

## FIRST DIVISION

[ G.R. No. 180235, January 20, 2016 ]

**ALTA VISTA GOLF AND COUNTRY CLUB, PETITIONER, VS. THE CITY OF CEBU, HON. MAYOR TOMAS R. OSMEÑA, IN HIS CAPACITY AS MAYOR OF CEBU, AND TERESITA C. CAMARILLO, IN HER CAPACITY AS THE CITY TREASURER, RESPONDENTS.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

Before the Court is a Petition for Review on *Certiorari* of the Resolution<sup>[1]</sup> dated March 14, 2007 and the Order<sup>[2]</sup> dated October 3, 2007 of the Regional Trial Court (RTC), Cebu City, Branch 9 in Civil Case No. CEB-31988, dismissing the Petition for Injunction, Prohibition, Mandamus, Declaration of Nullity of Closure Order, Declaration of Nullity of Assessment, and Declaration of Nullity of Section 42 of Cebu City Tax Ordinance, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction<sup>[3]</sup> filed by petitioner Alta Vista Golf and Country Club against respondents City of Cebu (Cebu City), then Cebu City Mayor Tomas R. Osmeña (Osmeña), and then Cebu City Treasurer Teresita Camarillo (Camarillo).

Petitioner is a non-stock and non-profit corporation operating a golf course in Cebu City.

On June 21, 1993, the *Sangguniang Panlungsod* of Cebu City enacted City Tax Ordinance No. LXIX, otherwise known as the "Revised Omnibus Tax Ordinance of the City of Cebu" (Revised Omnibus Tax Ordinance).

Section 42 of the said tax ordinance on amusement tax was amended by City Tax Ordinance Nos. LXXXII<sup>[4]</sup> and LXXXIV<sup>[5]</sup> (which were enacted by the *Sangguniang Panlungsod* of Cebu City on December 2, 1996 and April 20, 1998, respectively<sup>[6]</sup>) to read as follows:

Section 42. Rate of Tax. - There shall be paid to the Office of the City Treasurer by the **proprietors, lessees or operators** of theaters, cinemas, concert halls, circuses and other similar places of entertainment, an amusement tax at the rate of thirty percent (30%), **golf courses and polo grounds at the rate of twenty percent (20%), of their gross receipts on entrance, playing green, and/or admission fees**; PROVIDED, HOWEVER, That in case of movie premieres or gala shows for the benefit of a charitable institution/foundation or any government institution where higher admission fees are charged, the aforementioned rate of thirty percent (30%) shall be levied against the gross receipts based on the regular admission fees, subject to the approval of the Sangguniang Panlungsod;

PROVIDED FURTHER, That in case payment of the amusement tax is made promptly on or before the date hereinbelow prescribed, a rebate of five percent (5%) on the aforementioned gross receipts shall be given to the proprietors, lessees or operators of theaters; PROVIDED FURTHERMORE, that as an incentive to theater operators who own the real property and/or building where the theater is located, an additional one percent (1%) rebate shall be given to said operator/real property owner concerned for as long as their theater/movie houses are then (10) years old or older or the theater or movie house is located at the city's redevelopment area bounded on the north by Gen. Maxilom Street up to the port area; on the south by V. Rama Avenue up to San Nicolas area; and on the west by B. Rodriguez St. and General Maxilom Avenue; PROVIDED FINALLY, that the proceeds of this additional one percent (1%) rebate shall be used by the building/property owner-theater operator to modernize their theater facilities. (Emphases supplied.)

In an Assessment Sheet<sup>[7]</sup> dated August 6, 1998, prepared by Cebu City Assessor Sandra I. Po, petitioner was originally assessed deficiency business taxes, fees, and other charges for the year 1998, in the total amount of P3,820,095.68, which included amusement tax on its golf course amounting to P2,612,961.24 based on gross receipts of P13,064,806.20.<sup>[8]</sup>

Through the succeeding years, respondent Cebu City repeatedly attempted to collect from petitioner its deficiency business taxes, fees, and charges for 1998, a substantial portion of which consisted of the amusement tax on the golf course. Petitioner steadfastly refused to pay the amusement tax arguing that the imposition of said tax by Section 42 of the Revised Omnibus Tax Ordinance, as amended, was irregular, improper, and illegal.

Petitioner reasoned that under the Local Government Code, amusement tax can only be imposed on operators of theaters, cinemas, concert halls, or places where one seeks to entertain himself by seeing or viewing a show or performance. Petitioner further cited the ruling in *Philippine Basketball Association (PBA) v. Court of Appeals*<sup>[9]</sup> that under Presidential Decree No. 231, otherwise known as the Local Tax Code of 1973, the province could only impose amusement tax on admission from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses, and other places of amusement, but not professional basketball games. Professional basketball games did not fall under the same category as theaters, cinematographs, concert halls, and circuses as the latter basically belong to artistic forms of entertainment while the former catered to sports and gaming.

Through a letter dated October 11, 2005, respondent Camarillo sought to collect once more from petitioner deficiency business taxes, fees, and charges for the year 1998, totaling P2,981,441.52, computed as follows:

Restaurant - P4,021,830.65	P 40,950.00
Permit Fee	2,000.00
Liquor-P1,940,283.80	20,160.00
Permit Fee	2,000.00
Commission/Other Income	14,950.00

P1,262,764.28	
Permit Fee	1,874.00
Retail Cigarettes - P42,076.11 - Permit	84.15
Non-Securing of Permit	979.33
Sub-Total	P 82,997.98
Less: Payment based on computer assessment	74,858.61
Short payment	P 12,723.18
25% surcharge	3,180.80
72% interest	11,450.00
Penalty for understatement	500.00
Amount Due	P 27,854.85
<b>Add: Amusement Tax on golf course</b>	<b>P</b>
<b>25% surcharge</b>	<b>1,373,761.24</b>
<b>(P6,868,806.20 x 20%)</b>	<b>343,440.31</b>
<b>72% Interest</b>	<b>2,953,586.67</b>
	<b><u>1,236,385.12</u></b>
GRAND TOTAL	<b><u>P2,981,441.52</u></b> <sup>[10]</sup>
(Emphasis supplied.)	

Petitioner, through counsel, wrote respondent Camarillo a letter<sup>[11]</sup> dated October 17, 2005 still disputing the amusement tax assessment on its golf course for 1998 for being illegal. Petitioner, in a subsequent letter dated November 30, 2005, proposed that:

While the question of the legality of the amusement tax on golf courses is still unresolved, may we propose that Alta Vista Golf and Country Club settle first the other assessments contained in your Assessment Sheet issued on October 11, 2005.

At this early stage, we also request that pending resolution of the legality of the amusement tax imposition on golf courses in [the Revised Omnibus Tax Ordinance, as amended], Alta Vista Golf and Country Club be issued the required Mayor's and/or Business Permit.<sup>[12]</sup>

Respondent Camarillo treated the letter dated October 17, 2005 of petitioner as a Protest of Assessment and rendered on December 5, 2005 her ruling denying said Protest on the following grounds: (a) a more thorough and comprehensive reading of the *PBA* case would reveal that the Court actually ruled therein that PBA was liable to pay amusement tax, but to the national government, not the local government; (b) Section 42 of the Revised Omnibus Tax Ordinance, as amended, enjoyed the presumption of constitutionality and petitioner failed to avail itself of the remedy under Section 187 of the Local Government Code to challenge the legality or validity of Section 42 of the Revised Omnibus Tax Ordinance, as amended, by filing an appeal with the Secretary of Justice within 30 days from effectivity of said ordinance; and (c) the Office of the City Attorney issued a letter dated July 9, 2004 affirming respondent Camarillo's position that petitioner was liable to pay amusement tax on its golf course.<sup>[13]</sup> Ultimately, respondent Camarillo held:

**WHEREFORE**, upon consideration of the legal grounds as above-mentioned, we reiterate our previous stand on the validity of the ASSESSMENT SHEET pertaining to the Tax Deficiencies for CY 1998 and this ruling serve as the FINAL DEMAND for immediate settlement and payment of your amusement tax liabilities and/or delinquencies otherwise we will constrained (sic) the non-issuance of a Mayor's Business Permit for nonpayment of the said deficiency on amusement tax and/or other tax liabilities as well as to file the appropriate filing of administrative and judicial remedies for the collection of the said tax liability and the letter treated as a Protest of Assessment that was duly submitted before this office is hereby **DENIED**.<sup>[14]</sup>

Shortly after, on January 12, 2006, petitioner was served with a Closure Order<sup>[15]</sup> dated December 28, 2005 issued by respondent City Mayor Osmeña. According to the Closure Order, petitioner committed blatant violations of the laws and Cebu City Ordinances, to wit:

1. **Operating a business without a business permit for five (5) years, from year 2001-2005**, in relation to Chapters I and II and the penalty clauses under Sections 4, 6, 8, 66 (f) and 114 of the City Tax Ordinance No. 69, otherwise known as the REVISED CITY TAX ORDINANCE OF THE CITY OF CEBU, as amended by CO. 75;
2. **Nonpayment of deficiency on Business Taxes and Fees amounting to Seventeen Thousand Four Hundred Ninety-Nine Pesos and Sixty-Four Centavos (Php17,499.64)**, as adjusted, despite repeated demands in violation [of] Sections 4 and 8 of City Tax Ordinance No. 69, as amended;
3. **Nonpayment of deficiency on Amusement Tax and the penalties relative therewith totaling Two Million Nine Hundred Fifty-Three Thousand Five Hundred Eighty-Six Pesos and Eighty-Six Centavos (Php2,953,586.86)** in violation of Sections 4 and 8 in relation to Section 42 of City Tax Ordinance No. 69, as amended, business permit-violation of the Article 172, Revised Penal Code of the Philippines. (Emphases supplied.)

The Closure Order established respondent Mayor Osmeña's authority for issuance of the same and contained the following directive:

As the chief executive of the City, the Mayor has the power and duty to: Enforce all laws and ordinances relative to the governance of the city x x x and, in addition to the foregoing, shall x x x Issue such executive orders for the faithful and appropriate enforcement and execution of laws and ordinances x x x. These are undeniable in the LOCAL GOVERNMENT CODE, Section 455, par. (2) and par. (2)(iii).

Not only that, these powers can be exercised under the general welfare clause of the Code, particularly Section 16 thereof, where it is irrefutable

that "every government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental of its efficient and effective governance, and those which are essential to the promotion of the general welfare."

This CLOSURE ORDER precisely satisfies these legal precedents. Hence now, in view whereof, your business establishment is hereby declared closed in direct contravention of the above-specified laws and city ordinances. Please cease and desist from further operating your business immediately upon receipt of this order.

This closure order is without prejudice to the constitutional/statutory right of the City to file criminal cases against corporate officers, who act for and its behalf, for violations of Section 114 of the REVISED CITY TAX ORDINANCE OF THE CITY OF CEBU and Section 516 of the LOCAL GOVERNMENT CODE, with penalties of imprisonment and/or fine.

FOR STRICT AND IMMEDIATE COMPLIANCE.<sup>[16]</sup>

The foregoing developments prompted petitioner to file with the RTC on January 13, 2006 a Petition for Injunction, Prohibition, Mandamus, Declaration of Nullity of Closure Order, Declaration of Nullity of Assessment, and Declaration of Nullity of Section 42 of Cebu City Tax Ordinance, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, against respondents, which was docketed as Civil Case No. CEB-31988.<sup>[17]</sup> Petitioner eventually filed an Amended Petition on January 19, 2006.<sup>[18]</sup> Petitioner argued that the Closure Order is unconstitutional as it had been summarily issued in violation of its right to due process; a city mayor has no power under the Local Government Code to deny the issuance of a business permit and order the closure of a business for nonpayment of taxes; Section 42 of the Revised Omnibus Tax Ordinance, as amended, is null and void for being *ultra vires* or beyond the taxing authority of respondent Cebu City, and consequently, the assessment against petitioner for amusement tax for 1998 based on said Section 42 is illegal and unconstitutional; and assuming *arguendo* that respondent Cebu City has the power to impose amusement tax on petitioner, such tax for 1998 already prescribed and could no longer be enforced.

Respondents filed a Motion to Dismiss based on the grounds of (a) lack of jurisdiction of the RTC over the subject matter; (b) non-exhaustion of administrative remedies; (c) noncompliance with Section 187 of the Local Government Code, which provides the procedure and prescriptive periods for challenging the validity of a local tax ordinance; (d) noncompliance with Section 252 of the Local Government Code and Section 75 of Republic Act No. 3857, otherwise known as the Revised Charter of the City of Cebu, requiring payment under protest of the tax assessed; and (e) failure to establish the authority of Ma. Theresa Ozoa (Ozoa) to institute the case on behalf of petitioner.<sup>[19]</sup>

In its Opposition to the Motion to Dismiss, petitioner countered that the RTC, a court of general jurisdiction, could take cognizance of its Petition in Civil Case No. CEB-31988, which not only involved the issue of legality or illegality of a tax ordinance, but also sought the declaration of nullity of the Closure Order and the issuance of