

ZAMBOANGA COPRA PROCUREMENT CORPORATION, PLAINTIFF AND APPELLEE, VS. CITY OF ZAMBOANGA, DEFENDANT AND APPELLANT.

G.R. No. L-14806. July 30, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

The Zamboanga court of first instance, upon the complaint of Zamboanga Copra Procurement Corporation, annulled Ordinance No. 840, Series of 1950 of the City of Zamboanga, and ordered said City to pay the plaintiff Corporation the amount of P22,033.44 with legal interest plus costs. In addition, the City was required to pay P5,000.00 as attorneys' fees and P500.00 as expenses of litigation.

There is no question that Zamboanga Copra Procurement Corporation paid under protest, to the Treasurer of Zamboanga City the sum of P22,033.44 by virtue of the Ordinance hereinabove mentioned imposing upon copra dealers a tax of eight centavos per one hundred kilos of copra exported abroad.

The Corporation's contention that the City had no power to impose such taxes was upheld by the court, notwithstanding the City's assertion of power under sec. 14, paragraph (m) of Commonwealth Act No. 39 as amended, which for convenience, is quoted herewith:

"(m) To tax, fix the license fee for * * * the storage and sale of gun-powder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglycerine, petroleum, or any of the products thereof, and all other highly combustible or explosive materials, and other establishments likely to endanger the public safety or give rise to conflagrations or explosions. * * *"

Under a similar provision of the Cebu Charter, the appellant points out, this Court held^[1] the City of Cebu had power to impose a license fee or tax on persons engaged in the business of buying and selling and storing copra in a warehouse. Wherefore, appellant concludes, this ordinance should be upheld under the same view that copra, although not specifically mentioned in the above section, is included in the words "oil * * * or any products thereof, etc. etc."

We believe, however, that the Zamboanga ordinance may not be classed with the Cebu ordinance. The former imposed a tax on copra exported from the city whereas the latter imposed taxes on copra stored in the municipality. On the other hand, we think the issue is controlled by our pronouncements in *Saldaña vs. City of Iloilo*^[2] and *Panaligan vs. City of Tacloban*, L-9319, September 27, 1957. In the first, we annulled, as ultra vires, the ordinance of Iloilo City imposing fees on all animals, fish and fruit taken out of the City. We said the ordinance was not only unauthorized by the section in the City Charter in all material respects similar to the provision herein invoked by appellant, but was expressly prohibited by section 2287 of the Revised Administrative Code providing a general rule of taxation for municipal corporations:

"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."

In the second, we annulled an ordinance of Tacloban City levying inspection fees (in realty taxes) upon animals exported or taken away from the City.

In line with these two decisions, we must hold, and we hereby hold, the ordinance in question to be invalid. It was proper, therefore, to direct repayment of the amounts collected thereunder. But appellee may not recover all he paid—P27,497.67 instead of P22,034.44— because it has not appealed from the decision.

As to the amount of attorney's fees, we think P2,500.00 should be sufficient.

Wherefore, with this modification, the appealed decision is affirmed. No costs.

Paras, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur. Padilla, J., took no part.

[1] Uy Matiao vs. City of Cebu, 93 Phil., 300; 49 Off. Gaz., 1797. [2] 104 Phil., 28; 55 Off. Gaz., 10267.

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