Supreme Court E-Library

The third assignment being a mere corollary of the first two which We have already overruled needs no discussion.

In consequence of all the foregoing, the judgment appealed from is affirmed, with costs against the appellants.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Makasiar, Antonio, and *Esguerra, JJ.,* concur.

Makalintal, J., on official leave.

[G.R. No. L-29159. November 24, 1972]

CELESTINO TATEL, et al., *plaintiffs-appellees, vs.* THE MUNICIPALITY OF VIRAC, et al., *defendants-appellants.*

[G.R. No. L-29160. November 24, 1972]

GULF FIBERS CORPORATION, et al., *plaintiffs-appellees, vs.* THE MUNICIPALITY OF VIRAC, et al., *defendants-appellants.*

SYLLABUS

1. **POLITICAL LAW; MUNICIPAL CORPORATIONS; LOCAL AUTONOMY ACT; LOCAL TAX ORDINANCES; AUTHORITY OF SECRETARY REGARDING SAID ORDINANCES.**— The provision of C.A. No. 472 requiring the prior approval of the Secretary of Finance, when an ordinance increases by more than 50% municipal taxes prescribed in previous ordinances, has been impliedly repealed by R.A. No. 2264, which vests in municipal, city and municipal district councils ample discretion to impose taxes and even municipal license taxes, and instead of demanding the prior approval of the Secretary of Finance to ordinances increasing taxes by more than 50% of the previous rates, R.A. 2264 vests in said official no more than the authority to suspend the effectivity of any ordinance, within 120 days after its passage, when, in

Supreme Court E-Library

his opinion, the taxes imposed are "unjust, excessive, oppressive or confiscatory."

2. **ID.; ID.; ID.; ID.; ID.; ACTIONS OF SAID SECRETARY APPEALABLE TO COURTS.**— The suspension by the Secretary of Finance of ordinances imposing taxes which he may consider "unjust, excessive, oppressive or confiscatory" may be appealed to the courts of justice, unlike the power of approval or disapproval given to him under Sec. 4 of C.A. No. 472.

3. **ID.; ID.; ID.; ID.; ORDINANCES INVOLVED DO NOT TAX SPECIFIC GOODS.**— Where the ordinances do not tax specific goods but impose license taxes, or regulate and tax those engaging in the business or occupations, or exercising the privileges, therein enumerated, categorizing said businesses, occupations or privileges on the basis of the nature thereof or of the products they handle, and the license tax prescribed in each category is graduated, the amount thereof being dependent upon the "capital investment of purchases for the previous year, whichever is higher," the legality of said ordinances cannot be questioned on the ground that they impose taxes on articles subject to specific tax. The power to impose such taxes is explicitly authorized in Section 2 of Republic Act No. 2264. Moreover, the nature of the business or occupations taxed, and the amount invested therein, which is also reflected in the "purchases" not the "sales" made "for the previous year" are reasonable grounds for the classification made in said ordinances.

TEEHANKEE, *J.*, *concurring* and *dissenting*:

POLITICAL LAW; MUNICIPAL CORPORATIONS; LOCAL AUTONOMY ACT; LOCAL TAX ORDINANCE; QUESTIONED ORDINANCES IMPOSE A TAX CONTRARY TO THE PROHIBITION OF SEC. 2 OF R.A. NO. 2264.— The progressive taxes imposed by municipal ordinances 6 and 5 on all persons engaged in any business, occupation or in the exercise of privilege within the municipality of Virac, Catanduanes, fall within the express prohibition of Section 2 of R.A. No. 2264 that "municipalities ... shall, in no case, impose any *percentage tax on sales* or other *taxes in any form based thereon* xxx" and the use of *purchases* rather than *sales* as the basis for the tax should be taken as a transparent

Supreme Court E-Library

device to go around the statute's limitations, since the *purchases* made by merchants are obviously for *sales* purposes in the ordinary course of business.

APPEARANCES OF COUNSEL

Juanito M. Romano for plaintiffs-appellees.

Rey A. Tejada for defendants-appellants.

D E C I S I O N

CONCEPCION, *C.J.*:

These two (2) cases were jointly tried before and decided by the Court of First Instance of Catanduanes, owing to the identical issues raised therein, namely,the validity of two ordinances of the Municipality of Virac, the herein defendant-appellant.

In Case No. L-29159 - Civil Case No. 581 of the Court of First Instance of Catanduanes - Celestino Tatel, et al., question the legality of Ordinance No. 6, series of 1965, of said municipality, reading as follows:

"ORDINANCE NO. 6

"AN ORDINANCE IMPOSING MUNICIPAL LICENSE TAXES FOR THE EXERCISE OF ALL BUSINESS, OCCUPATIONS AND PRIVILEGES WITHIN THE MUNICIPALITY OF VIRAC AND FOR OTHER PURPOSES.

"Be it ordained by the Municipal Council assembled in session; That

"SECTION 1 - Purpose and Scope - The purpose of this ordinance is to raise revenue in the municipality of Virac, Catanduanes by imposing municipal license taxes on all persons engaged in any business, occupation or in the exercise of privilege.

"SECTION 2 - License Tax - A municipal license tax shall be imposed upon persons engaged in businesses, occupations or privileges as hereinafter provided.

"SECTION 3 - Amount of taxes on business - Municipal license taxes on business shall be collected as follows:

Supreme Court E-Library

(a) Merchants, Sari-Sari Store Owners, Wholesale or Retail Dealers of general merchandise, pharmaceutical products, rice and corn, except gasoline, etc. as provided under Republic Act 1435 -

With Capital investment or purchases for the previous year, whichever is higher, amounting to-

Not Exceeding	P 1000	-			P 20.00	per annum
	1001	-	2000	-	40.00	per annum
	2001	-	3000	-	60.00	per annum
	3001	-	4000	-	80.00	per annum
	4001	-	5000	-	100.00	per annum
	5001	-	6000	-	120.00	per annum
	6001	-	7000	-	140.00	per annum
	7001	-	8000	-	160.00	per annum
	8001	-	9000	-	180.00	per annum
	9001	-	10,000	-	200.00	per annum
	10,001	-	11,000	-	220.00	per annum
	11,001	-	15,000	-	240.00	per annum

For every P1000 in excess of P15,000 (sic)

Payable quarterly or before the 20th day of the month, January, April, July and October of the year with a penalty of 20% for late payment.

(b) Merchants (buyers and sellers) of Abaca and Copra;

With Capital Investment or purchases for the previous year, whichever is higher, amounting to -

Not Exceeding	P 500			-	P 20.00	per annum
	501	-	1000	-	40.00	per annum
	1001	-	2000	-	60.00	per annum
	2001	-	3000	-	80.00	per annum
	3001	-	4000	-	100.00	per annum
	4001	-	5000	-	120.00	per annum
	5001	-	6000	-	140.00	per annum
	6001	-	7000	-	160.00	per annum
	7001	-	8000	-	180.00	per annum
	8001	-	9000	-	200.00	per annum
	9001	-	10,000	-	220.00	per annum

For every P1000 in excess of P10,000 (sic)

Supreme Court E-Library

Payable quarterly on or before the 20th of the month, January, April, July and October of the year with a penalty of 20% for late payment.

(c) Proprietors or Operators of bakery and other food products:

With Capital Investment or purchases for the previous year, whichever is higher, amounting to -

Not Exceeding	P 5000	-	P200.00	per annum
	5001 - 10,001	-	240.00	per annum
	10,001 - 15,000	-	300.00	per annum
	15,001 - 20,000	-	360.00	per annum

For every P1000 in excess of P20,000 - P10.00 per annum

Payable quarterly on or before the 20th day of the month, January, April, July and October of the year with a penalty of 20% for late payment.

(d) Proprietors or Operators or manufacturers of hollow-blocks or similar products;

With machinery	-	P100.00	per annum
Without machinery	-	50.00	per annum

Payable quarterly on or before the 20th day of the month, January, April, July and October of the year with a penalty of 20% for late payment.

(e) Operator of Lumber Yard:

Class A - Lumber yard without machinery for deposit of more than 200 sq.m. P400.00 per annum

Class B - 1501-2000 sq.m. P350.00 per annum

Class C - 1001 -1500 sq.m. P300.00 per annum

Class D - 501-1000 sq.m. P250.00 per annum

Class E - Less than 500 sq.m. P200.00 per annum

Class F - Without a yard but with space to keep already sawed lumber and with office to accept orders for lumber P100.00 per annum.

Payable quarterly on or before the 20th day of the month, January, April, July and October of the year with a penalty of 20% for late payment.

Supreme Court E-Library

(f) Lumberyard with machinery shall pay in addition to the fees prescribed above -

Over	200 H.P.	P300.00	per annum
	151-200 H.P.	250.00	per annum
	101-150 H.P.	200.00	per annum
	51-100 H.P.	150.00	per annum
	26-50 H.P.	100.00	per annum
	-25 H.P. below	50.00	per annum

Payable quarterly on or before the 20th day of the month, January, April, July and October of the year with a penalty of P20% for late payment.

(g) Merchants, wholesale or retail dealers of lumber materials with capital investment or purchases for the previous year, whichever is higher -

Not Exceeding	P 1000	P40.00	per annum
	1001 - 2000	80.00	per annum
	2001 - 3000	120.00	per annum
	3001 - 4000	160.00	per annum
	4001 - 5000	200.00	per annum
	5001 - 6000	240.00	per annum
	6001 - 7000	280.00	per annum
	7001 - 8000	320.00	per annum
	8001 - 9000	360.00	per annum
	9001 - 10,000	400.00	per annum

For every P1000 in excess of P10,000 - P10.00 p.a.

Payable quarterly on or before the 20th day of the month, January, April, July and October of the year with penalty of 20% for late payment.

(h) Proprietors or Operators of furniture, windows and doors-

Sash Factory -

With machinery	P80.00	per annum
Without machinery	P40.00	per annum.

Payable quarterly on or before the 20th day of the month, January, April, July and October of the year with a penalty of 20% for late payment.

Supreme Court E-Library

(i) Merchants, wholesale or retail dealers of rattan and nipa shingles with a capital investment or purchases for the previous year, whichever is higher -

Not Exceeding	P 500	P20.00	per annum
	501 - 1000	40.00	per annum
	1001 - 2000	60.00	per annum
	2001 - 3000	80.00	per annum
	3001 - 4000	100.00	per annum
	4001 - 5000	120.00	per annum
	5001 - 6000	140.00	per annum
	6001 - 7000	160.00	per annum
	7001 - 8000	180.00	per annum
	8001 - 9000	200.00	per annum
	9001 - 10,000	220.00	per annum

For every P1000 in excess of P10,000 - P10.00 p.a.

Payable quarterly on or before the 20th day of the month, January, April, July and October of the year with a penalty of 20% for late payment.

PROVIDED FURTHER, that the proprietors or corporators mentioned under a, b, c, g and i under Sec. 3 of this ordinance are required to submit a statement of their purchases from January to June, 1965 on or before July 10,1965 and to submit their monthly purchases on or before the 10th day of the subsequent months which should be under oath in a prescribed form from the Office of the Municipal Treasurer, where the report shall be submitted.

"SECTION 4 - Violation of any of the provisions of this Ordinance shall be punished by a fine of P200.00 or imprisonment of six months or both penalties at the discretion of the Court.

"SECTION 5 - All ordinances the provisions of which are inconsistent with the provisions of this ordinance are hereby repealed.

"SECTION 6 - This ordinance shall take effect immediately upon approval.

"Approved unanimously, June 28, 1965."

In Case No. L-29160 - Civil Case No. 588 of the Court of First Instance of Catanduanes - Gulf Fibers Corporation, et al.,

Supreme Court E-Library

impugn the validity of Ordinance No. 5, series of 1966, of the same municipality, which is of the following tenor:

"ORDINANCE NO. 5

"AN ORDINANCE AMENDING SECTION 3(A) OF THE AMENDED ORDINANCE NO. 12 SERIES OF 1965 IMPOSING MUNICIPAL LICENSE TAXES FOR THE EXERCISE OF ALL BUSINESS, OCCUPATIONS AND PRIVILEGES WITHIN THE MUNICIPALITY OF VIRAC AND FOR OTHER PURPOSES.

"Be it ordained by the Municipal Council assembled in session; That -

"SECTION 1 - Amending Section 3(a) of amended ordinance No. 12 series 1965 to read as follows:

"SECTION 3(a) of amended ordinance No. 12 series 1965 as further amended.

"Amount of Taxes on business - Municipal license taxes on business shall be collected as follows:

(a) Merchant, Sari-Sari store owners, wholesale or retail dealers of merchandise, pharmaceutical products, rice and corn, abaca, copra, operators of bakery and other food products. Merchants on wholesale or retail dealers of lumber materials, rattan and nipa shingles, wholesale and retail dealers of liquor or fermented liquor, wholesale and retail dealer of tobacco.

With capital investment or purchases for the previous year, whichever is higher, amounting to -

(a) Not exceeding:

P1000.00		P 20.00	per annum
1001.00 -	2000.00	40.00	per annum
2001.00 -	3000.00	60.00	per annum
3001.00 -	4000.00	80.00	per annum
4001.00 -	5000.00	100.00	per annum
5001.00 -	6000.00	120.00	per annum
6001.00 -	7000.00	140.00	per annum
7001.00 -	8000.00	160.00	per annum
8001.00 -	9000.00	180.00	per annum
9001.00 -	10,000.00	220.00	per annum

and there shall be collected:

Supreme Court E-Library

P9.00 p.a. in excess of P10,000 for every P1,000 or fraction thereof up to P300,000.00;

P8.00 p.a. in excess of P300,000 for every P1,000 or fraction thereof up to P500,000.00;

P7.00 p.a. in excess of P500,000 for every P1,000 or fraction thereof, which amount shall not exceed the total of P6,000.00 per annum on the business. Provided, further that these shall be the basis of the licenses effective October 1,1966 based on the investment or purchases last calendar year whichever is higher and the licenses for the succeeding years shall be based from the investment or purchases for the previous year whichever is higher.

Payable quarterly on or before the 20th day of the month of January, April, July and October of the year with a penalty of 20% for late payment.

(b) Proprietors or Operators or Manufacturers of Hollow-block or similar products:

With Machinery	P100.00	per annum
Without Machinery.....	50.00	per annum

Payable quarterly on or before the 20th day of the month of January, April, July and October of the year with a penalty of 20% for late payment.

(c) Operator of Lumber Yard:

Class A - Lumber yard without machinery for deposit of more than 2000 sq.m.	P400.00	per annum
Class B - 1501 - 2000 sq.m.	350.00	per annum
Class C - 1001 - 1500 sq.m.	300.00	per annum
Class D - 501 - 1000 sq.m.	250.00	per annum
Class E - Less than 500 sq.m.	200.00	per annum
Class F - Without a yard but with a space to keep already sawed lumber and with office to accept order for lumber	100.00	per annum.

Payable quarterly on or before the 20th day of the month of January, April, July and October of the year with a penalty of 20% for late payment.

Supreme Court E-Library

(d) Lumber yard with machinery shall pay in addition to the fees prescribed above -

Over 200	H.P.	P300.00	per annum
151-200	H.P.	250.00	per annum
101-150	H.P.	200.00	per annum
51-100	H.P.	150.00	per annum
26- 50	H.P.	100.00	per annum
Below -25	H.P.	50.00	per annum

Payable quarterly on or before the 20th day of the month of January, April, July and October of the year with a penalty of P20% for late payment.

(e) Proprietors or Operators of furniture, windows and doors-

Sash Factory -	With Machinery	P80.00	p.a.
	Without Machinery	40.00	p.a.

Payable quarterly on or before the 20th day of the month of January, April, July and October of the year with a penalty of P20% for late payment.

"SECTION 2 - Provided further that proprietors or operators under (a) Section 1 hereof shall submit their monthly purchases under oath on or before the 10th day of the following month to the Municipal Treasurer in a prescribed form from the Office of the Municipal Treasurer which purchases or capital invested for the whole year whichever is higher shall be the basis of amount to be collected as provided under (a) of Section 1 of this ordinance.

"SECTION 3 - Violation of any of the provisions of this ordinance shall suffer a fine of not less than P50.00 nor more than P200.00 or imprisonment of not less than 30 days nor more than 6 months or both fine and imprisonment at the discretion of the court.

"SECTION 4 - Should any section or part of this ordinance be declared unconstitutional, such declaration shall not invalidate the other provisions thereof.

"SECTION 5 - All ordinances the provisions of which are inconsistent with the provisions of this ordinance are hereby repealed.

"SECTION 6 - This amendment shall take effect immediately upon its approval.

"Approved, September 30, 1966."

Supreme Court E-Library

Both ordinances were assailed upon the ground that they partake of the nature of a tax on imports or exports and a tax on purchases, as well as double taxation; that they effect an increase in taxes by more than 50% "without the requisite approval of the Secretary of Finance"; that the taxes imposed are unjust, excessive and confiscatory; and that the imposition thereof is *ultra vires*. Shortly after the filing of the complaints in Case No. 588 of the lower court - L-29160 of this Court - the trial court, on motion of the plaintiffs, ordered the issuance of a writ of preliminary injunction restraining the defendants from enforcing Ordinance No. 5, series of 1966, pending the resolution of said case on the merits.

In due course, thereafter, said court rendered a decision, the dispositive part of which We quote:

"Wherefore, in view of the foregoing considerations, the Court hereby finds Sections 3(a), 3(b) and 3(i) of Ordinance No. 6, Series of 1965 under question in Civil Case No. 581 and Section 1 of Ordinance No. 5, Series of 1966 under question in Civil Case No. 588, null and void, as contrary to the provisions of subsection 3 of Section 4 of Commonwealth Act No. 472 and Section 2 of Republic Act No. 2264. Unless purged of their infirmity, the provisions are unenforceable.

"In Civil Case No. 581, the defendants are hereby ordered to reimburse to the plaintiffs the taxes paid by them under protest, as follows:

(1) Celestino Tatel	P3,659.50
(2) Juan Molina	3,330.00
(3) Ang Kee Hian	3,432.00
(4) Ang Ban Giok	5,464.00
(5) Tio Son Kuan	834.00
(6) Bennie Co	1,604.00

"In Civil Case No. 588, the defendants are ordered to reimburse the taxes paid by the plaintiffs also under protest, as follows:

(1) Gulf Fibers Corporation	P2,845.00
(2) Juan Molina	3,142.50
(3) Celestino Tatel	3,000.00
(4) Ang Ban Giok	2,952.00
(5) Ang Kee Hian	2,346.00

Supreme Court E-Library

(6) Bennie Co	1,201.00
(7) Liu Lim	435.00

with interest at the legal rate from the time of the filing of the complaint up to final judgment.

"The preliminary injunction is hereby made permanent.

"With costs against the defendants.

"SO ORDERED."

Hence, this appeal by the Municipality of Virac.

The decision appealed from declared said ordinances illegal upon the ground that they provide for an increase in taxes by more than 50% without the approval of the Secretary of Finance and that they impose taxes on articles subject to specific tax, as well as over forest products.

We are unable to share this view. To begin with, the provision of Commonwealth Act No. 472 requiring the prior approval of the Secretary of Finance, when an ordinance increases by more than 50% municipal taxes prescribed in previous ordinances, has been impliedly repealed by Republic Act No. 2264, which vests in municipal, city and municipal district councils ample discretion to impose taxes and even municipal license taxes, and, instead of demanding said *prior approval* of the Secretary of Finance to ordinances increasing taxes by more than 50% of the previous rates, vests in said official no more than the authority to *suspend* the effectivity of any ordinance, within 120 days after its passage, when, in his opinion, the taxes imposed are "unjust, excessive, oppressive or confiscatory."

Moreover, the ordinances in question do not tax specific goods. They impose license taxes, or regulate and tax those engaging in the businesses or occupations, or exercising the privileges, therein enumerated. They categorize said businesses, occupations or privileges on the basis of the nature thereof — such as "merchants, sari-sari store owners, wholesale and retail dealers of general merchandise," manufacturers of hollow-blocks or similar products, lumber yards, etc. — or of the products they handle - such as pharmaceutical products, rice and corn, abaca

Supreme Court E-Library

and copra, furniture, rattan and nipa shingles, liquor or tobacco. Some of these categories are subclassified, depending upon whether the business or occupation being taxed is undertaken with or without machineries, or whether the lumber yard is merely for deposit, or without a "yard" properly, "but with space to keep already sawed lumber and with office to accept orders for lumber."

Secondly, the license tax prescribed in each category is graduated, the amount thereof being dependent upon the "capital investment or purchases for the previous year, whichever is higher."

The power to impose such license taxes is explicitly authorized in Section 2 of Rep. Act No. 2264, which provides that:

"SEC. 2.*Taxation.*- Any provision of law to the contrary notwithstanding, all chartered cities, municipalities and municipal districts shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business or exercising privileges in chartered cities, municipalities or municipal districts by requiring them to secure licenses at rates fixed by the municipal board or city council of the city, the municipal council of the municipality, or the municipal district council of the municipal district; to collect fees and charges for service rendered by the city, municipality or municipal district; to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation being conducted within the city, municipality or municipal district and otherwise to levy for public purposes, just and uniform taxes, licenses or fees: *Provided,* That municipalities and municipal districts shall, in no case, 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: *Provided, however,* That no city, municipality or municipal district may levy or impose any of the following:

(a) Residence tax;

(b) Documentary stamp tax;

(c) Taxes on the business of persons engaged in the printing and publication of any newspaper, magazine, review or bulletin appearing at regular intervals and having fixed prices for subscription and sale,

Supreme Court E-Library

and which is not published primarily for the purpose of publishing advertisements;

(d) Taxes on persons operating waterworks, irrigation and other public utilities except electric light, heat and power;

(e) Taxes on forest products and forest concessions;

(f) Taxes on estates, inheritances, gifts, legacies, and other acquisitions *mortis causa;*

(g) Taxes on income of any kind whatsoever;

(h) Taxes or fees for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof;

(i) Customs duties registration, wharfage on wharves owned by the national government, tonnage, and all other kinds of customs fees, charges and dues;

(j) Taxes of any kind on banks, insurance companies, and persons paying franchise tax;

(k) Taxes on premiums paid by owners of property who obtain insurance directly with foreign insurance companies; and

(l) Taxes, fees or levies, of any kind, which in effect impose a burden on exports of Philippine finished, manufactured or processed products and products of Philippine cottage industries.

"A tax ordinance shall go into effect on the fifteenth day after its passage, unless the ordinance shall provide otherwise: *Provided, however,* That the Secretary of Finance shall have authority to suspend the effectivity of any ordinance within one hundred and twenty days after its passage, if, in his opinion, the tax or fee therein levied or imposed is unjust, excessive, oppressive, or confiscatory, and when the said secretary exercises this authority the effectivity of such ordinance shall be suspended.

"In such event the municipal board or city council in the case of cities and the municipal council or municipal district council in the case of municipalities and municipal districts may appeal the decision of the Secretary of Finance to the court during the pendency of which case the tax levied shall be considered as paid under protest."

Supreme Court E-Library

It should be noted that, under the penultimate paragraph of the foregoing section, the power of the Secretary of Finance is limited to *suspending* ordinances imposing taxes that he considers" unjust, excessive, oppressive or confiscatory," and that the *only* qualification of that power is that it be exercised within 120 days after the passage of the ordinance. What is more, his action may be *appealed* to the courts of justice, unlike the power of approval or disapproval given to said official under Section 4 of Com. Act No. 472, reading:

"SEC. 4. The approval of the Secretary of Finance shall be secured:

(1) Whenever the rates of municipal license taxes fixed or imposed by ordinance of the municipal council or municipal district council by virtue of the provisions of this Act exceed the rates of fixed internal revenue privilege taxes regularly imposed by the National Government upon the same businesses or occupation, except on hotels, restaurants, cafes, refreshment parlors, race tracks, and retail dealers in vino liquors and fermented liquors, and any tax or fee on livery stables, garages, and other places or establishments where public vehicles and other conveyances are kept for hire;

(2) Whenever the rate of fixed municipal license taxes on businesses not excepted in this Act or otherwise covered by the preceding paragraph and subject to the fixed annual tax imposed in section one hundred eighty two of the National Internal Revenue Law, is in excess of fifty pesos *per annum;* and

"(3) Whenever the municipal license tax on any business, occupation, or privilege the rate of which is not limited above is increased by more than fifty *per centum.*

"xxx xxx xxx."

Considering that the purpose of Rep. Act No. 2264 is to grant more autonomy to our local governments[1] and that the object of Section 2 thereof is identical to that of Com. Act No. 472, We are satisfied that the provisions of the latter—relied upon by plaintiffs-appellees herein and applied by the lower court—have been repealed by the Local Autonomy Act (Rep.

[1] Ormoc Sugar Co. *v.* Municipal Board, L-24322, July 21, 1967.

Supreme Court E-Library

Act No. 2264). And this is borne out by the statements made on the floor of the House of Representatives, during the consideration of the Bill which later became R.A. No. 2264. Thus:

"MR. YANCHA: But is not the gentleman aware of the fact that the taxes being imposed under this proposed measure are practically the same taxes that are now being imposed by the municipal council?

"MR. ZOSA: Now, gentleman from Samar, they are not. Under Commonwealth Act 472, these are not the same taxes. The power of the municipality to tax under the present law is *limited,* but *this bill removes the limitation,* so that under this amendment of the Committee *the power to tax has become very broad.*

"MR. YANCHA: If the gentleman from Cebu reads Section 3, he will find that there is a limitation to the taxing power of the Municipal Council being proposed in the amendment.

"MR. ZOSA: Yes, but if the gentleman reads Commonwealth Act 472, together with that amendment, he will realize that the power of taxation given under this amendment has become very broad.

"MR. YANCHA: Precisely, because *the purpose of this law is to give more local autonomy* if he will not increase their finances, and the only way to increase the finances of municipalities is to broaden a little bit their power of taxation so that they will not be burdening the national government by asking certain things that they cannot do themselves."[2]

Further confirmation of Our view on this point is supplied by Provincial Circular No. 24, of the Secretary of Finance - the officer principally charged with the duty to enforce tax measures, and whose views thereon, although mainly persuasive, carry much weight - dated March 31, 1960, in which, referring to the effect of said R. A. No. 2264 upon his power of approval (or disapproval) under C. A. No. 472, said official said:

"*In lieu of* the power of approval of the rates of municipal taxes in certain instances granted the Secretary of Finance under Sec. 4

[2] No. 57, Vol. II, Part II, Cong. Record, 1959, p. 2539, 4th Congress. Italics supplied.

Supreme Court E-Library

of Commonwealth Act No. 472, said official is now authorized to *suspend* the effectivity of any ordinance within one hundred and twenty days after its passage, if, in his opinion, the tax or fees therein levied or imposed is unjust, excessive, oppressive or confiscatory."

Neither is there any merit in the theory that the contested ordinances impose taxes on specific goods, or on forest products, which are excluded by Section 2 of R. A. No. 2264 from the general power of taxation therein granted, inasmuch as the rate of taxation imposed in said ordinances is dependent upon the "capital investment or purchases for the previous year" - which, likewise, reflects the "capital investment" - "whichever is higher." It is Our considered view that the nature of the business or occupation taxed, and the amount invested therein, which is, also, reflected in the "purchases" - not the "sales" - made "for the previous year" are reasonable grounds for the classification made in said ordinances and the graduated taxes imposed therein.

WHEREFORE, the decision appealed from should be, as it is hereby reversed, with costs against plaintiffs-appellees herein.

IT IS SO ORDERED.

Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, Antonio, and *Esguerra, JJ.,* concur.

Teehankee, J., concurs and dissents in a separate opinion.

Makalintal, J., is on leave.

TEEHANKEE, *J., concurring* and *dissenting:*

I concur in the main opinion of the Chief Justice insofar as it upholds the validity of the questioned municipal ordinances imposing municipal license taxes on all persons engaged in any business, occupation or in the exercise of privilege within the municipality of Virac, Catanduanes, on a progressive scale based on the *capital investment* of the business, which, as therein stated, is a reasonable ground for the classification made in the said ordinances and for the graduated taxes imposed therein.

Supreme Court E-Library

I am constrained to dissent, however, where such taxes are imposed on an alternative basis of "(*capital investment* or) *purchases for the previous year, whichever is higher*" and imposes what amounts to percentage tax, in addition to the basic tax, of, for instance, *P10.00 per annum for every P1,000 in excess of P10,000 of purchases for the previous year* in the case of "merchants, wholesale or retail dealers of lumber materials."[1] This amounts to *one (1%) percent* for every P10,000 of purchases and is thus easily determinable as a percentage of the purchases made by the taxpayer.[2]

Similar percentage taxes based on the amount of *purchases for the previous year* are imposed on general merchants, sari-sari store owners, wholesale or retail dealers of general merchandise, pharmaceutical products, rice and corn, merchants (buyers and sellers) of abaca and copra, proprietors or operators of bakery and other food products, and wholesale or retail dealers of rattan and nipa shingles.[3]

The merchants concerned "are required to submit a statement of their *purchases* from January to June, 1965 on or before July 10, 1965 and to submit their monthly purchases on or before the 10th day of the subsequent months which should be under oath in a prescribed form from the office of the municipal treasurer, where the report shall be submitted."

I respectfully submit that such progressive taxes fall within the express prohibition of Section 2 of R.A. No. 2264 that "municipalities... shall, in no case, impose any *percentage tax* on *sales* or other *taxes in any form based thereon* xxx "and that using *purchases* rather than *sales* as the basis for the tax should be taken as a transparent device to go around the statute's limitations, since the *purchases* made by merchants are obviously for *sales* purposes in the ordinary course of business.

---

[1] Paragraph g of Section 3 of Ordinance No. 6, Series of 1965.

[2] See Marinduque Iron Mines Agents, Inc. *vs.* Municipality of Hinabangan, Samar, 11 SCRA 416, 421 (1964), *infra*.

[3] Paragraphs a, b, c and i of Section 3 of Ordinance No. 6, series of 1965 and Section 3 (a) of Ordinance No. 5, series of 1966.

Supreme Court E-Library

The graduated taxes so imposed, based on the monthly purchases of the merchants and required to be reported within the 10th day of the following month to the municipal treasurer for the imposition of the tax should be held to violate the prohibition against municipalities imposing any *percentage tax* or any other form of tax *based on sales.* This would be inconsonance with the Court's ruling in *Marinduque*[4] that "the ordinance in question, while not providing for a percentage tax, but a graduated tax (the progressive tax therein imposed not being *calculated on a percentage* of the sales made by the taxpayer), nevertheless, (it) prescribes a *tax based on sales,* contrary to the statute (R.A. 2264). It is true that the ordinance purports to base the tax on either 'gross output or sales'; but the *only standard* provided for measuring the *gross output* is its *peso value,* as determined from 'true copies of receipts and/or invoices (which are precisely the evidence of sales) that the taxpayer is required to submit to the municipal treasurer (Section 3), without deduction being provided for freight insurance, or incidental costs. *Directly or indirectly,* the amount of payable tax under this ordinance is determined by the gross sales of the taxpayer, and violates the explicit prohibition that the municipality must not levy, or impose, 'taxes in any form based on sales.'"

I vote, therefore, in partial affirmance of the appealed decision, for declaring the questioned ordinances invalid insofar as they would impose the taxes hereinabove referred to on the basis of the plaintiffs-appellees' "purchases for the previous year" rather than simply on the basis of their capital investment.

---

[4] See fn. 2; italics supplied.