

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. CITY OF MANILA, ET AL., DEFENDANTS APPELLANTS.

G.R. No. 16619. June 29, 1963

Ponente: DIZON, J.

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DIZON, J.:

Appeal from the decision of the Court of First Instance of Manila ordering the City Treasurer of Manila to refund the sum of P15,280.00 to Compania General de Tabacos de Filipinas.

Appellee Compañia General de Tabacos de Filipinas hereinafter referred to simply as Tabacalera—filed this action in the Court of First Instance of Manila to recover from appellants, City of Manila and its Treasurer, Marcelino Sarmiento—also hereinafter referred to as the City—the sum of P15,208.00 allegedly overpaid by it as taxes on its wholesale and retail sales of liquor for the period from the third quarter of 1954 to the second quarter of 1957, inclusive, under Ordinances Nos. 3634, 3301, and 3816.

Tabacalera, as a duly licensed first class wholesale and retail liquor dealer paid the City the fixed license fees prescribed by Ordinance No. 3358 for the years 1954 to 1957, inclusive, and, as a wholesale and retail dealer of general merchandise, it also paid the sales taxes required by Ordinances Nos. 3634, 3301, and 3816.

In its sworn statements of wholesale, retail, and grocery sales of general merchandise from the third quarter of 1954 to the second quarter of 1957, inclusive, Tabacalera included its liquor sales of the same period, and it is not denied that of the taxes it paid on all its sales of general merchandise, the sum of P15,208.00 subject of the action represent the tax corresponding to the liquor sales aforesaid.

Tabacalera's action for refund is based on the theory that, in connection with its liquor sales, it should pay the license fees prescribed by Ordinance No. 3358 but not the municipal sales taxes imposed by Ordinances Nos. 3634, 3301, and 3816; and since its already paid the license fees aforesaid, the sales taxes paid by it— amounting to the sum of P15,208—under the three ordinances mentioned heretofore is an overpayment made by mistake, and therefore refundable.

The City, on the other hand, contends that, for the permit issued to it granting proper authority to "conduct or engage in the sale of alcoholic beverages or liquors" Tabacalera is subject to pay the license fees prescribed by Ordinance No. 3358, aside from the sales taxes imposed by Ordinances Nos. 3634, 3301, and 3816; that, even assuming that Tabacalera is not subject to the payment of the sales taxes prescribed by the said three ordinances as regards its liquor sales, it is not entitled to the refund demanded for the following reasons:

- (a) The said amount was paid by the plaintiff voluntarily and without protest:
- (b) If at all the alleged overpayment was made by mistake, such mistake was one of law and arose from the plaintiff's neglect of duty;
- (c) The said amount had been added by the plaintiff to the selling price of the liquor sold by it and passed to the consumers; and

(d) The said amount had been already expended by the defendant City for public improvements and essential services of the City government, the benefits of which are enjoyed, and being enjoyed, by the plaintiff.

It is admitted that as liquor dealer, Tabacalera paid annually the wholesale and retail liquor license fees under Ordinance No. 3353. In 1954, City Ordinance No. 3634, amending City Ordinance No. 3420, and City Ordinance No. 3816, amending City Ordinance No. 3301 were passed. By reason thereof, the City Treasurer issued the regulations marked Exhibit A, according to which, the term "general merchandise", as used in said ordinances, includes all articles referred to in chapter 1, Sections 123 to 148 of the National Internal Revenue Code. Of these, Section 133-135 included liquor among the taxable articles. Pursuant to said regulations, Tabacalera included its sales of liquor in its sworn quarterly declaration submitted to the City Treasurer beginning from the third quarter of 1954 to the second quarter of 1957, with a total value of P722,501.09 and correspondingly paid a wholesaler's tax amounting to P13,688.00 and a retailer's tax amounting to P1,520.00, or a total of P15,208.00—the amount sought to be recovered.

It appears that in the year 1954, the City, through its treasurer, addressed a letter to Messrs. Sycip, Gorres, Velayo and Co., an accounting "firm, expressing the view that liquor dealers paying the annual wholesale and retail fixed tax under City Ordinance No. 3368 are not subject to the wholesale and retail dealers' taxes prescribed by City Ordinances Nos. 3634, 3301, and 3816. Upon learning of said opinion, appellee stopped including its sales of liquor in its quarterly sworn declarations submitted in accordance with the aforesaid City Ordinances Nos. 3634, 3301, and 3816, and on December 3, 1957, it addressed a letter to the City Treasurer demanding refund of the alleged overpayment. As the claim was disallowed, the present action was instituted.

The term "tax" applies—generally speaking—to all kinds of exactions which become public funds. The term is often loosely used to include levies for revenue as well as levies for regulatory purposes. Thus license fees are commonly called taxes. Legally speaking, however, license fee is a legal concept quite distinct from tax; the former is imposed in the exercise of police power for purposes of regulation, while the latter is imposed under the taxing power for the purpose of raising revenues (McQuillin, *Municipal Corporations*, Vol. 9, 3rd Edition, p. 26).

Ordinance No. 3358 is clearly one that prescribes municipal license fees for the privilege to engage in the business of selling liquor or alcoholic beverages, having been enacted by the Municipal Board of Manila pursuant to its charter power to fix license fees on, and regulate, the sale of intoxicating liquors, whether imported or locally manufactured. (Section 18 [p], Republic Act 409, as amended). The license fees imposed by it are essentially for purposes of regulation, and are justified, considering that the sale of intoxicating liquor is, potentially at least, harmful to public-health and morals, and must be subject to supervision or regulation by the state and by cities and municipalities authorized to act in the premises. (Mc-Quillin, *supra*, p. 445). A'

On the other hand, it is clear that Ordinances Nos. 3634, 3301, and 3816 impose taxes on the sales of general merchandise, wholesale or retail, and are revenue measures enacted by the Municipal Board of Manila by virtue of its power to tax dealers for the sale of such merchandise. (Section 18 [o], Republic Act No. 409, as amended).

Under Ordinance No. 3634 the word "merchandise" as employed therein clearly includes liquor. Aside from this, we have held in *City of Manila vs. Inter-Island Gas Service Inc.*, 99 Phil., 847, that the word "merchandise" refers to all subjects of commerce and traffic; whatever is usually bought and sold in trade or market; goods or wares bought and sold for gain; commodities or goods to trade; and commercial commodities in general.

That Tabacalera is being subjected to double taxation is more apparent than real. As already stated, what is collected under Ordinance No. 3358 is a license fee for the privilege of engaging in the sale of liquor, a calling in which—it is obvious—not anyone or anybody may freely engage, considering that the sale of liquor indiscriminately may endanger public health and morals. On the other hand, what the three ordinances mentioned heretofore

impose is a tax for revenue purposes based on the sales made of the same article or merchandise. It is already settled in this connection that both a license fee and a tax may be imposed on the same business or occupation, or for selling the same article, this not being in violation of the rule against double taxation (*Bentley Gray Dry Goods Co., vs. City of Tampa* 137 Fla. 641, 188 SO. 758; *McQuillin, Municipal Corporations*, Vol. 9, 3rd Edition, p. 83). This is precisely the case with the ordinances involved in the case at bar.

Appellee's contention that the City is repudiating its previous view—expressed by its Treasurer in a letter addressed to Messrs. Sycip, Gorres, Yelavo & Co. in 1954—that a liquor dealer who pays the annual license fee under Ordinance No. 3358 is exempted from the wholesalers and retailers taxes under the other three ordinances mentioned heretofore is of no consequence. The government is not bound by the errors or mistakes committed by its officers, specially on matters of law.

Having arrived at the above conclusion, we deem it unnecessary to consider the other legal points raised by the City.;

Wherefore, the decision appealed from is reversed, with the result that this case should be, as it is hereby dismissed, with costs.

Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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