

VICTORIAS MILLING CO., INC PLAINTIFF-APPELLANT VS. THE MUNICIPALITY OF VICTORIAS, PROVINCE OF NEGROS OCCIDENTAL, DEFENDANT-APPELLANT,

G.R. No. L-21183. September 27, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

This case calls into question the validity of Ordinance No.1, series of 1956, of the Municipality of Victorias, Negros Occidental.

The disputed ordinance was approved by the, municipal council of Victorias on September 22, 1956 by way of an amendment to two municipal ordinances separately imposing license taxes on operators of sugar centrals[1] and sugar refineries.[2] The changes were: with respect to sugar centrals, by increasing the rates of license taxes; and as to sugar refineries, by increasing the rates of license taxes as well as the range of graduated schedule of annual output capacity.

Ordinance No. 1[3] is labeled "An Ordinance Amending Ordinance No. 25, Series of 1953 and Ordinance No. 18, Series of 1947 on Sugar Central by Increasing the Rates on Sugar Refinery Mill by Increasing the Range of Graduated Schedule on Capacity Annual Output Respectively". It was, as the ordinance itself states, enacted pursuant to the taxing power conferred by Com-monwealth Act 472. By Section 1 of the Ordinance; "Any person, corporation or other forms of Companies, operating Sugar Central or engage[d] in the Manufacture of centrifugal sugar shall be required to pay the following annual municipal license tax, payable quarterly, to wit: x x x". Section 1 referred to prescribes a wide" range of schedule. It starts with a sugar central with mill having an annual output capacity of not less than 50,000 piculs of centri-fugal sugar, in which case an annual municipal license tax of P1,000.00 is provided. Depending upon the annual output capacity the schedule of taxes continues with P2, 000.00 progressively upward in twelve other grades until an output capacity of 1,500,001 piculs or more shall have been reached. For this, the annual tax is P40, 000.00. The tax on sugar refineries is likewise calibrated with similar rates, starts with P1,000.00 for a refinery with mill having an annual' output capacity of not less than 25,000 bags of 100 lbs. of refined sugar. Then, it continues with the second bracket of from 25,001 bags to 75,000 bags of 100 lbs. Here, the municipal license tax is P1,500.00. Then follow the other rates in the graduated scale with the ceiling placed at a capacity of 1,750,001 bags or more. The annual municipal license tax for the last mentioned output capacity is P40,000.00.

Of importance arc the provisions of Section 1(m) relating to sugar centrals and Section 2(m) covering sugar refineries with specific reference to the maximum annual license tax, viz:

"SECTION No. 1 - Any person, corporation or other forms of Companies, operating Sugar Central or engage[d] in the manufacture of centrifugal sugar shall be required to pay the following annual municipal license tax, payable quarterly, to wit:

x x x

(m) Sugar Central with mill having a capacity of producing an annual output of from 1,500,001 piculs or more shall be required to pay an annual municipal license tax of..... P 40,000.00.

SECTION No. 2. - Any person, corporation or 'other forms of Companies, shall be required to pay an annual municipal license tax for the operation of Sugar Refinery Mill at the following rates:

x x x

(m) Sugar Refinery with mill having a capacity of producing an annual output of from 1,750,001 bags of 100 lbs. or more shall be required to pay an annual municipal license tax of P40, 000. 00"

For, the production of plaintiff Victorias Milling Co., Inc. in both its sugar central and its sugar refinery located in the Municipality of Victorias comes within these items in the schedule.

Plaintiff filed suit below[4] to ask for judgment declaring Ordinance No. 1, series of 1956, null and void; ordering the refund of all license taxes paid and to be paid under protest; directing the officials of Victorias and the Province of Negros Occidental to observe, during the pendency of the action, the provisions of section 357 of the Revised Manual of Instructions to Treasurers of Provinces, Cities and Municipalities, 1954 edition,[5] regarding the treatment of license taxes paid under protest by virtue of a disputed ordinance; and other reliefs.[6]

The reasons put forth by plaintiff are that: (a) the ordinance exceeds the amounts fixed in Provincial Circular 12-A issued by the Finance Department on February 27, 1940; (b) it is discriminatory since it singles out plaintiff which is the only operator of a sugar central and a sugar refinery within the jurisdiction of defendant municipality; (c) it constitutes double taxation; and (d) the national government has pre-empted the field of taxation with respect to sugar centrals or refineries.

Upon the complaint as supplemented and amended, and the answer thereto, and following hearing on the merits, the trial court rendered its judgment. After declaring that "[t]here is no doubt that" the ordinance in question "refers to license taxes or fees", and that "[i]t is settled that a license tax should be limited to the cost of licensing, regulating and surveillance",[7] the trial court ruled that said license taxes in dispute are unreasonable,[8] and held that: "If the defendant has the power to tax the plaintiff for purposes of revenue, it may do so by proper municipal legis-lation, but not in the guise of a license tax".[9] The court added: "The Court is not, however, prepared to order the refund of all the license taxes paid by the plaintiff under protest and amounting, up to the second quarter of 1960, to P280,000.00, considering that the plaintiff appears to have agreed to the payment of the license taxes at the rates fixed prior to Ordinance No. 1, series of 1956; that the defendant had evidently not complied with the provisions of Section 357 of the Revised Manual of Instructions to Treasurers of Provinces, Cities and Municipalities, 1954 Edition, as the plaintiff herein seeks an order enjoining the defendant and its appropriate officials to carry out said provisions; that the financial position of the defendant would surely be disrupted if ordered to refund, while the plaintiff may perhaps easily forego or forget what it had already parted with." [10] It disposes of the suit in the following manner:

"WHEREFORE, judgment is rendered (a) dec-laring that Ordinance No. 1, series of 1956, of the municipality of Victorias, Negros Occidental, is invalid, (b) ordering all officials of the defendant to observe the provisions of Section 357 of the .Revised Manual of instructions to Treasurers of Provinces, Cities and Municipalities 1954 Edition,with particular reference to any license taxes paid by the plaintiff under said Ordinance No. 1, series of 1956, after notice of this decision; and (c) ordering the defendant to refund to the plaintiff any and all such license taxes paid under protest after notice of this decision".[11]

Both plaintiff and defendant appealed direct to this Court. Plaintiff questions that portion of the decision denying the refund of the license taxes paid under protest in the amount Of P280, 000, covering the period from the first quarter of 1957 to the second quarter of 1960; and balked at the court's order limiting refund to "any and all such

license taxes paid under protest after notice of this decision". Defendant, upon the other hand, challenges the correctness of the court's decision invalidating Ordinance No. 1, series of 1956.

The questions raised in the appeals will be discussed in their proper sequence.

1. We first grapple with the threshold question: Was Ordinance No. 1, series of 1956, passed by defendant's municipal council as a regulatory enactment or as a revenue measure?

The trial court says, and plaintiff seconds, that the amounts set forth in the ordinance in question did exceed the cost of licensing regulating and surveillance, and that defendant cannot impose a tax - for revenue - in the guise of a police or a regulatory measure. Our finding, however, is the other way.

The ordinance itself recites that its source of taxing power emanates from Commonwealth Act 472 Section 1 of which reads:

"Sec. 1. A municipal council or municipal district council shall have authority to impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality or municipal district, by requiring them to secure licenses at rates fixed by the municipal council, or municipal district council, and to collect fees and charges for services rendered by the municipality or municipal district and shall otherwise have power to levy for public local purposes, and for school purposes, including teachers' salaries, just and uniform taxes other than percentage taxes and taxes on specified articles",

Under the statute just quoted and pertinent jurisprudence, a municipality is authorized to impose three kinds of licenses: (1) license for regulation of useful occupations or enterprises; (2) license for restriction or regulation of non-useful occupations or enterprises; and (3) license for revenue.[12] The first two easily fall, within the broad police power granted under the general welfare clause.[13] The third class, however, is for revenue purposes. It is not a license fee, properly speaking, and yet it is generally so termed. It rests on the taxing power, that taxing power must be expressly conferred by statute upon the municipality.[14] It is so granted under Commonwealth Act 472.

To be recalled at this point is that Ordinance No. 1, series of 1956, is but an amendment of Ordinance No. 18, series of 1947, in reference to refineries, and Ordinance No. 25, series of 1953, covering sugar centrals. Ordinance No. 18 imposes "municipal, taxes on persons, firms or corporations operating refinery mills in this municipality".[15] Ordinance No. 25 speaks of municipal taxes "relative to the output, of the sugar centrals".[16]

What are these taxes for? Resolution No. 60 of the municipal council of Victorias,[17] adopted also on September 22, 1956 in conjunction with Ordinance No. 1, series of 1956, furnishes a ready answer. It reads in part:

"WHEREAS, the Municipal Treasurer informed the Municipal Council of the revenue of the Municipality and the heavy obligations which confront it because of the implementation of Minimum Wage Law on the salaries and wages it pays to its municipal employees and laborers thus greatly draining the Municipal Treasury;

WHEREAS, this local administration is committed to the plan of ameliorating the deplorable situation existing in the barrios, sitios and rural areas by giving them essential and necessary facilities calculated to improve conditions thereof thru improvements of roads and feeder roads;

WHEREAS, one of the causes of the municipality's financial difficulty is low rates of municipal taxes imposed by some of the ordinances enacted by the local legislative body;

WHEREAS, [in] x x x the ordinances known as Ordinance No. 25, Series of 1953, dealing on the operation of Sugar Central, and Ordinance No. 18, Series of 1947, which exclusively deals with the operation of Sugar Refinery Mill, the rates so given are rates suggested and determined by the Provincial Circular No. 12-A, dated

February 27, 1940 issued by the Department of Finance' as regards to Sugar Centrals;

WHEREAS, the Municipal Council has come to the conclusion that the rates provided for in such ordinances are no longer adequate if made in keeping with the present high cost of living;

WHEREAS, the Municipal Council has also taken cognizance of the fact that the price of sugar per picul today is more than twice its pre-war average price; x x x".[18]

Given the purposes just mentioned, we find no warrant in logic to give our assent to the view that the ordinance in question is solely for regulatory purpose. Plain is the meaning conveyed. The ordinance is for raising money. To say otherwise is to mis-read the purpose of the ordinance.

We should not hang so heavy a meaning on the use of the term "municipal license tax". This does not necessarily connote the idea that the tax is imposed as the lower court would want it to mean a revenue measure in the guise of a license tax. For really, this runs counter to the declared purpose to make money.

Besides, the term "license tax" has not acquired a fixed meaning. It is often "used indiscriminately to designate impositions exacted for the exercise of various privileges".[19] It does not refer solely to a license for regulation. In many instances, it refers to "revenue-raising exactions on privileges or activities".[20] On the other hand, license fees are commonly called taxes. But, legally speaking, the latter are "for the purpose of raising revenues in contrast to the former which are imposed "in the exercise of police power for purposes of regulation"[21]

We accordingly say that the designation given by the municipal authorities does not decide whether the imposition is properly a license tax or a license fee. The determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance.[22] Thus, "[w]hen no police inspection, super-vision, or regulation is provided, nor any standard set for the applicant[23] to establish, or that he agrees to attain or maintain, but any and all persons engaged in the business designated, without qualification or hindrance, may come, and a license on payment of the stipulated sum will issue, to do business, subject to no prescribe rule of conduct and under no guardian eye, but according to the unrestrained judgment or fancy of the applicant and licensee, the presumption is strong that the power of taxation, and not the police power, is being exercised." [24]

Precisely because of these considerations the present imposi-tion must be treated as a levy for revenue purposes. A quick glance at the big amount of maximum annual tax set forth in the ordinance, P40,000.00 for sugar centrals, and P40,000,00 for sugar refine will readily convince one that the tax is really a revenue tax. And then, we read in he ordinance nothing which would as much as indict that the tax imposed is merely for police inspection, supervision or regulation.

Our view that the tax imposed by the ordinance is for revenue purposes finds support in judicial pronouncements which have gained foothold in this jurisdiction. In *Standard Vacuum vs. Antigua*,[25] this Court had occasion to pass upon a similar ordinance. In cate-gorical terms, we there stated: "We are satisfied that the graduate license tax imposed by the ordinance in question is an occupation tax imposed not under the police or regulatory power of the munici-pality but by virtue of its taxing power for purposes of revenue, and is in accordance with the last part of Section 1 of Commonwealth Act No. 472. It is, therefore, valid".[26]

The present case is not to be analogized with, *Panaligan vs. City of Tacloban* cited in the decision below.[27] For there, the inspection fee sought to be collected - upon every head of specified animals to be transported out of the City of Tacloban (P2.00 per hog, P10. 00 per cow and P20.00 per carabao) - was in reality an export tax specifically withheld from municipal taxing power under Section 2287 of the Revised Administrative Code.

So also do we say that the cases of *Pacific Commercial vs. Romualdez*,[28] *Lacson vs. City of Bacolod*,[29] and *Santos vs, Municipal Government of Caloocan*,[30] used by plaintiff as reference are entirely inapposite. In

Pacific Commercial, the tax involved - on frozen meat - was nullified because tax measures on cold store not then within the legislative grant to the City of Manila. In *Lacson* the City of Bacolod taxed every admission ticket sold in the movie-houses. And justification for this imposition was moored to the general welfare clause of the city charter. This Court held the ordinance *ultra vires* for the reason that the authority to tax cannot be derived from the general welfare clause. In *Santos*, the taxes in controversy were internal organ fees, meat inspection fees and coral fees, separate, from the slaughter or slaughterhouse fees. In annulling the taxes there questioned, this Court declared: "[w]hen the Council ordained the payment of internal organs fees, meat inspection fees and coral fees, aside from the slaughter or slaughterhouse fees, it overstepped the limits of its statutory grant [Sec. I, C.A. 655]. Only one fee was allowed by that, law to be charged and that was slaughter or slaughterhouse fees".

In the cases cited then, the tax ordinances did not find plain and clear statutory prop. Such infirmity is not present here.

We, accordingly, rule that Ordinance No. 1, series of 1956, of the Municipality of Victorias, was promulgated not in the exercise of the municipality's regulatory power but as a revenue measure tax on occupation or business. The authority to impose such tax is backed by the express grant of power in Section 1 of Commonwealth Act 472.

2. Not that the disputed ordinance lacks the imprimatur of the Secretary of Finance required in paragraph 2, Section 4, of Commonwealth Act 472. This legal provision necessitates such approval "[w]henever the rate of fixed municipal license taxes on businesses not excepted in this Act or otherwise covered by the preceding paragraph and subject to the fixed annual tax imposed in section one hundred eighty-two of the National internal Revenue Law, is in excess of fifty pesos per annum; x x x".

The ordinance here challenged was recommended by the Provincial Board of Negros Occidental in its resolution (No. 1864) of October 26, 1956.[31] And, the Undersecretary of Finance in his letter to the municipal council of Victorias on December 18, 1956 approved said ordinance. But considering that it is amen-datory in nature, that approval was coupled with the mandate that the ordinance "should take effect at the beginning of the ensuing calendar year [1957] pursuant to Section 2309 of the Revised Administrative Code." [32]

3. Plaintiff argues that the municipality is bereft of authority to enact the ordinance in question because the national government "had preempted it from entering the field of taxation of sugar centrals and sugar refineries".[33] Plaintiff seeks refuge in Section 189 of the National Internal Revenue Code which subjects pro-prietors or operators of sugar centrals or sugar refineries to percentage tax.

The implausibility of this position is at once apparent. We are not dealing here with percentage tax. Rather, we are concerns with a tax specifically for operators of sugar centrals and sugar refineries. The rates imposed are based on the maximum annual output capacity. Which is not a percentage. Because it is not a share. Nor is it a tax based on the amount of the proceeds realized out of the sale of sugar, centrifugal or refined.[34]

What can be said at most is that the national government has preempted the field of percentage taxation, Section 1 of Common Act 472, while granting municipalities power to levy taxes, expressly , removes from them the power to exact "percentage taxes".

It is correct to say that preemption in the matter of taxation simply refers to an instance where the national government elects to tax a particular area, impliedly withholding from the local government the: delegated power to tax the same field. This doctrine primarily rests upon the intention of Congress.[35] Conversely, should Congress allow municipal corporations to cover fields of taxation it already occupies, then the doctrine of preemption will not apply.

In the case at bar, Section 4(1) of Commonwealth Act 472 clearly and specifically allows municipal councils to tax persons engaged in "the same businesses or occupation" on, which "fixed internal revenue privilege taxes" are

"regularly imposed by the National Government". With certain exceptions specified in Section 3 of the same statute. Our case does not fall within the exceptions. It would therefore be futile to argue that Congress exclusively reserved to the national government the right to impose the disputed taxes.

We rule that there is no preemption.

4. Petitioner advances the theory that the ordinance is excessive.

An ordinance carries with it the presumption of validity. The question of reasonableness though is open to judicial inquiry. Much should be left thus to the discretion of municipal authorities. Courts will go slow in writing off an ordinance as unreasonable unless the amount is so excessive as to be prohibitive, arbitrary, unreasonable, oppressive, or confiscatory.[36] A rule which has gained acceptance is that factors relevant to such an inquiry are the municipal conditions as a whole and the nature of the business made subject to imposition.[37]

Plaintiff has however not sufficiently proven that, taking these factors together, the license taxes are unreasonable. The presumption of validity subsists. For, plaintiff has limited itself to insisting that the amounts levied exceed the cost of regulation and that the municipality has adequate funds for the alleged purposes as evidenced by the municipality's cash surplus for the fiscal year ending 1956.

The cost of regulation cannot be taken as a gauge, if the municipality really intended to enact a revenue ordinance. For, "if the charge exceeds the expense of issuance of a license and costs of regulation, it is a tax".[38] And if it is, and it is validly imposed, as in this case, "the rule that license fees for regulation must bear a reasonable relation to the expense of the regulation has no application".[39]

And then, a cash surplus alone cannot stop a municipality from enacting a revenue ordinance increasing license taxes in anticipation of municipal needs. Discretion to determine the amount of revenue required for the needs of the municipality is lodged with the municipal authorities. Again, judicial intervention steps in only when there is a flagrant, oppressive and excessive abuse of power by said municipal authorities.[40]

Not that defendant municipality was without reason. On February 27, 1940, the Secretary of Finance, later President, Manuel A. Roxas, issued Provincial Circular 12-A. In that circular, the then Finance Secretary stated that his "Department has reached the conclusion that a tax on the basis of one centavo for every picul of annual output capacity of sugar centrals x x x would be just and reasonable". At that time, the price of sugar was around P6.00 per picul. Sixteen years later - 1956 - when Ordinance No. 1 was approved, the market quotation for export sugar ranged from P12.00 to P15.00 per picul.[41] And yet, since then the rate per output capacity of a sugar central in Ordinance No. 1 was Merely from one centavo to two centavos. There is a statement in the municipality's brief,[42] that thereafter the price of sugar had never gone below P16. 00 per picul; instead it had gone up.

The reasonableness of the ordinance may not be disputed. It is not confiscatory.

There was misapprehension in the decision below in its state-ment that the increase of rates for refineries was 2,000%. We should not overlook the fact that the original maximum rate covering refineries in Ordinance No. 18, series of 1947, was P2,000.00; but that was only for a refinery with an output capacity of 90,000 or more sacks. Under section 2(c) of Ordinance No. 1, series of 1956, where the refineries have an output capacity of from 75,001 bags to 100,000 bags, the tax remains at P2,000.00. From hereon, the ordinance provides for ten more scales for the graduation of the tax depending upon the output capacity (P3,000.00, P4,000.00, P5,000.00, P10,000, P15,000.00, P20,000.00, P25,000.00, P30,000.00, P35,000.00 and P40,000.00). But it is only where a refinery has an output capacity of 1,750,001 or more bags that the present ordinance imposes a tax of P40,000.00. The happenstance that plaintiff's refinery is in the last bracket calling upon it to pay P40,000.00 per annum does

not make the ordinance in question unreasonable.

Neither may we tag the ordinance with excessiveness if we consider the capital invested by plaintiff in both its sugar central and sugar refinery and its annual income from both. Plaintiff's capital investment in the sugar central and sugar refinery is more or less P26, 000, 000.00.[43] And here are its annual net income: for the year 1956 - P3,852,910; for the year 1957 - P3,854,520; for the year 1958 - P7,230,493; for the year 1959 - P5,951,187; and for the year 1960 - P7,809,250.[44] If these figures mean anything at all, they show that the ordinance in question is neither confiscatory nor unjust and unreasonable.

5. Upon the averment that in the Municipality of Victorias plaintiff is the only operator of a sugar central and sugar refinery, plaintiff now presses its argument that Ordinance No. 1, series of 1956, is discriminatory. The ordinance does not single out Victorias as the only object of the ordinance. Said ordinance is made to apply any sugar central or sugar refinery which may happen to operate in the municipality. So it is, that the fact that plaintiff is actually the sole operator of a sugar central and a sugar refinery does not make ordinance discriminatory. Argument along the same lines was rejected in *Shell Co. of P.I., Ltd vs. Vaño*,[45] this Court holding that the circumstance "that there is no other person in the locality who exercises" the occupation designated as installation manager "does not make the ordinance discriminatory and hostile, inasmuch as it is and will be applicable to any person or firm who exercises such calling or occupation". And in *Ornoc Sugar Company, Inc. vs. Municipal Board of Ormoc City*,[46] declaratory relief was sought to test the validity of a municipal ordinance which provides a city tax of twenty centavos per picul of centrifugal sugar and one per centum on the gross sale of its derivatives and by-products "produced by the Ormoc Sugar Company, Incorporated, or by any other sugar mill in Ormoc City". Mr. Justice Enrique Fernando, delivering the opinion of this Court, declared that ordinance did not suffer "from a constitutional or statutory infirmity". And yet, in Ormoc it is to be observed that Section 1 of the ordinance spelled out Ormoc Sugar Company, Incorporated specifically by name. Not even the name of plaintiff herein was ever mentioned in the ordinance now disputed.

No discrimination exists.

6. As infirm plaintiff's stand that its business is not confined to the Municipality of Victorias. It suffices that plaintiff engages in a business or occupation subject to an exaction by the municipality - within the territorial boundaries of that municipality. Plaintiff's sugar central and sugar refinery are located within Municipality of Victorias. In this central and refinery, plaintiff manufactures centrifugal sugar and refined sugar, respectively.

But plaintiff insists that plaintiff's sugar milling and refining operations are not wholly performed within the territorial limits of Victorias. According to plaintiff, transportation of canes from plantation to the mill site, operation and maintenance of telephone system, inspection of crop progress and other related activities, are conducted not only in defendant's municipality but also in the municipalities of Cadiz, Manapla, Sagay and Saravia as well.[47] We fail to see the relevance of these facts. Because, if we follow plaintiff's ratiocination, neither Victorias nor any of the municipalities just adverted to would be able to impose the tax. One thing certain, of course, is that the tax is imposed upon the business of operating a sugar central and a sugar refinery. And the situs of that business is precisely the Municipality of Victorias.

7. Plaintiff finally impleads double taxation. Its reason is that in computing the amount of taxes to be paid by the sugar refinery the cost of the raw sugar coming from the sugar central is not deducted; ergo plaintiff is taxed twice on the raw sugar.

Double taxation has been otherwise described as "direct duplicate taxation".[48] For double taxation to exist, "the same property must be taxed twice, when it should be taxed but once".[49] Double taxation has also been "defined as taxing the same person twice by the same jurisdiction for the same thing".[50] As stated in *Manila Motor*

Company, Inc. vs. Ciudad de Manila,[51] there is double taxation "cuando la misma propiedad se sujeta a dos impuestos por la misma entidad o Gobierno, para el mismo fin y durante el mismo periodo de tiempo".

With the foregoing precepts in mind, we find no difficulty in saying that plaintiff's argument on double taxation does not inspire assent. First. The two taxes cover two different objects. Section 1 of the ordinance taxes a person operating sugar centrals or engaged in the manufacture of centrifugal sugar. While under Section 2, those taxed are the operators of sugar refinery mills. One occupation or business is different from the other. Second. The disputed taxes are imposed on occupation or business. Both taxes are not on sugar. The amount thereof depends on the annual output capacity of the mills concerned, regardless of the actual sugar milled. Plaintiff's argument perhaps could make out a point if the object of taxation here were the sugar it produces, not the business of producing it.

There is no double taxation.

For the reasons given -

The judgment under review is hereby reversed; and

Judgment is hereby rendered: (a) declaring valid and subsisting Ordinance No. 1, series of 1956, of the Municipality of Victorias, Province of Negros Occidental; and (b) dismissing plaintiff's complaint as supplemented and amended.

Costs against plaintiff.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Angeles, Fernando, and Capistrano, JJ., concur.

[1] Ordinance No. 25, series of 1953, Exhibit 3.

[2] Ordinance No. 18, series of 1947. Exhibit 2.

[3] Exhibit 1.

[4] Civil Case No. 5565, Court of First Instance of Negros Occidental, entitled "Victorias Milling Co., Inc., Plaintiff, versus The Municipality of Victorias, Province of Negros Occidental, Defendant". The complaint was supplemented and amended.

[5] "x x x Section 357 of the Revised Manual of Instructions to Treasurer of Provinces, Cities and Municipalities, promulgated under the direction of the Auditor General, 1954 edition, x x x provides that:

"Tax ordinance under controversy. - Until declared illegal or void by a competent court, or otherwise revoked by the council or board from which it originated or which exercised authority over the same, a tax ordinance will be enforced in accordance with its provisions. Collection of taxes therein prescribed will be made even if the legality of the same should be impugned or any of its provisions be challenged or be under controversy. All protested collections, however, provided that the fact of said protest is made to appear on the receipt wherein payments has been acknowledged, will be taken up in the accounts as Undistributed Income, B-3-1. Upon final determination of the protest, a reversion entry will then be made, either by debiting the collection to the corresponding revenue account or crediting Cash if the protest has been considered in favor of the protestant and the amount protested is to be returned to him". Record on Appeal, pp. 11-12.

[6] Record on Appeal, pp. 12-14.

[7] Id., p. 70.

[8] Id, p. 72.

[9] Id., p. 73.

[10] Id.

[11] Id., 73-74

[12] See: Cu Unjieng vs. Patstone, 42 Phil. 818, 828-830.

[13] "SEC. 2238. General power of council to enact ordinance and make regulations. - The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of property therein". Revised Administrative Code.

[14] Section 2287, Revised Administrative Code; Cu Unjieng vs. Patstone, supra, at p. 831; Pacific Commercial Co. vs. Romualdez, 49 Phil. 917, 926; City of Iloilo vs. Villanueva, 105 Phil, 337, 340; People vs. Felisarta, L-15346, June 29, 1962.

[15] Emphasis supplied.

[16] Emphasis supplied.

[17] Exhibit G.

[18] Emphasis supplied.

[19] McQuillin, Municipal Corporations, 3rd. ed., Vol. 9, Chapter 26, p. 62.

[20] Ibid.

[21] Compañia General de Tabacos de Filipinas vs. City of Manila, L-16619, June 29, 1963.

[22] 19 R.C.L., pp, 951-952.

[23] Applicant for permit or license to do business.

[24] 19 R.C.L., p. 952; emphasis supplied.

[25] 96 Phil. 909, 911.

[26] Same ruling: Municipality of Cotabato vs. Santos, 105 Phil. 963, 966.

[27] L-9319, September 27, 1957; Plaintiff's Brief as Appellant, p. 22; Record on Appeal, p. 70.

[28] supra, at p. 926; Plaintiff's Brief as Appellee, p, 47.

[29] L-15892, April 23; 1962; Plaintiff's Brief as Appellee, pp. 23, 26.

[30] L-15807. April 22, 1963; Plaintiff's Brief as Appellee, p. 47.

[31] Exhibit 6-A.

- [32] Exhibit 6.
- [33] Plaintiff's Brief as Appellant, p. 42.
- [34] See: Shell Co. of P.I. Ltd. vs. Vaño, 94 Phil. 389, 394-395.
- [35] Plaintiff's Brief as Appellant, pp. 43-44, citing Yorkley on Municipal Corporations, p. 361.
- [36] 64 C.J.S., pp. 646-647.
- [37] McQuillin, op. cit., P. 65.
- [38] Ibid p. 29.
- [39] Ibid., p. 71.
- [40] 38 AM. Jur., p. 42.
- [41] Resolution 1864 dated October 26, 1956 of the Provincial Board, Exhibit 6-A
- [42] At p. 36.
- [43] Tr. (Artenero), p. 83.
- [44] Exhibit 8.
- [45] supra, at p. 393. See also: Cooley on Taxation, 4th ed., Vol. ??? p. 747.
- [46] L-24322, July 21, 1967; 1967C Phil. 116, 119.
- [47] Plaintiff's Brief as Appellant, pp. 36-37.
- [48] Cooley, op cit., p. 475.
- [49] Ibid., citing Attorney General vs. Supervisors of Sanilac County 71 Mich. 16, 38 N.W. 639.
- [50] Ibid. citing Harvey Coal & Coke Co. vs. Dillon, 59 W. Va. 605, ??? S.E. 928,
- [51] 72 Phil, 336, 31P, citing Cooley on Taxation, Vol. I, pp. 475-479; emphasis supplied.

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