

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. COURT OF TAX APPEALS AND WINTHROP-STEARNS, INC., RESPONDENTS.

G.R. No. 64768. November 05, 1987

Ponente: YAP, J.

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YAP, J.:

This case involves an action for the recovery of the sum of P509,825.00 as overpaid sales tax paid by private respondent for the following products: a) Tussy Lemon Hand and Body Lotion, b) Tussy Hand and Body Lotion, c) Tussy Lemon Moisturizer, and d) Tussy Lemon Cleansing Cream.

The question presented here is whether or not these products are taxable as medicinal preparations subject to the 7% sales tax prescribed in Section 186 of the 1939 National Internal Revenue Code, or as toilet articles or preparations within the purview of Section 184 (b) of the same code subject to the 70% sales tax prescribed therein. Section 184 (b) of the said Tax Code reads as follows:

"Sec. 184. Percentage tax on sales of jewelry, toilet preparations and others. - There shall be levied, assessed and collected once only on every original sale, barter, exchange or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles hereinbelow enumerated a tax equivalent to seventy per centum of the gross value in money of the articles so sold, bartered, exchanged, transferred, such tax to be paid by the manufacturer or producer: Provided, further, That, where the articles enumerated hereinbelow 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 such manufactured articles:

"xxx xxx xxx

"(b) Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article or preparations, by whatsoever name known or distinguished; and any of the above which are used or applied or intended to be used or applied for toilet purposes; except tooth and mouth washes, dentifrices, tooth paste; and talcum or medicated toilet powders.

"xxx xxx xxx."

Briefly, the facts are as follows:

Respondent is a domestic corporation engaged in the manufacture and sale of pharmaceutical, medicated, cosmetic and toilet products, among which are the Tussy Lemon Hand and Body Lotion, Tussy Hand and Body Lotion, Tussy Lemon Moisturizer and Tussy Lemon Cleansing Cream, hereinafter referred to as "Tussy Products".

On the sale of the aforesaid products for the period starting from the 4th quarter of 1975 up to the 4th quarter of 1976, respondent corporation made a total gross sales amounting to P1,975,979.00 with a net sales of

P809,144.00. On said net sales, respondent paid sales tax in the sum of P566,471.00 at the rate of 70% under Section 184(b) of the Tax Code.

On January 17, 1978, respondent corporation filed with petitioner a written claim for refund or tax credit of P509,825.00 on the contention that the Tussy Products are medicinal preparations subject only to the 7% sales tax under Section 186 of the Tax Code and not the 70% sales tax under 184 (b). The said amount represents the overpaid sales tax for the period starting the 3rd quarter of 1975 to the 4th quarter of 1976.

On January 20, 1978, before the expiration of the period of two years for seeking recovery of tax erroneously paid, respondent corporation filed with respondent court a petition for review praying that its "Tussy Products" be declared medicinal preparations subject to 7% sales tax, and that herein petitioner be ordered to grant respondent corporation's claim for tax credit or refund in the amount of P509,825.00. The alleged overpaid sales tax for the 3rd quarter of 1975 was excluded from respondent corporation's claim.

In its decision dated May 30, 1983, the respondent court declared the "Tussy Products" as "medicinal preparations subject to 7% sales tax prescribed in Section 186 of the Tax Code, instead of the 70% sales tax paid by private respondent under Section 184(b)" and therefore ordered herein petitioner to grant a tax credit in favor of private respondent the amount of P509,825.00. Its motion for reconsideration having been denied, herein petitioner filed the instant petition for review on certiorari.

Petitioner contends that in the case of *La Tondena Inc. vs. Collector of Internal Revenue*,^[1] the term "medicinal preparation" has been defined as follows:

"'Medicinal preparations' consists of two words, 'medicinal' and 'prepa-rations'. 'Medicinal' means curative or alleviative, used for the cure or alleviation of body disorders (Words and Phrases, Volume 26-A, p. 616). 'Prepa-rations' are those which are prepared or something equipped or compounded for particular purposes (Words and Phrases, Volume 33, p. 380). 'Medicinal prepa-rations' are therefore descriptive of and refer to substances used in medi-cine and prepared for the use of the apothecary or the physician to be administered as a remedy for diseases (Law Dictionary with Pronunciation, Ballantine, Phil. Ed.). As used in the Tariff Act of March 3, 1983 (C. 121, Schedule 2, 22 Stat. 494), these medi-cinal preparations mean such articles, as are of use or believed by the prescriber or user fairly and honestly to be of use, in curing or alleviating or palliating or preventing some disease or affliction of the human body (Words and Phrases, Volume 26-A, p. 617)."

It is argued that from the said definition, it is clear that to be classified as medicinal preparation, a product should have the following characteristics:

- (a) The product must have been prepared, equipped or compounded for a particular purpose;
- (b) The product is of use or believed to be of use by prescriber or user in curing, alleviating, palliating or preventing some disease or afflic-tion of the human body.

The labels of the above products represent their characteristics and uses as follows:

(1) "TUSSY LEMON MOISTURIZER

Natural Lemon for Natural Beauty

Medicated

TUSSY LEMON MOISTURIZER

Restores Moisture Balance

*The secret of soft, smooth skin complexion is moisture balance. Dry skin is caused by moisture loss from

aging, sun, sun, wind, air-conditioning and detergents.

Counter-act skin dryness with new Tussy Lemon Moisturizer. Enriches with allantoin, a moisture balance, and Vitamin A, a skin nutrient.

*Massage on face, arms, elbows, all of you, after every bath, outdoor exposure, overnight as make-up base. Refreshing Lemon scent.

(2) "TUSSY HAND & BODY LOTION

With Vitamin A

Specifically formulated to maintain the petal-fresh smoothness of the skin.

*Instantly softens, soothes, moisturizes the hands, elbows, shoulders, arms, legs, knees, lubricates the dry skin continuously without clogging pores.

*Use in the morning; after washing, bathing, exposure to sun; as over-night lotion. Keeps skin beautifully soft and smooth.

"TUSSY

Cleansing

Cream with Pridem

*Exclusive deep-cleansing emul-sifier.

*Deep-cleanses; draws out hidden grime.

*Gently removes make-up even stubborn eye shaddow and mascara.

*Protects skin with a smooth base of softening moisture.

*Non-greasy, leaves complexion fresh, glowing. Apply morning and night and before using make-up.

(5) "TUSSY

Honey & Almond

Hand and Body Lotion

With Vitamin A

Medicated

*Vitamin A helps heal skin damage by sun, detergents. Special soft-ening ingredients smooth and soften hands, elbows, shoulders, arms, legs and knees.

*Use morning and overnight; after washing, bathing, exposure to sun and whenever your skin feels dry.

*Keeps skin fresh and fragrant.

"Manufactured in the Philippines

WINTHROP-STEARNES, INC.

74 E. delos Santos, Mandaluyong, Metro Manila

By authorization of the

TUSSY DIVISION OF VALMONT, INC.

New York, N.Y. USA"

Petitioner maintains that from the labels and descriptions of the Tussy products, it is evident that they are not used or intended to be used to cure any skin disorder or disease. The labels do not state that the Tussy products can be used in curing, alleviating, palliating and preventing some disease or affliction of the human body. What they state is simply that the Tussy products are good for cleansing, moisturizing, lubricating, oiling or protecting the skin. The function therefor of the Tussy products is simply to improve body appearance or enhance the health of the skin.

On the other hand, private respondent contends that the findings of fact by respondent court are conclusive and no longer reviewable since they are supported by substantial evidence. The respondent court relied principally on the certification of the Food and Drug Administration to the effect that in view of the medicinal components present in the Tussy Products, "the preparations are used in the treatment and prevention of skin problems and for medicated skin cleansing and to nutritify the skin." Respondent claims that petitioner's reliance on the labels of Tussy products, rather than on their medicaments, functions and therapeutic uses, is erroneous, giving more importance to form rather than substance. Stressing this line of argument, the respondent Court of Tax Appeals stated in its decision"

"In an effort to discredit the medicinal functions and therapeutic uses of Petitioner's 'Tussy products', respondent would however find comfort in the labels of the products which present and describe them as lotions, moisturizers and cleansing creams instead of names and descriptions indicating their medicinal characteristics. Nevertheless, to quote once more the observations of Judge Alex Z. Reyes on this point in *Oro Enterprises*:

'The apparent quibble on the descriptive term, 'lotion' as creating the impression and evoking the connotation that the preparation is cosmetic, does not change the basic fact that the controverted products by nature, formulation and purpose, as found and certified, is medicinal. 'What's in a name? that which we call a rose, by any other name would smell as sweet! We do not think the certification is a mere cosmetic effort to disguise the true nature and character of the questioned product. We therefore feel compelled to affirm its import and force lest it be suffered to petrify in futility.'

At any rate, as explained by petitioner in his letter dated January 13, 1978 to respondent requesting a tax credit/refund of the amount involved in this case, 'these names are marketing strategies designed to attract more the buying public than if they are to be called by medical names.' (p.28, BIR records). And a medicinal preparation does not lose its character as such because it is sold over the counter to the public generally, rather than to druggist, physician and medical institution to be administered hyperdermically by physicians. (*Vital Corp. vs. Knox Co., Crest. & App. 143 F, 2d, 883, 888*)."

We find merit in the petition. In the *La Tondena* case[2], we held that "medicinal preparations" are descriptive of and refer to substances used in medicine and prepared for the use of the apothecary or the physician to be administered as a remedy for diseases; they mean such articles "as are of use or believed by the prescriber or user fairly and honestly to be of use, in curing or alleviating or palliating or preventing some disease or affliction of the human body." Tested by such standards, we find it difficult to uphold the respondent court's decision.

It is undisputed that the respondent has been publicly representing the Tussy products as good for cleansing, moisturizing, lubricating or oiling the skin; in other words, their function is principally to improve bodily appearance and enhance the health of the skin, making it soft, smooth and fragrant. The preparations fall squarely under the definition of "toilet preparation" which has been defined as "any preparation which is intended to affect

and conceivably improve the bodily appearance, such as a lotion intended to contribute to the health and appearance of the skin." [3]

The marketing presentation of the Tussy products by the manufacturer as a toilet article, rather than a medicinal preparation, cannot be dismissed as a mere matter of form rather than substance. For it is the perception of the public carefully and assiduously built over the years that lends substance to the claim of the manufacturer that its product is a toilet preparation good for beautifying or enhancing the health of the skin. It cannot be said that the public "fairly and honestly" believe the Tussy products to be of use in curing or alleviating some disease or affliction of the body.

WHEREFORE, the petition is hereby granted and the decision of the respondent Court of Tax Appeals is REVERSED and SET ASIDE. No pronouncement as to costs.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

[1] 10 SCRA 709.

[2] Supra.

[3] Peroxide Chemical Company v. Sheehan and Collector of Internal Revenue, 108 F. 2d 306, 308, 309.

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