449 Phil. 233

THIRD DIVISION

[G.R. No. 149110, April 09, 2003]

NATIONAL POWER CORPORATION, PETITIONER, VS. CITY OF CABANATUAN, RESPONDENT.

D E C I S I O N

PUNO, J.:

This is a petition for review[1] of the Decision[2] and the Resolution[3] of the Court of Appeals dated March 12, 2001 and July 10, 2001, respectively, finding petitioner National Power Corporation (NPC) liable to pay franchise tax to respondent City of Cabanatuan.

Petitioner is a government-owned and controlled corporation created under Commonwealth Act No. 120, as amended.[4] It is tasked to undertake the "development of hydroelectric generations of power and the production of electricity from nuclear, geothermal and other sources, as well as, the transmission of electric power on a nationwide basis."[5] Concomitant to its mandated duty, petitioner has, among others, the power to construct, operate and maintain power plants, auxiliary plants, power stations and substations for the purpose of developing hydraulic power and supplying such power to the inhabitants.[6]

For many years now, petitioner sells electric power to the residents of Cabanatuan City, posting a gross income of P107,814,187.96 in 1992.[7] Pursuant to section 37 of Ordinance No. 165-92,[8] the respondent assessed the petitioner a franchise tax amounting to P808,606.41, representing 75% of 1% of the latter's gross receipts for the preceding year.[9]

Petitioner, whose capital stock was subscribed and paid wholly by the Philippine Government,[10] refused to pay the tax assessment. It argued that the respondent has no authority to impose tax on government entities. Petitioner also contended that as a non-profit organization, it is exempted from the payment of all forms of taxes, charges, duties or fees[11] in accordance with sec. 13 of Rep. Act No. 6395, as amended, *viz*:

> "Sec.13. *Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities.*- The Corporation shall be non-profit and shall devote all its return from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation is hereby exempt:

(a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

(c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

(d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power." [12]

The respondent filed a collection suit in the Regional Trial Court of Cabanatuan City, demanding that petitioner pay the assessed tax due, plus a surcharge equivalent to 25% of the amount of tax, and 2% monthly interest.[13] Respondent alleged that petitioner's exemption from local taxes has been repealed by section 193 of Rep. Act No. 7160,[14] which reads as follows:

"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. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."

On January 25, 1996, the trial court issued an Order[15] dismissing the case. It ruled that the tax exemption privileges granted to petitioner subsist despite the passage of Rep. Act No. 7160 for the following reasons: (1) Rep. Act No. 6395 is a particular law and it may not be repealed by Rep. Act No. 7160 which is a general law; (2) section 193 of Rep. Act No. 7160 is in the nature of an implied repeal which is not favored; and (3) local governments have no power to tax instrumentalities of the national government. Pertinent portion of the Order reads:

"The question of whether a particular law has been repealed or not by a subsequent law is a matter of legislative intent. The lawmakers may expressly repeal a law by incorporating therein repealing provisions which expressly and specifically cite(s) the particular law or laws, and portions thereof, that are intended to be repealed. A declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number or title is repealed is an express repeal; all others are implied repeal. Sec. 193 of R.A. No. 7160 is an implied repealing clause because it fails to identify the act or acts that are intended to be repealed. It is a well-settled rule of statutory construction

that repeals of statutes by implication are not favored. The presumption is against inconsistency and repugnancy for the legislative is presumed to know the existing laws on the subject and not to have enacted inconsistent or conflicting statutes. It is also a well-settled rule that, generally, general law does not repeal a special law unless it clearly appears that the legislative has intended by the latter general act to modify or repeal the earlier special law. Thus, despite the passage of R.A. No. 7160 from which the questioned Ordinance No. 165-92 was based, the tax exemption privileges of defendant NPC remain.

Another point going against plaintiff in this case is the ruling of the Supreme Court in the case of Basco vs. Philippine Amusement and Gaming Corporation, 197 SCRA 52, where it was held that:

> 'Local governments have no power to tax instrumentalities of the National Government. PAGCOR is a government owned or controlled corporation with an original charter, PD 1869. All of its shares of stocks are owned by the National Government. xxx Being an instrumentality of the government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subjected to control by mere local government.'

Like PAGCOR, NPC, being a government owned and controlled corporation with an original charter and its shares of stocks owned by the National Government, is beyond the taxing power of the Local Government. Corollary to this, it should be noted here that in the NPC Charter's declaration of Policy, Congress declared that: 'xxx (2) the total electrification of the Philippines through the development of power from all services to meet the needs of industrial development and dispersal and needs of rural electrification are primary objectives of the nations which shall be pursued coordinately and supported by all instrumentalities and agencies of the government, including its financial institutions.' (underscoring supplied). To allow plaintiff to subject defendant to its tax-ordinance would be to impede the avowed goal of this government instrumentality.

Unlike the State, a city or municipality has no inherent power of taxation. Its taxing power is limited to that which is provided for in its charter or other statute. Any grant of taxing power is to be construed strictly, with doubts resolved against its existence.

From the existing law and the rulings of the Supreme Court itself, it is very clear that the plaintiff could not impose the subject tax on the defendant." [16]

On appeal, the Court of Appeals reversed the trial court's Order[17] on the ground that section 193, in relation to sections 137 and 151 of the LGC, expressly withdrew the exemptions granted to the petitioner.[18] It ordered the petitioner to pay the respondent city government the following: (a) the sum of P808,606.41 representing the franchise tax due based on gross receipts for the year 1992, (b) the tax due every year thereafter based in the gross receipts earned by NPC, (c) in all cases, to

pay a surcharge of 25% of the tax due and unpaid, and (d) the sum of P 10,000.00 as litigation expense.[19]

On April 4, 2001, the petitioner filed a Motion for Reconsideration on the Court of Appeal's Decision. This was denied by the appellate court, viz:

> "The Court finds no merit in NPC's motion for reconsideration. Its arguments reiterated therein that the taxing power of the province under Art. 137 (sic) of the Local Government Code refers merely to private persons or corporations in which category it (NPC) does not belong, and that the LGC (RA 7160) which is a general law may not impliedly repeal the NPC Charter which is a special law—finds the answer in Section 193 of the LGC to the effect that '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 xxx are hereby withdrawn.' The repeal is direct and unequivocal, not implied.
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> IN VIEW WHEREOF, the motion for reconsideration is hereby DENIED.
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> SO ORDERED."[20]

In this petition for review, petitioner raises the following issues:

> "A. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT NPC, A PUBLIC NON-PROFIT CORPORATION, IS LIABLE TO PAY A FRANCHISE TAX AS IT FAILED TO CONSIDER THAT SECTION 137 OF THE LOCAL GOVERNMENT CODE IN RELATION TO SECTION 131 APPLIES ONLY TO PRIVATE PERSONS OR CORPORATIONS ENJOYING A FRANCHISE.
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> B. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT NPC'S EXEMPTION FROM ALL FORMS OF TAXES HAS BEEN REPEALED BY THE PROVISION OF THE LOCAL GOVERNMENT CODE AS THE ENACTMENT OF A LATER LEGISLATION, WHICH IS A GENERAL LAW, CANNOT BE CONSTRUED TO HAVE REPEALED A SPECIAL LAW.
>
> C. THE COURT OF APPEALS GRAVELY ERRED IN NOT CONSIDERING THAT AN EXERCISE OF POLICE POWER THROUGH TAX EXEMPTION SHOULD PREVAIL OVER THE LOCAL GOVERNMENT CODE."[21]

It is beyond dispute that the respondent city government has the authority to issue Ordinance No. 165-92 and impose an annual tax on "businesses enjoying a franchise," pursuant to section 151 in relation to section 137 of the LGC, *viz*:

"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.

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein." (*emphasis supplied*)

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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."

Petitioner, however, submits that it is not liable to pay an annual franchise tax to the respondent city government. It contends that sections 137 and 151 of the LGC in relation to section 131, limit the taxing power of the respondent city government to private entities that are engaged in trade or occupation for profit.[22]

Section 131 (m) of the LGC defines a **"franchise"** as "a right or privilege, affected with public interest which is conferred upon **private persons or corporations**, under such terms and conditions as the government and its political subdivisions may impose in the interest of the public welfare, security and safety." From the phraseology of this provision, the petitioner claims that the word "private" modifies the terms "persons" and "corporations." Hence, when the LGC uses the term "franchise," petitioner submits that it should refer specifically to franchises granted to private natural persons and to private corporations.[23] Ergo, its charter should not be considered a "franchise" for the purpose of imposing the franchise tax in question.

On the other hand, section 131 (d) of the LGC defines **"business"** as "trade or commercial activity regularly engaged in as means of livelihood or with a view to profit." Petitioner claims that it is not engaged in an activity for profit, in as much as its charter specifically provides that it is a "non-profit organization." In any case, petitioner argues that the accumulation of profit is merely incidental to its operation; all these profits are required by law to be channeled for expansion and improvement of its facilities and services.[24]