

**LI SENG GIAP & CO. AND SY CONG BIENG & CO.,
PLAINTIFFS AND APPELLEES, VS. THE MUNICIPALITY OP DAET AND
JOSE FLORES, MUNICIPAL TREASURER OF DAET, DEFENDANTS AND
APPELLANTS.**

G. R. No. 32254. March 21, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The municipality of Daet and Jose Flores, as municipal treasurer of Daet, defendants, appeal from the decision of the Court of First Instance of Camarines Norte, the dispositive part of which is as follows:

"Wherefore, the court is of opinion that the ordinances under consideration must be declared null and void, and that the plaintiff is entitled to recover such sums as he may have paid to the municipal treasurer of Daet in pursuance thereof, with costs against the defendants."

In support of their appeal the appellants assign the following alleged errors as committed by the trial court, to wit:

"1. The trial court erred in holding that ordinance No. 13 prescribed an income tax, and on that ground declared it null and void, in view of the prohibition of paragraph (w), section 1, Act No. 3422.

"2. The trial court erred in holding that ordinance No. 14 imposed a tax upon exports, and on that ground declared it null and void, in view of section 2287 of the Revised Administrative Code.

"3. The trial court erred in holding that there is no express legal provision authorizing the defendant council to create the taxes imposed in ordinances Nos. 13 and 14.

"4. The trial court erred in considering these ordinances in the light of the prohibition or limitation of section 2287 of the Revised Administrative Code, holding it still in force, and not repealed by Act No. 3422.

"5. And the trial court erred in not holding that ordinances Nos. 13 and 14 above-mentioned are both lawful and valid, and in rendering judgment in favor of the plaintiffs, conceding them the right to recover the sums paid as lawful taxes."

When the case came up for trial, the following agreed statement of facts was submitted by the parties:

"The plaintiffs and the defendants in the above entitled case, through their respective attorneys, do hereby stipulate and agree:

"I. That the defendants admit the facts alleged in paragraphs I, II, and VII of the complaint.

"II. That municipal ordinances Nos. 13 and 14, quoted in paragraph II of the complaint, became effective on October 1, 1928, in accordance with section 2309 of the Administrative Code of 1917.

"III. That municipal ordinance No. 14 mentioned in the preceding paragraph was enforced by the defendant municipality without the approval of the Secretary of the Interior and the Secretary of Finance, although it

imposed a tax exceeding twenty-five pesos per annum, and such approval is required by section 2 of Act No. 3422 of the Philippine Legislature.

"IV. That defendant Jose Flores, as municipal treasurer of the defendant municipality of Daet, Camarines Norte, on October 17, 1928, collected, and received under protest, from the plaintiff Li Seng Giap & Co., the sum of P6.25 as license tax for the quarter comprising the months of October, November, and December, 1928, provided in the aforementioned municipal ordinance No. 13, said sum being based upon the total sales of the said plaintiff establishment, situated in the municipality of Daet, during the quarter covering the months of July, August, and September, 1928, at which time said municipal ordinance No. 13 had not yet become effective.

"V. That said defendant Jose Flores, in the capacity mentioned in the preceding paragraph, on October 17, 1928 collected, and received under protest, from the plaintiff Li Seng Giap & Co., the sum of P100, and on October 18, 1928 a like amount from the other plaintiff, Sy Cong Bieng & Co., as exporter's tax prescribed by the municipal ordinance No. 14, for the quarter covering the months of October, November, and December, 1928.

"VI. That the plaintiffs impugn the validity of municipal ordinances No. 13 and No. 14, not only because the municipal council of Daet, Camarines Norte, acting as a law-making body by authority of Act No. 3422 of the Philippine Legislature, exceeded its powers in enacting and enforcing said municipal ordinances Nos. 13 and 14, but also because they are contrary to the fundamental principles of municipal taxation in the Philippine Islands, and to the prevailing laws upon the matter, besides being unconstitutional.

"VII. That the plaintiffs pray that said municipal ordinances Nos. 13 and 14 be declared null and void, and that defendant Jose Flores, municipal treasurer of Daet, be ordered to return to them the amounts mentioned in the foregoing paragraphs which they paid under protest pursuant to the provisions of the aforesaid municipal ordinances Nos. 13 and 14.

"Wherefore the parties herein, having agreed upon the facts involved in the case, as above set forth, do hereby pray this Honorable Court to pass upon the questions of law arising therefrom in connection with the allegations of the complaint and the answer, without further production of evidence."

The municipal ordinances mentioned in the agreed statement of facts just quoted read as follows:

"[Resolution No. 127]

"By authority of Act No. 34-22, the Municipal Council of Daet hereby enacts the following ordinance:

"[Municipal Ordinance No. 13]

"ANNULLING MUNICIPAL ORDINANCE NO. 12, CURRENT SERIES, AND IMPOSING A MUNICIPAL LICENSE TAX UPON MERCHANTS ESTABLISHED IN THE MUNICIPALITY OF DAET, CAMARINES NORTE.

"Section 1. A municipal license tax is hereby imposed upon all merchants established within the municipality of Daet in the following manner:

"(a) Those whose quarterly sales range between five hundred pesos (P500) and one thousand pesos (P1,000), shall

pay a tax of four pesos (P4) a year.

"(b) Those whose quarterly sales range between one thousand pesos (P1,000) and one thousand five hundred (P1,500), shall pay eight pesos (P8) a year.

"(c) Those whose quarterly sales range from one thousand five hundred and one pesos (P1,501) to two thousand pesos (P2,000), shall pay sixteen pesos (P16) a year.

"(d) Those whose quarterly sales exceed two thousand pesos (P2,000) shall pay twenty-five pesos (P25) a year.

"Sec. 2. These taxes shall be payable quarterly during the first twenty days of the first month following the quarter for which they are to be paid. Provided, That the municipal treasurer shall collect the tax as in this ordinance provided upon the basis of the sales during the quarter immediately preceding the twenty-day term herein granted for the payment thereof.

"Sec. 3. Violators of this ordinance shall, upon conviction, be fined double the amount of the tax due.

"Sec. 4. This ordinance shall become effective upon approval.

"Unanimously approved."

"[Resolution No. 128]

"By authority of Act No. 3422, the Municipal Council of Daet hereby enacts the following ordinance:

"[Municipal Ordinance No. 14]

"IMPOSING A LICENSE TAX UPON MERCHANTS ESTABLISHED IN DAET WHO ARE ENGAGED
IN THE EXPORTATION OF MERCHANDISE AND GOODS OF VALUE.

"Section 1. It is hereby decreed that all merchants established in the municipality of Daet engaged in the exportation of merchandise or products of value shall pay a municipal tax of four hundred pesos (P400) a year, payable either quarterly or annually, at the option of the merchant.

"Sec. 2. Any merchant exporting any merchandise or products of value without first paying the proper license tax shall, upon conviction, be fined a sum not less than P250 nor greater than P500.

"Sec. 3. This ordinance shall become effective upon approval.

"Unanimously approved."

With regard to the first assignment of error, municipal ordinance No. 13 quoted above imposes a municipal license tax, payable quarterly, upon all merchants established in the municipality of Daet, prescribing graduated rates based upon the amount of the sales of each merchant.

In taking the amount of the quarterly sales of each merchant as the basis of the municipal license tax to be paid, the municipal lawmakers did not tax the income of the merchant, but the privilege to engage in business; because, in the first place, the sales are not income, but the profits or earnings, as the word "income" is defined by this court in the case of *Madrigal and Paterno vs. Kafferty and Concepcion* (38 Phil., 414); and, in the second place, said tax is not directly charged on said sales upon a percentage basis. Municipal corporations have the right to classify and graduate such fees according to the estimated value of the privilege conferred (*U. S. vs. Sumulong*, 30 Phil., 381), and the amount of the sales (37 *Corpus Juris*, paragraph 54, page 204).

Municipal ordinance No. 13, under consideration, does not therefore run counter to the prohibition of section 1, paragraph (m), of Act No. 3422.

As to the second assignment of error, section 2 of Act No. 3422 requires that the approval of the Secretary of the Interior and of the Secretary of Finance be obtained whenever the fixed amounts of the municipal taxes established through an ordinance exceed P25 a year, except in the certain lines of business or occupations mentioned' in said section. Ordinance No. 14 prescribes a municipal tax of P460 for all exporters of merchandise or products of value, and it is a fact agreed upon by both parties that the approval of the Secretary of the Interior and of the Secretary of Finance was not obtained before said municipal ordinance No. 14 was enforced. Such approval being a condition sine qua non for the validity of said ordinance, the same is null and void for lack thereof.

As to the other assignments of error being a consequence of the first two, the questions raised therein have been automatically solved by the conclusion reached in the first two assignments mentioned.

For the foregoing considerations, we are of opinion and so hold; (1) That a fixed graduated license tax based upon the periodic sales of merchants is not a tax upon their income, but is imposed not on the income but on the privilege to engage in business; (2) that as municipal ordinance No. 14 imposes a license tax exceeding P25 which had not been approved by the Secretary of the Interior and the Secretary of Finance before it became effective, it is null and void, and the taxes assessed thereunder were unlawfully collected.

By virtue thereof, the judgment appealed from is reversed in so far as it declares municipal ordinance No. 13 null and void, and affirmed in so far as it declares municipal ordinance No. 14 null and void, and orders the defendants to reimburse the plaintiffs in the amounts collected as license tax in pursuance of said municipal ordinance No. 14, without special pronouncement of costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns and Romualdez, JJ., concur.

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