REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DAVAO LIGHT AND POWER COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5413

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 07 1998

x - x

DECISION

Presented before Us for decision is a claim for the issuance of a tax credit certificate in the amount of ₱5,769,998.00, representing erroneously paid value-added tax on importations of various equipments, machineries and spare parts for the period June, 1994 to April, 1996.

Petitioner is a domestic corporation organized and existing under the laws of the Philippines. It is a grantee of a legislative franchise under Act No. 3760, dated November 26, 1930. The life of Act No. 3760 was extended for another 25 years per National Electrification Administration (NEA) Resolution No. 134, dated September 16, 1976, "subject to the rules and conditions established in Act Numbered Thirty Six Hundred Thirty Six (Model Electric Light and Power Franchise Act, dated December 7, 1929)".

For the period June, 1994 to April, 1996, petitioner purchased various imported equipments and machineries necessary in carrying out its business of generating and selling electric light and power in Davao City and in the Municipalities of Carmen and Panabo, Province of Davao Del Norte (Annex B).

The aforementioned importations of various equipments and machineries were subjected to 10% value-added tax by the Bureau of Customs.

Petitioner alleges that it is exempt from the payment of value-added tax pursuant to Section 10 of Act No. 3636 which was incorporated as part of its legislative franchise, 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)

On account of the "in lieu of any and all taxes" proviso contained therein, petitioner filed on June 14, 1996 a written claim for the issuance of a tax credit certificate with the respondent, dated June 13, 1996, in the amount of ₱5,769,998.00, representing erroneously paid value-added tax (Annex A). Petitioner further cites BIR Ruling No. UN-140-94, addressed to the Philippine Long Distance Telephone Company ("PLDT" for short) and the decision rendered by this Court in C.T.A. Case No. 5106, dated 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.

On July 22, 1996, petitioner filed the instant petition for review in order to toll the running of the two-year prescriptive period as provided under Section 230 of the Tax Code, as amended.

In her Answer, respondent raises the following as special and affirmative defenses:

> 7. The value added tax (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. It 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;
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> 8. In an action for refund and/or tax credit, the taxpayer has the burden of showing that the taxes paid were erroneously collected and failure to sustain this burden is fatal to the action for refund and/or tax credit;
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> 9. Claims for refund are construed strictly against claimants since they are in the nature of tax exemption. It cannot be allowed unless granted in the most explicit and categorical language (**Manila Electric Co. vs. Commissioner of Internal Revenue, 47 SCRA 351**); and
>
> 10. Assuming that petitioner is entitled to the tax refund, its right to file judicial action for the refund and/or tax credit of the alleged value-added tax paid before July 5, 1994 (should be July 22, 1994) has already prescribed.

The issues to be resolved by this Court are as follows:

1. Whether or not petitioner is exempt from the payment of value-added tax on its importations of various equipments, machineries and spare parts pursuant to the **"in lieu of any and all taxes"** proviso of Section 10 of

Act No. 3636 which was incorporated as part of its legislative franchise under Act No. 3760; and

2. Whether or not petitioner's right to file a judicial claim for refund of an alleged erroneously paid value-added tax prior to July 22, 1994 has prescribed.

The legal controversy brought about by the instant case has already been settled by this Court in the case entitled **Cotabato Light and Power Company, Inc. vs. The Honorable Commissioner of Internal Revenue, C.T.A. Case No. 5396, dated June 1, 1998**, wherein We ruled in favor of the petitioner. Quoted hereunder are the pertinent portions of the said 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.
>
> xxx xxx xxx
>
> This 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. <u>Thus, the 'in lieu of all other taxes' means that none other than the tax specified however described can be demanded</u>. 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). <u>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</u>. 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" and "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.[1] *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.

Having settled the legal aspect of the case, We now delve on the factual issue of the herein claim.

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1 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).

Respondent is correct when she argued in her memorandum that payments made by petitioner prior to July 22, 1994 has prescribed pursuant to Section 230 of the Tax Code, as amended, which states in part, that "no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax". Thus, the value-added tax payment in the amount of ₱59,677.00 covered by BOC O.R. No. 46808754, dated June 17, 1994, is barred by prescription (Exh. A). With regard to the remaining sum of ₱5,583,200.00, the same was supported by official receipts issued by the Bureau of Customs (Exhs. B to SSSS, inclusive).

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of **P5,583,200.00**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE 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
Court of Tax Appeals

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DISSENTING OPINION

I dissent with due deference to the majority opinion.

Petitioner claims that it is exempt from the payment of value-added tax on its importation of machineries and spare parts on the basis of Section 10 of Act No. 3636 which was incorporated as part of its legislative franchise. Section 10 of Act No. 3636 is 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, copartnership, private, public or quasi-public associations, corporations, or joint-stock companies, on his (its) real estate, buildings, plants, machinery; and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the

> municipal treasury of the (of each) municipality in which it is supplying electric current to the public under this franchise, a tax equal to two per centum of the gross earnings from current sold or supplied under this franchise in said (each) municipality. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial or insular, now or in the future, on its poles, wires, insulators, switches; transformers and structures, installations, conductors, and 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.
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> xxx xxx xxx"

Petitioner considers its importation of spare parts and machineries as part of its "rights" and "privileges" mentioned in the aforequoted law which specifically places the exercise thereof exempt from the payment of taxes of any kind, nature or description.

I disagree with the contention of petitioner.

It is my opinion that petitioner has magnified its exempt privileges beyond the actual signification of Act No. 3636.

An analysis 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 aforequoted rights and privileges. Petitioner's theory of exemption is simply without basis in law.

It is also important to point out that the very same provision of Act No. 3636 invoked by petitioner has already been analyzed by the Supreme Court in the case of **Borja vs. Collector of Internal Revenue, 3 SCRA 590,** where the Honorable Court ruled that it was not the intention of the law (referring to Section 10 of Act 3636) to exempt the payment of compensating tax on the personal properties imported by the grantee of the legislative franchise. Although what was in contention in the Borja case was the alleged exemption from the payment of compensating tax, said legal principle enunciated in said case can be applied to the present controversy as the rationale for the imposition of compensating tax applies likewise to the value-added tax on importation of goods.

Pertinent portions of the Borja case are quoted hereunder for emphasis:

> "x x x petitioner claims that she is exempt from any and all taxes, compensating tax, inclusive upon payment of the franchise tax.
>
> The case of the Panay Electric Co. vs. Collector of Internal Revenue, G.R. No. L-6753, July 30, 1955 would help Us in resolving the point in controversy. The franchise of the Panay Electric Co. (Act No. 2983, as amended by Act No. 3665), is identical with the franchise of petitioner herein, and was also subject to the terms and conditions of Act No. 3636.
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> x x x
>
> As to the second contention, the rights and privileges which the above provision

exempts from taxation refer to those which are not enjoyed by the public in general, but only by the grantee of a franchise. They therefore do not include the common right or privilege of every citizen to make purchases anywhere.

In this connection, we must not lose sight of the purpose for which the compensating tax has been instituted. That purpose is explained in the report of the Tax Commission that proposed the tax, as follows: -

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

"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 good reason why petitioner should be allowed to elude that burden by exempting it from paying compensating tax when it purchases equipment abroad. x x x"

Considering, therefore, the fact that section 190 of the Tax Code is a sort of an equalizer, to place casual importers, who are not merchants on equal footing with established merchants who pay sales tax on articles imported by them ...., We may conclude that it was not the intention of the law to exempt the

> payment of compensating tax on the personal properties in question. x x x
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> .... Unless it appears clearly and manifestly that an exemption is intended, the provision is to be construed strictly against the party claiming exemption. (Underscoring supplied)
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WHEREFORE, in view of the foregoing, I vote to deny petitioner's claim for refund of value-added taxes in the amount of P5,583,200.00.

AMANCIO Q. SAGA
Associate Judge