

THIRD DIVISION

[G.R. No. 183137, April 10, 2013]

**PELIZLOY REALTY CORPORATION, REPRESENTED HEREIN BY ITS
PRESIDENT, GREGORY K. LOY, PETITIONER, VS. THE PROVINCE
OF BENGUET, RESPONDENT.**

D E C I S I O N

LEONEN, J.:

The principal issue in this case is the scope of authority of a province to impose an amusement tax.

This is a *Petition for Review on Certiorari* under Rule 45 of the Rules of Court praying that the December 10, 2007 decision of the Regional Trial Court, Branch 62, La Trinidad, Benguet in Civil Case No. 06-CV-2232 be reversed and set aside and a new one issued in which: (1) respondent Province of Benguet is declared as having no authority to levy amusement taxes on admission fees for resorts, swimming pools, bath houses, hot springs, tourist spots, and other places for recreation; (2) Section 59, Article X of the Benguet Provincial Revenue Code of 2005 is declared null and void; and (3) the respondent Province of Benguet is permanently enjoined from enforcing Section 59, Article X of the Benguet Provincial Revenue Code of 2005.

Petitioner Pelizloy Realty Corporation ("Pelizloy") owns Palm Grove Resort, which is designed for recreation and which has facilities like swimming pools, a spa and function halls. It is located at Asin, Angalisan, Municipality of Tuba, Province of Benguet.

On December 8, 2005, the Provincial Board of the Province of Benguet approved Provincial Tax Ordinance No. 05-107, otherwise known as the Benguet Revenue Code of 2005 ("Tax Ordinance"). Section 59, Article X of the Tax Ordinance levied a ten percent (10%) amusement tax on gross receipts from admissions to "resorts, swimming pools, bath houses, hot springs and tourist spots." Specifically, it provides the following:

Article Ten: Amusement Tax on Admission

Section 59. Imposition of Tax. There is hereby levied a tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, cockpits, dancing halls, dancing schools, night or day clubs, and other places of amusement at the rate of thirty percent (30%) of the gross receipts from admission fees; and

A tax of ten percent (10%) of gross receipts from admission fees for

boxing, resorts, swimming pools, bath houses, hot springs, and tourist spots is likewise levied. [Emphasis and underscoring supplied]

Section 162 of the Tax Ordinance provided that the Tax Ordinance shall take effect on January 1, 2006.

It was Pelizloy's position that the Tax Ordinance's imposition of a 10% amusement tax on gross receipts from admission fees for resorts, swimming pools, bath houses, hot springs, and tourist spots is an *ultra vires* act on the part of the Province of Benguet. Thus, it filed an appeal/petition before the Secretary of Justice on January 27, 2006.

The appeal/petition was filed within the thirty (30)-day period from the effectivity of a tax ordinance allowed by Section 187 of Republic Act No. 7160, otherwise known as the Local Government Code (LGC).^[1] The appeal/petition was docketed as MSO-OSJ Case No. 03-2006.

Under Section 187 of the LGC, the Secretary of Justice has sixty (60) days from receipt of the appeal to render a decision. After the lapse of which, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

Treating the Secretary of Justice's failure to decide on its appeal/petition within the sixty (60) days provided by Section 187 of the LGC as an implied denial of such appeal/petition, Pelizloy filed a Petition for Declaratory Relief and Injunction before the Regional Trial Court, Branch 62, La Trinidad, Benguet. The petition was docketed as Civil Case No. 06-CV-2232.

Pelizloy argued that Section 59, Article X of the Tax Ordinance imposed a percentage tax in violation of the limitation on the taxing powers of local government units (LGUs) under Section 133 (i) of the LGC. Thus, it was null and void *ab initio*. Section 133 (i) of the LGC provides:

Section 133. *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

x x x

(i) Percentage or value-added tax (VAT) on sales, barter or exchanges or similar transactions on goods or services except as otherwise provided herein

The Province of Benguet assailed the Petition for Declaratory Relief and Injunction as an improper remedy. It alleged that once a tax liability has attached, the only remedy of a taxpayer is to pay the tax and to sue for recovery after exhausting administrative remedies.^[2]

On substantive grounds, the Province of Benguet argued that the phrase 'other

places of amusement' in Section 140 (a) of the LGC^[3] encompasses resorts, swimming pools, bath houses, hot springs, and tourist spots since "Article 220 (b) (sic)" of the LGC defines "amusement" as "pleasurable diversion and entertainment x x x synonymous to relaxation, avocation, pastime, or fun."^[4] However, the Province of Benguet erroneously cited Section 220 (b) of the LGC. Section 220 of the LGC refers to valuation of real property for real estate tax purposes. Section 131 (b) of the LGC, the provision which actually defines "amusement", states:

Section 131. *Definition of Terms.* - When used in this Title, the term:

x x x

(b) "Amusement" is a pleasurable diversion and entertainment. It is synonymous to relaxation, avocation, pastime, or fun

On December 10, 2007, the RTC rendered the assailed Decision dismissing the Petition for Declaratory Relief and Injunction for lack of merit.

Procedurally, the RTC ruled that Declaratory Relief was a proper remedy. On the validity of Section 59, Article X of the Tax Ordinance, the RTC noted that, while Section 59, Article X imposes a percentage tax, Section 133 (i) of the LGC itself allowed for exceptions. It noted that what the LGC prohibits is not the imposition by LGUs of percentage taxes in general but the "imposition and levy of percentage tax on sales, barter, etc., on goods and services only."^[5] It further gave credence to the Province of Benguet's assertion that resorts, swimming pools, bath houses, hot springs, and tourist spots are encompassed by the phrase 'other places of amusement' in Section 140 of the LGC.

On May 21, 2008, the RTC denied Pelizloy's Motion for Reconsideration.

Aggrieved, Pelizloy filed the present petition on June 10, 2008 on pure questions of law. It assailed the legality of Section 59, Article X of the Tax Ordinance as being a (supposedly) prohibited percentage tax per Section 133 (i) of the LGC.

In its *Comment*, the Province of Benguet, erroneously citing Section 40 of the LGC, argued that Section 59, Article X of the Tax Ordinance does not levy a percentage tax "because the imposition is not based on the *total gross receipts of services* of the petitioner but solely and actually limited on the *gross receipts of the admission fees collected*."^[6] In addition, it argued that provinces can validly impose amusement taxes on resorts, swimming pools, bath houses, hot springs, and tourist spots, these being 'amusement places'.

For resolution in this petition are the following issues:

1. Whether or not Section 59, Article X of Provincial Tax Ordinance No. 05-107, otherwise known as the Benguet Revenue Code of 2005, levies a percentage tax.

2. Whether or not provinces are authorized to impose amusement taxes on admission fees to resorts, swimming pools, bath houses, hot springs, and tourist spots for being “amusement places” under the Local Government Code.

The power to tax “is an attribute of sovereignty,”^[7] and as such, inheres in the State. Such, however, is not true for provinces, cities, municipalities and barangays as they are not the sovereign;^[8] rather, they are mere “territorial and political subdivisions of the Republic of the Philippines”.^[9]

The rule governing the taxing power of provinces, cities, municipalities and barangays is summarized in *Icard v. City Council of Baguio*:^[10]

It is settled that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality, cannot assume it. And the power when granted is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions – all these – have no place in the interpretation of the taxing power of a municipal corporation.^[11] [Underscoring supplied]

Therefore, the power of a province to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute. Section 5, Article X of the 1987 Constitution is clear on this point:

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. [Underscoring supplied]

Per Section 5, Article X of the 1987 Constitution, “the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges.”^[12] Nevertheless, such authority is “subject to such guidelines and limitations as the Congress may provide”.^[13]

In conformity with Section 3, Article X of the 1987 Constitution,^[14] Congress enacted Republic Act No. 7160, otherwise known as the Local Government Code of 1991. Book II of the LGC governs local taxation and fiscal matters.

Relevant provisions of Book II of the LGC establish the parameters of the taxing powers of LGUS found below.

First, Section 130 provides for the following fundamental principles governing the

taxing powers of LGUs:

1. Taxation shall be uniform in each LGU.

Taxes, fees, charges and other impositions shall:

- a. be equitable and based as far as practicable on the taxpayer's ability to pay;
 - b. be levied and collected only for public purposes;
 - c. not be unjust, excessive, oppressive, or confiscatory;
 - d. not be contrary to law, public policy, national economic policy, or in the restraint of trade.
2. The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person.
 3. The revenue collected pursuant to the provisions of the LGC shall inure solely to the benefit of, and be subject to the disposition by, the LGU levying the tax, fee, charge or other imposition unless otherwise specifically provided by the LGC.
 4. Each LGU shall, as far as practicable, evolve a progressive system of taxation.

Second, Section 133 provides for the common limitations on the taxing powers of LGUs. Specifically, Section 133 (i) prohibits the levy by LGUs of percentage or value-added tax (VAT) on sales, barter or exchanges or similar transactions on goods or services except as otherwise provided by the LGC.

As it is Pelizloy's contention that Section 59, Article X of the Tax Ordinance levies a prohibited percentage tax, it is crucial to understand first the concept of a percentage tax.

In *Commissioner of Internal Revenue v. Citytrust Investment Phils. Inc.*,^[15] the Supreme Court defined percentage tax as a "tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services." Also, Republic Act No. 8424, otherwise known as the National Internal Revenue Code (NIRC), in Section 125, Title V,^[16] lists amusement taxes as among the (other) percentage taxes which are levied regardless of whether or not a taxpayer is already liable to pay value-added tax (VAT).

Amusement taxes are fixed at a certain percentage of the gross receipts incurred by certain specified establishments.

Thus, applying the definition in *CIR v. Citytrust* and drawing from the treatment of amusement taxes by the NIRC, amusement taxes are percentage taxes as correctly argued by Pelizloy.

However, provinces are not barred from levying amusement taxes even if