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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CAGAYAN ELECTRIC POWER AND LIGHT CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2660

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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12/12/78

D E C I S I O N

Disputed by petitioner Cagayan Electric Power and Light Company, Inc., is the imposition and collection of compensating tax, amounting to P12,225.00, on its importations, for its own use as electric utility company, of various electric transformers, electric meters, switches, switch gears and electrical relays.

The parties submitted the following partial stipulation of facts:

1. The petitioner is a domestic corporation with principal office at 2nd Floor, Asia Industries Building, 2281 Pasong Tamo Extension, Makati, Metro Manila; while the respondent is the duly appointed and qualified Commissioner of Internal Revenue of the Republic of the Philippines;

2. That petitioner is an electric utility company operating in the municipalities of Tagolcan, Opol, Villanueva, Jasaan and Cagayan de Oro under a Legislative Franchise, particularly Republic Act 3247,

as amended by Republic Act 3570 and further amended by Republic Act 6020;

3. That Section 3, Republic Act No. 6020 provides that petitioner shall pay as franchise tax 3% of its gross earnings from sales of electric current as authorized by said franchise which shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is hereby exempted."

4. That petitioner on various dates imported for its consumption electric transformers, electric meters, switches, switch gears and electric relays detailed as follows:

(a) Import Entry and Internal Revenue Declaration (Serial No. 091233-72) covering 25 Packages Electric Transformers valued at US $6,923.88 C.I.F. The total customs duties and taxes on this import entry amount to ₱13,108.00 while the compensating tax amounted to ₱3,851.00. A xerox copy of the said Import Entry and Internal Revenue Declaration is hereto attached and made an integral part hereof as Annex "A";

(b) Import Entry and Internal Revenue Declaration (Serial No. 046711-72) covering five electrical relays valued at CIF $1,356.71. The total customs duties and compensating taxes on this import entry amount to ₱4,931.00. A xerox copy of the said Import Entry and Internal Revenue Declaration is hereto attached and made integral part hereof as Annex "B";

(c) Import Entry and Internal Revenue Declaration (Serial No. 46712-72) covering various electric meters, switches, switch gears and arresters valued at CIF $12,421.84. The total customs duties and compensating taxes on this import entry amount to ₱42,878.00. A xerox copy of the Import Entry and Internal Revenue Declaration is hereto attached and made an integral part hereof as Annex "C".

5. That in a letter dated October 26, 1973 and received by respondent on October 29, 1973, petitioner requested the refund of allegedly paid compensating taxes on the various importations of the company;

6. That the principal issue in this case is whether or not petitioner is exempt from payment of compensating taxes under the provisions of Republic Act No. 6020, on its aforesaid importation of electrical transformers, relays, meters, switches, switch gears and arresters for its own consumption; and

7. That the parties reserve their rights to present additional evidence not covered by this Partial Stipulations of Facts in support of their respective contentions.

Additional evidence, oral and documentary, consists mainly of proof of payment by petitioner of the compensating tax which is questioned by respondent.

Petitioner claims for the refund of the compensating tax paid on the various electric transformers, electric meters, switches, switch gears and electric relays imported by it from abroad for use in the operation of its electric light, heat and power system. Argument advanced is that petitioner is exempt from payment of compensating tax under the provisions of Section 3 of Republic Act No. 6020, which reads as follows:

"SEC. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three per centum of the gross earnings for electric current sold under this franchise, of which two per centum goes into the

National Treasury and one per centum goes into the treasury of the Municipalities of Tagoloan, Opol, Villanueva and Jasaan and Cagayan de Oro City, as the case may be: Provided, That the said franchise tax of three per centum of the gross earnings shall be in lieu of all taxes and assessments of whatever 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." (Emphasis supplied.)

Four-square with the case at bar on this point, by reason of the close, if not exact, similarity between the franchises and the laws involved, as well as the issue litigated, is Manila Electric Company vs. Vera, L-29987, October 22, 1975 (also Manila Electric Company vs. Tabios, L-23847, October 22, 1975), 67 SCRA 351.

In that case, Manila Electric Company (MERALCO for short) is the holder of a franchise to construct, maintain and operate an electric light, heat, and power system in the City of Manila and its suburbs. In 1962, MERALCO imported and received from abroad on various dates copper wires, transformers and insulators for use in the operation of its business on which, the Collector of Customs, as Deputy of Commissioner of Internal Revenue, levied and collected the corresponding compensating tax. A claim for refund of said tax was presented by MERALCO and because no action was taken by the Commissioner of Internal Revenue on its claim, it appealed to this Court by filing a petition for review (CTA Case No. 1495). On November 28, 1968, this Court denied MERALCO's claim, forthwith, the case was elevated to the Supreme Court on appeal (L-29987).

Again in 1963, MERALCO imported certain quantities of copper wires, transformers and insulators also to be used in its business and again compensating tax on said purchases was collected. Its claim for refund of the compensating tax having been denied by the Commissioner of Internal Revenue, MERALCO filed with this Court CTA Case No. 1493. The Court of Tax Appeals decided against MERALCO, and the latter filed with the Supreme Court the corresponding Petition for Review of said decision docketed as G.R. No. L-23847.

The law under which the Commissioner of Internal Revenue assessed and collected the corresponding compensating tax was found in Section 190 of the National Internal Revenue Code, the pertinent provision of which read at the time as follows:

> "Sec. 190. Compensating Tax. -All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total

> value thereof at the time they are received by such persons, including freight, postage, insurance, commission and all similar charges, a compensating tax equivalent to the percentage taxes imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid before the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office: xx xx xx."

In deciding against MERALCO, this Court held that following the ruling of the Supreme Court in the cases of Panay Electric Co. vs. Collector of Internal Revenue, G.R. No. L-6753, July 30, 1955, 97 Phil. 979; Manila Gas Corp. vs. Collector of Internal Revenue, G.R. No. L-11784, October 24, 1958, 104 Phil. 727; and Borja vs. Collector of Internal Revenue, G.R. No. L-12134, November 30, 1961, 113 Phil. 568, MERALCO is <u>not exempt</u> from paying the compensating tax provided for in Section 190 of the National Internal Revenue Code, the purpose of which is to "place casual importers, who are not merchants on equal putting with established merchants who pay sales tax on articles imported by them." This Court further stated that MERALCO's claim for exemption from the payment of the compensating tax is not clear or expressed, contrary to the cardinal rule in taxation that "exemptions from taxation are highly disfavored in law, and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law."

MERALCO, on the other hand, bases its claim for exemption from the compensating tax on poles, wires, transformers and insulators purchased by it from abroad on paragraph 9 of its franchise, which reads 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 the business under this franchise in the City and its 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 shall be due and payable at the times stated in paragraph nineteen of Part One hereof, and after an 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 the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted."

The Supreme Court unequivocally denied the exemption of MERALCO from payment of the compensating tax on poles, wires, transformers and insulators imported by it for use in the operation of its electric light, heat and power system. In enunciating the rule that a provision in a franchise exempting from 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," except the franchise tax, does not extend to the compensating tax on articles imported for use in the business for which the franchise was granted, the High Court first reiterated the well-settled principle that:

> One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and may almost be said "to be odious to the law." He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County of Shelby, 95 U.S. 679, 686). (see Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, 471, wherein all the above mentioned American doctrines are cited and quoted with approval.)

Second, and this is the controlling reason for the denial of MERALCO's claim for exemption from payment of compensating tax, the Supreme Court held that the phrase in the franchise, "in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee," which is exactly similar to, if not the same as, the provision found in the franchise of petitioner Cagayan Electric Power and Light Co., Inc., (Section 3, Rep. Act. No. 6020, supra), is an exemption of the grantee of the franchise, with regards to poles, wires, transformers and insulators, from payment of property tax, but not an exemption from payment of taxes like the compensating tax. To quote:

> We do not see in paragraph 9 of its petitioner's franchise, on the assumption that it does exist as worded, what may be considered as "plain and unambiguous terms" declaring petitioner MERALCO exempt from paying a compensating tax on its imports of poles, wires, transformers, and insulators. What MERALCO really wants Us to do, but which We cannot under the principles enumerated earlier, is to infer and imply that there is such an exemption from the following phrase: ". . . the grantee shall pay to the City of Manila five per centum of the gross earnings received from its business . . . and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted."
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> Note that 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 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 the property tax to be paid.

The ending clause of paragraph 9 providing in effect that the percentage tax imposed upon petitioner shall in lieu of "all taxes and assessments of whatsoever nature and by whatsoever authority" cannot be said to have granted it exemption from 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 exemption to taxes and assessments "upon the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee." The last clause of paragraph 9 merely reaffirms, with regards to poles, wires, transformers, and insulators, what has been expressed in the first sentence of the same paragraph namely, exemption of petitioner from payment of property tax. 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, 1940 ed. p. 324-325)

Explaining that a compensating tax is not a property tax but is an excise tax, the Supreme Court stated:

> It is a well-settled rule or principle in taxation that a compensating tax is not a property tax but is an excise tax. 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. A tax levied upon property because of its ownership is a direct tax, whereas one levied upon property because of its use is an excise duty. (manufacturer's Trust Co. vs. United States, Ct. Cl., 32 F. Supp. 289, 296) Thus, where a tax which is not on the property as such, is upon certain kinds of property, having reference to their origin and their intended use, that is an excise tax. (State v. Wynne, 133 S.W. 2d 951, 956, 957, 133 Tex. 622)
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> The compensating tax being imposed upon petitioner herein, MERALCO, is an impost on its use of imported articles and is not in the nature of a direct tax on the articles themselves, the latter tax falling within the exemption. Thus, in International Business Machine Corp. vs. Collector of Internal Revenue, 1956, 98 Phil. Reports 595, 593, which involved the collection of a compensating tax from the plaintiff-petitioner on business machines imported by it, this Court stated in unequivocal terms that "it is not the act of importation that is taxed under section 190, but the use of imported goods not subjected to a sales tax" because "the compensating tax was expressly designed as a substitute to make up or compensate for the revenue lost to the government through the avoidance of sales taxes by means of direct purchases abroad . . ."
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> It is true that upon the collection of a compensating tax on petitioner's poles, wires, transformers, and insulators purchased from abroad, the tax falls on the goods themselves; this fact leads petitioner to claim that what is being imposed upon it is a pro-

> perty tax. But petitioner loses sight of the principle that "every excise necessarily must finally fall upon and be paid by property, and so may be indirectly a tax upon property; but if it is really imposed upon the <u>performance of an act</u>, the <u>enjoyment of a privilege</u>, or the engaging in an occupation, it will be considered an <u>excise</u>." (51 Am. Jur. 1d, Taxation, Sec. 34, emphasis supplied) And so, to reiterate, what is being taxed here is the <u>use of goods</u> purchased from out of the country, and the imposition is in the nature of an excise tax.

And finding no valid reason for the Supreme Court not to apply to MERALCO its ruling in Panay Electric Co. vs. Collector of Internal Revenue, G.R. No. L-6753, July 30, 1955, and Consuelo P. Borja vs. Collector of Internal Revenue, et al., G.R. No. L-12134, November 30, 1961, for MERALCO is similarly situated, just like petitioner herein Cagayan Electric Power and Light Co., Inc., the High Court rationalized:

> Panay Electric Co. sought exemption from payment of a compensating tax on equipments purchased abroad for use in its electric plant. A provision in its franchise reads:
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> > "Sec. 8. * * * Said percentage shall be due and payable quarterly and shall be lieu of all taxes of any kind levied, established, or collected by any authority whatsoever, now or in the future, on its poles, wires, insulators, switches, transformers and other structures, installations, conductors, and accessories, placed in and over the public streets, avenues, roads, thoroughfares, squares, bridges, and other places on its franchise, from which taxes the grantee is hereby expressly exempted." (113 Phil. 570)

This Court rejected the exemption sought by Panay Electric and held that the cited provision in its franchise exempts from taxation those rights and privileges which are not enjoyed by the public in general but only by the grantee of a franchise, but do not include the common right or privilege of every citizen to make purchases anywhere; and that we must bear in mind the purpose for the imposition of compensating tax which as explained in the report of the Tax Commission is as follows:

> "The purpose of this proposal is to place persons purchasing goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. Under the present tax law, the former bear the burden of the local sales tax because it is shifted to them as part of the selling price demanded by the local merchants, while the latter do not. The proposed tax will do away with this inequality and render justice to merchants and firms of all nationalities who are in legitimate business here, paying taxes and giving employment to a large number of people." (113 Phil. 571)

In Borja, petitioner Consuelo P. Borja, a grantee of a legislative franchise, also claimed to be free from paying the compensating tax imposed on the materials and equipment such as wires, insulators, transformers, conductors, etc. imported from Japan, on the basis of Sec. 10 of Act No. 3636 (Model Electric Light and Power Franchise Act) which has been incorporated by reference in her franchise under Act No. 3810. Section 10 provides:

> "The grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, copartnerships, private, public or quasi public associations, corporations, or joint-stock companies, on his (its) real estate, buildings, plants, machinery; and other personal property, except property declared exempt in this section. In consideration of the franchise and

> rights hereby granted, the grantee shall pay into the municipal treasury of the (of each) municipality in which it is supplying electric current to the public under this franchise, a tax equal to two per centum of the gross earnings from electric current sold or supplied under this franchise in said (each) municipality. Said tax shall be due and payable quarterly and 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 insular, now or in the future, on its poles, wires, insulators, switches; transformers and structures, installations, conductors, and accesories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted." (113 Phil. 569-570)

The Court applying the ruling in Panay Electric denied the exemption with the added statement that

> "Considering, therefore, the fact that section 190 of the Tax Code is a sort of an equalizer, to place casual importers, who are not merchants on equal footing with established merchants who pay sales tax on articles imported by them . . We may conclude that it was not the intention of the law to exempt the payment of compensating tax on the personal properties in question. The principle and legal philosophy underlying the imposition of compensating tax, as enunciated in the above case (referring to Borja), are fundamentally correct, and no plausible reason is advanced for their non-application to the case at bar." (p. 572, ibid.)

Petitioner claims that there exists a difference between paragraph 9 of its franchise and the corresponding provisions of the franchise of Panay Electric and Borja in that in the latter, unlike in the former, there is no statement that the grantee is exempt from "all taxes of whatsoever nature and whatsoever authority." In addition, petitioner points out, the franchise of Panay Electric and Borja contains a qualifying phrase, to wit: "placed in and over the public streets, avenues, roads, thoroughfares, etc."

A comparison of the pertinent provisions mentioned by petitioner and which are quoted in the preceding pages reveals no substantial or fundamental distinction as to remove petioner MERALCO from the ambit of the Panay Electric and Borja ruling. There may be differences in the phraseology used, but the intent to exempt the grantee from the payment only of property tax on its poles, wires, transformers, and insulators is evidently common to the three; withal, in all the franchises in question there is no specific mention of exemption of the grantee from the payment of compensating tax.

Petitioner disputes, however, the applicability of the stare decisis principle to its case claiming that this Court should not blindly follow the doctrine of Panay Electric and Borja, and that in Philippine Trust Co. et al. vs. Mitchell, 59 Phil. 30, 36, the Court had occasion to state: "The rule of stare decisis is entitled to respect. Stability in the law, particularly in the business field, is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right." (pp. 18-19, petitioner's brief, L-29987)

But what possible ground can there be for deviating from the decisions of this Court in these two cases? A doctrine buttressed by law, reason, and logic is not to be simply brushed aside to suit the convenience of a particular party or interest or to avoid harship to one. As We view this legal problem, no justification can be found for giving petitioner herein preferential treatment by reading into its franchise an exemption from a particular kind of tax which is not there. If it had been the legislative intent to exempt MERALCO from paying a tax on the use of imported equip-

> ments, the legislative body could have easily done so by expanding the provision of paragraph 9 and adding to the exemption such words as "compensating tax" or "purchases from abroad for use in its business," and the like. We cannot ignore the principle that express mention in a statute of one exemption precludes reading others into it. (Hoard vs. Sears, Roebuck & Co., 122 Conn. 185, 193, 188 A. 269)

Inasmuch as the provision in the franchise of MERALCO exempting it from all taxes and assessments of whatsoever nature, and by whatsoever authority upon its <u>privileges</u>, earnings, income, franchise, and <u>poles</u>, <u>wires</u>, <u>transformers</u>, and <u>insulators</u>, except the franchise tax, is similar to, if not exactly the same as, the provision in the franchise of petitioner Cagayan Electric Power and Light Co., Inc., we find no cogent and valid reason to modify, much less depart from the conclusion reached by the Supreme Court in MERALCO, as expressed in the above-quoted opinion of the High Court there, and the same should resolve the identical problem now brought before us as to whether petitioner herein is exempt from payment of compensating tax on electrical transformers, relays, meters, switches, switch gears and arresters imported by it for use in the operation of its electric light, heat and power system.

Petitioner would find comfort, however, in the phrase, "Provided, That the said franchise tax of three per centum of the gross earnings shall be in lieu of all taxes and assessments of whatever authority" found in its franchise, arguing that said franchise tax compounds or commutes all other taxes payable by it. Petitioner misses the point. Without in the least attempting to resolve in these proceedings whether such clause or provision in a franchise has the effect of commuting, for the franchise tax, all other taxes otherwise payable by the grantee, it will be noted that, insofar as the franchise of petitioner is concerned, in its textual completeness, "the said franchise tax of three per centum of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee is hereby exempted." The franchise tax of three per cent is not expressly, or impliedly declared, as already explained by the Supreme Court above in MERALCO, to stand for or be in lieu of all other taxes. The phrase "in lieu of all taxes and assessments of whatever authority", as the Supreme Court stated in MERALCO, cited above, is limited to taxes and assessments "upon privileges, earnings, income, franchise" and with regards to "poles, wires, transformers, and insulators", the exemption is only from payment of property tax. To say, therefore, that the franchise tax imposed in petitioner's franchise is a "commutative tax" because it is in lieu of all other taxes, is to ignore the unmistakable meaning of plain words. Consequently, it can never be said that the exemption clause in the franchise of petitioner is but a "substituted method of taxation" and the payment of a specified portion of its gross income represents a commutation of all the taxes petitioner would otherwise have to pay.

The net result is that petitioner Cagayan Electric Power and Light Co., Inc., is not exempt, under its franchise, from payment of the compensating tax on various electric transformers, electric meters, switches, switch gears, arresters and electrical relays imported by it for its own use as electric utility company. Accordingly, its claim for refund of compensating tax paid on the importations of these articles has to be, as it is hereby denied.

WHEREFORE, we find no merit in the Petition for Review and the same is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, December 12, 1978.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge