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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MANILA ELECTRIC COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 554

November 23

BOARD OF ASSESSMENT APPEALS
OF LAGUNA,
Respondent.

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DECISION

This is an appeal from a decision of the Board of Assessment Appeals of Laguna, affirming the action of the Provincial Assessor in declaring and assessing for purposes of real property tax petitioner's electric step-up transformers installed at its Botocan substation, in Botocan Falls, Province of Laguna. Petitioner, in this appeal, seeks the reversal of the decision and prays for the cancellation of Real Property Tax Declaration No. 19743, wherein the electric step-up transformers were declared and assessed at a total value of ₱52,140.00.

The amended answer does not tender any issue of fact and raises purely questions of law. For this reason, the parties submitted this case for decision on the pleadings after the filing of their respective memoranda.

The facts are as stated in the amended petition for review, and are as follows:

> "1. That it is a corporation organized and existing under the laws of the Philippines, having its principal office in the City of Manila; that respondent is the duly organized, constituted and appointed Board of Assessment Appeals for the Province of Laguna and may be served with summons at the office of its Chairman, Mr. V. T. Argente, Provincial Auditor, Sta. Cruz, Laguna;

"2. That on October 20, 1902, the Philippine Commission enacted and approved Act No. 484 entitled:

'An act providing for the granting of a franchise to construct an electric street railway on the streets of Manila and its suburbs and a franchise to construct, maintain and operate an electric light, heat, and power system in the City of Manila and its suburbs, after competitive bidding",

which authorized the Municipal Board of Manila to grant to the person or persons making the most favorable bid a franchise to construct, maintain and operate an electric street railway and electric light, heat and power system in the City of Manila and its suburbs;

"3. That pursuant to Act No. 484 of the Philippine Commission, the Municipal Board of Manila awarded to Charles M. Swift on March 9, 1903 a franchise to construct, maintain and operate an electric street railway and electric light, heat and power system in the City of Manila and its suburbs; that the terms and conditions of said franchise are embodied in Ordinance No. 44 entitled:

'An ordinance granting to Charles M. Swift a franchise to construct an electric street railway on the streets of Manila and its suburbs, and a franchise to construct, maintain and operate an electric light, heat and power system in the City of Manila and its suburbs,"

and which was enacted and approved by the Municipal Board of Manila on March 24, 1903;

"4. That petitioner is presently the transferee and owner of the franchise granted by the Municipal Board of Manila to Charles M. Swift; that the transfer and assignment of the aforesaid franchise was in accordance with law; that petitioner's franchise will expire on March 9, 1973 as provided in Section 1 of Republic Act No. 150;

"5. That paragraph 9, Part II, of the franchise of petitioner provides:

"Par. 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 five per centum of the gross earnings received from its business under this franchise in the city and its suburbs: PROVIDED, That five 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." (As amended by Sec. 4, Republic Act No. 150.)

"6. That in compliance with the terms and conditions of its franchise, petitioner has constructed, maintained and operated an electric light, heat and power system in the City of Manila and its suburbs; that a portion of petitioner's electric power is generated by its hydroelectric plant located at Botocan Falls, Province of Laguna;

"7. That petitioner has likewise constructed and maintains in Botocan a substation for the purpose of tansmitting the electric power generated in its hydroelectric plant to the City of Manila and other places; that at its aforesaid substation in Botocan, petitioner has installed step-up transformers; that the aforesaid step-up transformers in petitioner's substation in Botocan are essential and integral parts of its electric system for distributing and transmitting electricity from its Botocan hydroelectric plant;

"8. That on January 7, 1958, the Provincial Assessor of Laguna declared the step-up transformers installed at petitioner's Botocan substation for real property tax and assessment purposes under Real Property Tax Declaration No. 19743 and assessed them at a total value of ₱52,140.00;

"9. That petitioner requested the Provincial Assessor of Laguna to cancel the above-numbered real property tax declaration on the ground that its transformers are exempt from real property taxes pursuant to paragraph 9, Part II, of its franchise; that in view of the denial of its request, petitioner appealed to respondent Board of Assessment Appeals of Laguna;

"10. That on June 16, 1958, petitioner received the decision of respondent (Resolution No. 3, dated June 10, 1958) affirming the decision of the Provincial Assessor of Laguna, a copy of which decision is hereto attached, marked as Annex 'A', and made an integral part hereof;"

From the amended petition for review, we gather that the instant appeal is limited to the assessment of petitioner's electric step-up transformers, which were installed in Botocan Falls, and covered by Real Property Tax Declaration No. 19743 of the Province of Laguna. (Pars. 8 to 11, Amended Petition for Review.) Other properties of petitioner were declared and assessed in the tax declaration. But "petitioner did not object to the declaration of these properties except its substation equipment in Item No. 79 of the list because the substation equipment consists mainly and primarily of transformers" (Reply Memorandum for Petitioner, p. 72, CTA rec.). Although, petitioner prays for the cancellation of Real Property Tax Declaration No. 19743 of the Province of Laguna, the issue to be determined is whether or not petitioner's step-up transformers installed in Botocan Falls are subject to the payment of real estate tax.

It is contended by petitioner that, pursuant to paragraph 9, Part II, of petitioner's franchise, the electric step-up transformers installed in its Botocan substation, in Botocan Falls, Laguna, are exempt from real property tax. On the other hand, respondent maintains that the installed transformers are subject to realty tax, pursuant to the provision of Section 2 of Commonwealth Act No. 470, otherwise known as the "Assessment Law." It is argued that petitioner could not properly invoke its franchise because the same is applicable only within the territorial limits of the City of Manila and its suburbs. And it is finally asserted that since petitioner pays a franchise tax only to the City of Manila and the Province of Rizal in consideration of its franchise, it cannot claim exemption for its properties located in the Province of Laguna.

Petitioner's contention is well-taken. By the provisions of the franchise, the step-up transformers, are expressly and explicitly excluded from the payment of real property tax. Paragraph 9, Part II of the franchise provides that petitioner "shall be liable to pay the same taxes upon its real estate, buildings, plant (<u>not including</u> poles, wires, <u>transformers</u>, and insulators), machinery and personal property x x x." (Italics supplied.) This provision which exempts petitioner's transformers from the payment of real estate tax is too plain and clear to admit a contrary interpretation. Hence, the said electric step-up transformers are not subject to declaration and assessment for real property tax purposes. They are exempt from real property tax.

Respondent's contention that the electric step-up transformers are subject to real property tax, pursuant to the provisions of Section 2 of Commonwealth Act No. 470, is untenable. The franchise in question, Act No. 484, is in the nature of a private contract between the government and petitioner, having a special application. It is a special law. On the other hand, the Assessment Law, Commonwealth Act No. 470, is a general law, it being of general application. Assuming, that petitioner's transformers are improvements on its properties and subject to the payment of taxes under Section 2 of Commonwealth Act No. 470, nevertheless, this provision of law must yield to the tax exemption provision of Act No. 484, which, as we have already said, is a special law. (Manila Railroad Co. v. Rafferty, 40 Phil. 224, 228-230.)

In support of the proposition that the transformers in question are subject to real estate tax, respondent further argues the City of Manila and the Province of Rizal receive a certain percentage of the gross earning of the petitioner for the location of its properties in said localities, whereas the Province of Laguna does not receive a single cent from petitioner. In effect, respondent implies injustice.

The provision of paragraph 9, Part II of the franchise, as amended, is clear that payment by petitioner of five per centum of its gross earnings to the City of Manila and the Province of Rizal "shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the earnings, income, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted". It is evident that by this franchisal provisions, petitioner is exempt from the payment of real estate tax on its transformers in Botocan Falls, Province of Laguna. Such is the law which we cannot, under the guise of interpretation, modify, or rewrite otherwise. Respondent's argument implying injustice should be addressed to Congress.

Finally, assuming that, as suggested by respondent, the Philippine Commission, in enacting the franchise of petitioner, did not take into consideration the fact that a generating station and/or other facilities could ever be located in Laguna does not justify the enactment of a new law by the court. The fact that events probably not foreseen by the legislature have occurred, does not permit the court to undertake to enact new law. (50 Am. Jur., sec. 237, p. 224.)

WHEREFORE, the decision of respondent, Board of Assessment Appeals of Laguna (Resolution No. 3, dated

DECISION -
C.T.A. CASE NO. 554

June 3, 1958) affirming the action of the Provincial Assessor of Laguna in declaring and assessing the electric step-up transformers for real property tax purposes, should be, as it is hereby, reversed. Without pronouncement as to costs.

SO ORDERED.

Manila, November 23, 1959.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge