

ENRIQUE R. YU KING, PLAINTIFF AND APPELLEE, VS. CITY OF ZAMBOANGA, DEFENDANT AND APPELLANT.*G.R. No. L-20406. December 29, 1966*

Ponente: DIZON, J.

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The City of Zamboanga appeals from the decision of the Court of First Instance of Zamboanga in Civil Case No. 620 entitled "Enrique R. Yu King vs. City of Zamboanga" declaring void Ordinances Nos. 340, 503 and 672 of the City Council of said city and ordering it to refund to Yu King the amount of P26,779.92 paid by the latter as specific or license tax on the gasoline, kerosene and oil sold by him from November 9, 1950 to December 20, 1955, pursuant to said ordinances, with legal interest from the date of the complaint and to pay attorney's fees in the sum of P1,000.00.

On July 17, 1956, appellee filed the abovementioned action in the Court of First Instance of Zamboanga alleging in his complaint that he was engaged in the business of buying and selling gasoline, kerosene and oil in the City of Zamboanga; that on October 6, 1950, the City Council passed Ordinance No. 340, which, among other things, imposed a specific tax of P0.50 per liter of gasoline sold, P0.02 per liter of lubricating oil, P0.01 per gallon of kerosene and P0.01 per gallon of crude oil sold; that said ordinance was superseded by Ordinance No. 503 approved on December 29, 1952 and later by Ordinance No. 672 approved on December 29, 1954, imposing an Identical tax on the sale of the aforementioned items; that Ordinance No. 340 was approved with retroactive effect as of October 1, 1950 and all said ordinances were passed as emergency measures; that pursuant thereto, appellee was forced to pay to the City Treasurer of Zamboanga from November 9, 1950 to December 20, 1955 the total amount of P26,779.92 as specific or license tax on the gasoline, kerosene and oil sold by him; that said ordinances were null and void because (1) Ordinance No. 340 was made to have a retroactive effect; (2) they were enacted and passed as emergency measures without their having been previously so certified by the City Mayor as provided for in paragraph (f), Section 10, Article II of Commonwealth Act No. 39, as amended, and (3) they were ultra vires since no power to impose said tax has been granted to the City of Zamboanga under its charter (Commonwealth Act No. 39, as amended); and that appellee had demanded the refund of said sum of P26,779.92 from appellant, thru its City Treasurer, but failed.

For its part, appellant City claimed that the questioned ordinances were valid, as they were passed by the City Council of Zamboanga pursuant to Section 10 of Article 2, paragraph (f) of Commonwealth Act No. 39, as amended, and were authorized under its taxing power, as provided for in Section 14 (M) of its charter, which authority to enact said ordinances was confirmed by Congress in Section 4 of Republic Act No. 1435, approved June 14, 1956, which provides, among other things, as follows:

"Section 4. Municipal boards or councils may, notwithstanding the provisions of section one hundred and forty-two and one hundred and forty-five of the National internal Revenue Code as hereinabove amended, levy an additional Tax of not exceeding twenty-five per cent of the rates fixed in said sections, on manufactured oils sold or distributed within the limits of the city or municipality; Provided, That municipal taxes heretofore

levied by cities through city ordinances on gasoline, airplane fuel, lubricating oil and other fuels, are hereby ratified and declared valid. The method of collecting said additional tax shall be prescribed by the Municipal board or council concerned."

and, finally, that appellee did not pay the taxes in dispute under protest as shown by the official receipts issued to him by appellant as enumerated in its answer.

After due trial, the court rendered the decision appealed from.

Main questions to be determined in this appeal are firstly, whether the City of Zamboanga had authority to enact the questioned ordinances, and secondly, whether or not they were properly enacted and approved as emergency measures.

The first question must be answered in the affirmative for it appears that under Section 14 (a) of Commonwealth Act No. 39, as amended, the City of Zamboanga has the power "to tax, fix the license fee for x x x regulate the business and fix the location of match factory or factories xxx the storage and sale of gunpowder x x x coal, oil, gasoline, benzine x x x petroleum, or any of the products thereof and of all other highly combustible or explosive materials".

The authority of the City of Zamboanga to Impose the tax in question being thus clear, the remaining question is whether the ordinances aforesaid are void because Ordinance No. 340 was made retroactive and the three other ordinances were not duly certified by the City Mayor as required by paragraph (f) Section 10, Article 2 of Commonwealth Act No. 39, as amended.

Appellee contends that although the ordinances in question were approved as emergency measures there is no proof that they had been previously certified by the City Mayor. In this connection it is obvious that it was incumbent upon appellee to prove the absence or lack of certification, he having gone to court to seek the annulment of said ordinance precisely upon that ground. To this we must add that, even if said ordinances are emergency measures, the presumption must be that official duty in connection with their enactment had been duly complied with, in the absence of clear evidence to the contrary.

With respect to the retroactive effect given to Ordinance No. 340, it will be observed that the same was passed on October 6, 1950 and it was made effective or retroactive as of October 1 of the same year—a matter of five days, lie do not believe such insignificant circumstance could render the measure void. Besides, said ordinance was superseded by Ordinance No. 50 enacted on December 29, 1950, while the present action was commenced only on July 17, 1956.

Having arrived at the above conclusions, we deem it unnecessary to consider and pass upon the other questions raised in appellant's brief.

WHEREFORE, the decision appealed from is hereby reversed and, as a result, the complaint filed by appellee in the lower court is dismissed, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

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