100 Phil. 50

[G.R. No. L-9257. October 17, 1956]

CARCAR ELECTRIC & ICE PLANT CO., INC., PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

REYES, J.B.L., J.:

Petitioner Carcar Electric and Ice Plant Co., Inc. is the holder of a franchise from the government of the Philippines to operate an electric light, heat an$ power plant in the municipality of Carcar, province of Cebu (R. A. No. 444, passed on June 7, 1950).

Section 1 of said Act reads as follows:

> "Sec. 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the,Carcar Electric and Ice Plant Co., Inc., for a period of twenty-five years from the approval of this Act, the right, privilege and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat and/or power for sale within the municipality of Carcar, Province of Cebu."

During the period from the second quarter of 1950 to the 4th quarter of 1952 (except the 3rd quarter of 1952), plaintiff paid franchise tax at the rate of 5 per cent of its gross earnings, as required by Sec. 259 of the National Internal Revenue Code. It was assessed, and it paid, income tax for the years 1950-51.

On October 23, 1952, petitioner filed with the Collector of Internal Revenue a claim for refund of the sum of P2,565.45 representing alleged overpayment of franchise tax for the period from the 2nd quarter of 1950 to the 2nd quarter of 1952, inclusive, on the theory that

it should have paid only a 2 per cent franchise tax under the provisions of its charter; and the sums of P238 and P194 representing income taxes paid for the years 1950-51, on the theory that it is exempt from the payment of income tax.

As the claim for refund was denied by the Collector, petitioner filed the present action in the Court of First Instance of Cebu. In view, however, of the creation of the Court of Tax Appeals by Republic Act 1125, this case was forwarded to said Court which, after trial, affirmed the decision of the Collector of Internal Revenue. From this decision, petitioner has appealed to this Court. On the question of the amount of franchise tax payable by it, petitioner claims that as its franchise was granted "subject to the terms and conditions established in Act 3636, as amended by C. A. 132, and to the provisions of the Constitution" (Rep. Act 444), the franchise tax it should pay to the government is only 2 per cent of its gross earnings, as provided in section 10 of section 1 of Act 3636 (Model Electric Light and Power Franchise Act), to wit:

> "Sec. 10. The grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, co-partnerships, private, public or quasi-public associations, corporations, or joint stock companies, on his (its) real estate, buildings, plants, 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 the (of each) municipality in which it is supplying electric current to the public under this franchise, a tax equal to two per centum of the *gross earnings* from electric current sold or supplied under this franchise in said (each said) municipality. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial, or insular, now or in the future, on its poles, wires, insulators, switches, transformers and structures, installations, conductors and accessories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted."

and not the corporate franchise tax of 5 per cent under section 259 of the National Internal Revenue Code, as held by the respondent Court of Tax Appeals.

We find petitioner's position untenable. We agree that its franchise is, by express provision of its charter, subject to all the terms and conditions expressed in Act 3636.

But we do not believe that the 2 per cent franchise tax, originally provided in section 10 of the model franchise set forth in section 1 of said Act had been intended by the legislature to be part of and incorporated into its charter. The reason is that at the time petitioner's franchise was granted (1950), the original 2 per cent tax had already been increased to 5 per cent by section 259 of the Internal Revenue Code, as amended by Republic Acts 39 and 418.

It should be noted that at the time of the approval of Act 3636 in 1929, the provisions of the then applicable tax law (section 1508 of the Administrative Code of 1917, the source of our present tax Code) was in accord with section 10 of the model franchise (section 1 of Act 3636) in that sec. 1508 provided:

> "Sec. 1508. *Tax on corporate franchises.*-—There shall be collected in respect to all existing and future franchises, upon the gross earnings or receipts from the business covered by the law granting the franchise, such taxes, charges, and percentages *as are specified in the special charters* of the corporations upon whom such franchises are conferred * * *."

This provision was substantially copied in the original section 259 of the Tax Code, at the time of its passage in 1939. But on October 1, 1946, because of pressing need for increased revenue (see Explanatory Note to H. B. No. 730, Congressional Record, H. R., Vol. 1, No. 69, pp. 1615-1616), Congress passed Republic Act No. 39, amending section 259 of the Tax Code to read as follows:

> "Sec. 259. *Tax on corporate franchise.*—There shall be collected in respect to all existing and future franchises, upon the gross earnings or receipts from the business covered by the law granting the franchise a tax of *five per centum* or such taxes, charges, and percentages as are specified in the special charters of the corporations upon whom such franchises are conferred, *whichever is higher, unless the provisions thereof preclude imposition of a higher tax* * * *." (Italics supplied).

Because of the apparent conflict between sec. 259 of the Code as amended by R. A. 39 (5 per cent) and section 10 of the model franchise under Act 3636 (2 per cent) the former must be deemed to have modified the latter. Therefore, when petitioner's charter was passed and its franchise granted under Republic Act 444 in 1950, the franchise tax payable by it was already the 5 per cent provided for in section 259 of the Tax Code as amended. There is, however merit in petitioner's contention that it is exempt from "the payment of income tax on its net earnings. Section 1 of the model franchise (section 1 of Act 3636h which we have already said became part of petitioner charter by reference, also provides that the franchise tax payable by the corporation

> * * * Shall be *in lieu of any and all taxes* of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial or insular, now or in the future, on its poles, wires, insulators, switches, transformers, and! structures,, installations,, conductors, and accessories, placed in and over and under public property, including public streets and highways, provincial roads, bridges and public squares, and on its' franchise, rights, privileges, *receipts, revenues*, and *profits, from which taxes the grantee is hereby expressly exempted*" (Italics supplied) ,

The above portion of section 10 of the model franchise could not have been repealed by section 259 of the Internal Revenue Code, as amended, since the latter is silent on any tax exemptions. There is nothing incompatible or conflicting between the increased franchise tax under section 259 of the Tax Code, and the exemption from any and all other taxes under Act 3636. We can not agree with, the Solicitor General's view that section 10 of the model franchise prescribed by section 1 of Act 3636 should not be considered part of petitioner's Charter, not having been actually incorporated therein, since petitioner's charter, Republic Act 444, expressly provides that its franchise is "subject to the terms and conditions established in Act Numbered thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One Hundred and thirty-two", so that all the provisions of said Act, including the unrepealed portions of section 10 of the model franchise, should be considered part of petitioner's charter by reference. In fact, such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee.

Wherefore, the appealed decision is modified in the sense that the defendant Collector of

Internal Revenue is ordered to refund to plaintiff the amount of P238 and P194 representing income taxes paid for the years 1950 and 1951, with legal interests thereon from the date of payment. In all other respects, the decision appealed from is affirmed. No costs.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia and *Felix, JJ.,* concur.

RESOLUTION

November 27, 1956

REYES, J. B. L., J.:

The Collector of Internal Revenue prays that our decision of October 17, 1956 be reconsidered and set aside insofar as (1) it holds that the franchise grantee Carcar Electric and Ice Plant Co. Inc., is not subject to the payment of income tax; and (2) requires the Collector to refund the taxes illegally collected with legal interest thereon.

The exemption from income taxes of the grantee of the franchise is but a consequence of section 10 of section 1 of the Model Franchise Act (No. 3636) (incorporated by reference in the company's franchise, Republic Act 444) expressly declaring that the franchise tax shall be in lieu of *any and all taxes of any kind, nature* and *description* on its *"receipts, revenues* and *profits*, from which taxes the grantee is hereby *expressly exempted*." It would seem self evident that the income tax is a tax on the *receipts* and *revenues* of the grantee, rather than on the property, real or personal, held and used by the corporation in carrying out its functions. In page 5 of our decision care was taken to underline the words *receipts, revenues* and *profits,* but apparently the significance of the emphasis was not appreciated.

It is true that section 10 of Act 3636 provides, as quoted by the Collector, that "the grantee shall pay the same taxes as ale now or may hereafter be required by law from other individuals co-partnerships, private, public or quasi-public associations, corporations, joint stock companies, on Jiis (its) real estate, buildings, plants, machinery and other personal property; but right after these words the law expressly adds (which the motion for reconsideration omits), "*except property* declared exempt in this section". , These last words must necessarily refer to the grantee's express exemption from taxes on its "poles, wires,

insulators, switches, transformers, and structures, installations, conductors and accessories,—and on its franchise, rights, privileges, *receipts, revenues* and *profits.*"

What the Collector sought to gain by tendering mutilated quotations from, statutory provisions we fail to appreciate. But such a practice clearly exposes this Court to sanctioning miscarriages of justice and should be forthwith discontinued.

It adds no strength to the Collector's position to cite previous adjudications of this Court on facts and situations substantially different from those obtaining in the present case. Thus, the Collector quotes from House *vs*. Posadas, 53 Phil. 340, that under an obligation to pay taxes "on other personal property", a grantee is subject to pay income tax. But the House franchise (Act 2700) did not contain a provision that the franchise tax was to be in lieu of other taxes.

> "We, not infrequently find in corporate charters, in connection with the imposition of particular charges, that payment of such imposition shall be in lieu of other taxes. *No words to this effect are found* in sec. 8 of Act No. 2700, where the appellant is required to pay quarterly into the Treasury of Tacloban one half of one per centum of the gross earnings of the enterprise during the first 20 years." (53 Phil. 340). (Italics supplied).

Plainly, this decision is no precedent in interpreting a franchise whereby payment of the franchise tax is expressly declared to be in lieu of "*any and all taxes of any kind, nature* and *description*" (section 10, section 1 Act 3636), on the grantee's receipts, revenues and profits.

Nor are the decisions in Philippine Telephone Co. *vs*. Collector of Internal Revenue (58 Phil. 639), Manila Gas *vs*. Collector of Internal Revenue (62 Phil. 895), Manila Gas *vs*. Collector of Internal Revenue (71 Phil. 513) any more applicable than the House case. These three cases decided that *dividends paid to the stockholders* no longer belong to the exempted grantee, and therefore the latter should, in connection with such dividends, comply with the *withholding* provisions of the Income Tax law, to insure payment of income tax *on such dividends*. In the present case, the Collector is claiming income taxes from the grantee itself and not from its stockholders. The case of Panay Electric Co. *vs*. Collector of Internal Revenue (G. R. No. Lr-6753, July 30, 1955), also invoked by the Collector, involved compensating taxes that could not affect "receipts, revenues and profits" expressly

exempted from taxation in the case before us.

Turning now to the question of the Collector's liability for interest on taxes improperly collected: Under the Internal Revenue Act of 1914, the Collector of Internal Revenue was held liable for such interests (Hongkong Shanghai Bank, *vs*. Rafferty, 39 Phil. 153; Heacock Co. *vs*. Collector of Customs, 37 Phil. 970; Vda. e Hijos de P. Roxas *vs*. Rafferty, 37 Phil. 957, and authorities cited therein) in the absence of any exempting provision in the law, and on the strength of American authorities to the effect that the State's exemption from paying interest on its obligations was never applied to subordinate governmental agencies. In Heacock Co. *vs*. Collector of Customs, *supra*, p., 980-981, this Court said:

> "While the sovereign State, in the absence of statute or contract, is not liable to pay interest, it has been held, however, that governmental agencies whether individuals or boards, which have been given the power to sue and to defend suits may be compelled to pay interest upon, their indebtedness even though the Government it«elf ultimately pays the indebtedness. Tax collectors are almost universally given the power to defend suits against them for illegal collection of taxes. It is usually provided that the person taxed may protest and appeal to the courts to have the question of the legality of the assessment determined. It is usually provided that when the courts determine that assessment was illegal,' the Government itself will refund the money, relieving the collector of personal liability. (See Section 989, Revised Statutes of the United States.)
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> In the ease of Erskine *vs*. Van Arsdale (15 Wall. [U.S.], 68-75), the Supreme Court of the United States held that—
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> "Taxes illegally assessed and paid may always be recovered back, if the collector understands from the payer that the taxes are regarded as illegal and that suit will be instituted to compel the refunding of them. * * *Where, an illegal tax has been collected, the citizen, who has paid it, and has been obliged to bring suit against the collector, is, we think, entitled to interest in the event of recovery, from the time of the illegal exaction. (See also Schell *vs*. Crockren, 107.JJ.S., 625; National Home *vs*. Parrish, 229 U.S., 196; White *vs*, Arthur, 10 Fed. Rep. 80; McClain *vs*. Pennsylvania Company, 108 Federal Republic 618.)
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> In the case of National Rome *vs*. Parrish (229 U.S., 496), the Supreme Court, discussing the question before us, said:

> 'It is quite true that the United States cannot be subjected to the,treasury (Erskine *vs*. Van Arsdale, 15 Wall., [U.S.], 68-75; to pay it or a statute permitting its recovery. (U.S. Ex rel. Angarica m. Bayard, 127 U.S., 251; U.S. *vs*. State of North Carolina, 136 U.S./211.) But this exemption has never as yet been applied to subordinate – governmental agencies. On the contrary, in suits against collectors to recover moneys illegally exacted as taxes and paid under. protest, the settled rule is that interest is recoverable without any statute to that effect, and this although the judgment is not to be paid by the collector, but directly from the treasury, (Erskine *vs*. Van Arsdale, 15 Wall. [U.S.], 68-75; Redfield *vs*. Bartels, 139 U.S. 694)'"

Subsequently, section 1579 of the Administrative Code of 1917 (Act 2711) expressly authorized suite against the Collector of Internal Revenue "for the recovery without interest of the sum alleged to have been illegally collected," and thereafter, no judgments for interest were rendered against the Collector. But in 1939, the .National Internal Revenue Code came into effect and its section 306 authorized recovery of taxes erroneously or illegally collected, but omitting the expression "*without interest*" employed in section 1579 of the 1917 Administrative Code that it superseded. Considering the repeated holdings of this Court that in the absence of words of exemption the Collector was liable for interest on taxes improperly collected, the legislature's failure to reenact the words "without interest" of the Administrative Code of 1917 imparted a desire to return to the rule in force before 1917 and under the Internal Revenue Act of 1914. This . view is supported by sec. 310 of the National Internal Revenue Code, as follows:

> "Sec. 310. *Satisfaction of judgment recovered against treasurer or other officer.*-—When an action is brought against any revenue officer to recover damages by reason of any act done in the performance of official duty, and the Collector of Internal Revenue is notified of such action in time to make defense against the same, through the Solicitor-General, any judgment, damages, or coots recovered in such action shall be satisfied by the Collector of Internal Revenue upon approval of the Department Head, or if the same be paid by the person sued, shall be repaid or reimbursed to him."

As observed by this Court in Heacock Co. *vs*. Collector of Customs, 37 Phil. 970, 982, the damages for wrongful exaction of money is precisely interest at the legal rate:

> "Section 144 of the Internal Revenue Act of 1914 authorizes the Collector of Internal Revenue, in cases like the present, to pay out of public funds in his hands 'any judgment, damages, or costs' recovered in an action brought against any revenue officer' by reason of any act done in the performance of official duties. The "damages" for the wrongful exaction or withholding of money is the payment of interest at the legal rate. (Article 1108, Civil Code.)"

We conclude that under the present Internal Revenue Code the Collector of internal Revenue may be made to answer for interest at the legal rate on taxes improperly collected. Such liability serves as additional safeguard in favor of the taxpayer against arbitrariness in the exaction or collection of taxes and imposts.

The motion to reconsider is denied. So ordered.

Paras, C. J., Padilla, Montemayor, Bautista Angela, Labrador, Concepcion, Endencia and *Felix, JJ.,* concur.

Date created: October 10, 2014