

THIRD DIVISION

[G.R. NO. 151899, August 16, 2005]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
PETITIONER, VS. PROVINCE OF LAGUNA AND MANUEL E.
LEYCANO, JR., IN HIS CAPACITY AS THE PROVINCIAL
TREASURER OF THE PROVINCE OF LAGUNA, RESPONDENTS.**

DECISION

GARCIA, J.:

Twice, this Court has denied the earlier plea of petitioner Philippine Long Distance Company, Inc. (PLDT) to be adjudged exempt from the payment of franchise tax assessed against it by local government units. The first was in the 2001 case of *PLDT vs. City of Davao*^[1] and the second, in the very recent case of *PLDT vs. City of Bacolod, et al.*^[2]. Indeed, no less than the Court *en banc*, in its Resolution of March 25, 2003^[3], denied PLDT's motion for reconsideration in Davao. In both cases, the Court in effect ruled that the desired relief is not legally feasible.

No less than PLDT's third, albeit this time involving the Province of Laguna, the instant similar petition for review on *certiorari* under Rule 45 of the Rules of Court seeks the reversal of the decision dated 28 November 2001^[4] of the Regional Trial Court at Laguna, dismissing PLDT's petition in its Civil Case No. SC-3953, an action for refund of franchise tax.

Except for inconsequential factual details which understandably vary from the first two (2) PLDT cases, the legal landscape is practically the same:

PLDT is a holder of a legislative franchise under Act No. 3436, as amended, to render local and international telecommunications services. On August 24, 1991, the terms and conditions of its franchise were consolidated under Republic Act No. 7082,^[5] Section 12 of which embodies the so-called "in-lieu-of-all taxes" clause, whereunder PLDT shall pay a franchise tax equivalent to three percent (3%) of all its gross receipts, which franchise tax shall be "in lieu of all taxes". More specifically, the provision pertinently reads:

SEC. 12. xxx 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 telephone or other telecommunications businesses 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: xxx (Italics ours).

Meanwhile, or on January 1, 1992, Republic Act No. 7160, otherwise known as the *Local Government Code*, took effect. Section 137 of the Code, in relation to Section

151 thereof, grants provinces and other local government units the power to impose local franchise tax on businesses enjoying a franchise, thus:

SEC. 137. *Franchise Tax.* - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

By Section 193 of the same Code, all tax exemption privileges then enjoyed by all persons, whether natural or juridical, save those expressly mentioned therein, were withdrawn, necessarily including those taxes from which PLDT is exempted under the "in-lieu-of-all taxes" clause in its charter. We quote Section 193:

SEC. 193. *Withdrawal of Tax Exemption Privileges.* - Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

Invoking its authority under Section 137, *supra*, of the *Local Government Code*, the Province of Laguna, through its local legislative assembly, enacted Provincial Ordinance No. 01-92, made effective January 1, 1993, imposing a franchise tax upon all businesses enjoying a franchise, PLDT included.

On January 28, 1998, PLDT, in compliance with the aforementioned Ordinance, paid the Province of Laguna its local franchise tax liability for the year 1998 in the amount of One Million Eighty-One Thousand Two Hundred Twelve and 10/100 Pesos (P1,081,212.10).

Prior thereto, Congress, aiming to level the playing field among telecommunication companies, enacted Republic Act No. 7925, otherwise known as the *Public Telecommunications Policy Act of the Philippines*, which took effect on March 16, 1995. To achieve the legislative intent, Section 23 thereof, also known as the "most-favored treatment" clause, provides for an equality of treatment in the telecommunications industry, to wit:

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.

Then, on June 2, 1998, the Department of Finance, thru its Bureau of Local Government Finance (BLGF), issued a ruling to the effect that as of March 16, 1995, the effectivity date of the *Public Telecommunications Policy Act of the Philippines*,^[6]

PLDT, among other telecommunication companies, became exempt from local franchise tax. Pertinently, the BLGF ruling reads:

It appears that RA 7082 further amending Act No. 3436 which granted to PLDT a franchise to install, operate and maintain a telephone system throughout the Philippine Islands was approved on August 3, 1991. Section 12 of said franchise, likewise contains the "in lieu of all taxes" proviso.

In this connection, Section 23 of RA 7929, quoted hereunder, which was approved on March 1, 1995 provides for the equality of treatment in the telecommunications industry:

xxx xxx xxx

On the basis of the aforequoted Section 23 of RA 7925, PLDT as a telecommunications franchise holder becomes automatically covered by the tax exemption provisions of RA 7925, which took effect on March 16, 1995.

Accordingly, PLDT shall be exempt from the payment of franchise and business taxes imposable by LGUs under Sections 137 and 143, respectively of the LGC [Local Government Code], upon the effectivity of RA 7925 on March 16, 1995. However, PLDT shall be liable to pay the franchise and business taxes on its gross receipts realized from January 1, 1992 up to March 15, 1995, during which period PLDT was not enjoying the "most favored clause" provision of RA 7025 [sic].

On the basis of the aforequoted ruling, PLDT refused to pay the Province of Laguna its local franchise tax liability for 1999. And, on December 22, 1999, it even filed with the Office of the Provincial Treasurer a written claim for refund of the amount it paid as local franchise tax for 1998.

With no refund having been made, PLDT instituted with the Regional Trial Court at Laguna a petition therefor against the Province and its Provincial Treasurer, which petition was thereat docketed as Civil Case No. SC-3953.

In its decision of November 28, 2001, the trial court denied PLDT's petition, thus:

WHEREFORE, the petition is **denied**. Petitioner PLDT is not exempt from paying local franchise and business taxes to the Respondent Province. **Refund is denied**. For failure to substantiate the claim for exemplary damages and attorneys fees, the same is likewise **denied**.

SO ORDERED.

Hence, this recourse by PLDT, faulting the trial court, as follows:

5.01.a. THE LOWER COURT ERRED IN NOT HOLDING THAT UNDER PETITIONER'S FRANCHISE (REPUBLIC ACT NO.7082), AS AMENDED AND EXPANDED BY SECTION 23 OF REPUBLIC ACT NO. 7925, TAKING INTO ACCOUNT THE FRANCHISES OF GLOBE TELECOM INC., (GLOBE) (REPUBLIC ACT NO. 7229) AND SMART COMMUNICATIONS, INC.

(SMART) (REPUBLIC ACT NO.7294), WHICH ARE SPECIAL PROVISIONS AND WERE ENACTED SUBSEQUENT TO THE LOCAL GOVERNMENT CODE, NO FRANCHISE TAXES MAY BE IMPOSED ON PETITIONER BY RESPONDENT PROVINCE.

5.01.b. THE LOWER COURT ERRED IN NOT HOLDING THAT SECTION 137 OF THE LOCAL GOVERNMENT CODE, WHICH ALLOWS RESPONDENT PROVINCE TO IMPOSE THE FRANCHISE TAX, AND SECTION 193 THEREOF, WHICH PROVIDES FOR WITHDRAWAL OF TAX EXEMPTION PRIVILEGES, ARE NOT APPLICABLE IN THIS CASE.

5.01.c. THE LOWER COURT ERRED IN APPLYING PRINCIPLES OF STATUTORY CONSTRUCTION THAT TAX EXEMPTIONS ARE DISFAVORED AND IN HOLDING THAT SECTION 23 OF REPUBLIC ACT NO. 7925 (PUBLIC TELECOMMUNICATIONS POLICY ACT) DOES NOT SUPPORT PETITIONER'S POSITION IN THIS CASE.

5.01.d. THE LOWER COURT ERRED IN NOT GIVING WEIGHT TO THE RULING OF THE DEPARTMENT OF FINANCE, THROUGH ITS BUREAU OF LOCAL GOVERNMENT FINANCE, THAT PETITIONER IS EXEMPT FROM THE PAYMENT OF FRANCHISE AND BUSINESS TAXES IMPOSABLE BY LOCAL GOVERNMENT UNITS UNDER THE LOCAL GOVERNMENT CODE.

5.01.e. THE LOWER COURT ERRED IN NOT GRANTING PETITIONER'S CLAIM FOR TAX REFUND.

5.01.f. THE LOWER COURT ERRED IN DENYING THE PETITION BELOW.

We note, quite interestingly, that except for the particular local government units involved in the earlier case of *PLDT vs. City of Davao*^[7] and the very recent case of *PLDT vs. City of Bacolod, et al.*,^[8] the arguments presently advanced by petitioner on the issues raised herein are but a mere reiteration if not repetition of the very same arguments it has already raised in the two (2) earlier PLDT cases. For sure, the errors presently assigned are substantially the same as those in *Davao* and in *Bacolod*, all of which have been adequately addressed and passed upon by this Court in its decisions therein as well as in its *en banc* Resolution in *Davao*.

In *PLDT vs. City of Davao*, and again in *PLDT vs. City of Bacolod, et al.*, this Court has interpreted Section 23 of Rep. Act No. 7925. There, we ruled that Section 23 does not operate to exempt PLDT from the payment of franchise tax. We quote what we have said in *Davao* and reiterated in *Bacolod*.

In sum, it does not appear that, in approving §23 of R.A. No. 7925, Congress intended it to operate as a blanket tax exemption to all telecommunications entities. Applying the rule of strict construction of laws granting tax exemptions and the rule that doubts should be resolved in favor of municipal corporations in interpreting statutory provisions on municipal taxing powers, we hold that §23 of R.A. No. 7925 cannot be considered as having amended petitioner's franchise so as to entitle it to exemption from the imposition of local franchise taxes. Consequently, we hold that petitioner is liable to pay local franchise taxes in the amount of P3,681,985.72 for the period covering the first to the fourth quarter of