TAXATION

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Last year, 1972, yielded a sparse crop of tax cases. Hardly any was of first impression, although some secondary issues which were raised in a few cases were rather new and quite interesting.

TAX ADMINISTRATION AND PROCEDURE

1. *Judicial action to collect taxes*

In *Republic of the Philippines v. Marsman Development Co., et. al.,*[1] an action instituted by the Government to collect deficiency taxes against the defendant corporation, the following issues were resolved by the Supreme Court:

a. *Finality of assessment; Effect of mere request for reconsideration.*

A taxpayer cannot delay the collection of taxes by the simple expedient of merely asking for clarification or reconsideration of the assessment without doing anything to comply with the statutory and reglamentary requirements for the reconsideration of the assessment made against him. The defendant in this case, upon receiving assessments for deficiency sales tax, forest charges, surcharges and penalties, requested the Bureau for an itemized statement of said taxes and served notice of its intention to question the validity of the assessments before the Conference Staff of the Bureau. In reply, the Bureau informed the defendant that the request for reinvestigation would not be given due course unless it complied with the provisions of Department Order No. 213 of November 2, 1954, which required that requests for reinvestigation or reexamination of tax assessments should be made in writing and under oath, specifying the grounds and accompanied by the documents relied upon for the request, as well as the payment of one-half of the total assessments plus a bond to guarantee payment of the balance. The corporation failed to comply. In view of such non-compliance, the Bureau warned the corporation that should it fail further to comply, within five (5) days from receipt, the assessments would be considered final. Still no compliance came. Subsequent follow-up letters brought no better results. Finally, the Bureau brought this action for collection.

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[1] G.R. No. L-18956, April 27, 1972.

The Supreme Court found no merit in defendant's contention that the assessment in question had not yet become final and executory, since it did nothing when it acknowledged receipt of the assessment now impugned to appeal the same, if such an appeal was possible, to the Court of Tax Appeals, even after it was warned by the Bureau that its failure to comply with the requirements for reconsideration within five (5) days would result in its being considered final.

b. *When amended complaint deemed filed for purposes of prescription.*

The original complaint for collection of taxes was filed on September 5, 1958 for ₱13,659.96 and an amended complaint for ₱59,133.78 was filed on August 26, 1959 and admitted on September 23, 1959. It was contended by defendant that the judicial action for the recovery of the bigger amount of ₱45,541.66 was not filed within five (5) years from September 13, 1954, the date of the earliest assessment. The Court held that nothing in *Breslin v. Luzon*[2] relied upon by appellant, was intended to modify the self-evident proposition that for practical reasons and to avoid the complication that may arise from undue delays in the admission thereof, such an amended complaint must be considered as filed, for the purposes of such a substantive matter as prescription, on the date it was actually filed with the court, regardless of when it was formally admitted by the court.

c. *Effect of extra-judicial dissolution of corporate taxpayer on action to collect taxes.*

Another issue raised in *Marsman Development Company* was whether, as the defendant Company maintained, the action to collect deficiency taxes against the Company was barred under Section 77 of the Corporation Law which allows the corporate existence of a corporation to continue only for three (3) years after its dissolution, for the purpose of presenting or defending suits by or against it, and to settle and close its affairs. The Marsman Development Company was extra-judicially dissolved on April 23, 1954. The original complaint was filed on September 5, 1958 and the amended complaint on August 26, 1959.

In holding that the extra-judicial dissolution of the defendant company did not affect the judicial action instituted by the Commissioner of Internal Revenue against the Company, the Supreme Court pointed out that the assessment against the defendant for deficiency taxes due for its operations were made on October 15, 1953, September 13, 1954 and November 8, 1954, so that the first was before its dissolution and the

[2] 84 Phil. 625 (1949).

last two not later than six months after such dissolution. Thus the Government became a creditor of the corporation before the completion of its dissolution by the liquidation of its assets. The co-defendant, F. H. Burgess, whom the Company chose as liquidator, became in law the trustee of all its assets for the benefit of all persons enumerated in Section 78, including its creditors, among whom is the Government for the taxes herein involved. To assume otherwise would render the extra-judicial dissolution illegal and void, since according to Section 62 of the Corporation Law, such kind of dissolution is permitted only when it does not affect the right of any creditor having a claim against the corporation. It is immaterial that the present action was filed after the expiration of three years from April 23, 1954, for at the very least, and assuming that judicial enforcement of taxes may not be initiated after said three years despite the fact that the actual liquidation has not been terminated and the one in charge thereof is still holding the assets of the corporation obviously for the benefit of all the creditors thereof, the assessment aforementioned, made within the three (3) years, definitely established the Government as creditor of the corporation for whom the liquidator is supposed to hold the assets of the corporation. Therefore, since the suit at bar is only for collection of taxes finally assessed against the corporation within the three (3) years invoked by the defendants, the latters' contention cannot be sustained.

2. Seizure and forfeiture of property (re customs duties and other imports)

a. *Jurisdiction of Court of Tax Appeals*

It is now settled rule that it is the Court of Tax Appeals and not the Court of First Instance that has jurisdiction to review the actuations of the Customs authorities regarding the legality of a seizure, detention, or release of imported goods; and regarding fines, forfeiture or other penalties imposed in relation thereto, or other matters arising under the Customs Law or other laws or parts of law administered by the Bureau of Customs.[3]

Thus, reiterating past rulings,[4] the Supreme Court in *Collector of Customs, et. al. v. Hon. Torres, et. al.*,[5] stated that the judicial recourse of the owner of personal property which is the subject of a seizure and forfeiture proceeding before the Collector of Customs is not in the Court of First Instance but in the Court of Tax Appeals, and only after exhausting

[3] See Rep. Act No. 1125 (1954), Sec. 7(2).

[4] See *Diosamito v. Balanque*, G.R. No. L-30734, July 28, 1969; 28 SCRA 836 (1969); *Pacis v. Averia*, G.R. No. L-22526, November 29, 1966, 18 SCRA 907 (1966); *De Joya v. David*, G.R. No. L-23504, December 29, 1967, 21 SCRA 1493 (1967).

[5] G.R. No. L-22977, May 31, 1972.

administrative remedies in the Bureau of Customs. An action brought before the Court of First Instance for the recovery of the possession of goods subject of seizure proceedings before the Collector of Customs and which will in effect make that Court review the acts or resolutions of the Collector of Customs in the aforementioned seizure proceedings is an improper proceeding.

b. *Retention of customs authority over released goods*

In the same case of *Collector of Customs v. Torres,* the respondents's argument that the issuance of the warrant of seizure and detention was illegal, improper and arbitrary because it was issued after the customs duties, taxes and other charges for the imported goods in the amount of ₱10,887.00 had been paid, and that the physical custody of the goods in question was no longer with the collector of customs, the same having been already deposited in a private bodega, is of no moment. Payment of an amount for customs duties, taxes, etc. does not necessarily terminate the importation and make the release of the imported goods from the customs zone regular. Importation is deemed terminated only upon *full* payment of the duties, taxes and other charges upon the articles, or secured to be paid, at the port of entry, and the legal permit for withdrawal shall have been granted. Hence, if customs duties, taxes and other charges on the articles have not been fully paid, and the same were released, the release thereof would be irregular and the goods would be subject to seizure under Section 2530(m) of the Tariff and Customs Code. Having been released irregularly, the goods or articles involved in the present case could be seized even outside the customs zone by the customs authorities or by the persons deputized by the Commissioner of Customs or by the Collector of Customs, as in the case of the herein petitioner PAGCOM agents whose deputation was specifically stated in the warrant of seizure and detention issued by the Collector of Customs.

The fact that the judge of the Court of First Instance, upon request of customs agents, issued a search warrant respecting the goods under Section 2209 of the Tariff and Customs Code did not divest the customs authorities of the custody of the articles seized or held in virtue of the search warrant. Otherwise, a municipal judge or CFI judge who issued the search warrant would have greater powers over the seized articles than the Collector of Customs — a situation that is certainly not contemplated by the law.

C. *Prohibited importations*

Foodstuff is imported into the country without the necessary release certificate from the Central Bank in violation of Central Bank Circulars

Nos. 247, 289, 294 and 295. Is the importation an "importation prohibited by law" within the meaning of Section 102(k) of the Tariff and Customs Code and which, under Section 2301, cannot be released under bond? Yes, ruled the Supreme Court in *Commissioner of Customs v. The Court of Tax Appeals and Eusebio Dichoco.*[6]

The respondents' contention that the general language of Sec. 102(k) ("all other articles the importation of which is prohibited by law") should be, on the principle of *ejusdem generis,* restricted only to those articles the importation of which is "absolutely prohibited" or to contraband, was untenable according to the Court. *Ejusdem generis* applies only where the specific words preceding the general expression are of the same nature, which is not the case of Sec. 102 where the specific things enumerated have no distinguishable common characteristics and differ greatly from one another. Moreover, the term contraband does not refer only to things "absolutely prohibited by law" but means any article the importation or exportation of which is prohibited by law.

The Court explained further that Sec. 102 shows that it prohibits the importation of two categories of articles, namely, those which are absolutely prohibited, for example those enumerated in paragraphs b, c, d, f, and j, and those articles which are *qualifiedly prohibited,* that is, those that may be imported subject to certain conditions or limitations, for example, those enumerated in paragraphs a and i. Accordingly, the general provision in paragraph (k) cannot be so restricted as to comprise only those articles, the interpretation of which is absolutely prohibited like explosives. Articles of prohibited importation cover not only absolutely prohibited articles but also qualifiedly prohibited articles. Paragraph (k) is comprehensive in the sense that it prohibits the importation of all articles not mentioned in the preceding provision but prohibited by other existing statutes. The legal effects of the importation of qualifiedly prohibited article are the same as those of absolutely prohibited articles.

The laws which prohibit importation mentioned in Sec. 102 (k) include, the Court added, the pertinent Central Bank Circulars which have the force and effect of laws.

Moreover, the law prohibits the release under bond of the imported foodstuffs in question (Sec. 2301 TCC). Sec. 3 of R.A. 1410 (An Act to Prohibit 'No-Dollar Imports' except under certain conditions) also provides that "any violation of this law or any provision hereof shall subject the articles imported to seizure and confiscation without any right of redemption or release under bond. . ."

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[6] G.R. No. L-33471, January 31, 1972.

NATIONAL TAXATION

A. Internal Revenue

1. *Income tax*

(a) *Partnership subject to corporate tax*

Under the National Internal Revenue Code, the income tax is imposed upon every "corporation" no matter how created or organized, including partnerships no matter how created or organized but not including duly registered general co-partnerships, private educational institutions, and building and loan associations.[7] The criteria established by the provisions on partnerships of the Civil Code for determining the existence of a partnership are not relevant for purposes of the tax code. The latter includes a "partnership" among the entities subject to the income tax on "corporations" even though it may not necessarily be a partnership in the technical sense of the word or as contemplated under the Civil Code.[8] In the light of past decisions,[9] it was quite obvious that the factual situation in *Oña et. al. v. The Commissioner of Internal Revenue*[10] fell within the broad panoply of the definition of a taxable entity under the tax code.

The facts of that case were as follows:

Petitioners' predecessor in interest died in 1944. The project of partition of her estate among the petitioners as her heirs was judicially approved is 1949. Instead of being actually distributed among themselves pursuant to the project of partition, the properties remained under the management of the widower spouse and father of the other petitioners who used said properties in business by leasing or selling them and investing the income derived therefrom and the proceeds from the sales thereof in real properties and securities as a result of which said properties and investments steadily increased yearly in value. The profits from these ventures were credited on the books of accounts of the common fund to the petitioners in proportion to their respective shares in the inheritance. Petitioners allowed their father to continue using said shares as part of the common fund for their ventures, even as they paid the corresponding income taxes on their respective share of the profits of their common business.

The Supreme Court affirmed the decision of the Court of Tax Appeals finding petitioners an unregistered partnership within the meaning of the

[7] See TAX CODE, Sec. 24 (a) and Sec. 84(b).
[8] See *Evangelista v. Collector of Internal Revenue,* 102 Phil. 140 (1957).
[9] See *Evangelista v. Collector of Internal Revenue, supra,* note 8; *Reyes v. Commissioner of Internal Revenue,* G.R. Nos. L-24020-21, July 29, 1968.
[10] G.R. No. L-19342, May 25, 1972.

Internal Revenue Code and subject to the corporate income tax pursuant to Section 24 in relation to Section 84(b) of said Code. From the moment petitioners allowed not only the incomes from their respective shares of the inheritance but even the inherited properties themselves to be used by the father as a common fund in undertaking several transactions or in business, with the intention of deriving profit to be shared by them proportionally, such act was tantamount to actually contributing such incomes to a common fund and, in effect, they thereby formed an unregistered partnership within the purview of the above-mentioned provisions of the Tax Code.

The Court further stated that language in *Evangelista v. Collector of Customs*[11] in holding, among other reasons, the appellants therein to be unregistered copartners for tax purposes, that their common fund "was not something they found already in existence" and that "it was not a property inherited by them *pro indiviso*", can not be construed to mean that in all instances where an inheritance is not actually divided, there can be no unregistered copartnership. From the moment of partition (either duly executed in an extrajudicial settlement or approved by the Court in the corresponding testate or intestate proceeding) the heirs are entitled already to their respective definite shares of the estate and the incomes thereof, for each of them to manage and dispose of as exclusively for his own without the intervention of the other heirs, and, accordingly, he becomes liable individually for all taxes, in connection therewith. If after such partition, he allows his share to be held in common with his co-heirs under a single management to be used with the intent of making profit thereby in proportion to his share, there can be no doubt that, even if no document or instrument were executed for the purpose, for tax purposes, at least, an unregistered partnership is formed.

(b) *Partnership income subject to tax*

In the *Oña* case, it was also contended by the petitioners that the taxable income of the partnership should be limited to the income derived from the acquisition and sale of real properties and corporate securities and should not include the income derived from the inherited properties. The Supreme Court rejected the contention and approved the ruling of the Court of Tax Appeals: "It is admitted that the inherited properties and the income derived therefrom were used in the business of buying and selling other real properties and corporate securities. Accordingly, the partnership income must include not only the income derived from the purchase and sale of other properties but also the income of the inherited properties." The Supreme Court further added: "The income derived

[11] *Supra*, note 8.

from inherited properties may be considered as individual income of the respective heirs only so long as the inheritance or estate is not distributed or, at least, partitioned, but the moment their respective known shares are used as part of the common assets of the heirs to be used in making profits, it is but proper that the income of such shares should be considered as part of the taxable income of an unregistered partnership."

(c) *Partnership profits distributable to be reduced by amount of corporate taxes paid.*

In the *Oña* case, as it happened, the unregistered partnership was assessed and taxed on its income after the partners had paid their taxes on their respective shares of such income without reduction of the amount of taxes payable on the income of the unregistered partnership. Consequently, there was overpayment of taxes on the part of the partners, in their individual capacities. In the litigation, the partners, therefore, claimed that the taxable income of the partnership must be reduced by the amounts of income tax paid by each petitioner on his share of partnership profits. The Supreme Court found the argument without merit, stating that it should be the other way around. The partnership profits distributable to the partners should be reduced by the amounts of income tax assessed against the partnership. Thus, while each of the petitioners in his individual capacity overpaid his income tax for the year in question, the income tax due from the partnership has been correctly assessed. The position of petitioners was simply that of a taxpayer who had paid the wrong tax, assuming that the failure to pay the corporate tax in question was not deliberate. Of course, such a taxpayer had the right to be reimbursed what he had erroneously paid, but the law is very clear that the claim and action for such reimbursement are subject to the bar of prescription. And since the period for the recovery of excess income taxes in the case of herein petitioners had already lapsed, it would not seem right to virtually disregard prescription merely upon the ground that the reason for the delay was precisely because the taxpayers failed to make the proper return and payment of the corporate taxes legally due from them.

2. *Exemption from tax under legislative franchise*

Exemption from tax is never presumed; for tax exemption to be recognized, the grant must be clear and express.[12]

In *Davao Light & Power Co., Inc. v. Commissioner of Customs, et. al.,*[13] an action was filed by petitioner company for the refund of customs

[12] COOLEY, LAW ON TAXATION, 149, 1403 (4th ed., 1924); *Philippine Telephone & Telegraph Company v. Collector of Internal Revenue,* 58 Phil. 639 (1933); *Phil. Acetylene Co., Inc. v. CIR,* G.R. No. L-19707, August 17, 1967.

[13] G.R. Nos. L-28739 & L-28902, March 29, 1972.

duties and taxes paid on imported electrical supplies, materials and equipment for installation of its power plant. Petitioner company was the grantee of a legislative franchise to install, operate and maintain an electric light, heat and power plant in Davao City. The claim for refund was based on the contention that Davao Light's legislative franchise to construct, maintain and operate an electric light, heat and power system was specifically made subject to Act 3636, which Act, in its Section 17, provides that any favorable terms granted to any "competing individual association, or corporation" shall *ipso facto* become part of a franchise earlier issued. As the National Power Corporation is actually operating a power plant, power stations and transmission lines in Davao City and selling electric power, heat and light in said locality and said corporation pursuant to Republic Act 358, as amended, was enjoying exemption from all taxes, duties, fees, imports and charges collectible by the government, it was argued that such tax exemption benefits *ipso facto* became part of its franchise.

In rejecting the claim for refund, the Supreme Court pointed out that the favorable terms which petitioner may avail itself of were those granted to a competitor which the National Power Corporation was not. In fact the National Power Corporation was not selling electric power directly to the general public; instead, it did sell power to petitioner for resale to the latter's customers. In other words, the National Power Corporation was even the source of petitioner's merchandise; it was aiding petitioner in its business operations, not competing with it.

Secondly, considering the history and purpose of the tax exemption of the National Power Corporation under Republic Act No. 358, it was clear that the intention was to limit the exemption benefit exclusively to the National Power Corporation. The National Government granted the exemption in order that the National Power Corporation may facilitate the payment of its loans and the consequential release by the government itself from its obligation as principal obligor with respect to loans negotiated by the President with the International Bank for Reconstruction and Development.

MUNICIPAL TAXATION

1. *Scope and extent of municipal taxing power*

Under the 1935 Constitution of the Philippines, the taxing authority of local goverments was dependent for existence upon a clear and distinct grant, express or implied, from the legislative power. With the municipal

power of taxation, therefore, being limited as it were, business enterprises are prone to assail the exercise of that power usually upon the theory that the tax imposed is without or in excess of delegated authority. This resistance to local taxation led the ponente in the first case hereinbelow reported to say, not without some note of annoyance, that "there should be greater awareness on the part of firms and entities conducting business within a municipality that the exercise of such a privilege could be subject to the appropriate exercise of the prerogative to tax."

(a) *Municipal License tax*

In *Procter & Gamble Trading Co. v. Municipality of Medina, et. al.,*[14] and *Union Import & Export Corporation v. Municipality of Medina, et. al.,*[15] the Municipality of Medina enacted, in 1949, pursuant to statutory authority under Commonwealth Act No. 472, the precursor of the Local Autonomy Act (R.A. 2264), an ordinance "levying taxes, charges and fees on businesses, occupations and privileges in the Municipality of Medina, Misamis Oriental." Plaintiff enterprises through branch offices or buying agencies in Medina were engaged in purchasing copra in the municipality in amounts ranging from one to two million pesos annually for each Company. Under the schedule set forth in the ordinance in question, the yearly license tax was fixed at ₱4,000.00.

In the face of these facts, the Supreme Court sustained the validity of the ordinance which the plaintiffs sought to annul. The Court stated that the ordinance was explicit as imposing taxes, charges and fees on businesses conducted therein. Appellants did carry on such business in the municipality. It would be unrealistic to state that the activities carried on by them, estimated to amount to more than a million pesos yearly, cannot be so characterized. The conferment on a Municipality of competence to tax under Commonwealth Act No. 472 is in accordance with the well-settled principle that a public corporation may tax a business or profession conducted within its territorial jurisdiction.

In *Tatel, et. al. v. The Municipality of Virac, et. al.,*[16] and *Gulf Fibers Corp., et. al. v. The Municipality of Virac, et. al.,*[17] the Municipality enacted ordinances purporting to impose license taxes for the exercise of all businesses, occupations and privileges within its jurisdiction. The ordinances categorized said businesses, occupations or privileges on the basis of the nature thereof — such as "merchants, sari-sari store owners, wholesale and retail dealers of general merchandise", manufacturers of hollow-blocks or

[14] G.R. No. L-29125, January 31, 1972.
[15] G.R. No. L-29126, January 31, 1972.
[16] G.R. No. L-29195, November 24, 1972.
[17] G.R. No. L-29160, November 24, 1972.

similar products, lumber yards, etc. — or of the products they handle — such as pharmaceutical products, rice and corn, abaca and copra, furniture, rattan and nipa shingles, liquor or tobacco. The license tax prescribed in each category was graduated, the amount thereof being dependent upon the "capital investment or purchases for the previous year, whichever is higher." In a suit assailing the validity of these ordinances brought by plaintiffs, the lower Court declared the ordinances null and void on the ground that they provided for an increase in taxes by more than 50% without the approval of the Secretary of Finance as required by Commonwealth Act No. 472, and that they imposed taxes on articles subject to specific tax as well as over forest products.[18] Reserving on appeal, the Supreme Court ruled that the provision of Commonwealth Act No. 472 requiring the prior approval of the Secretary of Finance when an ordinance increases by more than 50% municipal taxes prescribed in previous ordinances had been impliedly repealed by Republic Act No. 2264, which vests in municipal district councils ample discretion to impose taxes and even municipal license taxes, and, which, instead of requiring said prior approval of the Secretary of Finance of ordinances increasing taxes by more than 50% of the previous rates, vests in said official no more than the authority to suspend the effectivity of any ordinance, within 120 days after its passage, when, in his opinion, the taxes imposed are "unjust, excessive, or confiscatory."

According to the Tribunal, the ordinances in question do not tax specific goods. They impose license taxes, or regulate and tax those engaging in the businesses or occupations, or exercising the privileges, therein enumerated. They categorize said businesses, occupations or privileges on the basis of the nature thereof. Secondly, the license tax prescribed in each category is graduated, the amount thereof being dependent upon the "capital investment or purchases for the previous year, whichever is higher." The power to impose such license taxes is explicitly authorized in section 2 of Republic Act 2264. Under this section, the power of the Secretary of Finance is limited to suspending ordinances imposing taxes that he considers "unjust, excessive, oppressive or confiscatory."

The Court concluded that the nature of the business or occupation taxed, and the amount invested therein, which was, also, reflected in the "purchases" — not the "sales" — made "for the previous year" were reasonable grounds for the classification made in said ordinances and the graduated taxes imposed therein.

[18] Under Section 2 of Rep. Act No. 2264 (The Local Autonomy Act), municipalities are denied the power to impose taxes on articles subject to specific tax and on forest products and forest concessions.

(b) *Export tax*

In the cases of *Procter & Gamble Trading Company* and of *Union Import & Export Corporation,*[19] the contention of the petitioners that the municipal ordinance in question in taxing the business of purchasing copra in the municipality was really an export tax expressly prohibited by law was not sustained by the Supreme Court. Referring to *Ormoc Sugarcane Planters' Association v. Municipal Board of Ormoc City,*[20] the Court declared that only where there is a clear showing that what was being taxed was an export to any foreign country would the amendatory provision of Republic Act No. 2264 prohibiting it come into play.

(c) *Sales tax*

In *San Miguel Brewery, Inc. v. City of Cebu,*[21] and *Cebu Portland Cement Co. v. Municipality of Naga, Cebu, et. al.,*[22] an ordinance enacted by the City of Cebu imposing a tax on the sale or disposal of liquor or intoxicating beverages in the City and another ordinance enacting "an annual municipal license tax" upon all cement factories, corporations, or enterprises operating within the municipality, according to the "maximum annual output capacity" of the factory, were assailed on the ground that, in the case of the sales tax on liquor, it was ultra vires and constituted double taxation because the beverage firm was also subject to a business license tax of ₱600 per annum; in the case of the cement tax, it was ultra vires because the same was in the nature of a percentage or sales tax which a municipality had no authority to impose.

The Supreme Court, reiterating its ruling in *City of Bacolod v. Gruet*[23] and *Pepsi Cola Bottling Co. of the Phil. Inc. v. City of Butuan*[24] upheld the authority of Cebu City to impose a sales tax on liquor or intoxicating beverages since under Section 2 of the Local Autonomy Act the power to impose such a tax is explicitly withdrawn from municipalities only. The double taxation argument was without merit. As held by the Supreme Court in several cases, in the first place, double taxation is not prohibited by the Constitution and, in the second place, since double taxation exists when the same person is taxed by the same jurisdiction for the same purpose, the case of the plaintiff, San Miguel Brewery, was not double taxation as one tax was on sales and had for its purpose revenue, and the other tax was a license to engage in the business of wholesale

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[19] *Supra,* note 8.
[20] G.R. No. L-23793, February 23, 1968, 22 SCRA 736 (1968).
[21] G.R. No. L-20321, February 26, 1972.
[22] G.R. No. L-20496, February 26, 1972.
[23] G.R. No. L-18290, January 31, 1963.
[24] G.R. No. L-22814, August 28, 1968.

liquor in Cebu and constituted a regulatory measure in the exercise of the police power.

As to the contention of the cement manufacturer to the effect that the tax involved partook of the nature of a percentage or sales tax or specific tax because the amount of the tax was dependent upon the annual maximum capacity of the cement factory, the Court declared that settled is the rule that a graduation of the tax based upon the taxpayer's volume of business, when the same is considered solely for purposes of classification, and there is no set ratio between said volume and the amount of the tax, does not render the latter invalid as a sales, percentage or specific tax.

(d) *Market stall fees*

Chamber of Filipino Retailers, Inc. et al. v. Hon. Antonio Villegas, et. al.[25] was an action assailing the legality of a Manila City ordinance raising market stall fees in city markets on the ground that the City Charter of Manila only authorizes the collection of "fees" and the increase in market stall fees would make this a source of revenue. The issue was whether the enactment of the ordinance in question was in the exercise of the governmental or the proprietary function of the City, the parties having agreed that if the enactment was "governmental", the City may only collect such fees as would cover supervision of the market stalls, but, if "proprietary", the City may charge said fees for revenue purposes.

The Supreme Court held the ordinance as within the power of the City. It reasoned that even assuming that Section 18 of The Charter of Manila (Rep. Act No. 409), which includes in the enumeration of the legislative power of the Municipal Board the "establishment, maintenance and fix(ing) the fees for the use of . . . public markets," only authorizes the City of Manila to charge reasonable fees for the use of public markets in an amount sufficient to cover the cost of supervision, maintenance, and regulation, still this power was broadened by Republic Act No. 2264, section 2, which grants chartered cities, municipalities and municipal districts "authority to impose municipal license taxes or fees upon persons engaged in any occupation or business or exercising privilege in chartered cities, municipalities or municipal districts." Since it was not deniable that persons selling in public markets are engaged therein in occupation or business, it was plain that the city could impose upon market vendors or retailers fees designed to obtain revenue for the city, above or in addition to the amount needed to reimburse it for strictly supervisory services.

Moreover, the Court went on to say, the permit to a market vendor to occupy and use a definite location or stall within the market premises

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[25] G.R. No. L-29819, April 14, 1972.

partakes of the nature of a lease of the area occupied by the market stall which is patrimonial property of the City of Manila. The character of the transaction between the City and the stall occupied is acknowledged by section 52, paragraph 2 of its Charter to the effect that "the city treasurer shall collect . . . all rents due for markets and other property owned by the City." The renting by the City of its private property is a patrimonial activity or proprietary function and in this sphere, the City, like any other private owner, is free to charge such sums as it may deem best, regardless of the reasonableness of the amount fixed.