REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

BOHOL LIGHT COMPANY, INC.,
Petitioner,

CTA AC NO. 288

- versus -

Members:
RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

THE CITY GOVERNMENT OF TAGBILARAN AND THE CITY TREASURER OF TAGBILARAN,
Respondent.

Promulgated:
APR 2 9 2025
3:15 p.m.

x---x

RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is petitioner's **Motion for Reconsideration (Re: Decision dated September 10, 2024)** filed on October 17, 2024, with respondents' **Manifestation in lieu of a Comment on the Motion for Reconsideration filed by Petitioner** filed *via* licensed courier service on January 30, 2025, and received by the Court on January 31, 2025.

On September 10, 2024, the Court promulgated a Decision finding that respondents are not prevented from imposing local tax on businesses that are subject to franchise tax, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DENIED**.
>
> Accordingly, the assailed Decision dated March 31, 2016 and the Order dated November 22, 2022, both rendered by the Regional Trial Court of Tagbilaran City, Bohol- Branch 2, in Civil Case No. 8317, are **AFFIRMED**.
>
> **SO ORDERED**."

In its Motion, petitioner seeks reconsideration of the above Decision and raises the following grounds as bases its arguments, *viz*:

a) The Court erred in finding that Bohol Light Company, Inc. ("BLCI") is liable for both franchise tax and business tax under the Local Government Code and the Revenue Code of Tagbilaran City considering that BLCI is a common carrier exempt from local business tax. The Court in Division should have taken mandatory judicial notice of Section 22 of Republic Act ("R.A.") No. 9136 or the Electric Power Industry Reform Act of 2001 ("EPIRA") in relation to Section 133 (j) of the Local Government Code ("LGC") of 1991;

b) The Court erred in finding that BLCI is liable for both franchise tax and business tax under the LGC of 1991 and the Revenue Code of Tagbilaran City because BLCI should only be held liable for local franchise tax under Sections 3D.01 and 3D.02 of the Revenue Code of Tagbilaran City, subject to the limitation in Section 4(q), Rule 7 of the Implementing Rules and Regulation ("IRR") of EPIRA. Accordingly, the local franchise tax imposed on BLCI should only be on its distribution wheeling and captive market supply revenues and not on gross annual sales or receipts for the preceding year;

c) The Court erred in taking judicial notice of Section 6 of the Energy Regulatory Commission ("ERC") Resolution No. 16, Series of 2009, or the *Rules Governing the Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities* as the same was not raised as an issue in the Petition; and,

d) The Court correctly ruled that the "billing statement" is not the "notice of assessment" under Section 195 of the LGC of 1991, as stated at page 11 of the decision. The Billing Statement must therefore be nullified.

As to the first ground, petitioner asserts that it is classified as a *Distribution Utility* with a valid franchise issued by the National Electrification Commission. As a distribution utility, petitioner expounds that it is expressly categorized as a common carrier under Section 22 of R.A. No. 9136, or the EPIRA. Thus, petitioner claims that it is exempt from local business tax, in relation to Section 133(j) of R.A No. 7160, or the LGC of 1991.

Anent the second ground, petitioner insists that it is only liable for franchise tax pursuant to Section 3D.01, 3D.02 and 3D.03 of City Ordinance No. RC-001, otherwise known as *An Ordinance Enacting the Revenue Code of the City* *of Tagbilaran*. Petitioner continues that based on Sections 23 and 24 of the EPIRA, petitioner is directed, as a distribution utility, to only impose and collect ERC-approved distribution wheeling charges and connection fees from its end-users. As such, petitioner maintains that it shall pay franchise tax only on its *Distribution Wheeling* and *Captive Market Supply* revenues as provided under Section 4 (q), Rule 7 of the IRR of EPIRA, and not local business tax.

Moreover, petitioner cites the ERC Decision dated May 21, 2008 in ERC Case No. 2008-025 RC, wherein the ERC recognized the franchise taxes that petitioner paid respondents from 2002 to 2008, and allowed petitioner to recover the same from its consumers. Petitioner states the ERC reasoned that a "franchise tax is simply a pass-through charge imposed by the distribution utility to its consumers" and that the distribution utility should neither earn any additional revenue nor incur loss from the imposition of the same. Hence, petitioner submits that the Court should have afforded great weight and respect to the findings of the ERC that petitioner is only liable for franchise tax at the rate of seventy-five percent (75%) of one percent (1%) based on its distribution revenues.

As to the third ground, petitioner argues that this Court erred in taking judicial notice of Section 6 of the ERC Resolution No. 16, Series of 2009, or the *Rules Governing the Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities*, since the Court ruled on an issue that was not raised by the parties during trial. Petitioner claims that the Court cannot spontaneously rule that respondents can tax petitioner for both franchise tax and business tax without violating the latter's right to due process.

Lastly, with regard to the fourth ground, petitioner agrees that the Court correctly found that the "Billing Statement" issued by respondents is not the "notice of assessment" contemplated under Section 195 of the LGC of 1991, there being no sufficient information that would have apprised petitioner of the factual and legal basis of the tax imposed.

On the other hand, in their Manifestation, respondents point out that petitioner's Motion is a mere rehash of the allegations contained in the *Petition for Review* filed on March 27, 2023. As such, respondents reiterate their arguments, opposition, and comments against the Petition for Review, as well as the statements proffered in their *Memorandum for Respondents* filed on September 5, 2023, as comment and opposition against petitioner's Motion for Reconsideration.

After due consideration, the Court finds petitioner's Motion for Reconsideration bereft of merit.

Petitioner reiterates that since it is classified as a distribution utility with a franchise issued by the National Electrification Administration, it is considered as a common carrier under Section 22 of the EPIRA. As such, it is exempt from local business tax in relation to Section 133(j) of the LGC of 1991.

Again, the Court does not agree.

Sections 22 and 27 of the EPIRA provide that the distribution of electricity to consumers shall be a regulated common carrier business requiring a national franchise, which is vested exclusively in Congress of the Philippines, to wit:

> "*Section 22. Distribution Sector.* – **The distribution of electricity to end-users shall be a regulated common carrier business requiring a national franchise.** Distribution of electric power to all end-users may be undertaken by private distribution utilities, cooperatives, local government units presently undertaking this function and other duly authorized entities, subject to regulation by the ERC.
>
> *Section 27. Franchising Power in the Electric Power Sector.* – The power to grant franchises to persons engaged in the transmission and distribution of electricity shall be **vested exclusively in the Congress of the Philippines** and all laws inconsistent with this Act particularly, but not limited to, Section 43 of PD 269, otherwise known as the "National Electrification Decree", are hereby deemed repealed or modified accordingly: *Provided,* That all existing franchises shall be allowed to their full term: *Provided,* further, That in the case of electric cooperatives, renewals and cancellations shall remain with the National Electrification Commission under the National Electrification Administration for five (5) more years after the enactment of this Act."[1]

Relative thereto, Sections 1(a) and 8 of Rule 7 of the IRR of EPIRA, clearly requires that a distribution franchise be granted by the Congress of the Republic of the Philippines, *viz.:*

> **"RULE 7. DISTRIBUTION SECTOR**
>
> Section 1. **Guiding Principles**.
>
> (a) Pursuant to Section 22 of the Act, the Distribution of Electricity to End-users shall be a regulated common carrier business, a requiring a national franchise. For purposes of these Rules, **"distribution franchise"** shall mean the

[1] *Emphasis and underscoring supplied.*

privilege of a Distribution Utility to convey electric power through its Distribution System in a given geographical area **granted by the Congress of the Republic of the Philippines,** xxx

Section 8. **Franchise for a Distribution Utility.**

(a) Pursuant to Section 27 of the Act, a franchise to a Person intending to **engage in Distribution of Electricity shall be granted exclusively by the Congress of the Philippines.**

(b) All existing franchises shall be allowed to their full term.

(c) In the case of electric cooperatives, renewals and cancellations of franchise shall remain with the National Electrification Commission under the NEA for five (5) more years after the effectivity of the Act."[2]

From the foregoing, upon the effectivity of EPIRA on June 26, 2001, the power to grant franchises to persons or entities engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress of the Philippines.

Herein, records show that pursuant to its Certificate of Franchise No. 199 issued by the National Electrification Commission on July 10, 2003,[3] petitioner was given a franchise to operate light and power services in Tagbilaran City, Bohol, for a period of twenty-five (25) years or until October 19, 2025. Notably, the franchise granted to petitioner by the National Electrification Commission was not a legislative franchise contemplated under the EPIRA and its IRR. Furthermore, petitioner is a private company and not an electric cooperative to warrant the application of Section 8(c) Rule 7 of the aforementioned IRR, wherein it states that for electric cooperatives, renewals of franchise shall remain with the National Electrification Commission for five (5) more years after the effectivity of the EPIRA or until 2006. Thus, petitioner cannot insist that it is exempt from local business tax as a distribution utility under Section 22 of EPIRA in relation to Section 133(j) of the LGC of 1991.[4]

---

2 *Emphasis supplied.*

3 RTC Docket (Civil Case No. 8317) – Vol. 1, p. 345.

4 *Section 133. Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

x x x

(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code.

As to the second and third grounds, petitioner asserts that the Court violated its right to due process when it ruled on an issue that was not raised during trial (*i.e.,* that the respondents can tax petitioner for both franchise tax and business tax). However, records of the case reveal that the issue was included in the assignment of errors in the Petition for Review, which the Regional Trail Court of Tagbilaran City, Bohol supposedly committed, thereby giving this Court the power to pass upon or resolve said issue.[5]

Relatively, the Court reiterates that there is nothing under the LGC of 1991, nor *the Revenue Code of the City of Tagbilaran*, that prohibits respondent City Government of Tagbilaran from imposing local tax on businesses that are subject to local franchise tax, like petitioner. The same goes with Section 6 of the ERC Resolution No. 16, Series of 2009, which provides that both the franchise and business taxes rates shall be computed using a prescribed formula as discussed in the Decision.

Lastly, petitioner argues that since the Court ruled that the "Billing Statement" is not the notice of assessment contemplated under Section 195 of the LGC of 1991 – thereby rendering it void; such assessment must likewise be void since a void assessment bears no valid fruit.

The Court finds petitioner's argument misplaced.

In the Decision, the Court ruled that the Billing Statement issued by respondents cannot be considered as a "notice of assessment" falling under Section 195 of the LGC of 1991. Accordingly, there being no "notice of assessment" issued by respondent City Treasurer to petitioner, Section 195 is not applicable.

To stress, the issue involved in this aspect was whether petitioner failed to exhaust administrative remedies under Section 195 of the LGC of 1991. Specifically, by failing to file a written protest with respondent City Treasurer within sixty (60) days from receipt of assessment and whether the period within which to appeal with the court of competent jurisdiction has already prescribed. Correspondingly, the Court ruled that there being no "notice of assessment" issued by respondent City Treasurer to petitioner, Section 195 is not applicable. Therefore, petitioner's direct filing with the Court a *quo* without any written protest with respondent City Treasurer is proper.

In view of the foregoing disquisitions, the Court finds no compelling reason to reverse or modify the Decision promulgated on September 10, 2024.

---

5 Docket, Part VI(A) of the Petition for Review, p. 12.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated September 10, 2024) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice