

**RAYMIINDO B. TAN, JOSE ESGUERKA, ROMAN ABASTILLAS,  
ANTONIO QOEBRADO, ROMAN AGNES, ELISEO AMANDY, NICOLAS  
SOTOMAYOR, INESTORIO TORRENUEVA AND FELIPE TIOSAN,  
PLAINTIFFS AND APPELL...**

*G.R. No. L-14264. April 30, 1963*

Ponente: PAREDES, J.

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**PAREDES, J.:**

Defendant municipal corporation was the owner and operator of a wharf (Exhs. E & F). On May 31, 1956, the municipal council of defendant municipality enacted Ordinance No. 11, series of 1956, imposing certain charges and/or fees on articles or merchandises landed upon, or loaded from the said wharf and on the strip of shoreline adjacent thereto, measuring 300 meters. The plaintiffs, who were fishermen, merchants and proprietors of Padre Burgos, Quezon, had to pass Pagbilao in order to bring their goods consisting of fish, charcoal, copra, firewood and other merchandise to Lucena. The merchandise were transported in bancas or motor boats from Padre Burgos and unloaded on the Pagbilao wharf or on the shoreline, from where they were brought to Lucena by trucks.

Pursuant to the Ordinance, defendant municipality required plaintiffs to pay the charges and fees, which they did under protest. On January 7, 1957, alleging that the Ordinance was ultra vires, in that the fees prescribed therein, partake of the nature of import or export taxes, in the guise of wharfage or rental fees, the plaintiffs instituted an action, with the CFI of Quezon Province, praying:

- (1) That the said Municipal Ordinance be declared null and void and of no legal effect; and
- (2) Ordering the defendants, jointly and severally, to pay the plaintiffs the sum of P1,800.00 for fees collected and paid under protest.

Defendants answering the complaint, interposed the following special defenses:

- 1) that ;the fees collected at the wharf are intended for and actually being exclusively utilized in the repair, improvement, and maintenance of the same;
- 2) that the municipality has made material and additional constructions to date, and if the revenues raised from these fees are sufficient, the wharf is intended to be lengthened along the 300 meters distance by the river;
- 3) the presence, day and night, of a municipal employee or of a policeman at the wharf, has resulted in the .prevailing peace, order, and security of cargoes, vessels, and of the operators therein;
- 4) the municipality also maintains a 300 candle-power kerosene lantern at the wharf.

As counterclaim, defendants asked the payment of P6.00, for twelve truckloads of full-length bamboos, loaded on a vessel at the wharf for which no payment had been made, in spite of repeated demands. The court a quo rendered the following judgment:

\* \* \* \* \*

"In the light of the foregoing, the Court is therefore of the opinion that Ordinance No. 11, series of 1956, of

defendant Municipality of Pagibilao, Quezon, is null and void for having been enacted without lawful authority. \* \* \*.

\* \* \* \* \*

"WHEREFORE, judgment is hereby rendered ordering defendant municipality of Pagibilao, Quezon, to pay to plaintiff Raymundo B. Tan the amount of P774.25, with, legal interest thereon from the filing of the complaint, that is, from 4 February 1957, and dismissing defendants' counter of aim against plaintiffs, with the parties bearing their own costs."

The above judgment is now before us on appeal by the defendants, urging a reversal thereof on seven counts, which converge on the following legal, issues:

- 1) whether the defendant municipality can validly enact the ordinance in question and collect the charges contained therein; and
- 2) whether plaintiff Tan is entitled to a refund of the fees paid to the defendant municipality.

Appellants contend that aside from the general power of the council to enact ordinances and make regulations (Sec. 2238 of the Administrative Code), certain provisions of said Code authorizes a municipality to establish a wharf and collect wharfage fees, as compensation for its use, to wit—

"Sec. 2242. Certain legislative powers of mandatory character.— It shall be the duty of the municipal council, conformably with law:

\* \* \* \* \*

(c) To regulate the construction, care, and use of streets, sidewalks,, canals, wharves and piers of the municipality, and prevent 3ind remove obstacles and encroachment on the same.

SEC. 2318. Municipal fernes, wharves, markets, etc.—A municipal council shall have authority to acquire or establish municipal ferries, wharves, markets, slaughterhouses, pounds, and cemeteries. Public utilities thus owned by the municipality may, be conducted by the municipal authorities upon stipulated return to private parties.

SEC. 2320. Establishment of certain public utilities by private parties under license.—Where provision is not made by a municipal council, pursuant to the provisions of the next two preceding sections hereof, for maintaining or conducting ferries, wharves, markets, or slaughterhouses requisite for the needs of the municipality, the council shall have authority, in its discretion, to let the privilege of establishing arid maintaining such utilities to private parties by license granted upon, such terms, as shall be fixed by the council. \* \* \*."

Aside from the above provisions, 255, dated April 1, 1940., states:

"(6) Collection of berthing fees at municipal ports,—Municipalities may collect berthing fees at municipal ports, pursuant to the provisions of section two thousand, three hundred eighteen (2313) of the Revised Administrative Code, not to exceed those specified in paragraph (3) hereof, provided that such collection shall be credited to a special fund and used only' for the maintenance and improvement of the port at which the collections are made."

Appellants further contended that the wharfage fees which section 3(t), of Commonwealth Act. No. 472, prohibits a' municipality from collecting, are customs charges levied in connection with the exportation or importation of goods abroad, through ports of entry as contemplated in the Tariff and Customs Code,' but not the ordinary wharfage rentals which a municipality may collect for the use of its wharf, in relation to local trade and local products.

On the other hand, the appellees maintain that the appellant municipality was devoid of right to pass the ordinance in question, since the Revised Administrative Code also prohibits the imposition of tax on any goods or merchandise carried into or out of the municipality. Section 2287 thereof, provides;

"SEC. 2287. Fundamental principles governing municipal taxation.—\*\* It shall not be in the power of the 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."

Moreover, any power granted by the Administrative Code to municipalities had been impliedly repealed or withdrawn by Commonwealth Act No. 472, the pertinent portions of which read.—

"SEC 3. It shall be beyond the power of the municipal council and municipal district council to impose the following taxes, charges and fees:

Customs duties, registration, wharfage, tonnage and other kind" of customs fees, charges and duties."

In the light of the legal provisions applicable, We are of the opinion, that the ordinance in question, is ultra vires, and hence, null and void. The ordinance calls for a specific tax. It charges a specific sum, ranging from one centavo and up, by the head or number, and requires no assessment beyond a listing and classification of the objects to be charged.

"A tax which imposes a specific sum by the head or number, or some standard weight or measurement, and which requires no assessment beyond a listing and classification of the objects to be taxed is specific tax." (We Wa Yu vs. City of Lipa, 99 Phil., 975.)

Aside from being a specific tax, its nature as wharfage fee is also clear from the import of the ordinance, specifically paragraph 1, which recites—

"PANGKAT 1:—Ang lahat na mayari o tagapangasiwa ng liiga sasakyan sa pantalang bayan, ay dapat maghigayalam sa kinauukulan katiwala ng pamahalaan, upang maisauyos ang pagdaun, pagbaba at pagsakay ng mga kargamentos at iba pa."

The phraseology of the above paragraph points to the fact that the charges collected pursuant thereto, correspond to the words "berthing, unloading and loading of cargoes or merchandise" which fall under the category of wharfage fees. The change or the designation of the said fees as "rental of municipal property" did not change their basic character as "wharfage fees". Being a specific tax, the municipality has no right to impose the same, for taxation is an attribute of sovereignty which municipal corporation do not enjoy (Santo Lumber Co., et al. vs. City of Cebu, et al., 102 Phil. 870; 54 Off. Gaz., 5327; Saldana vs. City of Hollo, 104 Phil., 28.) It shall not be in the power of the 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 such tax in the guise of wharfage fee or charge is void (Sec. 228, Rev. Adm. Code). And being wharfage fee (Phil. Sugar Central vs. Coll. of Customs, 51 Phil. 131), it is likewise beyond the power of the municipal council and municipal district council to impose (Sec. 3, Coram. Act No. 472, supra). .

In the case at bar, aside from the fact that the right of the municipality to collect wharfage fees is doubtful for, at most, its claim is based merely by inference, implications and deductions; which have no place in the interpretation of the power to tax of a municipal corporation (Icard vs. City Council of Baguio, et al., 83 Phil., 870; 46 Off. Gaz., Suppl. No. 11, p. 320; Medina, et al. vs. City of Baguio, 91 Phil., 720; 48 Off. Gaz., 11, p. 4729) no less than two Secretaries of the Department of Justice, (Secretaries Jose Abad Santos and Bengzon) expressed the opinion that, "in view of section 3, paragraph (t), Commonwealth Act No. 472, which expressly

forbids municipalities from imposing wharfage fees, a municipal ordinance levying wharfage or berthing fees illegal and void,' (Opinion No. 373, series of 1940 and No. 165, series of 1951). Opinions and rulings of officials of the government called upon to execute or implement administrative laws, command such respect and weight (Regaladb vs. Yulo, 61 Phil. 173; Grapilon vs. Mun. council of Carigara, L-12347, May 30, 1961).

It should be noted that previous to the ordinance in question (No. 11), ordinance No. 9 was enacted by the same municipal council, providing for "wharfage fees" for goods and merchandise only. But because the Provincial Board ruled the same to be null and void, because the prescribed fees were unreasonable and were obviously export or import taxes in the guise of wharfage fees which are contrary to the provisions of section 2287 of the Administrative Code, the municipal council of Pagbilao enacted Ordinance No. 11, providing for the wharfage of boats and vessels and of goods and merchandise; and while it fixed the fees or charges for loading and unloading goods and merchandise, it did not state the berthing fees for boats and vessels carrying the goods all of which go to show that the council wanted only to impose specific tax on the goods and merchandise, which was the same objective it had, when annulled Ordinance No. 9 was promulgated.

The question as to whether or not the charges paid should be returned, must be answered in the affirmative. Not only were the payments made under protest, but they were also collected under an invalid ordinance. In a number of cases, We have ruled that monies collected under invalid acts or tax laws are refundable, even if the payments were voluntary (East Asiatic Co. Ltd. vs. City of Davao, L-16253, Aug. 21, 1962).

It is insinuated that invalidating the ordinance would leave the municipality with no means to defray the expenses for operation, repair and maintenance of the wharf in question. It would seem, however, that the municipality will not be absolutely helpless and hopeless, for there is always some remedy somewhere, and those indicated in sections 2318 and 2320 of the Adm. Code, (supra) may be availed of.

In view of all the foregoing, we find that the decision appealed from is in conformity with the law and jurisprudence on the matter. The same should be, as it is hereby affirmed, in all respects. No costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Dizon, and Regala JJ., concur.  
Makalintal, J.: concurs in the result.

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