

VISAYAN ELECTRIC CO., S. A., PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-9685. October 30, 1957

Ponente: PARAS, C.J.

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PARAS, C.J.:

On October 20, 1952, the petitioner presented to the Collector of Internal Revenue three requests for the refund of P2,186.12, P5,979.32 and P260.46, representing alleged overpaid franchise taxes from April 1, 1950 to June 30, 1952, and the additional sum of P2,046.92, representing income tax.

In the case of Carcar Electric and Ice Plant Company, Inc. vs. The Collector of Internal Revenue (100 Phil., 50; 53 Off. Gaz., [4] 1068), we have concluded that Congress in 1950 had intended to impose the 5% franchise tax on business like that covered by franchises in the instant case. The reference to the terms and conditions found in Act 3636 (as provided in petitioner's franchises) did not incorporate section 10 of said Act 3636 providing for 2% franchise tax, because when the franchise of Carcar Electric and Ice Plant Company (*supra*) was granted in 1950, the original 2% tax fixed in Act 3636 had already been increased to 5% by Section 259 of the National Internal Revenue Code, as amended by Republic Acts 39 and 418.

As to the liability of the petitioner for the income tax, we have decided also in the case of Carcar Company (*supra*) that holders of electric franchises are exempt from said tax.

In view of the silence of section 259 of the Tax Code, as amended, regarding tax exemptions, it could not have amended Section 10 of Act 3636. As we have held in the case of Carcar Company (*supra*), "there is nothing incompatible or conflicting between the increased franchise tax under 259 of the Tax Code and the exemption from any and all other taxes under Act 3636. Such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee." It being understood, therefore, that the Collector of Internal Revenue is hereby ordered to return to the petitioner the sum of P2,046.92, representing income tax paid by it for the Dipolog electric plant during the year 1950, the appealed decision is in all other respects affirmed, with costs against the petitioner. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angela, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

Decision affirmed with modification.

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