REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GMA NETWORK, INC.,
Petitioner,

-versus-

ROBERTO E. ORTOJAN, IN HIS CAPACITY AS CITY ASSESSOR, SURIGAO CITY,
Respondent.

CTA EB CASE No. 619
(CBAA Case No. M-28)

Members:
ACOSTA, *P.J.,*
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAR 2 3 2011 1:35 p.m.

X- -X

DECISION

Casanova, J.:

This is an appeal to the Court of Tax Appeals (CTA) *En Banc* by way of a verified Petition for Review[1], under Section 3(c), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking the reversal of the Decision[2] (*Assailed Decision*) dated August 13, 2009 rendered by the Central Board of Assessment Appeals (*CBAA*) in the CBAA Case No. M-28 entitled ***"GMA Network, Inc., vs. The Local Board of Assessment Appeals of the City of Surigao and Roberto E. Ortojan, in his capacity as the City Assessor of the City of Surigao,"*** dismissing petitioner's appeal as well as

[1] Petition for Review, CTA En Banc Rollo, pp. 1-37.
[2] Annex "A" to Petition for Review, *Ibid.*, pp. 38-61.

the Resolution[3] (*Assailed Resolution*) dated March 1, 2010 of CBAA denying its Motion for Reconsideration.

The facts of the case, as culled from the records, are briefly narrated as follows:

Petitioner GMA (formerly known as "Republic Broadcasting System, Inc.") is a private corporation duly organized and existing under Philippine laws with principal office at GMA Network Center, EDSA corner Timog Ave., Diliman, Quezon City. It is engaged in the business of radio and television broadcasting of all kinds and types on a commercial and/or sustaining basis.[4]

Respondent Roberto E. Ortojan is the City Assessor of Surigao City and may be served with the processes of the Honorable Court through his counsel of record, Atty. Carlo Reynaldo F. Lozada, Jr. at the City Legal Office, City Hall, 8400 Surigao City.[5]

Petitioner is a grantee of a legislative franchise to operate radio and television broadcasting stations in the country under Republic Act (R.A.) No. 7252. Pursuant to its legislative franchise, petitioner acquired real properties such as land, buildings and machineries that are necessary and essential to the operation of a television network and radio broadcasting stations in various cities and provinces in the Philippines.

On December 27, 2007, petitioner submitted a letter to the City Assessor of Surigao City requesting for the exclusion, exemption, cancellation or dropping from the roll of assessments of its real properties that are exclusively, actually, and directly used in pursuit of its franchise, citing the Supreme Court ruling in the cases of *City Government of Quezon City v. Bayan Telecommunications, Inc.* [6] and *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan.* [7]

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[3] Annex "B" to Petition for Review, *Ibid.*, pp. 62-67.
[4] Petition for Review, par. 3.1, *Ibid.*, p. 3.
[5] Petition for Review, par. 3.2, *Ibid.*
[6] G.R. No. 162015, March 6, 2006.
[7] G.R. No. 152534, February 23, 2007.

The City Assessor, in his letter dated January 14, 2008, confirmed the exemption from real property taxes of the Cor. Reflector antenna and VHF Transmitter but ruled that the building and self-supporting tower are taxable. On March 24, 2008, petitioner filed an appeal to the Local Board of Assessment Appeals (LBAA), which was subsequently denied per Order dated August 9, 2008 on the ground that the same was filed beyond the 30-day period provided for under Section 206 of R.A. No. 7160 (The Local Government Code of 1991).

On September 26, 2008, petitioner filed its Notice of Appeal[8] and Appeal Memorandum[9] before the CBAA. The CBAA, in its decision promulgated on August 13, 2009, dismissed petitioner's appeal on the ground that the phrase "exclusive of" in petitioner's franchise simply excludes the latter's franchise, a personal property, from other personal properties on which petitioner shall be liable to pay taxes on. Hence, telecommunications companies' properties, both real and personal – except the franchise are liable to payment of taxes as other persons or corporations are now or hereafter may be required by law to pay.

On September 15, 2009, petitioner filed a Motion for Reconsideration of the abovementioned CBAA decision dated August 13, 2009, arguing that the proper interpretation of the phrase "exclusive of" in its legislative franchise is that which was enunciated in the cases of Bayantel and Digitel[10] where it was held that telecommunications companies are exempt from paying real property taxes on the real properties that are actually, directly and exclusively used in the operations of the franchise. Petitioner further argued that CBAA, as an administrative agency, cannot substitute its own interpretation of the law for the rulings of the Supreme Court.

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[8] Annex "I" of Petition for Review, CTA En Banc Rollo, pp. 117-119.
[9] Annex "I-1" of Petition for Review, *Ibid.* pp. 120-143.
[10] *Ibid.*, p.11.

The CBAA issued a Resolution dated March 1, 2010 denying petitioner's Motion for Reconsideration.

Hence, petitioner filed the present Petition for Review raising the following ground:

> WITH ALL DUE RESPECT, IT WAS GRAVE REVERSIBLE ERROR FOR THE CBAA TO DENY PETITIONER GMA'S APPEAL BY RULING THAT REPUBLIC ACT NO. 7252 DOES NOT CATEGORICALLY GRANT PETITIONER GMA EXEMPTION FROM REAL PROPERTY TAX

On May 6, 2010, this Honorable Court promulgated a Resolution[11], to wit:

> "Without necessarily giving due course to the Petition for Review, respondent is directed to file his Comment, not a motion to dismiss, within ten (10) days from receipt hereof.
>
> Upon submission of the Comment or the expiration of the period for filing the same, the petition shall be deemed submitted for decision, unless the Court *en banc* decides to require the parties to submit simultaneous memoranda.
>
> SO ORDERED."

In view of respondent's failure to file his Comment on petitioner's Petition for Review, the CTA *En Banc* promulgated a Resolution on July 15, 2010[12], requiring both parties to submit their respective memorandum within a non-extendible period of thirty (30) days from receipt of the Resolution.

On August 18, 2010, petitioner filed a "Motion for Extension of Time to File Memorandum for Petitioner"[13] praying for an additional fifteen (15) days

[11] *Ibid.*, pp. 172-173.
[12] *Ibid.*, pp. 177-178.
[13] *Ibid.*, pp. 179-182.

from August 18, 2010 or until September 2, 2010 within which to file its Memorandum due to the heavy volume of work of the petitioner's counsel.

On August 20, 2010, the CTA *En Banc* promulgated a Resolution[14] granting petitioner's Motion for Extension of Time to File Memorandum. On September 1, 2010, petitioner filed, through registered mail, its Memorandum in compliance with this Court's Resolution (CTA *En Banc* Case No. 619) dated August 20, 2010.

Respondent failed to file his Memorandum, hence unable to comply with the order of this Court in the latter's Resolution dated July 15, 2010.

On September 22, 2010, this Court promulgated a Resolution[15], to wit:

> "For failure of respondent to file his Memorandum within the period prescribed by the Court, and it appearing that petitioner already filed its Memorandum on September 1, 2010, the above-captioned case is now deemed submitted for decision.
>
> SO ORDERED."

On October 11, 2010, respondent filed his Memorandum despite the lapse of the period given by this Court to file the same, reiterating his position that the "exclusive of this franchise" clause in the petitioner's franchise simply means that GMA shall be liable to pay taxes on its personal properties except the franchise itself. The aforequoted phrase does not exempt the petitioner from paying real property taxes on its real properties.

After a careful and thorough evaluation and consideration of the records of the case, including both parties' arguments in their respective pleading, the CTA *En Banc* finds no new matters which have not yet been considered and passed upon by the CBAA in its assailed Decision and Resolution.

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[14] *Ibid.*,p. 183.
[15] *Ibid.*, pp. 218-219.

Records show that the grounds relied upon by petitioner in the instant petition, and the respective discussions/arguments thereof are the same issues raised by the petitioner in its Notice of Appeal filed with the CBAA on September 26, 2008.

The same issues had been resolved by the CBAA in its Decision promulgated on August 13, 2009, as follows:

> "Webster's Third International Dictionary of the English Language Unabridged (1966 ed., p. 793) defines the phrase **"exclusive of"** as a preposition meaning "**not taking into account: excluding from consideration** (there were four of us ***exclusive of*** the guide; ***exclusive of*** artillery)"
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> Webster's New World Dictionary, Warner Books Paperback Edition (1990), and Webster's New World Pocket Dictionary, Third Edition (1997), both define the phrase ***"exclusive of"*** as ***"not including"***.
>
> Reader's Digest Encyclopedic Dictionary, First Edition (1994), classifies the phrase ***"exclusive of"*** as a quasi-adverb meaning ***"not including, not counting"***.
>
> In jurisprudence, a franchise, as a right and privilege, is regarded as property, separate and distinct from the property which the corporation itself may acquire. (Fletcher's Cyclopedia of the Law of Private Corporation, Vol. 6A, pages 427-428, citing Horn Silver Min. Co. vs. New York, 143 U.S. 305 36 L. Ed. 164 12 Sup. Ct.-403; City of Campbell vs. Arkansas-Missouri Power Co., 55F (2d) 560, as quoted in *The City Government of Batangas vs. Republic Telephone Company, Inc.,* CA-G.R. CV No. 21897, January 21, 1992.)
>
> Applying the above-cited meanings of the phrase 'exclusive of' and considering the fact that a franchise is an intangible personal property, the first sentence of the Tax Provisions of GMA's franchise, as simplified, would read thus:
>
> > "The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings, and personal property, **not including this franchise**, as other persons or corporations are now or hereafter may be required by law to pay."
>
> The "franchise," as a personal property, was to **be excluded from, or not to be included with,** the other personal properties on which the grantee, ... , shall be "liable to pay the same taxes ... as

other persons or corporations are now or hereafter may be required by law to pay" because the franchise (or earnings thereof) shall be subject to the ***franchise tax*** which "shall be ***in lieu of all (other) taxes.***"

The Second and Third Divisions of the Supreme Court, in Bayantel and in Digitel cases, respectively, discussed the **"meaning"** of the phrase ***"exclusive of*** this franchise." In both cases, the Supreme Court ruled that the phrase *"exclusive of this franchise"* means that "all of this franchisees' (Bayantel's and Digitel's) properties that are actually, directly and exclusively used in the pursuit of its franchise" are exempt from realty taxes.

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The "Tax Provisions" common to telecommunications franchises clearly provide that "**the grantee shall be liable to pay the same taxes on its 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.**" Unless the dictionaries cited herein are **WRONG** on the meaning of the preposition or quasi-verb ***"EXCLUSIVE OF"***, the telecommunications companies' properties, both real and personal – except the franchise (which itself is a personal property) are liable to payment of taxes **as other persons or corporations are now or hereafter may be required by law to pay.**

The tax provision of Rep. Act No. 3259 (Bayantel's original franchise, approved on June 17, 1961), embodied in section 14 thereof, reads:

> "SECTION 14. (a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, ***exclusive of*** the franchise, as other persons or corporations are now or hereafter may be required by law to pay. (b) The grantee ***shall further pay*** to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and one half per centum of all gross receipts from the business transacted under this franchise by the said grantee." (Emphasis supplied).

Since Bayantel, as franchise grantee under Rep. Act No. 3259 was NOT EXEMPT from realty tax, the Local Government Code of 1991 (LGC) **could not have withdrawn any realty tax**

<u>exemption of Bayantel simply because such exemption did NOT LEGALLY EXIST in the first place.</u>

A few months after the Local Government Code of 1991 (LGC) took effect, Congress enacted Rep. Act No. 7633 on July 20, 1992, amending Bayantel's original franchise. The amendatory law (Rep. Act No. 7633) contained the following tax provision:

> "SEC. 11. 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. Provided, That the grantee, its successors and assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code xxx." (Emphasis supplied)

Section 11 of Rep. Act No. 7633 is a virtual reenactment of Section 14(a) of Rep. Act No. 3259 (the original franchise of Bayantel). As Section 14(a) of Rep. Act No. 3259 **did not confer to Bayantel any exemption from the realty tax. Congress, by passing Rep. Act No. 7633, could not have "restored" any realty tax exemption which was not, in the first place, granted under the original franchise of Bayantel.**

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The tax provisions of the franchises of both Petitioner GMA and Bayantel say that "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 ... ***In addition thereto,*** the grantee, its successors or assigns shall pay a franchise tax ... ***in lieu of all taxes*** on this franchise or earnings thereof." On the other hand, the tax provision in Digitel's franchise states that "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 ... ***In addition thereto***, the grantee shall pay to the Bureau of Internal Revenue ... a franchise tax ... " If the grantees, their successors or assigns are **NOT** liable to pay the same taxes on their real estate, buildings and personal property, ***not including*** the franchise, what taxes, then, is the franchise tax **<u>in addition thereto</u>?** It is quite hard to imagine that Congress wanted the telecommunications companies to be subject **only** to a small percentage of their respective incomes, as franchise tax, **<u>and nothing more</u>.**

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On the matter of the doctrine of *stare decisis,* we believe that this doctrine applies only when the original decision was correctly rendered and the times have not altered the perceptions that existed when the same original decision was rendered. But, what if the said original decision is patently erroneous?

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Incidentally, all the three (3) Supreme Court decisions (Bayantel, Digitel and RCPI dealt with the said tax provisions of the franchises of the telecommunications companies. Applying, therefore, the doctrine of *stare decisis*, the Supreme Court's decision in *RCPI* (April 13, 2005), being the earliest of the three, should prevail over the same court's decisions in *Bayantel* (March 6, 2006) and *Digitel* (February 23, 2007).

Petitioner-Appellant's franchise (RA 7252, approved on March 2, 1992) contains a tax provision similar in substance to those found in the franchises of RCPI, BAYANTEL and DIGITEL. It does not matter that any of the franchises, or the amendments thereof, were granted by Congress after the effectivity of the Local Government Cod of 1991 (RA 7160) on January 1, 1992. Nothing in these franchises remotely suggests that Congress intended to exempt certain telecommunication companies from payment of the real property tax.

At any rate, in *DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC. VS. CITY GOVERNMENT OF BATANGAS represented by HON. ANGELITO DONDON A. DIMACUHA, Batangas City Mayor, M. BENJAMIN S. PARGAS, Batangas City Treasurer, and ATTY. TEODULFO A. DEQUITO, Batangas City Legal Officer* (G.R. No. 156040, December 11, 2008) the Supreme Court decided **en banc** to reverse unequivocally the decisions of its Second and Third Divisions' in the *Bayantel* and *Digitel* cases, respectively. Said the Court:

<u>Bayantel and Digitel cases</u>

In *City Government of Quezon City v. Bayan Telecommunications, Inc.* (G.R. No. 162015, 6 March 2006, 484 SCRA

169, 181), this Court's Second Division held that "all realties which are actually, directly and exclusively used in the operation of its franchise are 'exempted' from any property tax." The Second Division added that Bayantel's franchise being national in character, the "exemption" granted applies to all its real and personal properties found anywhere within the Philippines. xxx

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In *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan* (G.R. No. 152534, 23 February 2007, 516 SCRA 541, 559-560), this Court's Third Division ruled that Digitel's real properties located within the territorial jurisdiction of Pangasinan that are actually, directly and exclusively used in its franchise are exempt from realty tax under the first sentence of Section 5 of RA 7678. xxx

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Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that petitioner, as the franchisee, shall pay the "same taxes on its 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."

The heading of Section 5 is "Tax Provisions," not Tax Exemptions. To reiterate, the phrase "exemption from real estate tax" or other words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase "exclusive of this franchise" in the first sentence of Section 5 merely qualifies the phrase "personal property" to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the "franchise tax." Thus, there is no grant of tax exemption in the first sentence of Section 5.

The interpretation of the phrase "exclusive of this franchise" in the *Bayantel* and *Digitel* cases goes against the basic principle in construing tax exemptions. In *PLDT v. City of Davao* (G.R. No. 143867, 25 March 2003), 399 SCRA 442,453), the Court held that tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication of inference."

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED.**

SO ORDERED."[16]

The same issue was again addressed by the CBAA in its Resolution dated March 1, 2010 where it denied petitioner's Motion for Reconsideration. The CBAA maintained its position that the phrase **"exclusive of this franchise"** means **not including this franchise**. It also reiterated that pursuant to Article VIII, Sec. 4(3) of the 1987 Constitution and under the principle of *stare decisis*, the decision rendered by the First Division of the Supreme Court in the RCPI case cannot be modified or reversed by the decisions rendered by the Second and Third Divisions of the Supreme Court in the Bayantel and Digitel cases, respectively.[17]

Moreover, in the recent case of *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas represented by HON. ANGELITO DONDON A. DIMACUHA, Batangas City Mayor. M. BENJAMIN S. PARGAS, Batangas City Treasurer, and ATTY. TEODULFO A. DEQUITO, Batangas City Legal Officer*[18], the Supreme Court *en banc*, in affirming the lower court's decision that Digitel is not exempted from the payment of real property taxes on its telecommunications facilities, stated that Section 5 of R.A. No. 7678[19] provides that the phrase "exclusive of" does not grant any tax exemption to

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[16] CTA En Banc Rollo, pp. 47-61.
[17] *Ibid.*, pp. 62-67.
[18] Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, represented by Hon. Angelito Dondon A. Dimacuha, Batangas City Mayor, M. Benjamin S. Pargas, Batangas City Treasurer, and Atty. Teodulfo A. Dequito, Batangas City Legal Officer, G.R. No. 156040, December 11, 2008.
[19] An Act Granting the Digital Telecommunications Philippines, Incorporated, a Franchise to Install, Operate and Maintain Telecommunications Systems Throughout the Philippines and for Other Purposes (1994).

Digitel. It simply means that Digitel is liable to pay taxes on its real and personal properties, with the exception of the franchise itself.

In sum, the *CTA En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the Assailed Decision dated August 13, 2009 and the Assailed Resolution dated March 1, 2010, both promulgated by the CBAA. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon by the Court.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the August 13, 2009 Decision and the March 1, 2010 Resolution of the CBAA in CBAA Case No. M-28 entitled *"GMA Network, Inc. v. Roberto E. Ortojan, in his capacity as City Assessor, Surigao City"*, are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO GRULLA
Associate Justice

AMELIA C. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice