94 Phil. 389

[G.R. No. L-6093. February 24, 1954]

THE SHELL COMPANY OF P. I. LTD., PLAINTIFF AND APPELLANT, VS. E. E. VAÑO, AS MUNICIPAL TREASURER OF THE MUNICIPALITY OF CORDOVA, PROVINCE OF CEBU, DEFENDANT AND APPELLEE.

D E C I S I O N

PADILLA, J.:

The Municipal Council of Cordova, Province of Cebu, adopted the following ordinances: No. 10, series of 1946, which imposes an annual tax of P150 on occupation or the exercise of the privilege of installation manager; No. 9, series of 1947, which imposes an annual tax of P40 for local deposits in drums of combustible and inflammable materials and an annual tax of P200 for tin can factories; and No. 11, series of 1948, which imposes an annual tax of P150 on tin can factories having a maximum annual output capacity of 30,000 tin cans. The Shell Company of P. I. Ltd., a foreign corporation, filed suit for the refund of the taxes paid by it, on the ground that the ordinances imposing such taxes are *ultra vires*. The defendant denies that they are so. The controversy was submitted for judgment upon stipulation of facts which reads as follows:

> Come now the parties in the above-entitled case by their tinder-signed attorneys and hereby agree to the following stipulation of facts:
>
> 1. That the parties admit the allegations contained in Paragraph 1 of the Amended Complaint referring to residence, personality, and capacity of the parties except the fact that E. E. Vaño is now replaced by P. A. Corbo as Municipal Treasurer

of Cordova, Cebu;

2. That the parties admit the allegations contained in paragraph 2 of the Amended Complaint. Official Receipts Nos. A-1280606, A-3760742, A-3769852 and A-21030388 are herein marked as Exhibits A, B, C, and D, respectively, for the plaintiff;

3. That the parties admit that payments made under Exhibits B, C, and D were all *under protest* and plaintiff admits that Exhibit A was not paid under protest;

4.
That the parties admit that Official Receipt No. A-1280606 for P40 and Official Receipt No. A-3760742 for T200 were collected by the defendant by virtue of Ordinance No. 9, (Sees. E-4 and E-6, respectively) under Resolution No. 31, series of 1947, enacted December 15, 1947, approved by the Provincial Board of Cebu in its Resolution No. 644, series of 1948. Copy of said Ordinance No. 9, series of 1947 is herein marked as Exhibit "E" for the plaintiff, and as Exhibit "I" for the defendant;

5.
That the parties admit that Official Receipt No. A-3760852 for P150 was paid for taxes imposed on Installation Managers, collected by the, defendant by virtue of Ordinance No. 10 (section 3, E-12) under Resolution No. 38, series of 1946, approved by the Provincial Board of Cebu in its Resolution No. 1070, series of 1946. Copy of said Ordinance No. 10, series of 1946 is marked as Exhibit "F" for the plaintiff and as Exhibit "2" for the defendant;

6. That the parties admit that Official Receipt No. A-21030388 for P5,450 was paid by plaintiff and that said amount was collected by defendant by virtue of Ordinance No. 11, series of 1948 (under Resolution No. 46) enacted August 31, 1948 and approved by the Provincial Board of Cebu in its Resolution No. 115, series of 1949, and same was approved by the Honorable Secretary of Finance under the provisions of section 4 of Commonwealth Act No. 472. Copy of said Ordinance No. 11, series of 1948 is herein marked as Exhibit "G" for the plaintiff, and as Exhibit "3" for the defendant

Copy of the approval of the Honorable Secretary of Finance of the same Ordinance is herein marked as Exhibit “4” for the defendant.

Wherefore,
aside from oral evidence which may be offered by the parties and other points not covered by this stipulation, this case is hereby submitted upon the foregoing agreed facts and record of evidence.

Cebu City, Philippines, January 20, 1950.

THE SHELL CO. OF P. I. LTD. (Sgd.) L. DE C. BLECHYNDEN *Plaintiff*	C. D. JOHNSTON & A. P. DEEN (Sgd.) A. P. DEEN *Attys. for the plaintiff*
THE MUNICIPALITY OP CORDOVA (Sgd.) F. A. CORBO *Defendant*	(Sgd.)JOSE C. BORROMEO *Provincial Fiscal* *Attorney for the defendant*

(Record on Appeal, pp. 15—18.)

The parties reserved the right to introduce parole evidence but no such evidence was submitted by either party. From the judgment holding the ordinances valid and dismissing the complaint the plaintiff has appealed.

It is contended that as the municipal ordinance imposing an annual tax of P40 for “minor local deposit in drums of combustible and inflammable materials,” and of P200 “for tin factory” was adopted under and pursuant to section 2244 of the Revised Administrative Code, which provides that the municipal council in the exercise of regulative authority may require any person engaged in any business or occupation, such as “storing combustible or explosive materials” or “the conducting of any other business of an unwholesome, obnoxious, offensive, or dangerous character,” to obtain a permit for which a reasonable fee, in no case to exceed P10 per annum, may be charged, the annual tax of P40 and P200 are unauthorized and illegal. The permit and the fee referred to may be required and charged by the Municipal Council of Cordova in the exercise of its regulative authority, whereas the ordinance which

imposes the taxes in question was adopted under and pursuant to the provisions of Commonwealth Act No. 472, which authorizes municipal councils and municipal district councils "to impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality or municipal district, by requiring them to secure licenses at rates fixed by the municipal council or municipal district council," which shall be just and uniform but not "percentage taxes and taxes oh specified articles." Likewise, Ordinance No. 10, series of 1946, which imposes an annual tax of P150 on "installation manager" comes under the provisions of Commonwealth Act No. 472. But it is claimed that "installation manager" is a designation made by the plaintiff and such designation cannot be deemed to be a "calling" as defined in section 178 of the National Internal Revenue Code (Com. Act No. 466), and that the installation manager employed by the plaintiff is a salaried employee which may not be taxed by the municipal council under the provisions of Commonwealth Act No. 472. This contention is without merit, because even if the installation manager is a salaried employee of the plaintiff, still it is an occupation "and one occupation or line of business does not become exempt by being conducted with some other occupation or business for which such tax has been paid'[1] and the occupation tax must be paid "by each individual engaged in a calling subject thereto."[2]

And pursuant to section 179 of the National Internal Revenue Code, "The payment of * * * occupation tax shall not exempt any person from any tax, * * * provided by law or ordinance in places where such * * * occupation in * * * regulated by municipal Jaw, nor shall the payment of any such tax be held to prohibit any municipality from placing a tax upon the same * * * occupation, for local purposes, where the imposition of such tax is authorized by law." It is true that, according to the stipulation of facts, Ordinance No. 10, series of 1946, was approved by the Provincial Board of Cebu in its Resolution No. 1070, series of 1946, and that it does not appear that if was approved by the Department of Finance, as provided for and required in section 4, paragraph 2, of Commonwealth Act No. 472, the rate of municipal tax being in excess of P50 per annum. But as this point on the approval by the Department of Finance was not raised in the court

below, it cannot be raised for the first time on appeal. The issue joined by the parties in their pleadings and the point raised by the plaintiff is that the municipal council was not empowered to adopt the ordinance and not that it was not approved by the Department of Finance. The fact that it was not stated in the stipulation of facts justifies the presumption that the ordinance was approved in accordance with law.

The contention that the ordinance is discriminatory and hostile because there is no other person in the locality who exercises such "designation" or occupation is also without merit, because the fact that there is no other person in the locality who exercises such a "designation" or calling does not make the ordinance discriminatory and hostile, inasmuch as it is and will be applicable to any person or firm who exercises such calling or occupation named or designated as "installation manager."

Lastly, Ordinance No. 11, series of 1948, which imposes a municipal tax of P150 on tin can factories having a maximum annual output capacity of 30,000 tin cans which, according to the stipulation of facts, was approved by the Provincial Board of Cebu and the Department of Finance, is valid and lawful, because it is neither a percentage tax nor one on specified articles which are the only exceptions provided for in section 1, Commonwealth Act No. 472. Neither does it fall under any of the prohibitions provided for in section 3 of the same Act. Specific taxes enumerated in the National Internal Revenue Code are those that are imposed upon "things manufactured or produced in the Philippines for domestic sale or consumption" and upon "things imported from the United States and foreign countries," such as distilled spirits, domestic denatured alcohol, fermented liquors, products of tobacco, cigars and cigarettes, matches, mechanical lighters, firecrackers, skimmed milk, manufactured oils and other fuels, coal, bunker fuel oil, diesel fuel oil, cinematographic films, playing cards, sacharine.[1] And it is not a
percentage tax because it is tax on business and the maximum annual output capacity is not a percentage, because it is not a share or a tax based on the amount of the proceeds realized out of the sale of the tin

cans manufactured therein but on the business of manufacturing tin cans having a maximum annual output capacity of 30,000 tin cans.

In an action for refund of municipal taxes claimed to have been paid and collected under an illegal ordinance, the real party in interest is not the municipal treasurer but the municipality concerned that is empowered to sue and be sued.[2]

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and *Diokno, JJ.*, concur.

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[1] Section 178, National Internal Revenue Code (Com. Act. No. 466).

[2] Supra.

[1] Section 178, National Internal Revenue Code (Com. Act. No. 466).

[2] Tan vs. De la Fuente et al., 90 Phil., 519.

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