

**ARABAY, INC., PETITIONER, VS. THE COURT OF FIRST INSTANCE OF
ZAMBOANGA DEL NORTE, BRANCH II, THE CITY OF DIPOLOG AND
EMILIO L. TAGAILO, IN HIS CAPACITY AS CITY TREASURER OF THE
...**

G.R. No. L-37684. September 10, 1975

Ponente: CASTRO, J.

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CASTRO, J.:

Before us is a petition for review of the decision of the Court of First Instance of Zamboanga del Norte, Branch II, dismissing the complaint of the herein petitioner Arabay, Inc. for annulment of a tax ordinance of the Municipal Council of Dipolog, Zamboanga del Norte, and for refund of the taxes it had paid thereunder.

On December 17, 1965 the Municipal Council of Dipolog enacted Ordinance No. 19 amending Section 1 of ordinance No. 53, series of 1964. As thus amended the said Section 1 reads as follows:

"Section I. There shall be charged for the selling and distribution of refined and manufactured mineral oils, motor and diesel fuels, and petroleum based on the monthly allocation actually delivered and distributed and intended for sale, in any manner whatsoever, by the Company or supplier to any person, firm, entity, or corporation, whether as dealer of such refined and manufactured mineral oils, motor and diesel fuels, and petroleum or as operator of any station thereof, the following tax payable monthly:

Gasoline — P0.01 per liter

Lubricating oils — P0.01 per liter

Diesel Fuel oils — 1/4 centavo per liter

Petroleum or kerosene — P0.05 per gallon can or P.02 per half gallon tin.

Provided, however, that retail seller of not more than 5 gallon cans or its equivalent shall be exempted from the provisions of this ordinance.

"Section 2. This Ordinance shall take effect on January 1, 1966."

On June 21, 1969 Republic Act No. 5520 was approved. It provided for the creation of the City of Dipolog from the then existing territorial jurisdiction of the Municipality of Dipolog, to take effect on January 1, 1970.

On July 28, 1971 the Arabay, Inc., a distributor of gas, oil and other petroleum products, filed with the Court of First Instance of Zamboanga del Norte a complaint against the City of Dipolog contesting the validity of the above-mentioned Section 1 of Ordinance No. 53 on the ground that the same imposed a sales tax which is beyond the power of a municipality to levy under Section 2 of Republic Act No. 2264, otherwise known as the Local Autonomy Act of 1959. Said Section 2 provides:

"SEC. 2. Taxation. — Any provision of law to the contrary notwithstanding, all chartered cities, municipalities and municipal districts shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities, municipalities or municipal districts by requiring them to secure licenses at rates fixed by the municipal board or city council of the city, the municipal council of the municipality, or the municipal district council of the municipal district; to collect fees and charges for service rendered by the city, municipality or municipal district; to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation being conducted within the city, municipality or municipal district and otherwise to levy for public purposes, just and uniform taxes, licenses or fees: Provided, That municipalities and municipal districts shall, in no case, impose any percentage tax on sales or other taxes in any form based thereon nor impose taxes on articles subject to specific tax, except, gasoline, under the provisions of the National Internal Revenue Code: Provided, however, That no city, municipality or municipal district may levy or impose any of the following: x x x" (*italics supplied*)

On August 30, 1972 the Arabay, Inc. filed a supplemental complaint which prayed, among others, for a refund of the taxes it had paid under the ordinance in question.

On October 30, 1972 the parties entered into a stipulation of facts which, *inter alia*, states:

"2. That plaintiff, pursuant to the above ordinance, paid sales taxes for the sale of Diesel fuel oils, lubricating oils, petroleum, kerosene and other related petroleum products, to the defendant City of Dipolog, from December, 1969 to July, 1972 in the total amount of FIVE THOUSAND FOUR HUNDRED PESOS (P5,400.00). A schedule of the payments made by plaintiff is hereto attached as Annex 'A' and is made an integral part hereof. However, the payments made from April, 1972 to July, 1972, in the total amount of P69.80 have been refunded by defendant City of Dipolog to plaintiff.

"WHEREFORE, on the basis of the foregoing stipulation of facts and of the Memorandum of Arguments to be submitted by the parties, the latter, through, their respective counsels, hereby submit the case for the determination of this Honor."

On January 16, 1973 the court *a quo* rendered judgment upholding the validity of the questioned provision of Ordinance No. 53, as amended, essentially on the grounds that the Arabay, Inc. failed to present evidence that the tax provision in question imposed a sales tax, and the tax prescribed therein was, moreover, not a specific tax on the products themselves but on the privilege of selling them.

The basic issues in the case at bar are: (1) whether or not the questioned tax provision imposes a sales tax; and (2) if it imposes a sales tax, whether the Arabay, Inc. is entitled to a tax refund, considering that Dipolog is now a city.

1. It is settled rule in this jurisdiction that for purposes of Section 2 of the Local Autonomy Act, *supra*, a municipal tax ordinance which prescribes a set ratio between the amount of the tax and the volume of sales of the taxpayer imposes a sales tax and is null and void for being beyond the power of a municipality to enact.[1]

In our view, the questioned section of Ordinance No. 53 of the Municipal Council of Dipolog levies a sales tax, not only because the character of the ordinance as a sales tax ordinance was admitted by the parties below, but as well because the phraseology of the said provision reveals in clear terms the intention to impose a tax on the sale of oil, gasoline and other petroleum products. Thus, the ordinance provides: "There shall be charged for the selling and distribution of refined and manufactured oils . . . based on the monthly allocation actually delivered and distributed and intended for sale by the Company or supplier to any person . . . whether as dealer ... or as operator of any station . . . the following tax payable monthly: x x x" It is quite evident from these terms that the amount of the tax that may be collected is directly dependent upon or bears a direct relationship to the volume of sales which the owner or supplier of the itemized products generates every month. The ordinance in question

therefore exacts a tax based on sales; it follows that the Municipality of Dipolog was not authorized to enact such an ordinance under the local Autonomy Act.

2. The obligation of the City of Dipolog to refund the sum collected under the void provisions of an ordinance enacted while it was still a municipality, is not open to doubt. In *San Miguel Corporation vs. The Municipal Council of Mandaue, Cebu*, supra, the Court ordered take return to the taxpayer of the sums paid under an ordinance enacted under circumstances similar to the case at bar, and rejected the argument that the municipality of Mandaue had in the meantime been converted into a city. The Court said:

"Respondent however claim that with the conversion of Mandaue into a city pursuant to Republic Act No. 5519, which was approved on June 21, 1969, the issue has already become moot, since the prohibition contained in Section 2 of Republic Act 2264 applies only to municipalities and not lo chartered cities. The same contention has been rejected in *City of Naga v. Court of Appeals*, and *Laoag Producers ' Cooperative Marketing Association, Inc. vs. Municipality of Laoag*, supra where We ruled that the legality of an ordinance depends upon the power of the municipality at the time of the enactment of the challenged ordinance. Since the municipality of Mandaue had no authority to enact the said ordinance, the subsequent approval of Republic Act No. 5519 which became effective on June 21, 1969, did not remove the original infirmity of the ordinance. Indeed there is no provision in the aforecited statute which invests a curative effect upon the ordinances of the municipality which when enacted were beyond its statutory authority."

The right of the *Arabay, Inc.* to a refund of the local sales taxes it had paid under the questioned ordinance may not, however, include those levied on its gasoline sales. The relevant proviso of Section 2 of the Local Autonomy Act states:

"x x x Provided, That municipalities and municipal districts shall, in no case, impose any percentage tax on sales or other taxes on articles subject to specific tax, except gasoline, under the provisions of the National Internal Revenue Code:

x x x" (italics supplied)

Under the foregoing proviso of Section 2 of R.A. 2264, two courses of action in the exercise of their taxing powers are denied to municipalities and municipal districts, to wit, (1) to levy any sales tax in whatever form; and (2) to levy any tax on articles subject to specific tax under the National Internal Revenue Code. It is not difficult to see that these two prohibitions overlap in the sense that while the first clause of the said proviso forbids the levying of sales taxes of whatever form or guise, the second clause of the same proviso forbids the levying of "taxes" without any distinction as to the kind of tax, i.e.' whether percentage tax, sales tax, specific tax or license tax, although this latter prohibition applies only to a limited class articles, viz., those subject to the specific tax under the Tax Code.

Such an overlap would probably carry or connote no legal significance but for the exclusion of gasoline from the prohibition contained in the second clause of the mentioned proviso. For, with the exemption of gasoline from the coverage of the same, it becomes relevant to determine the effect which such exclusion has on the previous prohibition against the levying of the sales tax.

In our opinion, a reasonable and practical interpretation of the terms of the proviso in question results in the conclusion that Congress, in excluding gasoline from the general disability imposed on municipalities and municipal districts to exact any kind of taxes on articles subject to specific tax under the Tax Code, deliberately and intentionally meant to put it within the power of such local governments to impose whatever type or form of taxes the latter may deem proper to levy on gasoline, including a sales tax or one in that form. There is after all no clearly demonstrable and convincing reason why the law would allow municipal imposition of taxes on gasoline

and yet withhold such power if the imposition is in the form of a sales tax, when it was a known fact at the time of the enactment of the Local Autonomy Act in 1959 — and this still is true to this day — that gasoline is of no profitable use to the companies which own it unless turned over to the consuming public which, perforce, must pay for the right to obtain that commodity.

ACCORDINGLY, the judgment a quo is set aside. The City of Dipolog is hereby ordered to refund to the Arabay, Inc. the taxes the latter has paid under Section 1 of Ordinance No. 53, series of 1964, as amended, deducting therefrom the amount representing the taxes paid by the Abaray, Inc. on its gasoline sales. No costs.

Teehankee, Makasiar, Muñoz Palma, and Martin, JJ., concur.

Esguerra, J., is on official leave.

[1] San Miguel Corporation vs. Municipal Council of Mandaue, Cebu, L-30761, July 11, 1973, 52 SCRA 43; Laoag Producers' Coop. Mktg. Assn'n vs. Municipality of Laoag, Ilocos Norte, L-27498. Keb. 24. 1971, 37 SCRA 594; Cebu Portland Cement Co. vs. Municipality of Naga, Cebu, L-20496, Feb. 26, 1972, 43 SCRA 275; Marinduque Iron Mines Agents, Inc. vs. Municipality of Hinabangan, Samar, L-18924. June 30, 1964. 11 SCRA 416. Where the taxpayer's volume of business sales is considered solely for purposes of classification, the ordinance is not rendered invalid as imposing a sales or specific tax. See Northern Philippines Tobacco Corp. vs. Municipality of Agoo, La Union, L-26447, January 30, 1970; Cebu Portland Cement Co. vs. Municipality of Naga, Cebu, L-20496, Feb. 26, 1972. 43 SCRA 275.

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