

EN BANC

[G.R. No. 211093, June 06, 2017]

MINDANAO SHOPPING DESTINATION CORPORATION, ACE HARDWARE PHILS., INC., INTERNATIONAL TOYWORLD, INC., STAR APPLIANCE CENTER, INC., SURPLUS MARKETING CORPORATION, WATSONS PERSONAL CARE STORES (PHILS.), INC., AND SUPERVALUE, INC., PETITIONERS, V. HON. RODRIGO R. DUTERTE, IN HIS CAPACITY AS MAYOR OF DAVAO CITY, HON. SARA DUTERTE, VICE-MAYOR OF DAVAO CITY, IN HER CAPACITY AS PRESIDING OFFICER OF THE SANGGUNIANG PANLUNGSOD, AND THE SANGGUNIANG PANLUNGSOD (CITY COUNCIL) NG DAVAO, RESPONDENTS.

DECISION

PERALTA, J.:

This is a Petition for Review on *Certiorari* under Rule 45^[1] of the Rules of Court seeking the reversal of the Decision^[2] dated August 29, 2013 and Resolution^[3] dated January 22, 2014 of the Court of Appeals in CA-G.R. SP No. 101482, which affirmed the Decision dated July 2, 2007 and Resolution dated October 31, 2007 of the Office of the President.

Petitioners Mindanao Shopping Destination Corporation, Ace Hardware Philippines, Inc., International Toyworld, Inc., Star Appliance Center, Inc., Surplus Marketing Corporation, Watsons Personal Care Stores (Philippines), Inc. and Supervalu, Inc. (collectively as petitioners) are corporations duly organized and existing under and by virtue of Philippine law and engaged in the retail business of selling general merchandise within the territorial jurisdiction of Davao City.^[4]

The facts are as follows:

On November 16, 2005, respondent *Sangguniang Panglungsod* of Davao City (*Sanggunian*), after due notice and hearing, enacted the assailed Davao City Ordinance No. 158-05, Series of 2005, otherwise known as "*An Ordinance Approving the 2005 Revenue Code of the City of Davao, as Amended*"^[5] attested to by Vice-Mayor Hon. Luis B. Bonguyan (respondent Vice-Mayor), as Presiding Officer of the *Sanggunian*, and approved by then City Mayor, Hon. Rodrigo R. Duterte, now the President of the Republic of the Philippines. The Ordinance took effect after the publication in the *Mindanao Mercury Times*, a newspaper of general circulation in Davao City, for three (3) consecutive days, December 23, 24 and 25, 2005.^[6]

Petitioners' particular concern is Section 69 (d)^[7] of the questioned Ordinance which provides:

Section 69. *Imposition of Tax.* There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective

business within the City a graduated business tax in the amounts prescribed:

x x x x

(d) On Retailers

<u>Gross Sales/Receipts for the Preceding Year</u>	<u>Rates of Tax Per Annum</u>
More than P50,000 but not over P400,000.00	2%
In excess of P400,000.00	1 ½ %

However, *barangays* shall have the exclusive power to levy taxes on stores where the gross sales or receipts of the preceding calendar year does not exceed Fifty Thousand Pesos (P50,000) subject to existing laws and regulations.

x x x

Petitioners claimed that they used to pay only 50% of 1% of the business tax rate under the old Davao City Ordinance No. 230, Series of 1990, but in the assailed new ordinance, it will require them to pay a tax rate of 1.5%, or an increase of 200% from the previous rate. Petitioners believe that the increase is not allowed under Republic Act (RA) No. 7160, *The Local Government Code (LGC)*. Consequently, invoking the LGC, petitioners appealed to the DOJ, docketed as MTO-DOJ Case No. 02-2006, asserting the unconstitutionality and illegality of Section 69 (d), for being unjust, excessive, oppressive, confiscatory and contrary to the 1987 Constitution and the provisions of the LGC. Petitioners prayed that the questioned ordinance, particularly Section 69 (d) thereof be declared as null and void *ab initio*.

For lack of material time, the appeal was filed and served through registered mail. Unfortunately, when the appeal was mailed on January 24, 2006, the verification/certification of non-forum shopping and the postal money order, covering the payment of filing fees were not attached. The attachments were mailed the next day, January 25, 2006, together with a covering manifestation. Petitioners received respondents' Comment on the appeal on March 2, 2006; and, on June 27, 2006, petitioners received respondents' manifestation alleging that the appeal should be deemed filed out of time for failure to pay the filing fees within the prescribed period.

In a Resolution^[8] dated July 12, 2006, the DOJ-OSec dismissed the appeal and denied petitioners' motion for reconsideration.^[9]

Meanwhile, on September 26, 2006, Davao City Ordinance No. 0253, Series of 2006 (*Amended Ordinance*), amended Section 69 (d) of the questioned ordinance. In it, tax rate on retailers with gross receipts in excess of P400,000.00 was reduced from one and one-half percent (1 ½%) to one and one-fourth percent (1 ¼% Section 69 (d), as amended, now reads:

(d) On Retailers

<u>Gross Sales/Receipts for</u>	<u>Rates of Tax Per Annum</u>
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the Preceding Year

More than P50,000 but not over P400,000.00	2%
In excess of P400,000.00	1 ¼ %

However, *barangays* shall have the exclusive power to levy taxes on stores where the gross sales or receipts of the preceding calendar year does not exceed Fifty Thousand Pesos (P50,000) subject to existing laws and regulations.

With the above development, respondents maintained that the adjustment in the tax base no longer exceeds the limitation as set forth in Section 191 of the LGC considering that the current Davao City tax rate of 1.25% on retailers with gross receipts/sales of over P400,000.00 under the assailed ordinance is way below or 0.25% short of the maximum tax rates of 1.5% for cities sanctioned by the LGC. Respondents insist that there is thus no increase or adjustment to speak of under the premises which is violative of Section 191 of the LGC.

From the dismissal of the appeal and the denial of their motion for reconsideration, petitioners filed an appeal before the Office of the President (OP). On July 2, 2007, the OP, finding no merit on petitioners' appeal, dismissed the latter.^[10] Petitioners moved for reconsideration, but was denied anew in a Resolution^[11] dated October 31, 2007.

Unperturbed, petitioners filed a petition for review before the Court of Appeals.^[12]

On August 29, 2013, in the disputed Decision of the appellate court, the latter dismissed the petition, to wit:

WHEREFORE, the Petition is **DISMISSED**. The Decision dated July 2, 2007 and the Resolution dated October 31, 2007 of the Office of the President in O.P. Case no. 06-L-425 are **AFFIRMED**.

SO ORDERED. ^[13]

Petitioners moved for reconsideration, but were denied in a Resolution^[14] dated January 22, 2014. Thus, the instant petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS DESPITE THE PATENT ILLEGALITY AND UNCONSTITUTIONALITY, UPHELD THE VALIDITY OF THE ORDINANCE AS WELL AS THE LOCAL SANGGUNIAN'S ARBITRARY EXERCISE OF ITS POWER TO TAX

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT ADDRESSING THE MAIN ISSUE RAISED BY PETITIONERS AS A CONSTITUTIONAL ISSUE.

WHETHER THE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE SUBSTANTIAL COMPLIANCE OVER PROCEDURAL DEFICIENCIES

On the procedural issues, We find that at this stage of the proceeding, it is futile to belabor on the procedural deficiencies since the issue of timeliness of the appeal has

become moot and academic considering that petitioners' appeal was given due course by the OP. In fact, both the OP and the appellate court decided the appeal on the merits and not merely on technicality. We will, thus, proceed with the substantive issues of the instant case.

Petitioners assert that although the maximum rate that may be imposed by cities on retailers with gross receipts exceeding P400,000.00 is 1.5% of the gross receipts, *the maximum adjustment which can be applied once every five (5) years, is only 0.15% or 10% of the maximum rate of 1.5% of the gross receipts in accordance with Section 191 of the LGC.* However, petitioners lamented that the assailed Ordinance increased the tax rate on them, as retailers, by more than the maximum allowable rate of 0.15%, *from 50% of 1% (0.5%) of the gross receipts to 1.5% (now, 1.25%) of the gross receipts,* thus, violating Section 191 in relation to Sections 143 and 151 of the Code.

A perusal of the assailed new ordinance, particularly Section 69 (a) and (b) of Davao City Ordinance No. 158-05, Series of 2005, provides:

Section 69. *Imposition of Tax.* - There is hereby imposed on the following persons who establish, operates, conduct or maintain their respective business within the city a graduated tax in the amounts hereafter prescribed:

x x x x

(b) On **WHOLESALEERS, DISTRIBUTORS, OR DEALERS**, in any article of commerce of whatever kind or nature in accordance with the following schedules:

<u>Gross Sales/Receipts for the Preceding Calendar Year</u>	<u>Amount of Tax per Annum</u>
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x x x x

In excess P2,000,00.00	At a rate of fifty-five (55%) percent of one percent (1%)
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x x x x

(d) **On RETAILERS:**

<u>Gross Sales/Receipts for the Preceding Calendar Year</u>	<u>Amount of Tax per Annum</u>
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More than P50,000.00 but not over P400,000.00	2%
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In excess of P400,000.00	1 1/2%
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x x x^[15]

Petitioners claim that the assailed tax ordinance is violative of the Local Government Code, specifically Section 191, in relation to Sections 143 and 151, to wit:

Section 191. *Authority of Local Government Units to Adjust Rates of Tax Ordinances.* - **Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.**

Section 143 (d). *Tax on Business.* -The municipality may impose taxes on the following businesses:

x x x x

(d) On retailers

With gross sales or receipts for the preceding calendar year in the amount of:	Rate of Tax Per Annum
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400,000.00 or less	2.00%
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More than P400,000.00	1.00 %
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x x x x

Section 151. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.^[16]

We disagree.

Under the old tax ordinance of Davao City, *Ordinance No. 230, Series of 1990*, wholesalers and retailers were grouped as one, thus, the tax base and tax rate imposed upon retailers were the same as that imposed upon wholesalers. Subsequently, with the implementation of Republic Act No. 7160, otherwise known as the Local Government Code of the Philippines, the latter authorized a difference in the tax treatment between wholesale and retail businesses. Where before under the old tax ordinance, Davao City retailers only paid ½ of 1% of the gross sales/receipts exceeding P2,000,000.00, now under the new tax ordinance, retailers would have to pay 1.25% of the gross sales/receipts exceeding P400,000.00.