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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

GMA NETWORK, INC.,
Petitioner,

-versus-

RUBY FABABIER, IN HER CAPACITY AS PROVINCIAL TREASURER, PROVINCE OF ROMBLON,
Respondent.

C.T.A. EB NO.617
(CBAA CASE NO. V-29)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

FEB 0 1 2011 1:47pm

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

The historical usage of the phrase "exclusive of this franchise" in the franchise laws enacted by Congress indubitably shows that the phrase is not a grant of tax exemption, but an exclusion of one type of personal property subject to taxes, and the excluded personal property is the franchise *(Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, 573 SCRA 605)*.

THE CASE

This is an appeal from the Decision dated August 13, 2009 and Resolution dated March 1, 2010 rendered by the Central Board of Assessment Appeals (hereafter "CBAA") in CBAA Case No. V-29, the respective dispositive portions of which read, as follows:

> "WHEREFORE, premises considered, the instant Appeal is hereby DENIED.
> SO ORDERED."

> "WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby DENIED.
> SO ORDERED."

THE PARTIES

Petitioner GMA (formerly known as "Republic Broadcasting System, Inc." and hereafter "petitioner") is a private corporation duly organized and existing under Philippine Laws, with principal office at GMA Network Center, EDSA, corner Timog Ave., Diliman, Quezon City. It is engaged in the business of radio and television broadcasting of all kinds and types on a commercial and/or sustaining basis.

On the other hand, respondent Ruby Fababier is the Provincial Treasurer of the Province of Romblon (hereafter "respondent"), who may be served with the processes of this Honorable Court, through her counsel of record, Atty. Rodolfo R. Ranion, Provincial Legal Officer, Provincial Capitol Bldg., Romblon, Romblon.

THE FACTS

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

On March 2, 1992, R.A. 7252, otherwise known as "An Act Granting the Republic Broadcasting System, Inc. a Franchise To Construct, Install, Operate and Maintain Radio and Television Broadcasting Stations in the Philippines" granted petitioner a 25-year franchise to operate radio and television broadcasting station in the Philippines.

In pursuit of said legislative franchise, petitioner acquired lands, constructed buildings and improvements, and installed machineries thereon that are necessary and essential to the operation of a television network and radio broadcasting stations in Metro Manila and various provinces.

In 1997, petitioner opened its television relay station in San Isidro, Sta. Maria, Romblon, and constructed a transmitter building and installed

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machineries therein, among which is a television antenna, which are all listed in the assessment roll.

Tax Declaration No. A17-005-00289 for the building and Tax Declaration No. A17-005-00291 for the machineries were issued by the Office of the Provincial Assessor, which imposed real property tax on said properties.

On March 27, 2007, petitioner paid the real property taxes in the amounts of P145,796.98 under O.R. No. 8718852 and P84,393.20 under O. R. No.8718851.

On the strength of the decisions of the Supreme Court in the cases of *City Government of Quezon City v. Bayan Telecommunications, Inc., 484 SCRA 169, (Bayantel case)* and *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan, 516 SCRA 558, (Digitel Case))*, promulgated in 2006 and 2007 respectively, where the Supreme Court ruled that the clause "exclusive of this franchise" is an express exemption from payment of real property taxes on real properties that are exclusively, actually and directly used in the operation of its franchise, petitioner claimed that it is entitled to a refund of real property taxes erroneously collected by respondent.

Consequently, on February 1, 2008, petitioner sent to the provincial treasurer a letter claiming for refund of real property tax payment. Despite the lapse of 60 days from receipt of petitioner's claim for refund, respondent failed to act on said claim.

On April 14, 2008, petitioner filed a petition appealing the denial by inaction of respondent Provincial Treasurer to the Local Board of Assessment Appeals (LBAA) of the Province of Romblon, pursuant to *Section 253 of the Local Government Code* (LGC), in relation to the *2005 Manual of Assessment on Real Property and Assessment Operations*.

However, the original petition incorrectly impleaded Jose R. Leron, as the Provincial Treasurer, who is in fact the Municipal Treasurer of Sta. Maria, Romblon; thus, on June 2, 2008, petitioner filed an amended petition impleading respondent Ruby Fababier, as the Provincial Treasurer of the Province of Romblon.

On June 26, 2008, summons was served by the LBAA to respondent ordering her to file her answer to the petition, within 15 days from receipt.

On July 22, 2008, petitioner received a copy of respondent's "Urgent Motion for Extension" praying for an extension of 15 days to file her answer.

On July 28, 2008, petitioner received a copy of respondent's "Formal Entry of Appearance with Motion for Extension of Time to File Answer" praying for an additional period of 20 days to file her answer.

On August 26, 2008, petitioner received a copy of respondent's answer alleging that petitioner failed to appeal within 60 days from receipt of the new assessment and is thus estopped and barred to exercise such right; that the cases cited by petitioner do not mandate or provide that refund of taxes paid before said decisions became final and executory and that these cases have no retroactive effect; that the prayer for refund has no basis in fact and in law as said taxes are not illegally or erroneously paid; and that respondent acted in good faith and in accordance with law in collecting the subject taxes.

On September 9, 2008, petitioner filed its reply to respondent's answer.

On November 24, 2008, the LBAA rendered its decision denying the claim for refund of the amount of P229,790.18 corresponding to the real property tax collected on petitioner's real properties in the Province of Romblon for the year 2007, a copy of which was received by petitioner on December 22, 2008.

On January 21, 2009, petitioner filed a Notice of Appeal with attached Appeal Memorandum with the CBAA.

On March 25, 2009, petitioner received a copy of respondent's answer/comment, to which petitioner filed its reply.

On August 13, 2009, the CBAA rendered its decision denying petitioner's appeal.

On September 14, 2009, petitioner filed a Motion for Reconsideration (Re: Decision dated August 13, 2009), which was denied by the CBAA in its Resolution dated March 1, 2010.

Hence, this instant petition raising the following:

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ISSUES

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WHETHER OR NOT THE CBAA GRAVELY ERRED IN DENYING PETITIONER GMA'S APPEAL BY RULING THAT REPUBLIC ACT NO. 7252 DOES NOT CATEGORICALLY GRANT PETITIONER GMA EXEMPTION FROM REAL PROPERTY TAX.

II

WHETHER OR NOT THE CBAA GRAVELY ERRED IN DENYING PETITIONER GMA'S APPEAL BASED ON THE SUPREME COURT RULING IN THE CASE ENTITLED "DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC. VS, CITY GOVERNMENT OF BATANGAS", G.R. NO. 156040, DECEMBER 11, 2008.

On May 20, 2010, without necessarily giving due course to the Petition for Review, we required respondent to file her comment, not a motion to dismiss, within ten (10) days from notice; afterwhich, the petition shall be deemed submitted for decision.

Despite notice thereof, respondent failed to submit her comment; thus, on July 15, 2010, we required both parties to submit their simultaneous memoranda within thirty (30) days from notice; afterwhich, the petition shall be deemed submitted for decision.

Considering that both parties failed to submit their respective memorandum, the instant case was deemed submitted for decision on November 2, 2010.

Principal Issue

The issues raised by petitioner boil down to the principal issue of whether petitioner is liable to pay the realty tax imposed by the Province of Romblon.

Petitioner's Contention

Petitioner contends that its transmitter building and machineries situated in San Isidro, Municipality of Sta. Maria, Province of Romblon, are exempt from real property tax, the same being actually, directly and exclusively used in pursuit of its legislative franchise on the basis of the "exclusive of this franchise" clause found under *Section 8 of RA 7252.*

THE RULING OF THIS COURT

The petition has no merit.

The controversy lies in the interpretation of the phrase "exclusive of this franchise" in the first sentence of *Section 8 of RA 7252.*

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Section 8 of RA 7252 states:

> "**SEC. 8. Tax Provisions.**— The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, **exclusive of this franchise,** as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the radio/television business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof: Provided, That the grantee, its successors or assigns shall continue to be liable to income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.
>
> The grantee shall file the return with and pay the tax thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue."

There is nothing novel in this case, as the principal issue raised herein had already been ruled upon by the Supreme Court in the case of *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, 573 SCRA 622-625*, as follows:

> "We rule that the phrase 'exclusive of this franchise' simply means that petitioner's franchise shall not be subject to the taxes imposed in the first sentence of Section 5. The first

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sentence lists the properties that are subject to taxes, and the **list excludes the franchise.** Thus, the first sentence provides:

> The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property **exclusive of this franchise** as other persons or corporations are now or hereafter may be required by law to pay. (Emphasis supplied)

A plain reading shows that the phrase 'exclusive of this franchise' is meant to **exclude** the legislative franchise from the properties subject to taxes under the first sentence. In effect, petitioner's franchise, which is a personal property, is not subject to the taxes imposed on the properties under the first sentence of Section 5.

However, petitioner's gross receipts from its franchise are subject to the 'franchise tax' under the second sentence of Section 5. Thus, the second sentence provides:

> In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; xxx

In short, petitioner's franchise is excluded from the properties taxable under the first sentence of Section 5 but the gross receipts from its franchise are expressly taxable under the second sentence of the same Section.

The first sentence of Section 5 imposes on the franchisee the **'same taxes'** that non-franchisees are subject to with respect to real and personal properties. The clear intent is to put the franchisees and non-franchisees **in parity** in the taxation of their real and personal properties. Since non-franchisees have obviously no franchises, the franchise must be excluded from the list of properties subject to tax to maintain the parity

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between the franchisees and non-franchisees. However, the franchisee is taxable separately from its franchise. Thus, the second sentence of Section 5 imposes the "franchise tax" on gross receipts, which under Republic Act No. 7716 has been replaced by the 10% Value Added Tax effective 1 January 1996.

Section 5 can be divided into three parts. First is the first sentence which imposes taxes on real and personal properties, excluding one property, that is, the franchise. This puts in parity the franchisees and non-franchisees in the taxation of real and personal properties. Second is the second sentence which imposes the franchise tax, which is applicable solely to the franchisee. And third is the proviso in the second sentence that imposes the income tax on the franchisee, the same income tax payable by non-franchisees.

Petitioner claims that the first sentence refers only to real properties, and that the phrase 'exclusive of this franchise' exempts petitioner from realty tax on its real properties used in its telecommunications business. This claim has no basis in the language of the law as written in the first sentence of Section 5. First, the first sentence expressly refers to taxes on 'real estate' and on 'personal property'. Clearly, the first sentence does not refer only to taxes on real properties, but also to taxes on personal properties. The trial court correctly observed that petitioner pays taxes on its motor vehicles, which are personal properties, that are used in its telecommunications business. There is also the documentary stamp tax on transactions involving real and personal properties, which petitioner and other taxpayer are liable for.

A franchise granted by Congress to operate a private radio station for the franchisee's communications in deep-sea fishing shows that the first sentence of Section 5 of RA 7678 does not refer to real properties alone. Section 6 of Republic Act No. 3218 (RA 3218), entitled An Act Granting Batas Riego De Dios A Franchise To Construct, Maintain And Operate Private Radio Stations For Radio Communications In Its Deep-Sea Fishing Industry, provides:

> SECTION 6. The grantee shall be liable (1) to pay the same taxes on its real estate, **building, fish boats and personal property, exclusive of this franchise** as other persons or corporations are now, or hereafter may be required by law to pay, and shall further be liable (2) to pay all other taxes that may be imposed by the National Internal Revenue Code by reason of this franchise. (Emphasis Supplied)

The inclusion of 'fishing boats," personal properties that can never be attached to a land or building so as to make real properties, demonstrates that Section 6 of RA 3218, like the first sentence of Section 5 of RA 7678, not only applies to real properties but also to personal properties.

Second, there is no language in the first sentence of section 5 expressly or even impliedly exempting petitioner from the **realty tax**. The phrases 'exemption from real estate tax,' 'free from real estate tax' or 'not subject to real estate' do not appear in the first sentence. No matter how one reads the first sentence, there is no grant of exemption, express or implied, from realty tax. In fact, the first sentence expressly imposes taxes on both real and personal properties, excluding only the intangible personal property that is the franchise.

A tax exemption cannot arise from vague inference. The first sentence of Section 5 does not grant any express or even implied exemption from realty tax. On the contrary, the first sentence categorically states that the franchisee is subject to the '**same taxes** currently imposed, and those taxes that may be subsequently imposed, on other persons or corporations,' taxpayers that admittedly are all subject to realty tax. The first sentence does not limit the imposition of the 'same taxes' to realty tax only but even to 'those taxes' that may in the future be imposed on other taxpayers, which future taxes shall also be imposed on petitioner. Thus, the first sentence of Section 5 imposes on petitioner not only realty tax but also other taxes.

The phrase 'personal property exclusive of this franchise' merely means that 'personal property' does not include the franchise even if the franchise is an intangible personal property. Stated differently, the first sentence of Section 5 provides that petitioner shall pay tax on its real properties as well as on its personal properties but the franchise, which is an intangible personal property, shall not be deemed personal property."

In this case, the first sentence of *Section 8 of RA 7252* provides:

"**SEC. 8. Tax Provisions.**— The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, **exclusive of this franchise,** as other persons or corporations are now or hereafter may be required by law to pay.xxx" (Emphasis supplied)

Pursuant to the aforesaid ruling of the Supreme Court, the "exclusive of this franchise" clause simply means that the grantee's franchise shall not be subject to the taxes imposed in the first sentence of *Section 8.* The first sentence lists the properties that are subject to tax, both real and personal

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properties, excluding only the intangible personal property, that is, the franchise.

A plain reading of *Section 8 of RA 7252* clearly shows that it does not grant any express or even implied exemption from realty tax. On the contrary, the first sentence categorically states that the franchisee is subject to *"pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay"*. Nowhere in the language of the first sentence of *Section 8* does it expressly or impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its radio and television broadcasting business are exempt from payment of realty tax. *Section 8* is explicit that petitioner, being the franchisee, shall pay not only realty tax, but also other taxes as other persons and corporations may be required by law to pay.

Also, said clause cannot be construed as a grant of tax exemption, but only an exclusion of the grantee's franchise from the imposition of tax.

Applying the same ruling in this case, petitioner cannot claim exemption from paying real estate tax by invoking the phrase "exclusive of this franchise". Clearly, only petitioner's franchise is excluded from tax. However, as to its other real or personal properties, the same are subject to tax.

Neither can petitioner claim exemption from equivocal inference. Settled is the rule that tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority. They can only be given force when the grant is clear and categorical. The surrender of the power to tax, when claimed, must be clearly shown by a language that will admit of no reasonable construction consistent with the reservation of the power. If the intention of the legislature is open to doubt, then the intention of the legislature must be resolved in favor of the State *(Smart Communication vs. The City of Davao, 565 SCRA 249)*.

For all the foregoing, petitioner cannot claim for tax exemption on its transmitter building and machineries actually, directly and exclusively used in its radio and television broadcasting business situated in San Isidro, Municipality of Sta. Maria, Province of Romblon, in the absence of an express provision in *Section 8 of RA 7252*. Said properties, therefore, are subject to real property tax.

Finding no reversible error, we affirm the assailed Decision dated August 13, 2009 and Resolution dated March 1, 2010 rendered by CBAA.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice