

**THE GUAGUA ELECTRIC LIGHT PLANT COMPANY, INC.,
PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE AND
THE HONORABLE COURT OF TAX APPEALS, RESPONDENTS.**

G.R. No. L-23611. April 24, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Guagua Electric Light Plant Co. (hereinafter called Guagua Electric for short), a grantee of municipal franchises by the municipal council of Guagua, Pampanga under Resolution No. 42 dated December 13, 1927 and by the municipal council of Sexmoan, Pampanga under Resolution No. 48 dated November 15, 1928 pursuant to Act 667, as amended, realized and reported a gross income in the sum of P1,133,003.44 during the period from January 1, 1947 to November 1956 and paid thereon a franchise tax in the amount of P56,664.97 computed at 5% thereof in accordance with Section 259 of the National Internal Revenue Code.

Believing that it should pay franchise tax at the lower rates provided for in its franchises[1] instead of 5% fixed by Section 259 of the Tax Code, it filed on March 25, 1957 a claim for refund for allegedly overpaid franchise tax amounting to P35,593.98 on its gross receipts realized from January 1, 1947 to November 1956. The Commissioner of Internal Revenue denied refund of franchise tax corresponding to the period prior to the fourth quarter of 1951 on the ground that the right to its refund had prescribed.[2] He however granted refund of the following amounts:

Period

Sum Refunded

4th quarter, 1951 to

)

P7,482.17

3rd quarter, 1953

)

1st quarter, 1955 to

)

8,232.39

Sept. 1956

)

Oct. and Nov. 1956

879.31

TOTAL

P16,593.87

Not satisfied with the determination of the Commissioner, Guagua Electric appealed to the Court of Tax Appeals. However, its appeal, docketed as C.T.A. Case No. 508, was dismissed upon motion of the Commissioner of Internal Revenue, interposed before filing his answer to the petition for review, on the ground that the same was instituted beyond the 30-day period provided for in Section 11 of Republic Act 1125.

Subsequently, this Court held in *Hoa Hin Co., Inc. v. David*[3] that electric franchise holders under Act 667 are liable for franchise tax at the rate fixed by Section 259 of the Tax Code, that is, 5% of the gross receipts. Accordingly, on March 2, 1961 the Commissioner of Internal Revenue assessed against Guagua Electric deficiency franchise tax computed thus:

1. Gross receipts, Guagua

and Sexmoan, Oct. 1, 1952

to June 30, 1959

P1,116,138.01

Gross receipts, Sexmoan,

July 1, 1959 to Oct. 31, 1959

5,543.25

Gross receipts, Guagua,

July 1, 1959 to June 30, 1960

181,354.57

Total gross receipts

P1,303,035.83

5% franchise tax due

65,151.79

Less: amount paid

43,941.64

Tax still due

P21,210.15

Less: Overpayment, Sex moan,

Nov. 1, 1959 to June 30, 1960

181.71

Deficiency tax

21,028.44

Add: 25% surcharge

5,257.11

2. Add: Amount refunded

16,593.87

Total tax due

P 42,879.42

Guagua Electric contested the deficiency assessment in its letter dated March 30, 1961 contending that the same is violative of its franchises; that the computation of the gross receipts is contrary to rules; and that the right to assess and/or collect the tax has prescribed. On August 21, 1961 the appellate division of the Bureau of Internal Revenue recommended that the right to assess and collect the tax corresponding to the period prior to January 1, 1956 has prescribed. Consequently, the Commissioner issued the following revised assessment eliminating therefrom the deficiency tax for the period prior to January 1, 1956, as recommended:

1. Gross receipts, Jan. 1, 1956

to June 30, 1962

P 858,070.67

5% franchise tax and 3%

percentage tax due thereon

42,662.71

Less: Tax already paid

22,724.59

Balance still due

P 19,938.12

Add: 25% surcharge

4,984.53

Amount refunded

16,593.87

Total tax due

P 42,879.42

Guagua Electric appealed from the aforesaid Commissioner's decision to the Court of Tax Appeals which in turn affirmed the same. Still not satisfied, it elevated the case to Us and submitted the following propositions:

1. The application of the rate of 5% as provided for in Section 259 of the Tax Code, instead of 1% or 2% as provided for in its franchises granted under Act 667, impairs the obligation of contract and is therefore unconstitutional.
2. The government is precluded from recovering the sum of P16,593.87 representing the amount refunded to it on grounds of prescription and failure to set up as counterclaim in C.T.A. Case No. 508.

The constitutionality of collecting franchise tax at the rate of 5% of the gross receipts as provided for in Section 259 of the Tax Code instead of at the lower rates fixed by the franchise granted under Act 667, has already been settled in several cases.^[4] Guagua Electric, whose franchises were similarly granted under Act 667, being similarly situated as the taxpayers-franchise holders in those cases already decided by Us, shall likewise be subject to the 5% rate imposed in Section 259 of the Tax Code.

The Commissioner of Internal Revenue seeks the recovery of the amount of P16,593.87 allegedly erroneously refunded to Guagua Electric. Said amount represents the difference between the tax computed at 5% pursuant to Section 259 of the Tax Code and the tax at 1% or 2% under its franchises covering the period from September 1951 through November 1956. This, in effect, is an assessment for deficiency franchise tax.

It should be noted that the deficiency assessment of P19,938.12 in this case for the difference between the franchise tax paid at 1% or 2% under taxpayer's franchises and the tax computed at 5% pursuant to Section 259 of the Tax Code covers the period from January 1, 1956 to June 30, 1962. Obviously, if Guagua Electric were required to pay P16,593.87 in addition to the sum of P19,938.12, it would be paying twice for the same deficiency tax for the period from January 1 to November 30, 1956.

As afore-stated, moreover, the Commissioner of Internal Revenue revised his first deficiency assessment dated March 2, 1961 by eliminating therefrom the deficiency tax for the period prior to January 1, 1956 because the right to assess the same has prescribed. By insisting on the payment of the amount of P16,593.87 (which covers the period from September 1951 to November 1956), he is, in fact, trying to collect the same deficiency tax, the right to assess the same he had found to have been lost by prescription.

The Court of Tax Appeals however stated in its decision that Guagua Electric did not raise the issue of prescription of the right of the Government to assess and collect the sum of P16,593.87. This finding of the lower court is not supported by the pleadings. In its letter dated March 30, 1961 contesting the first assessment dated March 2, 1961 Guagua Electric assailed the right to assess and/or collect the tax on grounds of prescription. In paragraph 20 of its petition for review (C.T.A. Rec. p. 4), it raised the defense of prescription of the Commissioner's right to assess and collect the tax.

Anent the contention of the Commissioner of Internal Revenue that Guagua Electric failed to adduce evidence to prove prescription of his right to assess and collect the P16,593.87, suffice it to state that in paragraph 10 of the Commissioner's answer he admitted the allegations in paragraph 13 of the petition for review. Paragraph 13 alleged the facts, supported by annexes, constituting prescription. There was therefore no need for the taxpayer to present further evidence on the point.

The Commissioner of Internal Revenue further maintains that the prescription of his right to recover the amount of P16,593.87 is governed by Articles 1145(2) in relation to Articles 1154 and 1155 of the Civil Code. Hence, prescription will set in only after the expiration of six years from 1957 and 1959, the dates refunds were granted. Since the petition for review and answer thereto were filed in the Court of Tax Appeals on February 14, and May

4, 1962, he concludes that the prescriptive period of six years has not expired.

As stated above, the demand on the taxpayer to pay the sum of P16,593.87 is in effect an assessment for deficiency franchise tax. And being so, the right to assess or collect the same is governed by Section 331 of the Tax Code^[5] rather than by Article 1145 of the Civil Code. A special law (Tax Code) shall prevail over a general law (Civil Code).^[6]

Our above conclusion absolving Guagua Electric from the payment of the sum of P16,593.87 has removed the necessity of discussing Guagua Electric's assertion that the Government is precluded from recovering the said sum because it failed to set it up as a counterclaim in C.T.A. Case No. 508.

With regard to the 25% surcharge in the amount of P4,984.53, it is patently unfair on the part of the Government to require its payment inasmuch as the taxpayer acted in good faith in paying the franchise tax at the lower rates fixed by its franchises. As a matter of fact, the Bureau of Internal Revenue shared with the taxpayer the view that Section 259 of the Tax Code does not apply. Guagua Electric should not therefore be made to pay the 25% surcharge.^[7]

WHEREFORE, the judgment appealed from is affirmed with the modification that the amount of P16,593.87 representing franchise tax allegedly refunded erroneously and the 25% surcharge imposed on petitioner should be, and are, eliminated, thereby reducing the tax from a total of P41,516.52 to P19,938.12. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] Guagua: 1% of gross receipts during first 20 years; 2% of gross receipts during the remaining 15 years.

Sexmoan: 1-1/2% of gross receipts during the first two years; 2% of gross receipts during remaining 33 years.

[2] See Sec. 306, Tax Code.

[3] L-9616 and L-11783, May 25, 1959.

[4] *Hidalgo v. David*, L-8046, Aug. 30, 1956; *Hoa Hin Co., Inc. v. David*, L-9616, L-11783, May 25, 1959; *Lealda Electric Co. v. Commissioner of Internal Revenue*, L-16428, April 30, 1963; *Balanga Power Plant Co. v. Commissioner of Internal Revenue*, L-20499, June 30, 1965; *Imus Electric Co., Inc. v. Court of Tax Appeals*, L-22421, March 18, 1967.

[5] Cf. *Hidalgo v. David*, *supra*, Footnote 4.

[6] *Lichauco & Co. v. Apostol and Corpus*, 44 Phil. 138.

[7] *Connell Bros. Co. v. Collector of Internal Revenue*, L-15470, Dec. 26, 1963; *Imus Electric Co., Inc. v. Court of Tax Appeals*, *supra*.

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