

**WILLIAM LINES, INC., SWEET LINES, INC., CARLOS A. GO THONG
& CO., INC., AND GEORGE & PETER LINES, INC.,
PETITIONERS AND APPELLANTS, VS. THE CITY OF OZAMIS, CITY
MAYOR AND CITY T...**

G.R. NO. L-35048. April 23, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this petition for declaratory relief to annul an ordinance of respondent City of Ozamis,[1] the assertion was made that the imposition of a gross sales tax of one and one-half percent (1-1/2%) on the gross freight and fares of the cargo and passengers shipped or transported from Ozamis City collectible on owners, operators or agents of shipping companies with shipping offices or shipping agencies therein is tainted by legal and constitutional infirmity. The lower court decided adversely against petitioners, upholding its validity. Hence this appeal by certiorari with such a plea being reiterated with an even greater insistence. It is unavailing. There is, in the present Constitution, support for such an ordinance and renders futile any attempt at its nullification. We sustain the order of dismissal by the lower court.

It is undisputed that on March 18, 1971, the Municipal Board of the City of Ozamis approved Ordinance No. 604, Series of 1971. Its first section is worded thus: "All shipping agencies or offices or shipping agents with offices established in the City of Ozamis and transacting business in the City are hereby required to pay license fee therefore at the rate of Fifty (P50.00) Pesos per quarter and a yearly Mayor's permit fee of Forty (P40.00) Pesos." [2] It seems quite obvious that there is no infringement of any statutory or constitutional provision. Its second section is worded thus: "There is also hereby imposed upon owners, operators or agents of shipping companies with shipping offices or shipping agencies established in the City of Ozamis and transacting business in the city, a gross sales tax of 1-1/2 per centum of the gross freight and fares of the cargo and passengers shipped or transported out from Ozamis City by any of their vessels, ships or boats plying between Ozamis City and other ports, payable quarterly to the City Treasurer of Ozamis; [Provided], that 50% of the proceeds of the tax collections hereof shall be specifically allocated as City's aid for the barrio high schools in the City of Ozamis." [3] This is the questioned provision. The other sections deal with the five percent (5%) surcharge, [4] the repealing clause, [5] and the penal sanction. [6] In the decision of the lower court upholding its validity, reliance is had on the Local Autonomy Act, [7] with stress being laid on the fact that the tax levied in Section 2 "is for public purposes, just and uniform." [8]

The petition for declaratory relief was thus dismissed in its decision of October 14, 1971. As was made clear at the outset, this appeal by certiorari is to be disposed of similarly.

1. There is this categorical statement in the petition that the aforesaid Ordinance No. 604 of the City of Ozamis "is illegal, unconstitutional and null and void... * * *." [9] In raising the constitutional issue, petitioners undoubtedly are relying on the plenary legislative power being possessed by the then Congress of the Philippines subject to its

devolution over matters of municipal, provincial, or city concern to local governments. It is one of the exceptions to the fundamental principle of non-delegation.[10] It would follow then that the authority vested in such unit is limited to the terms of the grant. It is the contention of petitioners that under the Local Autonomy Act as amended,[11] the validity of the gross sales tax may be assailed. To so argue is to lose sight of what is ordained in the present Constitution. There is this declaration of principle: "The State shall guarantee and promote the autonomy of local government units, especially the barrio, to ensure their fullest development as self-reliant communities." [12] Even more explicit is this provision on the article on local government: "Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such limitations as may be provided by law." [13] In the Local Tax Code,[14] in line with the constitutional policy of according the widest possible autonomy on local governments even as to the power to tax, the absence of any restriction to its conceded competence to impose a revenue measure of this character is quite manifest. It would appear therefore that the Constitution, far from lending support to petitioners, precisely favors the stand of the respondent City of Ozamis. In *De Chavez vs. Zobel* [15] a decision promulgated last January, this Court was quite categorical in its view that it cannot "set at naught an express mandate of the Constitution." [16] The opinion continues: "Once it has spoken, our duty is clear; obedience is unavoidable." [17] So again, in the face of an explicit provision empowering a local government unit to create its own sources of revenue and to levy taxes, without any limitation to be found in the applicable Presidential decree, the plea of unconstitutionality cannot be sustained.

2. This is not to say that without the invocation of the present Constitution, the lower court decision dismissing this petition for declaratory relief would be susceptible to the charge of nonconformity with what the law then prescribed. The cases cited in the petition to cast doubt on the competence of the City of Ozamis to enact the challenged ordinance speak the language of a bygone era. [18] To quote from that eminent jurist, Claro M. Recto: "But as the saying goes, heretofore much water has passed under the bridge." [19] With the enactment of Republic Act No. 2264, this Court, in line with the policy set forth therein, has accorded the widest latitude to the efforts of municipal corporations to meet the ever-increasing need for revenues with the appropriate taxing ordinances. [20] Perhaps petitioners, being sufficiently aware that a general objection premised on alleged unconstitutionality or ultra vires is not likely to carry weight, would stigmatize the questioned provision as being an export tax. Reference to *Procter and Gamble Trading Company vs. Municipality of Medina* [21] suffices to demonstrate its lack of persuasive character. Thus: "Nor are appellants anymore successful in resisting its operation by the allegation in the second assignment of error that what is therein imposed is an export tax expressly prohibited by law. The decisive case, *Ormoc Sugarcane Planters Association, Inc. vs. Municipal Board of Ormoc City*, the opinion being penned by Justice Makalintal, leaves no doubt that only where there is a clear showing that what is being taxed is an export to any foreign country would the amendatory provision of Republic Act No. 2264, prohibiting it come into play. The ordinance in question is not susceptible to such a reproach." [22] The contention that it is a tax on public utilities is beside the point, not only for the reasons set forth in the comment of Solicitor General Estelito Mendoza sustaining the validity of the ordinance, but also in view of the constitutional provisions above referred to as implemented by the applicable Presidential Decree.

WHEREFORE, the decision of the lower court dated October 14, 1971 dismissing this petition for declaratory relief and upholding the validity of Ordinance No. 604 of respondent City of Ozamis is hereby affirmed. Costs against petitioners.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Along with the City of Ozamis, its City Mayor and City Treasurer are named respondents. The petitioners,

William Lines, Inc., Sweet Lines, Inc., Carlos A. Go Thong, & Co., Inc., and George, & Peter Lines, Inc., are private corporations operating shipping lines.

[2] Annex A of Petition, 2.

[3] Ibid.

[4] Ibid, Section 3.

[5] Ibid, Section 4.

[6] Ibid, Section 5. The penalty imposed is a fine of not more than P200.00 or imprisonment of not exceeding six months or both such fine and imprisonment at the discretion of the court. The manager as well as the managing partner of a partnership, corporation or association is likewise made criminally liable.

[7] Republic Act No. 2264 (1959).

[8] Decision, Annex C of Petition, 3.

[9] Petition, 3.

[10] Cf. *People vs. Vera*, 65 Phil. 56 (1937).

[11] Republic Act No. 2264 (1959), as amended by Republic Act No. 4497 (1965).

[12] Article II, Section 10 of the Constitution.

[13] Article XI, Section 5 of the Constitution.

[14] Presidential Decree No 231 dated June 28, 1973.

[15] G.R. No. L-28609, January 17, 1974.

[16] Ibid. 6.

[17] Ibid.

[18] Cf. *Icard vs. The City Council of Baguio*, 83 Phil. 870 (1949); *De la Rosa vs. City of Baguio*, 91 Phil. 720 (1952); *Vega vs. Municipal Board of the City of Iloilo*, 94 Phil. 949 (1954); *Wee Wa Yu vs. City of Lipa*, 90 Phil. 975 (1956).

[19] *People vs. Abad Lopez*, 63 Phil 835, 840 (1936), Recto, J., diss.

[20] Cf. *Hodges vs. Municipal Board of the City of Iloilo*, G.R. No. L-18129, Jan. 31, 1963, 7 SCRA 143; *City of Bacolod vs. Gruel*, G.R. No. L-18290, Jan. 31. 1963, 7 SCRA 163; *Nin Bay Mining Co. vs. Municipality of Roxas*, G.R. No. L-20125, July 20, 1965, 14 SCRA 660; *Hodges vs. Municipal Board of the City of Iloilo*, G.R. No. L-18276 Jan. 12, 1967, 19 SCRA 28; *Ormoc Sugar Co., Inc. vs. Municipal Board of Ormoc*, G.R. No. L-24322, July 21, 1967, 20 SCRA 739; *National Waterworks and Sewerage Authority vs. Dator* G.R. No. L-21911, Sept. 29, 1967, 21 SCRA 355; *City of Naga vs. Court of Appeals*, L-24954, Aug. 14. 1968, 21 SCRA 594; *Villanueva vs City of Iloilo*, G.R. No. G.R. No. L-26521, Dec. 28, 1968, 26 SCRA 578; *Serafica vs. Treasurer of Ormoc City*, G.R. No. L-24813, April 28, 1969, 27 SCRA 1108; *Procter and Gamble Trading Co. vs. Municipality of Medina*, G.R. No. L-29125, Jan. 31, 1972, 43 SCRA 130; *Chamber of Filipino Retailers, Inc. vs. Villegas*. G.R. No. L-29819, April 14, 1972, 44 SCRA 405; *Tatel vs. Municipality of G.R. No. L-29159* Nov. 24, 1972, 48 SCRA 79.

[21] G.R. No. L-29125, January 31, 1972, 43 SCRA 130.

[22] Ibid, 135.

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