

GONZALO PUYAT & SONS, INC., PLAINTIFF AND APPELLEE, VS. CITY OF MANILA AND MARCELINO SARMIENTO, AS CITY TREASURER OF MANILA, DEFENDANTS AND APPELLANTS.

G. R. No. L-17447. April 30, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

This an appeal from the judgment of the CFI of Manila, the dispositive portion of which reads:

"* *. Of the payments made by the plaintiff, only that made on October 25, 1950, in the amount of P1,250.00 has prescribed. Payments made in 1951 and thereafter are still recoverable since the extra-judicial demand made on October 30, 1956 was well within the six year prescriptive period of the New Civil Code.

In view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiff, ordering the defendants to refund the amount of P29,824.00, without interest. No costs.

Defendants' counterclaim is hereby dismissed for not having been substantiated."

On August 11, 1958, the plaintiff Gonzalo Puyat & Sons, Inc., filed an action for refund of Retail Dealers Taxes paid by it, corresponding to the first Quarter of 1950 up to the third Quarter of 1956, amounting to P33,785.00, against the City of Manila and its City Treasurer. The case was submitted on the following stipulation of Facts, to wit—

- That the plaintiff is a corporation duly organized and existing according to the laws, of the Philippines, with offices at Manila; while defendant City of Manila is a Municipal Corporation duly organized in accordance with the laws of the Philippines, and defendant Marcelino Sarmiento is the duly qualified incumbent City Treasurer of Manila;

- That the plaintiff is engaged in the business of manufacturing and selling all kinds of furniture at its factory at 190 Rodriguez-Arias, San Miguel, Manila, and has a display room located at 604-606 Rizal Avenue, Manila, wherein it displays the various kinds of furniture manufactured by it and sells some goods imported by it, such, as billiard balls, bowling balls and other accessories;

- That acting pursuant to the provisions of Sec. 1, group II, of Ordinance No. 3364, defendant City Treasurer of Manila assessed from plaintiff retail dealer's tax corresponding to the quarters hereunder stated on the sales of furniture manufactured and sold by it at its factory site, all of which assessments plaintiff paid without protest in the erroneous belief that it was liable therefor, on the dates and in the amount enumerated herein below:

Period

Date paid

O.R. No.

Amount assessed and paid

First Quarter 1950

Jan. 25, 1950

436271V

P1,255.00

Second Quarter 1950

Apr. 25, 1950

215895X

1,250.00

Third Quarter 1950

July 25, 1950

243321X

1,250.00

Fourth Quarter 1950

Oct. 25, 1850

271165X

1,250.00

(Follows, the assessment for different quarters in 1951, 1952, 1953, 1954 and 1955, fixing the same amounts quarterly). * * *.

First Quarter 1956

Jan. 25, 1956

823047X

Pl, 250.00

Second Quarter 1956

Apr. 25, 1956

855949X

1,250.00

Third Quarter 1956

July 25, 1956

880789X

1,250.00

=====

TOTAL

P33,785.00

- That plaintiff, being a manufacturer of various kinds of furniture, is exempt from the payment of taxes imposed under the provisions of Sec. 1, Group II, of Ordinance No. 3364, which took effect on September 24, 1956, on the sale of the various kinds of furniture manufactured by it pursuant to the provisions of Sec. 18(a) of Republic Act No. 409 (Revised Charter of Manila), as restated in Section 1 of Ordinance No. 8816.

- That, however, plaintiff, is liable for the payment of taxes prescribed in Section 1, Group II of Ordinance No. 3364, as amended by Sec. 1, Group II of Ordinance No. 3816, which took effect on September 24, 1956, on the sales of imported billiard balls, bowling balls and other accessories at its display room. The taxes paid by the plaintiff on the sales of said articles are as follows.

* * * * *

- That on October 30, 1956, the plaintiff filed with defendant City Treasurer of Manila, a formal request for refund of the retail dealer's taxes unduly paid by it as aforesaid in paragraph 3, hereof.

- That on July 24, 1958, the defendant City Treasurer of Manila definitely denied said request for refund.

- Hence on August 21, 1958, plaintiff filed the present complaint.

- Based on the above stipulation of facts, the legal issues to be resolved by this Honorable Court are: (1) the period of prescription applicable in matters of refund of municipal taxes erroneously paid by a taxpayer and (2) refund of taxes not paid under protest.* * *."

which was the basis of the judgment heretofore recited.

Said judgment was directly appealed to this Court on two dominant issues to wit: (1) Whether or not the amounts paid by plaintiff-appellee, as retail dealer's taxes under Ordinance 1925, as amended by Ordinance No. 3364 of the City of Manila, without protest, are refundable; and (2) Assuming arguendo, that plaintiff-appellee is entitled to the refund of the retail taxes in question, whether or not the claim for refund filed in October 1956, in so far as said claim refers to taxes paid from 1950 to 1952 has already prescribed.

Under the first issue, defendants-appellants contend that the taxes in question were voluntarily paid by appellee company and since, in this jurisdiction, in order that a legal basis arise for claim of refund of taxes erroneously assessed, payment thereof must be made under protest, and this being a condition sine qua non, and no protest having been made,—verbally or in writing, thereby indicating that the payment was voluntary, the action must fail. Cited in support of the above contention, are the cases of Zaragoza vs. Alfonso, 46 Phil., 160-161, and Gavino vs. Municipality of Calapan, 71, Phil., 438.

In refutation of the above stand of appellants, appellee avers that the payments could not have been voluntary. At most, they were paid "mistakenly and in good faith" and "without protest in the erroneous belief that it was liable thereof." Voluntariness is incompatible with protest and mistake. It submits that this is a simple case of "solutio indebiti".

Appellants do not dispute the fact that appellee-company is exempted from the payment of the tax in question. This is manifest from the reply of appellant City Treasurer, stating that sales of manufactured products at the factory site are not taxable either under the Wholesalers' Ordinance or under the Retailers' Ordinance. With this admission, it would seem clear that the taxes collected from appellee were paid, thru an error or mistake, which places said act of payment within the pale of the new Civil Code provisions on Solutio Indebiti. The appellant City of Manila, at the very start, notwithstanding the Ordinance imposing the Retailer's Tax, had no right to demand payment thereof.

"If something is received when there is no right to demand it, and it was duly delivered through mistake, the obligation to return it arises" (Art. 2154, NCC).

Appellee categorically stated the payment was not voluntarily made, (a fact found also by the lower court), but on the erroneous belief that they were due. Under this circumstance, the amount paid, even without protest is recoverable. "If the payer was in doubt whether the debt was due" he may recover if he proves that it was not due" (Art. 2156 NCC). Appellee had duly proved that taxes were not lawfully due. There is, therefore, no doubt that the provisions of Solutio Indebiti in the new Civil Code, apply to the admitted facts of the case.

Withal, appellant quoted Manress as saying:"* * De la misma opinion son el Sr. Sanchez Roman y el Sr. Galcon, el cual afirma que si la paga se hizo por error de derecho, ni existe el cuasi-contrato ni esta obligado a la restitution el que cobro, aunque no se debiera lo que se pago" (Manresa, Tomo 12, paginas 611-612), This opinion, however, has already lost its persuasiveness, in view of the provisions of the Civil Code, recognizing "error de derecho" as a basis for the quasi-contract of solutio indebiti.

"Payment by reason of a mistake in the construction or application of a doubtful or difficult question of law may come within the scope of the preceding article" (Art. 2155).

There is no gainsaying the fact that the payments made by appellee was due to a mistake in the construction of a doubtful question of law. The reason underlying similar provisions, as applied to illegal taxation, in the United States, is expressed in the case of *Newport vs. Ringo*, 37 Ky. 635, 636; 10 S.W.2, in the following manner:

"It is too well settled in this state to the citation of authority that if money be paid through a clear mistake of law or fact, essentially affecting the rights of the parties, and which, in law of conscience was not payable, and should not be retained by the party receiving it, it may be recovered. Both law and sound morality so dictate. Especially should this be the rule as to illegal taxation. The taxpayer has no voice in the imposition of the burden. He has the right to presume that the taxing power has been lawfully exercised. He should not be required to know more than those in authority over him, nor should he suffer loss by complying with what he bona fide believes to be his duty as a good citizen. Upon the contrary, he should be promoted to its ready performance by refunding to him any legal exaction paid by him in ignorance of its illegality; and, certainly, in such a case, if he be subject to a penalty for nonpayment, his compliance under belief of its legality, and without awaiting a resort to judicial proceedings, should not be regarded in law as so far voluntary as to affect his right of recovery."

"Every person who through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal grounds, shall return the same to him" (Art. 22, Civil Code). It would seem unedifying for the government, (here the City of Manila), that knowing it has no right at all to collect or to receive money for alleged taxes paid by mistake, it would be reluctant to return the same. No one should enrich itself unjustly at the expense of another (Art. 2142, Civil Code).

Admittedly, plaintiff-appellee paid the tax without protest. Equally admitted is the fact that section 76 of the Charter of Manila provides that "No court shall entertain any suit asserting the validity of tax assessed under this article until the taxpayer shall have paid, under protest, the taxes assessed against him,* *". It should be noted, however, that the article referred to in said section is Article XII, entitled Department of Assessment, and the sections thereunder manifestly show that said article and its sections relate to assessment, collection and recovery of real estate taxes only. Said section 76, therefore, is not applicable to the case at bar, which relates to the recovery of retail dealer taxes.

In the opinion of the Secretary of Justice (Op. 99, Series of 1957), in a question similar to the case at bar, it was held that the requirement of protest refers only to the payment of taxes which are directly imposed by the charter itself, that is, real estate taxes, which view was sustained by judicial and administrative precedents, one of which, is the case of *Medina, et al vs. City of Baguio*, 91 Phil., 854. In other words, protest is not necessary for the recovery of retail dealer's taxes, like the present, because they are not directly imposed by the charter. In the *Medina* case, the Charter of Baguio (Chap. 61, Revised Adm. Code), provides that "no court shall entertain any suit assailing the validity of a tax assessed under this charter until the tax-payer shall have paid, under protest, the taxes assessed against him (sec. 2574 (b), Rev. Adm. Code), a proviso similar to section 76 of the Manila Charter. The refund of specific taxes paid under a void ordinance was ordered, although it did not appear that payment thereof was made under protest.

In a recent case, We said: The appellants argue that the sum the refund of which is sought by the appellee, was not paid under protest and hence is not refundable. Again, the trial court correctly held that being unauthorized, it is not a tax assessed under the Charter of the appellant City of Davao and for that reason, no protest is necessary for a claim or demand for its refund" (Citing the *Medina* Case, supra: *East Asiatic Co. Ltd. vs. City of Davao*, G.R. No. L-16253, Aug. 21, 1962). Lastly, being a case of *solutio indebiti*, protest is not required as a condition sine qua non for its application.

The next issue in discussion is that of prescription. Appellants maintain that article 1146 (NCC), which provides for a period of four (4) years (upon injury to the rights of the plaintiff), apply to the case. On the other hand,

appellee contends that provisions of Act 190 (Code of Civ. Procedure) should apply, insofar as payments made before the effectivity of the New Civil Code on August 30, 1950, the period of which is ten (10) years, (Sec. 40, Act No. 190; *Osorio vs. Tan Jongko*, 98 Phil., 55; 51 Off. Gaz., 8221) and article 1145 (NCC), for payments made after and effectivity, providing for a period of six (6) years (upon quasi-contracts like *solutio indebiti*). Even if the provisions of Act No. 190 should apply to those payments made before the effectivity of the new Civil Code, because "prescription already running before the effectivity of this Code shall be governed by laws previously in force * *" (Art. 1116, NCC), still payments made before August 30, 1950, are no longer recoverable in view of the second paragraph of said article (1116), which provides: "but if since the time this Code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable even though by the former laws a longer period might be required". Anent the payments made after August 30, 1950, it is obvious that the action has t prescribed with respect to those made before October 30, 1950 only, considering the fact that the prescription of action is interrupted * * * when there is a written extra-judicial demand * *" (Art. 1155, NCC), and the written demand in the case at bar was made on October 30, 1956 (Stipulation of Facts)

Modified in the sense that only payments made on or after October 30, 1950 should be refunded, the decision appealed from is affirmed, in all other respects. No costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Dizon, Regala and Makalintal, JJ., concur.

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