

JESUS C. ESTANISLAO, IN HIS CAPACITY AS THE SECRETARY OF FINANCE, PETITIONER, VS. HONORABLE AMADO COSTALES, AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 14, AT ZAMBOAN...

G.R. No. 96516. May 08, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The validity of Ordinance No. 44 of Zamboanga City, dated January 13, 1982 imposing a P0.01 tax per liter of softdrinks produced, manufactured, and/or bottled within the territorial jurisdiction of the City of Zamboanga is the issue addressed by this petition.

This Ordinance was passed by the Sangguniang Panglungsod of Zamboanga City.[1] On February 16, 1982, the Sanggunian sent a copy of the Ordinance to the then Minister of Finance by registered mail for his review pursuant to P.D. No. 231, otherwise known as the Local Tax Code.

On December 3, 1982, the Minister of Finance through Deputy Minister Antonino P. Roman, Jr., sent the letter addressed to the Sanggunian, suspending the effectivity of Ordinance No. 44 on the ground that it contravenes Section 19(a) of the Local Tax Code.[2]

On January 31, 1983, the City of Zamboanga, represented by its City Mayor, appealed said decision of the Minister of Finance to the Regional Trial Court, Branch 14, at Zamboanga City.

On December 5, 1990, the lower court rendered a decision finding that the tax levied under said Ordinance is not among those that the Sanggunian may impose under the Local Tax Code, but nonetheless, it upheld its validity on the ground that the Minister of Finance did not take appropriate action on the matter within the prescribed period of 120 days after receipt of a copy thereof.[3]

Hence, this petition for review on certiorari filed by the incumbent Secretary of Finance, represented by the Solicitor General, alleging that the trial court erred when it held that the failure of the Minister of Finance to suspend the effectivity of Ordinance No. 44 within 120 days from receipt of a copy thereof rendered said Ordinance valid.

The petition is impressed with merit.

Section 19 (a) of the Local Tax Code provides as follows:

Sec. 19. Tax on business. – The municipality may impose a tax on businesses as follows:

"(a) Tax on the business of manufacturing, importing, exporting, producing, wholesaling or retailing of, or dealing in, any article of commerce of whatever kind or nature, except those for which fixed taxes are provided herein:

With gross annual sales
for the preceding
calendar
year in the amount of:

Amount of tax
per
annum

Less than

P1,000.00

P 10.00

P1,000.00 or more but

less than

P 2,000.00

20.00

2,000 or more but

less than

3,000.00

30.00

3,000.00 or more but

less than

4,000.00

45.00

4,000.00 or more but

less than

5,000.00

65.00

5,000.00 or more but

less than

6,000.00

80.00

6,000.00 or more but

less than

7,000.00

100.00

7,000.00 or more but

less than

8,000.00

120.00

8,000.00 or more but

less than

10,000.00

160.00

10,000.00 or more but

less than

15,000.00

240.00

15,000.00 or more but

less than

20,000.00

360.00

20,000.00 or more but

less than

30,000.00

520.00

30,000.00 or more but

less than

40,000.00

750.00

40,000.00 or more but

less than

50,000.00

1,000.00

50,000.00 or more but

less than

75,000.00

1,500.00

75,000.00 or more but

less than

100,000.00

2,200.00

100,000.00 or more but

less than

150,000.00

3,200.00

150,000.00 or more but

less than

300,000.00

3,900.00

300,000.00 or more but

less than

500,000.00

7,000.00

500,000.00 or more but

less than

750,000.00

11,250.00

P 750,000.00 to

P 1,000,000.00

P 16,000.00

For every P50,000.00 or fraction
thereof in excess of

P1,000,000.00

200.00

In the case of newly started business, the tax shall be at the rate of not exceeding one-tenth of one per cent of the capital investment but in no case shall it be less than the minimum of P10.00 fixed above.

The tax on the business of manufacturing, producing or importing agricultural implements, fertilizers, medicinal drugs, and dairy products shall be one-half of the rates above-prescribed.

For purposes of collection of this tax, manufacturers and producers maintaining or operating branch or sales offices elsewhere shall record the sales in the branch or sales office making the sale and the tax thereon shall accrue to the local government where the branch or sales office is located. In cases where there is no such branch or sales office in the locality where the sale is effected, the sale shall be duly recorded in the principal office and the tax shall accrue to the local government where said principal office is located."

In relation thereto Section 23 thereof also provides:

"SEC. 23. Scope of power. - Except as otherwise provided in this Code, the city may levy and collect, among others, any of the taxes, fees and other impositions that the province or the municipality may levy and collect. The exercise of the taxing powers of the city extends to the taxes, fees and other impositions mentioned in Sections 12, 13, 14, 15 and 16 of this Code which the city shall also impose and collect, to the exclusion of the national and municipal governments.

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 per cent, except the rates of the taxes and fees provided in Sections 12, 13 and 143 in Chapter II of this Code which shall be uniform for the province and the city.

In lieu of the graduated fixed tax prescribed under Section 19 of this Code as read in relation with this Section, the city may impose a percentage tax on the sales of non-essential commodities at the rate of not exceeding two per cent and on the sales of essential commodities at the rate of not exceeding one per cent. In no case, however, shall the city impose both the graduated fixed tax and the percentage tax on the same subject.

For purposes of this tax, the following shall be considered essential commodities:

- (a) Rice, corn, wheat flour, meat, milk, fish, sugar, salt and other agricultural, marine and fresh-water products;
- (b) Laundry soap, medicine and household remedies;
- (c) Locally manufactured ordinary fabrics and canned foodstuffs;
- (d) Commodities covered by the Price Control Law; and
- (e) Such other related and similar products necessary to human life and well-being.

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 Sections 49 and 50 of this Code." (Underscoring supplied.)

From the foregoing, it is clear that a city, like public respondent Zamboanga City may impose, in lieu of the graduated fixed tax prescribed under Section 19 of the Local Tax Code, a percentage tax on the gross sales for the preceding calendar year of non-essential commodities at the rate of not exceeding two per cent and on the gross sales of essential commodities at the rate of not exceeding one per cent.

Ordinance No. 44 of the respondent Zamboanga City imposes P0.01 per liter of softdrinks produced, manufactured, and/or bottled within the territorial jurisdiction of the City of Zamboanga. No doubt this Ordinance is ultra vires as it is not within the authority of the City to impose said tax. The authority of the City is limited to the imposition of a percentage tax on the gross sales or receipts of said product which, being non-essential, shall be at the rate of not exceeding 2% of the gross sales or receipts of the softdrinks for the preceding calendar year. The tax being imposed under said Ordinance is based on the output or production and not on the gross sales or receipts as authorized under the Local Tax Code.

Public respondent Zamboanga City, however, invokes the ruling of this Court in Pepsi-Cola Bottling Company vs. Municipality of Tanauan, Leyte^[4] whereby this Court upheld the validity of Municipal Ordinance No. 27 enacted by the Municipality of Tanauan, Leyte imposing a tax of P0.01 for every gallon of softdrinks produced in the municipality as follows:

"That brings Us to the question of whether the remaining Ordinance No. 27 imposes a percentage or a specific tax. Undoubtedly, the taxing authority conferred on local governments under Section 2, Republic Act No. 2264, is broad enough as to extend to almost "everything, excepting those which are mentioned therein." As long as the tax levied under the authority of a city or municipal ordinance is not within the exceptions and limitations in the law, the same comes within the ambit of the general rule, pursuant to the rules of *expresio unius est exclusio alterius*, and *exceptio firmat regulum in casibus non excepti*. The limitation applies, particularly, to the prohibition against municipalities and municipal districts to impose "any percentage tax on sales or other taxes in any form based thereon nor impose taxes on articles subject to specific tax, except gasoline, under the provisions of the National Internal Revenue Code." For purposes of this particular limitation, a municipal ordinance which prescribes a set ratio between the amount of the tax and the volume of sale of the taxpayer imposes a sales tax and is null and void for being outside the power of the municipality to enact. But, the imposition of "a tax of one centavo (P0.01) on each gallon (128 fluid ounces, U.S.) of volume capacity' on all soft drinks produced or manufactured under Ordinance No. 27 does not partake of the nature of a percentage tax on sales, or other taxes in any form based thereon. The tax is levied on the produce (whether sold or not) and not on the sales. The volume capacity of the taxpayer's production of soft drinks is considered solely for purposes of determining the tax rate on the products, but there is no set ratio between the volume of sales and the amount of the tax."^[5]

Said case was decided by this Court on the basis of the provisions of the Local Autonomy Act (Republic Act No. 2264, as amended, which took effect on June 19, 1959), particularly Section 2 thereof, which gives the cities or

municipalities ample taxing authority covering almost "everything, excepting those mentioned herein."

However, the Local Autonomy Act has been superseded by the Local Tax Code insofar as the taxing authority in the provinces, cities or municipalities is concerned. By express language of Section 64(a) of the Local Tax Code, "all existing tax ordinances of provinces, cities, municipalities and barrios shall be deemed ipso facto nullified on June 30, 1974." [6]

The applicable law, therefore, to the present case is the Local Tax Code and not the Local Autonomy Act.

Section 5, Article X of the 1987 Constitution provides "Each local government unit shall have the power to create its own sources of revenues, and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy." [7] Ordinance No. 44 of public respondent Zamboanga City traverses the limitations set by the Local Tax Code.

Section 44 of the Local Tax Code provides as follows:

"SEC. 44. Review and suspension of tax ordinance.- Within fifteen days after its approval, a certified true copy of a tax ordinance shall be furnished: the Secretary of Finance by the provincial board or city council; the provincial treasurer, by the municipal or barrio council; or the city treasurer by the barrio council in the city's jurisdiction. If, within one hundred and twenty days after receipt of a copy thereof, the Secretary of Finance or the provincial or city treasurer, as the case may be, takes no action as authorized in this section, the tax ordinance shall remain in force.

The Secretary of Finance, the provincial treasurer, or the city treasurer, as the case may be, shall review and have the authority to suspend the effectivity of any tax ordinance within one hundred and twenty days after receipt of a copy thereof, if, in his opinion, the tax or fee therein levied or imposed is unjust, excessive, oppressive, confiscatory, or not among those that the particular local government may impose in the exercise of its power in accordance with this Code; or when the tax ordinance is, in whole or in part, contrary to declared national economic policy; or when the ordinance is discriminatory in nature on the conduct of business or calling or in restraint of trade.

When the Secretary of Finance, the provincial treasurer or city treasurer, as the case may be, exercises this authority, the effectivity of such ordinance shall be suspended, either in part or, if necessary, in toto. The local legislative body, within thirty days after receipt of the notice of suspension, may either modify the tax ordinance to meet the objections thereto or file an appeal with the proper court, otherwise, the tax ordinance or the part or parts thereof declared suspended shall be considered as revoked.

An appeal shall not stay the order of suspension nor does it authorize the local legislative body to reimpose the same tax or fee levied under a suspended ordinance until such time as the grounds for the suspension thereof shall have ceased to exist or the appeal has been resolved in its favor. Any tax or fee paid pursuant to the ordinance involved shall be considered as having been paid under protest.

In case the appeal is resolved in favor of the local government, the tax or fee that would have been collected if there were no order of suspension shall immediately be collected without interest and surcharge. In case the order of suspension is upheld, the court shall forthwith order the refund of the tax or fee paid under protest to the taxpayer." [8]

In accordance with the foregoing provision, the Sanggunian Panglungsod sent a copy of Ordinance No. 44 by registered mail to the then Minister of Finance on February 16, 1982. Apparently, said official failed to act within 120 days after receipt of a copy thereof. It was only on December 6, 1982 when the Minister of Finance, through his deputy, wrote the Sanggunian informing it of the suspension of the effectivity of Ordinance No. 44 as it contravenes Section 19(a) of the Local Tax Code, as amended, without prejudice to the Sanggunian filing an appeal within thirty (30) days from receipt thereof; otherwise the same shall be deemed revoked. Public

respondent Zamboanga City concurs in the position of the respondent judge that since the Minister of Finance failed to act or otherwise suspend the effectivity of the tax ordinance within 120 days from receipt of a copy thereof, said Ordinance is valid and remains in force.

There is no authority under Section 44 of the Local Tax Code for this conclusion. All that is provided therein is that if the Secretary of Finance "takes no action as authorized in the Section, the tax ordinance shall remain in force."

Even if the Secretary of Finance failed to review or act on the Ordinance within the prescribed period of 120 days it does not follow as a legal consequence thereof that an otherwise invalid ordinance is thereby validated.

Much less can it be interpreted to mean that the Secretary of Finance can no longer act by suspending and/or revoking an invalid ordinance even after the lapse of the 120-day period. All that the law says is that after said period the tax ordinance shall remain in force. The prescribed period for review is only directory and the Secretary of Finance may still review the ordinance and act accordingly even after the lapse of the said period provided he acts within a reasonable time.

Consequently even after the prescribed period has lapsed, should the Secretary of Finance, upon review, find that the tax or fee levied or imposed is unjust, excessive, oppressive, confiscatory, or not among those that the particular local government may impose in the exercise of its power in accordance with this Code; or when the tax ordinance, is in whole or in part, contrary to the declared national economic policy; or when the ordinance is discriminatory in nature on the conduct of business or calling or in restraint of trade,"[9] the Secretary of Finance may certainly suspend the effectivity of such ordinance and revoke the same, without prejudice to the right to appeal to the courts within 30 days after receipt of the notice suspension. The same rule should apply to the provincial and city treasurers, as the case may be, under Section 44 of the Local Tax Code.

WHEREFORE, the petition is hereby GRANTED. City Ordinance No. 44 dated January 13, 1982 enacted by the Sangguniang Panglungsod of public respondent Zamboanga City is hereby declared null and void. Any taxes paid under protest thereunder should be accordingly refunded to the taxpayers concerned.[10] No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

[1] Annex B to Petition.

[2] Annex C to Petition.

[3] Annex A to Petition.

[4] 69 SCRA 460 (1976).

[5] Ibid at 468.

[6] Southeast Asia Manufacturing Corporation vs. The Municipal Council of Tagbilaran, 94 SCRA 341 (1979).

[7] Italics supplied.

[8] Italics supplied.

[9] Section 44, paragraph 2, Local Tax Code.

[10] Supra, last paragraph.

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