REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DAVAO LIGHT & POWER CO., INC.,
Petitioner,

- versus -

C.T.A. CASES Nos. 1537 & 1551

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - - x

Dec. 15, 1965

D E C I S I O N

These are appeals from the decisions of respondent denying the claims of petitioner for refund of the sums of P13,563.00 and P9,938.00, docketed as C.T.A. Case No. 1537 and C.T.A. Case No. 1551, respectively. The facts and issues involved being similar, they were submitted jointly for decision.

It appears that petitioner Davao Light and Power Company, Inc. is a grantee of a legislative franchise under Act 3760 subject to the terms and conditions established in Act No. 3636 to operate in the Municipality of Davao (now City). On November 14, 1955, the National Power Corporation, a government-owned and controlled corporation, entered into a contract with the National Development Co., another government-owned corporation, to supply the latter's plant in Davao City the necessary electric power for the said plant.

Sometime in 1962, petitioner imported electrical supplies and materials intended for installation and use at its power plant, on which it paid the sums of P13,563.00 and P9,938.00 as custom duty, special import tax, compensating tax and wharfage fee.

The amounts were paid under protest on the ground that under Section 2 of Republic Act 358 as amended by Republic Act 987, the National Power Corporation is "exempt from all taxes, except real property, and from all duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities and municipalities." And since Section 17 of Act 3636 provides that:

> "SEC. 17. In the event of any competing individual, association of persons or corporation receiving either a franchise or permission from the Government of the Philippine Islands, or from any province, city or municipality thereof, to conduct a similar business in all or any substantial portion of the territory covered by this franchise to that of the grantee, in which franchise or permission there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall ipso facto become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, association of persons or corporations."

the tax exemption of the National Power Corporation is deemed incorporated in the Charter of the petitioner.

To our mind, the National Power Corporation is not within the purview of Section 17 of Act 3636. This provision applies only to individuals, association of persons and corporations engaged in the business of retailing electric current that have competing franchises for the same territory. The National Power Corporation is not in the same plane with such individuals, association of persons or corporation. It was not created as a business enterprise to compete with petitioner for profit. It was created essentially for service, "for the purpose of undertaking the development of hydraulic power and the production of power from other sources" (Sec. 1, C. A. 120 as amended), as an instrumentality of the government performing one of its ministrant functions, to wit, public works that are beneficial to the economic life of our people (Bacani v. Nacoco et al. [53 O.G. 2798]. Petitioner itself admits that in 1950, when it could not cope with the needs of its patrons, the National Power Corporation did not retail electricity to the general public of the City of Davao, but instead it supplied petitioner with power which petitioner in turn retailed to its patrons as its own current, and this arrangement continued until petitioner was able to obtain a generator that was adequate for its needs. And if the National Power Corporation now supplies the National Development Company with electricity, it does so in compliance with the express mandate of Section 10 of its charter and not to compete with petitioner.

A well-established axiom of taxation is that the law frowns on exemption from taxes, hence, an exempting provision should be construed strictissimi juris (Commissioner of Internal Revenue v. A. D.

Guerrero, G. R. No. L-20942, Sept. 22, 1967). Section 2 of Republic Act 358 as amended by Republic Act 987 provides as follows:

> To facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, except real property tax, and from all duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities.

The foregoing exempting provision is clearly for a particular reason and it is granted to the National Power Corporation having in mind the peculiar and special circumstances underlying its corporate existence. To extend this tax exemption to the grantees of Act 3636 when there is no similarity of situation would seem to be stretching the grant of equality in Section 17 of Act 3636 beyond its intended scope, in contravention of the rule of strict construction of tax exemptions.

Lastly, to include the National Power Corporation within the purview of Section 17 of Act 3636 will lead to absurd results. The law granted powers and privileges to the National Power Corporation and the grantees under Act 3636 commensurate with the nature of their functions and essential purposes. Thus, there is a great disparity in their powers and privileges. The National Power Corporation, for instance, is authorized to fix its own rates of charges free from revision by the Public Service

Commission (Sec. 2, C. A. 120 as amended) and is exempt from all taxes, except real property tax, and from all duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities (R. A. 358, Sec. 2, as amended by R. A. 987, Sec. 1). There is no concession of similar powers and privileges to its grantees in Act 3636. One may well imagine what can happen if all said grantees can fix their rates at will and are exempt from all taxes, except real property tax, and from all duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities and municipalities. Indeed, we find it difficult to conceive that Section 17 aforesaid sanctions such a situation which will arise if we place on equal footing the grantees of franchises under Act 3636 with the National Power Corporation in spite of the difference in the nature of their functions and objectives.

WHEREFORE, the decisions appealed from being in accordance with law are hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, December 15, 1967.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge