Fit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 2789

ALFREDO PIO DE RODA, JR.,
as Acting Commissioner of
Customs,
Respondent.
x - - - - - - - - - - - - x

7/16/84

D E C I S I O N

This case of an assessment demand for unpaid compensating taxes and customs duties in the aggregate amount of ₱14,656,447.00 due on petitioner's various importations of poles, wires, insulators and transformers, etc. for the period 1967 to 1972 comes on a two-fold concern: whether or not 1) the "in lieu of all taxes" in Paragraph 9 of the petitioner's franchise comprehends such import liabilities of compensating tax and customs duty, and 2) the finality of liquidation in Section 1603 of the Tariff and Customs Code, as amended, applies to the petitioner's importations.

The provisions read as follows:

> "PARAGRAPH 9. The grantee shall be liable to pay the same taxes upon its real estate, buildings, plant (not including poles, wires, transformers and insulators), machinery, and

personal property as other persons are or may be hereafter required by law to pay. In consideration of Part Two of the franchise herein granted, to wit: the right to build and maintain in the City of Manila and its suburbs a plant for the conveying and furnishing of electric current for light, heat, and power and to charge for the same, the grantee shall pay to the City of Manila a five per centum of the gross earnings received from its business under this franchise in the City and suburbs: Provided, That two and one half per centum of the gross earnings received from the business of the line to Malabon shall be paid to the Province of Rizal. Said percentage tax shall be due and payable at the times stated in paragraph nineteen of Part One hereof, and after audit, like that provided in paragraph twenty of Part One hereof, and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted." (Ordinance 44 Municipal Board City of Manila)

"Sec. 1603. Finality of Liquidation.- When articles have been entered and passed free of duty or final adjustment of duties made, with subsequent delivery, such entry and passage free of duty or settlement of duties will, after the expiration of one year, from the date of the final payment of duties, in the absence of fraud or protest, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative." (Customs And Tariff Code, as amended)

As it appears 1) Petitioner is a holder of a franchise to construct, maintain and operate electric light, heat and power system in the City of Manila and suburbs under Ordinance 44 of the Municipal Board of the City of Manila implementing Act 484 of the Philippine Commission, as renewed and extended by R.A. Nos. 150 and 4159; 2) In the maintenance and operation of the system the petitioner imports, among other things, machinery, poles, wires, transformers and insulators; 3) During the period of 1967 to 1972 petitioner at various occasions imported poles, wires, insulators and transformers which were released from customs custody without the payment of the corresponding taxes and duties on the basis of the Collector of Customs' ruling in Manila Protest Case Nos. 289 and 290 dated February 4, 1959 exempting petitioner from such import liabilities under its franchise; 4) The Collector's ruling notwithstanding, the respondent Commissioner of Customs in a letter dated December 5, 1975 demanded payment of an aggregate amount of ₱14,656,447.00 representing unpaid compensating tax and customs duty on the imported poles, wires, insulators, and transformers during the aforesaid period; 5) Petitioner disputed the assessment and requested cancellation and withdrawal thereof for the reasons of the stipulation in Paragraph 9 of its franchise, <u>supra</u>, alternatively of the finality of the liquidation in Section 1603 of the Tariff and Customs Code, <u>supra</u>; but, 6) Respondent Commissioner of Customs reiterated the demand under letter to petitioner dated March 8, 1976.

Hence this petition for review.

The first question raised requires no tortured ratiocination. The Supreme Court construing the applicable scope of the tax exemption privilege in Paragraph 9 of the petitioner's franchise, supra, in Meralco v. Commissioner of Internal Revenue (G.R. Nos. L-29987 and L-23847, October 22, 1975, 67 SCRA 353), a case similar in many or so in tenor and identical in terms involving as it does the herein petitioner ruled, "what the above provision exempts petitioner from, is the payment of property tax on its poles, wires, transformers and insulators; it does not exempt it from the payment of taxes like the one in question which, by mere necessity or consequence alone, fall upon property. The first sentence of paragraph 9 of petitioner's franchise expressly states that the grantee like any other taxpayer shall pay taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery, and personal property. These are direct taxes imposed upon the thing or property itself. Thus, while the grantee is to pay tax on its plant, its poles, wires, transformers, and insulators as forming part of the plant or installation (significantly the enumeration is in parenthesis and follows the word'plant') are exempt and as such are not to be included in the assessment of property tax to be paid. The ending clause of paragraph 9 providing in effect that the percentage tax imposed upon petitioner shall be in lieu of 'all taxes and assessments of whatsoever nature and by whatsoever authority' cannot be said to have granted it exemption from the payment of compensating tax. The phrase 'all taxes and assessments of whatsoever nature and by whatsoever authority.' is not so broad and sweeping, as petitioner would have us think, as to include the tax in question because there is an immediately succeeding phrase which limits the scope of the exemption to taxes and assessments 'upon the privileges, earnings, income, franchise, and <u>poles, wires, transformers, and insulators</u> of the grantee'. The last clause of paragraph 9 merely re-affirms, with regards to poles, wires, transformers, and insulators, what has been expressed in the first sentence of the same paragraph namely, <u>exemption of petitioner from payment of property tax</u>. It is a principle of statutory construction that general terms may be restricted by specific words, with the result that the general language will be limited by the specific language which indicates the statute's object and purpose." (Statutory Construction by Crawford, 1950 ed. p. 324-325). (Underscoring supplied) We do not think that any different conclusion ought to follow.

In rejecting MERALCO's claim of exemption from the payment of compensating tax on its shipments the Court stresses that, "It is a well settled rule or principle in taxation that a compensating tax is not a property tax but an excise tax (129 A.L.R. p. 223, 230; 103 A.L.R. 93; Henneford v. Silas Mason Co. 81 L. Ed. 814; Connecticut Light & Power Co. v. Walsh 1 A.L.R. 2d, 453; Watson Industries v. Shaw, 69 SE 2d 505; Northern P.R. Co. v. Henneford (126; DC) 15 F. Supp. 302). Generally stated, an excise tax is one that is imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege (State v. Brown 148 NE 95, 112 Ohio St. 590; Buckstuff Bath House Co., v. McKinley, 127 S.W. 2d. 802, 806, 198 Ark. 91; State v. Fields, Ohio App. NE 2d 744, 747). A tax levied upon property because of its ownership is a direct tax, whereas one levied upon property <u>because of its use</u> is an excise duty. (Manufacturer's Trust Co. v. United States, Ct, CI, 32 F. Supp. 289, 296)." So is the nature of customs duty "an indirect tax imposed on the importation or consumption of goods." (Pellock v. Trust Co., 158 U.S. 601, 15 Sup. Ct. 912, 39 Ed. 1108) levied in a similar manner as compensating tax. Both impositions partake the attribute of excises brought to bear upon the importations. Upon the record there is nothing to take the present case out of the context of the operative effects of the said rule. We hesitate to further fashion an issue into a satisfactorily settled legal situation.

The finality of liquidation precipitately broached in the second towards adding a justification for the cancellation of the assessment can hardly be a reassuring prospect that can easily be reconciled with the statutory intendment. For, equally determinative of the sense and extent of the import of Section 1603 of the Tariff and Customs Code, supra, is the proscription of the "absence of fraud or protest" which in the instant situation poses the rub. The 1959 rulings of the Collector of Customs (Manila Protest Nos. 289 and 290) used to infuse validity in effecting the tax-free releases of petitioner's importations are largely nostalgic illusions having been eviscerated by subsequent decisions, but, "Petitioner, however, was not candid enough to disclose to the Collector that pursuant to the rulings of the Court of Tax Appeals in CTA Cases 1493 and 1495, appealed to the Supreme Court as G.R. Nos. L-29987 and L-23847, supra, MERALCO is subject to compensating tax. The Customs officials were unaware of the Tax Court decision. Petitioner herein, being the petitioner in those cases, knew of the ruling, yet it suppressed the information, which suppression amounts to misrepresentation and fraud on the part of petitioner." (Respondent's Brief, p. 7). The record makes it clear that insofar as the same is brought to bear upon the circumstances in the case at bar petitioner's posture would have stretched too far the effective range of expediency as to gravely impair the ends for which the privilege was granted and unjustifiably fetters perfectly legitimate methods of enforcement and collection of the lawful dues. Petitioner should have come to grip with the facts obtaining, nothing more. It is not therefore difficult to understand respondent's righteous indignation in disregarding the claim to any finality of liquidation alternatively invoked by the petitioner on its importations during the period in question.

Connected with the question just discussed and as interposed by petitioner is the attendant good faith and apparent clout of official panache in authorizing the tax exemption on the various importations. It might be, and indeed, we think it should be necessary to repeat what so often may have been said and what so plainly apply to the case at bar the well-settled rule as readily attested by a host of decisions that "errors committed by public officers cannot be set up as estoppel against the Government or bar its future action in accordance with law." (Zamora v. CTA & Commissioner of Internal Revenue, 36 SCRA 85; Government v. Monte de Piedad, 35 Phil. 728; Pineda v. CFI, 52 Phil. 803; Estate of Dela Vina v. Government, 65 Phil. 262; Cu

Unjieng v. Board of Tax Appeals, 100 Phil.; Hilado v. Collector of Internal Revenue, 100 Phil. 288; Canlubang v. Standard Alcohol Co., L-10887, April 16, 1958; Genato v. CTA, 104 Phil. 615; Phil. American Drug Co., v. Collector of Internal Revenue, 106 Phil. 161; Lewin v. Galang, 60 O.G. 7366; Visayan Cebu Terminal Co. v. Commissioner of Internal Revenue, L-19530 & L-19444, February 27, 1965). Moreover, exemption "cannot be allowed unless granted in the most explicit and categorical language" (Resins, Inc. v. Auditor General, L-17388, October 29, 1968; Commissioner of Internal Revenue v. Guerrero, 21 SCRA 180; Union Garments Co. Inc. v. CTA, 45 SCRA 304; Rep. Flour Mills, Inc. v. Commissioner of Internal Revenue 31 SCRA 520), because the "law does not look with favor a tax exemption and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted." (Reagan v. Commissioner of Internal Revenue, 30 SCRA 968; Ohio Life Ins. & Trust Co. v. Debolt, 60 Howard 416; Commissioner of Internal Revenue v. P.J. Keiner Co. Ltd., 65 SCRA 153). All that need be stated is any such claim for entitlement to tax exemption must prove compliance with the terms and conditions peremptorily required by law lest the integrity of collection of lawful dues be placed in the quicksand of sèlf-interest, so to speak. The privilege petitioner seeks to enjoy comes as a random quirk and falls sharply at odds with the tax exemption contemplated in its franchise.

ACCORDINGLY, the petition for review is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, July 16, 1984.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge