REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

GMA NETWORK, INC.,
Petitioner,

CTA EB No. 647
(CBAA CASE No. M-31)

- versus -

ENGR. ENRIQUE F. BARROGA, (Substituted by REMEGIO L. DAGA, In His capacity as City Assessor, Cotabato City,
Respondent.

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
OCT 2 5 2011 [illegible] 1:10 p.m.

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D E C I S I O N

UY, J.:

This is a Petition for Review filed by petitioner GMA Network, Inc., pursuant to Sections 3(c), Rule 8 of the Revised Rules of the Court of Tax Appeals,[1] praying for the reversal and setting aside of the Decision dated December 18, 2009[2] and Resolution dated May 14, 2010[3] of the Central Board of Assessment Appeals (CBAA) in CBAA Case No. M-31 entitled *"GMA Network, Inc., Petitioner-Appellant, versus The Local Board of Assessment Appeals of the City of Cotabato, Appellee, and Engr. Enrique F. Barroga, in his capacity as City*

[1] A.M. No. 05-11-07-CTA dated November 22, 2005.
[2] Docket, pp. 193 to 220.
[3] Docket, pp. 222 to 232.

Assessor, Cotabato City, Respondent-Appellee", the dispositive portions of which respectively read:

> **Decision dated December 18, 2009:**
>
> "WHEREFORE, premises considered, the instant Appeal is hereby DISMISSED for lack of merit.
>
> SO ORDERED."
>
> **Resolution dated May 14, 2010:**
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> "WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby DENIED.
>
> SO ORDERED."

THE FACTS

It is undisputed that petitioner, GMA Network, Inc. (formerly known as "Republic Broadcasting System, Inc.", and hereinafter referred to as "GMA"), is a corporation duly organized and existing under Philippine laws with principal office at GMA Network Center, EDSA corner Timog Ave., Diliman, Quezon City.

On the other hand, respondent Engr. Enrique F. Barroga is the former City Assessor of Cotabato City. In view of his demise on March 1, 2010, he was substituted by the incumbent City Assessor of the same City, Mr. Remegio L. Daga.

GMA is a grantee of the legislative franchise to operate a radio and television broadcasting stations in the country under Republic Act No. (RA) 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"*, which took effect on March 2, 1992. In particular, Congress granted GMA the license "to construct, install, operate and maintain for commercial purposes and in the public interest, radio and television broadcasting stations in the Philippines with the corresponding auxiliary, special broadcast and other program and distribution services and relay stations, and to install radio telecommunication facilities for private use in its broadcast services" for a term of 25 years. Section 8 of RA 7252 provides for the tax liability of GMA, to wit:

> "SECTION 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 for 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 due 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." *(Emphasis supplied)*

In pursuit of its legislative franchise, GMA acquired lands, constructed buildings and improvements, and placed machineries thereon that are necessary and essential to the operation of a television network and radio broadcasting stations. In 1998, GMA opened its television (TV) relay station in Org. Compound, Cotabato City, where it acquired from Cotabato Television Corporation a building thereon covered by Tax Declaration (TD) No. GR-25-1156[4] and various TV equipment and machineries covered by TD Nos. 96-25-

[4] Docket, p. 94.

1631[5] and 96-25-1632[6]. The said building is being used by GMA as its TV relay transmission site in Cotabato City and other neighboring areas.

On October 27, 2006, GMA, through its letter dated October 26, 2006, requested from respondent assessor the cancellation of TD Nos. 96-25-1631 and 96-25-1632 on the ground that the properties covered by the said tax declarations were no longer used in its operation. Subsequently, respondent assessor issued TD No. 96-25-2251[7] with a memorandum: "REVISED TO DROP THE ASSESSMENT OF NON-OPERATIONAL AND NO LONGER EXISTING MACHINES PER APPROVED INSPECTION REPORT" and indicating therein that such tax declaration was consolidated from TD Nos. 96-25-1631 and 96-25-1632. The equipment and machineries covered by TD No. 96-25-2251, namely "audio mixer", "2 TV monitor", "antenna disk and satellite receiver" and "VHS recorder" are all being used by GMA in receiving television signals from its program input equipment and transmitting them to the different TV sets in different households of Cotabato City and its neighboring areas. However, despite the issuance of TD No. 96-25-2251 which supposedly replaced TD Nos. 96-25-1631 and 96-25-1632, the City Treasurer of Cotabato continued to impose taxes on the properties covered by the latter tax declarations.

In 2006, the Second Division of the Supreme Court, in the case of *City Government of Quezon City, et al. vs. Bayan Telecommunications, Inc.*[8] (the *Bayantel* case), interpreted the phrase "exclusive of this franchise", which are found in almost all legislative franchises, including that of petitioner (*i.e.*, the earlier quoted Section 8 of RA 7252), to wit:

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[5] Docket, p. 95.
[6] Docket, p. 96.
[7] Docket, p. 98.
[8] G.R. No. 162015, March 6, 2006.

"As we see it, then, the issue in this case no longer dwells on whether Congress has the power to exempt Bayantel's properties from realty taxes by its enactment of Rep. Act No. 7633 which amended Bayantel's original franchise. **The more decisive question turns on whether Congress actually did exempt Bayantel's properties at all by virtue of Section 11 of Rep. Act No. 7633**.

Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel's former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase ***'exclusive of this franchise'*** which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that '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.' The Court views this subsequent piece of legislation as an **express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power**, all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuit of its franchise."

The said interpretation of the phrase "exclusive of this franchise" was later adhered to in *Digital Telecommunications Philippines, Inc. vs. Province of Pangasinan, et al.*[9] (the earlier *Digitel* case), which was promulgated on February 23, 2007. Said the Third Division of the High Court, viz:

"As to the issue relating to the claim of payment of real property taxes, of particular import is Section 5 of Republic Act No. 7678, the legislative franchise of petitioner DIGITEL. Sec. 5 of said law again states that:

'SECTION 5. Tax Provisions. – 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 x x x. (Emphasis supplied.)

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Thus, the question is, whether or not petitioner DIGITEL's real properties located within the territorial jurisdiction of respondent Province of Pangasinan are exempt from real property taxes by virtue of Section 5 of Republic Act No. 7678.

[9] G.R. No. 152534, February 23, 2007.

We rule in the affirmative. However, it is with the *caveat* that such exemption solely applies to those real properties *actually, directly and exclusively used by the grantee in its franchise.*

The present issue actually boils down to a dispute between the inherent taxing power of Congress and the delegated authority to tax of the local government borne by the 1987 Constitution. In the afore-quoted case of *PLDT v. City of Davao*, we already sustained the power of Congress to grant exemptions over and above the power of the local government's delegated taxing authority notwithstanding the source of such power. And fairly recently, in the case of *The City Government of Quezon City v. Bayan Telecommunications, Inc.*, we again had the opportunity to echo the *ponencia* of Mr. Justice Vicente V. Mendoza that:

> 'Indeed, ***the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy***. The legal effect of the constitutional grant to local governments simply means that in interpreting statutory provisions on municipal taxing powers, doubts must be resolved in favor of municipal corporations.' [Emphasis supplied.]

Succinctly put, had the Congress of the Philippines intended to tax each and every real property of petitioner DIGITEL, regardless of whether or not it is used in the business or operation of its franchise, it would not have incorporated a qualifying phrase, which such manifestation admittedly is. And, to our minds, 'the issue in this case no longer dwells on whether Congress has the power to exempt' petitioner DIGITEL's properties from realty taxes by its enactment of Republic Act No. 7678 which contains the phrase '*exclusive of this franchise,*' in the face of the mandate of the Local Government Code. The more pertinent issue to consider is whether or not, by passing Republic Act No. 7678, Congress intended to exempt petitioner DIGITEL's real properties actually, directly and exclusively used by the grantee in its franchise.

The fact that Republic Act No. 7678 was a later piece of legislation can be taken to mean that Congress, knowing fully well that the Local Government Code had already withdrawn exemptions from real property taxes, chose to restore such immunity even to a limited degree. Accordingly:

> 'The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's x x x properties that are actually, directly and exclusively used in the pursuit of its franchise.'

In view of the unequivocal intent of Congress to exempt from real property tax those real properties actually, directly and exclusively used by petitioner DIGITEL in the pursuit of its franchise, respondent Province of

> Pangasinan can only levy real property tax on the remaining real properties of the grantee located within its territorial jurisdiction not part of the above-stated classification. Said exemption, however, merely applies from the time of the effectivity of petitioner DIGITEL's legislative franchise and not a moment sooner."

Subsequently, pursuant to Section 206[10] of the Local Government Code (LGC) of 1991 (RA 7160) and in light of the pronouncements interpreting the phrase "exclusive of this franchise" in the *Bayantel* and earlier *Digitel* cases, GMA served a letter dated March 3, 2008[11] with respondent Assessor, requesting for the exclusion, cancellation or dropping from the roll of assessments the subject properties[12] of GMA which are being actually, directly and exclusively used by GMA in its TV relay transmission in Cotabato City, in pursuit of its franchise for the operation of its TV broadcasting station.

On May 30, 2008, GMA received a copy of the letter-reply of respondent Assessor dated May 23, 2008, denying GMA's request.[13] Respondent Assessor relied on the opinion dated May 12, 2008[14] of the Office for Legal Services of Cotabato which is reproduced as follows:

> "The herein sets of documents are returned to the City Treasury Office and the Office of the City Assessor, this City, with the accompanying legal opinion and recommendation, viz:
>
> ***The herein Claim for Refund of the subject Real Property Taxes filed by GMA Network should be DENIED on account of the following reasons/arguments, to wit:***

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[10] SEC. 206. *Proof of Exemption of Real Property from Taxation.*—Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

[11] Docket, pp. 100 to 106.

[12] Covered by TD Nos. GR 25-1156, 96-25-2251, 96-25-1631, and 96-25-1632.

[13] Docket, p. 107.

[14] Docket, pp. 108 to 109.

1] The provision relied upon for the said claim for refund [Section 253 of the Local Government Code of 1991], finds no application in the case at bar because the same applies in case of excessive collections of real property taxes, anchored on reduction or adjustment of the same, as the title of the foregoing provision clearly states: REPAYMENT OF EXCESSIVE COLLECTIONS. There has been no excessive collections made by the City Government of Cotabato with respect to the real property taxes assessed and imposed on GMA Network, and there is no jurisprudence which says that what the City Government assessed and collected is illegal or erroneous;

2] The subject Claim for Refund is in reality a claim for exemption from payment of real property taxes. It should have been invoked by way of assailing the assessment of real property taxes and in accordance with the proper and specific procedure and reglementary periods laid down in the pertinent provisions of the RA 7160. There was a dismal failure on the part of GMA Network in this regard, thus, **what it had failed to do, it cannot do in some other inappropriate way,** which is this Claim for Refund;

3] GMA Network cannot utilize the Digitel and Bayan Tel jurisprudence in its favor because the subjects of the cases are Digitel Telecommunications Philippines, Inc. and Bayan Telecommunications, Inc. Bayan Tel and Digitel. The latter, on one hand, and GMA Network, on the other, are distinct and separate entities, with different franchises and different business circumstances;

4] Section 193 of the Local Government Code of 1991 provides that: "unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under RA 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code"

Section 234 of the same law states that:

xxx Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code."

The enactment of GMA's congressional franchise [R.A. No. 7252} on March 20, 1992 did not operate to revive the tax exemption privilege, for it is hard to fathom that what the Congress had withdrawn on January 1, 1992, it has resurrected barely more than two (2) months from its withdrawal.

5] Taxation is the rule, exemption therefrom is the exception. Statutes granting exemptions are construed strictly against the taxpayer and liberally in favor of the taxing authority. A claim for exemption from tax

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payments must be clearly shown and based on the language in the law too plain to be mistaken [Mactan Cebu International Airport Authority vs. Marcos, GR No. 120082, September 11, 1996].

6] A claim for refund partakes the nature of an exemption which cannot be allowed unless granted in the most categorical language.

ERGO, for lack of merit, the Claim for Refund must FAIL.
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On July 29, 2008, in compliance with Section 3 of the *Rules and Procedures for Appeals on Assessment before the Local Board of Assessment Appeals*, GMA paid under protest the real property tax imposed by the City Treasurer of Cotabato City on the subject properties as of June 26, 2008 through Manager's Check.

On the same day, GMA filed a Petition[15] with the Local Board of Assessment Appeals (LBAA) of Cotabato City, praying that judgment be rendered: (1) finding that the subject properties covered by TD Nos. "GR 25-1156", "96-25-2251", "96-25-1631" and "96-25-1632" are exempt from real property taxation; and (2) directing the exclusion, cancellation or dropping of said properties from the roll of realty tax assessments of Cotabato City. The case was docketed as LBAA Case No. 08-002.

In the meantime, the Supreme Court *En Banc*, in the case of *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, et al.*[16] (the recent *Digitel* case), took a different view in interpreting the phrase "exclusive of this franchise", and effectively reversed the said *Bayantel* and *Digitel* cases. In the said case, the Supreme Court *En Banc* ruled:

"The issue in this case involves the interpretation of the phrase '**exclusive of this franchise**' in the first sentence of Section 5 of RA 7678.

[15] Docket, pp. 110 to 133.
[16] G.R. No. 156040, December 11, 2008.

Section 5 of RA 7678 states:

> 'Sec. 5. *Tax Provisions*. - **The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property <u>exclusive of this franchise</u> as other persons or corporations are now or hereafter may be required by law to pay**. 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; *Provided*, That the grantee shall continue to be liable for 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 due 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.' (Boldfacing and underscoring supplied)

The first sentence of Section 5 of RA 7678 is the same provision found in almost all legislative franchises in the telecommunications industry dating back to 1905. It is also the same provision that appears in the legislative franchises of other telecommunications companies like Philippine Long Distance Telephone Company, Smart Information Technologies, Inc., and Globe Telecom. Since 1905, no telecommunications company has claimed exemption from realty tax based on the phrase 'exclusive of this franchise,' until petitioner filed the present case on 3 July 1999.

The first sentence of Section 5 clearly states that the legislative franchisee shall be liable to pay the following taxes: (1) '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'; (2) 'franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise'; and (3) 'income taxes payable under Title II of the National Internal Revenue Code.'

The crux of the controversy lies in the interpretation of the phrase 'exclusive of this franchise' in the first sentence of Section 5. Petitioner interprets the phrase to mean that its real properties that are used in its telecommunications business shall not be subject to realty tax. Respondent interprets the same phrase to mean that the term 'personal property' shall not include petitioner's franchise, which is an intangible personal property.

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 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 properties under the first sentence of Section 5.

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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 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% Valued 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.

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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.

The historical usage of the phrase 'exclusive of this franchise' in 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.

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Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall 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.'

The heading of Section 5 is 'Tax Provisions,' not Tax Exemptions. To reiterate, the phrase 'exemption from real estate tax' or other words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase 'exclusive of this franchise' in the first sentence of Section 5 merely qualifies the phrase 'personal property' to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the 'franchise tax.' Thus, there is no grant of tax exemption in the first sentence of Section 5.

<u>The interpretation of the phrase 'exclusive of this franchise' in the *Bayantel* and *Digitel* cases goes against the basic principle in construing tax exemptions</u>. In *PLDT v. City of Davao*, the Court held that 'tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.'

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer." *(Underscoring supplied)*

On April 13, 2009, GMA received the LBAA's Order dated October 21, 2008,[17] denying the appeal of GMA in this wise:

> "A review of the records of this case shows no compelling reason to justify a reversal or even a modification of the assessment made by the respondent; (sic) City Assessor.
>
> WHEREFORE, the instant petition is hereby ordered dismissed for lack of merit.
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> SO ORDERED."

Proceedings before the CBAA

On May 12, 2009, GMA filed a Notice of Appeal[18] with the CBAA. This case was docketed as CBAA Case No. M-31.

Subsequently, on May 19, 2009, GMA filed an Appeal Memorandum[19], praying for the reversal and setting aside of the LBAA's Order dated October 21, 2008. GMA states its grounds for the said appeal as follows:

> "I.
>
> THE LBAA OF COTABATO CITY ERRED IN DISMISSING GMA'S PETITION WITHOUT COMPLYING WITH THE FUNDAMENTAL AND ESSENTIAL REQUIREMENTS OF ADMINISTRATIVE DUE PROCESS SINCE THE ASSAILED ORDER WAS NOT EXPRESSED IN A MANNER THAT WOULD SUFFICIENTLY INFORM THE PARTIES OF THE FACTUAL AND LEGAL BASES OF THE DECISION.
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> II.
>
> THE LBAA OF COTABATO CITY ERRED WHEN IT DISMISSED GMA'S PETITION ON THE GROUND THAT THERE IS NO COMPELLING REASON TO JUTIFY (sic) THE REVERSAL OR MODICFICATION (sic) OF THE SUBJECT ASSESSMENTS."

Through a letter dated June 8, 2009,[20] the CBAA requested respondent City Assessor to file her answer to or comment on the appeal of GMA, within ten (10) days from receipt of said letter.

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[17] CBAA Records (Folder 1), p. 33.
[18] Docket, pp. 134 to 135.
[19] Docket, pp. 136 to 164.

On July 13, 2009, respondent Assessor filed his Comment,[21] arguing that there was no denial of due process and that the instant appeal has no legal basis.

In the assailed Decision, the CBAA initially ruled that the Order dated October 21, 2008 of the LBAA in LBAA Case No. 08-002 is not in accordance with the rulings of the Supreme Court in the cases of *Solid Homes, Inc. vs. Laserna, et al.*[22] and *Ang Tibay vs. Court of Industrial Relations*[23]. However, the CBAA pointed out that the sufficiency or insufficiency in form and substance of the assailed Order is not controlling; rather, it is the issue of whether real properties of GMA that are actually, directly and exclusively used in the pursuit of its franchise are exempt from the payment of the realty tax.

Nevertheless, as CBAA denied GMA's appeal, it virtually attacked the rulings of the Supreme Court in the *Bayantel* and the earlier *Digitel* cases, declaring that the said Court "practically changed the law by substituting the phrase 'exclusive of' with another which says 'NOT actually, directly and exclusively used in'". Furthermore, the CBAA ruled that applying the doctrine of *stare decisis*, the earlier case of the Supreme Court in *RCPI vs. Provincial Assessor of South Cotabato, et al.*[24], should prevail over the *Bayantel* and the earlier *Digitel* cases. At any rate, the CBAA upheld, and also relied on the recent *Digitel* case.

On February 22, 2010, GMA filed a Motion for Reconsideration[25] of the CBAA's Decision, arguing that the CBAA's interpretation of the phrase "exclusive

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[20] Docket, p. 165.
[21] Docket, pp. 166 to 173.
[22] G.R. No. 166051, April 8, 2008.
[23] G.R. No. 46496, February 27, 1940.
[24] G.R. No.144486, April 13, 2005.
[25] Docket, pp. 174 to 184.

of this franchise" cannot prevail over the rulings in the *Bayantel* and the earlier *Digitel* cases; and that its reliance in the *RCPI* case in declaring GMA's real properties as taxable is misplaced.

Through the assailed Resolution, the CBAA denied GMA's Motion for Reconsideration and sustained its Decision.

Appeal to this Court En Banc

In view of the unfavorable ruling of the CBAA, GMA went to this Court *En Banc* via the instant Petition for Review filed on June 23, 2010, wherein it prays that the said Decision and Resolution of the CBAA be reversed and set aside; that the instant petition be granted; and that judgment be rendered ordering that the subject properties be declared exempt from real property tax and excluded, cancelled or dropped from the roll of taxable properties of Cotabato City.

Subsequently, the Court *En Banc* issued the Resolution dated August 16, 2010,[26] directing respondent Assessor to file his comment to the instant Petition for Review, within ten (10) days from receipt of said Resolution. Respondent filed said Comment[27] on September 22, 2010.

In the Resolution dated October 14, 2010,[28] the parties were granted a period of thirty (30) days from notice, within which to file their respective memorandum.

On November 22, 2010, GMA filed its Memorandum.[29]

Through the Resolution dated January 19, 2011,[30] the case was deemed submitted for decision, sans respondent Assessor's Memorandum.

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[26] Docket, pp. 237 to 238.
[27] Docket, pp. 239 to 244.
[28] Docket, pp. 249 to 250.
[29] Docket, pp. 251 to 279.
[30] Docket, pp. 283 to 284.

On April 8, 2011, the Court *En Banc* ordered the CBAA to certify and forward thereto, all the records of CBAA Case No. M-31 in its possession.[31] The CBAA forwarded to this Court said records on May 3, 2011.

Respondent Assessor filed, on April 29, 2011, a Compliance with Motion to Admit Memorandum for Respondent. The Court *En Banc* treated the same as his Memorandum. However, the Court *En Banc* observed that counsel for respondent, on his own instance, substituted the name of the original respondent with Mr. Daga, with an allegation that Engr. Barroga is now deceased. In the interest of orderly procedure, the Court *En Banc* required counsel for respondent to show proof of death of Engr. Barroga, and to manifest in an appropriate pleading that the supposed substitute adopts, continues, or threatens to adopt or continue, the action of Engr. Barroga, as respondent to this case, pursuant to Section 17, Rule 3 of the 1997 Rules of Procedure.[32]

On July 7, 2011, counsel for respondent filed a Compliance and Manifestation, wherein he attached a copy of the death certificate for Engr. Barroga and manifested that the supposed substitute, Mr. Daga, as the incumbent City Assessor for Cotabato City, adopts or continues, as he adopted and continued the action of Engr. Barroga in his position in opposing and objecting the petition of GMA. Accordingly, the Court *En Banc* amended the caption of this case.[33]

Hence, this Decision.

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[31] Resolution dated April 8, 2011. Docket, pp. 286 to 287.
[32] Resolution dated May 27, 2011. Docket, pp. 299 to 301.
[33] Resolution dated August 18, 2011. Docket, pp. 310 to 311.

THE ISSUES

GMA presented the following issues for the resolution of the Court *En Banc*:

"A.
Whether or not the CBAA committed grave reversible error when it denied petitioner GMA's appeal on the ground that its congressional franchise, Republic Act No. 7252, does not categorically grant petitioner GMA exemption from real property tax.

B.
Whether or not CBAA committed grave reversible error when it denied 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."

Petitioner's arguments

GMA argues that the CBAA's interpretation of the phrase *"exclusive of this franchise"* cannot prevail over the rulings of the Supreme Court in the *Bayantel* and earlier *Digitel* cases. Moreover, GMA likewise submits that it should enjoy the same tax exemption granted to Bayantel and Digitel considering that the Supreme Court has declared the real properties of Bayantel and Digitel as exempt from real property tax based on the same "exclusive of this franchise" clause.

According to GMA, the case of *RCPI vs. Provincial Assessor of South Cotabato*[34] cannot be applied in the instant case since it involves a different set of facts. Finally, GMA insists that to apply the ruling in the recent *Digitel* case retroactively instead of prospectively would result in deprivation of GMA's property rights.

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[34] G.R. No. 144486, April 13, 2005.

Respondent's counter-arguments

Respondent counter-argues that RA 7252 does not categorically grant GMA exemption from real property tax. Furthermore, GMA had not allegedly acquired any vested right by virtue of the ruling in the *Bayantel* and earlier *Digitel* cases, and even granting that GMA had benefited from the said cases, GMA cannot utilize the same because the latter is a corporation distinct and separate from the former. What was granted to Bayantel and Digitel (in the said cases), if there was any, is not necessarily or automatically granted to GMA.

THE COURT EN BANC'S RULING

The ruling of the Supreme Court in the recent *Digitel* case rendered the issues raised in this petition moot.

It must be noted that the present action sprung from the request of GMA for the exclusion from the roll of taxable properties of Cotabato City the properties of GMA covered by Tax Declarations Nos. GR 25-1156, 96-25-2251, 96-25-1631, and 96-25-1632, per its letter dated March 3, 2008 addressed to the Office of the City Assessor, Cotabato City. Assuming that GMA has become entitled to an exemption from the payment of the real property tax because of the *Bayantel* and earlier *Digitel* cases at the time GMA filed the said letter, the same is no longer true today.

Following the ruling of the Supreme Court in the recent *Digitel* case[35] that the phrase *"exclusive of this franchise"* in franchise laws *"is not a grant of tax exemption"*, GMA can no longer anchor its supposed tax exemption under Section 8 of RA 7252. Thus, any discussion of whether the subject property of

[35] *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas,* G.R. No. 156040, December 11, 2008

GMA should be dropped from the assessment roll will simply be hypothetical and speculative. In fact, it would be absurd, if not impractical, to order the respondent to drop the said property from the assessment roll by virtue of the *Bayantel* and earlier *Digitel* cases, and then to immediately restate the same in the taxable list pursuant to the recent *Digitel* case.

As regards petitioner's claim that the recent *Digitel* cannot be applied retroactively to petitioner in the instant case, as it relied on the old doctrines enunciated in the earlier *Bayantel* and *Digitel* cases, it must be remembered that this rule can only be invoked whenever a retroactive application would divest rights that have already become vested, or would impair obligations of contract. In other words, a new doctrine may be applied retroactively when no divestiture is effected on any vested rights, or no impairment is had on any obligation of contract. Thus, the pertinent question posited is whether GMA acquired a vested right to an exemption on the payment of real property tax for the years during the time that the ruling in the *Bayantel* and earlier *Digitel* cases were still operative.

The answer is in the negative.

A vested right is one which is absolute, complete, and unconditional, to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency. To be vested in its accurate legal sense, a right must be complete and consummated, and one of which the person to whom it belongs cannot be divested without his consent.[36]

It is well settled that tax exemptions are never presumed, the burden is on the claimant to establish clearly his right to the exemption and cannot be made

[36] *Development Bank of the Philippines vs. Court of Appeals, et al.*, G.R. No. L-28774, February 28, 1980.

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out of inference or implications but must be laid beyond reasonable doubt.[37] If such is the case, the grant of tax exemption under the *Bayantel* and *Digitel* cases cannot be claimed by GMA as already being vested to it, since it is still dependent upon a contingency of proving its entitlement thereto, and failing to do so would mean the denial of the claim.

More importantly, it must be emphasized that **there is no vested right in a tax exemption**, more so when the latest expression of legislative intent renders its continuance doubtful.[38]

Anent the question on whether there would be a violation of the non-impairment clause of the Constitution, the case of *Manila Electric Company vs. Province of Laguna, et al.*[39] is instructive, *viz*:

> "While the Court has, not too infrequently, referred to tax exemptions contained in special franchises as being in the nature of **contracts** and a part of the inducement for carrying on the franchise, these exemptions, nevertheless, are far from being strictly contractual in nature. **Contractual tax exemptions, in the real sense of the term and where the non-impairment clause of the Constitution can rightly be invoked, are those agreed to by the taxing authority in contracts, such as those contained in government bonds or debentures, lawfully entered into by them under enabling laws in which the government, acting in its private capacity, sheds its cloak of authority and waives its governmental immunity.** Truly, tax exemptions of this kind may not be revoked without impairing the obligations of contracts. <u>These contractual tax exemptions, however, are not to be confused with tax exemptions granted under franchises. A franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution</u>. xxx." *(Underscoring supplied)*

Clearly from the foregoing, tax exemptions granted under franchises are not the contractual tax exemptions contemplated under the non-impairment clause of the Constitution because a franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution.

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[37] *Quezon City, et al. vs. ABS-CBN Broadcasting Corp.*, G.R. No. 166408, October 6, 2008.
[38] *Republic of the Philippines vs. Hon. Ramon S. Caguioa, et al.*, G.R. No. 168584, October 15, 2007.
[39] G.R. No. 131359, May 5, 1999.

Nevertheless, the machineries covered by TD Nos. 96-25-1631 and 96-25-1632, which are no longer present in TD No. 96-25-2251, must be dropped from the assessment roll effective December 28, 2006—the date of approval of the latter TD,[40] since the same are undeniably no longer used in GMA's operation. This must be so because real property are classified, valued and assessed for purposes of the imposition of the real property tax on the basis of its "actual use".[41] Thus, when such real property is no longer actually used, the reason for its classification, valuation and assessment for purposes of the tax imposition no longer subsists.

WHEREFORE, all the foregoing considered, the instant Petition for Review is **PARTIALLY GRANTED**. The CBAA's Decision dated December 18, 2009 and Resolution dated May 14, 2010 rendered in CBAA Case No. M-31 are hereby **MODIFIED**, insofar as it denied the cancellation of TD Nos. 96-25-1631 and 96-25-1632 issued by the City Assessor of Cotabato City against GMA. Accordingly, the said tax declarations are **CANCELLED** and **SET ASIDE**.

However, TD Nos. GR 25-1156 and 96-25-2251 issued by the same City Assessor against GMA are **MAINTAINED**, upon the ground that GMA is not exempt from the payment of the real property tax, pursuant to the recent *Digitel* case.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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[40] See TD No. 96-25-2251, Docket, p. 98.
[41] Sections 198(b) and 217, Local Government Code of 1991 (Republic Act No. 7160).

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
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 conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice