

**DR. ESTEBAN MEDINA, DR. JOSE DE LA ROSA, ENRIQUE
SANTAMARIA AND BENGUET DEVELOPMENT CO., INC.,
PLAINTIFFS-APPELLANTS, VS. CITY OF BAGUIO,
DEFENDANT-APPELLEE.**

G.R. No. L-4060. November 28, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This concern the motion for reconsideration filed by the City of Baguio in which it seeks to modify the decision rendered in this case on August 29, 1952.

It is reiterated that Ordinance No. 100 is valid under the provisions of section 2553 (c), as amended by Republic Act No. 329, of the Revised Administrative Code, and that, granting arguendo that it is invalid, there is no point to order the City of Baguio to return the taxes paid under said ordinance to appellant Benguet Development Co., Inc., for he reason that said taxes, were not paid by said company but by the car owners who bought the gasoline and oil subject of the tax.

The first claim is not well taken. We already held that section 2553 (c), as amended by Republic Act No. 329, merely empowers the City of Baguio to impose a tax on business and not on the articles used therein. This is clear in said section and in the other authorities we cited in the main opinion. The case of *Eastern Theatrical Co., Inc., et al., v. Victor Alfonso, et al.*, 46 Off. Gaz., p. 303, can not be cited as a precedent in this case because the tax therein imposed by the city of Manila is amusement tax. This is not a specific tax but a tax on business. A municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. The intent to confer such power must be clear and manifest. Any doubt or ambiguity must be resolved against the corporation (*Joseph Icard v. City Council of Baguio and the City of Baguio*, G.R. No. L-1281, May 31, 1949).

The second claim is disputed. It involves question of fact. It does not appear in the record that the appellant corporation has collected the tax from the car owners as agent of the city of Baguio. Counsel for the city of Baguio sustains the affirmative and pleads that the ruling applied in the case of the theater-owners wherein it was declared that the tax should be returned to the persons from whom it was collected, should also guide the determination of this case. But counsel for the appellant corporation maintains the contrary and attempted to show that the tax was collected directly from and not from the car owners.

The view of the Court on this point is to leave it pending and remand the case to the lower court in order that it may be clarified with the presentation of the necessary evidence considering the precedent already set on this matter.

Wherefore, the Court holds in abeyance that portion of the decision relative to the return of the specific tax paid by the Benguet Development Co., Inc., pending determination of the question of fact pointed out above, and orders the remand of this case to the lower court for the presentation of the necessary evidence. After the

presentation of the evidence, the lower court may render judgment in line with the decision of this Court relative to the theater-owners. The decision of this Court is maintained in all other respects.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, and Labrador, JJ., concur.
Feria, and Reyes, JJ., did not take part.

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