

MACONDRAY & CO., INC., PLAINTIFF AND APPELLANT, VS. M. SARMIENTO, AS CITY TREASURER OF THE CITY OF MANILA, DEFENDANT AND APPELLEE.

G.R. No. L-3739. January 28, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The plaintiff Macondray & Co., Inc., is a domestic corporation engaged as an agent and dealer in new motor vehicles, accessories and spare parts, and of second-hand motor vehicles which it receives as trade-ins from its buyers of new motor vehicles. The defendant M. Sarmiento is the treasurer of the City of Manila.

On October 1, 1946, the Municipal Board of Manila passed Ordinance No. 2972, entitled "An Ordinance Imposing License Fees on Dealers of Second-Hand Motor Vehicles And For Other Purposes". Under this ordinance, the quarterly license fee for quarterly gross sales of P50,000 is P500.

On October 24, 1946, the Manila Municipal Board approved Ordinance No. 2980 imposing license fees on business dealers in motor vehicles and in accessories and other kinds of machines. This ordinance was amended on May 30, 1947, by Ordinance No. 3046 entitled "An Ordinance Amending Section One of Ordinance No. 2980, Imposing a License Fee On The Business Of Dealers On Motor Vehicles And Accessories, And On Accessories and Spare Parts (New Only)". Under this amended ordinance 3046, the quarterly license fee for quarterly gross sales of P50,000 is P750.

For the third and fourth quarter of 1948, and the first quarter of 1949, the plaintiff made a total gross sales of motor vehicles and spare parts in the amount of P1,706,906.34 and for each of these three quarters it paid the defendant City Treasurer under Ordinance No. 2980 as amended by Ordinance No. 3046, P750. In addition to these license fees, and because the plaintiff during the three quarters already mentioned sold second-hand motor vehicles in the amount of P231,404.14, already included in its gross sales of P1,706,906.34, the defendant under Ordinance No. 2972 assessed the amount of P912.50 against the plaintiff as license and permit fees and compromise, as dealer in second-hand motor vehicles. Plaintiff paid this additional assessment under protest and later it brought this action for its recovery, plus interest. The Court of First Instance of Manila absolved the defendant City Treasurer from the complaint, with costs. We quote the latter part of its decision embodying the lower court's view and reason for its decision:

"The demand for payment and the collection of the amount involved in this action were made under Ordinance No. 2972. This Ordinance covers a subject-matter entirely different from the subject-matter involved in Ordinance No. 2980, as amended by Ordinance No. 3046. The said Ordinance No. 2972 dwells clearly on license to be paid by any person who 'shall engage in, exercise, or carry on the trade or business of a dealer in second hand motor vehicles. * * *' (italics supplied). While Ordinance No. 2980, as amended by Ordinance No. 3046, speaks of motor vehicles, without any qualification. In Ordinance No. 2980, as amended by Ordinance No. 3046, cannot be included second hand motor vehicles, for were the intention of the Municipal Board to include therein both second hand and brand new motor vehicles, it would have stated so clearly.

Ordinance No. 2980 has not repealed or amended Ordinance. No. 2972.

"The validity of Ordinance No. 2972 is not in question. It having not been repealed or amended, its provisions should be carried out, as intended by the Municipal Board."

The plaintiff in appealing from the trial court's decision contends that inasmuch as Ordinance No. 2980 as amended by Ordinance No. 3046 makes no distinction between new and second-hand motor vehicles, it is to be deemed to cover both; that it (plaintiff), has included the sales of its second-hand motor vehicles, received by it as trade-ins, in its gross sales of new motor vehicles, and that for the defendant City Treasurer to assess an additional amount as quarterly fees for the sale of said second-hand motor vehicles, would constitute double taxation. The City Fiscal in representation of the City Treasurer, equally claims that Ordinances Nos. 2980 and 3046 clearly refer only to new motor vehicles and that the sale of second-hand motor vehicles and their accessories is covered by Ordinance No. 2972 which has not been repealed.

After a careful study of the case, we are inclined to agree to the contention of the plaintiff-appellant. As it well observes, the two ordinances 2980 and 3046 speak of motor vehicles in general and without distinction, both in the title and in the body, except that in the body of Ordinance No. 3046 (Sec. 1), under schedule (b), it refers to accessories and spare parts (new only). To us, this is significant. When the Municipal Board deemed it necessary to insert this phrase (new only), it may be deemed to have thought and believed that were it not for the insertion of this phrase, the accessories and spare parts mentioned in said schedule would cover and include both new and second-hand. The same thing may be said of the motor vehicles mentioned in Sec. 1.

Moreover, there would be no point in requiring a dealer in motor vehicles both new and second-hand, to take out two separate licenses and pay two separate quarterly fees on its gross sales when it is willing as in this case to include the sales of its second-hand motor vehicles in those of the new and thereby pay a' higher rate of fees, as provided for in Ordinances 2980 and 3046. Otherwise the tax payer could justly assert and complain that the three ordinances in question were designed to split his business into two or more units merely to derive more fees and taxes regardless of whether or not they are reasonable or fair. Besides, it may not be amiss to bear in mind that the plaintiff herein engages in the sale of second-hand motor vehicles only incidentally, in order to dispose of such motor vehicles traded in by the purchasers of new ones. Of course, in this particular case, by combining the sales of second-hand motor vehicles with those of new ones, the plaintiff happens to derive a financial advantage for the reason that the total gross sales of both kinds of motor vehicles greatly exceed the maximum fixed by the two ordinances 2980 and 3046, and the schedule of fees' fails to cover and fix fees for this excess. If the defendant City Treasurer feels it proper and advantageous for the City of Manila to plug this apparent loophole and get more revenues for the City, he could urge the Municipal Board to amend the ordinance in order to provide for an additional schedule of fees for sales in excess of maximum amount of quarterly gross sales of P50.000.

A reasonable interpretation of the three ordinances, Nos. 2972, 2980 and 3046 is to the effect that the first, still in force, refers exclusively to dealers in second hand motor vehicles and or accessories; that the second ordinance as amended by the third refers to dealers in motor vehicles, new and old, and new accessories and spare parts. We confess that the last two ordinances are not very clear due to some unhappy wording or phraseology.

In view of all the foregoing, we find and hold that the assessment and collection made by the defendant City Treasurer from the plaintiff-appellant of the amount of P912.50 is illegal and unjustified. The City Fiscal on behalf of the appellee claims that even assuming that appellant is entitled to refund still, it may not recover interest, and he cites the case of *Sarasola vs. Trinidad*, 40 Phil. 252 in support of his contention. The *Sarasola* case refers to nonrecovery of interest against a sovereign government or State, such as the Government of the Philippines. On the other hand, in the case of *Viuda e Hijos de Pedro Roxas vs. Rafferty*, 37 Phil. 957, this Court held that a municipal corporation or mere governmental agency like the City of Manila may be made to pay

interest. And in the case of *Palanca vs. City of Manila*, 41 Phil. 125, the same Court held that the City of Manila may and should pay costs like any other unsuccessful party.

Reversing the decision appealed from, the defendant-appellee is hereby ordered to pay the plaintiff the sum of P912.50, with legal interest from the date it was collected by defendant, plus costs. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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