REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PANAY ELECTRIC COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3063

THE ACTING COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - - - x

4/30/81

D E C I S I O N

Petition for review of the decision of respondent Commissioner of Customs affirming the denial by the Collector of Customs of the Port of Iloilo of the protests filed by petitioner Panay Electric Company, Inc., against the assessment and collection of customs duties and compensating tax on various machinery, equipment and spare parts imported by it for use in connection with its franchised business as public utility company engaged in the generation and distribution of electric light, heat and power in the City of Iloilo and adjacent municipalities.

The following are the facts which are alleged in the petition for review and admitted in the answer that gave rise to the present controversy:

1. Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal place of business at Iloilo City, while

respondent is the duly designated Acting Commissioner of Customs who is charged with the duty of enforcing customs laws, and may be served with summons at his office at the Bureau of Customs, Port of Manila.

2. Under Republic Act No. 5360, petitioner was granted a franchise "to construct, maintain and operate an electric light, heat and power system for the purpose of generating and/or distributing electric light, heat and power for sale within the City of Iloilo and the Municipalities of Sta. Barbara and Pavia, both in the Province of Iloilo". (Section 1, Republic Act No. 5360).

3. Section 5 of Republic Act No. 5360 provides that "in consideration of the franchise and rights hereby granted, the grantee (petitioner) shall pay a franchise tax equal to two per centum of the gross earnings for electric current sold under this franchise: Provided, That the said franchise tax of two per centum of the gross earnings shall be in lieu of taxes, duties and assessments, licenses and fees of whatever nature and which may be levied by any governmental authority now and in the future upon privileges, earnings, income, machinery and equipment, watt-hour meters, poles, wires, trans-

formers, and insulators used by the grantee (petitioner), from which taxes, duties, licenses, fees and assessments the grantee (petitioner) is hereby expressly exempted".

4. Petitioner imported for its use in connection with its franchised operations various machinery, equipment and spare parts which arrived at the Port of Iloilo on several occasions and declared under different import entries, to wit:

"Entry No. 14 - One Case - 6 pcs. Injector Body
Entry No. 30 - One Case Skid Distributor
Entry No. 46 - One Case Vulcan Engine Spares
Entry No. 47 - One Case Vulcan Engine
Entry No. 48 - Two Cases Spares for Vulcan Engine
Entry No. 68 - One Case - 238 pcs. Filter Element
Entry No. 81 - One Box - 21 Units Load Break Fuse
Entry No. 100 - Three Skids Panel and Distributor Board and parts
Entry No. 135 - One Case - 3 pcs. Big End Bearing
Entry No. 136 - One Tri-wall Carton Spares for MIRRLESS KV16 Major Engine
Entry No. 159 - One Skid Power Distributor Cutouts
I.E. 2968278 - One Parcel Spares for MIRRLESS KV16 Major Engine
Entry No. 169 - One Case Electrical Spare Parts for Vulcan Engine"

5. Notwithstanding Section 5 of Republic Act No. 5360, the Collector of Customs of Iloilo assessed petitioner the amounts of ₱63,245 and ₱31,059 as customs duties and compensating taxes, respectively, for the importations. Petitioner paid said customs duties and compensating taxes and duly protested the

same, to wit:

Entry	Duties	BIR Tax	O/R No.	Date Paid	Protest Number
14	₱ 501	₱ 381	367352	Feb. 18, 1977	1
30	6,409	1,284	367356	Feb. 28, 1977	2
46	403	343	367358	Apr. 22, 1977	3
47	5,868	4,001	367359	Apr. 22, 1977	4
48	8,690	6,232	367360	Apr. 22, 1977	5
68	1,719	1,653	367361	June 3, 1977	6
81	4,541	1,006	367363	June 24, 1977	7
100	8,645	6,480	367364	July 21, 1977	8
135	2,394	1,716	367367	Oct. 6, 1977	9
136	3,682	2,675	367368	Oct. 6, 1977	10
159	4,728	1,018	367373	Nov. 29, 1977	11
2968278	203	99	1869331	Dec. 14, 1977	12
169	15,462	4,171	367376	Dec. 21, 1977	13
Total	₱63,245	₱31,059			

6. In an order, the Collector of Customs of the Port of Iloilo denied said protests on the ground that the said provision of Section 5 of Republic Act No. 5360 had already been repealed by Section 105 of the Tariff and Customs Code, as amended by Presidential Decree No. 34 and by Section 190 of the Tax Code, as amended by Presidential Decree No. 69. Said order was duly appealed by petitioner to respondent.

7. On December 27, 1979, respondent rendered his final decision affirming the appealed order of the Collector of Customs of the Port of Iloilo, which decision was received by petitioner only on February 13, 1980.

Under paragraph 9 of its petition for review;

petitioner states that the compensating tax involved in this case has already been the subject matter of a claim for refund with the Commissioner of Internal Revenue which was appealed by petitioner to this Court to suspend the two-year prescriptive period to claim a refund under the provisions of Section 292 of the National Internal Revenue Code. Since as reiterated on page 4 of the Memorandum for Petitioner (p. 49, CTA records), the compensating tax mentioned in this appeal has, in the meantime, become the subject matter of a claim for refund filed with the Commissioner of Internal Revenue, which claim is presently the subject of CTA Case No. 2922 (2992), now pending before this Court, impleading the proper respondent therein the Commissioner of Internal Revenue, this decision will deal and confine itself only to the customs duties assessed and collected on the importations specified in paragraph 4 of the petition for review.

The parties are not in controversy on the computation of the customs duties payable by, or the amount refundable to, petitioner as the case may be.

Petitioner assails the Government's right to impose customs duties on its importations of various machinery, equipment and spare parts for use in connection with its enfranchised business on the ground that under its charter, its payment of two <u>per centum</u> tax based on its gross earnings for electric current sold is, by express provision of Section 5 of Republic Act No. 5360, in lieu of all taxes, duties, of whatever nature and which may be levied by any government authority now and in the future upon machinery and equipment, watt-hour meters, poles, wires, transformers and insulators used by petitioner, for which taxes, duties, petitioner is expressly exempted. To quote Section 5 of Republic Act No. 5360:

> "Sec. 5. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to two per centum of the gross earnings for electric current sold under this franchise: Provided, That the said franchise tax of two per centum of the gross earnings shall be in lieu of taxes, duties and assessments, licenses and fees of whatsoever nature and which may be levied by any governmental authority now and in the future upon privileges, earnings, income, machinery and equipment, watt-hour meters, poles, wires, transformers, and insulators used by grantee, from which taxes, duties, licenses, fees and assessments the grantee is expressly exempted."

Respondent in his answer avers as special and affirmative defense, however, that Presidential Decree No. 34 which took effect on November 17, 1972 repealed and/or amended the customs duty-exemption privilege previously enjoyed by petitioner on importations of machinery and equipment, watt-hour meters, poles, wires, transformers and insulators granted under its franchise (Republic Act No. 5360). The last paragraph of Section 105 of said decree provides:

> "The provisions of general and special laws, including those granting franchises, to the contrary notwithstanding, there shall be no exemptions whatsoever from the payment of customs duties except those provided for in this Code; those granted to government agencies, instrumentalities or government-owned or controlled corporations with existing contracts, commitments, agreements, or obligations (requiring such exemption) with foreign countries; international institutions, associations or organizations entitled to exemption pursuant to agreements or special laws; and those that may be granted by the President upon prior recommendation of the National Economic Development Authority in the interest of national economic development."

The issue for determination, therefore, as posed by petitioner, is: Whether or not Section 105 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, has revoked the grant of exemption from customs duties to petitioner under Section 5 of Republic Act No. 5360.

Petitioner's submission that Section 105 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, could not have revoked the grant of exemption from customs duties to petitioner under Section 5 of Republic Act No. 5360 on the ground that its franchise precludes the imposition of any tax other than the franchise tax which the Government may impose "now and in the future" is positively without merit.

Petitioner's franchise to construct, maintain and operate an electric light, heat and power system for the purpose of generating and/or distributing electric light, heat and/or power for sale within the City of Iloilo and the Municipalities of Santa Barbara and Pavia, both in the Province of Iloilo, is by express provision of Section 1 of its charter (Republic Act No. 5360, approved on June 15, 1968), subject to the provisions of the Constitution and to the terms and conditions established in Act No. 3636, as amended by Commonwealth Act No. 132. Section 8, Article XIV of the 1935 Constitution, under whose authority the franchise of petitioner was granted, specifically provides that: "No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the public interest so requires." The power of the State to amend the franchise of petitioner, as provided in the Constitution, is therefore deemed to be a part of such franchise. (Hoa Hin vs. David, 105 Phil. 783; Lealda Electric Co. Inc. vs. Commissioner of Internal Revenue, L-16428, April 30, 1963, 7 SCRA 728; Imus Electric Co. vs. Court of Tax Appeals, L-22421, March 18, 1967, 19 SCRA 612; Guagua Electric Light vs. Collector of Internal Revenue, L-23611, April 24, 1967, 19 SCRA 790.) And in Section 12 of Act No. 3636, which took effect on December 7, 1929, it is provided that:

> "Sec. 12. This franchise is granted subject to the provisions of Act Numbered Three thousand one hundred and eight, as amended, and with the understanding and upon the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly or by the Congress of the United States, and that it shall be subject in all respects to the limitations upon corporations and the granting of franchises contained in the Constitution of the Philippines, and also subject to the provisions of Act Numbered Fourteen hundred and fifty-nine of the Philippine Legislature, as amended. (Act No. 3636, Permanent and General Statutes, Vol. I, p. 682, 1971 ed.; emphasis supplied.)

Accordingly, when petitioner accepted its franchise, it did so with the understanding that the constitutional and statutory reservations of the right of the State to amend, alter, modify or repeal petitioner's franchise when public interest so requires became an unwritten condition thereof. On the assumption therefore that Section 5 of Republic Act No. 5360 granted exemption from customs duties to petitioner on its importations of machinery, equipment and spare parts for use in its franchised operations, such exemption may be revoked or repealed anytime by the State when the public interest so requires. The acts of the Legislature granting franchises should be construed so as not to contravene or violate the Constitution, for otherwise said legislative acts would be null and void or unconstitutional. (The Philippine Long Distance Telephone Co. vs. Collector of Internal Revenue, 90 Phil. 674.) It is thus self-evident that petitioner's franchise does not preclude the imposition of any tax other than the franchise tax which the Government may impose when the public interest so requires, notwithstanding the "now-and-in-the-future" proviso thereof.

Public interest is the basic and primordial concern of the State. It is in pursuance of the constitutional mandate, as ordained in the preamble of the Constitution under whose authority petitioner's franchise was granted, to promote the general welfare. It is a matter of public necessity or policy, for the public good and economic well-being of the country. And this could mean alteration, amendment or revocation of franchises or rights granted, within constitutional limits, in the interest of national economic development or adjustment to suit the needs of the changing economic conditions of the country. It has been declared that the economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference even with contracts and property rights. (Rutter vs. Esteban, 93 Phil. 68, 73, citing Home Building & Loan Association vs. Blaisdel, 78 L. ed. 413, 428.)

Thus, as enunciated in the Explanatory Note (whereases) to Presidential Decree No. 34, amending the Tariff and Customs Code, in order to:

(1) Simplify the present complicated tariff structure and improve thereby the administration of customs;

(2) Raise additional revenues;

(3) Provide tariff protection to economically desirable and deserving local industries;

(4) Serve as an instrument for bargaining vis-a-vis other countries;

(5) Allocate properly available resources from investments in non-essentials to investments in

essential and exportable goods;

(6) Prevent technical smuggling;

public policy would seem to require that only those articles enumerated in Section 105 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, should be exempt from the payment of import duties upon compliance with the formalities prescribed in, or with the regulations promulgated by the Commissioner of Customs with the approval of Secretary (now Minister) of Finance. Consequently, under the last paragraph of said Section 105, supra, there shall be no exemptions whatsoever from the payment of customs duties, the provisions of general and special laws, including those granting franchises, to the contrary notwithstanding, except:

(1) Those provided for in the Tariff and Customs Code;

(2) Those granted to government agencies, instrumentalities or government-owned or controlled corporations with existing contracts, commitments, agreements, or obligations (requiring such exemptions) with foreign countries;

(3) Those granted to international institutions, associations or organizations entitled to exemption pursuant to agreements or special laws; and

(4) Those that may be granted by the President upon prior recommendation of the National Economic Development Authority in the interest of national economic development.

In the interest of national economic development and the needs of the changing economic conditions of the country, national welfare and public interest appear to require, therefore, as declared in the Introductory Note to Presidential Decree No. 34, amending the Tariff and Customs Code, that there should be no exemptions whatsoever from the payment of customs duties except those mentioned in the last paragraph of Section 105 of the Tariff and Customs Code as amended by Presidential Decree No. 34. And since petitioner accepted its franchise with the understanding of the constitutional and statutory reservations of the right of the State to amend, alter or repeal the same when the public interest so requires, petitioner can not claim that the "now-and-in-the-future" proviso of its charter has the effect of precluding the imposition of customs duties on its importations of machinery, equipment and spare parts for its use in connection with its enfranchised business.

Petitioner contends, however, that in order that Section 105 of the Tariff and Customs Code may be deemed to have amended or altered its franchise, the intention to do so must clearly and without doubt appear from the said Section 105. Petitioner's contention may not be inherently implausible, but the law is so clear, specific and mandatory that it leaves no room for doubt or interpretation. It merely calls for application as thus worded. The controlling legal provision, as already quoted above, reads: "The provisions of general and special laws, including those granting franchises, to the contrary notwithstanding, there shall be no exemptions whatsoever from payment of customs duties x x x." The applicable provision makes it explicitly and abundantly clear that exemptions from payment of customs duties, <u>including those granted under franchises</u>, are no longer available except those enumerated in Section 105, and petitioner is undoubtedly not one of them.

While it is to be admitted, under settled rules of statutory construction, that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute, the clean-up phrase "including those granting franchises, to the contrary notwithstanding, there shall be no exemptions whatsoever from the payment of customs duties," is so plain and explicit, free from ambiguity or doubt, definite and clear in meaning, that it unquestionably includes exemptions from customs duties granted under special laws or franchises, including the franchise of petitioner, on the assumption that such exemption from customs duties does exist. In granting petitioner a legislative franchise to construct, maintain and operate an electric light, heat and power system for the purpose of generating and/or distributing electric light, heat and power for sale within the City of Iloilo and adjacent municipalities, Congress might have considered and made provision for all the circumstances of the particular case, but the power of the State to amend, alter or repeal when the public interest so requires, as provided in the Constitution and in the franchise of petitioner, is also a part of petitioner's charter. The peremptory requirements of public interest which could mean priority measures vital to the national economic development programs of the Government and the needs of the changing economic conditions of the country, as envisaged in

Presidential Decree No. 34, amending the Tariff and Customs Code, appear to stress the necessity of limiting exemptions from customs duties to those enumerated in the last paragraph of Section 105 of the Code. The terms of the statute provide the safest guide as to the views of the State on national interest or necessity which should not be construed so as to limit or preclude the Government from attaining or applying those views by legislation.

In finding petitioner's cause without merit, it bears emphasis that he who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and may almost be said "to be odious to the law." He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. (Asiatic Petroleum vs. Llanes, 49 Phil. 466, 471; Union Garment Co., Inc. vs. Court of Tax Appeals, L-16809, January 31, 1962, 4 SCRA 304; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, L-19707, August 17, 1967, 20 SCRA 1056; Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue, L-25602, February 18, 1970, 31 SCRA 520; Commissioner of Customs vs. Philippine Acetylene Co. & Court of Tax Appeals, L-22443, May 29, 1971, 39 SCRA 71; Davao Light and Power Co., Inc. vs. Commissioner of Customs, L-28902, March 29, 1972, 44 SCRA 122.) The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty. (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County of Shelby, 95 U.S. 679, 686). (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, 471; Manila Electric Company vs. Commissioner of Internal Revenue, L-29987 & L-23844, October 22, 1975, 67 SCRA 351.)

As stressed by the Supreme Court in Acting Commissioner of Customs vs. Manila Electric Company and Court of Tax Appeals, L-23632, June 30, 1977, 77 SCRA 469, an exemption from taxation must be justified by words too clear to be misread. As set forth in Commissioner of Internal Revenue vs. Guerrero, L-20812, September 22, 1967, 21 SCRA 180: "From 1906, in Catholic Church v. Hastings to 1966, in Esso Standard Eastern, Inc. v. Acting Commissioner of Customs, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed strictissimi juris." (Catholic Church vs. Hastings, 5 Phil. 701; Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, L-21841, October 28, 1966, 18 SCRA 488. The opinion also cited Government vs. Monte de Piedad, 35 Phil. 42; Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466; House vs. Posadas, 53 Phil. 338; Phil. Tel and Tel. Co. vs. Collector, 58 Phil. 639; Greenfield vs. Meer, 77 Phil. 394; Collector of Internal Revenue vs. Manila Jockey Club, 98 Phil. 670; Phil. Guaranty Co., Inc. vs.

Commissioner, L-22074, September 6, 1965, 15 SCRA 1; Abad vs. Court of Tax Appeals, L-20834, October 19, 1966, 18 SCRA 374.)

The net result is that the decision of respondent denying the protests of petitioner against the assessment and collection of customs duties on its importations of machinery, equipment and spare parts for use in connection with its franchised business and declared under Import Entries Nos. 14, 30, 46, 47, 48, 68, 81, 100, 135, 136, 159, 169 and Informal Entry No. 2968278, all Series of 1977 of the Port of Iloilo, for lack of legal basis must have to be sustained. Petitioner Panay Electric Company, Inc. is not therefore entitled to the refund of the amount of ₱63,245.00 as customs duties paid on its importations.

IN VIEW OF THE FOREGOING, we find no merit in the petition for review and we hereby affirm the decision of respondent Commissioner of Customs insofar as it refers to the assessment and collection of customs duties. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, April 30, 1981.

Amante Filler
AMANTE FILLER
Presiding Judge

I CONCUR:

Did not take part
CONSTANTE C. ROAQUIN
Associate Judge

Alex Z. Reyes
ALEX Z. REYES
Associate Judge