

PHILIPPINE RAILWAY CO., PLAINTIFF AND APPELLANT, VS. COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. L-3859. March 25, 1952

Ponente: TUASON, J.

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TUASON, J.:

This case was submitted for decision in the court below upon an agreed statement of facts as follows:

"1. The plaintiff is engaged in business as operator of a railway line on Panay Island by virtue of the franchise granted by the Philippine Government under Act 1497 (enacted on May 28, 1906); and defendant is the duly appointed, qualified and incumbent Collector of Internal Revenue;

"2. During the fourth quarter of 1946 plaintiff realized from the business covered by its franchise a total gross receipts of P364,845.67, on which plaintiff paid a franchise tax of 1 1/2 per cent amounting to P5,532.69, in accordance with Sec. 13 of Act No. 1497;

"3. On September 5, 1947, defendant notified the plaintiff that the tax due on its gross receipts from the business covered by the franchise is 5 per cent and not only 1 1/2 per cent of such gross receipts, and demanded as a consequence a deficiency tax of P12,714.61 plus a 25 per cent surcharge of P3,178.65 incident to delinquency, or a total of P15,893.26, which plaintiff paid to defendant on January 20, 1948;

"4. During the year 1947 plaintiff realized from the business covered by the same franchise a total gross receipts of P976,712. Plaintiff, in order to avoid the imposition of the surcharge, paid franchise tax of P48,835.60 computed at the rate of 5 per cent of the total gross receipts;

"5. On April 26, 1948, plaintiff, thru counsel presented to the defendant a claim for the refund of the amounts of P15,893.26 and P34,184.92, representing the difference between the franchise taxes for the years 1946 (one quarter) and 1947 at the rate of 5 per cent and the same taxes at the rate of 1 1/2 per cent.

"6. On July 1, 1948, plaintiff received a letter from the Collector of Internal Revenue dated June 10, 1948, demanding from plaintiff a deficiency franchise tax of P2,108.18, plus surcharge of 25 per cent or a total of P2,635.22. This deficiency assessment was based on the finding of an Auditor of the General Auditing Office as a result of the annual audit of the business covered by the franchise of plaintiff corporation, that the total gross income of plaintiff for the year 1947 was P1,019,301.89 instead of P976,712, or a difference of P42,589.89. On July 12, 1948, the plaintiff paid to the City Treasurer of Iloilo the sum of P2,108.18, representing the franchise tax excluding the surcharge at the rate of 5 per cent of the gross receipts or income. However, plaintiff has not yet paid the sum of P527.04 demanded by defendant as 25 per cent Surcharge on the deficiency franchise tax;

"7. On June 12, 1948 the defendant denied the claim of the plaintiff for the refund of the aforesaid sums of P15,893.26 and P34,184.92;

"8. The parties reserve the right to present additional evidence at the trial of this case."

Plaintiff's contentions are that it is subject to 1 1/2 tax only under Section 13 of Act No. 1497 of the Philippine

Commission, which provides:

"SEC. 13. In consideration of the premises and of the granting of this concession or franchise, there shall be paid by the grantee to the Philippine Government, annually, for the period of thirty years from the date hereof, an amount equal to one-half of one per centum of the gross earnings of the grantee in respect of the lines covered hereby for each preceding year; after said period of thirty years and for fifty years thereafter, the amount so to be paid annually shall be an amount equal to one and one-half per centum of such gross earnings for each preceding year, and after such period of eighty years the percentage and amount so to be paid annually to the grantee shall be fixed by the Philippine Government.

"Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature—municipal, provincial, or central—upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise."

On the other hand, the Collector of Internal Revenue, sustained by the trial court, relied upon Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39, which reads as follows:

"SEC. 259. 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 a tax of five per centum or such taxes, charges, and percentages as are specified in the special charters of the corporation upon whom such franchises are conferred, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax. For the purpose of facilitating the assessment of this tax, reports shall be made by the respective holders of the franchises in such form and at such times as shall be required by the regulations of the Department of Finance.

"The taxes, charges, and percentages on corporate franchises, shall be due and payable as specified in the particular franchise, or, in case no time limit is specified therein, the provisions of Section one hundred eighty-three shall apply; and if such taxes, charges, and percentages remain unpaid for fifteen days from and after the date on which they must be paid, twenty-five per centum shall be added to the amount of such taxes, charges, and percentages, which increase shall form part of the tax."

From our view of the case the decisive question is whether the National Internal Revenue Code amended the plaintiff's franchise. Four-square with the case at bar on this point, by reason of the exact or close similarity between the franchises and the laws involved and the issues litigated, is *Manila Railroad Company vs. Rafferty*, 40 Phil., 224.

In that case, the defendant as Collector of Internal Revenue had assessed a tax on certain oil and coal which the Manila Railroad Company had imported into the Philippines for its use, in virtue of an act of Congress which authorized the imposition by the Philippine Government of internal revenue tax upon like articles consumed in the Philippines. Against that enactment, the Manila Railroad Company pointed to its charter, which (like the Philippine Railway's charter) fixed certain percentage tax on its earnings and declared that "such payments, when promptly and fully made, by the grantee, shall be in lieu of all taxes of every name and nature." As formulated by the Court the question then was: "May a special law or charter be amended altered, or repealed, by general law, by implication?"

The Court answered this query in the negative. Because of its controlling effects on the present case we will quote at length from the decision.

"It will be noted that Act No. 1510 is a private charter granted to the plaintiff; that said Acts of Congress are general laws. A careful reading of said Acts of Congress fails to disclose any reference to, or any attempt to amend, alter, or repeal, said special charter (Act No. 1510); and no other Act of Congress has been called to our attention, which in any way attempts to amend, alter, or repeal said Act (No. 1510). And it must be borne

in mind that said charter (Act No. 1510) is subject to amendment, alteration, or repeal only by an Act of the Congress of the United States.

* * * * *

"Repeals of laws by implication are not favored; and the mere repugnance between, two, statutes should be very clear in order to warrant the court in holding that the later in time repeals the other, when it does not in terms purport to do so. (Cooley's Constitutional Limitations (6th Ed.), p. 182, and cases cited; Sutherland Stat. Construction, Vol. 1, p. 465 (2d Ed.); Kinney vs. Mallory, 3 Ala., 626; Banks vs. Yolo County, 104 Cal., 258; People vs. Pacific Import Co., 330 Cal., 442; Reese vs. Western Union etc. Co., 123 Ind., 294; 7 L. R. A., 583; Cope vs. Cope, 137 U.S., 682.)

"In the case of McKenna vs. Eduardstone (91 N.Y., 231) the court said: 'It is well settled that a special and local statute, providing for a particular case or class of cases, is not repealed by a subsequent statute, general in its terms, provisions and application, unless the intent to repeal or alter is manifest, although the terms of the general act are broad enough to include the cases embraced in the special law.' That rule is but the application of the larger rule that a statute is not to lie deemed repealed, by implication, by a subsequent act upon the same subject unless the two are manifestly inconsistent with, and repugnant to, each other, or unless a clear intention is disclosed on the face of the later statute to repeal the former one.

"It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. (Steamboat Company vs. Collector, 18 Wall. (U.S.), 478; Cass County vs. Gillet, 100 U.S. 585; Minnesota vs. Hitchcock, 185 U.S. 373, 396.)

"Where there are two statutes, the earlier special and the later general—the terms of the general broad enough to include the matter provided for in the special—the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. (State vs. Stoll, 17 Wall. (U.S.), 425.)

"Said Act No. 1510 is a charter granted to the plaintiff company by the Government of the Philippine Islands. It is in the nature of a private contract. It is not a law constituting a part of the machinery of the general government. It was adopted after careful consideration of the private rights of the plaintiff in relation with the resultant benefits to the State. It stands upon a different footing from the general law. When a charter is granted, it constitutes a certain property right. Charters or special laws, such as Act No. 1510, stand upon a different footing from general laws. Once granted, a charter becomes a private contract and cannot be altered nor amended except by consent of all concerned, unless the right is expressly reserved. (Darmouth College vs. Woodward, 4 Wheat., 578.) The reason for the rule is clear. The legislature, in passing a special charter, have their attention directed to the special facts and circumstances which the Act or charter is intended to meet. The Legislature consider and make provision for all the circumstances of the particular case. The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act. (Lewis vs. Cook County, 74 Ill. App., p. 151, Philippine Railway Co. vs. Nolting, 34 Phil. 401.)"

We can press further the reasons why a statute will not be construed as in exercise of the power of amendment or revocation unless the intention to amend or revoke the charter clearly appears, by citing two other American decisions.

In Union Pacific Railroad Co. vs. Laramie Stock Yards Co., 231 U. S. 179, 190, 58 L. Ed. 179, the United States Supreme Court held that Congress could not be deemed to have exercised its right to alter, amend, or repeal

reserved in the railroad company's charter, by the enactment of a posterior law of general character. The Court said: "The exercise of such power would naturally only find an impulse in some large national purpose, and would hardly be provoked by a desire to legalize the encroachments here and there on the right of way of a transcontinental railroad.

"We are constrained to believe that when Congress intends to forfeit or limit any of the rights conveyed to aid that great enterprise, it will do so explicitly and directly by a measure proportionate to the purpose, and not leave it to be accomplished in a piecemeal and precarious way."

And in *Wilmington & R. R. Co. vs. Downward et al.*, 32 Atl. 133, the Court of Errors and Appeals of Delaware had this to say: "It is only reasonable to suppose that when such a course is intended in any case it will be marked by legislative language of purpose, direct, and not inferential. While the constitution makes no requirement of form or method for the act, yet, in view of the nature of such, a stupendous power, and the consequences to flow or ensue from its exercise, a legislature (it is fair to presume) would not leave its purpose so uncertain as to require the aid of one of its own courts to ascertain and 42 PHILIPPINE REPORTS *Philippine Railway Co. vs. Collector of Int. Rev.* declare it. There would be some expression, in some form or other, that the act relied upon to create revocation was intended for that purpose. I do not mean to be understood as saying that the legislature may not adopt its own method of revoking a charter, but I do believe the act would seem to the body to require expression of purpose to revoke, and would have such purpose distinctly put forth therein. And, looking at the subject in this light, I do not think any court of this state should yield to a mere inference of design to revoke, when language importing purpose of revocation is wanting. The proper view, I think, is that the legislature, by the act of February 22, 1877, did not intend to revoke the charter aforesaid, but only that which is plainly expressed, as quoted above."

We not only do not discover in the National Internal Revenue Code any intention to levy a higher percentage tax on existing franchises, but, on the contrary, this Code evinces the purpose of respecting the tax rates incorporated in the charters. Section 259 thereof, as has been seen, specifically exempts franchises "whose provisions . . . preclude the imposition of a higher tax." To what provisions does this exception refer? As applied to the plaintiff's franchise, we can think of no provisions which the Congress could have in mind other than those which are embodied in the last paragraph of Section 13 of Act No. 1497, namely, "such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature—municipal, provincial, or central—upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise."

We are therefore of the opinion that Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39, does not apply to plaintiff's franchise. With this conclusion, it is unnecessary to go into the controversy concerning the power of the Government to change the tax fixed in the plaintiff's charter or to impose a new tax thereon or its other property. Nevertheless it may be of interest to note, by way of statement only, that in *Philippine Railway Co. vs. Nolting*, 34 Phil. 401, the Court went so far as to say that "The plaintiff had a right to believe, when it accepted said contract, that it would be relieved of all the burdens imposed by the Government, when it promptly and fully paid the amount imposed by section 13 (No. 13 of Section 1)."

Upon the foregoing considerations, the appealed judgment will be reversed and the appellee ordered to refund to the appellant the sums of P15,893.26 and P34,184.92 with legal interest thereon from the date of collection and to pay costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, and Jugo, JJ., concur.

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