Supreme Court E-Library

for unlawful detainer, within the intendment of Section 1, Rule 70 of the procedural law.

Wherefore, in view of the foregoing, the judgment appealed from is hereby affirmed, with costs against the appellant.

Fernando (Chairman), Barredo, Aquino and *Concepcion Jr., JJ.*, concur.

Judgment affirmed.

[No. L-31156. February 27, 1976]

EN BANC

PEPSI-COLA BOTTLING COMPANY OF THE PHILIPPINES, INC., plaintiff-appellant *vs.* MUNICIPALITY OF TANAUAN, LEYTE, THE MUNICIPAL MAYOR, ET AL., defendants-appellees.

APPEAL certified by the Court of Appeals.

SYNOPSIS

Pepsi-Cola Bottling Company of the Philippines, Inc., filed a complaint with preliminary injunction before the Court of First Instance of Leyte to declare Section 2 of R.A. No. 2264 (known as the Local Autonomy Act), unconstitutional as an undue delegation of the taxing authority and declare null and void Municipal Ordinance No. 23, which levies and collects from soft drinks producers and manufacturers a tax of 1/16 of a centavo for

Supreme Court E-Library

every bottle of soft drinks corked, and Municipal Ordinance No. 27, which levies and collects on soft drinks produced or manufactured within the territorial jurisdiction a tax of one centavo on each gallon of volume capacity. The trial court dismissed the complaint and upheld the constitutionality of Sec. 2 of R.A. No. 2264 and declared Municipal Ordinances Nos. 23 and 27 valid and constitutional. Appealed to the Court of Appeals, the case was certified to the Supreme Court as involving pure question of law.

The Supreme Court upheld the validity of the delegation to Municipal Corporation or authority to tax and likewise the validity of Municipal Ordinance No. 27, which repealed Municipal Ordinance No. 23.

SYLLABUS
of the Ruling of the Court

1. TAXATION; NATURE; NON-DELEGATION OF POWER, EXCEPTION.– The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent government, without being expressly conferred by the people. It is a power that is purely legislative and which the central legislative body cannot delegate either to the executive or judicial department of government without infringing upon the theory of separation of powers. The exception, however, lies in the case of municipal corporations, to which, said theory does not apply. Legislative powers may be delegated to local governments in respect of matters of local concern. This is sanctioned by immemorial practice. By necessary implication, the legislative power to create political corporations for purpose of local self-government carries with it the power to confer on such local governmental agencies the power to tax.
2. ID.; ID.; ID.; SCOPE OF LOCAL GOVERNMENT'S POWER TO TAX.– The taxing authority conferred on local governments under Section 2, Republic Act No. 2264, is broad enough as to

Supreme Court E-Library

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.* Municipalities are empowered to impose not only municipal license taxes upon persons engaged in any business or occupation but also to levy for public purposes, just and uniform taxes.

3. ID.; ID.; ID.; LIMITATION.– Municipalities and municipal districts are prohibited 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 of ratio between the amount of the tax and the volume of sales of the taxpayer imposes a sales tax and is null and void for being outside the power of the municipality to enact.

4. ID.; ID.; ID.; DELEGATION OF POWER TO TAX UNDER NEW CONSTITUTION.– Under the New Constitution, local governments are granted the autonomous authority to create their own sources of revenue and to levy taxes. Section 5, Article XI provides: "Each local government unit shall have the power to create its sources of revenue and to levy taxes, subject to such limitations as may be provided by law." Withal, it cannot be said that Section 2 of Republic Act No. 2264 emanated from beyond the sphere of the legislative power to enact and vest in local governments the power of local taxation.

5. ID.; ID.; ID.; VALIDITY THEREOF.– The plenary nature of the delegated power of local governments under Section 2, of R.A. No. 2264 would not suffice to invalidate the said law as confiscatory and oppressive. In delegating the authority, the State is not limited to the exact measure of that which is exercised by itself. When it is said that the taxing power may

Supreme Court E-Library

be delegated to municipalities and the like, it is meant that there may be delegated such measure of power to impose and collect taxes as the legislature may deem expedient. Thus, municipalities may be permitted to tax subjects which for reasons of public policy the State has not deemed wise to tax for more general purposes.

6. ID.; REQUISITES FOR LAWFUL EXERCISE OF TAXING POWER.– Constitutional injunction against deprivation of property without due process of law may not be passed over under the guise of the taxing power, except when the taking of the property is in the lawful exercise of the taxing power, as when, (1) the tax is for a public purpose; (2) the rule on uniformity of taxation observed; (3) either the person or property taxed is within the jurisdiction of the government levying the tax; and (4) in the assessment and collection of certain kinds of taxes, notice and opportunity for hearing are provided.
7. ID.; ID.; INSTANCES WHERE DUE PROCESS IS VIOLATED.– Due process is usually violated where the tax imposed is for a private as distinguished from a public purpose; a tax is imposed on property outside the State, i.e., extra-territorial taxation; and arbitrary or oppressive methods are used in assessing and collecting taxes. But, a tax does not violate the due process clause, as applied to a particular taxpayer, although the purpose of the tax will result in an injury rather than a benefit to such taxpayer. Due process does not require that the property subject to the tax or the amount of tax to be raised should be determined by judicial inquiry, and a notice and hearing as to the amount of tax and the manner in which it shall be apportioned are generally not necessary to due process of law.
8. ID.; DOUBLE TAXATION; GENERALLY NOT FORBIDDEN.– The delegated authority under Section 2 of the Local Autonomy Act cannot be declared unconstitutional on the theory of double taxation. It must be observed that the delegating authority specifies the limitations and enumerates the taxes over which local taxation may not be exercised. The reason is that the State has exclusively reserved the same for its own

Supreme Court E-Library

prerogative. Moreover, double taxation, in general, is not forbidden by the fundamental law, since the injunction against double taxation found in the Constitution of the United States and some states of the Union has not been adopted as part thereof.

9. ID.; ID.; ID.; EXCEPTION.– Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality.

10. ID.; ID.; ID.; INSTANT CASE.– Where, as in the case at bar, the municipality of Tanauan enacted Ordinance No. 27 imposing a tax of one centavo on each gallon of volume capacity while in the previous Ordinance No. 23, it was 1/16 of a centavo for every bottle corked, it is clear that the intention of the municipal council was to substitute Ordinance No. 27 to that of Ordinance No. 23, repealing the latter.

11. ID.; TAX LEVIED ON PRODUCE, NOT PERCENTAGE TAX.– The imposition of "a tax of one centavo (₱0.01) 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 a 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 tax.

12. ID.; ID.; ID.; MUNICIPALITY ALLOWED TO INCREASE TAX AS LONG AS AMOUNT IS REASONABLE.– The tax of one centavo (₱0.01) on each gallon (128 fluid ounces, U.S.) of volume capacity of all soft drinks, produced or manufactured, or an equivalent of 1-1/2 centavos per case, cannot be considered unjust and unfair. An increase in the tax alone would not support the claim that the tax is oppressive, unjust and confiscatory. Municipal corporations are allowed much

Supreme Court E-Library

discretion in determining the rates of imposable taxes. This is in line with the constitutional policy of according the widest possible autonomy to local government in matters of taxation, an aspect that is given expression in the Local Tax Code (PD No. 231, July 1, 1973).

13. ID.; SPECIFIC TAXES; ARTICLES SUBJECT TO SPECIFIC TAX.– Specific taxes are those imposed on specified articles, such as distilled spirits, wines, fermented liquors, products of tobacco other than cigars and cigarettes, matches, firecrackers, manufactured oils and other fuels, coal, bunker fuel oil, cinematographic films, playing cards, saccharine, opium and other habit forming drugs.

FERNANDO, *J.*, concurring.

1. CONSTITUTIONAL LAW; TAXATION; POWER OF MUNICIPAL CORPORATION TO TAX UNDER THE NEW CONSTITUTION.– The present Constitution is quite explicit as to the power of taxation vested in local and municipal corporations. It is therein specifically provided: "Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such limitations as may be provided by law."
2. ID.; ID.; LIMITATION ON POWER TO TAX UNDER THE 1935 CONSTITUTION.– The only limitation on the authority to tax under the 1935 Constitution was that while the President of the Philippines was vested with the power of control over all executive departments, bureaus, or offices, he could only "exercise general supervision over all local governments as may be provided by law." As far as legislative power over local government was concerned, no restriction whatsoever was placed in the Congress of the Philippines. It would appear therefore that the extent of the taxing power was solely for the legislative body to decide.
3. ID.; ID.; MUNICIPAL CORPORATION'S POWER TO TAX MUST BE CLEARLY SHOWN.– Although the scope of municipal

Supreme Court E-Library

taxing power had been enlarged by subsequent legislations, the Court, in Golden Ribbon Lumber Co. *vs.* City of Butuan, L-18534, December 24, 1964, reaffirmed the traditional concept, thus: "The rule is well-settled that municipal corporations, unlike sovereign states, are clothed with no power of taxation; that its charter or a statute must clearly show an intent to confer that power or the municipal corporation cannot assume and exercise it, and that any such power granted must be construed strictly, any doubt or ambiguity arising from the terms of the grant to be resolved against the municipality."

4. ID.; ID.; DOUBLE TAXATION.– The objection to the taxation as double may be laid down on one side. The 14th Amendment (the due process clause) no more forbids double taxation than it does doubling the amount of a tax, short of confiscation or proceedings unconstitutional on other grounds.

APPEARANCES OF COUNSEL

Sabido, Sabido & Associates for plaintiff-appellant.

Assistant Solicitor General Conrado T. Limcaoco and *Solicitor Enrique M. Reyes* for defendants-appellees.

DECISION

MARTIN, *J.*:

This is an appeal from the decision of the Court of First Instance of Leyte in its Civil Case No. 3294, which was certified to Us by the Court of Appeals on October 6, 1969, as involving only pure questions of law, challenging the power of taxation delegated to municipalities under the Local Autonomy Act (Republic Act No. 2264, as amended, June 19, 1959).

On February 14, 1963, the plaintiff-appellant, Pepsi-Cola Bottling Company of the Philippines, Inc., commenced

Supreme Court E-Library

a complaint with preliminary injunction before the Court of First Instance of Leyte for that court to declare Section 2 of Republic Act No. 2264,[1] otherwise known as the

[1] "Sec. 2. Taxation.– Any provision of law to the contrary notwithstanding, all chartered cities, municipalities and municipal districts shall have authority to impose municipal licence taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities, municipalities and 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 any newspaper engaged i nthe printing and publication of any newspaper, magazine, review or bulletin appearing at regular intervals and having fixed prices for subscription and sale, 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, inheritance, 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.

Supreme Court E-Library

Local Autonomy Act, unconstitutional as an undue delegation of taxing authority as well as to declare Ordinances Nos. 23 and 27, series of 1962, of the Municipality of Tanauan, Leyte, null and void.

On July 23, 1963, the parties entered into a Stipulation of Facts, the material portions of which state that, *first*, both Ordinances Nos. 23 and 27 embrace or cover the same subject matter and the production tax rates imposed therein are practically the same, and *second* that on January 17, 1963, the acting Municipal Treasurer of Tanauan, Leyte, as per his letter addressed to the Manager of the Pepsi-Cola Bottling Plant in said municipality, sought to enforce compliance by the latter of the provisions of said Ordinance No. 27, series of 1962.

Municipal Ordinance No. 23, of Tanauan, Leyte, which was approved on September 25, 1962, levies and collects "from soft drinks producers and manufacturers a tax of one-sixteenth (1/16) of a centavo for every bottle of soft drink corked."[2] For the purpose of computing the taxes due, the person, firm, company or corporation producing soft drinks shall submit to the Municipal Treasurer a monthly report of the total number of bottles produced and corked during the month.[3]

On the other hand, Municipal Ordinance No. 27, which was approved on October 28, 1962, levies and collects "on soft drinks produced or manufactured within the territorial jurisdiction of this municipality a tax of ONE CENTAVO (₱0.01) on each gallon (128 fluid ounces, U.S.) of volume capacity."[4] For the purpose of computing the taxes due, the person, firm, company, partnership, cor-

[2] Section 2.

[3] Section 3.

[4] Section 2.

Supreme Court E-Library

poration or plant producing soft drinks shall submit to the Municipal Treasurer a monthly report of the total number of gallons produced or manufactured during the month.[5]

The tax imposed in both Ordinances Nos. 23 and 27 is denominated as "municipal production tax."

On October 7, 1963, the Court of First Instance of Leyte rendered judgment "dismissing the complaint and upholding the constitutionality of [Section 2, Republic Act No. 2264] ; declaring Ordinances Nos. 23 and 27 valid, legal and constitutional; ordering the plaintiff to pay the taxes due under the oft-said Ordinances; and to pay the costs."

From this judgment, the plaintiff Pepsi-Cola Bottling Company appealed to the Court of Appeals, which, in turn, elevated the case to Us pursuant to Section 31 of the Judiciary Act of 1948, as amended.

There are three capital questions raised in this appeal:

> 1.– Is Section 2, Republic Act No. 2264 an undue delegation of power, confiscatory and oppressive?
>
> 2.– Do Ordinances Nos. 23 and 27 constitute double taxation and impose percentage or specific taxes?
>
> 3.– Are Ordinances Nos. 23 and 27 unjust and unfair?

1. The power of taxation is an essentail and inherent attribute of sovereignty, belonging as a matter of right to every independent government, without being expressly conferred by the people.[6] It is a power that is purely legislative and which the central legislative body cannot delegate either to the executive or judicial department of

[5] Section 3.

[6] Cooley, The Law of Taxation, Vol. 1, Fourth Edition, 149-150.

Supreme Court E-Library

the government without infringing upon the theory of separation of powers. The exception, however, lies in the case of municipal corporations, to which, said theory does not apply. Legislative powers may be delegated to local governments in respect of matters of local concern.[7] This is sanctioned by immemorial practice.[8] By necessary implication, the legislative power to create political corporations for purposes of local self-government carries with it the power to confer on such local governmental agencies the power to tax.[9] Under the New Constitution, local governments are granted the autonomous authority to create their own sources of revenue and to levy taxes. Section 5, Article XI provides: "Each local government unit shall have the power to create its sources of revenue and to levy taxes, subject to such limitations as may be provided by law." Withal, it cannot be said that Section 2 of Republic Act No. 2264 emanated from beyond the sphere of the legislative power to enact and vest in local governments the power of local taxation.

The plenary nature of the taxing power thus delegated, contrary to plaintiff-appellant's pretense, would not suffice to invalidate the said law as confiscatory and oppressive. In delegating the authority, the State is not limited to the exact measure of that which is exercised by itself. When it is said that the taxing power may be delegated to municipalities and the like, it is meant that there may be delegated such measure of power to impose and collect taxes as the legislature may deem expedient. Thus, municipalities may be permitted to tax subjects

---

[7] Pepsi-Cola Bottling Co. of the Phil., Inc. vs. City of Butuan, L-22814, August 28, 1968, 24 SCRA 793-96;

[8] Rubi vs. Prov. Brd. of Mindoro, 39 Phil. 702 (1919).

[9] Cooley, *ante*, at 190.

Supreme Court E-Library

which for reasons of public policy the State has not deemed wise to tax for more general purposes.[10] This is not to say though that the constitutional injunction against deprivation of property without due process of law may be passed over under the guise of the taxing power, except when the taking of the property is in the lawful exercise of the taxing power, as when (1) the tax is for a public purpose; (2) the rule on uniformity of taxation is observed; (3) either the person or property taxed is within the jurisdiction of the government levying the tax; and (4) in the assessment and collection of certain kinds of taxes notice and opportunity for hearing are provided.[11] Due process is usually violated where the tax imposed is for a private as distinguished from a public purpose; a tax is imposed on property outside the State, i.e., extra-territorial taxation; and arbitrary or oppressive methods are used in assessing and collecting taxes. But, a tax does not violate the due process clause, as applied to a particular taxpayer, although the purpose of the tax will result in an injury rather than a benefit to such taxpayer. Due process does not require that the property subject to the tax or the amount of tax to be raised should be determined by judicial inquiry, and a notice and hearing as to the amount of the tax and the manner in which it shall be apportioned are generally not necessary to due process of law.[12]

There is no validity to the assertion that the delegated authority can be declared unconstitutional on the theory of double taxation. It must be observed that the delegating authority specifies the limitations and enumerates the taxes

---

[10] *Idem*, at 198-200.

[11] Malcolm, Philippine Constitutional Law, 513-14.

[12] Cooley, *ante*, at 334.

Supreme Court E-Library

over which local taxation may not be exercised.[13] The reason is that the State has exclusively reserved the same for its own prerogative. Moreover, double taxation, in general, is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union.[14] Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity[15] or by the same jurisdiction for the same purpose,[16] but not in a case where one tax is imposed by the State and the other by the city or municipality.[17]

2. The plaintiff-appellant submits that Ordinance Nos. 23 and 27 constitute double taxation, because these two ordinances cover the same subject matter and impose practically the same tax rate. The thesis proceeds from its assumption that both ordinances are valid and legally enforceable. This is not so. As earlier quoted, Ordinance No. 23, which was approved on September 25, 1962, levies or collects from soft drinks producers or manufacturers a tax of one-sixteen (1/16) of a centavo for every bottle corked, irrespective of the volume contents of the bottle used. When it was discovered that the producer or manufacturer could increase the volume contents of the bottle

---

[13] See footnote 1.

[14] Pepsi-Cola Bottling Co. of the Phil. Inc. *vs.* City of Butuan, L-22814, August 28, 1968, 24 SCRA 793-96. *See* Sec. 22, Art. VI, 1935 Constitution and Sec. 17 (1), Art. VIII, 1973 Constitution.

[15] Commissioner of Internal Revenue *vs.* Lednicky, L-18169, July 31, 1964, 11 SCRA 609.

[16] SMB, Inc. *vs.* City of Cebu, L-20312, February 26, 1972, 43 SCRA 280.

[17] Punzalan *vs.* Mun. Bd. of City of Manila, 50 O.G. 2485; Manufacturers Life Ins. Co. *vs.* Meer, 89 Phil. 351 (1951).

Supreme Court E-Library

and still pay the same tax rate, the Municipality of Tanauan enacted Ordinance No. 27, approved on October 28, 1962, imposing a tax of one centavo (₱0.01) on each gallon (128 fluid ounces, U.S.) of volume capacity. The difference between the two ordinances clearly lies in the tax rate of the soft drinks produced: in Ordinance No. 23, it was 1/16 of a centavo for every bottle corked; in Ordinance No. 27, it is one centavo (₱0.01) on each gallon (128 fluid ounces, U.S.) of volume capacity. The intention of the Municipal Council of Tanauan in enacting Ordinance No. 27 is thus clear: it was intended as a plain substitute for the prior Ordinance No. 23, and operates as a repeal of the latter, even without words to that effect.[18] Plaintiff-appellant in its brief admitted that defendants-appellees are only seeking to enforce Ordinance No. 27, series of 1962. Even the stipulation of facts confirms the fact that the Acting Municipal Treasurer of Tanauan, Leyte sought to compel compliance by the plaintiff-appellant of the provisions of said Ordinance No. 27, series of 1962. The aforementioned admission shows that only Ordinance No. 27, series of 1962 is being enforced by defendants-appellees. Even the Provincial Fiscal, counsel for defendants-appellees admits in his brief "that Section 7 of Ordinance No. 27, series of 1962 clearly repeals Ordinance No. 23 as the provisions of the latter are inconsistent with the provisions of the former."

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

[18] McQuillin, Municipal Corporations, 3rd Ed., Vol. 6, at 206-210.

Supreme Court E-Library

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.* [19] 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 sales of the taxpayer imposes a sales tax and is null and void for being outside the power of the municipality to enact. [20] But, the imposition of "a tax of one centavo (₱0.01) 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 taxpayers 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.[21]

Nor can the tax levied be treated as a specific tax. Specific taxes are those imposed on specified articles, such

---

[19] Villanueva *vs.* City of Iloilo, L-26521, December 28, 1968, 26 SCRA 585-86; Nin Bay Mining Co. *vs.* Mun. of Roxas, Palawan, L-20125, July 20, 1965, 14 SCRA 663-64.

[20] Arabay, Inc. *vs.* CFI of Zamboanga del Norte, et al., L-27684, September 10, 1975.

[21] SMB, Inc. *vs.* City of Cebu, *ante,* Footnote 16.

Supreme Court E-Library

as distilled spirits, wines, fermented liquors, products of tobacco other than cigars and cigarettes, matches, firecrackers, manufactured oils and other fuels, coal, bunker fuel oil, diesel fuel oil, cinematographic films, playing cards, saccharine, opium and other habit-forming drugs.[22] Soft drink is not one of those specified.

3. The tax of one centavo (₱0.01) on each gallon (128 fluid ounces, U.S.) of volume capacity on all soft drinks, produced or manufactured, or an equivalent of 1-1/2 centavos per case,[23] cannot be considered unjust and unfair.[24] An increase in the tax alone would not support the claim that the tax is oppressive, unjust and confiscatory. Municipal corporations are allowed much discretion in determining the rates of imposable taxes.[25] This is in line with the constitutional policy of according the widest possible autonomy to local governments in matters of local taxation, an aspect that is given expression in the Local Tax Code (PD No. 231, July 1, 1973).[26] Unless the amount is so excessive as to be prohibitive, courts will go slow in writing off an ordinance as unreasonable.[27] Reluct-

[22] Shell Co. of P.I. Ltd. *vs.* Vaño, 94 Phil. 394-95 (1954); Sections 123-148, NIRC; RA No. 953, Narcotic Drugs Law, June 20, 1953.

[23] Brief, defendants-appellees, at 14. A regular bottle of Pepsi-Cola soft drinks contains 8 oz., or 192 oz. per case of 24 bottles; a family-size contains 26 oz., or 312 oz. per case of 12 bottles.

[24] *See* Pepsi-Cola Bottling Co. of the Phil., Inc. vs. City of Butuan, *ante*, Footnote 14, where the tax rate is *₱.10 per case of 24 bottles;* City of Bacolod *vs.* Gruet, L-18290, January 31, 1963, 7 SCRA 168-69, where the tax is ₱.03 *on every case of bottled Coca-cola.*

[25] Northern Philippines Tobacco Corp. *vs.* Mun. of Agoo, La Union, L-26447, January 30, 1971, 31 SCRA 308.

[26] William Lines, Inc. *vs.* City of Ozamis, L-35048, April 23, 1974, 56 SCRA 593, Second Division, per Fernando, *J.*

[27] Victorias Milling Co. *vs.* Mun. of Victorias, L-21183, September 27, 1968, 25 SCRA 205.

Supreme Court E-Library

ance should not deter compliance with an ordinance such as Ordinance No. 27 if the purpose of the law to further strengthen local autonomy were to be realized. [28]

Finally, the municipal license tax of ₱1,000.00 per corking machine with five but not more than ten crowners or ₱2,000.00 with ten but not more than twenty crowners imposed on manufacturers, producers, importers and dealers of soft drinks and/or mineral waters under Ordinance No. 54, series of 1964, as amended by Ordinance No. 41, series of 1968, of defendant Municipality,[29] appears not to affect the resolution of the validity of Ordinance No. 27. Municipalities are empowered to impose, not only municipal license taxes upon persons engaged in any business or occupation but also to levy for public purposes, just and uniform taxes. The ordinance in question (Ordinance No. 27) comes within the second power of a municipality.

Accordingly, the constitutionality of Section 2 of Republic Act No. 2264, otherwise known as the Local Autonomy Act, as amended, is hereby upheld and Municipal Ordinance No. 27 of the Municipality of Tanauan, Leyte, series of 1962, repealing Municipal Ordinance No. 23, same series, is hereby declared of valid and legal effect. Costs against petitioner-appellant. So ordered.

Castro, C.J., Teehankee, Barredo, Makasiar, Antonio, Esguerra, Muñoz Palma, Aquino and *Concepcion Jr., JJ.*, concur.

Fernando, J., concurs in a separate opinion.

Decision affirmed.

---

[28] Procter & Gamble Trading Co. *vs.* Mun. of Medina, Misamis Oriental, L-29125, January 31, 1973, 43 SCRA 133-34.

[29] Subject of plaintiff-appellant's Motion for Admission and Consideration of Essential Newly Discovered Evidence, dated April 30, 1969.

Supreme Court E-Library

FERNANDO, *J., concurring*:

The opinion of the Court penned by Justice Martin is impressed with a scholarly and comprehensive character. Insofar as it shows adherence to tried and tested concepts of the law of municipal taxation, I am certainly in agreement. If I limit myself to concurrence in the result, it is primarily because with the article on Local Autonomy found in the present Constitution, I feel a sense of reluctance in restating doctrines that arose from a different basic premise as to the scope of such power in accordance with the 1935 Charter. Nonetheless, it is well-nigh unavoidable that I do so as I am unable to share fully what for me are the nuances and implications that could arise from the approach taken by my brethren. Likewise as to the constitutional aspect of the thorny question of double taxation, I would limit myself to what has been set forth in City of Baguio *v.* De Leon.[1]

1. The present Constitution is quite explicit as to the power of taxation vested in local and municipal corporations. It is therein specifically provided: "Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such limitations as may be provided by law."[2] That was not the case under the 1935 Charter. The only limitation then on the authority, plenary in character of the national government, was that while the President of the Philippines was vested with the power of control over all executive departments, bureaus, or offices, he could only "exercise general supervision over all local governments as may be provided by law

[1] L-24756, October 31, 1968, 25 SCRA 938.

[2] Article XI, Section 5 of the present Constitution.

Supreme Court E-Library

* * * "[3] As far as legislative power over local government was concerned, no restriction whatsoever was placed on the Congress of the Philippines. It would appear therefore that the extent of the taxing power was solely for the legislative body to decide. It is true that in 1939, there was a statute that enlarged the scope of the municipal taxing power.[4] Thereafter, in 1959 such competence was further expanded in the Local Autonomy Act.[5] Nevertheless, as late as December of 1964, five years after its enactment of the Local Autonomy Act, this Court, through Justice Dizon, in Golden Ribbon Lumber Co. *v.* City of Butuan,[6] reaffirmed the traditional concept in these words: "The rule is well-settled that municipal corporations, unlike sovereign states, are clothed with no power of taxation; that its charter or a statute must clearly show an intent to confer that power or the municipal corporation cannot assume and exercise it, and that any such power granted must be construed strictly, any doubt or ambiguity arising from the terms of the grant to be resolved against the municipality."[7] Taxa-

[3] Article VII, Section 10 of the 1935 Constitution.

[4] Commonwealth Act 472 entitled "An Act Revising the General Authority of Municipal Councils and Municipal District Councils to Levy Taxes, Subject to Certain Limitations."

[5] Republic Act No. 2264.

[6] L-18534, December 24, 1964, 12 SCRA 611.

[7] *Ibid*, 619. Cf. Cuunjieng *v.* Patstone, 42 Phil. 818 (1922); De Liñan *v.* Municipal Council of Daet, 44 Phil. 792 (1923); Arquiza Luta *v.* Municipality of Zamboanga, 50 Phil. 748 (1927); Hercules Lumber Co. *v.* Zamboanga, 55 Phil. 653 (1931); Yeo Loby *v.* Zamboanga, 55 Phil. 656 (1931); People *v.* Carreon, 65 Phil. 588 (1939); Yap Tak Wing *v.* Municipal Board, 68 Phil. 511 (1939); Eastern Theatrical Co. *v.* Alfonso, 83 Phil. 852 (1949); De la Rosa *v.* City of Baguio, 91 Phil. 720 (1952); Medina *v.* City of Baguio, 91 Phil. 854 (1952); Standard-Vacuum Oil Co. *v.* Antigua, 96 Phil. 909 (1955); Municipal Government of Pagsanjan *v.* Reyes, 98 Phil. 654 (1956); We Wa Yu *v.* City of Lipa, 99 Phil. 975 (1956); Municipality of Cotabato *v.* Santos, 105 Phil. 963 (1959).

Supreme Court E-Library

tion, according to Justice Paredes in the earlier case of Tan *v.* Municipality of Pagbilao, [8] "is an attribute of sovereignty which municipal corporations do not enjoy."[9] That case left no doubt either as to weakness of a claim "based merely by inferences, implications and deductions, [as they] have no place in the interpretation of the power to tax of a municipal corporation." [10] As the conclusion reached by the Court finds support in such grant of the municipal taxing power, I concur in the result.

2. As to any possible infirmity based on an alleged double taxation, I would prefer to rely on the doctrine announced by this Court in City of Baguio *v.* De Leon. [11] Thus: "As to why double taxation is not violative of due process, Justice Holmes made clear in this language: 'The objection to the taxation as double may be laid down on one side. * * * The 14th Amendment [the due process clause] no more forbids double taxation than it does doubling the amount of a tax, short of confiscation or proceedings unconstitutional on other grounds.' With that decision rendered at a time when American sovereignty in the Philippines was recognized, it possesses more than just a persuasive effect. To some, it delivered the *coup de grace* to the bogey of double taxation as a constitutional bar to the exercise of the taxing power. It would seem though that in the United States, as with us, its ghost, as noted by an eminent critic, still stalks the juridical stage. In a 1947 decision, however, we quoted with approval this excerpt from a leading American decision: 'Where, as here, Congress

---

[8] L-14264, April 30, 1963, 7 SCRA 887.

[9] *Ibid*, 892.

[10] *Ibid.*

[11] L-24756, October 31, 1968, 25 SCRA 938.

Supreme Court E-Library

has clearly expressed its intention, the statute must be sustained even though double taxation results.' " [12]

So I would view the issues in this suit and accordingly concur in the result.

[No. L-33154. February 27, 1976]

EN BANC

PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* ANGEL REYES Y ALCANTARA, defendant-appellant.

AUTOMATIC REVIEW of a decision of the Circuit Criminal Court of Manila. Pamaran, *J.:*

SYNOPSIS

Accused, a policeman, having been found guilty beyond reasonable doubt as principal of the crime of murder qualified by treachery, with the attending aggravating circumstance of taking advantage of public position, without any mitigating circumstance to offset the same was sentenced by the trial court to DEATH, to indemnify the heirs of the deceased the sum of ₱12,000.00, the sum of ₱8,000 by way of moral damages, and ₱8,000 by way of exemplary damages, and to pay the costs.

On review, the Supreme Court affirmed the appealed judgment *in toto.*

---

[12] *Ibid.* 943-944.