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FIRST DIVISION

[G.R. No. 180651, July 30, 2014]

NURSERY CARE CORPORATION; SHOEMART, INC.; STAR APPLIANCE CENTER, INC.; H&B, INC.; SUPPLIES STATION, INC.; AND HARDWARE WORKSHOP, INC., PETITIONERS, VS. ANTHONY ACEVEDO, IN HIS CAPACITY AS THE TREASURER OF MANILA; AND THE CITY OF MANILA, RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

The issue here concerns double taxation. There is double taxation when the same taxpayer is taxed twice when he should be taxed only once for the same purpose by the same taxing authority within the same jurisdiction during the same taxing period, and the taxes are of the same kind or character. Double taxation is obnoxious.

The Case

Under review are the resolution promulgated in CA-G.R. SP No. 72191 on June 18, 2007,[1] whereby the Court of Appeals (CA) denied petitioners' appeal for lack of jurisdiction; and the resolution promulgated on November 14, 2007,[2] whereby the CA denied their motion for reconsideration for its lack of merit.

Antecedents

The City of Manila assessed and collected taxes from the individual petitioners pursuant to Section 15 (*Tax on Wholesalers, Distributors, or Dealers*) and Section 17 (*Tax on Retailers*) of the Revenue Code of Manila.[3] At the same time, the City of Manila imposed additional taxes upon the petitioners pursuant to Section 21 of the Revenue Code of Manila,[4] as amended, as a condition for the renewal of their respective business licenses for the year 1999. Section 21 of the Revenue Code of Manila stated:

> Section 21. *Tax on Business Subject to the Excise, Value-Added or Percentage Taxes under the NIRC* - On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code, hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) OF ONE PERCENT (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:
>
> A) On person who sells goods and services in the course of trade or businesses; x x x

PROVIDED, that all registered businesses in the City of Manila already paying the aforementioned tax shall be exempted from payment thereof.

To comply with the City of Manila's assessment of taxes under Section 21, *supra,* the petitioners paid under protest the following amounts corresponding to the first quarter of 1999,[5] to wit:

(a) Nursery Care Corporation	P595,190.25
(b) Shoemart Incorporated	P3,283,520.14
(c) Star Appliance Center	P236,084.03
(d) H & B, Inc.	P1,271,118.74
(e) Supplies Station, Inc.	P239,501.25
(f) Hardware Work Shop, Inc.	P609,953.24

By letter dated March 1, 1999, the petitioners formally requested the Office of the City Treasurer for the tax credit or refund of the local business taxes paid under protest.[6] However, then City Treasurer Anthony Acevedo (Acevedo) denied the request through his letter of March 10, 1999.[7]

On April 8, 1999, the petitioners, through their representative, Cecilia R. Patricio, sought the reconsideration of the denial of their request.[8] Still, the City Treasurer did not reconsider.[9]

In the meanwhile, Liberty Toledo succeeded Acevedo as the City Treasurer of Manila.[10]

On April 29, 1999, the petitioners filed their respective petitions for *certiorari* in the Regional Trial Court (RTC) in Manila. The petitions, docketed as Civil Cases Nos. 99-93668 to 99-93673,[11] were initially raffled to different branches, but were soon consolidated in Branch 34.[12] After the presiding judge of Branch 34 voluntarily inhibited himself, the consolidated cases were transferred to Branch 23,[13] but were again re-raffled to Branch 19 upon the designation of Branch 23 as a special drugs court.[14]

The parties agreed on and jointly submitted the following issues for the consideration and resolution of the RTC, namely:

(a) Whether or not the collection of taxes under Section 21 of Ordinance No. 7794, as amended, constitutes double taxation.
(b) Whether or not the failure of the petitioners to avail of the statutorily provided remedy for their tax protest on the ground of unconstitutionality, illegality and oppressiveness under Section 187 of the Local Government Code renders the

present action dismissible for non-exhaustion of administrative remedy.[15]

Decision of the RTC

On April 26, 2002, the RTC rendered its decision, holding thusly:

> The Court perceives of no instance of the constitutionally proscribed double taxation, in the strict, narrow or obnoxious sense, imposed upon the petitioners under Section 15 and 17, on the one hand, and under Section 21, on the other, of the questioned Ordinance. The tax imposed under Section 15 and 17, as against that imposed under Section 21, are levied against different tax objects or subject matter. The tax under Section 15 is imposed upon wholesalers, distributors or dealers, while that under Section 17 is imposed upon retailers. In short, taxes imposed under Section 15 and 17 is a tax on the business of wholesalers, distributors, dealers and retailers. On the other hand, the tax imposed upon herein petitioners under Section 21 is not a tax against the business of the petitioners (as wholesalers, distributors, dealers or retailers) but is rather a tax against consumers or end-users of the articles sold by petitioners. This is plain from a reading of the modifying paragraph of Section 21 which says:
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> > "The tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter." (Underscoring supplied)
>
> In effect, the petitioners only act as the collection or withholding agent of the City while the ones actually paying the tax are the consumers or end-users of the articles being sold by petitioners. The taxes imposed under Sec. 21 represent additional amounts added by the business establishment to the basic prices of its goods and services which are paid by the end-users to the businesses. It is actually not taxes on the business of petitioners but on the consumers. Hence, there is no double taxation in the narrow, strict or obnoxious sense, involved in the imposition of taxes by the City of Manila under Sections 15, 17 and 21 of the questioned Ordinance. This in effect resolves in favor of the constitutionality of the assailed sections of Ordinance No. 7807 of the City of Manila.
>
> Petitioners, likewise, pray the Court to direct respondents to cease and desist from implementing Section 21 of the questioned Ordinance. That the Court cannot do, without doing away with the mandatory provisions of Section 187 of the Local Government Code which distinctly commands that an appeal questioning the constitutionality or legality of a tax ordinance 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. This is so because an ordinance carries with it the presumption of validity.

x x x

With the foregoing findings, petitioners' prayer for the refund of the amounts paid by them under protest must, likewise, fail.

Wherefore, the petitions are dismissed. Without pronouncement as to costs.

SO ORDERED.[16]

The petitioners appealed to the CA.[17]

Ruling of the CA

On June 18, 2007, the CA denied the petitioners' appeal, ruling as follows:

The six (6) cases were consolidated on a common question of fact and law, that is, whether the act of the City Treasurer of Manila of assessing and collecting business taxes under Section 21 of Ordinance 7807, on top of other business taxes also assessed and collected under the previous sections of the same ordinance is a violation of the provisions of Section 143 of the Local Government Code.

Clearly, the disposition of the present appeal in these consolidated cases does not necessitate the calibration of the whole evidence as there is no question or doubt as to the truth or the falsehood of the facts obtaining herein, as both parties agree thereon. The present case involves a question of law that would not lend itself to an examination or evaluation by this Court of the probative value of the evidence presented.

Thus the Court is constrained to dismiss the instant petition for lack of jurisdiction under Section 2, Rule 50 of the 1997 Rules on Civil Procedure which states:

"Sec. 2. Dismissal of improper appeal to the Court of Appeals. – An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

WHEREFORE, the foregoing considered, the appeal is DISMISSED.

SO ORDERED.[18]

The petitioners moved for reconsideration, but the CA denied their motion through the resolution promulgated on November 14, 2007.[19]

Issues

The petitioners now appeal, raising the following grounds, to wit:

A.

THE COURT OF APPEALS, IN DISMISSING THE APPEAL OF THE PETITIONERS AND DENYING THEIR MOTION FOR RECONSIDERATION, ERRED IN RULING THAT THE ISSUE INVOLVED IS A PURELY LEGAL QUESTION.

B.

THE COURT OF APPEALS ERRED IN NOT REVERSING THE DECISION OF BRANCH 19 OF THE REGIONAL TRIAL COURT OF MANILA DATED 26 APRIL 2002 DENYING PETITIONERS' PRAYER FOR REFUND OF THE AMOUNTS PAID BY THEM UNDER PROTEST AND DISMISSING THE PETITION FOR CERTIORARI FILED BY THE PETITIONERS.

C.

THE COURT OF APPEALS ERRED IN NOT RULING THAT THE ACT OF THE CITY TREASURER OF MANILA IN IMPOSING, ASSESSING AND COLLECTING THE ADDITIONAL BUSINESS TAX UNDER SECTION 21 OF ORDINANCE NO. 7794, AS AMENDED BY ORDINANCE NO. 7807, ALSO KNOWN AS THE REVENUE CODE OF THE CITY OF MANILA, IS CONSTITUTIVE OF DOUBLE TAXATION AND VIOLATIVE OF THE LOCAL GOVERNMENT CODE OF 1991.[20]

The main issues for resolution are, therefore, (1) whether or not the CA properly denied due course to the appeal for raising pure questions of law; and (2) whether or not the petitioners were entitled to the tax credit or tax refund for the taxes paid under Section 21, *supra.*

Ruling

The appeal is meritorious.

1.
The CA did not err in dismissing the appeal;