574 Phil. 620

SECOND DIVISION

[G.R. No. 158881, April 16, 2008]

PETRON CORPORATION, PETITIONER, VS. MAYOR TOBIAS M. TIANGCO, AND MUNICIPAL TREASURER MANUEL T. ENRIQUEZ OF THE MUNICIPALITY OF NAVOTAS, METRO MANILA, RESPONDENTS.

D E C I S I O N

TINGA, J,:

The novel but important issue before us is whether a local government unit is empowered under the Local Government Code (the LGC) to impose business taxes on persons or entities engaged in the sale of petroleum products.

I.

The present Petition for Review on Certiorari under Rule 45 filed by petitioner Petron Corporation (Petron) directly assails the Decision of the Regional Trial Court (RTC) of Malabon, Branch 74, which dismissed petitioner's complaint for cancellation of assessment made by the then municipality (now City) of Navotas (Navotas) for deficiency taxes, and ordering the payment of P10,204,916.17 pesos in business taxes to Navotas. As the issues raised are pure questions of law, we need not dwell on the facts at length.

Petron maintains a depot or bulk plant at the Navotas Fishport Complex in Navotas. Through that depot, it has engaged in the selling of diesel fuels to vessels used in commercial fishing in and around Manila Bay.[1] On 1 March 2002, Petron received a letter from the office of Navotas Mayor, respondent Toby Tiangco, wherein the corporation was assessed taxes "relative to the figures covering sale of diesel declared by your Navotas Terminal from 1997 to 2001."[2] The stated total amount due was P6,259,087.62, a figure derived from the gross sales of the depot during the years in question. The computation sheets[3] that were attached to the letter made reference to Ordinance 92-03, or the New Navotas Revenue Code (Navotas Revenue Code), though such enactment was not cited in the letter itself.

Petron duly filed with Navotas a letter-protest to the notice of assessment pursuant to Section 195 of the Code. It argued that it was exempt from local business taxes in view of Art. 232(h) of the Implementing Rules (IRR) of the Code, as well as a ruling of the Bureau of Local Government Finance of the Department of Finance dated 31 July 1995, the latter stating that sales of petroleum fuels are not subject to local taxation. The letter-protest was denied by the Navotas Municipal Treasurer, respondent Manuel T. Enriquez, in a letter dated 8 May 2002.[4] This was followed by a letter from the Mayor dated 15 May 2002, captioned "Final Demand to Pay," requiring that Petron pay the assessed amount within five (5) days from receipt thereof, with a threat of closure of Petron's operations within Navotas should there

be no payment.[5] Petron, through counsel, replied to the Mayor by another letter posing objections to the threat of closure. The Mayor did not respond to this last letter.[6]

Thus, on 20 May 2002, Petron filed with the Malabon RTC a Complaint for Cancellation of Assessment for Deficiency Taxes with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction. The quested TRO was not issued by the Malabon RTC upon manifestation of respondents that they would not proceed with the closure of Petron's Navotas bulk plant until after the RTC shall have decided the case on the merits.[7] However, while the case was pending decision, respondents refused to issue a business permit to Petron, thus prompting Petron to file a Supplemental Complaint with Prayer for Preliminary Mandatory Injunction against respondents.[8]

On 5 May 2003, the Malabon RTC rendered its Decision dismissing Petron's complaint and ordering the payment of the assessed amount.[9] Eleven days later, Petron received a Closure Order from the Mayor, directing Petron to cease and desist from operating the bulk plant. Petron sought a TRO from the Malabon RTC, but this was denied.[10] Petron also filed a motion for reconsideration of the order of denial, but this was likewise denied.[11]

On 4 August 2003, this Court issued a TRO, enjoining the respondents from closing Petron's Navotas bulk plant or otherwise interfering in its operations.[12]

II.

As earlier stated, Petron has opted to assail the RTC Decision directly before this Court since the matter at hand involves pure questions of law, a characterization conceded by the RTC Decision itself. Particularly, the controversy hinges on the correct interpretation of Section 133(h) of the LGC, and the applicability of Article 232 (h) of the IRR.

Section 133(h) of the LGC reads as follows:

> **Sec. 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:
>
> xxx
>
> (h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

Evidently, Section 133 prescribes the limitations on the capacity of local government units to exercise their taxing powers otherwise granted to them under the LGC. Apparently, paragraph (h) of the Section mentions two kinds of taxes which cannot be imposed by local government units, namely: "excise taxes on articles enumerated under the National Internal Revenue Code [(NIRC)], as amended;" and "taxes, fees or charges on petroleum products."

The power of a municipality to impose business taxes is provided for in Section 143 of the LGC. Under the provision, a municipality is authorized to impose business taxes on a whole host of business activities. Suffice it to say, unless there is another provision of law which states otherwise, Section 143, broad in scope as it is, would undoubtedly cover the business of selling diesel fuels, or any other petroleum product for that matter.

Nonetheless, Article 232 of the IRR defines with more particularity the capacity of a municipality to impose taxes on businesses. The enumeration that follows is generally a positive list of businesses which may be subjected to business taxes, and paragraph (h) of Article 232 does allow the imposition of local business taxes "[o]n any business not otherwise specified in the preceding paragraphs which the sanggunian concerned may deem proper to tax," but subject to this important qualification, thus:

> "xxx provided further, that in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed on this article.

Notably, the Malabon RTC declared Art. 232(h) of the IRR void because the Code purportedly does not contain a provision prohibiting the imposition of business taxes on petroleum products.[13] This submission warrants close examination as well.

With all the relevant provisions of law laid out, we address the core issues submitted by Petron, namely: first, is the challenged tax on sale of the diesel fuels an excise tax on an article enumerated under the NIRC, thusly prohibited under Section 133(h) of the Code?; second, is the challenged tax prohibited by Section 133(h) under the *proviso*, "taxes, fees or charges on petroleum products"? and; third, does Art. 232(h) of the IRR similarly prohibit the imposition of the challenged tax?

III

As earlier observed, Section 133(h) provides two kinds of taxes which cannot be imposed by local government units: "excise taxes on articles enumerated" under the NIRC, as amended; and "taxes, fees or charges on petroleum products." There is no doubt that among the excise taxes on articles enumerated under the NIRC are those levied on petroleum products, per Section 148 of the NIRC.

We first consider Petron's argument that the "business taxes" on its sale of diesel fuels partakes of an excise tax, which if true, could invalidate the challenged tax solely on the basis of the phrase "excise taxes on articles enumerated under the [NIRC]." To support this argument, it cites *Cordero v. Conda*,[14] *Allied Thread Co. Inc. v. City Mayor of Manila*,[15] and *Iloilo Bottlers, Inc. v. City of Iloilo*,[16] as having explained that "an excise tax is a tax upon the performance, carrying on, or the exercise of an activity."[17] Respondents, on the other hand, argue that what the provision prohibits is the imposition of excise taxes on petroleum products, but not the imposition of business taxes on the same. They cite *Philippine Petroleum Corporation v. Municipality of Pililia,*[18] where the Court had noted, "[a] tax on business is distinct from a tax on the article itself."[19]

Petron's argument is fraught with far-reaching implications, for if it were sustained, it would mean that local government units are barred from imposing business taxes on any of the articles subject to excise taxes under the NIRC. These would include alcohol products,[20] tobacco products,[21] mineral products[22] automobiles,[23] and such non-essential goods as jewelry, goods made of precious metals, perfumes, and yachts and other vessels intended for pleasure or sports.[24]

Admittedly, the proffered definition of an excise tax as "a tax upon the performance, carrying on, or exercise of some right, privilege, activity, calling or occupation" derives from the compendium *American Jurisprudence,* popularly referred to as *Am Jur*,,[25] and has been cited in previous decisions of this Court, including those cited by Petron itself. Such a definition would not have been inconsistent with previous incarnations of our Tax Code, such as the NIRC of 1939,[26] as amended, or the NIRC of 1977[27] because in those laws the term "excise tax" was not used at all. In contrast, the nomenclature used in those prior laws in referring to taxes imposed on specific articles was "specific tax."[28] Yet beginning with the National Internal Revenue Code of 1986, as amended, the term "excise taxes" was used and defined as applicable "to goods manufactured or produced in the Philippines... and to things imported."[29] This definition was carried over into the present NIRC of 1997.[30] Further, these two latest codes categorize two different kinds of excise taxes: "specific tax" which is imposed and based on weight or volume capacity or any other physical unit of measurement; and "*ad valorem* tax" which is imposed and based on the selling price or other specified value of the goods. In other words, the meaning of "excise tax" has undergone a transformation, morphing from the *Am Jur* definition to its current signification which is a tax on certain specified goods or articles.

The change in perspective brought forth by the use of the term "excise tax" in a different connotation was not lost on the departed author Jose Nolledo as he accorded divergent treatments in his 1973 and 1994 commentaries on our tax laws. Writing in 1973, and essentially alluding to the *Am Jur* definition of "excise tax," Nolledo observed:

> Are specific taxes, taxes on property or excise taxes -
>
> In the case of *Meralco v. Trinidad* ([G.R.] 16738, 1925) it was held that specific taxes are property taxes, a ruling which seems to be erroneous. Specific taxes are truly excise taxes for the fact that the value of the property taxed is taken into account will not change the nature of the tax. It is correct to say that specific taxes are taxes on the privilege to import, manufacture and remove from storage certain articles specified by law.[31]

In contrast, after the tax code was amended to classify specific taxes as a subset of excise taxes, Nolledo, in his 1994 commentaries, wrote:

1. *Excise taxes*, as used in the Tax Code, refers to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things

imported into the Philippines. They are either *specific* or *ad valorem*.

2. *Nature of excise taxes.* - They are imposed directly on certain specified goods. (*infra*) They are, therefore, taxes on property. (see Medina vs. City of Baguio, 91 Phil. 854.)

A tax is not excise where it does not subject directly the produce or goods to tax but indirectly as an incident to, or in connection with, the business to be taxed.[32]

In their 2004 commentaries, De Leon and De Leon restate the *Am Jur* definition of excise tax, and observe that the term is "synonymous with `privilege tax' and [both terms] are often used interchangeably."[33] At the same time, they offer a caveat that "[e]xcise tax, as [defined by *Am Jur*], is not to be confused with excise tax imposed [by the NIRC] on certain specified articles manufactured or produced in, or imported into, the Philippines, `for domestic sale or consumption or for any other disposition.'"[34]

It is evident that *Am Jur* aside, the current definition of an excise tax is that of a tax levied on a specific article, rather than one "upon the performance, carrying on, or the exercise of an activity." This current definition was already in place when the Code was enacted in 1991, and we can only presume that it was what the Congress had intended as it specified that local government units could not impose "excise taxes on articles enumerated under the [NIRC]." This prohibition must pertain to the same kind of excise taxes as imposed by the NIRC, and not those previously defined "excise taxes" which were not integrated or denominated as such in our present tax law.

It is quite apparent, therefore, that our current body of taxation law does not explicitly accommodate the traditional definition of excise tax offered by Petron. In fact, absent any statutory adoption of the traditional definition, it may be said that starting in 1986 excise taxes in this jurisdiction refer exclusively to specific or *ad valorem* taxes imposed under the NIRC. At the very least, it is this concept of excise tax which we can reasonably assume that Congress had in mind and actually adopted when it crafted the Code. The palpable absurdity that ensues should the alternative interpretation prevail all but strengthens this position.

Thus, Petron's argument concerning excise taxes is founded not on what the NIRC or the Code actually provides, but on a non-statutory definition sourced from a legal paradigm that is no longer applicable in this jurisdiction. That such definition was referred to again in our 1998 decision in *Province of Bulacan v. Court of Appeals*[35] is ultimately of little consequence, and so is Petron's reliance on such ruling. The Court therein had correctly nullified, on the basis of Section 133(h) of the Code, a province-imposed tax "of 10% of the fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth and other quarry resources xxx extracted from public lands," because it noted that under Section 151 of the NIRC, all nonmetallic minerals and quarry resources were assessed with excise taxes of "two percent (2%) based on the actual market value of the gross output thereof at the time of removal, in case of those locally extracted or produced".[36] Additionally, the Court also observed that the case had emanated from an attempt to impose the said tax on quarry resources from private lands, despite the clear language of the tax ordinance limiting the tax to such resources extracted from public lands.[37] On