

EAST ASIATIC CO., LTD., PLAINTIFF AND APPELLEE, VS. CITY OF DAVAO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-16253. August 21, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

On 3 November 1958 in the Court of First Instance of Manila the East Asiatic Co., Ltd. brought an action against the City of Davao and Victor Clapano (civil case No. 38389) to recover export taxes paid by it to the defendant City amounting to P41,720.51 from 18 May 1949 to 12 December 1952, pursuant to Ordinance No. 78 passed on 28 December 1948 and Ordinance No. 13 passed on 17 January 1951 by the City Council of Davao, lawful interest from the date of collection, attorney's fees, legal expenses, moral and exemplary damages and costs, on the ground that such tax is illegal, as held by the Secretary of Justice in an opinion rendered by him on 26 November 1954 (Opinion No. 321, series of 1954), and alleged that a refund of such tax had been made to other taxpayers similarly situated as the plaintiff. The other defendant, a member of the City Council of Davao, is joined to make him jointly and severally liable for the sums sought to be recovered from the City because of his vote that denied the refund of the tax to the plaintiff despite his favorable vote on the refund of the same tax to other taxpayers similarly situated as the plaintiff.

In motions to dismiss the complaint and answers after the motions had been denied, both defendants set up the defense that (1) the ordinances under which the tax had been collected and paid have not judicially been declared illegal; (2) the tax had not been paid under protest; and (3) the right or cause of action to demand or claim for a refund thereof is barred by the statute of limitations. Defendant Victor Clapano denies that he violated articles 21, 27 and 32 of the new Civil Code.

After hearing, the trial court rendered judgment—

* * * in favor of the plaintiff, the East Asiatic Co., against the defendants, ordering the City of Davao to pay plaintiff, East Asiatic Co., the amount of P41,720.51 with legal interest from the time when each of these payments were (was) made as shown by Exhibits D-1 to D-29 until complete refund thereof, plus attorney's fees in the amount of P10,000.00, moral damages in the amount of P30,000.00 and exemplary damages in the amount of P30,000.00; and finding defendant Victor Clapano to be jointly and severally liable with the City of Davao insofar as the interest, attorney's fees and moral and exemplary damages awarded herewith are concerned.

With costs against the defendants. Both defendants have appealed.

There is no dispute that a total sum of P41,720.51, the refund of which is sought, was collected by the defendant City of Davao from the plaintiff during the period above stated. The appellants contend that nowhere in the complaint is there an allegation and prayer that the ordinances under which the tax was collected and paid be held and declared illegal. The action brought by the plaintiff for the refund of the tax is predicated upon the illegality of the ordinances imposing the tax, as held by the Secretary of Justice in his opinion above referred to, so that, if

the plaintiff is entitled to his prayer for the refund of the sums paid by it under the ordinances that imposed the tax, it must be on the ground that the ordinances imposing the tax, are void, in restraint of trade, ultra vires and illegal. A judicial declaration or pronouncement that the tax is ultra vires and unlawful would be the reason or ground for a judicial order to make the refund of such illegally collected and paid tax. As correctly held by the trial court is ultra vires, unauthorized and illegal, because the charter of the defendant City does not authorize or empower it to impose such tax and it is expressly prohibited by section 2287 of the Revised Administrative Code which partly provides that—

It shall not be in the power of the municipal council to impose a tax in any form whatever upon goods and merchandise carried into the municipality, or out of the same, and any attempt to impose an import or export tax upon such goods in the guise of an unreasonable charge for wharfage, use of bridges or otherwise, shall be void.

The fact that the ordinances under which the tax had been collected and paid were later repealed by Ordinance No. 132 adopted by the City Council of Davao on 24 December 1954 (Exhibit 2) does not relieve the Court from pronouncing that the ordinances were unauthorized and illegal, a holding that must precede an order for the refund of such illegally collected and paid taxes.

The appellants argue that the sum the refund of which is sought by the appellee was not paid under protest and hence is not refundable. Again, the trial court correctly held that being unauthorized it is not a tax assessed under the charter of the appellant City of Davao and for that reason no protest is necessary for a claim or demand for its refund.[1] The trial court further held that the payment of the tax was not made voluntarily, for aside from the surcharge of 20% it imposed for non-payment thereof (section 4 of the ordinances), the business of the appellee would be stopped as it could no longer engage in the business of buying and/or selling copra, ramie and/or hemp without paying the tax.

On the point of prescription raised by the appellants the holding by the trial court is in accord with law. It held—

* * * Under Article 1149 of the Civil Code, the prescriptive period of these claims is five years which, under Article 1155, is interrupted by written extrajudicial demand. Naturally, the Civil Code only refers to causes of action available after August 30, 1950. Prior to this date, Section 44 of the Code of Civil Procedure which then governed prescription provided for a prescriptive period of ten years. In this case, the payments were made by the East Asiatic Co. from 1949 to 1952. In other words, insofar as the payments made before the enactment of the Civil Code is (are) concerned, the prescriptive period had not expired when the present action was filed on November 6, 1958. Insofar as payments made after the effectivity of the Civil Code of the Philippines were concerned, the prescriptive period was interrupted by the written demand made on the treasurer of the City of Davao on March 30, 1955. In other words, the entire claim is well within the legal prescriptive period. * * *

As to the liability of the appellant Victor Clapano this Court is of the opinion and so holds that, in view of the belief entertained by some of the city officials that the tax was not an export tax but just a license fee "on the business of buying and/or selling of copra, ramie and/or hemp and for other purposes," or an "imposition of storage fees on copra and hemp stored then exported and not an export tax," and of the fact that the refund of the tax authorized by Resolution No. 610 adopted by the City Council of Davao on 18 October 1957 (Exhibit N or 5) was that collected from and paid by other taxpayers from July to December 1954; that "refund of the balance of the taxes paid by the exporters during the current fiscal year, subject to the availability of funds;" "that refund of the rest of the claims of the exporters for the amount as shall be decided by the court shall be made under the tax credit system" (Resolution No. 851 adopted on 29 December 1954); and that at the time of the deliberation by the City Council of Davao on the plaintiff's claim there was no available fund for the purpose or to make the refund, his liability would be predicated on a doubtful ground. And if Resolution No. 720 adopted by the City Council of

Davao on 5 December 1958, which in part states—

Whereas, by virtue of the "Municipal Tax Ordinance" (Ordinance No. 78, series of 1948 and Ordinance No. 13, series of 1951), the City of Davao, had collected from several exporters doing business in this City the total sum of P1,152,874.55 which were paid not under protest, except the amount of P20,000.00.

Whereas, by virtue of Resolution No. 851, series of 1954, the City of Davao is making a refund of the said amount;

Whereas, said Ordinance was premised on an opinion of the Honorable Secretary of Justice declaring Sections 2, 3, and 4, of said Ordinance as ultra vires, hence null and void;

Whereas, the foregoing opinion was never appealed to nor brought before the Courts of Justice;

Whereas, in an unpublished decision in the case of Visayan Electric Company, S.A., Plaintiff-Appellant, versus City of Dumaguete, et al., Defendants-Appellees, the Supreme Court held that taxes paid not under protest is (are) not refundable;

Whereas, the taxes in question, even granting that the ordinances under which they were collected are null and void are not refundable in view of the above-mentioned Supreme Court decision;

Whereas, there has been no clear and categorical authority granted to the City Treasurer to make the refund of said taxes except those paid under protest.

BE IT RESOLVED, AS IT IS HEREBY RESOLVED, That the City Treasurer immediately stops or discontinues the refund;

AND BE IT FURTHER RESOLVED, That the City Attorney be requested to immediately take legal steps to recover the sum of P475,436.89 already refunded; (Exhibit Q or 6),

be taken into consideration the legality of the ground upon which the liability of appellant Victor Clapano is to be predicated would be still more doubtful.

The judgment appealed from is modified by dismissing the complaint against the appellant Victor Clapano and ordering the appellant City of Davao to pay the appellee East Asiatic Co., Ltd. the sum of P41,720.51, lawful interest thereon from the dates of payments made, as shown in Exhibits D-1 to D-29, until complete refund thereof^[1] and the further sum of P5,000 as attorney's fees, and costs. No amount of moral and exemplary damages are awarded to the appellee.

Bengzon, C. J. Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Medina et al. vs. City of Baguio, 91 Phil., 854; 48 Off. Gaz., [11] 4769.

[1] Carcar Electric & Ice Plant Co., Inc. vs. Collector of Internal Revenue, (100 Phil., 55).

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