

**MUNICIPALITY OF OPON (NOW LAPU-LAPU CITY), ET AL.,
PETITIONERS, VS. CALTEX (PHILIPPINES) INC., RESPONDENT.***G.R. No. L-21853. February 26, 1968*

Ponente: SANCHEZ, J.

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Suit lodged in 1956 to recover P37,050.00 in municipal license taxes paid for the years 1950-1955. The Cebu court dismissed the complaint.[1] The Court of Appeals modified, allowed recovery of P27,900.00.[2] Petitioners - defendants below - came to this Court on appeal.

The facts, the Court of Appeals found, are: "Plaintiff-appellant Caltex (Philippines) Inc., is a domestic corporation engaged in the business of importing, distributing and selling gasoline, kerosene and other petroleum products. For the purpose of storing its imported petroleum products it has an establishment called 'Caltex Opon Terminal' located in the Municipality of Opon, Cebu. In addition, the said 'Caltex Opon Terminal' has a tin can factory whereby plaintiff-appellant manufactures 5-gallon tin cans for its use in the sale and distribution of its petroleum products. Pursuant, however, to a service agreement dated August 1, 1946 and entered into between plaintiff-appellant and Tide Water Associated Oil Company (hereinafter called Tidewater), plaintiff-appellant agreed to arrange, within its ability to do so, in drum and package factories owned and operated by it, to manufacture, supply and/or fill cans and drums for Tidewater, provided the latter reimburses herein plaintiff-appellant for all cost and expense caused thereby, plus three (3%) per cent of such cost and expense. From 1950 to 1955, plaintiff-appellant's tin can factory at its 'Caltex Opon Terminal' manufactured 8,037,775 tin cans, out of which 6,883,429 were used for the sale and distribution of its own products and 1,154,346 tin cans were delivered to Tidewater by virtue of the service agreement abovementioned. An annual breakdown of the foregoing figures is provided by Exhibit 'I' and plaintiff-appellant's brief, as follows:

Year

Used by Caltex

Delivered to Tidewater

Total Tins Manufactured

Percentage for Tidewater

1950

1,115,839

153,674

1,269,513

12.014%

1951

1,346,091

196,527

1,542,618

12.739%

1952

1,141,645

131,276

1,272,921

10.312%

1953

1,152,559

213,612

1,266,171

15.635%

1954

1,026,549

209,848

1,236,397

16.972%

1955

1,100,746

249,409

1,350,155

18.472%

6,883,429

1,154,346

8,037,775

14.361%

Ordinance No. 9, series of 1949, of defendant-appellee Municipality of Opon, Cebu, imposes a municipal license tax on in factory on the basis of its maximum annual output capacity, with a schedule of graduated rates. Pursuant to this ordinance, defendants-appellees levied and collected from plaintiff-appellant license taxes based on the production of the tin factory at its 'Caltex Opon Terminal' for the years 1950 to 1955 as follows:

Official

Receipt No.

Date

Amount

A-10495701

Jan. 20, 1950

P3,750.00**A-16556672**

Jan. 15, 1951

6,300.00

A-1453325

Jan. 15, 1952

7,700.00

A-7863313

Jan. 8, 1953

6,350.00

B-3044810

Jan. 15, 1954

6,800.00

B-9788189

Jan. 11, 1955

6,150.00

T o t a l-----

P37,050.00"

The gist of the decision of the Court of Appeals, speaking through Presiding Justice Jose P. Bengzon, now Associate Justice of this Court, is that respondent is entitled to recover P27,900.00 representing license taxes paid for the manufacture of tin cans used in the sale and distribution of its own products (P30,750 less P2,850, the amount paid in 1950, action as to which has prescribed); and that the sum of P6,300.00, collected as license taxes corresponding to the tin cans respondent produced for Tidewater was properly collectible.

1. Petitioners' line of argument is this: respondent company is liable for the entire output of the tin can factory because profit is the motivating factor in the manufacture thereof. Petitioners' view is that the tin cans, whether for its own use or for Tidewater upon the contract heretofore stated, are taxable. Reason therefor, so petitioners point out, is that the license tax is based on the maximum annual output capacity of the factory.

Ordinance No. 9 here involved is entitled "An Ordinance imposing a Municipal License Tax on Tin Factory on the Basis of its Maximum Annual Output Capacity." Section 1, in part, provides: "A municipal license tax on tin factory" is imposed upon "(a) Tin factory with a maximum output capacity of 30,000 tins --- P150.00."

Tersely put then, the issue is narrowed down to whether respondent tin can factory is taxable as a separate business of respondent. And this, because petitioners insist that even the tin cans manufactured for use by respondent itself should be subjected to municipal tax.

On this point, we are not hampered by lack of precedent. The reach of petitioner municipality's licensing power under this very same Ordinance No. 9 had already been the subject of a judicial test in *Standard Vacuum Oil Company vs. Antigua*,^[3] 96 Phil. 909, 913. The language there is expressive. We said that "when a person or company is already taxed on its main business, it may not be further taxed for doing some-thing or engaging in an activity or work which is merely a part of, incidental to and is necessary to its main business."^[4]

The *Standard Oil* case does not stand alone. In *City of Manila vs. Fortune Enterprises, Inc.*,^[5] this Court ruled that the business of auto supplies, battery charging and upholstery is part of the main business of automobile repairing and is, therefore, not taxable separately. Mr. Justice Jose B. L. Reyes, speaking for this Court, wrote down the following guidelines:

"x x x The foregoing ruling^[6] brings out the point that where something is done as a mere incident to, or as a necessary consequence of the principal business, it is not ordinarily taxed as an independent business in itself; and that what is usually taken as essential is the main activity in which the taxpayer is engaged. All the various transactions tending to better accomplish the principal end in view must be treated as merely incidental to the principal purpose of the business, in the absence of circumstances evidencing a different intent."

In the sale and distribution of its products in liquid form, respondent uses containers. The container is a part of the product sold. By maintaining its factory for tin cans, respondent is assured of continuous supply thereof. Therefore, the tin cans it manufactures for its own use are not within the coverage of petitioner municipality's taxing power under Ordinance No. 9.

Withal, the problem does not end here. The entire-output-of-factory argument advanced by petitioners needs further articulation. For, petitioners insist that respondent's factory also serves the needs of another entity - Tidewater. To be noted here is that of the tin cans produced for the period 1950-1955, 85.63% were used by respondent; 14.361% delivered to Tidewater. Jurisprudential support is not wanting for the decision of the Court of Appeals establishing a dividing line between the tin cans manufactured for respondent's own business and those for Tidewater.

In *Manila Press, Inc. vs. Sarmiento*, *supra*, this Court separately treated the quarterly license tax liability of

plaintiff therein thus: The papers, stationeries and office supplies on which customers' names were printed were held subject to the tax on the printing business because, for the printing jobs performed for its customers, "the principal service was that of a printer"; but the sales of papers, stationeries and office supplies "on which no printing work was performed," were con-sidered subject to the retail dealers' tax, for the taxpayer "merely acted as a retail dealer."

So it is, that in our case, the distinction made by the Court of Appeals is not without reason. For the tin cans produced for Tidewater, license tax was correctly assessed. But for those produced by respondent for its own use, no license tax is due, because the manufacture thereof is "incidental to" and tends "to better accomplish the principal end in view" - its main business.

2. The second assignment of error - that respondent's action to recover taxes paid for the years 1951 to 1953 has also prescribed - offers no novel question of law. A rule which has earned acceptance is that the period for prescription of action to recover municipal license taxes is six years under Article 1145 (2) of the Civil Code.[7] The two-year prescriptive period in Section 306 of the National Internal Revenue Code relied upon by petitioners finds no application. For, this codal provision, as we have said in one case,[8] "clearly refers exclusively to claims for refund of 'national internal revenue tax' erroneously or illegally collected" and not "to a refund of 'local or municipal license fees' illegally collected."

For the reasons given, the judgment under review is hereby affirmed.

No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Civil Case R-4473, Court of First Instance of Cebu, Branch II, entitled "Caltex (Philippines) Inc., Plaintiff, vs. M.D. Antigua, as Municipal Treasurer of Opon, Cebu, and The Municipality of Opon, Cebu, Defendants."

[2] CA-G.R. 27330-R.

[3] M.D. Antigua, Municipal Treasurer in the Standard Gil case is the same M.D. Antigua, who, as Municipal Treasurer, is one of the defendants in the courts below, and a petitioner here.

[4] Underscoring supplied.

[5] L-14096, July 26, 1960.

[6] Referring to the rule set out in *Manila Press, Inc. vs. Sarmiento*, 99 Phil. 31, 34-35. See also: *Ah Nam vs. City of Manila*, L-15502, October 25, 1960.

[7] *Gonzalo Puyat & Sons vs. City of Manila*, L-17447, April 30, 1963, where we held that the provisions of the Civil Code on solutio indebiti Articles 2154 and 2155 apply in case of payment of a tax imposed under a city ordinance thru error or mistake and allowed recovery of taxes paid six years prior to demand therefor. See: *Wise & Co., Inc. vs. City of Manila*, 101 Phil. 244, 247 and *Atkins Kroll & Co. vs. City of Manila*, 103 Phil. 520, 521, where this Court ruled that action for refund of meat inspection fees collected under a void city ordinance had not yet prescribed upon the provisions of the Civil Code, without however making a definite pronouncement which particular provision applies. See also: *Nazario & Sons vs. Central Bank*, L-15225, April 29, 1961 and *Belman Compania, Inc. vs. Central Bank*, L-15044, July 14, 1960, where this Court, in view of the six-year prescriptive

period provided in Article 1145 (2), held that the action for the refund a payments made for a foreign exchange tax had not yet prescribed.

[8] Santos vs. The Municipal Government of Caloocan, Rizal, L-15807, April 22, 1963; emphasis supplied. See also: Visayan Electric Co. vs. City of Dumaguete, 102 Phil. 566, 570.

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