

**CITY OF CEBU AND/OR CITY COUNCIL OF THE CITY OF CEBU,
COMPOSED OF HON. FLORENCIO S. UROT, RAYMUNDO A. CRYSTAL,
BIENVENIDO B. TUdTUD, JOSE V. CUENCO, PABLO U. ABELLA,
GEORGE M. B...**

G.R. No. 70684. October 10, 1986

Ponente: PARAS, J.

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PARAS, J.:

Petitioners in this instant petition seek reversal of the judgment of the then Intermediate Appellate Court in its AC-G.R. CV No. 64237 which affirmed the Decision of the then Court of First Instance of Cebu Branch IV, Cebu City, dismissing the appeal of petitioners and affirming the action taken by respondents Secretary and Acting Secretary, Department of Finance, in suspending the effectivity of Section 57, Section 65(G), Section 74(Q) and (R) and Section 102, all of Cebu City Tax Ordinances I and II, Series of 1974.

Pursuant to Presidential Decree No. 231, as amended, otherwise known as the Local Tax Code, the City Council of Cebu passed Ordinances I and II which were approved by the Mayor on June 15, 1974, to take effect on July 1, 1974. The aforementioned ordinances were submitted to the respondents Secretary and Acting Secretary of Finance for review. After review, said respondents ordered the suspension of the following provisions with the corresponding reasons:

A. Tax Ordinance No. I

Section 57 - Social Amelioration Tax (provided for an additional social amelioration tax of P0.05 on owner/promoter of boxing exhibitions, or athletic games or exhibitions held for fund raising purposes).

Section 65 - Fixed Tax on Business, in general (tax on amusement places wherein customers actively participate without making bets or wagers).

Reason for suspension: Violative of uniformity of taxation required by sec. 13 of P.D. No. 231.

Section 74 - Fees and charges for services rendered:

(Q) Foods and Drugs Fees:

(To be collected from sari-sari stores, food establishments, drugstores, drugs, manufacturers, and drug laboratories)

Reason for suspension: Unauthorized by P.D. No. 231.

C. Section 74 - Fees and charges for Services rendered. x x x

(R) Storage fees, for attached properties stored in the Office of the City Sheriff:

xxx xxx xxx

Reason for suspension: Fees are excessive, violating Sec. 2(d) of P.D. No. 231.

D. Section 102 - Fish inspection fees.

Reason for suspension: Fees are in restraint of trade violating Sec. 2(e) of P.D. No. 231.

B. Tax Ordinance No. II

Section 1. Imposed a city tax of P0.30 for every case of beer (24 bottles) or ten (10) cans sold in the City of Cebu.

Reason for suspension: This tax was withdrawn by P.D. No. 426.

From the aforesaid order of suspension, petitioners filed a petition for review and/or appeal in the Court of First Instance of Cebu. The petition was docketed as Civil Case No. R-14420 and assigned to Branch IV of said court.

After hearing, the lower court rendered judgment, the dispositive portion of which nullified Section 57, Section 65 (G), Section 74(Q) and (R) and Section 102, all of Cebu City Tax Ordinance No. 1 and Section 1 of City Tax Ordinance No. II, Series of 1974.

Petitioners appealed the foregoing decision to the Court of Appeals and after due proceedings, rendered judgment affirming the lower court's decision. Hence, the instant petition, upon the following issues:

A. Whether or not the respondent Intermediate Appellate Court is correct in -

- interpreting the provisions of the Local Tax Code (PD 231, as amended) in relation to section 57 and section 65 of the City Tax Ordinance No. 1;
- holding that Food and Drugs fees under Sec. 74(Q) of City Tax Ordinance No. 1 violates the provision of Sec. 35 of the Local Tax Code and the same is oppressive and unreasonable.
- holding that the sheriff's storage fees under sec. 74(R) of the City Tax Ordinance in question is confiscatory.
- interpreting and applying the provision of sec. 5(K) of the Local Tax Code and sec. 2 (of the same code) in relation to Sec. 102 of the City Tax Ordinance No. 1 of the City of Cebu which imposed an inspection fee of three (3) centavos for every kilo of fish sold within the city of Cebu.
- holding that City Tax Ordinance No. 2 which imposes a tax on sale of beer within the city is not within the taxing power of the petitioner.

We find no merit in the petition.

1. Re: First assignment of error:

The lower court ruled that section 57 and section 65 (G), item 14 of Cebu Tax Ordinance No. 1 imposing an amusement tax (on top of the amusement tax the city is admittedly authorized to impose under section 23 of the Local Tax Code) violate Sec. 13 of the Local Tax Code in relation to section 23 of the same Code which mandates that the taxes imposed "shall be uniform for the city and the province." Petitioners argue that since all establishments of amusement within Cebu City are subject to the same rate of taxes imposed by sections 57 and 65 (G), the rule on uniformity of taxation is not violated.

This contention is erroneous. Section 23, second paragraph of the Local Tax Code states:

"The rates of the taxes, fees, or other impositions that the city shall fix may exceed the maximum rates allowed for the province or municipality by not more than fifty percent, except the rates of the taxes and fees provided in Section 12, 13, 14, 15-A and 19(A-5) in Chapter II of this Code which shall be uniform for the city and the

province or municipality as the case maybe." (underscoring supplied)

Under Section 13 of the Local Tax Code, the province is authorized to impose an amusement tax of 20% or 30% depending on the amount paid for admission. But under secs. 57 and 65 (G) of its Tax Ordinance No. 1 now in question, petitioner Cebu City is authorized to impose an additional P0.05 amusement tax (on top of the amusement tax the city is admittedly authorized to impose under section 23 of the Local Tax Code). In effect, Cebu City will have a higher rate of amusement tax than Cebu province. This disparity in rates is precisely what is proscribed by the second paragraph of section 23 earlier quoted. The said section speaks of "uniform for the city and the province or municipality". Hence, what is required is uniformity of amusement taxes between the province and the city; not uniformity of the rates on the same subject.

2. Re: Second assignment of error:

Under this assignment of error, petitioners assert that the City of Cebu has the authority or power to impose the food and drug fees and charges provided for in section 74(Q) of Tax Ordinance No. 1 even though sari-sari stores and drug store are already taxed under sec. 65-a, par. 2 of the ordinance as retailers, and food establishments are also already taxed under sec. 65-b of the same ordinance as manufacturers. The reason being that this kind of business requires close supervision and control which would justify the imposition of higher and additional regulatory fees.

This contention is not tenable. Section 36 of the Local Tax Code provides as follows:

Sec. 36 Permit fee - The local government may collect a fee sufficient to cover the cost of regulation, inspection and surveillance relative to the issuance of a permit which shall be required of an individual or any juridical entity before the same shall engage in any business or occupation under the provisions of this Code.

As correctly observed by respondent Court, the law (Section 36) contemplates a single fee for the issuance of a permit to engage in any business or occupation. But Sec. 74 (Q) of Tax Ordinance No. 1 imposes another permit fee on foods and drugs establishments. As a result, the taxpayer will have to pay another permit fee for conducting the same business in the same city. Such multiple imposition of permit fees is unreasonable and oppressive and is definitely not sanctioned by the Local Tax Code.

3. Re: Third assignment of error:

Petitioners assert that respondent court erred in its appreciation of the factual issues concerning the excessiveness of the sheriff's storage fees under section 74(R) of Tax Ordinance No. 1, leading it to erroneously hold that section 74 (R) is violative of section 2(D) of the Local Tax Code for being excessive or confiscatory.

Again, the aforesaid contention is without merit. As illustrated by respondent court in its assailed decision, quoting the observation of the trial court, a typewriter with a fair market value of P3,000.00 will have to pay a sheriff's storage fee of P5.00 a day. Thus, it would take only 600 days, or less than two years, for the typewriter to completely eat up its value on account of storage fees. Being excessive and confiscatory, the suspension of the imposition of storage fees by the lower court was correct.

4. Re: Fourth assignment of error:

The respondent court held that the final inspection fee under section 102 of City Tax Ordinance No. 1 is violative of section 5(K) and section 2(E) of the Local Tax Code for being contrary to law, public policy and/or in restraint of trade. Petitioners assail the aforesaid ruling pointing out that the said provision is not against the fishermen but rather against the traders and fish vendors, and that the rate of imposition is very minimal it being fixed at P0.03 per kilo of fish only.

This contention is not correct. Sec. 5(K) of the Local Tax Code limits the taxing powers of Local governments as follows -

"Sec. 5. Common limitations on the taxing powers of local governments - The exercise of the taxing powers of provinces cities, municipalities and barrios shall not extend to the imposition of the following:

(K) Taxes or fees on agricultural products when sold by the farmers or producers thereof, whether in their original form or not"

The aforequoted provision prohibits a local government from imposing an inspection fee on agricultural products and fish is an agricultural product. Contrary to the claim of petitioners, under Section 102 of City Ordinance No. 1 a fisherman selling his fish within the city has to pay the inspection fee of P0.03 for every kilo of fish sold. Furthermore, the imposition of the tax will definitely restrict the free flow of fresh fish to Cebu City because the price of fish will have to increase.

5. Re: Fifth assignment of error:

The lower court held that City Tax Ordinance No. 11 imposing a tax on the sale of beer is not within the taxing power of Cebu City.

This ruling according to petitioners is erroneous because the City of Cebu is empowered by Sec. 24 of the Local Tax Code, as amended to impose this kind of tax.

Again, the said contention of petitioners is not tenable. True, under the original provisions of Section 24 of the Local Tax Code, a city could levy taxes on articles already subject to specific tax under the provisions of the National Internal Revenue Code provided the rate imposed by the City did not exceed 25% of the rates provided by the National Internal Revenue Code. But Section 24 was subsequently amended by PD 426 to read as follows -

"SEC 24. Additional taxing powers The city may levy any tax, fee or other imposition not specifically enumerated or otherwise provided for in this Code, subject to the provisions of section 49 and 50 of this Code as herein amended."

This power to tax articles subject to specific tax which was expressly granted to cities by the original provisions of section 24, was deleted in the amendment. The said section 24, as it now reads, merely grants the city the power to "levy any tax, fee or other imposition not specifically enumerated or otherwise provided for" in the Local Tax Code. The amendment evinces the intent of the lawmaker to remove such taxing authority (on articles already subject to the national specific tax) from the cities like Cebu City.

WHEREFORE, in view of the foregoing considerations, the petition is DISMISSED for lack of merit. No pronouncement as to costs.

Feria, Acting C.J., (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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