

MANILA LIGHTER TRANSPORTATION, INC., PETITIONER AND APPELLANT, VS. THE MUNICIPAL BOARD, THE CITY TREASURER, AND THE CITY MAYOR, ALL OF THE CITY OF CAVITE, RESPONDENTS AND APPELL...

G.R. No. L-6848. April 27, 1956

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal from a decision of the Court of First Instance of Cavite upholding the validity of an ordinance enacted by the Municipal Board of the City of Cavite which imposes an annual license tax of P400 upon marine shops located in said city.

Appellant is a corporation engaged in the lighterage and water transportation business and in connection with that business it runs a marine shop in the city of Cavite for the repairs of its own lighters and barges. Having been required to pay the annual license tax on the said shop under the ordinance above-mentioned, appellant brought an action for declaratory relief to challenge the validity of said ordinance on the ground, among others, that it is beyond the power of the Municipal Board of Cavite to enact. The appellees on the other hand contend that the ordinance is authorized by paragraphs (a.) and (p) of section 15 of the, city's charter (Commonwealth Act No. 547), which provide:

"Sec. 15. General powers and duties of the. Board.—Except as otherwise provided by law, and subject to conditions and limitations thereof, the Municipal Board shall have the following legislative powers:

(a) To provide for the levy and collection of taxes for general and special purposes in accordance with law including specifically the power to levy real property tax not to exceed two per cent ad valorem.

* * * * *

(p) To tax, fix the license fee for, regulate the business and fix the location of, match factories, blacksmith shops, foundries, steam boilers, lumber yards, shipyards, the storage and sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglieerin, petroleum, or any of the products thereof, and of all other highly combustible or explosive materials, and other establishments likely to endanger the public safety or give rise to conflagrations or explosions, and, subject to the rules and regulations issued by the Director of Health in accordance with law, tanneries, renderies, tallow chandleries, embalmers and funeral parlors, bone factories, and soap factories."

Reading the above provisions carefully,, we note that paragraph (a) merely expresses in a general way the city's authority¹ to levy taxes for general and special purposes, which authority, so the paragraph says, must be exercised "in accordance with, law." In accordance with our decision in *Icard vs. City of Baguio*, 46 Off. Gaz. (Supp. No. 11) 320, to the effect that where the authority to tax is given in general terms .and subject to the qualification that the authority is to be exercised as provided by law, one must look elsewhere in the statute book for specific subjects of taxation, that is to say, for subjects specifically authorized by law to be taxed. In. the

present case, those specific subjects—excepting realty which is already mentioned in the paragraph—are in fact enumerated in various paragraphs of section 15, among them paragraph (p) above, which is the one applicable to the present case.

Now, going over paragraph (p), we find "shipyards" to be among the subjects of taxation therein enumerated, and since a shipyard is denned as a "yard, place or inclosure where ships are built or repaired" (Webster's International Dictionary, 2nd ed.), the term necessarily includes marine shops, such as those sought to be taxed by the ordinance in question which are therein defined as "establishments engaged in the repair of boats and other marine and water crafts."

It is contended, however, that paragraph (p) authorizes the taxing of a shipyard only when it is conducted as a business, and in that connection it is claimed that appellant's marine shop is not in itself a business because it is devoted to the repair of its own watercraft only and does not accept work from others. We find merit in this contention. Considering the amount of the charge imposed by the ordinance—P400 yearly—and the fact that the ordinance itself calls it a tax, we are inclined to regard it as such and not as a mere fee for regulatory purposes in connection with the exercise of the police power. As a tax, it may be imposed by the ordinance upon a shipyard only when this is operated as a business, that is to say, when it builds or repairs ships for others, but not when it is devoted solely to the repair of the owner's own watercraft used by it in its lighterage and water transportation business, which already pays a tax of its own as such business. (See *Standard Vacuum Oil Company vs. M. D. Antigua, et al.*, 96 Phil., 909.)

The above conclusion, however, does not necessarily call for the invalidation of the questioned ordinance, but only for a declaration that appellant's marine shop in the City of Cavite—so long as it is not operated as a business—is not subject to the payment of the tax provided for in the ordinance.

As the evidence stands, we cannot say that during the period preceding the filing of the complaint appellant's marine shop was engaged in building or repairing watercraft for others.

Wherefore, the decision appealed from is affirmed in so much as it declares the ordinance in question valid." But it is also hereby declared that appellant's marine shop in the City of Cavite is not subject to the tax imposed by said ordinance so long as it is not operated as a business. No costs.

Parás, C. J., Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Reyes, J. B. L. and Endencia, JJ., concur.

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