REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COTABATO LIGHT AND POWER COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5396

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 01 1998

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DECISION

The pivotal issue in this appeal, by way of a petition for review, is the correct interpretation of the provisions of Section 10 of Act No. 3636, An Act Prescribing the Form for Bills for the Granting of Electric Light and Power Franchises, and for Other Purposes, in relation with petitioner's view that it is exempt from the payment of value-added tax ("VAT" for brevity) allegedly on its importation of transformers and spare parts for engine and turbo charger covering the period June 29, 1994 to November 24, 1996, which were used in the course of its business of generating and selling electric light and power in Cotabato City and in the Municipality of Dinaig, Province of Cotabato, pursuant to its legislative franchise under Commonwealth Act No. 487, as extended for another 25 years by Republic Act No. 3341, dated June 17, 1981.

On June 14, 1996, petitioner filed with the respondent a written claim, dated June 13, 1996, for the issuance of a tax credit in the amount of ₱240,841.00 representing the VAT it has paid on its aforesaid importation of goods. It alleged that the payment of the VAT was erroneous because under Section 10 of Act No. 3636, which was incorporated as part of its amended legislative franchise, it is expressly made exempt from the payment of all kinds of taxes on account of the "in lieu of any and all taxes" proviso contained therein.

In support of such view, petitioner cited BIR Ruling No. UN-140-94, addressed to the Philippine Long Distance Telephone Company ("PLDT" for short) and the rule laid down in C.T.A. Case No. 5106, promulgated on December 18, 1995 entitled, **PLDT vs. The Honorable Commissioner of Internal Revenue**, wherein it was ruled, in both instances, that the "in lieu of all taxes" proviso contained in PLDT's franchise covers the 10% VAT on importation of equipments, machineries and spare parts necessary in PLDT's franchise operations. It likewise cited a similar case wherein petitioner itself was a party involving an interpretation of the same franchise provision which the Supreme Court has interpreted favorably to petitioner declaring it as also exempted from the privilege of paying local business tax by reason of the phrase "in lieu of all taxes" provision (**Cotabato Light and Power Co. vs. City of Cotabato, G.R. No. L-24942, March 30, 1970, 32 SCRA 231**).

Petitioner did not wait for the action of the respondent. Records reveal that on July 5, 1996, the instant case was filed before this Court in order to beat the running of the prescriptive period of two-years as provided under Section 230 of the Tax Code, as amended.

At bar, petitioner reasserts its stance *a quo*. Respondent, on the other hand, contends, *inter alia*, in her Answer that the VAT on importation under Section 101 of the Tax Code, as amended, is neither a tax on franchise nor on gross receipts or earnings thereof; that VAT is a tax on the privilege of importing goods whether or not the taxpayer is engaged in business and regardless of whether the imported goods are intended for sale, barter or exchange.

Respondent adds in her Answer that claims for refund are construed strictly against claimants since they are in the nature of tax exemption and that unless granted in the most explicit and categorical language, it cannot be allowed (**Manila Electric Company vs. Commissioner of Internal Revenue**, 67 SCRA 351); and that, assuming that petitioner is entitled to tax refund, its right to file judicial action for the refund and/or tax credit of the alleged VAT paid before July 5, 1994 has already prescribed.

During the trial, proceedings were limited to the presentation of exhibits for identification and marking and formal offer of evidence. Both parties submitted their memoranda, with petitioner opting to file a reply to respondent's memorandum.

A look into petitioner's memorandum, pp. 88-89 CTA records, shows that the latter centered its argument on the express exemption given by Section 10 of Act No. 3636 on its "rights" and "privileges". It is observed that petitioner quoted therein the statement of the respondent, in her Answer, that VAT "is a tax on the privilege of importing goods" in concluding that it should, likewise, be held exempt from the "tax (VAT) on the *privilege* to import goods". (italics supplied)

Petitioner also cited the case of **Carcar Electric & Ice Plant Co., Inc. vs. The Collector of Internal Revenue**, 53 No. 4 O.G. 1068, February 28, 1957 in asseverating that it should be exempt from the VAT imposed on its "rights" and "privileges" of importing goods inasmuch as the franchise holder in said case was exempted from the payment of income tax on its profits, receipts or gains in accordance with Section 10 of Act No. 3636. Lastly, petitioner further cited various cases[1] in justifying its exemption under the "in lieu of any and all taxes" proviso.

Respondent disagrees with the above contentions of the petitioner. She avers in her memorandum, thus:

> As plainly worded, it is clear that the petitioner's payment of the value added tax on its importations sought to be refunded is not a tax on its gross earning nor on its franchise, rights and privileges of herein petitioner-grantee to construct, maintain and operate an electric light, heat and power, and to supply electric current in the area covered by its franchise, but a tax on its importation of goods, separate and distinct from its function delineated under its franchise.
>
> Otherwise stated, petitioner is not entitled to the refund of the alleged erroneously paid value-added tax on the subject importations because the same cannot be considered or otherwise construed as a tax of two per cent on the gross earnings from the electric current sold or supplied under its franchise, rights, privileges receipts, revenues and profits of the herein petitioner franchise holder and thus falling under the "in lieu of any and all taxes of any kind, nature or description levied" proviso of petitioner's legislative franchise.

Moreover, respondent contends that the VAT payments being claimed for refund by the petitioner before July 5,

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1 Manila Railroad Co. vs. Rafferty, 40 Phil. 224; Philippine Railway Co. vs. Collector of Internal Revenue, 91 Phil. 35; Visayan Electric Co. SA. vs. Saturnino David, 49 No. 4 O.G. 1385; Commissioner of Internal Revenue vs. Lingayen Gulf Electric Power, Co., Inc. et. al., 164 SCRA 27; Province of Mizamis Oriental vs. Cagayan Electric Power and Light Company, Inc. (CEPALCO), 181 SCRA 38.

1994, that is, from June 29, 1994 to July 4, 1994, have already prescribed beyond the two-year period allowed by Section 230 of the Tax Code, as amended, in view of the filing of herein case only on July 5, 1996.

After a painstaking scrutiny of the attending facts, the issues raised, the disquisition of the parties and the laws and jurisprudence applicable to the case at bar, this Court rules in favor of the petitioner.

For better understanding, the pertinent provisions of Section 10 of Act No. 3636 is hereunder reproduced, to wit:

> "**Sec. 10** The grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, co-partnerships, private 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 of two per centum of the gross earnings from the electric current sold or supplied under this franchise in said (each said) 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 accessories, 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." (Underscoring supplied)

Based on the above, herein parties are calling upon this Court to determine whether petitioner's importation of transformers and spare parts for engine and turbo charger fall under the "rights" and "privileges" declared exempt pursuant to the "in lieu" proviso stated therein.

The above issue is not a case of first impression. In the *analogous* case of **Philippine Long Distance Company vs. Commissioner of Internal Revenue, CTA Case No. 5106, promulgated on December 18, 1995**, We have already ruled that the "in lieu" proviso includes exemption from the payment of VAT on the importation of equipment, machineries and spare parts. We quote:

> "The phrase 'in lieu of' means instead of in place of; or in substitution for (Black v Barnes, 46 P. 2d 625, 626, 142 Kan. 381; Rutherland v. Oroville-Wyandotte Irr. Dist., 22 P. 2d 505, 218 Cal. 242; Words and Phrases, Vol. 21, p 472). It does not mean 'in addition to' (Glassman Const. Co. v. Baltimore Brick Co., 246 Md. 478, 228 A.2d 472, 474, Black's Law Dictionary, 6th ed., 1990, p. 787). The 'in lieu of' implies the existence of something for which a substitution is being made. Thus, the 'in lieu of all other taxes' means that none other than the tax specified however described can be demanded. It limits the liability to the specific tax (State of Tennessee v. Bank of Commerce, 53 P. 735, 736, Words and Phrases, Vol. 21, p. 474). Thus, the phrase 'in lieu of all taxes' has the effect of

> exempting from taxation the VAT which is covered under the general term 'taxes' under Section 12 of R.A. 7082) on the purchases of imported equipments, machineries and spare parts made by petitioner by virtue of its paying of the 3% Franchise Tax pursuant to Section 117 of the NIRC and Section 12 of R.A. 7082. The rationale or purpose for the exemption from all other taxes except the income tax and the real property tax granted on petitioner upon the payment of the 3% Franchise Tax is 'that such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee' (Province of Misamis Oriental v. Cagayan Electric Power and Light Company, Inc. G.R. No. 45355, January 12, 1990, 181 SCRA 38). (Underscoring supplied)

Respondent elevated the aforementioned PLDT case to the Court of Appeals which on February 16, 1998 rendered judgment supporting our conclusion. We quote:

> It is a basic rule of statutory construction that a meaning that does not appear nor is intended or reflected in the very language of the statute cannot be placed therein (Masikad vs. Tanodbayan, 127 SCRA 224); Chang Yung Fa, et. al. vs. Gianzon, etc., 97 Phil. 913). It is worth noting that the exempting clause or the "in lieu" provision in Sec. 12 of R.A. 7082, which reads "shall be in lieu of all taxes on this franchise or earnings thereof" is couched in a general term and all encompassing that it is safe to say that respondent PLDT is likewise exempted from paying the Value Added Tax (VAT) on its importation of equipment, machineries and spare parts for the use of its telecommunication system. If the intention of the law were to delimit the extent of the exemption, the legislative authority could have enumerated the kinds of taxes and assessments which shall not be collected and restrict the exemption by specific words. 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 delimited by

> the specific language which indicates the statutes object and purpose (Manila Electric Company vs. Vera, 67 SCRA 352; 360; Statutory Construction by Crawford, 1940 ed., p. 324-325). (**Commissioner of Internal Revenue vs. Philippine Long Distance Company, CA-G.R. SP No. 40811**, on motion for reconsideration by the petitioner; underscoring supplied)

Applying the same rationale, We view petitioner's payment of the 2% tax on its gross earnings as an all encompassing exemption from the payment of all other types of taxes in view of the "in lieu" proviso similarly found in petitioner's franchise.

It is rather revealing that in the instant case, unlike in the above PLDT case, the "in lieu" proviso is more specific and clearer in providing that such exemption includes taxes that may be imposed in the "future". Undeniably, VAT is well within the contemporaneous purview of the "in lieu" proviso.

Most importantly, a close reading of Sections 1 and 2 of Act No. 3636 together with Commonwealth Act No. 487 and Republic Act No. 3341 which govern petitioner's legislative franchise would show that the "right, privilege and authority" conferred to it to *construct* and *maintain* an electric light, heat and power system necessarily includes the importation of transformers and spare parts for engine and turbo charger, thus:

> a) "...to **construct**, **maintain**, and operate an electric light, heat, and power system for the purpose of generating and distributing electric light, heat, and power, for sale within the limits of the municipality (or municipalities.."
>
> b) "... to install, lay, and **maintain** in, along, under, and over all public property of the municipality (or municipalities), including the public streets and highways, provincial roads, bridges, and public squares within said municipality (or municipalities) all necessary apparatus and appurtenances for the transmission and distribution of electric current, and to supply, sell, and furnish such current to any individual, co-partnership, private, public or quasi-public association, corporation, or joint-stock company, within the limits of said municipality (or municipalities) for insular, provincial, municipal, domestic or manufacturing uses or for any other use to which electricity may be put, and to charge and collect a schedule of prices and rates for the use of electric current so furnished, which schedule of prices and rates shall be at all times be subject to regulation by the Public Service Commission."

The word "maintain" has been defined as meaning to bear the expense of; to support; to keep up; to supply with what is needed. (**Alzona vs. Vicuña, 41764-R, February 17, 1976** as cited in Moreno's Philippine Law Dictionary, 3rd ed.; **Alexander vs. Parker, 33 N.E. 183, 184, 144 Ill. 355, 19 L.R.A. 187, citing Webst. Dict.**, as cited in Words and Phrases) Also, Merriam-Webster Dictionary defines the word "construct" as signifying to "build" or to "make".

From the above definitions, We can readily see that petitioner's acquisition from abroad (or even in the domestic market) is but a part of its right and privilege to construct and maintain an electric light, heat and power system within its franchise area. More specifically, the acquisition is for the purpose of supplying the things needed in the pursuit of such right and privilege.

Petitioner has been given the right and privilege to maintain its franchise operation and this, We believe, also entails the bearing of expenses attendant to its purchase of transformers and spare parts required for construction or maintenance.

If we are to declare such acquisition as not falling within the rights and privileges granted to it, then we are naively defeating or declaring as hollow the very essence of the word "construct" or "maintain" as stated in said law.

It is here where the *doctrine of necessary implication* applies. "Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms.[2] *Ex necessitate legis.* And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, simper inest et minus.*[3]" (Statutory Construction by Agpalo, 2nd ed., pp. 117-118)

While it is true that as a rule tax exemptions are strictly construed and highly disfavored in law, as respondent insists, We believe, however, that the case at bar presents an exception because herein petitioner "falls within the purview of exemption by clear legislative intent". (**Commissioner of Internal Revenue vs. Arnoldus Carpentry Shop,** 159 SCRA 199) The words "maintain" and "construct" provided in the rights and privileges of the petitioner under Sections 1 and 2 of its franchise unmistakably include, by their definition, petitioner's purchase of transformers and spare parts for engine and turbo charger.

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2 Go Chico v. Martinez, 45 Phil. 256 (1923); Gatchalian v. Commission on Elections, G.R. No. 32560, Oct. 22, 1970, 35 SCRA 435 (1970); People v. Uy Jui Pio, 102 Phil. 679 (1957).

3 See People v. Aquino, 83 Phil. 614 (1949).

With our conclusion that petitioner has every legal right to its claim for refund, We now delve into the factual basis thereof, inclusive of the issue on prescription raised by the respondent.

A cursory look into the evidence formally offered by the petitioner would reveal that it made three payments for import duty and VAT on several dates, aside from the earlier advance deposits it has made, as follows, to wit:

Date	Duty	VAT	Import Proc. Fee	Advance Duty	Per BOC OR	BOC OR#	Date	Exh.
2.17.94	290,165.00	126,332.00	250.00			No CR		C-3
6.06.94	102,780.00	100,438.00	250.00	76,653.00	126,815.00	No CR		F-3
11.24.94	35,474.00	14,071.00	250.00	35,474.00	14,321.00	48888217	10.18.94	G

Herein case was filed only on July 5, 1996. Hence, the VAT payments made on February and June of 1994 amounting to ₱126,332.00 and ₱100,438.00, respectively, have clearly prescribed. They were instituted before this Court beyond the allowable prescriptive period of two years from the date of payment of the tax as provided in Section 230 of the Tax Code. What remains available for tax credit, thus, is the payment made on November 11, 1994 amounting to ₱14,071.00.

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **ISSUE** a **TAX CREDIT**

CERTIFICATE in favor of the petitioner in the amount of **P14,071.00** immediately.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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Respondent.

Promulgated:
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DISSENTING OPINION

With due respect to the majority opinion, I disagree with the conclusion embodied in this decision which considered petitioner as exempt from the payment of value-added tax on its importation of transformers and spare parts covering the period June 29, 1994 to November 24, 1996.

Petitioner anchors its exempt status on the provisions of Section 10, Act 3636, quoted hereunder as follows:

> "Sec. 10 ***The grantee shall pay the same taxes as are now or may hereafter be required by law*** from other individuals, co-partnerships, private 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 of two per centum of the gross earnings from the electric current sold or supplied under this franchise in said (each said) 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 accessories, ***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." (Underscoring and emphasis supplied)

It can be gleaned readily from the aforequoted provision of law that in the business of the petitioner, the ***general rule*** is that the grantee (petitioner in this case) shall pay the same taxes as are now or hereafter be required by law from other individuals, co-partnerships, private, public or quasi-public associations, corporations, or joint-stock companies on its real estate, buildings, *plants, machinery* and *other personal property*. The ***exception to the general rule*** covers property declared exempt in said section itself. This comprises of petitioner's poles, wires, insulators, switches, transformers and structures, installations, conductors, and accessories *placed in and over and under all public property* and its *franchise, rights, privileges, receipts, revenues and profits.*

In its attempt to seek refuge on the exemption granted by said section, petitioner has deemed its importation of goods as being part and parcel of the "rights" and "privileges" it has acquired by virtue of its franchise.

I strongly disagree.

A franchise is a special privilege conferred by government authority. (**J.R.S. Business Corporation v. Imperial insurance Inc.**, 120 Phil. 623) While a privilege is a special right or power conferred on or possessed by one or more individuals, in derogation of the general right. (**Artex Development Corporation, Inc. vs. Central Bank**, CV-65079, October 19, 1984 as cited in Philippine Law Dictionary by Moreno, 3rd ed.) A franchise together with the right or privilege arising from it, thus, may be construed to be akin in meaning, in that, they are all conferred by governmental authority. Being so, any right or privilege accruing to the petitioner is expected to be expressly or impliedly worded, enumerated or laid down in its franchise.

A close reading of Sections 1 and 2 of Act No. 3636 together with Commonwealth Act No. 487 and Republic Act No. 3341 which govern petitioner's legislative franchise would show that the "right, privilege and authority" conferred to it are limited to the following, to wit:

> a) "... to construct, maintain, and operate an electric light, heat, and power system for the purpose of generating and distributing electric light, heat, and power, for sale within the limits of the municipality (or municipalities.."
>
> b) "... to install, lay, and maintain in, along, under, and over all public property of the municipality (or municipalities), including the public streets and highways, provincial roads, bridges, and public squares within said municipality (or municipalities) all necessary apparatus and appurtenances for the transmission and distribution of electric current, and to supply, sell, and furnish such current to any individual, co-partnership, private, public or quasi-public association, corporation, or joint-stock company, within the limits of said municipality (or municipalities) for insular, provincial, municipal, domestic or manufacturing uses or for any other use to which electricity may be put, and to charge and collect a schedule of prices and rates for the use of electric current so furnished, which schedule of prices and rates shall be at all times be subject to regulation by the Public Service Commission."

Petitioner's alleged exemption from VAT based on its *privilege to import goods* is unmistakably not one among those enumerated in the abovequoted rights and privileges. Petitioner's theory of exemption is simply without basis in law.

Courts may not indulge in expansive construction and write into the law an exemption not therein set forth. Where a statute has granted in express terms certain exemptions, those are the only exemptions to be considered. (**Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, 18 SCRA 488**). To accept petitioner's point of view would open the floodgates to wider abuse. All sorts of acts, aside from those described in Act No. 3636, may be termed or implied to be within the ambit of the meaning of "rights" and "privileges" as construed by the petitioner, which eventually would result in the virtual emasculation of the legislative intent to tax, *as a general rule*, the grantee of a franchise under said Section 10 of Act No. 3636.

Exemptions from taxation are highly disfavored in law; and he who claims an exemption must be able to justify his claim by the clearest grant of law. An exemption from the common burden cannot be permitted to exist upon vague implications. (**Asiatic Petroleum Co.(P.I.), Ltd. vs. Llanes**, 49 Phil 466)

In the case of **Borja vs. Collector of Internal Revenue, 3 SCRA 590,** the Supreme Court specifically dwelt on the same provision of Section 10 of Act No. 3636 and declared that petitioner is not exempt from the payment of compensating tax on its importation of goods. While the instant case deals on VAT, the ruling in said case still holds, to wit:

> "xxx the petitioner's alleged exemption from the payment of compensating tax in the present case is not clear or expressed, unlike the exemption from the payment of income tax which was clear and expressed in the Carcar case. Unless it appears clearly and manifestly that an exemption is intended, the provision is to be construed strictly against the party claiming exemption."

In the aforecited Borja case, the Supreme Court quoted portions of its decision in the case of **Panay Electric Company vs. Collector of Internal Revenue, G.R. No. L-6753, July 30, 1955,** to elaborate on the basis for its denial of petitioner's claim in that particular situation, thus:

> "If petitioner had purchased the equipment in question in the Philippines, there would be no question that it would have to bear the burden of the sales tax, because the same would have to be added to the purchase price by the dealer, and petitioner might not escape the burden by invoking the exemptions granted in its franchise. There would appear to be no reason why petitioner should be allowed to elude that burden by exempting it from paying compensating tax when it purchases equipment abroad."

WHEREFORE, in view of the foregoing, I hereby register my dissent to the majority opinion and declare that petitioner is liable to pay value-added taxes on its importation of equipment covering the period June 29, 1994 to November 24, 1996.

AMANCIO Q. SAGA
Associate Judge