REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DAVAO CITY WATER DISTRICT, *Petitioner,*	**CTA *EB* NO. 2725** (CTA Case Nos. 9138, 9139, 9140, 9141, 9142 and 9143)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 0 2 2024 3:50 p.m.

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DECISION

MANAHAN, *J.:*

Before the Court *En Banc* is a *Petition for Review* filed by Davao City Water District posted on December 21, 2022,[1] which essentially seeks to reverse the Decision[2] dated May 6, 2022 of the CTA Third (3rd) Division and the Resolution[3] dated October 7, 2022 of the CTA Special Third (3rd) Division, by praying for respondent to refund the franchise tax paid in the amount of Thirty-Six Million Seven Hundred Twenty-Eight Thousand One Hundred Ninety-Two and 55/100 Pesos (₱36,728,192.55).

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[1] Petition for Review, EB Docket, pp. 2-40.

[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justice Maria Rowena Modesto-San Pedro concurring and Retired Associate Justice Erlinda P. Uy dissenting, EB Docket, Vol. I, pp. 47-92.

[3] EB Docket, pp. 114-117.

For easy reference, the dispositive portion of the May 6, 2022 Decision and the October 7, 2022 Resolution read, as follows:

May 6, 2022 Decision

> "**WHEREFORE**, premises considered, the present consolidated Petitions for Review docketed as CTA Case Nos. 9138, 9139, 9140, 9141, 9142 and 9143, respectively, are **DENIED** for lack of merit.
>
> **SO ORDERED**."[4]

October 7, 2022 Resolution

> "**WHEREFORE**, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED**."[5]

FACTS

The following are the facts as found by the Court in Division:

> "For taxable years 2003, 2006, 2007, 2009, 2010, and 2011, petitioner paid forty percent (40%) of the basic franchise tax for each of the said taxable years. The payments were offered for purpose of compromise, and were made pursuant to Revenue Regulations (RR) No. 30-2002 dated December 16, 2002. The details of the said payments are as follows, to wit:

Dates of Payment	**Amounts**	**Taxable Years**
February 27, 2014	P4,682,408.28	2003
December 9, 2013	P3,658,126.69	2006
September 26, 2013	P6,988,083.88	2007
February 27, 2014	P7,940,076.52	2009
February 27, 2014	P8,481,294.87	2010
December 9, 2013	P8,636,329.00	2011

[4] See Note 2, p. 84.
[5] See Note 3, p. 116.

On February 11, 2015, petitioner separately filed its *Claims for Refund*, all dated January 26, 2015, in the respective amounts of: (a) ₱4,682,408.28 for taxable year 2003; (b) ₱3,658,126.69 for taxable year 2006; (c) ₱6,988,083.88 for taxable year 2007; (d) ₱7,940,076.52 for taxable year 2009; (e) ₱8,481,294.87 for taxable year 2010; and (f) ₱8,636,329.00 for taxable year 2011.

On September 8, 2015, petitioner filed six (6) separate *Petitions for Review* docketed as CTA Case Nos. 9138 (for the claim for taxable year 2003), 9139 (for the claim for taxable year 2006), 9140 (for the claim for taxable year 2007), 9141 (for the claim for taxable year 2009), 9142 (for the claim for taxable year 2010), and 9143 (for the claim for taxable year 2011).

CTA Case Nos. 9138, 9139, and 9140 were raffled to this Court's Division; while CTA Case Nos. 9141 and 9142 were raffled to the Second Division of this Court.

For an orderly presentation, the Court deems it proper to state the proceedings that took place for each case prior to the consolidation of the present cases.

CTA Case No. 9138

On November 9, 2015, respondent filed his *Answer*, interposing certain special and affirmative defenses, to wit: (1) petitioner, as a local water district was organized pursuant to the provisions of PD No. 198, as amended; (2) petitioner is a franchisee and therefore liable to pay franchise tax; (3) Republic Act (RA) No. 7109 limited the tax exemption privileges of local water districts (LWDs); and (4) in a case of refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

The Pre-Trial Conference was initially set on February 23, 2016.

On December 4, 2015, petitioner posted its *Motion for Consolidation* of CTA Case Nos. 9138, 9139, 9140, 9141 and 9142. Subsequently, on December 17, 2015, petitioner posted its *Amended Motion for Consolidation* of CTA Case Nos. 9138, 9139, 9140, 9141 and 9142 with CTA Case No. 9143, for the purposes of expediency and sound judicial policy to avoid the possibility of rendition of two (2) conflicting decisions over the cases involving essentially the same facts and laws. Respondent, however, failed to comment on both *Motions*.

Thereafter, on January 20, 2016, petitioner filed its *Motion for Resetting* of the Pre-Trial Conference, in view of the pendency of its *Motion for Consolidation*.

In the Resolution dated January 21, 2016, the Court granted petitioner's prayer to consolidate CTA Case Nos. 9138, 9139, 9140, 9141, 9142 and 9143, subject to the conformity of the *ponente*.

In the Resolution dated January 29, 2016, the Court granted petitioner's *Motion for Resetting*, and accordingly reset the Pre-Trial Conference to April 12, 2016.

Respondent's Pre-Trial Brief was filed on February 9, 2016.

CTA Case No. 9139

Petitioner posted its *Motion for Consolidation* on December 4, 2015. Thereafter, petitioner posted its *Amended Motion for Consolidation* on December 17, 2015.

In the Resolution dated January 21, 2016, the Court granted petitioner's prayer to consolidate CTA Case No. 9139 with CTA Case Nos. 9138, 9140, 9141, 9142, and 9143, subject to the conformity of the *ponente*.

On March 21, 2016, respondent filed his *Answer*, interposing certain special and affirmative defenses, to wit: (1) the Court has no jurisdiction to determine whether petitioner is a franchisee under the provisions of the Constitution; (2) petitioner is liable for franchise tax; and (3) there is no law exempting petitioner from franchise tax.

CTA Case No. 9140

On November 9, 2015, respondent filed his *Answer*, interposing the same special and affirmative defenses he raised in his *Answer* in CTA Case No. 9138.

The Pre-Trial Conference was initially set on February 23, 2016.

Petitioner posted its *Amended Motion for Consolidation* on December 17, 2015, praying for the consolidation of the six (6) cases, reiterating that it is for purposes of expediency and sound judicial policy to avoid the possibility of rendition of two (2) conflicting decisions over the cases involving essentially the same facts and laws.

Further, on January 19, 2016, petitioner posted its *Motion for Resetting* of the Pre-Trial Conference.

Respondent filed his *Manifestation (re: petitioner's Motion for Consolidation and Amended Motion for Consolidation)* on January 21, 2016.

In the Resolution dated January 27, 2016, the Court granted petitioner's *Motion for Resetting*, and reset the Pre-Trial Conference to April 12, 2016.

Respondent's Pre-Trial Brief was filed on February 9, 2016.

In the Resolution dated February 24, 2016, the Court granted the consolidation of CTA Case No. 9140 with CTA Case No. 9138.

CTA Case No. 9141

Respondent filed his *Answer* on November 23, 2015, interposing certain special and affirmative defenses, to wit: (1) petitioner is a government-owned and controlled corporation with primary and secondary franchises liable for franchise tax; and (2) a claim for exemption is never favored, hence, an exempting provision should be construed *strictissimi juris* against a taxpayer.

The Pre-Trial Conference was initially set on February 4, 2016.

Petitioner posted its *Amended Motion for Consolidation* on December 17, 2015, praying for the consolidation of the six (6) cases still for purposes of expediency and sound judicial policy.

Respondent's Pre-Trial Brief was filed on January 15, 2016.

Respondent filed his *Comment (Re: Petitioner's Motion for Consolidation)* on January 22, 2016.

On January 22, 2016, petitioner filed its *Motion for Resetting* of the Pre-Trial Conference. In its Order dated January 25, 2016, the Court granted the said *Motion*.

In the Resolution dated January 29, 2016, the Court granted petitioner's *Amended Motion for Consolidation* and ordered the consolidation of CTA Case No. 9141 with CTA Case No. 9138, subject to the conformity of this Court's Division.

CTA Case No. 9142

Respondent filed his *Answer (with Motion to Admit)* on December 7, 2015, interposing, *inter alia*, certain special and affirmative defenses, to wit: (1) in order to be entitled to the refund being sought, petitioner must satisfactorily comply with the two (2)-year prescriptive period as provided under Section 204(c) in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997; and (2) that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed *strictissimi juris* against the person or entity claiming the exemption, as entitlement to a tax refund is for the taxpayer to prove and for the government to disprove.

The Pre-Trial Conference was initially set on February 4, 2016.

Petitioner posted its *Motion for Consolidation* on December 4, 2015. Thereafter, petitioner posted its *Amended Motion for Consolidation* on December 17, 2015, praying for the consolidation of the six (6) cases for the same purposes of expediency and sound judicial policy. Respondent filed his *Comment* to petitioner's *Amended Motion for Consolidation* on February 4, 2016.

On January 21, 2016, petitioner filed its *Motion for Resetting* of the Pre-Trial Conference which was granted by the Court in its Order dated January 22, 2016.

In the Resolution dated February 10, 2016, the Court granted the consolidation of CTA Case No. 9142 with CTA Case No. 9138, subject to the conformity of this Court's Division.

CTA Case No. 9143

Respondent posted his *Answer* on November 5, 2015, interposing the same special and affirmative defenses as that he raised in his *Answer* in CTA Case No. 9138.

The Pre-Trial Conference was initially set on February 3, 2016.

On December 17, 2015, petitioner posted its *Motion for Consolidation*, praying for the consolidation of the six (6) cases, again for purposes of expediency and sound judicial policy to avoid the possibility of rendition of two (2) conflicting decisions over the cases involving essentially the same facts and laws.

In the Resolution dated January 28, 2016, the Court granted the consolidation of CTA Case No. 9143 with CTA Case No. 9138, subject to the conformity of this Division, and cancelled the scheduled Pre-Trial Conference.

Respondent's Pre-Trial Brief was filed on February 5, 2016.

Consolidated Cases

In the Resolution dated February 24, 2016, the Court declared that it has no objection on the consolidation of the six (6) cases docketed as CTA Case Nos. 9138, 9139, 9140, 9141, 9142, and 9143.

In the Resolution dated March 31, 2016, the Court directed that the Pre-Trial Conference previously set on April 12, 2016 shall proceed as scheduled; and order the parties their respective consolidated *Pre-Trial Briefs*.

Thus, *Respondent's Consolidated Pre-Trial Brief* was filed on April 7, 2016; and the *Consolidated Pre-Trial Brief for Petitioner* was submitted on April 8, 2016. The Pre-Trial Conference indeed proceeded as scheduled.

On April 27, 2016, the parties presented their *Joint Stipulation of Facts and Issues.*

In the Resolution dated May 6, 2016, the Court, in view of the consolidation of the present cases, ordered respondent to certify and elevate to the Court the entire *BIR Records* of the consolidated cases, within a final and non-extendible period of ten (10) days from receipt, otherwise, respondent should show cause why he should not be cited in contempt for failure to comply with a lawful order of the Court.

The Pre-Trial Order was subsequently issued on May 19, 2016.

On May 23, 2016, respondent filed his *Manifestation*, stating that no *BIR Records* were transmitted by BIR Revenue Region No. 9, despite notice. The said *Manifestation* was noted by the Court, but directed respondent to exert utmost effort to transmit the *BIR Records* to the Court as soon as the same are received, per its Resolution dated June 8, 2016.

Trial then ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimony of the following individuals, namely: (1) Mr. Engr. Edwin V. Regalado, petitioner's General Manager; (2) Mr. Hilton P. Husain, OIC-Manager of petitioner's Accounting Department; and (3) Mr. Siegfred G. Medina, petitioner's driver-messenger.

Petitioner posted its *Formal Offer of Exhibits* on December 9, 2016. Respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on December 28, 2016. In the Resolution dated February 13, 2017, the Court admitted the exhibits formally offered by petitioner.

Respondent transmitted the *BIR Records* for the present consolidated cases via his *Manifestation (Re: Submission of BIR Records)* filed June 27, 2017, *Compliance* filed on May 7, 2018, and *Compliance* filed on May 25, 2018.

For his part, respondent also presented his documentary and testimonial evidence. He offered the testimonies of Revenue Officers Marilou E. Cubero and Christine Diwata T. Camiña.

Respondent filed his *Formal Offer of Evidence* on September 25, 2018. Petitioner, however, failed to file its comment thereon.

Petitioner posted its *Manifestation and/or Motion to Suspend Proceedings* on November 29, 2018, wherein it manifested, *inter alia*, that on October 1, 2018, petitioner's Office of the General Manager received the letter dated September 7, 2018 from the BIR, informing petitioner that its application for compromise settlement under RR No. 30-2002, involving the amount of ₱13,032,076.33, representing deficiency franchise tax liabilities for taxable year 2006, was approved, attaching therewith the *Certificate of Availment (Compromise Settlement)* dated September 7, 2018 signed by Mr. Alfredo V. Misajon, ACIR-Collection Service and Head, TWG on Compromise; that petitioner intend to make earnest efforts to secure similar approval from the BIR for the other taxable years involved in this case (*i.e.*,2003, 2007, 2009, 2010, and 2011); and that petitioner will be needing more time in pursuing such efforts.

Respondent, however, failed to file his comment on the said *Manifestation and/or Motion to Suspend Proceedings*.

In the Resolution dated March 26, 2019, the Court noted its *Manifestation*, but denied the *Motion to Suspend Proceedings*. However, the parties were given a period of thirty (30) days from notice, within which to enter a possible judicial compromise in relation to the cases, and in case no compromise is reached, petitioner was given a fresh period of ten (10) days to file its comment to respondent's *Formal Offer of Evidence*. The Court also directed petitioner's counsel to submit, within ten (10) days from notice, a certified true copy of the *Certificate of Availment*, and a copy of the authority by the BIR's National Evaluation Board, authorizing Mr. Alfredo V. Misajon to issue a *Certificate of Availment*.

After the posting of petitioner's *Compliance* dated July 15, 2019 on July 16, 2016, the Court, in its Resolution dated August 5, 2019, the Court closed and terminated CTA Case No. 9139, involving a claim for refund of petitioner's franchise tax for taxable year 2006. The Court, on the other hand, ruled that since the thirty (30)-day period given to the parties to enter into a judicial compromise already lapsed, the proceedings in CTA Case Nos. 9138, 9140, 9141, 9142 and 9143 shall proceed accordingly. Moreover, in the Resolution, petitioner was given a period of ten (10) days from notice within which to file its comment/opposition to respondent's *Formal Offer of Evidence*. Petitioner, however, failed to file its comment to respondent's *Formal Offer of Evidence*.

In the Resolution dated July 21, 2020, the Court admitted respondent's exhibits, *except* Exhibit 'R-2', for being a mere photocopy.

Respondent's *Memorandum* was posted on September 25, 2020; while petitioner's *Memorandum* was posted on January 20, 2021.

On June 23, 2021, these consolidated cases were submitted for decision."[6]

On May 6, 2022, the CTA Third (3rd) Division rendered the assailed Decision.

On July 7, 2022, petitioner posted its Motion for Reconsideration.[7] On October 7, 2022,[8] the CTA Special Third (3rd) Division issued a Resolution denying petitioner's Motion for Reconsideration for lack of merit.

On December 21, 2022,[9] petitioner posted the present Petition for Review.

On February 1, 2023,[10] the Court *En Banc* issued a Resolution ordering respondent to file his Comment to the Petition for Review. As per Records Verification dated March 10, 2023,[11] respondent failed to file the same.

On April 13, 2023,[12] the Court *En Banc* issued a Resolution submitting the case for decision. Hence, this Decision.

ISSUE

Petitioner raised the lone issue of "[W]hether or not the franchise tax mentioned under Section 119 of the Tax Code may be assessed and imposed on petitioner."[13]

Petitioner's Arguments

Petitioner raised the following arguments:

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[6] See Note 2, pp. 48-57.
[7] Division Docket, Vol. 3, pp. 1205-1224.
[8] Division Docket, Vol. 3, pp. 1230-1233.
[9] See Note 1.
[10] EB Docket, Vol. II, pp. 565-566.
[11] EB Docket, Vol. II, p. 567.
[12] EB Docket, Vol. II, pp. 569-570.
[13] See Note 1, Legal Issue, p. 13.

"I. Petitioner cannot be a franchise under the fundamental law of the land. As such, it cannot be subject of franchise tax.

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II. Statues which define Franchise Tax and who are subject to Franchise tax. As such, the 'water utilities' referred to in Section 119 of the Tax Code must be understood to mean[s] as water utilities formed under the Corporation Code of the Philippines.

A franchise is not necessary for petitioner to operate as water utility.

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III. Petitioner is a government instrumentality as defined in Section 2(10) of the EO 292, and in the light of the MIAA case and Republic Cases. In its Charter, petitioner is not organized as a stock or non-stock corporation. As such, petitioner cannot be subject to franchise tax.

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IV. Petitioner herein, although a GOCC is not required to meet the test of economic viability as prescribed in Section 16, Article XII of the 1987 Constitution.

xxx xxx xxx

V. Congress considered local water districts as quasi-public corporations when it enacted RA No. 7109 and passed into law on August 14, 1991. Pursuant to the DCWD Case, it is already a GOCC.

xxx xxx xxx

VI. The factual antecedents and issues in the City of Cabanatuan and MCIAA Cases are different from the petitioner's case.

xxx xxx xxx

VII. Strict interpretation on tax exemption statutes should not apply to petitioner.

xxx xxx xxx"[14]

RULING OF THE COURT

The Court *En Banc* finds the Petition bereft of merit.

The CTA has jurisdiction over the case

Before discussing the merits, the Court *En Banc* finds it proper to initially discuss whether it has jurisdiction over the case.

In the most recent case of *The Department of Energy v. Court of Tax Appeals (DOE)*,[15] the Supreme Court categorically declared that "*all disputes, claims, and controversies, solely between or among executive agencies, including disputes on tax assessments, must perforce be submitted to administrative settlement by the Secretary of Justice or the Solicitor General, as the case may be.*"

The *DOE* case reiterated the ruling in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue (PSALM)*,[16] where the Supreme Court said that "[u]nder Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved."

Both *PSALM* and *DOE* cases provide that the proper forum to resolve conflict, *i.e.*, dispute on tax assessments, among

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[14] See Note 1, pp. 13-36.
[15] G.R. No. 260912, August 17, 2022.
[16] G.R. No. 198146, August 8, 2017.

executive agencies, is before the Secretary of Justice or the Solicitor General, as the case may be, and not before the CTA.

However, it bears stressing that at the time this case was filed on *September 8, 2015* before the CTA Third (3rd) Division, the prevailing doctrine is laid down in *Philippine National Oil Company v. The Hon. Court of Appeals, The Commissioner of Internal Revenue and Tirso Savellano* and *Philippine National Bank v. The Hon. Court of Appeals, Court of Tax Appeals, Tirso B. Savellano and Commissioner of Internal Revenue* (*PNOC*)."[17] The Supreme Court said in the *PNOC* case:

> "When there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. xxx
>
> It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails — *Generalia specialibus non derogant.*
>
> Sustained herein is the contention of private respondent Savellano that P.D. No. 242 is a general law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies. It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines. On the other hand, Rep. Act No. 1125 is a special law dealing with a specific subject matter — the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein.
>
> Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect Rep. Act No. 1125. Rep. Act No. 1125, specifically Section

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[17] G.R. Nos. 109976 and 112800, April 26, 2005.

> 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. **Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA**. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant." *(Emphasis supplied)*

Here, at the time of the filing of the Petition on *September 8, 2015* before the CTA Third (3rd) Division, the CTA had jurisdiction over the instant case by virtue of the ruling in the *PNOC* case. In fact, more than a year later after the filing of the said Petition, the Supreme Court confirmed the *PNOC* ruling in *Commissioner of Internal Revenue v. Secretary of Justice and Philippine Amusement and Gaming Corporation*,[18] where it declared that the Secretary of Justice has no jurisdiction to review disputed assessments.

As such, while the more recent *PSALM* and *DOE* rulings divest the CTA of jurisdiction to adjudicate this case, its retroactive application will work to the prejudice of the parties. "While a judicial interpretation becomes a part of the law as of the date that the law was originally passed, the reversal of the interpretation cannot be given retroactive effect to the prejudice of parties who may have relied on the first interpretation."[19]

Considering the foregoing, the Court *En Banc* declares that the CTA has jurisdiction over the case.

Petitioner is liable to pay franchise tax

Section 119 of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> "**Section 119**. *Tax on Franchises.*— **Any provision of general or special law to the contrary**

[18] G.R. No. 177387, November 9, 2016.
[19] See Note 16, citing *People v. Jabinal*, L-30061, February 27, 1974, 55 SCRA 607, 612.

> **notwithstanding**, there shall be levied, assessed and collected in respect to **all franchises on** radio and/or television broadcasting companies whose *annual* gross receipts of the preceding year does not exceed Ten million pesos (P10,000,000.00), subject to Section 236 of this Code, a tax of three percent (3%) and on electric, gas and **water utilities**, a tax of two percent (2%) on the **gross receipts derived from the business covered by the law granting the franchise**: *Provided, however*, That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon: *Provided, further*, That once the option is exercised, it shall not be revoked.
>
> The grantee shall file the return with, and pay the tax due thereon to the Commissioner or his duly authorized representative, in accordance with the provisions of Section 128 of this Code, and the return shall be subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding." *(Emphasis supplied)*

It must be noted that the above-quoted provision is an exception to Section 108(A) of the 1997 NIRC, as amended. It provides:

> "**Section 108**. *Value-added Tax on Sale of Services and Use or Lease of Properties.—*
>
> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
>
> The phrase '*sale or exchange of services*' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling,

> processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees **except those under Section 119 of this Code**; xxx"*(Emphasis supplied)*

Section 108 of the 1997 NIRC, as amended, provides the general rule that the sale or exchange of services is subject to Value-Added Tax (VAT). Section 119 of the 1997 NIRC, as amended, on the other hand, enumerates the entities who are engaged in sale or exchange of services that are subject to franchise tax instead of VAT under the general rule laid down in Section 108.

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]."[20]

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."[21]

In *Renato V. Diaz and Aurora Ma. F. Timbol v. The Secretary of Finance and the Commissioner of Internal Revenue*,[22] 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

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[20] See Note 2, p. 79.
[21] See Note 2, pp. 80-81.
[22] G.R. No. 193007, July 19, 2011.

> 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.**"[23] *(Emphasis supplied)*

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.

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,

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[23] Id., citing *Metropolitan Cebu Water District v. Adala*, G.R. No. 168914, July 4, 2007, 526 SCRA 465, 476.

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 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 reverse or modify the findings of the Court in Division in denying petitioner's claim for refund.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of merit. The assailed Decision dated May 6, 2022 and the Resolution dated October 7, 2022 of the Court in Division in CTA Case Nos. 9138, 9139, 9140, 9141, 9142 and 9143 are **AFFIRMED**.

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

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

ROMAN G. DEL ROSARIO
Presiding Justice