

MARINDUQUE LION MINES AGENTS, INC., PETITIONER AND APPELLEE, VS. THE MUNICIPAL COUNCIL OF THE MUNICIPALITY OF HINABANGAN, PROVINCE OF SAMAR, ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. L-18924. June 30, 1964

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

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

Appeal from a declaratory decision of the Court of First Instance of Manila declaring Municipal Ordinance No. 7, Series of 1960, of the Municipality of Hinabangan, Samar, null and void.

On June 27, 1960, the Municipality of Hinabangan, through its duly constituted Municipal Council, enacted Ordinance No. 7, Series of 1960, which in full reads as follows:

"An Ordinance Imposing a Municipal License Tax On the Gross Outputs of the Mines and Other Business; Its Imposition and Penalties Thereof Within the Jurisdiction of this Municipality.

Be it ordained by the Municipal Council of Hinabangan, Samar, That:

Section 1.—For the purpose of this Ordinance, the following terms are defined:

"Corporation" refers to any person or persons, firm or association engaged in the business for which this Ordinance is enacted.

"Gross Outputs" shall be interpreted as the total actual market value of minerals or mineral products from each mine or mineral land operated as separate entity without any deduction on expenses incurred in the operation of the business.

"Municipal Treasurer" herein referred to, is the duly appointed Municipal Treasurer including his authorized representatives and /or deputies in his office.

Section 2.—Republic Act 2264 empowers the Municipal Council of Hinabangan, Samar, to impose a graduated Municipal License Fees on any occupation or business in the municipality to any Corporation, based on the gross outputs or sales in accordance with following schedule:

MINES AND OTHER BUSINESS

Yearly Gross

Output or Sales

.....

Amount of Tax to be levied

	P 50,000.00
to P 100,000.00	
	P 100.00
	P 100,000.00
to P 500,000.00	
	P 1,000.00
	P 500,001.00
to P 1,500,000.00	
	P 7,500.00
	P 1,500,001.00
to P 3, 500,000.00	
	P26,250.00
	P 3,500,001.00
to P 7,500,000.00	
	P75,000.00
	P7,500,001.00
to P 13,500.00	
	P168,750.00
	P 13,500,001.00
to P 23,500,000.00	
	P352,500.00
	P 23,500,001.00
to P 50,000,000.00	
	P875,000.00

P 50,000,001.00

to P up

P1,000,000.00

Section 3.—Any corporation subject to payment of the Municipal License herein imposed shall immediately at the end of each calendar year, but in no case shall it exceed beyond the first FIFTEEN (15) DAYS of the succeeding year subject to Municipal Treasurer certified true copies of receipts and/or invoices as the case maybe on the total output per shipment of that mining produce for the year or the total yearly sales which will serve as the basis for the collection of the Municipal License Tax Provided that upon subsequent verification by the Municipal Treasurer no erroneous or fraudulent entries are made. On the contrary when upon proper investigation and examination of the Books or Records of the Corporation, there shall be found discrepancies in the declarations of the total output per shipment or sales, such discrepancy shall be revised within TEN (10) DAYS from the date of verification within which to settle the taxes due without penalties as provided by law.

Section 4.—To enforce this Ordinance, the Municipal Treasurer shall have authority to examine the Books and Records of the Corporation subject to the payment of tax herein levied, PROVIDED that such examination of Records or Books as the case maybe, be made during office hours unless a written consent from the President, or Manager as the case maybe of the Corporation is secured.

Section 5.—Any violation of a provision of this Ordinance is punishable by a fine of not less than ONE HUNDRED (P100.00) Pesos nor more than Two Hundred (P200.00) Pesos or by an imprisonment of not less than One (1) Month nor more than Six (6) Months or both fine and imprisonment in the discretion of the Court. Any violation of Section 2 of this Ordinance shall subject the Corporation to pay the tax imposed plus penalties and the subsequent fine and imprisonment promulgated by the Court. Criminal responsibility rests on the President, Manager or any person charged with the management of the Corporation.

Section 6.—All Ordinances or parts thereof in conflict with the Present Ordinance are hereby repealed.

Section 7.—This Ordinance shall take effect Fifteen (15) Days from its approval."

On December 14, 1960, the petitioner, a corporation duly organized and existing under the laws of the Philippines and operating the only mine within the jurisdiction of the municipality of Hinabangan, filed this case of declaratory relief in the Court of First Instance of Manila questioning the validity of the ordinance as enacted without authority and in violation of law. Respondents answered averring the ordinance's validity with a counter-claim for damages; and petitioner having filed an amended petition and answer to the counterclaim, which amended petition was accordingly answered by respondents; the case was tried by the Court a quo on March 15, 1961, the parties filed respective memoranda, and on April 4, 1961 the Court a quo rendered its decision declaring the ordinance in question illegal, from which judgment respondents in due time perfected their appeal to this Court.

Neither petitioner-appellee nor respondents-appellants adduced any evidence before the Court a quo, the facts heretofore stated having been based on the allegations of the amended petition and the admissions thereof in the appellants' amended answer thereto, and the case was submitted for decision on the pleadings.

Respondents-appellants maintain in this appeal that the Court a quo erred in finding that Ordinance No. 7 does not impose a tax, that Ordinance No. 7 was intended to impose a tax on sales; that Ordinance No. 7 is illegal because it is an imposition of a double taxation; and that Ordinance No. 7 is null and void.

On the petitioner-appellee's side, they maintain that Section 2 of Municipal Ordinance No. 7 does not impose a tax or levy, and there is no clear and express imposition of a charge in the other provisions of the ordinance; that the declaration of authority to impose a tax is false and erroneous because no such power is conferred in Section 2 of Republic Act No. 2264, upon which such authority is based; that, moreover, there is no finding by the Court *quo* that a tax was imposed, much less, that the same is based on the gross outputs or sales, because the Court *quo* merely assumed that the tax is imposed and declared it illegal as not within the Municipal Council's authority to impose because it falls within the exceptions to the taxing powers of municipal governments, as prescribed in Section 2, last paragraph, of the Local Autonomy Act (RA No. 2264).

We find no error in the decision appealed from in so far as it holds that the ordinance in question fails to levy any tax. Appellants admit in their brief that the main section (section 2) of the ordinance "seems merely declaratory of authority", albeit they aver that a reading of it as a whole leads to the conclusion that a tax was intended. It is, however, a well established rule that—

"A statute will not be construed as imposing a tax unless it does so clearly, expressly and unambiguously." (82 C.J.S., 956) (*Italics supplied*)

and that—

It is an ancient principle that a tax can not be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication." (30 Am. Jur. 153; also *McQuillin on Municipal Corp.*, Vol. 16, p. 267; *italics ours*)

A mere reading of the ordinance discloses that not only are there no words therein imposing a tax but that the peruser is left in doubt as to whether the intention is to levy a tax for revenue or charge a fee for permitting the business to be carried on; for section 2 declares that the law "empowers the Municipal Council of Hinabangan, Samar, to impose graduated Municipal License Fees". Since the validity of taxes and license fees are governed by different principles, the taxpayer is left in doubt as to the true nature of the charge, and whether he must bear it or not. The rule is that taxes may not be imposed by implications,^[1] and "a tax statute is to be construed strictly and against the subjection to a tax liability where the question is whether a matter, property or person is subject to the tax" (82 C.J.S., p. 957). Considering the unavailability of taxes by the citizen, it seems that the *Marinduque Iron Mines Agents, Inc. vs. Municipal Council of Hinabangan, Samar, et al.* least he is entitled to is to be expressly required to pay a tax, which the words of the questioned ordinance do not state. This is particularly true where the ordinance, as in this case, carries penal provisions.

We further agree with the judgment appealed from that Ordinance No. 7, Ser. 1960, of Hinabangan, Samar, is invalid because the same infringes upon the express restrictions placed by the legislature upon the taxing power delegated to city and municipal councils. Section 2, paragraph 1, of Republic Act No. 2264, after conferring power to cities, municipalities, and municipal districts to impose license taxes and service fees or charges on business and occupations, expressly limited said powers by the following proviso:

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

Even granting that it does impose a tax, the ordinance in question, while not providing for a percentage tax, but a graduated tax (the progressive tax therein imposed not being calculated on a percentage of the sales made by the taxpayer), nevertheless, it prescribes a tax based on sales, contrary to the statute (R.A. 2264). It is true that the ordinance purports to base the tax on either "gross output or sales"; but the only standard provided for measuring the gross output is its peso value, as determined from "true copies of receipts and/or invoices" (which are

precisely the evidence of sales) that the taxpayer is required to submit to the municipal treasurer (section 3), without deduction being provided for freight, insurance, or incidental costs. Directly or indirectly, the amount of payable tax under this ordinance is determined by the gross sales of the taxpayer, and violates the explicit prohibition that the municipality must not levy, or impose, "taxes in any form based on sales".

The plea that the members of the Municipal Council are not attorneys and of low scholastic ability" affords no excuse for not observing well-established legal principles. The tax imposing authority is held to know and understand that the levying of taxes is a subject of grave responsibility, and of serious consequences to the taxpayer. Taxation is not merely a matter of wishing before an unused well, or of stroking some wornout lamp.

In view of the foregoing, the judgment appealed from is affirmed, with costs against appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Regala and Makalintal, J.J., concur.

[1] Howell vs. Dept. of Labor, 222 SW 2d., 953; Olson vs. Oklahoma Tax Commission, 180 Pac 2d, 622; Harrington vs. Cobb, 172 ALR, 837; In re Lunch Rooms, 85 Fed. 2d., 1002; In re California Pea Products, Inc., 37 Fed. Supp., 658; In re Bush Terminal Co., 93 Fed. 2d., 659.

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