REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DAVAO CITY WATER DISTRICT,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2725
(CTA Case Nos. 9138, 9139, 9140, 9141, 9142 and 9143)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
NOV 04 2024
4:25 pm

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RESOLUTION

MANAHAN, *J.*:

For resolution of the Court En Banc is petitioner's *Motion for Reconsideration* posted on May 21, 2024 and received by the Court on June 14, 2024, without respondent's comment.

In its motion, petitioner once again essentially argues that a franchise is not required for its public water utility operations. As such, it is not liable to pay franchise tax. It is noteworthy that the same issue has been exhaustively passed upon and duly considered in the assailed Decision. To reiterate:

> "Petitioner's bone of contention is that since it is not a holder of a primary franchise and it is not required to obtain a secondary franchise for it to operate, it follows that it is not liable to pay franchise tax under Section 119 of the 1997 NIRC, as amended.

The Court *En Banc* disagrees.

As correctly held by the Court in Division Presidential Decree (PD) No. 198, otherwise known as the *Provincial Water Utilities Act of 1973*, serves both as petitioner's general or primary franchise and special or secondary franchise, thus:

> 'First, the petitioner holds a franchise to operate as a water utility. PD 198, as amended, serves both as petitioner's *general or primary* franchise and *special or secondary* franchise. In a number of cases, the Supreme Court already confirmed that local water districts derive their legal existence from PD 198, as amended. In this regard, the said law serves as local water districts' general or primary franchise. As a special or secondary franchise, PD 198, as amended, grants local water districts *special* powers, rights and/ or privileges in addition to, or aside from, the rights, powers, or privileges conferred to private corporations under existing law. These special rights or powers granted to local water districts by PD 198, as amended, include: (1) the power of eminent domain [Sec. 25]; (2) the power to construct or acquire of waterworks [Sec. 26]; (3) the power to sell water to any persons within the district [Sec. 27]; (4) the power to construct and operate facilities for the collection, treatment, and disposal of sewerage [Sec. 28]; and (5) right of way to construct and maintain waterworks on lands belonging to the Philippine Government, or any of its political subdivisions, and/or instrumentalities [Sec. 29].'

Additionally, the Court in Division correctly ruled that public utilities, such as petitioner, require franchise in order to operate. Thus:

> 'As a corollary to the finding that the petitioner holds a franchise and, as such, is covered by Section 119 of the 1997 NIRC, this Court also finds as untenable petitioner's contention that a franchise is not necessary for its operation as a water utility. Local water districts are considered "public utilities" as confirmed by the Supreme Court in the above-cited *Metropolitan Cebu* case. Being public utilities, they unquestionably require franchise for their operation as mandated by Section 11, Article XII of the Constitution.'

In *Renato V. Diaz and Aurora Ma. F. Timbol v. The Secretary of Finance and the Commissioner of Internal Revenue*, the Supreme Court had the occasion to discuss the term *franchise* as used in Section 108 of the 1997 NIRC, as amended. Thus:

'Tollway operators are franchise grantees and they do not belong to exceptions (the low-income radio and/or television broadcasting companies with gross annual incomes of less than ₱10 million and gas and water utilities) that Section 119 spares from the payment of VAT. **The word 'franchise' broadly covers government grants of a special right to do an act or series of acts of public concern**.

Petitioners of course contend that tollway operators cannot be considered 'franchise grantees' under Section 108 since they do not hold legislative franchises. But nothing in Section 108 indicates that the 'franchise grantees' it speaks of are those who hold legislative franchises. Petitioners give no reason, and the Court cannot surmise any, for making a distinction between franchises granted by Congress and franchises granted by some other government agency. The latter, properly constituted, may grant franchises. Indeed, franchises conferred or granted by local authorities, as agents of the state, constitute as much a legislative franchise as though the grant had been made by Congress itself. **The term 'franchise' has been broadly construed as referring, not only to authorizations that Congress directly issues in the form of a special law, but also to those granted by administrative agencies to which the power to grant franchises has been delegated by Congress**.'

Based on the above-discussion, it is clear that petitioner holds a primary and secondary franchise by virtue of PD No. 198. At any rate, even if petitioner only holds either one of the primary or secondary franchise, the above *Diaz* ruling clearly provides that the term franchise refers not only to authorizations that Congress directly issues in the form of a special law, but also to those granted by administrative agencies to which the power to grant franchises has been delegated by Congress. As such, petitioner is covered by Section 119 of the 1997 NIRC, as amended, and is therefore liable to pay franchise tax."[1]

Thus, the Court *En Banc* likewise reiterates the conclusion in the assailed Decision, as follows:

"To summarize, petitioner is engaged in the sale of services as a water utility. Such sale of services, as a general rule, would have been subject to VAT under Section 108 of the 1997 NIRC, as amended. However, the same provision provided for an exception under Section 119, where the entities enumerated therein are subject to franchise tax instead of VAT. Again, petitioner, as a water utility, is covered

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[1] Court *En Banc* Docket, pp. 588-590.

by the exception under Section 119, *i.e.*, liable to pay two percent (2%) franchise tax rate, instead of the higher twelve percent (12%) VAT rate under Section 108. Ironically, if petitioner's position is sustained, *i.e.*, it is not liable to pay franchise tax under Section 119, it follows that petitioner would be liable to pay the higher VAT rate under the general rule in Section 108. At any rate, the Court *En Banc* finds no reason to deviate from the findings of the Court in Division that petitioner is liable to pay franchise tax under Section 119 as a holder of primary and secondary franchises by virtue of PD No. 198."

Considering the foregoing, the Court *En Banc* finds no compelling reason to deviate from the findings in the assailed Decision. Hence, the denial of the instant motion is in order.

FOR THESE REASONS, the instant *Motion for Reconsideration* is **DENIED**, for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice