

## EN BANC

[ G.R. No.156040, December 11, 2008 ]

**CITY GOVERNMENT OF BATANGAS REPRESENTED BY HON. ANGELITO DONDON A. DIMACUHA, BATANGAS CITY MAYOR, MR. BENJAMIN S. PARGAS, BATANGAS CITY TREASURER, AND ATTY. TEODULFO A. DEQUITO, BATANGAS CITY LEGAL OFFICER, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a petition for review on certiorari<sup>[1]</sup> assailing the Regional Trial Court's Order<sup>[2]</sup> dated 2 May 2002 in Civil Case No. 5343 as well as the 19 November 2002 Order denying the Motion for Reconsideration. In the assailed orders, Branch 8 of the Regional Trial Court (RTC) of Batangas City (RTC-Branch 8) reversed the 28 March 2001 Order<sup>[3]</sup> issued by Branch 3 of RTC-Batangas City (RTC-Branch 3). RTC-Branch 8 declared that under its legislative franchise, Digital Telecommunications Philippines, Inc. (petitioner) is not exempt from paying real property tax assessed by the Batangas City Government (respondent).

#### The Facts

On 17 February 1994, Republic Act No. 7678 (RA 7678)<sup>[4]</sup> granted petitioner a 25-year franchise to install, operate and maintain telecommunications systems throughout the Philippines. Section 5 of RA 7678 reads:

*Sec. 5. Tax Provisions.* - **The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.** In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; *Provided*, That the grantee 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Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return

shall be subject to audit by the Bureau of Internal Revenue. (Boldfacing and underscoring supplied)

Sometime in 1997, respondent issued a building permit for the installation of petitioner's telecommunications facilities in Batangas City. After the installation of the facilities, petitioner applied with the Mayor's office of Batangas City for a permit to operate. Because of a discrepancy in the actual investment costs used in computing the prescribed fees for the clearances and permits, petitioner was not able to secure a Mayor's Permit for the year 1998. Petitioner was also advised to settle its unpaid realty taxes. However, petitioner claimed exemption from the payment of realty tax, citing the first sentence of Section 5 of RA 7678, the Letter-Opinion of the Bureau of Local Government Finance (BLGF) dated 8 April 1997,<sup>[5]</sup> and the letter of the Office of the President dated 12 March 1996.<sup>[6]</sup>

In 1999, respondent refused to issue a Mayor's Permit to petitioner without payment of its realty taxes.

On 22 June 1999, petitioner paid P68,890.39 under protest as fees for the permit to operate, but respondent refused to accept the payment unless petitioner also paid the realty taxes.<sup>[7]</sup>

On 2 July 1999, respondent threatened to close down petitioner's operations. Hence, on 3 July 1999, petitioner instituted a complaint for prohibition and mandamus with prayer for a temporary restraining order or writ of preliminary injunction. This case was raffled to RTC-Branch 3. On the same date, respondent served a Cease and Desist Order on petitioner.<sup>[8]</sup>

On 20 January 2000, during the pendency of the complaint, petitioner paid its realty taxes of P2,043,265 under protest.<sup>[9]</sup> Petitioner resumed its business, rendering the other issues raised in petitioner's complaint moot. Consequently, the only issue left for resolution is whether petitioner is exempt from the realty tax under Section 5 of RA 7678.

### **The Ruling of RTC -Branch 3**

On 28 March 2001, RTC-Branch 3 issued the following Order:

**WHEREFORE**, premises considered, the Court hereby declares that the real estate, buildings and personal property of plaintiff Digital Telecommunications Philippines, Inc. which are used in the operation of its franchise are exempt from payment of real property taxes, but those not so used should be held liable thereto.<sup>[10]</sup>

RTC-Branch 3 reasoned that the phrase "exclusive of this franchise" in the first sentence of Section 5 of RA 7678 limits the real properties that are subject to realty tax only to those which are not used in petitioner's telecommunications business. In short, petitioner's real properties used in its telecommunications business are not subject to realty tax.<sup>[11]</sup>

On 1 May 2001, respondent moved for reconsideration. Before acting on the motion, the Presiding Judge of RTC-Branch 3 voluntarily inhibited himself because the newly-

elected mayor of Batangas City was his *kumpadre*.<sup>[12]</sup> The case was re-raffled to RTC-Branch 8.

### **The Ruling of RTC -Branch 8**

On 2 May 2002, RTC-Branch 8 issued an Order which reads:

**WHEREFORE**, the defendants' Motion for Reconsideration is hereby granted. The Order of this Court dated March 21, 2001 is hereby set aside and, in lieu thereof, judgment is hereby rendered in favor of the defendants and against the plaintiff:

- **DISMISSING** the Amended Complaint;
- **DECLARING** that the plaintiff Digital Telecommunications Philippines, Inc., under its legislative franchise RA No. 7678, is not exempted from the payment of real property tax being collected by the defendant City of Batangas and, accordingly,
- **ORDERING** said plaintiff to pay the City of Batangas real estate taxes in the amount of Ph4,620,683.33 which was due as of January, 2000, as well as those due thereafter, plus corresponding interest and penalties.

<sup>[13]</sup>

On 29 May 2002, petitioner moved for reconsideration. On 19 November 2002, RTC-Branch 8 denied petitioner's motion for reconsideration.

Hence, this petition.

### **The Issue**

The sole issue for resolution is whether, under the first sentence of Section 5 of RA 7678, petitioner's real properties used in its telecommunications business are exempt from the realty tax.

### **Petitioner's Contentions**

Petitioner contends that its exemption from realty tax is based on the first sentence of Section 5 of RA 7678. Petitioner claims that the evident purpose of the phrase "**exclusive of this franchise**" is to limit the real properties that are subject to realty tax only to properties that are not used in petitioner's telecommunications business.<sup>[14]</sup> Petitioner asserts that the phrase "exclusive of this franchise" must not be construed as a useless surplusage. Petitioner points out that its exemption from realty tax was affirmed in two separate opinions, one rendered by the Office of the President on 12 March 1996 and the other by the BLGF on 8 April 1997 and reaffirmed on 4 January 1999.<sup>[15]</sup> The BLGF declared that "the real properties of Digitel, which are used in the operation of its franchise are x x x found to be exempt from the payment of real property taxes beginning 1 January 1993. However, all other properties of that company not used in connection with the operation of its franchise shall remain taxable."<sup>[16]</sup>

Petitioner further argues that under the Local Government Code, the realty tax is

imposed on all lands, buildings, machineries and other improvements attached to real property. A franchise is an incorporeal being, a special privilege granted by the legislature. Hence, to read the first sentence of Section 5 of RA 7678 to mean that the franchisee shall pay taxes on its real properties used in its telecommunications business would render the phrase "exclusive of this franchise" meaningless.

Petitioner admits that the franchise granted under RA 7678 is a personal property, but the franchise is not the "personal property" referred to in the first sentence of Section 5. Petitioner asserts that the phrase "real estate, buildings, and personal property" in the first sentence of Section 5 refers solely to real properties and does not include personal properties. Petitioner explains thus:

For PTEs (public telecommunication entities), these personal properties include the switches which were installed in the exchange buildings as well as the outside and inside plant equipment. Initially, these telecommunications materials and equipment were personal property in character. But, having been installed and made operational by being attached to the exchange building, they are now converted into immovables or real property. **That being the case, the phrase "real estate, buildings and personal property" actually refer[s] to properties that are liable for real estate tax.** And, Congress having made the qualification with the phrase "exclusive of this franchise," only such real properties that are not used in furtherance of the franchise are subject to real property tax.<sup>[17]</sup> (Emphasis supplied)

### **Respondent's Contentions**

Respondent contends that the phrase "exclusive of this franchise" does not mean that petitioner is exempt from the realty tax on its real properties used in its telecommunications business. The first sentence of Section 5 of RA 7678 makes petitioner "liable to pay the same taxes for its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are or hereafter may be required by law to pay." This shows the clear intent of Congress to tax petitioner's real and personal properties.<sup>[18]</sup> Respondent asserts that the phrase "exclusive of this franchise" is a qualification of the broad declaration on the franchisee's liability for taxes which is the main thrust of the first sentence of Section 5. Respondent points out that petitioner is paying taxes and fees on all its motor vehicles, which are personal properties, without distinction.<sup>[19]</sup> Respondent also points out that petitioner admits that the first sentence of Section 5 of RA 7678 is ambiguous with respect to the phrase "exclusive of this franchise,"<sup>[20]</sup> thus petitioner resorted to the rules on statutory construction.<sup>[21]</sup>

Respondent adds that the legislative franchises granted to other telecommunications companies contain the same phrase "exclusive of this franchise." This shows the intent of Congress to make franchisees liable for the realty tax rather than exempt them even if the real properties are used in their telecommunications business.<sup>[22]</sup>

The Office of the Solicitor General (OSG), appearing for respondent, contends that the first sentence of Section 5 provides for petitioner's general liability to pay taxes and does not provide for petitioner's exemption from realty tax. The OSG invokes the doctrine of last antecedent which is an aid in statutory construction. The OSG

argues that under this doctrine, the qualifying word or phrase only restricts the word or phrase to which the qualifying word or phrase is immediately associated and not the word or phrase which is distantly or remotely located. In the first sentence of Section 5, the phrase "exclusive of this franchise" restricts only the words "personal property" which immediately precede the phrase "exclusive of this franchise." This means that the franchise, an intangible personal property, should be excluded from the personal properties that are subject to taxes under the first sentence of Section 5. The OSG adds that the use of the comma to separate "real estate, buildings" from "personal property" exerts a dominant influence in the application of the doctrine of last antecedent. Further, the OSG reiterates that laws granting exemption from tax are to be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power.

### **The Ruling of the Court**

The petition has no merit.

#### **Section 5 of RA 7678 imposes taxes and does not exempt from realty tax**

The issue in this case involves the interpretation of the phrase "**exclusive of this franchise**" in the first sentence of Section 5 of RA 7678.

Section 5 of RA 7678 states:

**Sec. 5. Tax Provisions. - The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.** In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; *Provided*, That the grantee 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.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Boldfacing and underscoring supplied)

The first sentence of Section 5 of RA 7678 is the same provision found in almost all legislative franchises in the telecommunications industry dating back to 1905.<sup>[23]</sup> It is also the same provision that appears in the legislative franchises of other telecommunications companies like Philippine Long Distance Telephone Company,<sup>[24]</sup> Smart Information Technologies, Inc.,<sup>[25]</sup> and Globe Telecom.<sup>[26]</sup> Since 1905, no telecommunications company has claimed exemption from realty tax based on the phrase "exclusive of this franchise," until petitioner filed the present case on 3