Supreme Court E-Library

WHEREFORE, the judgment of the court *a quo* dismissing the complaint is hereby affirmed. No pronouncement as to costs.

Makalintal, (Actg. C.J.), Zaldivar, Ruiz Castro, Teehankee, Makasiar, and *Esguerra, JJ.*, concur.

Fernando and *Barredo, JJ.*, took no part.

[G.R. No. L-30761. July 11, 1973]

THE SAN MIGUEL CORPORATION, *petitioner, vs.* THE MUNICIPAL COUNCIL, THE MAYOR, and THE MUNICIPAL TREASURER OF THE MUNICIPALITY OF MANDAUE, PROVINCE OF CEBU, *respondents.*

SYLLABUS

1. **TAXATION; LOCAL TAXATION; GRANT OF POWER TO CHARTERED CITIES AND MUNICIPALITIES SUBJECT TO EXCEPTIONS AND LIMITATIONS.**— While We have heretofore announced the doctrine that the grant of power to tax to chartered cities and municipalities under Section 2 of the Local Autonomy Act is sufficiently plenary, it is, however, subject to the exceptions and limitations contained in the two (2) provisos of the same statute. In other words, the municipal corporation should not transcend the limitations imposed by the statute on the basis of which the power to tax is sought to be exercised. Thus, We held in the Marinduque case, that an ordinance providing for a graduated tax based on either "gross output or sales" violates the prohibition on municipalities against imposing any percentage tax on sales, or other taxes in any form based thereon, as the only standard provided for measuring the gross output is its peso value, as determined from true copies of receipts and/or invoices that the taxpayer is required to submit to the municipal treasurer.

2. **ID.; ID.; ID.; "GROSS VALUE IN MONEY," CONSTRUED.**— The term "gross value in money" of articles sold, bartered, exchanged or transferred, as used in Sections 184, 185 and 186 of the

Supreme Court E-Library

National Internal Revenue Code, has been invariably used as equivalent to "gross selling price" and has been construed as the total amount of money or its equivalent which the purchaser pays to the vendor to receive or get the goods.

3. **ID.; ID.; ID.; "ACTUAL MARKET VALUE", CONSTRUED.**— The phrase "actual market value" has been construed as the price which an article "would command in the ordinary course of business," that is to say, when offered for sale by one willing to sell, but not under obligation to purchase it, or the price which the property will bring in a fair market after fair and reasonable efforts have been made to find a purchaser who will give the highest price for it. The "actual market value" of property, for purposes of taxation, therefore means the selling price of the article in the course of ordinary business.

4. **ID.; ID.; ID.; "ACTUAL MARKET VALUE" INTENDED TO EXPLAIN "GROSS VALUE IN MONEY" IN ORDINANCE IN INSTANT CASE; ORDINANCE IS BEYOND THE AUTHORITY OF THE MUNICIPALITY TO ENACT.**— The ordinance in question imposes "a graduated quarterly fixed tax based on the gross value of money or actual market value at the time of removal of the manufactured articles from their factories or other manufacturing or processing establishments." Considering that in said ordinance the phrase "gross value in money" is followed by the words "or actual market value," it is evident that the latter was intended to explain and clarify the preceding phrase. For the word "or" may be used as the equivalent of "that is to say" and gives that which precedes it the same significance as that which follows it. It is not always disjunctive and is sometimes interpretative or expository of the preceding word. Certainly We cannot assume that the phrase "or actual market value" was a mere surplusage, for it serves to clarify and explain the meaning and import of the preceding phrase. In any event, it is the duty of the courts, so far as reasonably practicable, to read and interpret a statute as to give life and effect to all its provisions, so as to render it a harmonious whole. Moreover, there is a set ratio between the amount of the tax and the volume of sales. Thus, if the "gross value in money or actual market value" of the beer removed from the factory exceeds P37,500.00 per quarter, the taxpayer is required to pay a quarterly license tax of P160 plus P0.30 for every P1,000.00 or fraction of the excess. In other words in excess of P37,500.00, the taxpayer will pay to the municipality

Supreme Court E-Library

a certain amount of the tax measured by a percentage of the sales. It is therefore evident that the challenged ordinance was a transparent attempt on the part of the municipality to impose a tax based on sales and therefore beyond the authority of the municipality to enact.

5. **ID.; ID.; ID.; ID.; ID.; TAX NEED NOT BE IMPOSED ON ACTUAL DATE OF SALE; CASE OF LAOAG PRODUCERS' COOPERATIVE MARKETING ASSOCIATION IS SIMILAR TO INSTANT CASE.**— In Laoag Producers' Cooperative Marketing Association, Inc. *vs.* Municipality of Laoag, We held that the challenged ordinance imposed a tax based on sales, although the ordinance merely imposed a "municipal tax or inspection fee of one-half (1/2) centavo on every kilo of Virginia Leaf tobacco, garlic and onion on all wholesale dealers and vendors" because, in its application, it does impose a tax based on sales, as it is based on the number of kilos sold and purchased by him and when the wholesaler or vendor accumulates his stock, he does so for only one purpose, to sell the same at the appropriate time, and "he cannot by its very nature, carry on his business unless he sells what he has bought." Similarly, in the case at bar, the circumstance that the tax is imposed upon petitioner at the time of removal from the factory of the manufactured beer, and not on the date of actual sale, is not of important consequence since petitioner will, in the end, sell the beer removed from the factory, because by the nature of its business, it has no alternative but to sell what it has manufactured.

6. **ID.; ID.; CONVERSION OF MUNICIPALITY INTO CITY DOES NOT REMOVE INFIRMITY OF ORDINANCE IN QUESTION.**— Respondents claim that with the conversion of Mandaue into a city pursuant to Republic Act No. 5519, which was approved on June 21, 1969, the issue has already become moot, since the prohibition contained in Section 2 of Republic Act 2264 applies only to municipalities and not to chartered cities. The same contention has been rejected in City of Naga *vs.* Court of Appeals, and Laoag Producers' Cooperative Marketing Association, Inc. *vs.* Municipality of Laoag, where We ruled that the legality of an ordinance depends upon the power of the municipality at the time of the enactment of the challenged ordinance. Since the municipality of Mandaue had no authority to enact the said ordinance, the subsequent approval of Republic Act No. 5519 which became effective on June 21, 1969, did not

Supreme Court E-Library

remove the original infirmity of the ordinance. Indeed there is no provision in the aforecited statute which invests a curative effect upon the ordinances of the municipality which when enacted were beyond its statutory authority.

7. **ID.; TAX STATUTES; TECHNICAL AND COMMERCIAL TERMS USED MUST BE TAKEN IN THEIR TRADE OR COMMERCIAL MEANING.**— Well settled is the rule that in the absence of legislative intent to the contrary, technical or commercial terms and phrases, when used in tax statutes, are presumed to have been used in their technical sense or in their trade or commercial meaning.

APPEARANCES OF COUNSEL

Gadioma and Josue for petitioner.

Acting City Fiscal Lawrence A. Parawan for respondents.

DECISION

ANTONIO, *J.:*

Petition for writ of certiorari to review the judgment of the Court of First Instance of Cebu, in Civil Case No. R-10631, upholding the validity of Ordinance No. 23, series of 1966, as amended by Ordinance No. 25, series of 1967, of the Municipality of Mandaue, Cebu, imposing "a graduated quarterly fixed tax based on the gross value of money or actual market value at the time of removal of the manufactured articles from their factories or other manufacturing or processing establishments."

In enacting the said ordinances, the municipal council of Mandaue invoked as basis of its authority Republic Act No. 2264 (Local Autonomy Act).

The relevant portion of Section 1, Ordinance No. 23 (1966), as amended by Ordinance No. 25 (1967), provides as follows:

"SECTION 1. - *Municipal License Tax On Proprietors Or Operators Of* * * * *Breweries,* * * * Proprietors or operators of * * * breweries, * * * within the territorial limits of this municipality shall pay a graduated

Supreme Court E-Library

quarterly fixed tax based on the *gross value in money* or *actual market value* at the time of removal, of the manufactured articles from their factories * * * during the preceding quarter in accordance with the following schedules: * * *:

CLASS	QUARTERLY GROSS VALUE	QUARTERLY LICENSE TAX
1	P37,500.00 or over	P160.00 and P0.30 for each P1,000.00 or fraction thereof in excess of P37,500.00 gross value.
2	P31,250.00 to P37,499.99	P158.00 per quarter
3	25,000.00 to 31,249.99	132.00 " "
4	20,000.00 to 24,999.99	105.00 " "
5	15,000.00 to 19,999.99	83.00 " "
6	12,500.00 to 14,999.99	63.00 " "
7	10,000.00 to 12,499.99	50.00 " "
8	8,750.00 to 9,999.99	42.00 " "
9	7,500.00 to 8,749.99	37.00 " "
10	6,500.00 to 7,499.99	31.00 " "
11	5,500.00 to 6,499.99	27.00 " "
12	4,500.00 to 5,499.99	23.00 " "
13	3,750.00 to 4,499.99	19.00 " "
14	3,000.00 to 3,749.99	16.00 " "
15	2,500.00 to 2,999.99	13.00 " "
16	2,000.00 to 2,499.99	11.00 " "
17	1,750.00 to 1,999.99	9.00 " "
18	1,500.00 to 1,749.99	8.00 " "
19	1,250.00 to 1,499.99	7.00 " "
20	Less than P1,250.00	5.00 " " "

The pertinent portion of Section 2 of Ordinance No. 23 which was not amended by Ordinance No. 25 states:

"*Payment of Municipal License Tax.* - A fixed tax imposed on this ordinance must first be paid before any person can engage in business and is payable for each taxable business; * * *.

"The graduated fixed tax provided in this ordinance shall be paid at the Office of the Municipal Treasurer quarterly, on or before the twentieth of January, April, July and October; * * *. Provided further, That as regards businesses already operating at the time this ordinance

Supreme Court E-Library

takes effect, the tax for the initial quarter shall be paid pursuant to the provisions of this ordinance and shall be based on the gross value in money during the quarter immediately preceding, * * *.

"Within the time fixed for the payment of the license taxes herein imposed, the taxpayers shall prepare and file with the Municipal Treasurer, a sworn statement of the *gross value in money* during the preceding quarter on the basis of which the tax shall be assessed and collected. * * *".

The basic Ordinance was No. 88,[1] which took effect on September 25, 1962, but this was amended by Ordinance No. 23 (January 1, 1967), and by Ordinance No. 25 (January 1, 1968).

Petitioner, a domestic corporation engaged in the business of manufacturing beer and other products with a subsidiary manufacturing plant in Mandaue, Cebu, since December, 1967, paid the taxes prescribed in the aforesaid ordinance, under protest thus: P309.40 on January 22, 1968 and P5,171.80 as of July 18, 1968, computed respectively "on the basis of 70,412 and 2,203.070 cases of beer manufactured and removed from said Mandaue plant, multiplied by P7.60 which is the prevailing market price (wholesaler's price) per case of beer at the time of the removal."

Claiming that it is adversely affected by the ordinance, which in its view was beyond the power and authority of the municipality to enact, petitioner brought an action in the Court of First Instance of Cebu, Branch VI, for the annulment of said ordinance.

Petitioner contends that (1) the phrase "gross value in money or actual market value" employed in the questioned ordinance clearly referred to "sales or market price" of the articles or commodities manufactured thereby indicating a manifest intent to impose a tax based on sales, and (2) that to impose a tax upon the privilege of

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[1] Entitled "An Ordinance Imposing Municipal License Taxes on Proprietors or Operators of Factories, Assembly Plants, Breweries, Distilleries, Refineries, Mills (Except Rice, Corn, Shell Grits Mills, and Native or Primitive Sugar Mills) and Other Manufacturing or Processing Establishments (Except Salt Beds and Cottage Industries) and Mining Concessions, and Owners, Lessees, or Operators of Mines, and for Other Purposes."

Supreme Court E-Library

manufacturing beer, when the amount of the tax is measured by the gross receipts from its sales of beer, is the same as imposing a tax upon the product itself.

Respondents upon the other hand insist that the tax imposed in the questioned ordinance (1) is not a percentage tax or a tax on the sales of beer but is a tax on the privilege to engage in the business of manufacturing beer, and the phrase "actual market value" was merely employed as a basis for the classification and graduation of the tax sought to be imposed; (2) that it is not a specific tax because it is not a tax on the beer itself, but on the privilege of manufacturing beer; and (3) that with the conversion of Mandaue into a city on June 21, 1969, the appeal has become moot, because the prohibition against the imposition of any privilege tax on sales or other taxes in any form based thereon, is applicable only to municipalities.

While We have heretofore announced the doctrine that the grant of power to tax to chartered cities and municipalities under Section 2 of the Local Autonomy Act is sufficiently plenary,[2] it is, however, subject to the exceptions and limitations contained in the two (2) provisos of the same statute. In other words, the municipal corporation should not transcend the limitations imposed by the statute on the basis of which the power to tax is sought to be exercised. Thus, We held in the Marinduque case,[3] that an ordinance providing for a graduated tax based on either "gross output or sales" violates the prohibition on municipalities against imposing any percentage tax on sales, or other taxes in any form based thereon, as the only standard provided for measuring the gross output is its peso value, as determined from true copies of receipts and/or invoices that the taxpayer is required to submit to the municipal treasurer.

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[2] Nin Bay Mining Co. *vs.* Municipality of Roxas, Palawan, 14 SCRA 660.

[3] Marinduque Iron Mines, Inc. *vs.* Municipal Council of the Municipality of Hinabangan, Samar, 11 SCRA 416.

Supreme Court E-Library

We are thus confined to the narrow issue of whether or not the challenged ordinance has transcended the exceptions and limitations imposed by Section 2 of Republic Act 2264.

Section 2 of the aforecited statute provides:

"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 * * *."

Section 1 of Ordinance No. 88 of the Municipality of Mandaue, as amended by Ordinances Nos. 23 (1967) and 25 (1968), specifically provides that the graduated quarterly fixed tax shall be "based on the *gross value in money* or *actual market* value at the time of removal, of the manufactured products * * * from their factories * * * during the preceding calendar year * * *."

Well settled is the rule that in the absence of legislative intent to the contrary, technical or commercial terms and phrases, when used in tax statutes, are presumed to have been used in their technical sense or in their trade or commercial meaning. Thus, the phrase "*gross value in money*" has a well-defined meaning in our tax statutes. For instance, the term "gross value in money" of articles sold, bartered, exchanged or transferred, as used in Sections 184, 185 and 186 of the National Internal Revenue Code, has been invariably used as equivalent to "gross selling price" and has been construed as the total amount of money or its equivalent which the purchaser pays to the vendor to receive or get the goods.[4] It must be noted that the ordinance specifically provides that the basis of the tax is the "gross value in money or actual market value" of the manufactured article.

The phrase "actual market value" has been construed as the price which an article "would command in the ordinary course of business, that is to say, when offered for sale by one willing to

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[4] General Circular No. 431 of the Bureau of Internal Revenue, dated July 29, 1939, which implements Sections 184-186 of the Tax Code; Philippine Acetyline Co. *vs.* Blaquera, L-13728, November 30, 1952.

Supreme Court E-Library

sell, but not under compulsion to sell, and purchased by another who is willing to buy, but under no obligation to purchase it,[5] or the price which the property will bring in a fair market after fair and reasonable efforts have been made to find a purchaser who will give the highest price for it.[6] The "actual market value" of property, for purposes of taxation, therefore means the selling price of the article in the course of ordinary business.

Considering that the phrase "gross value in money" is followed by the words "or actual market value," it is evident that the latter was intended to explain and clarify the preceding phrase. For the word "or" may be used as the equivalent of "that is to say" and gives that which precedes it the same significance as that which follows it. It is not always disjunctive and is sometimes interpretative or expository of the preceding word.[7] Certainly We cannot assume that the phrase "or actual market value" was a mere surplusage, for it serves to clarify and explain the meaning and import of the preceding phrase. In any event, it is the duty of the courts, so far as reasonably practicable, to read and interpret a statute as to give life and effect to its provisions, so as to render it a harmonious whole.

It is also significant to note, that there is a set ratio between the amount of the tax and the volume of sales. Thus if the "gross value in money or actual market value" of the beer removed from the factory exceeds P37,500.00 per quarter, the taxpayer is required to pay a quarterly license tax of P160.00 plus P0.30 for every P1,000.00 or fraction of the excess. In other words in excess of P37,500.00, the taxpayer will pay to the municipality a certain amount of tax measured by a percentage of the sales. It is therefore evident that the challenged ordinance was a transparent attempt on the part of the municipality to impose a tax based on sales.

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[5] Republic Cement Corporation *vs.* Commissioner of Internal Revenue, 23 SCRA 967; City of Manila *vs.* Estrada, 25 Phil. 208, 215.

[6] Macondray & Co. *vs.* Sellner, 33 Phil. 370, 375.

[7] Benny *vs.* Bell, Tex. Civ. App., 291 S.W. 2d 369, 372; State *vs.* Jones, 89 S.E. 2d. 129, 131, 242 N.C. 563; Bryan *vs.* Menefee, 95 P. 471, 475, 21 Okl. 1.

Supreme Court E-Library

Although Section 2 of the ordinance in question provides in a vague manner that the tax shall be assessed and collected on the basis of the sworn statement of the manager of a firm or corporation "of the gross value in money during the preceding quarter," in actual practice the quarterly tax levied upon petitioner, was computed on the basis of the total market value of the beer, per quarter, as shown by the shipping memorandum certified to by the storekeeper of the Bureau Internal Revenue assigned to the brewery. Thus the taxes amounting to P309.40 and P5,171.80, paid by petitioner on January 22, 1968 and July 18, 1968, were actually determined respectively on the basis of 70,412 and 2,203.070 cases of beer manufactured and removed from the Mandaue plant, multiplied by P7.60 which is the prevailing market price (wholesaler's price) per case of beer.

In Laoag Producers' Cooperative Marketing Association, Inc. *vs.* Municipality of Laoag,[8] We held that the challenged ordinance imposed a tax based on sales, although the ordinance merely imposed a "municipal tax or inspection fee of one-half (1/2) centavo on every kilo of Virginia leaf tobacco, garlic and onion on all wholesale dealers and vendors" because, in its application, it does impose a tax based on sales, as it is based on the number of kilos sold and purchased by him and when the wholesaler or vendor accumulates his stock, he does so for only one purpose, to sell the same at the appropriate time, and "he cannot by its very nature, carry on his business unless he sells what he has bought." Similarly, in the case at bar, the circumstance that the tax is imposed upon petitioner at the time of removal from the factory of the manufactured beer, and not on the date of actual sale, is not of important consequence since petitioner will, in the end, sell the beer removed from the factory, because by the nature of its business, it has no alternative but to sell what it has manufactured.

We therefore hold that the questioned ordinance imposed a tax based on sales and therefore beyond the authority of the municipality to enact.

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[8] 37 SCRA 594.

Supreme Court E-Library

Having reached this conclusion, it becomes unnecessary to pass upon the additional question posed, i.e., whether or not the challenged ordinance imposes a tax on a product subject to specific tax.

Respondents however claim that with the conversion of Mandaue into a city pursuant to Republic Act No. 5519, which was approved on June 21, 1969, the issue has already become moot, since the prohibition contained in Section 2 of Republic Act 2264 applies only to municipalities and not to chartered cities. The same contention has been rejected in City of Naga *vs.* Court of Appeals,[9] and Laoag Producers' Cooperative Marketing Association, Inc. *vs.* Municipality of Laoag, *supra*, where We ruled that the legality of an ordinance depends upon the power of the municipality at the time of the enactment of the challenged ordinance. Since the municipality of Mandaue had no authority to enact the said ordinance, the subsequent approval of Republic Act No. 5519 which became effective on June 21, 1969, did not remove the original infirmity of the ordinance. Indeed there is no provision in the aforecited statute which invests a curative effect upon the ordinances of the municipality which when enacted were beyond its statutory authority.

IN VIEW WHEREOF, the appealed judgment is hereby reversed and Ordinance No. 23, series of 1966, as amended by Ordinance No. 25, series of 1967, which became effective on January 1, 1968, of the Municipality of Mandaue, Cebu, is hereby declared null and void. Respondents are also ordered to refund the taxes paid by Petitioners under the said ordinance, with legal interest thereon. No costs.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Teehankee, Makasiar, and *Esguerra, JJ.*, concur.

Fernando and *Barredo, JJ.*, took no part.

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[9] 24 SCRA 594.