610 Phil. 717

THIRD DIVISION

[G.R. No. 155491, July 21, 2009]

SMART COMMUNICATIONS, INC., PETITIONER, VS. THE CITY OF DAVAO, REPRESENTED HEREIN BY ITS MAYOR HON. RODRIGO DUTERTE, AND THE SANGGUNIANG PANLUNSOD OF DAVAO CITY, RESPONDENTS .

R E S O L U T I O N

NACHURA, J.:

Before the Court is a Motion for Reconsideration[1] filed by Smart Communications, Inc. (Smart) of the Decision[2] of the Court dated September 16, 2008, denying its appeal of the Decision and Order of the Regional Trial Court (RTC) of Davao City, dated July 19, 2002 and September 26, 2002, respectively.

Briefly, the factual antecedents are as follows:

On February 18, 2002, Smart filed a special civil action for declaratory relief[3] for the ascertainment of its rights and obligations under the Tax Code of the City of Davao, which imposes a franchise tax on businesses enjoying a franchise within the territorial jurisdiction of Davao. Smart avers that its telecenter in Davao City is exempt from payment of franchise tax to the City.

On July 19, 2002, the RTC rendered a Decision denying the petition. Smart filed a motion for reconsideration, which was denied by the trial court in an Order dated September 26, 2002. Smart filed an appeal before this Court, but the same was denied in a decision dated September 16, 2008. Hence, the instant motion for reconsideration raising the following grounds: (1) the "in lieu of all taxes" clause in Smart's franchise, Republic Act No. 7294 (RA 7294), covers local taxes; the rule of strict construction against tax exemptions is not applicable; (2) the "in lieu of all taxes" clause is not rendered ineffective by the Expanded VAT Law; (3) Section 23 of Republic Act No. 7925[4] (RA 7925) includes a tax exemption; and (4) the imposition of a local franchise tax on Smart would violate the constitutional prohibition against impairment of the obligation of contracts.

Section 9 of RA 7294 and Section 23 of RA 7925 are once again put in issue. Section 9 of Smart's legislative franchise contains the contentious "in lieu of all taxes" clause. The Section reads:

> Section 9. Tax provisions. -- The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. **In addition thereto, the grantee, its successors or assigns shall**

> **pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof**: Provided, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.
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> xxx[5]

Section 23 of RA 7925, otherwise known as the most favored treatment clause or equality clause, contains the word "exemption," *viz*.:

> SEC. 23. Equality of Treatment in the Telecommunications Industry -- Any advantage, favor, privilege, **exemption**, or immunity granted under existing franchises, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of the service authorized by the franchise.[6]

A review of the recent decisions of the Court on the matter of exemptions from local franchise tax and the interpretation of the word "exemption" found in Section 23 of RA 7925 is imperative in order to resolve this issue once and for all.

In *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan*, [7] Digitel used as an argument the "in lieu of all taxes" clauses/provisos found in the legislative franchises of Globe,[8] Smart and Bell,[9] *vis-à-vis* Section 23 of RA 7925, in order to claim exemption from the payment of local franchise tax. Digitel claimed, just like the petitioner in this case, that it was exempt from the payment of any other taxes except the national franchise and income taxes. Digitel alleged that Smart was exempted from the payment of local franchise tax.

However, it failed to substantiate its allegation, and, thus, the Court denied Digitel's claim for exemption from provincial franchise tax. Cited was the ruling of the Court in *PLDT v. City of Davao*,[10] wherein the Court, speaking through Mr. Justice Vicente V. Mendoza, held that in approving Section 23 of RA No. 7925, Congress did not intend it to operate as a blanket tax exemption to all telecommunications entities. Section 23 cannot be considered as having amended PLDT's franchise so as to entitle it to exemption from the imposition of local franchise taxes. The Court further held that tax exemptions are highly disfavored and that a tax exemption must be expressed in the statute in clear language that leaves no doubt of the intention of the legislature to grant such exemption. And, even in the instances when it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.