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Concepcion, C.J., Reyes, J. B. L., Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor and *Makasiar, JJ.*, concur.

Petitions dismissed.

[No. L-20312. February 26, 1972]

SAN MIGUEL BREWERY, INC., plaintiff and appellant, *vs.* THE CITY OF CEBU, defendant and appellee.

[No. L-20496. February 26, 1972]

CEBU PORTLAND CEMENT COMPANY, plaintiff and appellant, *vs.* MUNICIPALITY OF NAGA, CEBU and THE MUNICIPAL TREASURER, NAGA, CEBU, defendants and appellees.

1. POLITICAL LAW; LOCAL AUTONOMY ACT; GRANT OF POWER TO MUNICIPAL CORPORATIONS TO LEVY TAXES; SECTION 2.— Referring to section 2 of Republic Act No. 2264 (Local Autonomy Act), this Court declared in Nin Bay Mining Co. vs. Municipality of Roxas, Palawan, that said Act "confers upon all chartered cities, municipalities and municipal districts the *general power* to levy, *not only* taxes, but also, *municipal license taxes*, subject to specified exceptions, as well as service fees."

2. ID.; ID.; ID.; ID.; POWER TO TAX, PLENARY.— Luzon Surety Co., Inc. vs. City of Bacolod cited with approval the fact that this Court had consistently upheld the "doctrine that the grant of the power to tax to chartered cities under section 2 of the Local Autonomy Act is *sufficiently plenary to cover everything* excepting those which are mentioned therein, subject only to the limitation that the tax so levied is for public purposes, just and uniform.

3. ID.; ID.; ID.; ORDINANCE IMPOSING TAX PRESUMED VALID;

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TAXPAYER TO PROVE THAT TAX IS EXCESSIVE, OPPRESSIVE AND CONFISCATORY; CASE AT BAR. The objection of Cebu Portland that the tax in question is excessive, oppressive and confiscatory cannot be sustained because it has not introduced any evidence in support of its claim for "an ordinance carries with it the presumption of validity. The question of reasonableness though is open to judicial inquiry. Much should be left thus to the discretion of municipal authorities. Courts will go slow in writing off an ordinance as unreasonable unless the amount is so excessive as to be prohibitive. A rule which has gained acceptance is that factors relevant to such an inquiry are the municipal conditions as a whole and the nature of the business made subject to imposition."

4. ID.; ID.; ID.; TAX NOT PERCENTAGE, SALES OR SPECIFIC TAX IN CASE AT BAR.– The tax involved in L-20496 does not partake of the nature of a percentage or sales tax or a specific tax. merely because the amount of the tax is dependent upon the maximum annual capacity of the cement factory subject thereto for settled is the rule that a graduation of the tax based upon the taxpayer's volume of business, when the same is considered solely for purposes of classification, and there is no set ratio between said volume and the amount of the tax, does not render the latter invalid as a sales, percentage or specific tax.

5. ID.; ID.; GRANT OF POWER TO CHARTERED CITIES TO IMPOSE SALES TAX; SECTION 2.– The authority of cities under section 2 of Rep. Act No. 2264, to impose a sales tax has already been upheld in City of Bacolod *vs.* Gruet and Pepsi-Cola Bottling Co. of the Philippines, Inc. *vs.* City of Butuan.

6. TAXATION; DOUBLE TAXATION; CONCEPT OF; NOT PROHIBITED BY CONSTITUTION; NO DOUBLE TAXATION IN CASE AT BAR.– There is double taxation when the same person is taxed by the same jurisdiction for the same purpose. which is not the case in L-20312, for the ordinance in question imposes a tax on the *sale* or disposal of every "bottle or container" of "liquor or intoxicating beverages," and, as such, is a typical tax or revenue measure, whereas the sum of P600 it pays annually is for a "second-class wholesale liquor license," which is a license to engage in the business of wholesale liquor in Cebu

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city, and, accordingly, constitutes a regulatory measure, in the exercise of the police power. In any case, however, double taxation is not prohibited by the Constitution.

L-20312

APPEAL from a judgment of the Court of First Instance of Manila. Barcelona, *J.*

The facts are stated in the opinion of the Court.

Picazo & Agcaoili for plaintiff and appellant.

Quirico del Mar, Eliseo Ynclino and *Assistant City Fiscal* for defendant and appellee.

L-20496

APPEAL from a judgment of the Court of First Instance of Manila. Morfe, *J.*

The facts are stated in the opinion of the Court.

Government Corporate Counsel Tomas P. Matic, Jr. and *Assistant Government Corporate Counsel Lorenzo R. Mosqueda* for plaintiff and appellant.

Fiscal Ananias V. Maribao and *Vicente Mendiola* for defendant Municipality of Naga, Cebu, etc.

CONCEPCION, *C.J.:*

The above-entitled cases are jointly disposed of in this decision owing to the common issue therein – namely, the extent of the taxing power of municipal corporations under section 2 of Republic Act No. 2264, otherwise known as the Local Autonomy Act.

In L-20312, plaintiff San Miguel Brewery, Inc. – hereinafter referred to as SMB – assails the validity of Ordinance No. 298, as amended by Ordinance No. 300, both series of 1960, of the City of Cebu, providing that "(t)here shall be collected on any sale or disposal of liquor or

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intoxicating beverages of any form in the City of Cebu by manufacturers and wholesalers for purposes of a municipal tax the follwing rates:

> "(a) On sales or disposal per bottle or container not exceeding P.50, a tax of P.03;
>
> "(b) On sales or disposal per bottle or container over P.50, but not exceeding P1, a tax of P.05;
>
> "(c) On sales or disposal per bottle or container over P1, but not exceeding P2, a tax of P.15;
>
> "(d) On sales or disposal per bottle or container exceeding P2, the amount of tax provided under schedule C, plus P.10 per P1, or a fraction thereof.
>
> "PROVIDED, however, that manufacturers, who are at the same time wholesalers of their own product, shall pay only as manufacturers under the rates specified hereinabove."

Pursuant to said ordinance, the SMB, which is engaged in the manufacture, bottling, distribution and sale of beer throughout the Philippines, including the defendant Cebu City, paid thereto, under protest, on April 20, 1961, the sum of P29,874.69, the refund of which is prayed for in the complaint herein, upon the ground that said ordinance is *ultra vires*, for imposing a sales tax, which is allegedly beyond defendant's power to levy, apart from resulting in illegal double taxation, since SMB already pays the defendant a business license tax of P600 per annum. The Court of First Instance of Manila having rendered judgment dismissing the complaint, with costs, plaintiff seeks a review by record on appeal.

In L-20496, the Cebu Portland Cement Company – Cebu Portland for short – seeks to annul Ordinance No. 22, series of 1959, of the Municipality of Naga, Cebu, imposing upon "all cement factories, corporations, or enterprises operating within" said municipality "an annual municipal license tax, payable quarterly, graduated" according to the "maximum annual output capacity" of the factory, as

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follows: P150 if the capacity is not more than 10,000 bags of cement; P300, if over 10,000 but not more than 20,000 bags; P450, if over 20,000 but not more than 30,000 bags; P600, if over 30,000 but not more than 40,000 bags; P750, if over 40,000 but not more than 50,000 bags; P900, if over 50,000 but not more than 60,000 bags; and P75 for every 5,000 bags or fraction thereof in excess of 60,000 bags.

Having failed to pay said tax for the years 1960 and 1961, and the corresponding penalties therefor, 100,000 bags of cement of Cebu Portland were placed under distraint and levy by the municipal treasurer of Naga. This triggered the filing by Cebu Portland of two (2) actions, namely: 1) one to impugn the validity of the distraint and then the sale of said 100,000 bags of cement, both of which were, in due course, upheld by the Court of First Instance of Manila, the decision of which was, on appeal, affirmed by Us; [1] and 2) the present case, to annul said ordinance and secure the refund of P44,000, subsequently paid under protest by Cebu Portland, in partial satisfaction of its tax liability, which said plaintiff contests as illegal upon the theory that it partakes of the nature of a specific tax and that it is allegedly unjust, excessive, oppressive and confiscatory. The defendants having obtained a favorable judgment in the Court of First Instance of Manila, Cebu Portland appealed by record on appeal.

Said section 2 of Republic Act No. 2264 reads as follows:

> "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

1 Cebu Portland Cement Co. *vs.* Mun. of Naga, Cebu, et L-24116-17, Aug. 22, 1968.

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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, 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, 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

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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; and

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

Referring to the above provision, this Court declared in Nin Bay Mining Co. *vs.* Municipality of Roxas, Palawan, [2] that "Republic Act No. 2264 confers upon all chartered cities, municipalities and municipal districts the *general power* to levy, *not only* taxes, but, also, *municipal license taxes,* subject to specified exceptions, as well as service fees." Subsequently, Luzon Surety Co., Inc. *vs.* City of Bacolod [3] cited with approval the fact that this Court had consistently upheld the "doctrine that the grant of the power to tax to chartered cities under section 2 of the Local Autonomy Act is *sufficiently plenary to cover everything* excepting those which are mentioned therein, subject only to the limitation that the tax so levied is for public purposes, just and uniform." [4]

Appellant in L-20312 questions the conclusions reached in the decision appealed from, to the effect that the first proviso in the above-quoted provision, prohibiting "municipalities and municipal districts" from imposing "any percentage tax on sales or other taxes in any form based thereon," implies that *cities,* like appellee therein, are not subject to said restriction, and that the contested ordinance is not invalid upon the ground of double taxation.

2 L-20125, July 20, 1965. Italics supplied.

3 L-23618, Aug. 31, 1970. Italics supplied.

4 *Citing* Nin Bay Mining Co. *vs.* Mun. of Roxas, Palawan, *supra;* C.N. Hodges *vs.* Mun. Board of the City of Iloilo, L-18276, Jan. 12, 1967; Ormoc Sugar Co. *vs.* Mun. Board of Ormoc City, L-24322, July 21, 1967.

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We find no merit in this pretense, for: (a) double taxation is not prohibited by the Constitution; [5] (b) there is double taxation when the same person is taxed by the same jurisdiction for the same purpose, [6] which is not the case in L-20312, for the ordinance in question imposes a tax on the *sale* or disposal of every "bottle or container" of "liquor or intoxicating beverages," and, as such, is a typical tax or revenue measure, whereas the sum of P600 it pays annually is for a "second-class wholesale liquor license," which is a license to engage in the business of wholesale liquor in Cebu City, and, accordingly, constitutes a regulatory measure, in the exercise of the police power; [7] and (c) the authority of cities under the above-quoted section 2 of Rep. Act No. 2264, to impose a sales tax has already been upheld in City of Bacolod *vs.* Gruet [8] and Pepsi-Cola Bottling Co. of the Philippines, Inc. *vs.* City of Butuan, [9] and We find no plausible reason to depart from said view.

Neither is there any merit in the contention of Cebu Portland in L-20496, to the effect that the tax involved

5 Comm. of Int. Revenue *vs.* Hawaiian-Philippine Co., L-16315, May 30, 1964; Pepsi-Cola Bottling Co. *vs.* City of Butuan, L-22814, Aug. 28, 1968; City of Baguio *vs.* De Leon, L-24756, Oct. 31, 1968; Serafica *vs.* Treasurer of Ormoc, L-24813, April 28, 1969; Manufacturers Life Ins. Co. *vs.* Meer, 89 Phil. 351, 357; City of Manila *vs.* Inter-Island Gas Service, 99 Phil. 847, 854. *See*, also, City of Bacolod *vs.* Gruet, L-18290, Jan. 31, 1963.

6 Victorias Milling Co. *vs.* Mun. of Victorias, L-21183, Sept. 27, 1968; Laoag Producers' Cooperative Marketing Association, Inc. *vs.* Mun. of Laoag, L-27498, Feb. 24, 1971; Manila Motor Co. *vs.* City of Manila, 72 Phil. 336, 339.

7 *See:* Northern Philippines Tobacco Corporation *vs.* Mun. of Agoo, La Union, L-26447, Jan. 30, 1970; Cia. General de Tabacos de Filipinas *vs.* City of Manila, L-16619, June 29, 1963; City of Naga *vs.* Court of Appeals, L-24954, Aug. 14, 1968; Uy Matiao & Co. *vs.* City of Cebu, 93 Phil. 300; Shell Co. of P.I. *vs.* Vano, 94 Phil. 389.

8 *Supra.*

9 *Supra.* The ordinance contested therein was, however, invalidated on *another* ground, as discriminatory, for only sales agents or consignees of outside dealers would be subject to the tax.

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therein partakes of the nature of a percentage or sales tax or a specific tax, merely because the amount of the tax is dependent upon the maximum annual capacity of the cement factory subject thereto. Settled is the rule that a graduation of the tax based upon the taxpayer's volume of business, when the same is considered solely for purposes of classification, and there is no set ratio between said volume and the amount of the tax, does not render the latter invalid as a sales, percentage or specific tax. Thus, in Northern Philippines Tobacco Corporation *vs.* Municipality of Agoo, La Union, [10] We held:

> "The circumstance, that the rate of tax payable under the ordinance is made to some extent dependent on the minimum and maximum quantity of tobacco redried per quarter, does not transform said tax into a percentage or sales or income tax and does not bring the case out of the council's authorized sphere of action. It may be noted that, as framed in the ordinance, the volume of business is merely taken into account in classifying the taxpayer's business according to its size or extent of operations, for the purpose of imposing the fixed graduated tax it has to pay; and that there is no set ratio between the tax and the amount of tobacco redried."

This criterion was, also, adhered to in Nin Bay Mining Co. *vs.* Municipality of Roxas, [11] Li Seng Giap *vs.* Municipality of Daet, [12] Standard-Vacuum Oil Co. *vs.* Antigua, [13] Shell Co. of P.I. *vs.* Vaño, [14] Syjuco *vs.*

10 *Supra.*

11 *Supra.*

12 54 Phil. 625, 630-631.

13 96 Phil. 909.

14 *Supra.*

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Municipality of Parañaque, [15] Marinduque Iron Mines Agents, Inc. *vs.* Municipal Council of Hinabangan, [16] and Victorias Milling Co., Inc. *vs.* Municipality of Victorias. [17]

For the rest, Cebu Portland has not introduced any evidence in support of its claim that the tax in question is excessive, oppressive, and confiscatory. Hence, this objection cannot be sustained for:

> "An ordinance carries with it the presumption of validity. The question of reasonableness though is open to judicial inquiry. Much should be left thus to the discretion of municipal authorities. Courts will go slow in writing off an ordinance as unreasonable unless the amount is so excessive as to be prohibitive. A rule which has gained acceptance is that factors relevant to such an inquiry are the municipal conditions as a whole and the nature of the business made subject to imposition." [18]

In Northern Philippines Tobacco Corporation *vs.* Municipality of Agoo, [19] a similar charge was disposed of in the following language:

> "We find nothing in the record, however, to support such charge. Appellant has failed to present proof of the existing municipal conditions and the nature of its business, as well as other factors that would have been relevant to the issue of the arbitrariness or unreasonableness of the questioned rates. An increase in the rate of tax alone would not support the claim that it is

15 L-11265, Nov. 27, 1959.

16 L-18924, June 30, 1964.

17 *Supra.*

18 Victorias Milling Co., Inc. *vs.* Mun. of Victorias, *supra.*

19 *Supra.*

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oppressive, unjust and confiscatory; municipal corporations are allowed much discretion in determining the rates of imposable license fees, even in cases of purely police power-measures."

Wherefore, the decisions appealed from should be and are hereby affirmed, with costs against plaintiffs-appellants San Miguel Brewery, Inc. and Cebu Portland Cement Company. It is so ordered.

Reyes, J. B. L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor and *Makasiar, JJ.*, concur.

Decisions affirmed.

[No. L-26418. February 28, 1972]

EMILIO LLANES, petitioner, *vs.* THE HONORABLE COURT OF APPEALS and HON. RUPERTO C. KAPUNAN, JR., Presiding Judge, Court of First Instance of Manila, Branch XVIII, respondents.

REMEDIAL LAW; PETITION FOR CERTIORARI AND MANDAMUS WITH PRELIMINARY INJUNCTION; DISMISSAL AS MOOT AND ACADEMIC; CASE AT BAR.– Where (1) the herein amended petition of the petitioner has been denied due course, (2) the petitioner himself has declared that Atty. Buenaventura Padilla is not the "Padilla" with whom he had negotiations concerning his appeal, and, with respect to Atty. Jose A. Beltran, that he does not assert that said counsel misrepresented him, and (3) the City Fiscal's Office has already informed this Court in connection with its resolution dated August 28, 1967 that a criminal case for perjury has been filed against the petitioner with the Court of First Instance of Manila, nothing more remains to be done in the present case, and the same should be dismissed for being moot and academic.

ORIGINAL ACTION in the Supreme Court. Certiorari and