

SECOND DIVISION

[G.R. No. 191761, November 14, 2012]

**CAGAYAN ELECTRIC POWER AND LIGHT CO., INC., PETITIONER,
VS. CITY OF CAGAYAN DE ORO, RESPONDENT.**

DECISION

CARPIO, J.:

The Case

G.R. No. 191761 is a petition for review^[1] assailing the Decision^[2] promulgated on 28 May 2009 as well as the Resolution^[3] promulgated on 24 March 2010 by the Court of Appeals (appellate court) in CA-G.R. CV No. 01105-Min. The appellate court affirmed the 8 January 2007 Decision^[4] of Branch 18 of the Regional Trial Court of Misamis Oriental (trial court) in Civil Case No. 2005-207.

The trial court upheld the validity of the City of Cagayan de Oro's Ordinance No. 9503-2005 and denied Cagayan Electric Power and Light Co., Inc.'s (CEPALCO) claim of exemption from the said ordinance.

The Facts

The appellate court narrated the facts as follows:

On January 10, 2005, the *Sangguniang Panlungsod* of Cagayan de Oro (City Council) passed Ordinance No. 9503-2005 imposing a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at ten percent (10%) of the annual rental income derived from such lease or rental.

The City Council, in a letter dated 15 March 2005, informed appellant Cagayan Electric Power and Light Company, Inc. (CEPALCO), through its President and Chief Operation Manager, Ms. Consuelo G. Tion, of the passage of the subject ordinance.

On September 30, 2005, appellant CEPALCO, purportedly on pure question of law, filed a petition for declaratory relief assailing the validity of Ordinance No. 9503-2005 before the Regional Trial Court of Cagayan de Oro City, Branch 18, on the ground that the tax imposed by the disputed ordinance is in reality a tax on income which appellee City of Cagayan de Oro may not impose, the same being expressly prohibited by Section 133(a) of Republic Act No. 7160 (R.A. 7160) otherwise known as the Local Government Code (LGC) of 1991. CEPALCO argues that, assuming the City Council can enact the assailed ordinance, it is

nevertheless exempt from the imposition by virtue of Republic Act No. 9284 (R.A. 9284) providing for its franchise. CEPALCO further claims exemplary damages of Php200,000.00 alleging that the passage of the ordinance manifests malice and bad faith of the respondent-appellee towards it.

In its Answer, appellee raised the following affirmative defenses: (a) the enactment and implementation of the subject ordinance was a valid and lawful exercise of its powers pursuant to the 1987 Constitution, the Local Government Code, other applicable provisions of law, and pertinent jurisprudence; (b) non-exemption of CEPALCO because of the express withdrawal of the exemption provided by Section 193 of the LGC; (c) the subject ordinance is legally presumed valid and constitutional; (d) prescription of respondent-appellee's action pursuant to Section 187 of the LGC; (e) failure of respondent-appellee to exhaust administrative remedies under the Local Government Code; (f) CEPALCO's action for declaratory relief cannot prosper since no breach or violation of the subject ordinance was yet committed by the City.^[5]

Ordinance No. 9503-2005 reads:

ORDINANCE IMPOSING A TAX ON THE LEASE OR RENTAL OF ELECTRIC AND/OR TELECOMMUNICATION POSTS, POLES OR TOWERS BY POLE OWNERS TO OTHER POLE USERS AT THE RATE OF TEN (10) PERCENT OF THE ANNUAL RENTAL INCOME DERIVED THEREFROM AND FOR OTHER PURPOSES

BE IT ORDAINED by the City Council (*Sangguniang Panlungsod*) of the City of Cagayan de Oro in session assembled that:

SECTION 1. - Whenever used in this Ordinance, the following terms shall be construed as:

- a. Electric companies include all public utility companies whether corporation or cooperative engaged in the distribution and sale of electricity;
- b. Telecommunication companies refer to establishments or entities that are holders of franchise through an Act of Congress to engage, maintain, and operate telecommunications, voice and data services, under existing Philippine laws, rules and regulations;
- c. Pole User includes any person, natural or juridical, including government agencies and entities that use and rent poles and towers for the installation of any cable, wires, service drops and other attachments[;]
- d. Pole Owner includes electric and telecommunication company or corporation that owns poles, towers and other accessories thereof.

SECTION 2. - There shall be imposed a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at the rate of ten (10) percent of the annual rental income derived therefrom.

SECTION 3. - The tax imposed herein shall not be passed on by pole owners to the bills of pole users in the form of added rental rates.

SECTION 4. (a) Pole owners herein defined engaged in the business of renting their posts, poles and/or towers shall secure a separate business permit therefor as provided under Article (P), Section 62(a) of Ordinance No. 8847-2003, otherwise known as the Cagayan de Oro City Revenue Code of 2003.

(b) Pertinent provisions of Ordinance No. 8847-2003, covering situs of the tax, payment of taxes and administrative provisions shall apply in the imposition of the tax under this Ordinance.

SECTION 5. - This Ordinance shall take effect after 15 days following its publication in a local newspaper of general circulation for at least three (3) consecutive issues.

UNANIMOUSLY APPROVED.^[6]

Ordinance No. 9503-2005 was unanimously approved by the City Council of Cagayan de Oro on 10 January 2005.

The Trial Court's Ruling

On 8 January 2007, the trial court rendered its Decision^[7] in favor of the City of Cagayan de Oro. The trial court identified three issues for its resolution: (1) whether Ordinance No. 9503-2005 is valid; (2) whether CEPALCO should be exempted from tax; and (3) whether CEPALCO's action is barred for non-exhaustion of administrative remedies and for prescription.

In ruling for the validity of Ordinance No. 9503-2005, the trial court rejected CEPALCO's claim that the ordinance is an imposition of income tax prohibited by Section 133(a) of the Local Government Code.^[8] The trial court reasoned that since CEPALCO's business of leasing its posts to pole users is what is directly taxed, the tax is not upon the income but upon the privilege to engage in business. Moreover, Section 143(h), in relation to Section 151, of the Local Government Code authorizes a city to impose taxes, fees and charges on any business which is not specified as prohibited under Section 143(a) to (g) and which the city council may deem proper to tax.

The trial court also rejected CEPALCO's claim of exemption from tax. The trial court noted that Republic Act (R.A.) Nos. 3247,^[9] 3570^[10] and 6020,^[11] which previously granted CEPALCO's franchise, expressly stated that CEPALCO would pay a three percent franchise tax in lieu of all assessments of whatever authority.

However, there is no similar provision in R.A. No. 9284, which gave CEPALCO its current franchise.

Finally, the trial court found that CEPALCO's action is barred by prescription as it failed to raise an appeal to the Secretary of Justice within the thirty-day period provided in Section 187 of the Local Government Code.

The dispositive portion of the trial court's decision reads:

WHEREFORE, it is crystal clear that Petitioner CEPALCO failed not only in proving its allegations that City Ordinance 9503-2005 is illegal and contrary to law, and that [it] is exempted from the imposition of tax, but also in convincing the Court that its action is not barred for non-exhaustion of administrative remedy [sic] and by prescription. Hence, the instant petition is DENIED.

SO ORDERED.^[12]

CEPALCO filed a brief with the appellate court and raised the following errors of the trial court:

A. The lower court manifestly erred in concluding that the instant action is barred for non-exhaustion of administrative remedies and by prescription.

B. The lower court gravely erred in finding that Ordinance No. 9503-2005 of the City of Cagayan de Oro does not partake of the nature of an income tax.

C. The lower court gravely erred in finding that Ordinance No. 9503-2005 of the City of Cagayan de Oro is valid.

D. The lower court seriously erred in finding that herein appellant is not exempted from payment of said tax.^[13]

The Appellate Court's Ruling

On 28 May 2009, the appellate court rendered its Decision^[14] and affirmed the trial court's decision.

The appellate court stated that CEPALCO failed to file a timely appeal to the Secretary of Justice, and did not exhaust its administrative remedies. The appellate court agreed with the trial court's ruling that the assailed ordinance is valid and declared that the subject tax is a license tax for the regulation of business in which CEPALCO is engaged. Finally, the appellate court found that CEPALCO's claim of tax exemption rests on a strained interpretation of R.A. No. 9284.

In a Resolution^[15] dated 24 March 2010, the appellate court denied CEPALCO's

motion for reconsideration for lack of merit. The resolution also denied CEPALCO's 3 August 2009 supplemental motion for reconsideration for being filed out of time.

CEPALCO filed the present petition for review before this Court on 27 May 2010.

The Issues

CEPALCO enumerated the following reasons for warranting review:

1. In spite of its patent illegality, a City Ordinance passed in violation or in excess of the city's delegated power to tax was upheld;
2. In a case involving pure questions of law, the Court of Appeals still insisted on a useless administrative remedy before resort to the court may be made; and
3. Recent legislation affirming [CEPALCO's] tax exemptions was disregarded.^[16]

In a Resolution dated 6 July 2011,^[17] this Court required both parties to discuss whether the amount of tax imposed by Section 2 of Ordinance No. 9503-2005 complies with or violates, as the case may be, the limitation set by Section 151, in relation to Sections 137 and 143(h), of the Local Government Code.

The Court's Ruling

Failure to Exhaust Administrative Remedies

Ordinance No. 9503-2005 is a local revenue measure. As such, the Local Government Code applies.

SEC. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however*, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

SEC. 188. *Publication of Tax Ordinances and Revenue Measures.* - Within