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THIRD DIVISION

[G.R. No. L-46787. August 12, 1991]

FLORO CEMENT CORPORATION, *petitioner, vs.* **HON. BENJAMIN K. GOROSPE, Judge, CFI of Misamis Oriental, Branch I, and the MUNICIPALITY OF LUGAIT,** *respondents.*

SYLLABUS

1. **TAXATION; GENERAL PRINCIPLES; ANY CLAIM FOR EXEMPTION FROM TAXATION SHOULD BE STRICTLY CONSTRUED AGAINST THE TAXPAYER.—** On the exemption claimed by petitioner, this Court has laid down the rule that as the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied. More specifically stated, the general rule is that any claim for exemption from the tax statute should be strictly construed against the taxpayer. He who claims an exemption must be able to point out some provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. It must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim. The petitioner failed to meet this requirement.

2. **ID.; STATUTES; PRESIDENTIAL DECREE NO. 463; POWER TO LEVY TAXES ON MINES, MINING CORPORATION AND MINERAL PRODUCTS; EXEMPTION PROVIDED THEREUNDER DOES NOT INCLUDE THE MANUFACTURE AND EXPORT OF CEMENT FOR IT IS NOT A MINERAL PRODUCT.—** As held by the lower court, the exemption mentioned in Sec. 52 of P.D. No. 463 refers only to machineries, equipment, tools for production, *etc*., as provided in Sec. 53 of the same decree. The manufacture and the export of cement does not fall under the said provision for it is not a mineral product. It is not cement that is mined, only the mineral products composing the finished product. Furthermore, by the parties' own stipulation of facts submitted before the court *a quo*, it is

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admitted that Floro Cement Corporation is engaged in the manufacturing and selling, including exporting of cement. As such, and since the taxes sought to be collected were levied on these activities pursuant to Sec. 19 of P.D. No. 231, Ordinances Nos. 5 and 10, which were enacted pursuant to P.D. No. 231 and P.D. No. 426, respectively, properly apply to petitioner Floro Cement Corporation.

APPEARANCES OF COUNSEL

Scarlet V. Santos and Advocates Circle Lawyers for petitioner.

D E C I S I O N

BIDIN, *J.*:

This is a petition for review on *certiorari* seeking to set aside and reverse the decision* of the then Court of First Instance of Misamis Oriental in Civil Case No. 4867, entitled "*Municipality of Lugait, Misamis Oriental, (represented) by the Municipal Treasurer and Provincial Treasurer vs. Floro Cement Corporation*," ordering defendant to pay unto plaintiff the amount of ₱161,875.00 as manufacturer's and exporter's taxes plus surcharges for the period from January 1, 1974 to September 30, 1975 and that herein petitioner Floro Cement Corporation be declared exempted from the coverage of Ordinances Nos. 5 and 10 of the Municipality of Lugait and that the taxes and fees it has paid pursuant to said ordinances be refunded.

The facts of the case, as summarized in the decision of the trial court, are as follows:

"The municipality of Lugait, province of Misamis Oriental, represented jointly in this action by its Municipal Treasurer and the Provincial Treasurer of the said province, filed with this Court a verified complaint for collection of taxes against the defendant Floro Cement Corporation, a domestic corporation duly organized and existing under

* Rendered by Judge Benjamin K. Gorospe.

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the laws of the Republic of the Philippines with business establishment and office address at its compound in the aforementioned municipality of Lugait. The taxes sought to be collected by the plaintiff specifically refers to 'manufacturers' and 'exporter's' taxes for the period from January 1, 1974 to September 30, 1975, inclusive, in the total amount of ₱161,875.00 plus 25% thereof as surcharge. Plaintiff alleged that the imposition and collection of these taxes is based on its Municipal Ordinance No. 5, otherwise known as the Municipal Revenue Code of 1974, which was passed pursuant to Presidential Decree No. 231 dated June 28, 1973 and also Municipal Ordinance No. 10 passed on June 11, 1974 pursuant to Presidential Decree No. 426 dated March 30, 1974, amending Presidential Decree No. 231.

In its answer to the complaint, the defendant set up the defense that it is not liable to pay manufacturer's and exporter's taxes alleging among others that the plaintiff's power to levy and collect taxes, fees, rentals, royalties or charges of any kind whatsoever on defendant has been limited or withdrawn by Section 52 of Presidential Decree No. 463 which provides:

> 'SECTION 52. Power to Levy Taxes on Mines, Mining Corporation and Mineral Products. — Any law to the contrary notwithstanding, no province, city, municipality, barrio or municipal district shall levy and collect taxes, fees, rentals, royalties or charges of any kind whatsoever on mines, mining claims, mineral products, or on any operation, process or activity connected therewith.'

Defendant also set up several special/affirmative defenses, namely: (1) that plaintiff has no legal capacity to sue; (2) that the complaint states no cause; (3) that plaintiff has absolutely no cause of action against defendant; (4) that defendant was granted by the Secretary of Agriculture and Natural Resources a Certificate of Qualification for Tax Exemption, CQTE No. 22, dated July 7, 1960, entitling defendant to exemption for a period of five (5) years from April 30, 1969 to April 29, 1974 from payment of all taxes, except income tax, and which Certificate was amended on November 5, 1974 (CQTE P.D. 463-22), entitling defendant to exemption from all taxes, duties and fees except income tax, for five (5) years from the first date of actual commercial production of saleable mineral products that is from May 17, 1974 to January 1, 1978; and (5) that Republic Act No. 3823, as implemented by Mines Administrative Order No. V-25, and P.D. No. 463 which

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are the basis for the exemption granted to defendant are special laws; whereas, the municipal ordinance mentioned in the complaint which are based on P.D. No. 231 and P.D No. 426, respectively, are general laws; and that it is axiomatic that a special law can not be amended and/or repealed by a general law unless there is an express intent to repeal or abrogate the provisions of the special law.

After the issues were joined, the parties submitted a written stipulation of facts under date of May 21, 1976 the pertinent portion of which is quoted in full as follows:

'PLAINTIFF and DEFENDANT, by and through counsel, most respectfully submit the following stipulation of facts:

1. That plaintiff is a political subdivision of the Republic of the Philippines created pursuant to EXECUTIVE ORDER NO. 425, entitled "CREATING THE MUNICIPALITY OF LUGAIT, IN THE PROVINCE OF MISAMIS ORIENTAL," a xerox copy of said executive order is attached hereto marked ANNEX "A" and made an integral part hereof;

2. That defendant is a corporation duly organized and existing under and by virtue of the laws of the Philippines; with plant and once at Lugait, Misamis Oriental, and is engaged in the manufacture and selling, including exporting, of cement, one of the essential ingredients of which is limestone;

3. That defendant, as a mining operator of mineral land/lands situated at Lugait, Misamis Oriental, was granted by the Secretary of Agriculture and Natural Resources a Certificate of Qualification for Tax Exemption, CQTE No. 22, dated July 7, 1960, entitling defendant to exemption for a period of five (5) years from April 30, 1969 to April 29, 1974, from the payment of all taxes, except income tax, a xerox copy of which is attached marked ANNEX "A" to defendant's answer and made an integral part hereof;

4. That the Certificate of Qualification for Tax Exemption mentioned in the next preceding paragraph was amended on November 5, 1974, when the Honorable Secretary of Natural Resources, Mr. Jose J. Leido, Jr., upon recommendation of the Director of Mines, granted to defendant a Certificate of Qualification for Tax Exemption, CQTE P.D. 463-22, which entitled defendant to exemption from all taxes, duties, and fees, except

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income tax, for five (5) years from May 17, 1974 to January 1, 1978, a xerox copy of which is attached marked ANNEX "B" to defendant's answer and made an integral part hereof; and that a copy of the Certificate of Qualification for Tax Exemption, CQTE P.D. 463-22 was furnished the Municipal Treasurer of plaintiff on November 12, 1974, as shown by a xerox copy of the letter of the Assistant Director of the Bureau of Mines, Mr. Francisco A. Comsti, a copy of which is attached hereto marked ANNEX "B" and made an integral part hereof;

5. That the Certificate of Qualification for Tax Exemption mentioned in the next preceding paragraph was issued pursuant to the provisions of Sec. 52, P.D. No. 463, which reads as follows:

> "SECTION 52. Power to Levy Taxes on Mines, Mining Operations and Mineral Products. — Any law to the contrary notwithstanding, no province, city, municipality, barrio or municipal district shall levy and collect taxes, fees, rentals, royalties or charges of any kind whatsoever on mines, mining claims, mineral products, or on any operation, process, or activity therewith."

6. That on or about July 3, 1974, plaintiff, through its Municipal Mayor, wired the Secretary of Finance, opposing the application of defendant for the extension of its exemption from all forms of taxation, including its application for extension of its exemption from realty taxes, which opposition was not favorably acted upon by the said Secretary of Finance, as evidenced by a xerox copy of the letter of the Honorable Secretary of Finance, Mr. Cesar Virata, attached hereto marked ANNEX "C" and made an integral part hereof;

7. That plaintiff, pursuant to P.D. No. 231 promulgated on June 28, 1973, passed Municipal Ordinance No. 5, otherwise known as Municipal Revenue Code of 1974, effective January 1, 1974, Section 3 of which is quoted in paragraph 2 of the complaint and made integral part hereof by reference;

8. That plaintiff, pursuant to P.D. No. 426 promulgated on March 30, 1974, Municipal Revenue Ordinance No. 10, effective fifteen (15) days after its passage, of which Section 4, Title I is quoted in paragraph 3 of the complaint and made integral part hereof by reference;

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9. That pursuant (to) Municipal Ordinances Nos. 5 and 10, mentioned in paragraphs 7 and 8 hereof, respectively, plaintiff demanded of defendant the payment of the manufacturer's and exporter's taxes including surcharge for the period covering January 1, 1974 to September 30, 1975, broken down as shown in paragraph 5 of the complaint and made integral part hereof by reference; but defendant refused because of the allegations found in paragraphs 1, 2, 3, 4, 5 and 6 hereof.

WHEREFORE, it is most respectfully prayed that the foregoing stipulation of facts be made the basis of the judgment of this Honorable Court, after the parties hereto have submitted their respective memoranda.

Cagayan de Oro City, May 21, 1976."
(CFI Decision, pp. 1-6; Rollo, pp. 54-59).

As aforementioned, the trial court rendered its decision on November 29, 1976, the dispositive portion of which reads, as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ordering defendant Floro Cement Corporation to pay unto plaintiff the amount of ₱161,875.00 as manufacturer's and exporter's taxes and surcharges for the period from January 1, 1974 to September 30, 1975, inclusive, and to pay the costs.

SO ORDERED."

Hence, this appeal.

The petition was given due course by the First Division of this Court on January 6, 1978 and both parties were required to submit their simultaneous memoranda. Respondent complied on February 17, 1978 while petitioner filed its memorandum on March 9, 1978.

The principal issue in this case is whether or not Ordinances Nos. 5 and 10 of Lugait, Misamis Oriental apply to petitioner Floro Corporation notwithstanding the limitation on the taxing power of local government as provided for in Sec. 5(m) of P.D. 231 and Sec. 52 of P.D. 463.

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Petitioner Floro Cement Corporation holds that since Ordinances Nos. 5 and 10 were enacted pursuant to P.D. No. 231 and P.D. No. 426, respectively, said ordinances do not apply to its business in view of the limitation on the taxing power of local government provided in Sec. 5(m) of P.D. No. 231, which reads:

"SECTION 5. Common Limitations on the Taxing Powers of Local Governments. The exercise of taxing power of provinces, cities, municipalities and barrios shall not extend to the imposition of the following:

x x x x x x x x x

(m) Taxes on mines, mining operations and mineral products and their by-products when sold domestically by the operator."

Floro Cement Corporation likewise contends that cement is a mineral product, relying on the case of *Cebu Portland Cement Company vs. Commissioner of Internal Revenue*, G.R. No. L-20563, October 29, 1968 (25 SCRA 789), and in the case of *Philippine Pipes and Merchandising Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 1858, dated July 29, 1970 decided by the Court of Tax Appeals (Memorandum for the Petitioner, *Rollo*, pp. 89-90).

Petitioner further contends that the partial exemption aforementioned was rendered absolute by Sec. 52 of P.D. No. 463 promulgated on May 17, 1974, which expressly prohibits the province, city, municipality, barrio and municipal district from levying and collecting taxes, fees, rentals, royalties or charges of any kind whatsoever on mines, mining claims and mineral products, any law to the contrary notwithstanding. Said prohibition includes any operation, process or activity connected with its production. The manufacture of cement is a process inherently connected with the mining operation undertaken by petitioner Floro Cement Corporation (*Ibid*., pp. 92-93).

On other hand, while respondent municipality admits that petitioner Floro Cement Corporation undertakes exploration, development and exploitation of mineral products, the taxes sought to be collected were not imposed on these activities in

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view of the mentioned prohibition under Sec. 52 of P.D. No. 463. Said taxes were levied on the corporation's business of manufacturing and exporting cement. The business of manufacturing and exporting cement does not fall under exploration, development nor exploitation of mineral resources as defined in Sec. 2 of P.D. No. 463, hence, it is outside the scope of application of Sec. 52 of said decree (Memorandum for Respondent, p. 10; *Rollo*, p. 85).

The municipality's power to levy taxes on manufacturers and exporters is provided in Article 2, Sec. 19 of P.D. No. 231, as amended by P.D. No. 426 which provides that "The municipality may impose a tax on business except those for which fixed taxes are provided for in this Code:

"(a) On manufacturers, importers, or producers of any article of commerce of whatever kind or nature, including brewers, distillers, rectifiers, repackers, and compounders of liquors, distilled spirits and/or wines in accordance with the following schedule:

x x x x x x x x x

(a-1) On retailers, independent wholesalers and distributors in accordance with the following schedule:

x x x x x x x x x

(Comment of the Respondent, *Rollo*, p. 72)

The petition is without merit.

On the question of whether or not cement is a mineral product, this Court has consistently held that it is not a mineral product but rather a manufactured product (*Commissioner of Internal Revenue vs. Cebu Portland Cement Company*, 156 SCRA 535 [1987]; *Commissioner of Internal Revenue vs. Philippine Pipes and Merchandising Corporation*, 153 SCRA 113 [1987]; *Commissioner of Internal Revenue vs. Republic Cement Corporation*, 149 SCRA 487 [1987]). While cement is composed of 80% minerals, it is not merely an admixture or blending of raw materials, as lime, silica, shale and others. It is the result of a definite process — the crushing of minerals, grinding, mixing, calcining, adding of retarder or raw gypsum. In short, before cement reaches its saleable form, the minerals had already

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undergone a chemical change through manufacturing process (*Commissioner of Internal Revenue vs. Cebu Portland Cement Company, supra*, reiterating the ruling in *Commissioner of Internal Revenue vs. Republic Cement Corporation*, 124 SCRA 46 [1983]). It appears evident that the foregoing cases overruled the case of *Cebu Portland Cement Company vs. Commissioner of Internal Revenue*, 25 SCRA 789 [1969] which was cited by petitioner.

On the exemption claimed by petitioner, this Court has laid down the rule that as the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied. More specifically stated, the general rule is that any claim for exemption from the tax statute should be strictly construed against the taxpayer (*Luzon Stevedoring Corporation vs. Court of Appeals*, 163 SCRA 647 [1988]). He who claims an exemption must be able to point out some provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. It must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (*Manila Electric Company vs. Ver*, 67 SCRA 351 [1975]). The petitioner failed to meet this requirement.

As held by the lower court, the exemption mentioned in Sec. 52 of P.D. No. 463 refers only to machineries, equipment, tools for production, *etc*., as provided in Sec. 53 of the same decree. The manufacture and the export of cement does not fall under the said provision for it is not a mineral product. (CFI Decision, *Rollo*, p. 62) It is not cement that is mined, only the mineral products composing the finished product (*Commissioner of Internal Revenue vs. Republic Cement Corporation, supra*).

Furthermore, by the parties' own stipulation of facts submitted before the court *a quo*, it is admitted that Floro Cement Corporation is engaged in the manufacturing and selling, including exporting of cement (CFI Decision, *Rollo*, p. 57). As such, and since the taxes sought to be collected were levied on these

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activities pursuant to Sec. 19 of P.D. No. 231, Ordinances Nos. 5 and 10, which were enacted pursuant to P.D. No. 231 and P.D. No. 426, respectively, properly apply to petitioner Floro Cement Corporation.

WHEREFORE, the petition is DENIED for lack of merit and the decision dated November 29, 1976 of the then Court of First Instance of Misamis Oriental is Affirmed.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and *Davide, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 68491. August 12, 1991]

SALVADOR JACULINA, *petitioner, vs.* **NATIONAL POLICE COMMISSION (Special Appellate Committee) and ATTY. PABLO S. VILLANUEVA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; ESSENCE THEREOF. —** The essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side, an opportunity amply afforded to the petitioner.

2. **ID.; ID.; RIGHT NOT DENIED IN CASE AT BAR. —** The records show that the hearings were conducted on January 19, 1977, January 20, 1977, March 1, 1977, April 18, 1977 and April 20, 1977; and that except for the hearings on March 1, 1977 and April 18, 1977 when only his counsel, Atty. Rayfrando Diaz, attended, petitioner was always present. It is, therefore, evident that he was not in any way, deprived of his substantial and constitutional right to due process.