

G. R. No. L-10196

[G. R. No. L-10196. January 22, 1958]

SANTOS LUMBER COMPANY, ET AL., PLAINTIFFS AND APPELLANTS, VS. CITY OF CEBU, ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

BAUTISTA ANGELO, J.:

Plaintiffs brought this action in the proper court of first instance seeking to nullify Ordinance No. 92, series of 1950, and Ordinance No. 116, series of 1951, of the Municipal Board of the City of Cebu, and to recover the taxes paid by them under said ordinances. Plaintiffs claim that these ordinances are *ultra vires* and, therefore invalid. Defendants answered the complaint alleging that said ordinances are valid having been enacted pursuant to the power conferred upon the City of Cebu by its charter, Commonwealth Act No. 58.

Deciding the case on the basis of facts agreed upon by the parties, the lower court upheld the validity of the ordinances and dismissed the case without costs. Plaintiffs appealed from the decision but took the case directly to us on the ground that only questions of law are involved in the appeal.

Ordinance No. 92, as subsequently modified by Ordinance No. 116, imposes upon every person, individual, company or corporation engaged in the sale of lumber a tax of P2 "for every first local sale of one thousand board feet of lumber sold during the month", which shall be paid not later than the first twenty (20) days of the succeeding month. Failure to pay the tax within said period subjects the taxpayer to a surcharge of 20 per cent which shall be added to the tax. Plaintiffs claim that the Charter of the City of Cebu (Commonwealth Act No. 58) does not confer upon it the power to impose the tax provided for in said ordinances.

The pertinent portion on which the power of the City of Cebu is predicated is section 17 (m) of Commonwealth Act No. 58, which provides:

“Sec. 17. General powers and duties of the Board.—Except as otherwise provided by law, and subject to the conditions and limitations thereof, the Municipal Board shall have the following powers:

* * * * *

“(m) To tax, fix the license fee for, regulate the business, and fix the location of match factories, blacksmith shops, foundries, steam boilers, lumber yards, shipyards, the storage and sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglycerin, petroleum, or any of the products thereof, and of all other establishments likely to endanger the public safety or give rise to conflagration or explosions, and, subject to the provisions of ordinances issued by the Philippine Health Service in accordance with law, tanneries, renderies, tallow chandleries, bone factories, and soap factories.”

Under the provision above-quoted, it would appear that the City of Cebu is given the power (1) to tax the business of, among other things, lumber yards, and (2) to tax the sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglycerin, petroleum, or any other products thereof. Note that lumber is not therein enumerated. Considering the well-known principle of *inclusio unius est exclusio alterius*, the conclusion is inevitable that the power to tax the sale of lumber has been withdrawn.

But it is contended that the power to tax the business of lumber yards necessarily includes that of taxing the sale of lumber stocked therein, for, as the lower court said, “it is evident * * * that the intention was to include the sale of lumber, inasmuch as it cannot be denied that the ultimate business of maintaining a lumber yard is the accumulation of lumber and building materials and their subsequent sale for profit.” But this reasoning is untenable considering that the Charter of the City of Cebu has expressly withheld, as we have already pointed out, the power to tax the sale of lumber. Moreover, a municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. Its charter must plainly show an intent to confer that power or the corporation cannot assume it. And the power when granted is to be construed *strictissimi juris*. Any doubt or ambiguity arising out of the term used must be resolved against the corporation.

“It is settled that a municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. The charter or statute must plainly show an

intent to confer that power or the municipality cannot assume it. And the power when granted is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions—all these—have no place in the interpretation of the taxing power of a municipal corporation (Cu Unjieng vs. Patstone, 42 Phil., pp. 818, 830; Pacific Commercial Co., vs. Romualdez, 49 Phil., pp. 917, 924; Batangas Transportation Co., vs. Provincial Treasurer of Batangas, 52 Phil., pp. 190, 196; Baldwin vs. Coty Council, 53 Ala. p. 437; State vs. Smith, 31 Iowa, p. 493; 38 Am. Jur. pp. 68, 72-73).” (Joseph K. Icard vs. The City Council of Baguio and the City of Baguio, 46 Off. Gaz., No. 11, Sup. pp. 320, 323)

“MUNICIPAL CORPORATIONS; POWERS AND DUTIES OF; POWERS STRICTLY CONSTRUED.—Municipal corporations in the Philippines are mere creatures of Congress. As such, said corporations have only such powers as the legislative department may have deemed fit to grant them. By reason of the limited powers of local governments and the nature thereof, said powers are to be construed strictly and ‘any doubt or ambiguity arising out of the terms used in granting’ said powers ‘must be resolved against the municipality.’” (Syllabus, Fulgencio Vega, et al., vs. The Municipal Board of the City of Iloilo, et al., 50 O. G., No. 6, p. 2456)

A case squarely in point is *Jos S. Johnston & Sons, Inc. vs. Ramon Regondola*, G. R. No. L-9355 (November 26, 1957). In that case plaintiff, a corporation engaged in lumber business in the City of Zamboanga, was made to pay a tax on its sales of lumber by virtue of an ordinance approved by the Municipal board and the question that arose was whether the city had the power to impose a tax on the sale of lumber under its charter, Commonwealth Act No. 39. This Court held that the ordinance was *ultra vires* because its enactment was beyond the power of the city, making on this point the following comment:^[1]

“This provision of the city charter, it should be noted, authorizes the city to tax certain establishments—among them, lumber yards. It also authorizes the city to impose a tax upon ‘the storage and sale’ of certain materials therein expressly named or described, to wit: gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglycerine, petroleum, ‘or any of the

products thereof, and of all other highly combustible or explosive materials.' It is appellant's contention that the phrase 'or any of the products thereof refers to products of the establishments mentioned, so that lumber, as a lumber yard product, is, in his opinion, among the articles whose storage and sale the charter means to subject to a municipal tax. To this we cannot agree. Appellant's interpretation of the phrase would do violence to the language of the statute, for it is obvious from the context that the phrase has reference to products made from the materials enumerated. This is made more patent by the succeeding phrase 'and of all other highly combustible or explosive materials', which necessarily implies that the materials already mentioned are of that same character, that is to say, highly combustible or explosive. In other words, the materials whose storage and sale are authorized to be taxed by this provision of the charter are (1) those specifically mentioned for that purpose, namely, gunpowder, tar, pitch, etc., (2) any product made from them, and (3) all other highly combustible or explosive materials. Lumber is not specifically mentioned. Neither is it of the category described, because, though capable of undergoing combustion, it is not a highly combustible or explosive material. We therefore think that the trial judge was right in holding that the ordinance in question insofar as it imposes a tax on the sale of lumber is not authorized by the city charter."

Wherefore, the decision appealed from is reversed. The Court declares the ordinances in question illegal and orders appellees to return to appellants the sum of P97,542.57 and all such sums as may have been paid by the later after February, 1953, by virtue of said ordinances. No costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

^[1]The pertinent provisions of the Charter of Zamboanga are similar to those of the Charter of Cebu herein involved.

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