

THIRD DIVISION

[G.R. NO. 149179, August 15, 2005]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
PETITIONER, VS. CITY OF BACOLOD, FLORENTINO T. GUANCO,
IN HIS CAPACITY AS THE CITY TREASURER OF BACOLOD CITY,
AND ANTONIO G. LACZI, IN HIS CAPACITY AS THE CITY LEGAL
OFFICER OF BACOLOD CITY, RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

In this appeal by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Philippine Long Distance Telephone Company (PLDT), seeks the reversal and setting aside of the **July 23, 2001 decision^[1]** of the Regional Trial Court at Bacolod City, Branch 42, dismissing its petition in **Civil Case No. 99-10786**, an action to declare petitioner as exempt from the payment of franchise and business taxes sought to be imposed and collected by the respondent City of Bacolod.

The material facts are not at all disputed:

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,^[2] 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 cities 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.

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SEC. 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees, and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

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.

Aiming to level the playing field among telecommunication companies, Congress 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, thus:

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.

In August 1995, the City of Bacolod, invoking its authority under Section 137, in relation to Section 151 and Section 193, *supra*, of the Local Government Code, made an assessment on PLDT for the payment of franchise tax due the City.

Complying therewith, PLDT began paying the City franchise tax from the year 1994 until the third quarter of 1998, at which time the total franchise tax it had paid the City already amounted to P2,770,696.37.

On June 2, 1998, the Department of Finance through 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* (Rep. Act. No. 7925), 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 7925, quoted hereunder, which was approved on March 1, 1995 provides for the equality of treatment in the telecommunications industry:

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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' proviso of RA 7025 [sic].^[3]

Invoking the aforequoted ruling, PLDT then stopped paying local franchise and business taxes to Bacolod City starting the fourth quarter of 1998.

The controversy came to a head-on when, sometime in 1999, PLDT applied for the issuance of a Mayor's Permit but the City of Bacolod withheld issuance thereof pending PLDT's payment of its franchise tax liability in the following amounts: (1) P358,258.30 for the fourth quarter of 1998; and (b) P1,424,578.10 for the year 1999, all in the aggregate amount of P1,782,836.40, excluding surcharges and interest, about which PLDT was duly informed by the City Treasurer via a 5th Indorsement dated March 16, 1999 for PLDT's "appropriate action".^[4]

In time, PLDT filed a protest^[5] with the Office of the City Legal Officer, questioning the assessment and at the same time asking for a refund of the local franchise taxes it paid in 1997 until the third quarter of 1998.

In a reply-letter dated March 26, 1999,^[6] City Legal Officer Antonio G. Laczi denied the protest and ordered PLDT to pay the questioned assessment.

Hence, on May 14, 1999, in the Regional Trial Court at Bacolod City, PLDT filed its petition^[7] in **Civil Case No. 99-10786**, therein praying for a judgment declaring it

as exempt from the payment of local franchise and business taxes; ordering the respondent City to henceforth cease and desist from assessing and collecting said taxes; directing the City to issue the Mayor's Permit for the year 1999; and requiring it to refund the amount of P2,770,606.37, allegedly representing overpaid franchise taxes for the years 1997 and 1998 with interest until fully paid.

In time, the respondent City filed its Answer/Comment to the petition,^[8] basically maintaining that Section 137 of the Local Government Code remains as the operative law despite the enactment of the *Public Telecommunications Policy Act of the Philippines* (Rep. Act No. 7925), and accordingly prayed for the dismissal of the petition.

In the ensuing pre-trial conference, the parties manifested that they would not present any testimonial evidence, and merely requested for time to file their respective memoranda, to which the trial court acceded.

Eventually, in the herein assailed **decision dated July 23, 2001**,^[9] the trial court dismissed PLDT's petition, thus:

WHEREFORE, premises considered, the petition should be, as it is hereby DISMISSED. No costs.

SO ORDERED.

Therefrom, PLDT came to this Court via the present recourse, imputing the following errors on the part of the trial court:

5.01.a. THE LOWER COURT ERRED IN SUSTAINING RESPONDENTS' POSITION THAT SECTION 137 OF THE LOCAL GOVERNMENT CODE, WHICH, IN RELATION TO SECTION 151 THEREOF, ALLOWS RESPONDENT CITY TO IMPOSE THE FRANCHISE TAX, IS APPLICABLE IN THIS CASE.

5.01.b. 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 (PUBLIC TELECOMMUNICATIONS POLICY ACT), TAKING INTO ACCOUNT THE FRANCHISES OF GLOBE TELECOM, INC., (GLOBE) (REPUBLIC ACT NO. 7229) AND SMART COMMUNICATIONS, INC. (SMART) (REPUBLIC ACT NO. 7294), WHICH WERE ENACTED SUBSEQUENT TO THE LOCAL GOVERNMENT CODE, NO FRANCHISE TAXES MAY BE IMPOSED ON PETITIONER BY RESPONDENT CITY.

5.01.c. 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.d. THE LOWER COURT ERRED IN DISMISSING THE PETITION BELOW.

As we see it, the only question which commends itself for our resolution is, whether or not Section 23 of Rep. Act No. 7925, also called the "most-favored-treatment" clause, operates to exempt petitioner PLDT from the payment of franchise tax imposed by the respondent City of Bacolod.

Contrary to petitioner's claim, the issue thus posed is not one of "first impression" insofar as this Court is concerned. For sure, this is not the first time for petitioner PLDT to invoke the jurisdiction of this Court on the same question, *albeit* involving another city.

In *PLDT vs. City of Davao*,^[10] this Court has had the occasion to interpret 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 imposed upon it by the City of Davao:

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 1999 and that it is not entitled to a refund of taxes paid by it for the period covering the first to the third quarter of 1998.^[11]

Explains this Court in the same case:

To begin with, tax exemptions are highly disfavored. The reason for this was explained by this Court in *Asiatic Petroleum Co. v. Llanes*, in which it was held:

. . . Exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right. . . As was said by the Supreme Court of Tennessee in *Memphis vs. U. & P. Bank* (91 Tenn., 546, 550), 'The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden must justify his claim by the clearest grant of organic or statute law.' Other utterances equally or more emphatic come readily to hand from the highest authority. In *Ohio Life Ins. and Trust Co. vs. Debolt* (16 Howard, 416), it was said by Chief Justice Taney, that the right of taxation will not be held to have been surrendered, 'unless the intention to surrender is manifested by words too plain to be mistaken.' In the case of the *Delaware Railroad Tax* (18 Wallace, 206, 226), the Supreme Court of the United States said that the surrender, when claimed, must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power. If a doubt arises as to the intent of the legislature, that doubt must be solved