

HERCULES LUMBER CO., INC., PLAINTIFF AND APPELLEE, VS. THE MUNICIPALITY OF ZAMBOANGA AND CARLOS DOMINGUEZ, MUNICIPAL TREASURER OF ZAMBOANGA, DEFENDANTS AND APPELLANTS.*G. R. No. 33749. February 18, 1931*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Zamboanga by the Hercules Lumber Co., Inc., for the purpose of recovering from the defendant municipality of Zamboanga, of which the co-defendant Carlos Doxninguez is municipal treasurer, the sum of P112.66 for taxes paid under protest. Upon hearing the cause the trial court gave judgment for the plaintiff to recover the amount sued for with interest from the date of the filing of the complaint, but without costs. From this judgment the defendants appealed.

It appears that the plaintiff maintains in the municipality of Zamboanga a shed (camarin) from which it is accustomed to sell lumber; and, in connection therewith, it operates a machine for sawing lumber, driven by a motor-engine of twenty five (25) horse power. Although these activities are conducted by the plaintiff upon a moderate scale, we think that they are not improperly designated when we say that the plaintiff is engaged in maintaining a lumber yard and operating a saw-mill.

On December 14, 1928, the municipal council of Zamboanga, acting under the supposed authority of subsection (d) of section 2625 of the Administrative Code of 1917, enacted an ordinance (No. 226) purporting to impose a license tax in the amount of one hundred pesos per annum upon each person engaged in selling lumber from a fixed place of deposit (coda vendedor de madera con depdsito estableddo) and also a further annual tax of five pesos per horse power upon each motor-engine for sawing wood (coda mdquina de motor de aserrar madera). This ordinance was made effective January 1, 1929, immediately prior to which date the municipal treasurer of the municipality made a formal demand upon the plaintiff for the payment of the license fees upon the activities conducted by it as above stated. The plaintiff questioned the right of the treasurer to collect the tax, but paid the same under protest, and instituted this action to recover the money, as stated in the first paragraph of this opinion.

Subsection (d) of section 2625 of the Administrative Code of 1917 enumerates the activities upon which license taxes may be imposed by the municipal council of municipalities contained in the Province of Zamboanga; but no mention is made therein of the keeping of lumber yards or the maintenance of motor engines for sawing lumber. This is fatal to the pretension of the municipal authorities that they have the power to impose the taxes here in question. It is true that in subsection (e) of section 2625, lumber yards and saw-mills are mentioned as businesses that may be regulated by the municipal council; but regulation in the sense intended in said subsection does not include the levying of license taxes for the purposes of revenue. The separate enumeration of the activities which may be lawfully taxed and the activities which may only be regulated reveals the distinction in the mind of the lawmaker between the act of taxing and the act of regulating. The power to regulate should not be construed as

including the power to impose license taxes for revenue purposes. It is well established doctrine that subordinate entities like municipal councils can exercise the power of taxation only to the extent specified by law; and this power cannot be extended by strained implications.

The judgment ordering the refund of the tax will therefore be affirmed, and it is so ordered, with costs against the appellant municipality.

Avanceña, C. J., Johnson, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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