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LINGAYEN GULF ELECTRIC
POWER CO., INC.,
Petitioner

versus C. T. A. Case No. 581

MELECIO R. DOMINGO,
as Commissioner of
Internal Revenue,
Respondent.
x - - - - - - - - - - x

Sept. 15, 1964

LINGAYEN GULF ELECTRIC
POWER CO., INC.,
Petitioner

versus C. T. A. Case No. 1302

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - x

D E C I S I O N

These cases involve deficiency assessments for percentage, franchise and fixed taxes, as well as surcharges thereon, for the years 1946 through 1954 and 1959 through 1961, inclusive. Upon agreement of the parties, they were heard jointly.

It appears that since 1946, petitioner Lingayen Gulf Electric Power Co., Inc. has been operating an electric power plant, serving the municipalities of Lingayen and Binmaley pursuant to franchises granted in Municipal Resolutions numbered 14 and 25 (Exhs. 1 & 2, BIR rec. pp. 1-13) dated June 29 and July 1, 1946, respectively, which were adopted by authority of Act No. 667, as amended, of the Philippine Commission. As required, said resolutions were subsequently approved by the Provincial Board of Pangasinan, the Public Service Commission and the President of the Philippines.

Sections 10 of Resolutions numbered 14 and 25 have identical provisions which state in part, to wit:

> "10. x x x The said grantee, in consideration of the franchise hereby granted, shall pay quarterly into the provincial treasury of Pangasinan one per centum of the gross earnings obtained thru this privilege during the first twenty years and two per centum during the remaining fifteen years of the life of said franchise."

For the periods January 1, 1946 to December 31, 1954 and January 1, 1959 to December 31, 1961, petitioner had gross earnings of ₱628,405.18 and ₱502,243.-30, respectively, on which it paid the following franchise taxes:

1946 . . .	₱ 942.35
1947 . . .	1,433.04
1948 . . .	4,111.38
1949 . . .	780.79
1950 . . .	2,744.85
1951 . . .	1,124.19
Total . .	₱11,136.60
1959 . . .	7,078.34
1960 . . .	7,051.49
1961 . . .	8,088.83
Total . .	₱22,218.66

(Exhs. 4, BIR rec. pp. 21-22 and BB, CTA rec. pp. 88-89.) The gross earnings include accounts receivable on the sale of electric power. No franchise tax was paid for the years 1952, 1953 and 1954, although it had gross receipts in the sums of:

1952 . . . ₱ 66,748.69
1953 . . . 69,503.54
1954 . . . 87,252.59

exclusive of amounts representing deposits on electric meters, sales of electrical materials and proceeds from loans (Exh. AA, BIR rec. p. 72).

On the basis of the audit report of the General Auditing Office, respondent, on November 21, 1955, assessed against petitioner deficiency franchise tax and surcharge for the years 1946 to 1954, inclusive, itemized as follows:

Period Covered	Gross Receipts	Rate	Tax Due
1/1 to 9/30/46	₱42,442.87	1½%	₱ 636.64
10/1 to 12/31/46	23,454.50	2%	469.09
1/1 to 12/31/47	82,689.42	2%	1,653.79
1/1 to 2/29/48	13,326.75	2%	266.54
3/1 to 12/31/48	66,470.25	5%	3,323.51
1/1 to 12/31/49	30,186.24	5%	1,509.31
1/1 to 12/31/50	58,572.46	5%	2,928.62
1/1 to 12/31/51	66,863.52	5%	3,343.18
1/1 to 12/31/52	73,652.91	5%	3,682.65
1/1 to 12/31/53	74,605.90	5%	3,730.30
1/1 to 12/31/54	96,140.36	5%	4,807.02
T o t a l . . .	₱628,405.18		₱26,350.65
Deduct: Tax already paid			11,136.60
Deficiency			₱15,214.05
Add: 25% surcharge thereon			3,803.51

For late payment on the following:

1st & 2nd qtr., 1946 . . .	₱ 6.44	
1st qtr., 1946 additional	67.71	
2nd qtr., 1946 additional	157.49	
3rd " " "	6.02	
1st " 1947	342.73	
4th " 1950	212.88	
1st " 1951	190.13	
Total	₱ 983.40	
25% surcharge thereon		245.85
Fixed tax from 1946 to 1948		30.00
TOTAL AMOUNT DUE		₱19,293.41

(Exh. 6, BIR rec. p. 32)

On August 21, 1962, another assessment was issued by respondent against petitioner for deficiency franchise tax and surcharge for the period from January 1, 1959 to December 31, 1961, to wit:

Gross earnings January 1, 1959 to December 31, 1961	₱502,243.30	
5% Tax due thereon		₱25,112.15
Less tax already paid		22,218.66
Deficiency franchise tax		₱ 2,893.49
25% Surcharge		723.37
		₱ 3,616.86

(Exh. 19, BIR rec. p. 9)

The increase in franchise tax resulted from the addition of the accounts receivable to the gross receipts.

In resumé, respondent found that petitioner had a total gross receipt of ₱1,130,648.48 for the periods January 1, 1946 to December 31, 1954 and January 1, 1959 to December 31, 1961.

Petitioner contested respondent's deficiency assessment, dated November 21, 1951. On August 6, 1958, it received the denial of its request to cancel the assessment. Whereupon, it filed a motion for reconsideration on August 9, 1958 which was also denied. Petitioner received the denial on September 11, 1958. On September 19, 1958, it filed the petition for review in CTA Case No. 581.

Likewise, petitioner protested the deficiency assessment, dated August 21, 1962. Its request having been denied, it filed the petition for review in CTA

Case No. 1302 on November 29, 1962.

While both cases were pending hearing before this Court, Republic Act No. 3843, which granted to petitioner a legislative franchise to operate an electric light, heat and power system in the municipalities of Lingayen and Binmaley, Province of Pangasinan, was approved. Section 4 of said Republic Act provides:

> "SEC. 4. In consideration of the franchise and rights hereby granted, the grantee shall pay into the Internal Revenue Office of each municipality in which it is supplying electric current to the public under this franchise, a tax equal to two _per centum_ of the gross receipts from electric current sold or supplied under this franchise. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes and/or licenses of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial, or national, now or in the future, on its poles, wires, insulators, switches, transformers and structures, installations, conductors, and accessories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes and/or licenses the grantee is hereby expressly exempted and effective further upon the date the original franchise was granted, no other tax and/or licenses other than the franchise tax of two _per centum_ on the gross receipts as provided for in the original franchise shall be collected, any provision of law to the contrary notwithstanding."

The issues raised by the parties are:

(1) Whether or not the right of respondent to assess deficiency franchise tax for the period from

January 1, 1946 to November 21, 1950 has prescribed;

(2) Whether or not Section 4 of Republic Act No. 3843 is unconstitutional;

(3) Whether or not Republic Act No. 3843 should be given retroactive effect; and

(4) Whether or not petitioner's gross receipts or gross earnings, for purposes of imposing the franchise tax, should include accounts receivable, deposit on electric meters, sale of electrical materials and proceeds from loans.

Respondent, in his answer, raised the issue of jurisdiction in that the petition for review in CTA Case No. 581 was filed beyond the reglementary period prescribed by law. However, he did not press the issue in his memorandum and we take it that he has abandoned said defense. Moreover, from the facts of the case, it appears that petitioner consumed only eleven days out of the 30 days allowed it by Section 11 of Republic Act No. 1125.

We will first consider the issue of whether or not Republic Act No. 3843 is unconstitutional.

Respondent contends that Republic Act No. 3843, insofar as it provides for the payment by petitioner of franchise tax of 2% of the gross receipts, violates the constitutional provision on the "uniformity and equality of taxation." It is argued that before the passage of Republic Act No. 3843, petitioner was a grantee of municipal franchises pursuant to Act No. 667 of the Philippine Commission and hence, was subject to the 5% franchise tax imposed in Section 259 of the National Internal Revenue Code. But Republic Act No. 3843 took petitioner from the class to which it belonged and exempted it from the provisions of said Section 259. The exemption makes the law discriminatory and violates the rule of uniformity of taxation.

Respondent's contention is without merit. Petitioner's legislative franchise (R. A. No. 3843) was granted subject to the terms and conditions established in Act No. 3636, as amended by Commonwealth Act No. 132. This condition identifies its power plant as falling within that class of power plants created by Act No. 3636, as amended, which operates indiscriminately upon petitioner's power plant and others circumscribed within this class. Republic Act No. 3843 merely transferred petitioner's power plant from that class provided for in Act No. 667, as amended, to which it belonged until the approval of Republic Act No. 3843, and placed it within the class installed by Act No. 3636, as amended. In other words, it only effected the transfer of a taxable property from one class to another.

In the alternative, respondent Commissioner claims that Sec. 4 of Republic Act No. 3843, which fixes the franchise tax on petitioner's gross receipts at 2%, cannot have a retroactive effect. It is urged that this statutory provision is in the nature of a tax exemption, and tax exemptions operate prospectively, not retroactively; that taxes already assessed before the exempting law are collectible; and to give Sec. 4 of Republic Act No. 3843 a retroactive effect would create confusion and litigations.

Respondent's contention is of no moment. The question of whether a statute operates retrospectively, or prospectively only, is one of legislative intent (Hasset v. Welch, 303 US 303, 82 L ed 858; Shwab v. Doyle, 258 US 529, 66 L ed 747). Article 4 of our Civil Code states:

> "Art. 4. Laws shall have no retroactive effect, unless the contrary is provided."

In view of this codal provision, there should be no question that Section 4 of Republic Act No. 3843 retroacts to the date when petitioner's original franchises were granted in 1946 for it is so expressly provided therein. However, it is a long accepted doctrine that the rule giving a statute a retroactive effect is subject to two exceptions, namely: (1) when the retroactivity of a penal statute will make it an *ex post facto* law (US vs. Diaz Conde, 42 Phil. 766; US vs. Gomez, 12 Phil. 279), and (2) when the retroactive effect of the statute will constitute an impairment of the obligation of contract (Asiatic Petroleum vs. Llanes, 49 Phil. 466). Republic Act No. 3843 does not come within these two exceptions.

As to the wisdom of Congress in giving retroactivity to Section 4 of Republic Act No. 3843, we are wanting in authority to pass upon the same (People vs. Cayat, 68 Phil. 12). Courts are not concerned with the wisdom, efficacy or morality of laws, their only function being to interpret them, and if not in disharmony with the Constitution, to apply them (People vs. Limcaco, G. R. No. L-3090, January 9, 1951).

In fine, petitioner had a total gross receipt in the sum of ₱1,130,648.48 as per findings of respondent's examiners, during the periods covered by the instant cases, that is, January 1, 1946 to December 31, 1954, and January 1, 1959 to December 31, 1961. Imposing thereon the 2% franchise tax as provided for in Section 4 of Republic Act No. 3843, the total amount due from petitioner is ₱22,612.96. During the same periods petitioner paid the amount of ₱34,134.36 which is very much more than the amount rightfully due from it.

Having thus ruled, we find it unnecessary to pass upon the first and last issues.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decisions appealed from are hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, September 15, 1964.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge