Lilo

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE TELEGRAPH &
TELEPHONE CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2409

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

2/12/76

D E C I S I O N

The petitioner is seeking recovery of the sum of P967.50, representing the fixed annual tax from the second semester of 1970 to 1971, which was paid by it as grantee of a franchise under Section 182(A) (3) (gg) of the National Internal Revenue Code.

Petitioner is a domestic corporation operating telecommunications services under franchise granted by Republic Act No. 4161, as amended by Republic Act No. 5048. Section 14 of said franchise, as amended, provides:

> "Sec. 14. This franchise shall not be interpreted to mean an exclusive grant of the privilege herein provided for; however, in the event of any competing individual, partnership or corporation, receiving from the Congress of the Philippines a similar permit or franchise with terms and/or provisions more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms, and/or provision shall, ipso facto become part of the terms and/or provision hereof, and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation."

It is alleged that since petitioner's franchise provides that the more favorable terms and conditions contained in franchises granted to competing corporations operating telecommunications services shall likewise apply to petitioner, then the tax exemption granted to Radio Communications, Inc. under Republic Act No. 4054 and to Clavecilla Radio System under Republic Act No. 4540 should also be made applicable to petitioner. Section 14, Republic Act No. 4054, the franchise of Radio Communications, Inc., provides:

> "Sec. 14.- In consideration of the franchise and rights granted and any provisions of law to the contrary notwithstanding, the grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, co-partnerships, private, public or quasi-public associations, corporations, or joint stock companies, on real estate, buildings and other personal property except radio equipment, machinery and spare parts needed in connection with the business of the grantee, which shall be exempt from customs duties, tariffs and other taxes, as well as those properties declared exempt in this section. In consideration of the franchise, a tax equal to one and one-half per centum of all gross receipts from the business transacted under this franchise by the grantee shall be paid to the Treasurer of the Philippines, each year, within ten days after the audit and approval of the account as prescribed in this Act. Said tax shall be in lieu of any and all taxes of any kind, nature or description

> levied, established or collected by any authority whatsoever, municipal, provincial or national from which taxes the grantee is hereby expressly exempted."

On the other hand, respondent claims that there is nothing in its franchise which clearly provides for exemption of petitioner from all taxes, except the franchise tax provided therein, so that it has no right to claim exemption solely by implication, citing numerous cases which need not here be mentioned.

Section 14 of Republic Act No. 4161, as amended, provides that "in the event of any competing individual, partnership or corporation, receiving from the Congress of the Philippines a similar permit or franchise with terms and/or provisions more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such terms, and/or provisions shall ipso facto become part of the terms and/or provision hereof, and shall operate equally in favor of the grantee as in the case of said competing individual partnership or corporation." This law is too clear to leave no room for doubt that if a competing corporation enjoys tax exemption, as has been shown in this case, petitioner should also enjoy the same exemption in order to place it "on equal footing and not be placed at a disadvantage with its competitors." (See Explanatory Note of H. No. 7289, which became Rep. Act No. 5048.)

There can be no dispute over the time-honored principle that tax exemption laws should be construed strictissimi juris, and that for a tax exemption to exist, it must be so categorically declared in words that admit of no doubt. There is, however, no doubt in our minds that the franchise of petitioner granting it exemption from the tax here in question is too clear and unequivocal to preclude any speculation as to the real intent of Congress on the matter. Section 14 of Republic Act No. 4054 expressly exempts Radio Communications, Inc. from all taxes, except the franchise tax. This law has been made applicable to petitioner by express provision of Section 14 of Republic Act No. 4161, as amended by Republic Act No. 5048. Therefore, by express provision of Section 14 of Republic Act No. 4054, in relation to Section 14 of Republic Act No. 4161, as amended, petitioner is likewise exempt from all taxes, except the franchise tax. Obviously, the doubt as to the exemption from taxation of petitioner has been created by a too stilted interpretation of the law by respondent. This finds support in an opinion of the Secretary of Finance, dated October 14, 1971, which reads as follows:

> "Anent your letter of September 8, 1971 requesting reconsideration of the ruling of this Department denying exemption from duties and taxes on importations of the Philippine Telegraph & Telephone Corporation (P.T.& T.), on the ground that the 'ipso facto' provision found in any franchise should only be given prospective operation, please be informed that, after a careful restudy of the case, this Department believes, with you, that, from the explanatory notes to House No. 7289 which later became Republic Act No. 5048, there is an apparent legislative intention to extend to PT&T the same tax exemption privileges previously granted to the Radio Communications of the Philippines, Inc. and the Clavecilla Radio System.
>
> Accordingly, to give effect to the aforesaid manifest legislative intention, insofar as the Philippine Telegraph & Telephone Corporation only is concerned, this Department reconsiders its former ruling, and hereby grants the said corporation exemption from customs duties, tariffs and other taxes on importations of radio equipment, machinery and spare parts needed in connection with the business of the grantee, under Section 14 of its franchise, Republic Act No. 4161, as amended." [1]

WHEREFORE, the sum of ₱967.50 having been paid erroneously, respondent is hereby ordered to refund the same to petitioner within thirty days from the date this decision becomes final. No costs.

---

[1] See page 3, BIR record.

DECISION -
C.T.A. CASE NO. 2409

SO ORDERED.

Quezon City, February 2, 1976

ROMAN M. UMALI
Presiding Judge

I CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge