

SECOND DIVISION

[G.R. No. 143867, August 22, 2001]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
PETITIONER, VS. CITY OF DAVAO AND ADELAIDA B.
BARCELONA, IN HER CAPACITY AS THE CITY TREASURER OF
DAVAO, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure of the resolution,^[1] dated June 23, 2000, of the Regional Trial Court, Branch 13, Davao City, affirming the tax assessment of petitioner and the denial of its claim for tax refund by the City Treasurer of Davao.

The facts are as follows:

On January 1999, petitioner Philippine Long Distance Telephone Co., Inc. (PLDT) applied for a Mayor's Permit to operate its Davao Metro Exchange. Respondent City of Davao withheld action on the application pending payment by petitioner of the local franchise tax in the amount of P3,681,985.72 for the first to the fourth quarter of 1999.^[2] In a letter dated May 31, 1999,^[3] petitioner protested the assessment of the local franchise tax and requested a refund of the franchise tax paid by it for the year 1997 and the first to the third quarters of 1998. Petitioner contended that it was exempt from the payment of franchise tax based on an opinion of the Bureau of Local Government Finance (BLGF), dated June 2, 1998, which reads as follows:

PLDT:

Section 12 of RA 7082 provides as follows:

"SEC. 12. 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 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 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 . . . "

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:

"SEC. 23. Equality of Treatment in the Telecommunications Industry. ³/₄ 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 service authorized by the franchise." (Underscoring supplied.)

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 (sic), respectively, of the LGC, 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).^[4]

In a letter dated September 27, 1999, respondent Adelaida B. Barcelona, City Treasurer of Davao, denied the protest and claim for tax refund of petitioner,^[5] citing the legal opinion of the City Legal Officer of Davao and Art. 10, §1 of Ordinance No. 230, Series of 1991, as amended by Ordinance No. 519, Series of 1992, which provides:

Notwithstanding any exemption granted by any law or other special law, there is hereby imposed a tax on businesses enjoying a franchise, at a rate of Seventy-five percent (75%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the income or receipts realized within the territorial jurisdiction of Davao City.^[6]

Petitioner received respondent City Treasurer's order of denial on October 1, 1999. On November 3, 1999, it filed a petition in the Regional Trial Court of Davao seeking a reversal of respondent City Treasurer's denial of petitioner's protest and the refund of the franchise tax paid by it for the year 1998 in the amount of P2,580,829.23. The petition was filed pursuant to §§195 and 196 of the Local Government Code (R.A. No. 7160). No claim for refund of franchise taxes paid in 1997 was made as the same had already prescribed under §196 of the LGC, which provides that claims for the refund of taxes paid under it must be made within two (2) years from the date of payment of such taxes.^[7]

The trial court denied petitioner's appeal and affirmed the City Treasurer's decision. It ruled that the LGC withdrew all tax exemptions previously enjoyed by all persons and authorized local government units to impose a tax on businesses enjoying a franchise notwithstanding the grant of tax exemption to them. The trial court likewise denied petitioner's claim for exemption under R.A. No. 7925 for the following reasons: (1) it is clear from the wording of §193 of the Local Government Code that Congress did not intend to exempt any franchise holder from the payment of local franchise and business taxes; (2) the opinion of the Executive Director of the Bureau of Local Government Finance to the contrary is not binding on respondents; and (3) petitioner failed to present any proof that Globe and Smart were enjoying local franchise and business tax exemptions.

Hence, this petition for review based on the following grounds:

- I. THE LOWER COURT ERRED IN APPLYING SECTION 137 OF THE LOCAL GOVERNMENT CODE, WHICH ALLOWS A CITY TO IMPOSE A FRANCHISE TAX, AND SECTION 193 THEREOF, WHICH PROVIDES FOR WITHDRAWAL OF TAX EXEMPTION PRIVILEGES.
- II. THE LOWER COURT ERRED IN NOT HOLDING THAT UNDER PETITIONER'S FRANCHISE, AS IMPLICITLY AMENDED AND EXPANDED BY SECTION 23 OF REPUBLIC ACT NO. 7925 (PUBLIC TELECOMMUNICATIONS POLICY ACT), TAKING INTO ACCOUNT THE FRANCHISES OF GLOBE TELECOM, INC. AND SMART COMMUNICATIONS, INC., WHICH WERE ENACTED SUBSEQUENT TO THE LOCAL GOVERNMENT CODE, NO FRANCHISE AND BUSINESS TAXES MAY BE IMPOSED ON PETITIONER BY RESPONDENT CITY.
- III. THE LOWER COURT ERRED IN NOT GIVING WEIGHT TO THE RULING OF THE BUREAU OF LOCAL GOVERNMENT FINANCE THAT PETITIONER IS EXEMPT FROM THE PAYMENT OF FRANCHISE AND BUSINESS TAXES, AMONG OTHERS, IMPOSABLE BY LOCAL GOVERNMENT UNITS UNDER THE LOCAL GOVERNMENT CODE.

First. The LGC, which took effect on January 1, 1992, provides:

SEC. 137. *Franchise Tax.* ^{3/4} 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.^[8]

SEC. 193. *Withdrawal of Tax Exemption Privileges.* ^{3/4} 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.

The trial court held that, under these provisions, all exemptions granted to all persons, whether natural and juridical, including those which in the future might be granted, are withdrawn unless the law granting the exemption expressly states that the exemption also applies to local taxes. We disagree. Sec. 137 does not state that it covers future exemptions. In *Philippine Airlines, Inc. v. Edu*,^[9] where a provision of the Tax Code enacted on June 27, 1968 (R.A. 5431) withdrew the exemption enjoyed by PAL, it was held that a subsequent amendment of PAL's franchise, exempting it from all other taxes except that imposed by its franchise, again entitled PAL to exemption from the date of the enactment of such amendment. The Tax Code provision withdrawing the tax exemption was not construed as prohibiting future grants of exemptions from all taxes.

Indeed, the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy. The legal effect of the constitutional grant to local governments simply means that in interpreting statutory provisions on municipal taxing powers, doubts must be resolved in favor of municipal corporations.^[10]

The question, therefore, is whether, after the withdrawal of its exemption by virtue of §137 of the LGC, petitioner has again become entitled to exemption from local franchise tax. Petitioner answers in the affirmative and points to §23 of R.A. No. 7925, in relation to the franchises of Globe Telecom (Globe) and Smart Communications, Inc. (Smart), which allegedly grant the latter exemption from local franchise taxes.

To begin with, tax exemptions are highly disfavored. The reason for this was explained by this Court in *Asiatic Petroleum Co. v. Llanes*,^[11] 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 in favor of the State. In *Erie Railway Company vs. Commonwealth of Pennsylvania* (21 Wallace, 492, 499), Mr. Justice Hunt, speaking of exemptions, observed that a State cannot strip itself of the most essential power of taxation by doubtful words. "It cannot, by ambiguous language, be deprived of this highest attribute of sovereignty." In *Tennessee vs. Whitworth* (117 U. S., 129, 136), it was said: "In all cases of this kind the question is as to the intent of the legislature, the presumption always being against any surrender of the taxing power." In *Farrington vs. Tennessee and County of Shelby* (95 U. S., 679, 686), Mr. Justice Swayne said: ". . . When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported."

The 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 if it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.^[12]

In the present case, petitioner justifies its claim of tax exemption by strained inferences. First, it cites R.A. No. 7925, otherwise known as the Public Telecommunications Policy Act of the Philippines, §23 of which reads:

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 service authorized by the franchise.