REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SILANG WATER DISTRICT,
Respondent.

C. T. A. EB Case No. 366
(C. T. A. Case No. 7403)

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SILANG WATER DISTRICT,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C. T. A. EB Case No. 368
(C. T. A. Case No. 7403)

Present:
Acosta, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, JJ.

Promulgated:

NOV 27 2008 [signature] 2:05 p.m.

x- x

DECISION

Casanova, J:

This is a case where both parties filed their respective Petitions for Review, assailing the Decision[1] (Assailed Decision) of the Court of Tax Appeals

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[1] Rollo (EB 366), pp. 18-35.

Second Division dated October 9, 2007 and the Resolution[2] (Assailed Resolution) dated January 23, 2008 in CTA Case No. 7403 entitled, *"Silang Water District, petitioner vs. Commissioner of Internal Revenue, respondent".*

Commissioner of Internal Revenue (CIR) filed on March 6, 2008 a Petition for Review with CTA *En Banc* docketed as EB Case No. 366, while Silang Water District (SILANG) filed on March 13, 2008 its Petition for Review with CTA *En Banc* docketed as EB Case No. 368.

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

> *Silang Water District (Petitioner) is a government-owned or controlled corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at M.H. del Pilar corner E. Montoya Streets, Silang Cavite. It was created pursuant to the provisions of Presidential Decree (P.D.) No. 198[3] as a public utility engaged in the operation and management of the water supply and distribution system within the boundaries of the Municipality of Silang, Cavite.[4]*
>
> *The Commissioner of Internal Revenue (Respondent) is the duly appointed officer of the Bureau of Internal Revenue (BIR) authorized to decide disputed assessments pursuant to the provisions of the National Internal Revenue Code of 1997 (1997 Tax Code), as amended. Respondent's principal office is at the fourth floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[5]*
>
> *On April 12, 2005, petitioner received a Preliminary 15-Day Letter dated March 29, 2005 from the BIR, informing petitioner of its alleged liability for deficiency income, value-added, and franchise tax liabilities for the year ended December 31, 2002, in the total amount of P6,097,955.10, broken down as follows[6]:*

2 Ibid, pp. 36-40
3 As amended by PD Nos. 768 and 1479 dated August 15, 1975 and June 11, 1978, respectively
4 Paragraphs 1, 11, and 13, Joint Stipulation of Facts and Issues ("JSFI"), Rollo, pp. 133 and 136
5 Ibid, paragraph 2,, p. 133
6 Ibid, paragraph 3, p. 134

	Income Tax	Value-Added Tax	Franchise Tax	
Tax Due	2,332,198.38	198,550.14	1,083,701.49	
Add: Surcharge	583,049.60	49,637.54	270,925.37	
Interest	932,879.35	89,347.56	487,665.67	
Compromise	25,000.00	20,000.00	25,000.00	
Total	**3,873,127.33**	**357,535.24**	**1,869,296.53**	6,097,955.10

On April 28, 2005, petitioner filed its position paper dated April 25, 2005 refuting the preliminary deficiency tax assessments, citing therein justifications for the withdrawal of said deficiency tax assessments.[7]

On September 30, 2005, the BIR issued Assessment Notice No. 54/2002 together with the Formal Letter of Demand holding petitioner liable for deficiency income, value-added, and franchise tax liabilities for the year ended December 31, 2002, computed as follows[8]:

	Income Tax	Value-Added Tax	Franchise Tax	
Tax Due	2,332,198.38	198,550.15	1,083,701.49	
Add: Surcharge	583,049.60	49,637.54	270,925.37	
Interest	1,141,377.89	107,097.95	584,548.58	
Compromise	25,000.00	16,000.00	25,000.00	
Total	**4,081,625.87**	**371,285.64**	**1,964,175.44**	6,417,086.95

On October 28, 2005, petitioner filed its protest against the deficiency tax assessments contained in Assessment Notice No. 54/2002[9].

On December 23, 2005, respondent, through his Acting Regional Director of Revenue Region No. 9, served to petitioner a letter dated December 6, 2005, denying its protest against the deficiency tax assessments.[10] Hence, a Petition for Review was filed before this Court on January 23, 2006.[11]

During trial, petitioner submitted testimonial and documentary evidence in support of its position. Respondent, however, waived his right to present evidence since the issues involved are questions of law.[12]"

[7] Ibid, paragraph 4
[8] Ibid, paragraphs 5, 6 and 7, pp. 134 & 135
[9] Ibid, paragraph 8, p. 135; Exh. "B", "B-1" to "B-9", Rollo, pp. 21-30
[10] Exhibit "C", "C-1" to "C-3", Rollo, pp. 31-34; par. 9, JSFI, Rollo p. 135
[11] January 22, 2006 falls on a Sunday
[12] TSN, January 31, 2007, pp. 4 & 5

After trial on the merits, the *CTA Second Division* promulgated the assailed Decision, the dispositive portion of which is hereunder quoted, to wit:

> ***"IN VIEW OF THE FOREGOING,*** *the instant petition is hereby* ***PARTIALLY GRANTED.*** *Accordingly, the value-added tax assessment against petitioner for taxable year 2002 is* ***CANCELLED*** *and* ***SET ASIDE.*** *However, petitioner is* ***ORDERED*** *to* ***PAY*** *respondent the amount of* ***P5,995,801.31*** *representing deficiency income tax (P4,056,625.87) and franchise tax (P1,939,175.44) plus 20% delinquency interest per annum pursuant to Section 249(C)(3) of the 1997 Tax Code*[13] *from October 31, 2005 until the amount is fully paid.*
>
> ***SO ORDERED."***

On November 5, 2007, CIR filed his Motion for Partial Reconsideration. On the other hand, SILANG filed its Motion for Reconsideration also on November 5, 2007. The *CTA Second Division*, in a Resolution dated January 23, 2008, denied both motions. The dispositive portion of the assailed Resolution is hereby quoted, to wit:

> ***"WHEREFORE,*** *petitioner's 'Motion for Reconsideration' and respondent's 'Motion for Partial Reconsideration' are hereby* ***DENIED*** *for lack of merit.*
> ***SO ORDERED."***

Hence, the consolidated Petitions for Review.

In CTA EB No. 366, petitioner-CIR raised the sole issue of:

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[13] **SECTION 249.** Interest. –
xxx
(C) Delinquency Interest. – In case of failure to pay:
xxx
(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

> *Whether or not the sales of respondent not subject to franchise tax are subject to value-added tax pursuant to the provisions of the National Internal Revenue Code.*

CIR claims that the parties readily stipulated that the VAT assessment pertains to respondent's sales not subject to franchise tax; and, whether the VAT assessment on these sales not subject to franchise tax may be upheld. In other words, both parties have accepted as gospel truth the fact that VAT is not imposable on sales subject already to franchise tax. But as far as those sales not subject to franchise tax, petitioner is of the position that the VAT is properly imposable.

The VAT is imposed on all sales of goods, property or service, unless expressly exempted. Attention must be drawn to the word "all". Whatever the type of business is irrelevant unless expressly exempted. This means that as long as it is a sale of goods or services no matter what business that is, and not expressly exempted by law, that sale is subject to VAT. Thus, it becomes respondent's burden to prove it is exempted from its imposition.

On the other hand, in CTA EB No. 368, petitioner-SILANG submits the following issues:

> 1. *Whether or not the Second Division of the Honorable Court erred in considering that the gross water revenue of the Petitioner does not fall under the exclusion from gross income under Section 32(B)(7)(b) of the National Internal Revenue Code; and*
>
> 2. *Whether or not the Second Division of the Honorable Court erred in declaring that Petitioner has been issued a special or secondary franchise under Presidential Decree No. 198, as amended, contrary to the provisions of Section II Article XII of the 1987 Constitution.*

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

As aptly discussed by the *CTA Second Division*, and We quote and hereby adopt, to wit:

> *"Presidential Decree No. 198 was issued by then President Ferdinand E. Marcos by virtue of his legislative power under Proclamation No. 1081. It authorized the different local legislative bodies to form and create their respective water districts through a resolution they will pass subject to the guidelines, rules and regulations therein laid down. The decree further created and formed the 'Local Water Utilities Administration' (LWUA), a national agency attached to the National Economic and Development Authority (NEDA), and granted with regulatory power necessary to optimize public service from water utilities operations.*
>
> *Section 45[14] of P.D. No. 198 provides the exemption from taxes of local water districts as follows:*
>
>> *'**SECTION 45.** Exemption from Taxes. — A district shall (1) be exempt from paying income taxes, and (2) shall be exempt from the payment of (a) all National Government, local government and municipal taxes and fees, including any franchise, filing, recordation, license or permit fees or taxes and fees, charges or costs involved in any court or administrative proceeding in which it may be a party and (b) all duties or imposts on imported machinery, equipment and materials required for its operations.'*
>
> *In Republic Act (R.A.) No. 7109,[15] the exemption from taxes granted to local water districts was reiterated, save for some changes, as follows:*

[14] Renumbered by Section 20 of P.D. No. 768 as Section 46

[15] Otherwise known as *"An Act Granting Tax Exemption Privileges to Local Water Districts"*, approved on August 14, 1991

> *'**SECTION 1.** Exemption from taxes. — A water district created pursuant to Presidential Decree No. 198, as amended, shall be exempted from the payment of (1) income taxes, except taxes on interest income from deposits and on investments that have no direct relation with water service operations; (2) franchise taxes; and (3) duties and taxes on imported machinery, equipment and materials required for its operations: Provided, That such machinery, equipment and materials are not domestically manufactured at comparable and competitive prices and quality.*
>
> ***SECTION 2.** Additional Exemption Under the Real Property Tax Code. — All lands, buildings, and other real property, including equipment attached thereto, that are used for water supply generation and distribution shall be exempted from real property taxes: Provided, That the land or building is not used for office or any other commercial purposes.'*

However, local water districts can enjoy these privileges only for a period of five (5) years, as provided in Section 3 which states:

> *'**SECTION 3.** Period and Conditions of Exemptions. — The tax exemption privileges provided for in Sections 1 and 2 to all water districts shall be enjoyed only for a period of five (5) years from the effectivity of this Act:[16] Provided, That the water districts shall adopt internal control reforms that would bring about their economic and financial viability: Provided, further, That, for a water district to be entitled to the tax exemption, its appropriation for personal services, as well as for travel, transportation or representation expenses and purchase of motor vehicles, shall not be increased by more than twenty-five percent (25%) a year during the period of exemption.'*

Because of the revocation of these privileges on August 14, 1996, respondent assessed petitioner of deficiency taxes for taxable year 2002.

The hornbook doctrine in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.[17] For this reason, the withdrawal of the tax exemption under R.A. No. 7109 should not be construed as automatically subjecting local water districts to the taxes for which it was formerly

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[16] Under Section 8 of R.A. No. 7109, this Act shall take effect upon its approval.
[17] *Commissioner of Internal Revenue vs. Court of Appeals, et al*, G.R. No. 115349, April 18, 1997

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exempted. Instead, this Court shall determine whether or not local water districts are subject to income, franchise, and value-added tax under the provisions of the 1997 Tax Code.

Income Tax

Relying on the expiration of the tax exemption, respondent assessed petitioner of deficiency income tax. However, petitioner argues that while the tax exemption was removed under R.A. No. 7109, its income as public utility is an exclusion from gross income as stated in Section 32(B)(7)(b) of the 1997 Tax Code. Consequently, it is exempt from income tax.[18] *Section 32(B)(7)(b) provides as follows:*

> ***'SECTION 32.*** *Gross Income. —*
>
> *xxx*
>
> *(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:*
>
> *xxx*
>
> *(7) Miscellaneous Items. —*
>
> *xxx*
>
> *(b) Income Derived by the Government or its Political Subdivisions. — Income derived from any public utility or from the exercise of any essential governmental function accruing to the Government of the Philippines or to any political subdivision thereof.*
>
> *Xxx'*

The Court disagrees with petitioner.

Petitioner, as admitted by both parties, is a public utility; since it is engaged in the operation and management of the water supply and distribution system for domestic, commercial and industrial uses for residents within the boundaries of the Municipality of Silang, Cavite. In

[18] Exhibit "D-4"; *Rollo*, page 169

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*the case of **JG Summit Holdings vs. Court of Appeals, et al.**,[19] the Supreme Court defined 'public utility' in this manner:*

> *'A '**public utility**' is 'a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service.' To constitute a public utility, the facility must be necessary for the maintenance of life and occupation of the residents. However, the fact that a business offers services or goods that promote public good and serve the interest of the public does not automatically make it a public utility. Public use is not synonymous with public interest. As its name indicates, the term 'public utility' implies **public use** and **service to the public**. The principal **determinative characteristic** of a public utility is that of service to, or readiness to serve, an indefinite public or portion of the public as such which has a legal right to demand and receive its services or commodities. Stated otherwise, the owner or person in control of a public utility must have devoted it to such use that the public generally or that part of the public which has been served and has accepted the service, has the right to demand that use or service so long as it is continued, with reasonable efficiency and under proper charges. Unlike a private enterprise which independently determines whom it will serve, a 'public utility' holds out generally and may not refuse legitimate demand for service.' (Citations omitted)*

In order to be excluded from gross income under Section 32(B)(7)(b), petitioner's income must accrue to the Government of the Philippines[20] or any political subdivision thereof. While petitioner is indisputably a public utility, income derived by it does not accrue to the local government such as the Municipality of Silang in Cavite for the following reasons:

First, income derived by petitioner from its sale of water is utilized for its operation and maintenance alone under Section 37 of P.D. No. 198[21], as amended, which states:

> *'**SECTION 37.** Rates and Charges – Water. – A district may sell water under its control, under schedules of rates and charges as may be determined by the Board, to any and all water users within the district. Said schedule may provide for*

[19] *G.R. No. 124293, September 24, 2003*

[20] The term "*Government of the Republic of the Philippines*" refers to "the corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or *barangay* subdivisions or other forms of local government." [Section 2(1) of the Administrative Code of 1987]

[21] As amended by P.D. No. 768 and renumbered by Section 7 of P.D. No. 1479

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differential rates for different categories of use and different quantity blocks. The district, as far as practicable, shall fix such rates and charges for water as will result in revenues which will:

(a) Provide for reimbursement from all new water customers for the cost of installation of new services and meters;

(b) Provide for revenue from all water deliveries and services performed by the district;

(c) Pay the operating expenses of the district;

(d) Provide for the maintenance and repairs of the works;

(e) Provide a reasonable surplus for replacement, extension and improvements; and

(f) Pay the interest and principal and provide a sinking fund for the payment of debts of the district as they become due and establish a fund for reasonable reserves.'

Second, the priority of disposing its income does not include that of the Municipality of Silang in Cavite under Section 41 of P.D. No. 198[22]*, to wit:*

*'**SECTION 41.** Disposition of Income. - The income of the district shall be disposed of according to the following priorities:*

First to pay its contractual and statutory obligations and to meet its essential current operating expenses.

Second, to allocate at least fifty percent (50%) of the balance exclusively as a reserve for debt service and operating and maintenance, to be used for such purposes only during periods of calamities force majeure or unforeseen events.

Third, to allocate the residue as a reserve exclusively for expansion and improvement of its physical facilities.'

Finally, the non-accrual of petitioner's income to the Municipality of Silang in Cavite is reinforced by the latter's loss of ownership and control over the former under Section 7 of P.D. No. 198[23]*, as amended, as follows:*

*'**SECTION 7.** Filing of Resolution. – A certified copy of the resolution or resolutions forming a district shall be forwarded to the office of Secretary of the Administration. If*

[22] As amended by Section 8 of P.D. No. 1479
[23] As amended by Section 3 of P.D. No. 768

found by the Administration to conform to the requirement of Section 6 and the policy objectives in Section 22, the resolution shall be duly filed. The district shall be deemed duly formed and existing upon the date of such filing. A certified copy of said resolution showing the filing stamp of the Administration shall be maintained in the office of the district. ***Upon such filing, the local government or governments concerned shall lose ownership, supervision and control or any right whatsoever over the district except as provided herein****.' (Emphasis supplied)*

Moreover, one of the Whereas clauses of Resolution No. 060-79,[24] *the resolution forming petitioner, explicitly provides for the independence of petitioner from the Municipality of Silang, Cavite, to wit:*

'WHEREAS, PD No. 198 provides that no avail of this assistance there should be formed and organized an autonomous Local Water District, free from political influence and independent of any local government, and which entity shall take charge and operate the local water utility on a self-liquidating, revenue-producing basis;'

Besides, the passage of the 1997 Tax Code accordingly removed the tax exemption privileges contained in the charters of government-owned and controlled corporations, except for some. Section 27(C) of the 1997 Tax Code explicitly subjects government-owned and controlled corporation to income tax, as follows:

'SECTION 27. *Rates of Income tax on Domestic Corporations.* –

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(C) Government-owned or -Controlled Corporations, Agencies or Instrumentalities. - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.'

[24] Exhibit "A", *Rollo,* page 163

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Based on the foregoing, petitioner is liable for income tax as a government-owned and controlled corporation under Section 27(A) of the 1997 Tax Code.[25]

Franchise Tax

Petitioner argues that the franchise tax applies only to those companies such as water utilities which were granted franchises. Petitioner concludes that the assessment for deficiency franchise tax against it was erroneous because it was not given any franchise, as it was established only by a mere resolution of the Sangguniang Bayan of Silang, Cavite.[26]

This Court disagrees.

In its general signification, a franchise is a privilege conferred by government authority, which does not belong to citizens of the country generally as a matter of common right. In its specific sense, a franchise may refer to:

a) General or primary franchise - relates to the right to exist as a corporation, by virtue of duly approved articles of incorporation, or a charter pursuant to a special law creating the corporation. The right under a primary or general franchise is vested in the individuals who compose the corporation and not in the corporation itself.[27] *This is the one contemplated in Section 16, Article XII of the 1987 Constitution which states:*

> ***'SECTION 16.*** *The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.'*

b) Special or secondary franchise - refers to the right or privileges conferred upon an existing corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires.

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[25] **SECTION 27.** *Rates of Income tax on Domestic Corporations.* –

(A) *In General.* - Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: *Provided*, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%). xxx

[26] Exhibit "D-7" and "D-8", *Rollo,* pages 172-173

[27] *National Power Corporation vs. City of Cabanatuan,* G.R. No. 149110. April 9, 2003

The rights under a secondary or special franchise are vested in the corporation and may ordinarily be conveyed or mortgaged under a general power granted to a corporation to dispose of its property, except such special or secondary franchises as are charged with a public use.[28] *This is the franchise referred to in Section 11 Article XII of the 1987 Constitution, to wit:*

> *'**SECTION 11.** No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.'*

It is also this type of franchise where the franchise tax provided under Section 119 of the 1997 Tax Code is imposed which provides:

> *'**SECTION 119.** Tax on Franchises. — ,Any provision of general or special law to the contrary 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), 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.*
>
> *Xxx'*

Here, petitioner was granted both kinds of franchise. Aside from the joint admission of both parties that petitioner is a government-owned or controlled

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[28] Ibid.

*corporation, the Supreme Court categorically ruled in **Feliciano vs. Commission on Audit, et al.**[29] that local water districts are government-owned and controlled corporations with a special charter, as follows:*

> *'LWDs[30] exist by virtue of PD 198, which constitutes their special charter. Since under the Constitution only government-owned or controlled corporations may have special charters, LWDs can validly exist only if they are government-owned or controlled. To claim that LWDs are private corporations with a special charter is to admit that their existence is constitutionally infirm.*
>
> *Unlike private corporations, which derive their legal existence and power from the Corporation Code, LWDs derive their legal existence and power from PD 198. x x x*
>
> *Clearly, LWDs exist as corporations only by virtue of PD 198, which expressly confers on LWDs corporate powers. Section 6 of PD 198 provides that LWDs 'shall exercise the powers, rights and privileges given to private corporations under existing laws.' Without PD 198, LWDs would have no corporate powers. Thus, PD 198 constitutes the special enabling charter of LWDs. The ineluctable conclusion is that LWDs are government-owned and controlled corporations with a special charter.'*

*Simultaneously with the formation of petitioner as a government-owned and controlled corporation, P.D. No. 198, as amended, also granted petitioner the franchise to operate as a water utility.[31] Thus, the contention of petitioner that it was not given any franchise as it was created by the enactment of a resolution by the Sangguniang Bayan is untenable. In **Davao City Water District, et al. vs. Civil Service Commission, et al.**[32], the Supreme Court ruled:*

> *'No consideration may thus be given to petitioners' contention that the operative act which created the water districts are the resolutions of the respective local sanggunians and that consequently, PD 198, as amended, cannot be considered as their charter.*
>
> *xxx*

29 G.R. No. 147402. January 24, 2004

30 Local Water Districts

31 **SECTION 6.** *Formation of District.* – This Act is the source of authorization and power to form and maintain a district. For purposes of this Act, a district shall be considered as a quasi-public corporation performing public service and supplying public wants. As such, a district shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed under this Act. xxx

32 G.R. Nos. 95237-38. September 13, 1991

> *Noteworthy, the above quoted provisions of PD 198, as amended, are similar to those which are actually contained in other corporate charters. The conclusion is inescapable that the said decree is in truth and in fact the charter of the different water districts for it clearly defines the latter's primary purpose and its basic organizational set-up. In other words, PD 198, as amended, is the very law which gives a water district juridical personality. While it is true that a resolution of a local sanggunian is still necessary for the final creation of a district, this Court is of the opinion that said resolution cannot be considered as its charter, the same being intended only to implement the provisions of said decree. In passing a resolution forming a water district, the local sanggunian is entrusted with no authority or discretion to grant a charter for the creation of a private corporation. It is merely given the authority for the formation of a water district, on a local option basis, to be exercised under and in pursuance of PD 198.'*

Based on all the foregoing, petitioner is liable for franchise tax under Section 119 of the 1997 Tax Code.

Value-Added Tax

Since petitioner is already subject to franchise tax under Section 119 of the 1997 Tax Code, it is no longer liable for the value-added tax under Section 108(A). Section 108(A) is hereunder quoted for ready reference, to wit:

> ***'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 ten percent (10%) 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 or 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 another 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****; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. Xxx' (Emphasis supplied)*

Moreover, Section 109(j) exempts services subject to percentage tax such as franchise tax from value-added tax. Thus:

'SECTION 109. *Exempt Transactions. - The following shall be exempt from the value-added tax:*

xxx

(j) Services subject to percentage tax under Title V;

xxx'

Compromise

The Court notes, however, that the compromise penalty of P25,000.00 and P16,000.00 for deficiency income and franchise taxes, respectively, should not have been imposed by respondent. xxx xxx xxx. Inasmuch as respondent had not shown that petitioner conformed to the imposition of the compromise penalty, the compromise penalty is deleted. Thus, the amount of deficiency income and franchise tax is recomputed as follows:"

	Income Tax	**Franchise Tax**
Tax Due	*P2,332,198.38*	*P1,083,701.49*
Add: Surcharge	*583,049.60*	*270,925.37*
Interest	*1,141,377.89*	*584,548.58*
Total	***P4,056,625.87***	***P1,939,175.44***

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusions spelled out in the assailed October 9, 2007 Decision and January 23, 2008 Resolution of the *CTA Second Division*. What the consolidated

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petitions seek is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the consolidated Petitions for Review is hereby **DISMISSED** for lack of merit. Accordingly, the October 9, 2007 Decision and the January 23, 2008 Resolution of the *CTA Second Division* in CTA Case No. 7403 are hereby **AFFIRMED in toto**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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C E R T I F I C A T I O N

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