;

- That sometime on July 31, 1969, the defendant demanded from the plaintiff the payment of the municipal license tax under the above-mentioned ordinance, a xerox copy of the said letter is attached to the complaint as Annex "A" and made an integral part hereof by reference.

- That plaintiff explained in a letter to the defendant that it could not anymore be liable to pay the municipal license fee because its bottling plant (was) not anymore inside the City of Iloilo, and that moreover, since it itself (sold) its own products to its (customers) directly, it could not be considered as a distributor in line with the doctrines enunciated by the Supreme Court in the cases of City of Manila vs. Bugsuk Lumber Co., L-8255, July 11, 1957; Manila Trading & Supply Co., Inc. vs. City of Manila L-12156, April 29, 1959; Central Azucarera de Don Pedro vs. City of Manila, et al., G.R. No. L-7679, September 29, 1955; Cebu Portland Cement vs. City of Manila and City Treasurer of Manila, L--14229, July 26, 1960. A xerox copy of the said letter is attached as Annex "B" to the complaint and made an integral part hereof by reference. As a result of the said letter of the plaintiff, the defendant did not anymore press the plaintiff to pay the said municipal license tax;

- That sometime on January 25, 1972, the defendant demanded from the plaintiff compliance with the said ordinance for 1972 in view of the fact that it was engaged in distribution of the softdrinks in the City of Iloilo, and it further demanded from the plaintiff payment of back taxes from the time it transferred its bottling plant to the Municipality of Pavia, Iloilo;

- That the plaintiff demurred to the said demand of the defendant raising as its justification the reason that its bottling plant is situated outside the City of Iloilo and as bottler could not be considered as distributor under the said ordinance although it sells its product directly to the consumer, in line with the jurisprudence enunciated by the Supreme Court but due to insistence of the defendant, the plaintiff paid on April 20, 1972, the first quarter payment of the municipal license tax in the sum of P3,329.20, under protest, and thereafter has been paying defendant every quarter under protest;

- That on June 15, 1972, the defendant informed the plaintiff that it must pay all the taxes due since July, 1968 up to the last quarter of 1971, otherwise it shall be constrained to cancel the operation of the business of the plaintiff, and because of this threat, and so as not to occasion disruption of its business operation, the plaintiff under protest agreed to the payment of the back taxes, on staggered basis, which was acceded to by the defendant;

- That as computed by the plaintiff the following are its softdrinks sold in Iloilo City since it transferred its bottling plant from the City of Iloilo to Barrio Ungca, Pavia, Iloilo in July 1968, to wit:

No. of Cases sold

SEVEN-

PEPSI-

TOTAL

TAX

UP

COLA

DUE

1968

-

Jul. to Dec.

39,340

49,060

88,400

P 8,840

1969

-

Jan. to Dec.

81,240

87,660

168,900

16,890

1970

-

Jan. to Dec.

79,389

89,211

168,600

16,600

1971

-

Jan. to Dec.

80,670

88,480

169,150

16,915

TOTAL

280,639

314,411

595,050

59,505

- That the plaintiff does not maintain any store or commercial establishment in the City of Iloilo from which it distributes its products, but by means of a fleet of delivery trucks, plaintiff distributes its products from its bottling plant at Barrio Ungca, Municipality of Pavia, Iloilo, directly to its customers in the different towns of the Province of Iloilo as well as the City of Iloilo;

- That the plaintiff is already paying the National Government a percentage Tax of 7% as manufacturer's sales tax on all the softdrinks it manufactures as follows:

O.R. No. 4683995-January 1972 Sales P 17,222.90

O.R. No. 5614767-February " " 17,024.81

O.R. No. 5614870-March " " 17,589.19

O.R. No. 5614891-April " " 18,726.77

O.R. No. 5614897-May " " 16,710.99

O.R. No. 5614935- June " " 14,791.20

O.R. No. 5614967-July

" " 13,952.00

O.R. No. 5614973-August " " 15,726.16

O.R. No. 5614999-September " ' 19,159.54

and is also paying the municipal license tax to the municipality of Pavia, Iloilo in the amount of P10,000.00 every

year, plus a municipal license tax for engaging in its business to the municipality of Pavia in the amount of P2,000.00 every year.

* * *

[Rollo, p. 10 (Record on Appeal, pp. 25-31).]

On the basis of the above stipulations, the court a quo rendered on January 26, 1973 a decision in favor of Iloilo Bottlers, Inc., declaring the Corporation not liable under the ordinance, and directing the City of Iloilo to pay the sum of P3,329.20. The decision was amended in an Order dated March 15, 1973, so as to include the amounts paid by the company after the filing of the complaint. The City of Iloilo appealed to the Court of Appeals which certified the case to this Court.

The tax ordinance imposes a tax on persons, firms, and corporations engaged in the business of:

- distribution of softdrinks
- manufacture of softdrinks, and
- bottling of softdrinks

within the territorial jurisdiction of the City of Iloilo.

There is no question that after it transferred its plant to Pavia, Iloilo province, Iloilo Bottlers, Inc. no longer manufactured/bottled its softdrinks within Iloilo City. Thus, it cannot be taxed as one falling under the second or the third type of business. The resolution of this case therefore hinges on whether the company may be considered engaged in the distribution of softdrinks in Iloilo City, even after it had transferred its bottling plant to Pavia, so as to be within the purview of the ordinance.

Iloilo Bottlers, Inc. disclaims liability on two grounds: First, it contends that since it is not engaged in the independent business of distributing softdrinks, but that its activity of selling is merely an incident to, or is a necessary consequence of its main or principal business of bottling, then it is NOT liable under the city tax ordinance. Second, it claims that only manufacturers or bottlers having their plants inside the territorial jurisdiction of the city are covered by the ordinance.

The second ground is manifestly devoid of merit. It is clear from the ordinance that three types of activities are covered: (1) distribution, (2) manufacture and (3) bottling of softdrinks. A person engaged in any or all of these activities is subject to the tax.

The first ground, however, merits serious consideration.

This Court has always recognized that the right to manufacture implies the right to sell/distribute the manufactured products [See *Central Azucarera de Don Pedro v. City of Manila and Sarmiento*, 97 Phil. 627 (1955); *Caltex (Philippines), Inc. v. City of Manila and Cudiamat*, G.R. No. L-22764, July 28, 1969, 28 SCRA 840, 843.] Hence, for tax purposes, a manufacturer does not necessarily become engaged in the separate business of selling simply because it sells the products it manufactures. In certain cases, however, a manufacturer may also be considered as engaged in the separate business of selling its products.

To determine whether an entity engaged in the principal business of manufacturing, is likewise engaged in the separate business of selling, its marketing system or sales operations must be looked into.

In several cases [See *Central Azucarera de Don Pedro v. City of Manila and Sarmiento*, supra; *Cebu Portland Cement Co. v. City of Manila and the City Treasurer*, 108 Phil. 1063 (1960); *Caltex (Philippines), Inc v. City of Manila and Cudiamat*, supra], this Court had occasion to distinguish two marketing systems:

Under the first system, the manufacturer enters into sales transactions and invoices the sales at its main office where purchase orders are received and approved before delivery orders are sent to the company's warehouses, where in turn actual deliveries made. No warehouse sales are made nor are separate stores maintained where products may be sold independently from the main office. The warehouses only serve as storage sites and delivery points of the products earlier sold at the main office.

Under the second system, sales transactions are entered into and perfected at stores or warehouses maintained by the company. Any one who desires to purchase the product may go to the store or warehouse and there purchase the merchandise. The stores and warehouses serve as selling centers.

Entities operating under the first system are NOT considered engaged in the separate business of selling or dealing in their products, independent of their manufacturing business. Entities operating under the second system are considered engaged in the separate business of selling.

In the case at bar, the company distributed its softdrinks by means of a fleet of delivery trucks which went directly to customers in the different places in Iloilo province. Sales transactions with customers were entered into and sales were perfected and consummated by route salesmen. Truck sales were made independently of transactions in the main office. The delivery trucks were not used solely for the purpose of delivering softdrinks previously sold at Pavia. They served as selling units. They were what were called, until recently, "rolling stores". The delivery trucks were therefore much the same as the stores and warehouses under the second marketing system. Iloilo Bottlers, Inc. thus falls under the second category above. That is, the corporation was engaged in the separate business of selling or distributing softdrinks, independently of its business of bottling them.

The tax imposed under Ordinance No. 5 is an excise tax. It is a tax on the privilege of distributing, manufacturing or bottling softdrinks. Being an excise tax, it can be levied by the taxing authority only when the acts, privileges or businesses are done or performed within the jurisdiction of said authority [Commissioner of Internal Revenue v. British Overseas Airways Corp. and Court of Tax Appeals, G.R. Nos. 65773-74, April 30, 1987, 149 SCRA 395, 410.] Specifically, the situs of the act of distributing, bottling or manufacturing softdrinks must be within city limits, before an entity engaged in any of the activities may be taxed in Iloilo City.

As stated above, sales were made by Iloilo Bottlers, Inc. in Iloilo City. Thus, We have no option but to declare the company liable under the tax ordinance.

With the foregoing discussion, it becomes unnecessary to discuss the other issues raised by the parties.

WHEREFORE, the appealed decision is hereby REVERSED. The complaint in Civil Case No. 9046 is ordered DISMISSED. No costs.

SO ORDERED.

Fernan, C.J., Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., no part.

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