

LAOAG PRODUCERS' COOPERATIVE MARKETING ASSOCIATION, INC., PLAINTIFF-APPELLANT, VS. THE MUNICIPALITY OF LAOAG, ILOCOS NORTE, AND PETRONILO JULIAN, AS MUNICIPAL TREASURER, DEFENDANT...

G.R. No. L-27498. February 24, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal[1] by plaintiff-appellant Laoag Producers' Cooperative Marketing Association, Inc., from the decision of the Court of First Instance of Ilocos Norte, in its Civil Case No. 3976, upholding the validity of two (2) municipal ordinances of the Municipality of Laoag, Ilocos Norte (now city).

In enacting the said ordinances, the municipal council of Laoag invoked the authority of the Local Autonomy Act (Republic Act No. 2264). The first, Ordinance No. 10, series of 1960, provides that a permit be secured from the mayor's office by all wholesale dealers and vendors of Virginia leaf tobacco, garlic and onion duly registered with the Bureau of Internal Revenue before doing business in the municipality; for them to report in writing the number of kilos sold and purchased by them within the first ten (10) days of each succeeding month; imposes a "municipal tax or inspection fee of one-half (1/2) centavo" "on every kilo of Virginia leaf tobacco, garlic and onion on all wholesale dealers and vendors"; and provides penalties for violation thereof. The second ordinance amended the first, by increasing the "municipal tax or inspection fee" to one (1) centavo.

The statement of facts in plaintiff-appellant's brief is accepted by defendants-appellees municipality and its municipal treasurer, Petronilo Julian.[2] Briefly, these facts are as follows: That plaintiff-appellant is a wholesale dealer in Virginia leaf tobacco; that it has paid the tax prescribed by the ordinances, under protest, in the amount of P2,401; that it pays a privilege tax as wholesaler in the amount of P400.00 per annum to the municipality pursuant to Ordinance No. 22, series of 1958; a permit fee of P1.00, as required by Ordinance No. 18, series of 1957; a quarterly garbage fee of P6.00, as required by Ordinance No. 10, series of 1950; an annual warehouse fee of P50.00, as imposed by Ordinance No. 1, series of 1961; and pays the Bureau of Internal Revenue P100.00 for its dealer's license (known as "L-3"), aside from the amount of one-half (1/2) centavo on every kilo of tobacco that it transports from the municipality. On the other hand, the municipality renders services to dealers and vendors, consisting of the inspection of their weighing scales and balances, checking of their bodegas for the protection of farmers, maintaining police outposts near bodegas to check whether or not the tobacco, garlic or onion had been paid, and maintaining the fire department to see that the bodegas are free from fire. It may be here added that the court a quo took judicial notice of the fact that middlemen rake huge profits and are "farming the farmers".

Appellant assails the validity of the two (2) ordinances on the grounds that: (a) they impose a sales tax, which municipalities and municipal districts are not empowered to levy under Republic Act 2264; (b) they impose an export tax in violation of Section 2287 of the Revised Administrative Code; (c) they give rise to double taxation;

(d) considered as regulatory measures, they prescribe unjust and excessive amounts; and (e) they are ambiguous in the sense that they can be either interpreted as imposing a tax or a license fee.

The last four (4) grounds relied upon by appellant to support its claim to the invalidity of the ordinances are untenable. The prohibition against the imposition by municipal councils of a tax in any form whatever upon goods or merchandise carried into the municipality, or out of the same, and any attempt to impose an import or export tax upon such goods, under Section 2287 of the Revised Administrative Code, is no longer in force, as having been impliedly repealed by the Local Autonomy Act.[3] The fact that appellant is doubly taxed in that it pays the Bureau of Internal Revenue one-half (1/2) centavo for every kilo of tobacco that it transports from the municipality and that the municipality also imposes a like amount (increased to one (1) centavo by the amendatory ordinance) for the same quantity of tobacco upon appellant is not in-herently obnoxious for the impositions are made by different government entities.[4] The record does not show any basis that the amount of one (1) centavo required to be paid by the later ordinance is unjust or excessive. That the questioned ordinances are ambiguous in that they may be interpreted as revenue-raising or are police-power measures is of no moment because Republic Act 2264 "confers upon all chartered cities, municipalities and municipal districts the general power to levy not only taxes but also municipal license taxes subject to specified exceptions, as well as service fees." (*Nin Bay Mining Co. vs. Municipality of Roxas*, supra).

The untenability of the last four grounds of objection notwithstanding, the ordinances are infirm on appellant's first ground -- that they violate the first proviso of Section 2 of Republic Act 2264, which provides:

"Provided, That municipalities and municipal districts shall, in no case, impose any percentage tax on sales or other taxes in any form based thereon, ..."

By the terms of the ordinance, a wholesaler or vendor is required to report in writing the number of kilos sold and purchased by him within the first ten (10) days of each succeeding month. Undoubtedly, this provision serves as the basis upon which the volume of sale is determined from month to month. The "municipal tax or inspection fee" is, in turn, imposed "on every kilo of Virginia leaf tobacco, garlic and onion on all wholesale dealers and vendors" so that what is taxed is precisely the volume of sales; or, as appellees admit in their brief on page 6, "the volume of trade or output of said dealer of leaf tobacco, garlic and onion". The tax imposed is, therefore, a tax on sales, or one based thereon.[5] For a dealer is not one who buys to keep or makes to sell, but one who buys to sell again;[6] the ordinances tax his sale when he sells again, and he cannot, by its very nature, carry on his business unless he sells what he has bought.

The decision in *Nin Bay Mining Co. vs. Municipality of Roxas*, supra, where the validity of an ordinance imposing an inspection and verification fee on every ton of silica excavated and shipped out of the municipality was upheld by this Court, is not applicable to the case at bar because in said case, the issue whether the levied fee constituted a tax on sales was not raised. The decision itself states: "Neither the plaintiff nor the lower court maintains that the subject matter of the ordinance in question comes under any of the foregoing exceptions" (referring to the two (2) provisos of Section 2 of Republic Act 2264, the first of which was hereinbefore quoted).

That the municipality possessed power to enact the ordinances because Republic Act 2264 empowers it to levy not only taxes but also licenses; that the inspection fees imposed are for services rendered by the municipality (as proved in evidence by it) and that its power to impose inspection fees is not restricted by the first proviso of Section 2 of the law, albeit the same does not authorize a tax on sales, is no argument in favor of the validity of the ordinances in question because in their actual application they do impose a sales tax.

The cases of *Yap Tak Wing vs. Municipal Board of Manila*, 68 Phil. 511; *Manila Motor Co. vs. City of Manila*, 72 Phil. 336; *City of Bacolod vs. Gruet*, L-18290, 31 January 1963, 7 SCRA 164; and *C. N. Hodges vs. Municipal*

Board of the City of Iloilo, L-18276, 12 January 1967, 19 SCRA 28, are not applicable to the present case. In the Yap Tak Wing case, a certain ordinance of the City of Manila providing for the reclassification of panciterias, restaurants, cafes, carinderias and other public eating places, and imposing increased rates of license fees and taxes previously provided for by prior ordinances, was sought to be annulled on the ground that the City of Manila had no power to enact the ordinance under its police power to regulate the establishments mentioned because the power to regulate does not include the power to impose taxes, but this Court upheld the power of the city as a revenue measure and is within its power " (m) to tax, fix the license fee and regulate the business of hotels, restaurants, refreshments places, cafes, lodging houses, and boarding houses ", under Section 2444 of the Administrative Code, as amended by Act 3669; the prior ordinances alluded to required licenses to operate the said establishments and the rate of tax is based on volume of business and the number of persons who may be accommodated in the establishment; the Yap Tak Wing case, therefore, does not compare with the present case not only because no mention is made that the tax imposed is a tax on sales but also because Manila is a city, which is not disauthorized under the Local Autonomy Act from imposing a tax on sales, unlike municipalities and municipal districts. The same reasons of non-applicability to the present case exists in the Manila Motor case. In City of Bacolod vs. Gruet, supra, an imposition of P0.03 tax on every case of Coca-cola was held as valid because the tax imposed by the City of Bacolod "was within its express powers, unlimited by the proviso applicable only to municipalities and municipal districts" (7 SCRA 169), reference therein being made to the aforementioned proviso of Section 2 of the Local Autonomy Act. To the same effect in the ruling in C. N. Hodges vs. Municipal Board, Iloilo City, supra, where the ordinance of Iloilo City imposing a municipal tax on the sale of real property was upheld as valid (except for a portion of the ordinance requiring payment of the tax as a condition for the registration of the sale). In brief, these four (4) cases relied upon by appellees involve the common fact that the ordinances whose validity were there upheld were enacted by chartered cities, in contra-distinction to the fact, in the present case, that the ordinance in question was enacted by a municipality, Laoag.

But appellees argue that even if the "municipal tax or inspection fee" as provided for in the ordinances, is a tax on sales, which is not allowed to be imposed by municipalities and municipal districts but which is allowed to be imposed by cities, the prohibition does not apply to appellee as it is now a city. The argument is unavailing because the legality of an ordinance is dependent upon the power that the municipal corporation had at the time of the enactment of the ordinance;^[7] so that if the questioned ordinances were invalid when enacted by Laoag as a municipality, they did not become valid when it became a city.

FOR THE FOREGOING REASONS, the appealed decision is hereby reversed and another one entered, declaring Ordinance No. 10, series of 1960, and its amendatory Ordinance No. 10, series of 1964, of Laoag, Ilocos Norte, as null and void, and ordering the defendants-appellees to refund the taxes paid by plaintiff-appellant under the said ordinances, with legal interest thereon. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Received in the Supreme Court on 28 March 1967, Rollo, page 1.

[2] Brief for defendants-appellees, page 1.

[3] Nin Bay Mining Co. vs. Mun. of Roxas, L-20125, 20 July 1965, 14 SCRA 660.

[4] Punzalan vs. Municipal Board of the City of Manila, 95 Phil. 46; Comm. of Int. Revenue vs. Lednický, L-18169, L-18286, L-21434, 31 July 1964, 11 SCRA 603.

[5] Cf. *Marinduque Iron Mines vs. Mun. of Hinabangan*, L-18924, 30 June 1964, 11 SCRA 416.

[6] *Ah Nam vs. City of Manila, et al.*, 109 Phil. 808, citing *Norries vs. Com.*, 27 Pa. 494; *Com. vs. Campbell*, 33 Pa. 385; *Bouvier's Law Dictionary*.

[7] *City of Naga vs. CA*, L-24954, 14 August 1968, 24 SCRA 594.

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