43 Phil. 816

[G. R. No. 18154. September 26, 1922]

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

D E C I S I O N

JOHNSON, J.:

This action was commenced in the Court of First Instance of the city of Manila on the 15th day of August, 1921. Its purpose was to recover of the defendant the sum of P19,638.25, a sum paid by the plaintiff to the defendant under protest, as internal revenue, under and by virtue of the provisions of section 1462 of Act No. 2711. To the petition the defendant demurred upon the ground that the complaint did not state facts sufficient to constitute a cause of action. The demurrer was sustained and the plaintiff was ordered to amend its complaint. The plaintiff refused to amend its complaint and it was dismissed. While the record fails to show that the lower court finally rendered an order dismissing the complaint, in view of the fact that neither the appellant nor the appellee raises any question concerning that failure we will assume for the purpose of this decision that a final judgment was rendered.

From the judgment sustaining the demurrer the plaintiff appealed and now contends; first, that the lower court committed an error in declaring that the plaintiff is a "contractor," as that term is used under section 1462 of Act No. 2711.

By reason of the demurrer, the facts alleged in the complaint are admitted to be true. They may be stated briefly as follows: That the plaintiff is a corporation organized and existing under the laws of the Philippine Islands; that the defendant is the Internal Revenue Collector of the Philippine Islands; that the plaintiff is the owner of a sugar mill located at La Carlota, Province of Occidental Negros, Philippine Islands, established for the purpose of producing raw centrifugal sugar from sugar cane delivered to it by sugar cane growers; that all the sugar produced at said mill is under an agreement with the growers of sugar cane, by

virtue of which agreement the plaintiff receives for its work 45 per centum of the sugar produced and the owner of the cane receives 55 per centum of the same; that during the first and second quarters of the year 1921 the plaintiff shipped from the Philippine Islands, for sale abroad, raw centrifugal sugar as its share of the sugar produced in said mill, of the value of P1,963,825; and that the defendant as Collector of Internal Revenue, claiming to be authorized so to do by section 1462 of Act No. 2711, treated the plaintiff's share of the raw sugar so produced, as gross receipts subject to taxation under the provisions of said section, and levied, assessed, and collected, by way of percentage tax from the plaintiff, under protest, the sum of P19,638.25.

The theory of the defendant is that, under the facts stated in the complaint, the plaintiff is a "contractor" and therefore subject to be taxed under the provisions of said section 1462. Said section 1462 provides for a tax of one per cent upon the *gross receipts* of contractors, warehousemen, and others. Said section provides that: "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."

If the plaintiff is a contractor, and if the sum of P1,963,825 is its gross receipts for the period mentioned in the complaint, then the tax collected was legally collected and cannot be recovered. Upon the other hand, if the plaintiff is not a contractor, then the tax collected upon said sum was illegally collected and should be ordered returned to the plaintiff.

Generally speaking, the only question presented by the appellant is: Is it a contractor under the facts alleged in the complaint? Generally speaking, every person who enters into a contract may be denominated a contractor, but evidently the Legislature did not mean to apply the word "contractor," as used in section 1462, to every person, partnership, or corporation who enters into a contract; or, otherwise, it would not have been necessary to have mentioned in the same section other classes of business, such as warehousemen, proprietors of dockyards, and persons selling light, heat, or power, etc., etc. If the word "contractor" in said section means every person who enters into a contract, then it would have included warehousemen and the other classes of business mentioned in said section, for the reason that every transaction by the other persons mentioned in said section is by virtue of an express or implied contract. If the Legislature had intended the word "contractor," as used in said section, to cover all persons who enter into a contract, then it

would have been unnecessary to have mentioned the other persons referred to in said section.

Moreover, if the general and broad meaning is to be given to the word "contractor" as used in said section, it would include bankers, merchants, brokers, lawyers, farmers in the sale of their product, and every person who enters into a contract of whatever nature or character. It would also include school teachers in the public and private schools, as well as common laborers who work by the day under a contract and, in the absence of exceptions, would in fact apply to all persons loaning money upon promissory notes, for the reason that their transaction is a contract and that the parties thereto, speaking broadly, are contractors.

In a general sense, every person who enters into a contract may be called a contractor, yet the word, for want of a better one, has come to be used with special reference to person who, in the pursuit of an independent business, undertakes to do a specific piece or job of work for other persons, using his own means and methods without submitting himself to control as to the petty details. The true test of a "contractor" would seem to be that he renders the service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished. (Luzon Stevedoring Company vs. Trinidad, p. 803, *ante*). A "contractor" is defined by the "Century Dictionary" to be one who contracts or covenants, either with a public body or private parties, to construct works or erect buildings at a certain price or rate. The definition of lexicographers, however, cannot always be adopted as a correct meaning for a statutory word or phrase. The intention of the legislature and the object which it intended to attain must be taken into consideration for the purpose of determining the meaning of words and phrases used in a statute rather than the set definition of lexicographers.

Every transaction entered into by bankers, merchants, importers and exporters, brokers, persons engaged in the purchase and sale of real estate or of agricultural products, etc., etc., is by virtue of a contract, and the parties to such transaction are contractors in the broad sense of that term. Yet it will hardly be contended that the word "contractor," as used in said section 1462, is applicable to them.

Two persons enter into a contract, by virtue of which the first furnishes the material and the second, the labor, upon condition that they divide the proceeds of the finished product in proportion to the value of the material and labor. Are such persons contractors, falling under the provisions of said section? The answer must be in the negative. They are partners

and are, in no sense, contractors under the meaning of that word as used in said section.

Is not the agreement between the plaintiff herein and the growers of the sugar cane more analogous to that of a partnership than to that of a contractor and a contractee? One furnishes the material for the sugar; the other furnishes the labor and the means necessary to produce the sugar. They agree to divide the product, evidently in proportion to the value of the raw material with that of the finished product. Is not the relation of the plaintiff with the growers of the sugar cane more nearly that of a partnership or "de una sociedad de cuentas en participacion?" If that is so, the plaintiff cannot be regarded as a contractor either in the general or special signification of that term. While it may be true that the plaintiff used its own means and methods for the production of sugar, without submitting itself to the control as to petty details by the growers of the sugar cane, yet by virtue of the very terms of the agreement it cannot be regarded as a contractor for the reason that, by virtue of the terms of the agreement, both the plaintiff and the growers of the sugar cane are joint owners in the proportion agreed upon of the finished product. While perhaps they cannot be technically regarded as partners, their relation is more like that of a partnership than of contractor and contractee.

Section 1462 of Act No. 2711 having been brought forward from Act No. 2339, has been in force for a period of more than eight years. No attempt prior to the present action was made to apply its provisions to cases like the present. Evidently the internal revenue department of the Government had some doubt about its application. Suppose, for example, A is the owner of a tobacco plantation. He enters into a contract with B, by virtue of which the latter uses the tobacco produced for the purpose of manufacturing the same into cigars, upon condition that the amount received from the sale of the cigars should be divided between them proportionally upon the basis of the comparative cost of production and manufacture. Can A and B be regarded as contractors? We are very much inclined to answer that question in the negative. We see no difference in the relation between A and B in this illustration, and the relation between the plaintiff herein and the growers of the sugar cane. We are of the opinion that the plaintiff in its agreement with the growers of the sugar cane is not a contractor in the sense that that word is used in section 1462.

In every case, in the interpretation of a tariff law where a doubt is presented as to the meaning of the law, the doubt must be resolved in favor of the person upon whom the tax is to be levied.

A further illustration might be given which, we think, is analogous to the case before us. It

is: A is the owner of a farm and rents the same to B under a written contract, conditioned that B is to cultivate the same and plant it to sugar cane, and that he is to harvest the same and to deliver to A 55 per cent of the value of the cane reserving to himself but 45 per cent, thus dividing the sugar cane in proportion to the value of the farm with the labor performed. Is B a contractor in the sense that that term is used in section 1462? If B is a contractor in that sense, then A is a contractor also and they each must pay the tax under said section. Would it make any difference in the analogy if B contracted not only to cultivate, plant, and harvest the cane but also to reduce it to sugar and to divide the sugar in the same proportion?

Suppose, in the present case, the plaintiff's contract was not only to cultivate the land of the farmers, but to harvest and grind the cane and to divide the sugar, would that make any difference in its relation with the owners of the land? Would it be any more or less of a contract under those circumstances than it is now? Is it not clear that their relation is more like that of a partnership than a contractor and contractee? Moreover, in the present case and in the examples just given, if the tenant or the plaintiff are contractors in the sense that that word is used in said section 1462, then the owners who furnished the land in each of said illustrations would also be a contractor because they have each made a contract.

It is a common practice in the Philippine Islands for the owner of the land to produce the sugar cane, and then in order to have the same ground, to enter into an arrangement with the owner of a sugar mill for that purpose, and to divide the sugar in equitable proportion. The same might be said of rice producers who are not owners of mills for the purpose of cleaning the same. They enter into a contract with the owner of a mill for cleaning rice, for the purpose of cleaning it, and either to pay a fixed amount per cavan or to divide the rice so cleaned in a certain proportion. We cannot bring ourselves to believe that the Legislature intended that the word contractor used in said section should include the plaintiff under the facts in the present case.

The appellant further contends that it is also exempt from the payment of the tax in question, by virtue of section 1460 of Act No. 2711. The appellee admits that the appellant is not liable under that section. For that reason we deem it unnecessary to discuss the second assignment of error presented by the appellant.

For all of the foregoing, we are fully persuaded that it was not the intention of the Legislature to apply the word "contractor" as used in section 1462, to a business like that in which the plaintiff is engaged, and that the same is therefore not applicable to the plaintiff.

Therefore, the judgment of the lower court is hereby revoked, without any finding as to costs; and it is hereby ordered and decreed that the record be returned to the lower court, with permission on the part of the defendant to answer, if he so desires, within a period of five days. If no. answer is presented within that time, let a final judgment be rendered in favor of the plaintiff and against the defendant for the sum of P19,638.25. So ordered.

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

Date created: June 06, 2014