Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-30745. January 18, 1978]

PHILIPPINE MATCH CO., LTD., *plaintiff-appellant, vs.* **THE CITY OF CEBU and JESUS E. ZABATE, Acting City Treasurer**, *defendants-appellees*.

SYLLABUS

1. **PUBLIC CORPORATIONS; CITIES AND MUNICIPALITIES; TAXING POWER; DEFINED UNDER LOCAL AUTONOMY ACT.**— The taxing power validly delegated to cities and municipalities is defined in the Local Autonomy Act, Republic Act No. 2264 which took effect on June 19, 1959.

2. **ID.; ID.; ID.; STRENGHTENED BY THE CONSTITUTION.**— Article XI of the Constitution provides that "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." This was implemented by Presidential Decree No. 231, the Local Tax Code, which took effect on July 1, 1973.

3. **ID.; ID.; ID.; SCOPE.** — The taxing power of cities, municipalities and municipal districts may be used (1) "upon any person engaged in any occupation or business, or exercising any privilege" therein; (2) for services rendered by those political subdivisions or rendered in connection with any business, profession or occupation being conducted therein, and (3) to levy, for public purposes, just and uniform taxes, licenses or fees.

4. **ID.; ID.; MUNICIPAL BOARDS OF CEBU CITY; EMPOWERED TO PROVIDE FOR THE LEVY AND COLLECTION OF TAXES.** — The municipal board of Cebu City is empowered "to provide for the levy and collection of taxes for general and special purposes in accordance with law."

5. **ID.; MUNICIPAL CORPORATIONS; TAX ON SALES OF GOODS IN THE CITY; CONDITIONS.**— Under a city ordinance which imposes tax on sales of goods in the city, the city can validly tax sales of matches to customers outside of the city as long

Supreme Court E-Library

as the orders were booked and paid for, and the matches were delivered to the carrier, in the city. The matches can be regarded as sold in the city, as contemplated in the ordinance, because delivery to the carrier is delivery to the buyer. As the sales were finalized in the city and the matches sold were stored in the city, the fact that the matches were delivered to customers, whose places of business were outside of the city, would not place those sales beyond the city's taxing power. Those sales formed part of the merchandising business being carried on by the taxpayer in the city. In essence, they are the same as sales of matches fully consummated in the city.

6. **ADMINISTRATIVE LAW; PUBLIC OFFICERS; LIABILITY, GENERAL RULE.**— As a rule, a public officer, whether judicial, quasi-judicial or executive, is not personally liable to one injured in consequence of an act performed within the scope of his official authority, and in the line of his official duty. Where an officer is invested with discretion and is empowered to exercise his judgment in matters brought before him, he is sometimes called a quasi-judicial officer, and when so acting he is usually given immunity from liability to persons who may be injured as the result of an erroneous or mistaken decision, however erroneous his judgment may be, provided the acts complained of are done within the scope of the officer's authority, and without willfulness, malice of corruption.

7. **ID.; ID.; CITY TREASURER WHO ACTED WITHIN THE SCOPE OF AUTHORITY, NOT LIABLE.**— Where the city treasurer honestly believed that he was justified under section 9 of the tax ordinance in collecting the sales tax on out-of-town deliveries, considering that the company's branch office was located in the city and that all out-of-town purchase orders for matches were filled up by the branch office and the sales were duly reported to it and the city treasurer acted within the scope of his authority and in consonance with his bona fide interpretation of the tax ordinance, the fact that his action was not completely sustained by the courts would not render him liable for damages.

8. **CIVIL LAW; DAMAGES; ERRONEOUS INTERPRETATION OF ORDINANCE, NOT GROUND FOR DAMAGES.**— Article 27 presupposes that the refusal or omission of a public official is attributed to malice or inexcusable negligence. An erroneous

Supreme Court E-Library

interpretation of an ordinance does not constitute nor does it amount to bad faith that would entitle and aggrieved party to an award for damages.

APPEARANCES OF COUNSEL

Pelaez, Pelaez & Pelaez for appellant.

Nazario Pacquiao, Metudio P. Belarmino & Ceferino Jomuad for appellees.

D E C I S I O N

AQUINO, *J.*:

This case is about the legality of the tax collected by the City of Cebu on sales of matches stored by the Philippine Match Co., Ltd. in Cebu City but delivered to customers outside of the city.

Ordinance No. 279 of Cebu City (approved by the mayor on March 10, 1960 and also approved by the provincial board) is "an ordinance imposing a quarterly tax on gross sales of receipts of merchants, dealers, importers and manufacturers or any commodity doing business" in Cebu City. It imposes a sales tax of one percent (1%) on the gross sales, receipts or value of commodities sold, bartered, exchanged or manufactured in the city in excess of ₱2,000 a quarter.

Section 9 of the ordinance provides that, for purposes of the tax, "all delivers of goods or commodities stored in the City of Cebu, or if not stored are sold" in that city, "shall be considered as sales" in the city and shall be taxable.

Thus, it would seem that under the tax ordinance sales of matches consummated outside of the city are taxable as long as the matches sold are taken from the company's stock stored in Cebu City.

The Philippine Match Co., Ltd., whose principal office is in Manila, is engaged in the manufacture of matches. Its factory is located at Punta, Sta. Ana, Manila. It ships cases or cartons

Supreme Court E-Library

of matches from Manila to its branch office in Cebu City for storage, sale and distribution within the territories and districts under its Cebu branch or the whole Visayas-Mindanao region. Cebu City itself is just one of the eleven districts under the company's Cebu City branch office.

The company does not question the tax on the sales of matches consummated in Cebu City, meaning matches sold and delivered within the city.

It assails the legality of the tax which the city treasurer collected on out-of-town deliveries of matches, to wit: (1) sales of matches booked and paid for in Cebu City but shipped directly to customers outside of the city; (2) transfers of matches to salesmen assigned to different agencies outside of the city and (3) shipments of matches to provincial customers pursuant to salesmen's instructions.

The company paid under protest to the city treasurer the sum of ₱12,844.61 as one percent sales tax on those three classes of out-of-town deliveries of matches for the second quarter of 1961 to the second quarter of 1963.

In paying the tax the company accomplished the verified forms furnished by the city treasurer's office. It submitted a statement indicating the four kinds of transactions enumerated above, the total sales, and a summary of the deliveries to the different agencies, as well as the invoice numbers, names of customers, the value of the sales, the transfers of matches to salesmen outside of Cebu City, and the computation of taxes.

Sales of matches booked and paid for in Cebu City but shipped directly to customers outside of the city refer to orders for matches made in the city by the company's customers, by means of personal or phone calls, for which sales invoices are issued, and then the matches are shipped from the *bodega* in the city, where the matches had been stored, to the place of business or residences of the customers outside of the city, duly covered by bills of lading. The matches are used and consumed outside of the city.

Supreme Court E-Library

Transfers of matches to salesmen assigned to different agencies outside of the city embrace shipments of matches from the branch office in the city to the salesmen (provided with panel cars) assigned within the province of Cebu and in the different districts in the Visayas and Mindanao under the jurisdiction or supervision of the Cebu City branch office. The shipments are covered by bills of lading. No sales invoices whatsoever are issued. The matches received by the salesmen constitute their direct cash accountability to the company. The salesmen sell the matches within their respective territories. They issue cash sales invoices and remit the proceeds of the sales to the company's Cebu branch office. The value of the unsold matches constitutes their stock liability. The matches are used and consumed outside of the city.

Shipments of matches to provincial customers pursuant to salesmen's instructions embrace orders, by letter or telegram, sent to the branch office by the company's salesman assigned outside of the city. The matches are shipped from the company's *bodega* in the city to the customers residing outside of the city. The salesmen issue the sales invoices. The proceeds of the sale, for which the salesman are accountable, are remitted to the branch office. As in the first and second kinds of transactions above-mentioned, the matches are consumed and used outside of the city.

The company in its letter of April 15, 1961 to the city treasurer sought the refund of the sales tax paid for out-of-town deliveries of matches. It invoked *Shell Company of the Philippines, Ltd. vs. Municipality of Sipocot, Camarines Sur*, 105 Phil. 1263. In that case sales of oil and petroleum products effected outside the territorial limits of Sipocot were held not to be subject to the tax imposed by an ordinance of that municipality.

The city treasurer denied the request. His stand is that under Section 9 of the ordinance all out-of-town deliveries of matches stored in the city are subject to the sales tax imposed by the ordinance.

On August 12, 1963 the company filed the complaint herein, praying that the ordinance be declared void insofar as it taxed

Supreme Court E-Library

the deliveries of matches outside of Cebu City, that the city be ordered to refund to the company the said sum of ₱12,844.61 as excess sales tax paid, and that the city treasurer be ordered to pay damages.

After hearing, the trial court sustained the tax on the sales of matches booked and paid for in Cebu City although the matches were shipped directly to customers outside of the city. The lower court held that the said sales were consummated in Cebu City because delivery to the carrier in the city is deemed to be a delivery to the customers outside of the city.

But the trial court invalidated the tax on transfers of matches to salesmen assigned to different agencies outside of the city and on shipments of matches to provincial customers pursuant to the instructions of the salesmen. It ordered the defendants to refund to the plaintiff the sum of ₱8,923.55 as taxes paid on the said out-of-town deliveries with legal rate of interest from the respective dates of payment.

The trial court characterized the tax on the other two transactions as a "storage tax" and not a sales tax. It assumed that the sales were consummated outside of the city and, hence, beyond the city's taxing power.

The city did not appeal from that decision. The company appealed from that portion of the decision upholding the tax on sales of matches to customers outside of the city but which sales were booked and paid for in Cebu City, and also from the dismissal of its claim for damages against the city treasurer.

The issue is whether the City of Cebu can tax sales of matches which were perfected and paid for in Cebu City but the matches were delivered to customers outside of the City.

We hold that the appeal is devoid of merit because the city can validly tax the sales of matches to customers outside of the city as long as the orders were booked and paid for in the company's branch office in the city. Those matches can be regarded as sold in the city, as contemplated in the ordinance, because the matches were delivered to the carrier in Cebu

Supreme Court E-Library

City. Generally, delivery to the carrier is delivery to the buyer (Art. 1523, Civil Code; *Behn, Meyer & Co. vs. Yangco*, 38 Phil. 602).

A different interpretation would defeat the tax ordinance in question or encourage tax evasion through the simple expedient of arranging for the delivery of the matches at the outskirts of the city through the purchases were effected and paid for in the company's branch office in the city.

The municipal board of Cebu City is empowered "to provide for the levy and collection of taxes for general and special purposes in accordance with law" (Sec. 17[a], Commonwealth Act No. 58; See. 31[1], Rep. Act No. 3857, Revised Charter of Cebu City).

The taxing power validly delegated to cities and municipalities is defined in the Local Autonomy Act, Republic Act No. 2264 (*Pepsi-Cola Bottling Co. of the Philippines, Inc. vs. Municipality of Tanauan, Leyte*, L-31156, February 27, 1976, 69 SCRA 460), which took effect on June 19, 1959 and which provides:

"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 services 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,

Supreme Court E-Library

except gasoline, under the provisions of the National International Revenue Code;

"*Provided, however*, That no city, municipality or municipal district may levy or impose any of the following:

(here follows an enumeration of internal revenue taxes)

x x x x x x x x x"*

Note that the prohibition against the imposition of percentage taxes (formerly provided for in Section 1 of Commonwealth Act No. 472) refers to municipalities and municipal districts but not to chartered cities. (See Sec. 5[1], Local Tax Code, P.D. No. 231; *Marinduque Iron Mines Agents, Inc. vs. Municipal Council of Hinabangan, Samar*, 120 Phil. 413; *Ormoc Sugar Co., Inc. vs. Treasurer of Ormoc City*, L-23794, February 17, 1968, 22 SCRA 603).

Note further that the taxing power of cities, municipalities and municipal districts may be used (1) "upon any person engaged in any occupation or business, or exercising any privilege" therein; (2) for services rendered by those political subdivisions or rendered in connection with any business, profession or occupation being conducted therein, and (3) to levy, for public purposes, just and uniform taxes, licenses or fees (*C. N. Hodges vs. Municipal Board of the City of Iloilo*, 117 Phil. 164, 167. See Sec. 31[25], Revised Charter of Cebu City).

Applying that jurisdictional test to the instant case, it is at once obvious that sales of matches to customers outside of Cebu City, which sales were booked and paid for in the company's branch office in the city, are subject to the city's taxing power. The instant case is easily distinguishable from the *Shell Company* case where the price of the oil sold was paid outside of the municipality of Sipocot, the entity imposing the tax.

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* Sec. 5, Article XI of the Constitution provides that "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."

That constitutional provision was implemented by Presidential Decree No. 231, the Local Tax Code, which took effect on July 1, 1973.

Supreme Court E-Library

On the other hand, the ruling in Municipality of Jose Panganiban, *Province of Camarines Norte vs. Shell Company of the Philippines, Ltd.*, L-18349, July 30, 1966, 17 SCRA 778 that the place of delivery determines the taxable situs of the property to be taxed cannot properly be invoked in this case. Republic Act No. 1435, the law which enabled the Municipality of Jose Panganiban to levy the sales tax involved in that case, specifies that the tax may be levied upon oils "distributed within the limits of the city or municipality," meaning the place where the oils were delivered. That feature of the *Jose Panganiban* case distinguishes it from this case.

The sales in the instant case were finalized in the city and the matches sold were stored in the city. The fact that the matches were delivered to customers, whose places of business were outside of the city, would not place those sales beyond the city's taxing power. Those sales formed part of the merchandising business being carried on by the company in the city. In essence, they are the same as sales of matches fully consummated in the city.

Furthermore, because the seller's place of business is in Cebu City, it cannot be sensibly argued that such sales should be considered as transactions subject to the taxing power of the political subdivisions where the customers resided and accepted delivery of the matches sold.

The company in its second assignment of error contends that the trial court erred in not ordering defendant acting city treasurer to pay exemplary damages of ₱20,000 and attorney's fees.

The claim for damages is predicated on Articles 19, 20, 21, 27 and 2229 of the Civil Code. It is argued that the city treasurer refused and neglected without just cause to perform his duty and to act with justice and good faith. The company faults the city treasurer for not following the opinion of the city fiscal, as legal adviser of the city, that all out-of-town deliveries of matches are not subject to sales tax because such transactions were effected outside of the city's territorial limits.

Supreme Court E-Library

In reply, it is argued for defendant city treasurer that in enforcing the tax ordinance in question he was simply complying with his duty as collector of taxes (Sec. 50, Revised Charter of Cebu City). Moreover, he had no choice but to enforce the ordinance because according to Section 357 of the Revised Manual of Instructions to Treasurers, "a tax ordinance will be enforced in accordance with its provisions" until declared illegal or void by a competent court, or otherwise revoked by the council or board from which it originated.

Furthermore, the Secretary of Finance had reminded the city treasurer that a tax ordinance approved by the provincial board is operative and must be enforced without prejudice to the right of any affected taxpayer to assail its legality in the judicial forum. The fiscal's opinion on the legality of an ordinance is merely advisory and has no binding effect.

Article 27 of the Civil Code provides that "any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken."

Article 27 presupposes that the refusal or omission of a public official is attributable to malice or inexcusable negligence. In this case, it cannot be said that the city treasurer acted wilfully or was grossly negligent in not refunding to the plaintiff the taxes which it paid under protest on out-of-town sales of matches.

The record clearly reveals that the city treasurer honestly believed that he was justified under Section 9 of the tax ordinance in collecting the sales tax on out-of-town deliveries, considering that the company's branch office was located in Cebu City and that all out-of-town purchase orders for matches were filled up by the branch office and the sales were duly reported to it.

The city treasurer acted within the scope of his authority and in consonance with his *bona fide* interpretation of the tax ordinance. The fact that his action was not completely sustained by the courts would not render him liable for damages. We

Supreme Court E-Library

have upheld his act of taxing sales of matches booked and paid for in the city.

"As a rule, a public officer, whether judicial, quasi-judicial, or executive, is not personally liable to one injured in consequence of an act performed within the scope of his official authority, and in the line of his official duty." "Where an officer is invested with discretion and is empowered to exercise his judgment in matters brought before him, he is sometimes called a quasi-judicial officer, and when so acting he is usually given immunity from liability to persons who may be injured as the result of an erroneous or mistaken decision, however erroneous his judgment may be, provided the acts complained of are done within the scope of the officer's authority, and without willfulness, malice or corruption." (63 Am Jur 2nd 798, 799 cited in *Philippine Racing Club, Inc. vs. Bonifacio*, 109 Phil. 233, 240-241).

It has been held that an erroneous interpretation of an ordinance does not constitute nor does it amount to bad faith that would entitle an aggrieved party to an award for damages (*Cabungcal vs. Cordova*, 120 Phil. 567, 572-3). That salutary rule may be applied in this case.

Exemplary damages may be claimed in addition to moral, temperate, liquidated or compensatory damages (Art. 2229, Civil Code). Attorney's fees are being claimed herein as actual damages. We find that it would not be just and equitable to award attorney's fees in this case against the City of Cebu and its treasurer (See Art. 2208, Civil Code).

WHEREFORE, the trial court's judgment is affirmed. No costs.

SO ORDERED.

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

Barredo, J., I concur. Anent appellant's claim for damages, it should be happy the trial court did not sustain the city fully, which in my opinion, could have been possible.

Santos, J., is on leave.