

VISAYAN ELECTRIC CO., S. A., PLAINTIFF AND APPELLANT VS. THE CITY OF DUMAGUETE, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. L-10787. December 17, 1957

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On November 25, 1953, plaintiff filed an action against defendants in the Court of First Instance of Cebu to recover the aggregate amount of P4,301.00, plus interest thereon and the costs of action. Basis of the action is the claim that the provisions of Section 8, paragraph (ii) and (vv) of Ordinance No. 6 of the City of Dumaguete do not apply to plaintiff and so the collection of said amount as tax is illegal.

Defendants in answer countered that City Ordinance No. 6 applies to plaintiff and even if it is not, plaintiff is estopped from recovering said amount because it was not paid under protest as required by law. Parties submitted a stipulation of facts plus some documentary evidence and on January 17, 1955, the court rendered judgment declaring Section 8, paragraph (ii) of Ordinance No. 6 of the City of Dumaguete, as amended, null and void, and Section 8, paragraph (vv) of the same ordinance, inapplicable to plaintiff, but holding that plaintiff cannot ask for refund of the taxes because they were not paid under protest. In due time, plaintiff appealed but because the only issue raised is one of law, the case was certified to us by the Court of Appeals.

On March, 1917, our government granted to "La Electrica", a sociedad anonima, a franchise to maintain and operate an electric plant for light, heat and power in the Municipality of Dumaguete (now city), Province of Negros Oriental, for a period of fifty (50) years. This franchise was acquired by plaintiff who was given a certificate of public convenience by the Public Service Commission. Under the provisions of Act No. 2791, plaintiff is required to pay quarterly a franchise tax of 2% during a period of thirty (30) years on its gross income.

On December 14, 1949, the City of Dumaguete enacted Ordinance No. 6, which was amended by Ordinance No. 79, imposing certain license taxes on every operator of an electric plant within the city, and on the strength of its provisions the City of Dumaguete collected the taxes in question.

The only issue before us is whether the taxes in question were paid under protest, and in the negative, whether the law requires that they be paid under protest before their refund can be demanded by the tax payer.

With regard to the first question, the evidence shows that a portion of the tax was paid under protest while the rest was voluntarily paid. "This appears on the face of the official receipts issued by the City Treasurer when the taxes were paid. With regard to the portion which was paid under protest, there can therefore be no question with regard to its refund because in the decision appealed from the trial court held that the provisions of the ordinance under which the same was collected are either null or inapplicable to plaintiff. This portion of the decision is now binding upon defendants because of their failure to appeal.

With regard to the second question, plaintiff contends that there is no provision in the Charter of the City of Dumaguete which requires a taxpayer to pay under protest to enable him to secure a refund of a municipal tax

paid by him under an ordinance approved by said city. This claim has no merit. Republic Act No. 327, known as the Charter of the City of Dumaguete, lays down the procedure to be followed relative to the collection of taxes in general. We refer to Section 57 which provides that " (a) The assessment of a tax shall constitute a lawful indebtedness of the taxpayer to the city which may be enforced by a civil action in any court of competent jurisdiction" and that "(b) No court shall entertain any suit assailing the validity of a tax assessed under this Charter until the taxpayer shall have -paid, under protest, the taxes assessed against him." (Italics supplied)

Note that this section refers to taxes in general and does not limit its scope to real estate taxes even if they come under Article X. Note also that the section refers to a tax assessed under this Charter, which term is all-inclusive. If the intentment of the law is to limit its scope to collections of real estate taxes, it should have mentioned Article X instead of the word "Charter."

It is true that Section 306 of the National Internal Revenue Code provides that an action for the recovery of any national internal revenue tax may be maintained regardless of whether such tax has been paid or not under protest, but this provision refers to a national internal revenue tax and not to a tax assessed under a city or municipal ordinance. The requirement concerning the payment of a tax under protest is statutory (Sections 1227 and 1298, Cooley on Taxation, Vol. 3, 4th Ed.).

Wherefore, the decision appealed from is modified in the sense that plaintiff may recover the taxes which, according to the records of the City Treasurer of Dumaguete, were paid under protest. In all other respects, the decision is affirmed, without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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