43 Phil. 345

[G. R. No. 18740. April 28, 1922]

WALTER E. OLSEN & CO., INC., PETITIONER, VS. VICENTE ALDANESE, AS THE INSULAR COLLECTOR OF CUSTOMS OF THE PHILIPPINE ISLANDS, AND W. TRINIDAD, AS THE COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, RESPONDENTS.

D E C I S I O N

STATEMENT

On March 29, 1922, respondents' demurrer to the petition was overruled; on April 3, an answer was duly filed; and on April 21, the petitioner filed a motion for judgment on the pleadings.

The facts are fully stated in the former opinion.[1]

Paragraph 4 of the petition contains certain subdivisions of section 6 of Act No. 2613 of the Philippine Legislature, passed February 4, 1916, entitled "An act to improve the methods of production and the quality of tobacco in the Philippines and to develop the export trade therein." They empower the Collector of Internal Revenue to establish certain general and local rules respecting the classification, marking and packing of tobacco for domestic sale or for exportation to the United States, and, among other things, provide:

> "No leaf tobacco or manufactured tobacco shall be exported from the Philippine Islands to the United States until it shall have been inspected by the Collector of Internal Revenue or his duly authorized representative and found to be standard for export * * *.
>
> "In order to facilitate the free entry of tobacco products from the Philippine Islands into the United States, the Collector of Internal Revenue is authorized to

> act as stamp agent for the United States Commissioner of Internal Revenue, and to certify to the Insular Collector of Customs that the standard tobacco exported is the growth and product of the Philippine Islands. The Insular Collector of Customs upon certificate from the Collector of Internal Revenue as aforesaid, shall issue such certificate of origin as may be necessary to insure the speedy admission of the standard tobacco into the United States free of customs duties."

Paragraph 5 of the petition alleges that under clause B of section 6 of the Act, the Collector of Internal Revenue promulgated Administrative Order No. 35, known as "Tobacco Inspection Regulations," in which it is said:

> "To be classed as standard, cigars must be manufactured under sanitary conditions from good, clean, selected tobacco, properly cured and seasoned, of a crop which has been harvested at least six months, exclusively the product of the provinces of Cagayan, Isabela, or Nueva Vizcaya. The cigars must be well made, with suitable spiral wrapper and with long filler, etc."

Paragraph 6 pleads the provisions of section 1 of article 1 of the Constitution of the United States, and paragraph 7 pleads section 10 of the "Jones Law."

The answer admits paragraphs 4, 5, 6, and 7 of the petition.

Paragraph 6 of the answer says:

> "They admit the facts alleged in Paragraph XI of the petition in so far as they refer to the Insular Collector of Customs, but they deny that the acts performed by the said officer are wrongful or illegal; and they also deny the other facts alleged in the same paragraph except as they may hereinafter be impliedly admitted, that is, that on or about February 6, 1922, the petitioner applied to the Collector of Internal Revenue for a certificate of origin covering a consignment of 10,000 machine-made cigars to San Francisco, and as the petitioner himself stated on making such application that the cigars sought to be exported must have been manufactured from short-filler tobacco which was not the product of the provinces of Cagayan, Isabela, and Nueva Vizcaya, the Collector of Internal Revenue did not deem it necessary to make an actual examination and inspection

> of said cigars and stated to the petitioner that he did not see his way clear to the granting of petitioner's request, in view of the fact that the cigars which the petitioner was seeking to export were not made with long-filler nor were they made from tobacco exclusively the product of any of the three mentioned provinces, and the said cigars were neither inspected nor examined by the Collector of Internal Revenue."

As a special defense, the respondents allege that under section 11 of Act No. 2613 and section 5 of the Administrative Code of 1917, the Collector of Internal Revenue has discretionary power to decide whether the manufactured tobacco that the petitioner seeks to export to the United States fulfills the requisites prescribed by Administrative Order No. 35. That it is not within the jurisdiction of this court to order the Collector of Internal Revenue to issue a certificate to the petitioner to the effect that the manufactured tobacco that the petitioner seeks to export is a product of the Philippine Islands, but it is for the Collector of Internal Revenue to exercise the power of issuing said certificate if after an inspection of said tobacco, he should find that "it conforms to the conditions required by Administrative Order No. 35 with the exclusion of those conditions which, according to the said decision of the Supreme Court, the Collector of Internal Revenue is not authorized to require under Act No. 2613."

> "That the cigars which petitioner seeks to export to the United States have not as yet been examined or inspected by the Collector of Internal Revenue."

Wherefore, the defendants pray that the petition be dismissed, with costs.

The question presented is whether under the facts admitted, the answer is a good defense to the petition.

Johns, J.:

The defendants are public officers of the Philippine Islands, and the acts of which the petitioner complains are their official acts.

In paragraph 11 of the petition, among other things, it is alleged:

> "That on the 6th day of February the said respondent Collector of Internal

> Revenue wrongfully and unlawfully refused and neglected and still unlawfully refuses and neglects to issue such certificate of origin on the ground that said cigars were not manufactured of long-filler tobacco produced exclusively in the provinces of Cagayan, Isabela, or Nueva Vizcaya."

Paragraph 6 of the answer says:

> "The petitioner applied to the Collector of Internal Revenue for a certificate of origin covering a consignment of 10,000 machine-made cigars to San Francisco," and represented that the cigars were made from short-filler tobacco which was not the product of Cagayan, Isabela, and Nueva Vizcaya. The Collector of Internal Revenue did not deem it necessary to make an actual examination and inspection of said cigars, and stated to the petitioner that he did not see his way clear to the granting of petitioner's request, in view of the fact that the cigars which the petitioner was seeking to export were not made with long-filler nor were they made from tobacco exclusively the product of any of the three provinces, and the said cigars were neither inspected nor examined by the Collector of Internal Revenue.

In its final analysis, this is an admission by the defendants that the cigars in question were rejected by the Collector of Internal Revenue, for the specified reason that they were not long-filler cigars manufactured from tobacco grown in one of the three provinces. That the Collector accepted and treated the statement of the petitioner as true, and, relying thereon, refused to issue the certificate of origin, for the sole reason that the cigars in question were not long-filler cigars, and were not manufactured from tobacco grown in one of the three provinces.

If, when the cigars were presented, the Collector of Internal Revenue had simply refused to issue the certificate of origin and had not specified any grounds for such refusal, he would then have a legal right to plead and rely upon any and all grounds of refusal. But where, as in the instant case, it is alleged in the petition, and, in legal effect, admitted in the answer, that the cigars were rejected because they were not long-filler and were not manufactured from tobacco grown in one of the three provinces, then, under the authorities and rule of construction, the defendants are confined and limited to the specified grounds of refusal, and cannot be heard to say that the cigars were rejected upon any other or different

grounds than those specified in the refusal.

Again, it appears from the whole purport and tenor of the answer that, in their refusal, the defendants were acting under, and relying upon, those portions of Administrative Order No. 35, known as "Tobacco Inspection Regulations," which this court held to be null and void in its former opinion.

Although in this class of cases, as a general rule, a demand and refusal is prerequisite to the granting of a writ, it is not necessary where it appears from the record that the demand, if made, would have been refused.

Merrill on Mandamus, section 225, says:

> "The law never demands a vain thing, and when the conduct and action of the officer is equivalent to a refusal to perform the duty desired, it is not necessary to go through the useless formality of demanding its performance. Anything showing that the defendant does not intend to perform the duty is sufficient to warrant the issue of a mandamus."

Cyc., vol. 26, p. 182, says:

> "Where it appears that a demand would be unavailing it need not be made, as where the course and conduct of officers is such as to show a settled purpose not to perform the imposed duty."

In the case of Chicago, K. & W. R. Co. vs. Harris (30 Pac, 456), on page 459, the court says:

> "The action of the officers before and since the commencement of this action clearly shows that a formal demand would have been unavailing. The commencement of this proceeding was at least a sufficient demand; and the defendants, instead of indicating a willingness to execute the bonds, expressly denied the right of the plaintiff to the bonds, and denied the existence of any obligation or duty to issue and deliver them. Having distinctly manifested their purpose not to perform this duty, the question of a formal demand is no longer important. It appears that it would have been useless and foolish, and the law

> rarely requires the doing of a useless act." (Citing a number of authorities.)

In United States vs. Auditors of Town of Brooklyn (8 Fed. Rep., 473), the court says:

> "But while it is generally true that a court will not issue a mandamus to compel the performance of an act which it is merely anticipated the defendant will not perform, still if the defendant has shown by his conduct that he does not intend to perform the act, and that fact is apparent to the court, it would be a work of supererogation to require that a demand should be made for its performance."

The facts in this case are peculiar.

Under the provisions of Act No. 2613, the Collector of Internal Revenue of the Philippine Islands promulgated Administrative Order No. 35, known as "Tobacco Inspection Regulations." Such rules and regulations, having been promulgated by that officer, we have a right to assume that he was acting under such rules and regulations; when he refused to issue the certificate of origin.

It appears from the record that the cigars in question were not long-filler cigars, and that they were not manufactured from tobacco grown in one of the three provinces.

By the express terms and provisions of such rules and regulations promulgated by the Collector of Internal Revenue, it was his duty to refuse petitioner's request, and decline the certificate of origin, because the cigars tendered were not of the specified kind, and we have a right to assume that he performed his official duty as he understood it. After such refusal and upon such grounds, it would indeed, have been a vain and useless thing for the Collector of Internal Revenue to have examined or inspected the cigars.

Having refused to issue the certificate of origin for the reasons above assigned, it is very apparent that a request thereafter made to examine or inspect the cigars would also have been refused.

The motion for judgment on the pleadings is sustained, and the writ will issue, as prayed for in the petition, without costs. So ordered.

Malcolm, Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.

[1]Page 259, *ante*.

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