

**PEPSI-COLA BOTTLING CO. OF THE PHILIPPINES, INC.,  
PLAINTIFF-APPELLANT, VS. CITY OF BUTUAN, MEMBERS OF THE  
MUNICIPAL BOARD, THE CITY MAYOR AND THE CITY TREASURER,  
ALL OF THE CIT...**

*G.R. No. L-22814. August 28, 1968*

Ponente: CONCEPCION, C.J.

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**CONCEPCION, C.J.:**

Direct appeal to this Court, from a decision of the Court of First Instance of Agusan, dismissing plaintiff's complaint, with costs.

Plaintiff, Pepsi-Cola Bottling Company of the Philippines, is a domestic corporation with offices and principal place of business in Quezon City. The defendants are the City of Butuan, its City Mayor, the members of its municipal board and its City Treasurer. Plaintiff seeks to recover the sums paid by it to the City of Butuan - hereinafter referred to as the City - and collected by the latter, pursuant to its Municipal Ordinance No. 110, as amended by Municipal Ordinance No. 122, both series of 1960, which plaintiff assails as null and void, and to prevent the enforcement thereof. Both parties submitted the case for decision in the lower court upon a stipulation to the effect:

"1. That plaintiff's warehouse in the City of Butuan serves as a storage for its products the "Pepsi-Cola" soft drinks for sale to customers in the City of Butuan and all the municipalities in the Province of Agusan. These "Pepsi-Cola" soft drinks are bottled in Cebu City and shipped to the Butuan City warehouse of plaintiff for distribution and sale in the City of Butuan and all municipalities of Agusan.

"2. That on August 16, 1960, the City of Butuan enacted Ordinance No. 110 which was subsequently amended by Ordinance No. 122 and effective November 28, 1960. A copy of Ordinance No. 110, Series of 1960 and Ordinance No. 122 are incorporated herein as Exhibits "A" and "B", respectively.

"3. That Ordinance No. 110 as amended, imposes a tax on any person, association, etc., of P0.10 per case of 24 bottles of Pepsi Cola and the plaintiff paid under protest the amount of P4,926.63 from August 16 to December 31, 1960 and the amount of P9,250.40 from January 1 to July 30, 1961.

"4. That the plaintiff filed the foregoing complaint for the recovery of the total amount of P14,177.03 paid under protest and those that it may later on pay until the termination of this case on the ground that Ordinance No. 110 as amended of the City of Butuan is illegal, that the tax imposed is excessive and that it is unconstitutional.

"5. That pursuant to Ordinance No. 110 as amended, the City Treasurer of Butuan City, has prepared a form to be accomplished by the plaintiff for the computation of the tax. A copy of the form is enclosed herewith as Exhibit "C".

"6. That the Profit and Loss Statement of the plaintiff for the period from January 1, 1961 to July 30, 1961 of its warehouse in Butuan City is incorporated herein as Exhibits "D" to "D-1" to "D-5". In this Profit and Loss

Statement, the defendants claim that the plaintiff is not entitled to a depreciation of P3,052.63 but only P1,202.55 in which case the profit of plaintiff will be increased from P1,254.44 to P3,104.52. The plaintiff differs only on the claim of depreciation which the company claims to be P3,052.62. This is in accordance with the findings of the representative of the undersigned City Attorney who verified the records of the plaintiff.

"7. That beginning November 21, 1960, the price of Pepsi-Cola per case of 24 bottles was increased to P1.92 which price is uniform through-out the Philippines. Said increase was made due to the increase in the production cost of its manufacture.

"8. That the parties reserve the right to submit arguments on the constitutionality and illegality of Ordinance No. 110, as amended of the City of Butuan in their respective memoranda.

" x x x x x "

Section 1 of said Ordinance No. 110, as amended, states what products are "liquors", within the purview thereof. Section 2 provides for the payment by "any agent and/or consignee" of any dealer "engaged in selling liquors, imported or local, in the City," of taxes at specified rates. Section 3 prescribes a tax of P0.10 per case of 24 bottles of the soft drinks and carbonated beverages therein named, and "all other soft drinks or carbonated drinks." Section 3-A, defines the meaning of the term "consignee or agent" for purposes of the ordinance. Section 4 provides that said taxes "shall be paid at the end of every calendar month." Pursuant to Section 5, the taxes "shall be based and computed from the cargo manifest or bill of lading or any other record showing the number of cases of soft drinks, liquors or all other soft drinks or carbonated drinks received within the month." Sections 6, 7 and 8 specify the surcharge to be added for failure to pay the taxes within the period prescribed and the penalties imposable for "deliberate and willful refusal to pay the tax mentioned in Sections 2 and 3" or for failure "to furnish the office of the City Treasurer a copy of the bill of lading or cargo manifest or record of soft drinks, liquors or carbonated drinks for sale in the City." Section 9 makes the ordinance applicable to soft drinks, liquors or carbonated drinks "received outside" but "sold within" the City. Section 10 of the ordinance provides that the revenue derived therefrom "shall be allotted as follows: 40% for Roads and Bridges Fund; 40% for the General Fund and 20% for the School Fund."

Plaintiff maintains that the disputed ordinance is null and void because: (1) it partakes of the nature of an import tax; (2) it amounts to double taxation; (3) it is excessive, oppressive and confiscatory; (4) it is highly unjust and discriminatory; and (5) section 2 of Republic Act No. 2264, upon the authority of which it was enacted, is an unconstitutional delegation of legislative powers.

The second and last objections are manifestly devoid of merit. Indeed - independently of whether or not the tax in question, when considered in relation to the sales tax prescribed by Acts of Congress, amounts to double taxation, on which we need not and do not express any opinion - double taxation, in general, is not forbidden by our fundamental law. We have not adopted, as part thereof, the injunction against double taxation found in the Constitution of the United States and of some States of the Union.[1] Then, again, the general principle against delegation of legislative powers, in consequence of the theory of separation of powers[2] is subject to one well-established exception, namely: legislative powers may be delegated to local governments - to which said theory does not apply[3] - in respect of matters of local concern.

The third objection is, likewise, untenable. The tax of "P0.10 per case of 24 bottles" of soft drinks or carbonated drinks - in the production and sale of which plaintiff is engaged - or less than P0.0042 per bottle, is manifestly too small to be excessive, oppressive, or confiscatory.

The first and the fourth objections merit, however, serious consideration. In this connection, it is noteworthy that

the tax prescribed in section 3 of Ordinance No. 110, as originally ap-proved, was imposed upon dealers "engaged in selling" soft drinks or carbonated drinks. Thus, it would seem that the intent was then to levy a tax upon the sale of said merchandise. As amended by Ordinance No. 122, the tax is, however, imposed only upon "any agent and/or consignee of any person, associa-tion, partnership, company or corporation engaged in selling x x soft drinks or carbonated drinks." And, pursuant to section 3-A, which was inserted by said Ordinance No. 122:

" x x - Definition of the Term Consignee or Agent. - For purposes of this Ordinance, a con-signee or agent shall mean any person, associa-tion, partnership, company or corporation who acts in the place of another by authority from him or one entrusted with the business of another or to whom is consigned or shipped no less than 1,000 cases of hard liquors or soft drinks every month for resale, either retail or wholesale."

As a consequence, merchants engaged in the sale of soft drinks or carbonated drinks, are not subject to the tax, unless they are agents and/or consignees of another dealer, who, in the very nature of things, must be one engaged in business out-side the City. Besides, the tax would not be applicable to such agent and/or consignee, if less than 1,000 cases of soft drinks are consigned or shipped to him every month. When we consider, also, that the tax "shall be based and computed from the cargo manifest or bill of lading x x showing the number of cases" - not sold - but "received" by the taxpayer, the intention to limit the application of the ordinance to soft drinks and carbonated drinks brought into the City from outside thereof becomes apparent. Viewed from this angle, the tax partakes of the nature of an import duty, which is beyond defendant's authority to impose by express provision of law.[4]

Even, however, if the burden in question were regarded as a tax on the sale of said beverages, it would still be invalid, as discriminatory, and hence, violative of the uniformity required by the Constitution and the law therefor, since only sales by "agents or consignees" of outside dealers would be subject to the tax. Sales by local dealers, not acting for or on behalf of other merchants, regardless of the volume of their sales, and even if the same exceeded those made by said agents or consignees of producers or merchants established outside the City of Butuan, would be exempt from the disputed tax.

It is true that the uniformity essential to the valid exercise of the power of taxation does not require identity or equality under all circumstances, or negate the authority to classify the objects of taxation.[5] The classification made in the exercise of this authority, to be valid, must, however, be reasonable[6] and this requirement is not deemed satisfied unless: (1) it is based upon substantial distinctions which make real differences; (2) these are germane to the purpose of the legislation or ordi-nance; (3) the classification applies, not only to present condi-tions, but, also, to future conditions substantially identical to those of the present; and (4) the classification applies equally all those who belong to the same class.[7]

These conditions are not fully met by the ordinance in question.[8] Indeed, if its purpose were merely to levy a burden upon the sale of soft drinks or carbonated beverages, there is no reason why sales thereof by dealers other than agents or con-signees of producers or merchants established outside the City of Butuan should be exempt from the tax.

WHEREFORE, the decision appealed from is hereby reversed, and another one shall be entered annulling Ordinance No. 110, as amended by Ordinance No. 122, and sentencing the City of Butuan to refund to plaintiff herein the amounts collected from and paid under protest by the latter, with interest thereon at the legal rate from the date of the promulgation of this deci-sion, in addition to the costs, and defendants herein are, ac-cordingly, restrained and prohibited permanently from enforcing said Ordinance, as amended.

**IT IS SO ORDERED.**

Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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[1] De Villata v. Stanley, 32 Phil. 541; City of Manila v. Inter-Island Gas Service, 99 Phil. 847, 854; Syjuco v. Municipality of Parañaque, G.R. No. L-11265, Nov. 27, 1959; City of Bacolod v. Gruet, G.R. No. L-18290, Jan. 31, 1963.

[2] U.S. v. Bull, 15 Phil. 7, 27; Kilbourn v. Thompson, 103 U.S. 168, 26 L. ed. 377.

[3] State v. City of Mankato, 136 N.W. 264; People v. Provinces, 34 Cal. 520; Stoutenburgh v. Hennick, 129 U.S. 141, 32 L. ed. 637.

[4] Section 2(i), Republic Act No. 2264; Panaligan v. City of Tacloban, G.R. No. L-9319, Sept. 27, 1957, 102 Phil. 1162-1163; East Asiatic Co. v. City of Davao, G.R. No. L-16253, August 21, 1962.

[5] Tan Tim Kee v. Court of Tax Appeals, G.R. No. L-18080, April 22, 1963; Nin Bay Mining Co. v. Municipality of Roxas, G.R. No. L-20125, July 20, 1965.

[6] Felwa v. Salas, G.R. No. L-26511, October 29, 1966; Aleja v. GSIS, G.R. No. L-18529, February 26, 1965; People v. Solon, G.R. No. L-14864, November 23, 1960; People v. Cayat, 68 Phil. 12; People v. Vera, 65 Phil. 56; Laurel v. Misa, 42 O.G. 2847.

[7] Commissioner of Int. Rev. v. Botelho Shipping Corp., G.R. No. L-21633-34, June 29, 1967; Ermita-Malate Hotel & Motel Operators Ass'n. v. City Mayor, G.R. No. L-24693, October 23, 1967; Rafael v. Embroidery & Apparel Control & Inspection Board, G.R. No. L-19978, September 29, 1967; Meralco v. Public Utilities Employees' Ass'n., 79 Phil. 409.

[8] Viray v. City of Caloocan, G.R. No. L-23118, July 26, 1967; PHILCONSA v. Gimenez, G.R. No. L-23326, December 18, 1965; Ormoc Sugar Co. v. Treasurer of Ormoc City, G.R. No. L-23794, February 17, 1968.

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