

THE PROVINCE OF MISAMIS ORIENTAL, REPRESENTED BY ITS PROVINCIAL TREASURER, PETITIONER, VS. CAGAYAN ELECTRIC POWER AND LIGHT COMPANY, INC. (CEPALCO), RESPONDENT.

G.R. No. L-45355. January 12, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The issue in this case is a legal one: whether or not a corporation whose franchise expressly provides that the payment of the "franchise tax of three per centum of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee" (p. 20, Rollo), is exempt from paying a provincial franchise tax.

Cagayan Electric Power and Light Company, Inc. (CEPALCO for short) was granted a franchise on June 17, 1961 under Republic Act No. 3247 to install, operate and maintain an electric light, heat and power system in the City of Cagayan de Oro and its suburbs. Said franchise was amended on June 21, 1963 by R.A. No. 3570 which added the municipalities of Tagoloan and Opol to CEPALCO's sphere of operation, and was further amended on August 4, 1969 by R.A. No. 6020 which extended its field of operation to the municipalities of Villanueva and Jasaan.

R.A. Nos. 3247, 3570 and 6020 uniformly provide that:

"Sec. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three per centum of the gross earnings for electric current sold under this franchise, of which two per centum goes into the National Treasury and one per centum goes into the treasury of the Municipalities of Tagoloan, Opol, Villanueva and Jasaan and Cagayan de Oro City, as the case may be: Provided, That the said franchise tax of three per centum of the gross earnings shall be in lieu of all taxes and assessments of whatever authority privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is hereby expressly exempted." (Italics supplied.)

On June 28, 1973, the Local Tax Code (P.D. No. 231) was promulgated, Section 9 of which provides:

"Sec. 9. Franchise Tax. — Any provision of special laws to the contrary notwithstanding, the province may impose a tax on businesses enjoying franchise, based on the gross receipts realized within its territorial jurisdiction, at the rate of not exceeding one-half of one per cent of the gross annual receipts for the preceding calendar year.

In the case of newly started business, the rate shall not exceed three thousand pesos per year. Sixty per cent of the proceeds of the tax shall accrue to the general fund of the province and forty per cent to the general fund of the municipalities serviced by the business on the basis of the gross annual receipts derived therefrom by the franchise holder. In the case of a newly started business, forty per cent of the proceeds of the tax shall be divided equally among the municipalities serviced by the business." (Italics supplied.)

Pursuant thereto, the Province of Misamis Oriental (herein petitioner) enacted Provincial Revenue Ordinance No. 19, whose Section 12 reads:

"Sec. 12. Franchise Tax. — There shall be levied, collected and paid on businesses enjoying franchise tax of one-half of one per cent of their gross annual receipts for the preceding calendar year realized within the territorial jurisdiction of the province of Misamis Oriental." (p. 27, Rollo.)

The Provincial Treasurer of Misamis Oriental demanded payment of the provincial franchise tax from CEPALCO. The company refused to pay, alleging that it is exempt from all taxes except the franchise tax required by R.A. No. 6020. Nevertheless, in view of the opinion rendered by the Provincial Fiscal, upon CEPALCO's request, upholding the legality of the Revenue Ordinance, CEPALCO paid under protest on May 27, 1974 the sum of P4,276.28, and appealed the fiscal's ruling to the Secretary of Justice who reversed it and ruled in favor of CEPALCO.

On June 26, 1976, the Secretary of Finance issued Local Tax Regulation No. 3-75 adopting entirely the opinion of the Secretary of Justice.

On February 16, 1976, the Province filed in the Court of First Instance of Misamis Oriental a complaint for declaratory relief praying, among others, that the Court exercise its power to construe P.D. No. 231 in relation to the franchise of CEPALCO (R.A. No. 6020), and to declare the franchise as having been amended by P.D. No. 231. The Court dismissed the complaint and ordered the Province to return to CEPALCO the sum of P4,276.28 paid under protest.

The Province has appealed to this Court, alleging that the lower court erred in holding that:

- 1) CEPALCO's tax exemption under Section 3 of Republic Act No. 6020 was not amended or repealed by P.D. No. 231;
- 2) the imposition of the provincial franchise tax on CEPALCO would subvert the purpose of P.D. No. 231;
- 3) CEPALCO is exempt from paying the provincial franchise tax; and
- 4) petitioner should refund CEPALCO's tax payment of P4,276.28.

We find no merit in the petition for review.

There is no provision in P.D. No. 231 expressly or impliedly amending or repealing Section 3 of R.A. No. 6020. The perceived repugnancy between the two statutes should be very clear before the Court may hold that the prior one has been repealed by the later, since there is no express provision to that effect (*Manila Railroad Co. vs. Rafferty*, 40 Phil. 224). The rule is that a special and local statute applicable to a particular case is not repealed by a later statute which is general in its terms, provisions and application even if the terms of the general act are broad enough to include the cases in the special law (*id.*) unless there is manifest intent to repeal or alter the special law.

Republic Acts Nos. 3247, 3570 and 6020 are special laws applicable only to CEPALCO, while P.D. No. 231 is a general tax law. The presumption is that the special statutes are exceptions to the general law (P.D. No. 231) because they pertain to a special charter granted to meet a particular set of conditions and circumstances.

The franchise of respondent CEPALCO expressly exempts it from payment off "all taxes of whatever authority" except the three per centum (3%) tax on its gross earnings.

In an earlier case, the phrase "shall be in lieu of all taxes and at any time levied, established by, or collected by any authority" found in the franchise of the Visayan Electric Company was held to exempt the company from payment of the 5% tax on corporate franchise provided in Section 259 of the Internal Revenue Code (*Visayan Electric Co. vs. David*, 49 O.G. [No. 4] 1385).

Similarly, we ruled that the provision: "shall be in lieu of all taxes of every name and nature" in the franchise of the Manila Railroad (Subsection 12, Section 1, Act No. 1510) exempts the Manila Railroad from payment of internal revenue tax for its importations of coal and oil under Act No. 2432 and the Amendatory Acts of the Philippine Legislature (Manila Railroad vs. Rafferty, 40 Phil. 224).

The same phrase found in the franchise of the Philippine Railway Co. (Sec. 13, Act No. 1497) justified the exemption of the Philippine Railway Company from payment of the tax on its corporate franchise under Section 259 of the Internal Revenue Code, as amended by R.A. No. 39 (Philippine Railway Co. vs. Collector of Internal Revenue, 91 Phil. 35).

Those magic words: "shall be in lieu of all taxes" also excused the Cotabato Light and Ice Plant Company from the payment of the tax imposed by Ordinance No. 7 of the City of Cotabato (Cotabato Light and Power Co. vs. City of Cotabato, 32 SCRA 231).

So was the exemption upheld in favor of the Carcar Electric and Ice Plant Company when it was required to pay the corporate franchise tax under Section 259 of the internal Revenue Code, as amended by R.A. No. 39 (Carcar Electric & Ice Plant vs. Collector of Internal Revenue, 53 O.G. [No. 4]. 1068). This Court pointed out that such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee. As a charter is in the nature of a private contract, the imposition of another franchise tax on the corporation by the local authority would constitute an impairment of the contract between the government and the corporation.

Recently, this Court ruled that the franchise (R.A. No. 3843) of the Lingayen Gulf Electric Power Company which provided that the company shall pay:

"tax equal to 2% per annum of the gross receipts x x x and shall be in lieu of any and all taxes x x x now or in the future x x x from which taxes x x x the grantee is hereby expressly exempted and x x x no other tax x x x other than the franchise tax of 2% on the gross receipts as provided for in the original franchise shall be collected."

exempts the company from paying the franchise tax under Section 259 of the National Internal Revenue Code (Commissioner of Internal Revenue vs. Lingayen Gulf Electric Power Co., Inc., G. R. No. 23771, August 4, 1988).

On the other hand, the Balanga Power Plant Company, Imus Electric Company, Inc., Guagua Electric Company, Inc. were subjected to the 5% tax on corporate franchise under Section 259 of the Internal Revenue Code, as amended, because Act No. 667 of the Philippine Commission and the ordinance or resolutions granting their respective franchises did not contain the "in-lieu-of-all-taxes" clause (Balanga Power Plant Co. vs. Commissioner of Internal Revenue, G.R. No. L-20499, June 30, 1965; Imus Electric Co. vs. Court of Tax Appeals, G.R. No. L-22421, March 13, 1967; Guagua Electric Light vs. Collector of Internal Revenue, G.R. No. L-23611, April 24, 1967).

Local Tax Regulation No. 3-75 issued by the Secretary of Finance on June 26, 1976, has made it crystal clear that the franchise tax provided in the Local Tax Code (P.D. No. 231, Sec. 9) may only be imposed on companies with franchises that do not contain the exempting clause. Thus it provides:

"The franchise tax imposed under local tax ordinance pursuant to Section 9 of the Local Tax Code, as amended, shall be collected from businesses holding franchise but not from business establishments whose franchise contain the 'in-lieu-of-all-taxes-proviso'."

Manila Electric Company vs. Vera, 67 SCRA 351, cited by the petitioner, is not applicable here because what the

Government sought to impose on Meralco in that case was not a franchise tax but a compensating tax on the poles, wires, transformers and insulators which it imported for its use.

WHEREFORE, the petition for review is denied, and the decision of the Court of First Instance is hereby affirmed in toto. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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