45 Phil. 202

[G.R. No. 20579. October 04, 1923]

LA CARLOTA SUGAR CENTRAL, PLAINTIFF AND APPELLEE, VS. WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

D E C I S I O N

STATEMENT

The plaintiff is a domestic corporation, and the defendant the Collector of Internal Revenue. The complaint alleges that the plaintiff is the owner of a sugar mill at La Carlota, Occidental Negros, for the production of raw centrifugal sugar from sugar cane delivered to it for milling by sugar cane growers; that all the sugar ground and centrifugal sugar produced in the mill is under an agreement by which the plaintiff receives 45 per cent from the growers for its labor and services; that during the first quarter of 1921, plaintiff shipped for sale abroad all of its centrifugal sugar of the value of P1,166,000, the proceeds of its percentage; "that the defendant, as Collector of Internal Revenue, claiming to be authorized to do so by section 1462 of Act No. 2711 known as the 'Administrative Code of the Philippine Islands,' erroneously and unlawfully and against the will of the said plaintiff, has treated the value of plaintiff's share of the raw sugar produced as aforesaid as gross receipts subject to taxation under the provisions of the section above quoted, and has levied and assessed upon plaintiff by way of percentage tax and by reason of said erroneous application of said section 1462, the sum of P11,660, Philippine currency." It is then alleged that the plaintiff paid the tax under protest upon the ground that it was an illegal tax; that demand therefor has been made and payment refused.

As a second cause of action, like allegations are made for the sum of P7,978.25, and plaintiff prays judgment for P19,638.25, with interest at the

legal rate from the filing of the complaint and costs.

To this complaint, the defendant filed a demurrer upon the ground that it does not state facts sufficient to constitute a cause of action.

The lower court sustained the demurrer, and upon appeal this court reversed the decision, and the case was remanded to the lower court with leave for defendant to answer within five days, and he then filed the following answer:

> "Comes now the defendant in the above-entitled action and in answer to plaintiff's complaint, alleges:
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> "That he admits all the allegations of the complaint in the two causes of action set forth therein.
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> "As a special defense to said two causes of action, the defendant alleges:
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> "1. That the plaintiff in converting the sugar cane delivered to it by the planters into sugar and selling its share of the latter product acted as a manufacturer who sells articles of its own production, and, was therefore subject to the percentage tax imposed in section 1459 of the Administrative Code of 1917.
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> "2. That the Collector of Internal Revenue, in collecting from the plaintiff the amounts referred to in its complaint, acted legally and in accordance with law.
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> "Wherefore, the defendant prays the court to render judgment that plaintiff take nothing by its complaint, with costs of this action against the plaintiff."
> To which the plaintiff filed a demurrer upon the ground "that the said special defense does not allege facts sufficient to constitute a defense to the two causes of action set forth in plaintiff's complaint, or either of them."

The parties then made an "agreed statement of facts," of which paragraph 6 is

as follows:

> "That the defendant, Wenceslao Trinidad, as Collector of Internal Revenue of the Philippine Islands, and claiming to act under the authority of section 1462 of Act No. 2711, Administrative Code of 1917, levied and assessed against plaintiff a percentage tax of one per centum (1%) on the value of the sugar set forth in Paragraph IV hereof, in the sum of eleven thousand six hundred and sixty pesos (P11,660), Philippine currency; that defendant, in like manner and claiming to act under like authority, did levy and assess against plaintiff a percentage tax of one per centum (1%) on the value of the sugar set forth in paragraph V hereof, in the sum of seven thousand nine hundred seventy-eight pesos and twenty-five centavos (P7,978.25)—a total tax of nineteen thousand six hundred thirty-eight pesos and twenty-five centavos (P19,638.25) Philippine currency."

And paragraph 11 recites:

> "That on the 27th day of October, 1922, the defendant answered, admitting all of the facts alleged by plaintiff in its aforesaid complaint, but alleged, as its special defense, that plaintiff was liable to tax under section 1459 of Act No. 2711, Administrative Code of 1917, as a manufacturer."

Upon such stipulation, the trial court found for the plaintiff for the full amount, without costs to either party, to which ruling the defendant duly excepted, and from which he appeals, assigning the following errors:

> "I. The lower court erred in holding that the plaintiff is not a manufacturer.
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> "II. The lower court erred in not holding that the plaintiff is not included in the exemption prescribed in section 1460 (*b*) of the Administrative Code (Act No. 2711).
>
> "III. The lower court erred in rendering judgment for the plaintiff and against the defendant."

JOHNS, J.:

Able briefs have been filed by opposing counsel, in which numerous legal questions are presented, but under our view, only one of which is necessary to this opinion. It will be noted that the complaint alleges, and the answer and the stipulated facts admit, that the tax in question was levied under section 1462 of the Administrative Code, which provides as follows:

> "*Percentage tax on contractors, warehousemen, and others.*—Contractors, warehousemen, proprietors of dockyards, and persons selling light, heat, or power, as well as persons engaged in conducting telephone or telegraph lines, or exchanges, and proprietors of steam laundries, and of shops for the construction and repair of bicycles or vehicles of any kind, and keepers of hotels and restaurants shall pay a tax equivalent to one per centum of their gross receipts."

In its former opinion,[1] this court held that the plaintiff was not a contractor within the meaning of that section, and that the tax levied under it by the defendant was illegal and void. Accepting that ruling, and to defeat the action and as a special defense, the defendant alleges "that plaintiff was liable to tax under section 1459 of Act No. 2711, Administrative Code of 1917, as a manufacturer." Assuming, without deciding, that the plaintiff would be liable for such a tax in the event a proper levy was made, there is no claim, allegation or proof that the tax in question was ever levied against the plaintiff as a manufacturer. The defendant having admitted that the tax was levied against the plaintiff as a contractor under section 1462, and having collected the tax upon that theory, and this court having found that the levy under that section was illegal and void, it then became the duty of the defendant upon demand to refund the money which was collected under a void levy.

After an action has been commenced to recover money levied and assessed under section 1462 of the Administrative Code in which the defendant admits that the tax was levied and assessed under that section, he cannot defeat the right of recovery and keep the money upon a claim or pretense that he could or might have made a valid levy under another and a different section of the Administrative

Code. The fact remains that the defendant obtained plaintiff's money under a void levy. After that fact was established, it became the legal duty of the defendant on demand to refund the money. This is specially true where, as in this case, there is no claim, allegation or proof that a valid levy was ever actually made under any other or different section.

The judgment of the lower court is affirmed, without costs to either party. So ordered.

Araullo, C.J., Johnson, Street, Malcolm, Avanceña, Villamor, and *Romualdez, JJ.,* concur.

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[1] La Carlota Sugar Central *vs.* Trinidad (43 Phil., 816).

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