

THE COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. LINGAYEN GULF ELECTRIC POWER CO., INC. AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-23771. August 04, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an appeal from the decision[*] of the Court of Tax Appeals (C.T.A., for brevity) dated September 15, 1964 in C.T.A. Cases Nos. 581 and 1302, which were jointly heard upon agreement of the parties, absolving the respondent taxpayer from liability for the deficiency percentage, franchise, and fixed taxes and surcharge assessed against it in the sums of P19,293.41 and P3,616.86 for the years 1946 to 1954 and 1959 to 1961, respectively.

The respondent taxpayer, Lingayen Gulf Electric Power Co., Inc., operates an electric power plant serving the adjoining municipalities of Lingayen and Binmaley, both in the province of Pangasinan, pursuant to the municipal franchise granted it by their respective municipal councils, under Resolutions Nos. 14 and 25 of June 29 and July 2, 1946, respectively. Section 10 of these franchises provide that:

x x x The said grantee in consideration of the franchise hereby granted, shall pay quarterly into the Provincial Treasury of Pangasinan, one per centum of the gross earnings obtained thru this privilege during the first twenty years and two per centum during the remaining fifteen years of the life of said franchise.

On February 24, 1948, the President of the Philippines approved the franchises granted to the private respondent.

On November 21, 1955, the Bureau of Internal Revenue (BIR) assessed against and demanded from the private respondent the total amount of P19,293.41 representing deficiency franchise taxes and surcharges for the years 1946 to 1954 applying the franchise tax rate of 5% on gross receipts from March 1, 1948 to December 31, 1954 as prescribed in Section 259 of the National Internal Revenue Code, instead of the lower rates as provided in the municipal franchises. On September 29, 1956, the private respondent requested for a reinvestigation of the case on the ground that instead of incurring a deficiency liability, it made an overpayment of the franchise tax. On April 30, 1957, the BIR through its regional director, denied the private respondent's request for reinvestigation and reiterated the demand for payment of the same. In its letters dated July 2, and August 9, 1958 to the petitioner Commissioner, the private respondent protested the said assessment and requested for a conference with a view to settling the liability amicably. In his letters dated July 25 and August 28, 1958, the Commissioner denied the request of the private respondent. Thus, the appeal to the respondent Court of Tax Appeals on September 19, 1958, docketed as C.T.A. Case No. 581.

In a letter dated August 21, 1962, the Commissioner demanded from the private respondent the payment of P3,616.86 representing deficiency franchise tax and surcharges for the years 1959 to 1961 again applying the franchise tax rate of 5% on gross receipts as prescribed in Section 259 of the National Internal Revenue Code. In a letter dated October 5, 1962, the private respondent protested the assessment and requested reconsideration thereof. The same was denied on November 9, 1962. Thus, the appeal to the respondent Court of Appeals on

November 29, 1962, docketed as C.T.A. No. 1302.

Pending the hearing of the said cases, Republic Act (R.A.) No. 3843 was passed on June 22, 1963, granting to the private respondent a legislative franchise for the operation of the electric light, heat, and power system in the same municipalities of Pangasinan. Section 4 thereof provides that:

In consideration of the franchise and rights hereby granted, the grantee shall pay into the Internal Revenue office 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 receipts from electric current sold or supplied under this franchise. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes and/or licenses of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial or national, now or in the future, on its poles, wires, insulator x x x and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes and/or licenses, the grantee is hereby expressly exempted and effective further upon the date the original franchise was granted, no other tax and/or licenses other than the franchise tax of two per centum on the gross receipts as provided for in the original franchise shall be collected, any provision of law to the contrary notwithstanding.

On September 15, 1964, the respondent court ruled that the provisions of R.A. No. 3843 should apply and accordingly dismissed the claim of the Commissioner of Internal Revenue. The said ruling is now the subject of the petition at bar.

The issues raised for resolution are:

- Whether or not the 5% franchise tax prescribed in Section 259 of the National Internal Revenue Code assessed against the private respondent on its gross receipts realized before the effectivity of R.A. No. 3843 is collectible.
- Whether or not Section 4 of R.A. No. 3843 is unconstitutional for being violative of the "uniformity and equality of taxation" clause of the Constitution.
- If the abovementioned Section 4 of R.A. No. 3843 is valid, whether or not it could be given retroactive effect so as to render uncollectible the taxes in question which were assessed before its enactment.
- Whether or not the respondent taxpayer is liable for the fixed and deficiency percentage taxes in the amount of P3,025.96 for the period from January 1, 1946 to February 29, 1948, the period before the approval of its municipal franchises.

The first issue raised by the petitioner before us is whether or not the five percent (5%) franchise tax prescribed in Section 259 of the National Internal Revenue Code (Commonwealth Act No. 466 as amended by R.A. No. 39) assessed against the private-respondent on its gross receipts realized before the effectivity of R.A. No. 3843 is collectible. It is the contention of the petitioner Commissioner of Internal Revenue that the private respondent should have been held liable for the 5% franchise tax on gross receipts prescribed in Section 259 of the Tax Code, instead of the lower franchise tax rates provided in the municipal franchises (1% of gross earnings for the first twenty years and 2% for the remaining fifteen years of the life of the franchises) because Section 259 of the Tax Code, as amended by R.A. No. 39 of October 1, 1946, applied to existing and future franchises. The franchises of the private respondent were already in existence at the time of the adoption of the said amendment, since the franchises were accepted on March 1, 1948 after approval by the President of the Philippines on February 24, 1948. The private respondent's original franchises did not contain the proviso that the tax provided therein "shall be in lieu of all taxes"; moreover, the franchises contained a reservation clause that they shall be subject to amendment, alteration, or repeal, but even in the absence of such clause, the power of the Legislature to alter, amend, or repeal any franchise is always deemed reserved. The franchises of the private respondent have been

modified or amended by Section 259 of the Tax Code, the petitioner submits.

We find no merit in petitioner's contention. R.A. No. 3843 granted the private respondent a legislative franchise in June, 1963, amending, altering, or even repealing the original municipal franchises, and providing that the private-respondent should pay only a 2% franchise tax on its gross receipts, "in lieu of any and all taxes and/or licenses of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial, or national, now or in the future x x x and effective further upon the date the original franchise was granted, no other tax and/or licenses other than the franchise tax of two per centum on the gross receipts x x x shall be collected, any provision of law to the contrary notwithstanding." Thus, by virtue of R.A. No. 3843, the private respondent was liable to pay only the 2% franchise tax, effective from the date the original municipal franchise was granted.

On the question as to whether or not Section 4 of R.A. No. 3843 is unconstitutional for being violative of the "uniformity and equality of taxation" clause of the Constitution, and, if adjudged valid, whether or not it should be given retroactive effect, the petitioner submits that the said law is unconstitutional insofar as it provides for the payment by the private respondent of a franchise tax of 2% of its gross receipts, while other taxpayers similarly situated were subject to the 5% franchise tax imposed in Section 259 of the Tax Code, thereby discriminatory and violative of the rule on uniformity and equality of taxation.

A tax is uniform when it operates with the same force and effect in every place where the subject of it is found. Uniformity means that all property belonging to the same class shall be taxed alike. The Legislature has the inherent power not only to select the subjects of taxation but to grant exemptions. Tax exemptions have never been deemed violative of the equal protection clause.[1] It is true that the private respondent's municipal franchises were obtained under Act No. 667[2] of the Philippine Commission, but these original franchises have been replaced by a new legislative franchise, i.e. R.A. No. 3843. As correctly held by the respondent court, the latter was granted subject to the terms and conditions established in Act No. 3636,[3] as amended by C.A. No. 132. These conditions identify the private respondent's power plant as falling within that class of power plants created by Act No. 3636, as amended. The benefits of the tax reduction provided by law (Act No. 3636 as amended by C.A. No. 132 and R.A. No. 3843) apply to the respondent's power plant and others circumscribed within this class. R.A. No. 3843 merely transferred the petitioner's power plant from that class provided for in Act No. 667, as amended, to which it belonged until the approval of R.A. No. 3843, and placed it within the class falling under Act No. 3636, as amended. Thus, it only effected the transfer of a taxable property from one class to another.

We do not have the authority to inquire into the wisdom of such act. Furthermore, the 5% franchise tax rate provided in Section 259 of the Tax Code was never intended to have a universal application.[4] We note that the said Section 259 of the Tax Code expressly allows the payment of taxes at rates lower than 5% when the charter granting the franchise of a grantee, like the one granted to the private respondent under Section 4 of R.A. No. 3843, precludes the imposition of a higher tax. R.A. No. 3843 did not only fix and specify a franchise tax of 2% on its gross receipts, but made it "in lieu of any and all taxes, all laws to the contrary notwithstanding", thus, leaving no room for doubt regarding the legislative intent. "Charters or special laws granted and enacted by the Legislature are in the nature of private contracts. They do not constitute a part of the machinery of the general government. They are usually adopted after careful consideration of the private rights in relation with resultant benefits to the State x x x in passing a special charter the attention of the Legislature is directed to the facts and circumstances which the act or charter is intended to meet. The Legislature consider (sic) and make (sic) provision for all the circumstances of a particular case." [5] In view of the foregoing, we find no reason to disturb the respondent court's ruling upholding the constitutionality of the law in question.

Given its validity, should the said law be applied retroactively so as to render uncollectible the taxes in question which were assessed before its enactment? The question of whether a statute operates retrospectively or only prospectively depends on the legislative intent. In the instant case, Act No. 3843 provides that "effective ... upon the date the original franchise was granted, no other tax and/or licenses other than the franchise tax of two per centum on the gross receipts ... shall be collected, any provision to the contrary notwithstanding." Republic Act No. 3843 therefore specifically provided for the retroactive effect of the law.

The last issue to be resolved is whether or not the private-respondent is liable for the fixed and deficiency percentage taxes in the amount of P3,025.96 (i.e. for the period from January 1, 1946 to February 29, 1948) before the approval of its municipal franchises. As aforesaid, the franchises were approved by the President only on February 24, 1948. Therefore, before the said date, the private respondent was liable for the payment of percentage and fixed taxes as seller of light, heat, and power - which, as the petitioner claims, amounted to P3,025.96. The legislative franchise (R.A. No. 3843) exempted the grantee from all kinds of taxes other than the 2% tax from the date the original franchise was granted. The exemption, therefore, did not cover the period before the franchise was granted, i.e. before February 24, 1948. However, as pointed out by the respondent court in its findings, during the period covered by the instant case, that is from January 1, 1946 to December 31, 1961, the private respondent paid the amount of P34,184.36, which was very much more than the amount rightfully due from it. Hence, the private respondent should no longer be made to pay for the deficiency tax in the amount of P3,025.98 for the period from January 1, 1946 to February 29, 1948.

WHEREFORE, the appealed decision of the respondent Court of Tax Appeals is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Cortes, Griño-Aquino, and Medialdea, JJ., concur.

[*] Penned by Hon. Mariano Nable, Presiding Judge, Hon. Roman M. Umali, Associate Judge, concurring.

[1] Gomez v. Palomar, 25 SCRA 827.

[2] An Act prescribing the method of applying to governments of municipalities x x x and of provinces for franchises to construct and operate street railway, electric light and power and telephone lines x x x. (The model franchise for municipal franchises or the basic authority for granting municipal franchises.)

[3] An Act prescribing the form for bills for the granting of electric light and power franchises, and for other purposes; Section 10 thereof provides for the payment of a franchise tax of 2% of the gross earnings x x x in lieu of any and all taxes x x x (Model Franchise for legislative franchises).

[4] See Phil. Railway Co. v. Collector of Internal Revenue, 91 Phil. 35; Visayan Electric Co. v. David, 92 Phil. 969.

[5] Manila Railroad Co. v. David, 40 Phil. 224.

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