PANAY ELECTRIC COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2674

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Petitioner seeks to recover an aggregate amount of ₱411,635.00 representing compensating taxes alleged to have been erroneously and/or illegally imposed and collected on importations under its legislative franchise.

Petitioner corporation is a public utility authorized 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" under R.A. No. 5360 which took effect on June 15, 1968.

On different occasions during the years 1973 and 1974, petitioner imported various equipment and spare parts such as Mirrless KV 16 Major Diesel Engine Generating Set, diesel engine parts, generator parts and transformers, for use in connection with its franchise to operate an electric light, heat and power system as authorized by Republic Act No. 5360. As a condition to the withdrawal from Customs' custody of the imported articles, the Collector of Customs of the Port of Iloilo as agent of the respondent Commissioner of Internal Revenue assessed and collected from petitioner the corresponding compensating taxes prescribed under Section 190 of the Tax Code, as amended, aggregating ₱411,635.00, aside from the customs duties, due on the importations.

On October 1, 1974 and November 25, 1974, petitioner filed two separate letters with the Office of the respondent claiming the refund of the compensating taxes paid on the imported equipment and spare parts for use in its franchised operations on the ground of its express exemption from any and all taxes other than franchise tax, under its legislative grant, which provides:

> "Sec. 5. - In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal

> to the two per centum of the gross earnings for electric current sold under this franchise: Provided, That the said franchise of two per centum of the gross earnings shall be in lieu of taxes, duties, and assessments, licenses and fees of whatever nature 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 the grantee, from which taxes, duties, licenses, fees and assessments the grantee is expressly exempted." (R.A. No. 5360).

And towards sustaining such tax privilege petitioner contends that such subsisting grant is contractual in nature and could not have been impaired nor withdrawn impliedly by the repealing provision of Section 190 of the Tax Code as amended by PD 69 which took effective on January 1, 1973.

Taking exception, respondent sees nothing of any such sort of an express exemption from the payment of compensating tax on petitioner's importations under Section 5 supra of its franchise, otherwise, the language in essence would more likely have so specifically provided. Respondent cites the pronouncement in the MERALCO case (No. L-23847 & L-29987, October 22, 1975, 67 SCRA 360) as controlling that, "No justification can be found for giving petitioner herein preferential treatment by reading into its franchise an exemption from a particular kind of tax which is not there. If it had been the legislative intent to exempt MERALCO from paying a tax on the use of imported equipment, the legislative body could have easily done so by expanding the provision of Section 9 and adding to the exemption such words as 'compensating tax' or 'purchases from abroad for use in its business' and the like. We cannot ignore the principle that express mention in a statute of an exemption precludes reading others into it. (Heard v. Sears Roebuck & Co., 122 Conn. 185, 193, 188A. 269)." Moreover, Section 190 (now Sec. 204) of the Tax Code, as amended by PD 69, providing that, "The provision of existing laws to the contrary notwithstanding, exemption from this tax shall be limited to the following:" repealed the exemption provision in petitioner's franchise insofar as regards compensating tax.

This case finds a two-fold concern: whether or not 1) the "in lieu of taxes" provision in Section 5 of R.A. No. 5360, supra, includes an exemption from compensating tax, and 2) the repealing provision in Section 190 of the Tax Code, as amended, precludes the availment thereof, should any subsist.

The first requires no tortured ratiocination. Section 5 of petitioner's franchise providing that, "the 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, transformers, and insulators used by the grantee, from which taxes, duties, licenses, fees and assessments the grantee is expressly exempted", appears quite explicit in terms and unequivocal in tone. It deserves to be measured by its own intent. There is nothing cryptic or abstract in these words as would pose an ambiguity or obscurity in their application. As such, it is not for us to fashion the governing rule of law according to our standard.

What seems similar in many or so in tenor with the MERALCO grant may not be identical in terms with respect to the availment of the tax privilege. We do not in the case at bar reach the same situation. Thus, paragraph 9 of the MERALCO franchise provides that "the grantee shall be liable to pay the same taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators) machinery and personal property as other persons are or may be hereafter required by law to pay" and further provides that the percentage tax payable by petitioner as fixed therein "shall be in lieu of all taxes and assessments of whatever nature and by whatsoever authority upon privileges, earnings, income, franchise and poles, wires, transformers and insulators of the grantee from which taxes and assessments the grantee is hereby expressly exempted." The Supreme Court then observed that the "last clause of paragraph 9 merely reaffirms, with regards the poles, wires, transformers and insulators, what has been expressed in the first sentence of the same paragraph namely, exemption of petitioner from the payment of property tax." It concluded, in rejecting MERALCO's claimed exemption, that compensating tax is not a property tax but in the nature of an excise. We need not belabor the authority relied upon by respondent Commissioner of Internal Revenue more than to say that the animating principles enunciated in the MERALCO decision do not portray the same meaning and intent as of the herein petitioner's grant. As a point of simple fact, the specific inclusion of "duties" among the levies enumerated under the "in lieu of taxes" provision in petitioner's franchise is a compelling indication that the exemption need not be zeroed to property taxes but must have to be tacked to other impositions compatible with petitioner's undertaking authorized under the franchise. Duties as well as compensating taxes are such imposts partaking the attributes of the lawful dues brought to bear on importations. This we think may well be determinative of the sense and extent of the coverage of the privilege. We feel therefore compelled to sustain petitioner's exemption from the payment of compensating tax on its importations.

The answer to the second question poses the rub. The exemption for particular tax was subsequently eviscerated upon effectivity of the PD 69 repealing amendment in Section 190 of the Tax Code and is therefore largely nostalgic illusion, so to speak. The language of the amendment is not simply strung in syntactical correctness but by apt and certain words is intended to effectuate a purpose to be served. Thus provided:

"Sec. 190. - Compensating tax. x x x x

"The provisions of existing laws to the contrary notwithstanding, exemption from the tax shall be limited to the following:

1. Those enumerated in this section;
2. Those granted under Republic Act No. 5186, as amended, Republic Act No. 6135, as amended, Republic Act No. 5490;
3. Those granted in pursuance of or in compliance with international treaties or commitments, such as the ADB-RP Host Agreement (1966), the 1947 Convention on Privileges and Immunities of the United Nations and its Specialized Agencies; the United States Agency for International Development-RP Agreement; the 1947 Military Bases Agreement; and other similar treaties or commitments; and
4. Those that may be granted by the President upon recommendation of the NEDA in the interest of economic development."

The pellucidity of the intendment need not lapse into further exegesis. We must consider what the amendment has expressly reserved. Had it been intended to extend the exemption, the inclusion of public utility franchises among the exceptions should have sufficed for the purpose. Far from a quirky insights of the law maker, the amendment has on the contrary specially and specifically enumerated the subjects to be exempted from the particular imposition of compensating tax. If we take the provision to mean what it says, it gives such tax privilege to those expressly mentioned and to no other following the well-known rule of law, <u>Expressio unius est exclusio alterius</u>. It will be of immense naivette if we do not presume that when the lawmaking body enacted the amendment it had full knowledge of prior existing laws and legislations on the subject of the statute and acted in accordance or with respect thereto. (Tamiani Trial Tours v. Lee, 194 So. 305; Manila Lodge No. 701 v. Court of Appeals, L-41061, September 30, 1976, 73 SCRA 163). And, when the amendment provides that, "The provisions of existing laws to the contrary notwithstanding, exemption from this tax shall be limited to the following:", the lawmaking power cannot be said to have intended the establishment of conflicting and hostile systems upon the same subject, or to leave in force provisions of a prior law by which the later will of the legislature may be thwarted and overthrown. Such result would render legislation a useless and idle ceremony, and subject the law to the reproach of uncertainty and untelligibility. (See Separate

Opinion of Justice Jones in Lichuaco v. Apostol, 44 Phil. 145 fn 3, citing Lewis' Sutherland Statutory Construction; Bagatsing v. Ramirez, 74 SCRA 313). The omission of franchises among the exceptions mentioned under Section 190 of the Tax Code, as amended, is not a legal legerdemain but a purposeful and deliberate choice sufficient to arrest the refund of compensating tax sought in the case at bar.

We deem it unnecessary to discuss the asserted "impairment" of the contractual agreement in petitioner's grant. The obvious and decisive answer, of course, is the pervading restraint of the Constitution that, "Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration or repeal." (Art. XIV, Sec. 5).

WHEREFORE, the petition for review is hereby dismissed with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, July 30, 1982.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge