REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

VISAYAN ELECTRIC CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3506

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

6/14/85

D E C I S I O N

This case comes on a simple issue of whether petitioner's importations under its franchise, Act No. 3499 as amended by R.A. No. 6454, became subject to compensating tax upon the issuance of Presidential Decree No. 69 amending Section 190 (now Sec. 204) of the Tax Code limiting the coverage of the tax exemption to specific exceptions.

Petitioner Visayan Electric Co., Inc. (VECO) is a public utility authorized to operate an electric light, heat and power system in the cities of Cebu, Naga and Mandaue and the municipalities of Talisay, Minglanilla, San Fernando, Consolacion, Liloan and Campostela, all in the province of Cebu under a legislative franchise, Act No. 3499 dated December 8, 1928.

It appears that on account of such franchise, petitioner had not been paying any tax on its importations, viz.: machineries, equipment, supplies, watt-meters, poles, wires, transformers, insulators, capacitors, transportation equipment and other facilities for use in the electric light, heat and power system from the time of the grant in 1928 up to 1972 other than the 2% percentage tax, thus,

> Sec. 8. -The grantee shall pay the same taxes as are now or may hereafter be required by law from other persons, on its real estate, buildings, plant, machinery, and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of each municipality in which it is supplying electricity to the public under this franchise, a tax equal to two per centum of the gross earnings of electric current sold under this franchise. Said percentage shall be due and payable quarterly and shall be in lieu of all taxes of any kind levied, established or collected by any authority whatsoever, now or in the future, on its poles, wires, insulators, switches, transformers and other structures, installations, conductors, and accessories, placed in and over the public streets, avenues, roads, thoroughfares, squares, bridges, and other places, and on its franchises, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted. (Act 3499, December 8, 1928).

At this juncture it may be noted that in not a few cases conceived and claimed as broad grant of exemption under an "in lieu of all taxes" provision of the mold as the petitioner's franchise, the rule was and still is that the rights and privileges which the franchise exempts from taxation refer to those which are not enjoyed by the general public but only the grantee of a franchise. They therefore do not include the common rights or privileges of every citizen to make purchases anywhere. The exemptions in the franchise do not cover compensating tax. (Panay Electric Co. v. Collector of Internal Revenue, G.R. No. L-6753, July 30, 1955; Manila Gas Corporation v. Collector of Internal Revenue, G.R. No. 11784, October 24, 1958; Borja v. Collector of Internal Revenue, G.R. No. L-12134, November 20, 1961). "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 paragraph 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 one exemption precludes reading others into it." (Manila Electric Co. v. Commissioner of Internal Revenue, G.R. Nos. L-29987, and L-23847, October 22, 1975, 67 SCRA 351).

If we go by the said pronouncements it is by no means clear why the petitioner through 1972 could have remained unperturbed when there was no longer an occasion to speculate upon how the imposition of the compensating tax should be enforced. Just as it is not clear why there could be a random quirk of a variance in the tax application among similarly circumstanced franchise holders. The treatment of petitioner's tax exemption privilege seems rather generous than candid. But this is water under the bridge.

So it appears that petitioner finally awoke to the fact that the chips must somehow fall. "Fearing that respondent might also impose compensating taxes on its importations, petitioner went to the franchise grantor the then Congress of the Philippines which promptly enacted R.A. Act No. 6454, amending petitioner's original franchise Act No. 3499, as follows:

> "Sec. 2. The other provisions of Act Numbered Thirty-four hundred ninety-nine is amended insofar as they are inconsistent with the provisions of this amendatory Act; Provided, That the phrase 'taxes of any kind' appearing in Section eight of Act Numbered Thirty-four hundred ninety-nine shall include duties, tariffs, imposts, assessments, licenses, and fees of whatever kind and nature which may be levied by any government authority whatsoever, now or in the future, upon its franchises, rights and privileges, earnings, incomes, payments, revenues, or profits, and upon its machineries, equipments, supplies, watt-meters, poles, wires, transformers, insulators, capacitors, transportation equipments and other facilities used or intended for use by the grantee including, but not limited to, compensating taxes and other customs fees and assessments or licenses." (R.A. 6454, June 12, 1972, without executive approval).

The clear and unambiguous consequence of the amendment entitles the petitioner to an exemption from the payment of the compensating tax liabilities brought to bear upon the importations under the franchise. That seemed to be where the petitioner stood with respect to the enjoyment of the privilege upon effectivity of R.A. No. 6454 on June 12, 1972. But no sooner than it can fully avail of the tax exemption from such import liabilities it went kerplunk upon coming to grip with Presidential Decree No. 69 dated November 24, 1972 which amended Section 190 (now Sec. 204) of the Tax Code, providing, inter alia, "The provisions of existing laws to the contrary notwithstanding, exemption from this tax (compensating) shall be limited to the following: (None of the specified exceptions refer to the petitioner's importations)." (Portions in parenthesis supplied).

In a que sera expectation, petitioner was required to pay the corresponding compensating taxes as a condition for the withdrawal of its various importations occasioned in the years 1980, 1981 and 1982, aggregating ₱2,071,888.00. And, petitioner having considered such imposition and collection erroneous, illegal and improper protested and filed a claim for the refund or credit therefor with the respondent Commissioner of Internal Revenue simultaneous with the filing of the instant petition for review on August 5, 1982.

By and large, petitioner holds on to the proposition that its franchise (Act No. 3499 as amended by R.A. No. 6454), a special law partaking the nature of a contract, cannot be amended, altered or repealed much less withdrawn impliedly by a general law such as P.D. No. 69.

Respondent maintains that Section 190 of the Tax Code, as amended by P.D. No. 69, subjects all imported articles for use to compensating tax unless specifically exempt and the petitioner does not fall under any of the specified exemption. The law employs the word "limited" to exclude reading into the law an exemption which is not there.

The case before Us presents no dispute as to the relatively simple material facts but the parties seem trying to get the better of each other over by a quibble on the proper import of the repealing provision of Section 190 of the Tax Code, as amended by P.D. No. 69, on the particular exemption from compensating tax as provided in the amended franchise.

We may say at the outset that we fail to find for petitioner. The issue now raised was squarely met in a case similar in many or so in tenor and terms involving as it does a like franchise. (Panay Electric Co. v. Commissioner of Internal Revenue, CTA Case No. 2674, July 30, 1982; affirmed by the Supreme Court in G.R. No.

L-62053, January 17, 1983). It may be necessary to repeat what we said and which so plainly apply to the petitioner in the case at bar, as thus -

> 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:
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> 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 lawmaker, 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, Expressio unius est exclusio alterius. 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 latter 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).

We therefore reach a conclusion no different from the aforesaid decision as we see no reason to further graft a precipitious distinction on a satisfactorily settled legal situation.

WHEREFORE, finding the petition to be without merit, the same is dismissed and the refund/credit sought is hereby denied.

SO ORDERED.

Quezon City, Metro Manila, June 14, 1985.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge