

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
PETITIONER, VS. CITY OF BACOLOD, FLORENTINO T. GUANCO, IN
HIS CAPACITY AS THE CITY TREASURER OF BACOLOD CITY, AND
ANTONIO G. LA...**

G.R. No. 149179. July 15, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

In this appeal by way of a petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Philippine Long Distance Telephone Company (PLDT), seeks the reversal and setting aside of the July 23, 2001 decision[1] of the Regional Trial Court at Bacolod City, Branch 42, dismissing its petition in Civil Case No. 99-10786, an action to declare petitioner as exempt from the payment of franchise and business taxes sought to be imposed and collected by the respondent City of Bacolod.

The material facts are not at all disputed:

PLDT is a holder of a legislative franchise under Act No. 3436, as amended, to render local and international telecommunications services. On August 24, 1991, the terms and conditions of its franchise were consolidated under Republic Act No. 7082,[2] Section 12 of which embodies the so-called "in-lieu-of-all-taxes" clause, whereunder PLDT shall pay a franchise tax equivalent to three percent (3%) of all its gross receipts, which franchise tax shall be "in lieu of all taxes". More specifically, the provision pertinently reads:

SEC. 12. xxx In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee, its successors or assigns, and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof. xxx (Italics ours).

Meanwhile, or on January 1, 1992, Republic Act No. 7160, otherwise known as the Local Government Code, took effect. Section 137 of the Code, in relation to Section 151 thereof, grants cities and other local government units the power to impose local franchise tax on businesses enjoying a franchise, thus:

SEC. 137. Franchise Tax.—Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

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SEC. 151. Scope of Taxing Powers.—Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees, and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

By Section 193 of the same Code, all tax exemption privileges then enjoyed by all persons, whether natural or juridical, save those expressly mentioned therein, were withdrawn, necessarily including those taxes from which PLDT is exempted under the "in-lieu-of-all-taxes" clause in its charter. We quote Section 193:

SEC. 193. Withdrawal of Tax Exemption Privileges.—Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

Aiming to level the playing field among telecommunication companies, Congress enacted Republic Act No. 7925, otherwise known as the Public Telecommunications Policy Act of the Philippines, which took effect on March 16, 1995. To achieve the legislative intent, Section 23 thereof, also known as the "most-favored-treatment" clause, provides for an equality of treatment in the telecommunications industry, thus:

SEC. 23. Equality of Treatment in the Telecommunications Industry.—Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of the service authorized by the franchise.

In August 1995, the City of Bacolod, invoking its authority under Section 137, in relation to Section 151 and Section 193, supra, of the Local Government Code, made an assessment on PLDT for the payment of franchise tax due the City.

Complying therewith, PLDT began paying the City franchise tax from the year 1994 until the third quarter of 1998, at which time the total franchise tax it had paid the City already amounted to P2,770,696.37.

On June 2, 1998, the Department of Finance through its Bureau of Local Government Finance (BLGF), issued a ruling to the effect that as of March 16, 1995, the effectivity date of the Public Telecommunications Policy Act of the Philippines (Rep. Act. No. 7925), PLDT, among other telecommunication companies, became exempt from local franchise tax. Pertinently, the BLGF ruling reads:

It appears that RA 7082 further amending ACT No. 3436 which granted to PLDT a franchise to install, operate and maintain a telephone system throughout the Philippine Islands was approved on August 3, 1991. Section 12 of said franchise, likewise, contains the 'in lieu of all taxes' proviso.

In this connection, Section 23 of RA 7925, quoted hereunder, which was approved on March 1, 1995 provides for the equality of treatment in the telecommunications industry:

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On the basis of the aforequoted Section 23 of RA 7925, PLDT as a telecommunications franchise holder becomes automatically covered by the tax exemption provisions of RA 7925, which took effect on March 16, 1995.

Accordingly, PLDT shall be exempt from the payment of franchise and business taxes imposable by LGUs under Sections 137 and 143, respectively, of the LGC [Local Government Code], upon the effectivity of RA 7925 on March 16, 1995. However, PLDT shall be liable to pay the franchise and business taxes on its gross

receipts realized from January 1, 1992 up to March 15, 1995, during which period PLDT was not enjoying the 'most favored clause' proviso of RA 7025 [sic].[3]

Invoking the aforequoted ruling, PLDT then stopped paying local franchise and business taxes to Bacolod City starting the fourth quarter of 1998.

The controversy came to a head-on when, sometime in 1999, PLDT applied for the issuance of a Mayor's Permit but the City of Bacolod withheld issuance thereof pending PLDT's payment of its franchise tax liability in the following amounts: (1) P358,258.30 for the fourth quarter of 1998; and (b) P1,424,578.10 for the year 1999, all in the aggregate amount of P1,782,836.40, excluding surcharges and interest, about which PLDT was duly informed by the City Treasurer via a 5th Indorsement dated March 16, 1999 for PLDT's "appropriate action".[4]

In time, PLDT filed a protest[5] with the Office of the City Legal Officer, questioning the assessment and at the same time asking for a refund of the local franchise taxes it paid in 1997 until the third quarter of 1998.

In a reply-letter dated March 26, 1999,[6] City Legal Officer Antonio G. Laczi denied the protest and ordered PLDT to pay the questioned assessment.

Hence, on May 14, 1999, in the Regional Trial Court at Bacolod City, PLDT filed its petition[7] in Civil Case No. 99-10786, therein praying for a judgment declaring it as exempt from the payment of local franchise and business taxes; ordering the respondent City to henceforth cease and desist from assessing and collecting said taxes; directing the City to issue the Mayor's Permit for the year 1999; and requiring it to refund the amount of P2,770,606.37, allegedly representing overpaid franchise taxes for the years 1997 and 1998 with interest until fully paid.

In time, the respondent City filed its Answer/Comment to the petition,[8] basically maintaining that Section 137 of the Local Government Code remains as the operative law despite the enactment of the Public Telecommunications Policy Act of the Philippines (Rep. Act No. 7925), and accordingly prayed for the dismissal of the petition.

In the ensuing pre-trial conference, the parties manifested that they would not present any testimonial evidence, and merely requested for time to file their respective memoranda, to which the trial court acceded.

Eventually, in the herein assailed decision dated July 23, 2001,[9] the trial court dismissed PLDT's petition, thus:

WHEREFORE, premises considered, the petition should be, as it is hereby DISMISSED. No costs.

SO ORDERED.

Therefrom, PLDT came to this Court via the present recourse, imputing the following errors on the part of the trial court:

5.01.a. THE LOWER COURT ERRED IN SUSTAINING RESPONDENTS' POSITION THAT SECTION 137 OF THE LOCAL GOVERNMENT CODE, WHICH, IN RELATION TO SECTION 151 THEREOF, ALLOWS RESPONDENT CITY TO IMPOSE THE FRANCHISE TAX, IS APPLICABLE IN THIS CASE.

5.01.b. THE LOWER COURT ERRED IN NOT HOLDING THAT UNDER PETITIONER'S FRANCHISE (REPUBLIC ACT NO. 7082), AS AMENDED AND EXPANDED BY SECTION 23 OF REPUBLIC ACT NO. 7925 (PUBLIC TELECOMMUNICATIONS POLICY ACT), TAKING INTO ACCOUNT THE FRANCHISES OF GLOBE TELECOM, INC., (GLOBE) (REPUBLIC ACT NO. 7229) AND SMART COMMUNICATIONS, INC. (SMART) (REPUBLIC ACT NO. 7294), WHICH WERE ENACTED SUBSEQUENT TO THE LOCAL GOVERNMENT CODE, NO FRANCHISE TAXES MAY BE IMPOSED ON PETITIONER BY RESPONDENT CITY.

5.01.c. THE LOWER COURT ERRED IN NOT GIVING WEIGHT TO THE RULING OF THE DEPARTMENT OF FINANCE, THROUGH ITS BUREAU OF LOCAL GOVERNMENT FINANCE, THAT PETITIONER IS EXEMPT FROM THE PAYMENT OF FRANCHISE AND BUSINESS TAXES IMPOSABLE BY LOCAL GOVERNMENT UNITS UNDER THE LOCAL GOVERNMENT CODE.

5.01.d. THE LOWER COURT ERRED IN DISMISSING THE PETITION BELOW.

As we see it, the only question which commends itself for our resolution is, whether or not Section 23 of Rep. Act No. 7925, also called the "most-favored-treatment" clause, operates to exempt petitioner PLDT from the payment of franchise tax imposed by the respondent City of Bacolod.

Contrary to petitioner's claim, the issue thus posed is not one of "first impression" insofar as this Court is concerned. For sure, this is not the first time for petitioner PLDT to invoke the jurisdiction of this Court on the same question, albeit involving another city.

In *PLDT vs. City of Davao*,^[10] this Court has had the occasion to interpret Section 23 of Rep. Act No. 7925. There, we ruled that Section 23 does not operate to exempt PLDT from the payment of franchise tax imposed upon it by the City of Davao:

In sum, it does not appear that, in approving §23 of R.A. No. 7925, Congress intended it to operate as a blanket tax exemption to all telecommunications entities. Applying the rule of strict construction of laws granting tax exemptions and the rule that doubts should be resolved in favor of municipal corporations in interpreting statutory provisions on municipal taxing powers, we hold that §23 of R.A. No. 7925 cannot be considered as having amended petitioner's franchise so as to entitle it to exemption from the imposition of local franchise taxes. Consequently, we hold that petitioner is liable to pay local franchise taxes in the amount of P3,681,985.72 for the period covering the first to the fourth quarter of 1999 and that it is not entitled to a refund of taxes paid by it for the period covering the first to the third quarter of 1998.^[11]

Explains this Court in the same case:

To begin with, tax exemptions are highly disfavored. The reason for this was explained by this Court in *Asiatic Petroleum Co. v. Llanes*, in which it was held:

. . . Exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right. . . As was said by the Supreme Court of Tennessee in *Memphis vs. U. & P. Bank* (91 Tenn., 546, 550), 'The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden must justify his claim by the clearest grant of organic or statute law.' Other utterances equally or more emphatic come readily to hand from the highest authority. In *Ohio Life Ins. and Trust Co. vs. Debolt* (16 Howard, 416), it was said by Chief Justice Taney, that the right of taxation will not be held to have been surrendered, 'unless the intention to surrender is manifested by words too plain to be mistaken.' In the case of the *Delaware Railroad Tax* (18 Wallace, 206, 226), the Supreme Court of the United States said that the surrender, when claimed, must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power. If a doubt arises as to the intent of the legislature, that doubt must be solved in favor of the State. In *Erie Railway Company vs. Commonwealth of Pennsylvania* (21 Wallace, 492, 499), Mr. Justice Hunt, speaking of exemptions, observed that a State cannot strip itself of the most essential power of taxation by doubtful words. 'It cannot, by ambiguous language, be deprived of this highest attribute of sovereignty.' In *Tennessee vs. Whitworth* (117 U.S., 129, 136), it was said: 'In all cases of this kind the question is as to the intent of the legislature, the presumption always being against any surrender of the taxing power.' In *Farrington vs. Tennessee and County of Shelby* (95 U.S., 379, 686), Mr. Justice Swayne said: '. . . When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded

doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported.'

The tax exemption must be expressed in the statute in clear language that leaves no doubt of the intention of the legislature to grant such exemption. And, even if it is granted, the exemption must be interpreted in strictissimi juris against the taxpayer and liberally in favor of the taxing authority.

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The fact is that the term 'exemption' in §23 is too general. A cardinal rule in statutory construction is that legislative intent must be ascertained from a consideration of the statute as a whole and not merely of a particular provision. For, taken in the abstract, a word or phrase might easily convey a meaning which is different from the one actually intended. A general provision may actually have a limited application if read together with other provisions. Hence, a consideration of the law itself in its entirety and the proceedings of both Houses of Congress is in order.

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R.A. No. 7925 is thus a legislative enactment designed to set the national policy on telecommunications and provide the structures to implement it to keep up with the technological advances in the industry and the needs of the public. The thrust of the law is to promote gradually the deregulation of the entry, pricing, and operations of all public telecommunications entities and thus promote a level playing field in the telecommunications industry. There is nothing in the language of §23 nor in the proceedings of both the House of Representatives and the Senate in enacting R.A. No. 7925 which shows that it contemplates the grant of tax exemptions to all telecommunications entities, including those whose exemptions had been withdrawn by the LGC.

What this Court said in *Asiatic Petroleum Co. v. Llanes* applies mutatis mutandis to this case: 'When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported.' In this case, the word 'exemption' in §23 of R.A. No. 7925 could contemplate exemption from certain regulatory or reporting requirements, bearing in mind the policy of the law. It is noteworthy that, in holding Smart and Globe exempt from local taxes, the BLGF did not base its opinion on §23 but on the fact that the franchises granted to them after the effectivity of the LGC exempted them from the payment of local franchise and business taxes.

As in *City of Davao*, supra, petitioner presently argues that because Smart Communications, Inc. (SMART) and Globe Telecom (GLOBE) under whose respective franchises granted after the effectivity of the Local Government Code, are exempt from franchise tax, it follows that petitioner is likewise exempt from the franchise tax sought to be collected by the City of Bacolod, on the reasoning that the grant of tax exemption to SMART and GLOBE ipso facto applies to PLDT, consistent with the "most-favored-treatment" clause found in Section 23 of the Public Telecommunications Policy Act of the Philippines (Rep. Act No. 7925).

Again, there is nothing novel in petitioner's contention. In fact, this Court in *City of Davao*, even adverted to PLDT's argument therein, thus:

Finally, it [PLDT] argues that because Smart and Globe are exempt from the franchise tax, it follows that it must likewise be exempt from the tax being collected by the City of Davao because the grant of tax exemption to Smart and Globe ipso facto extended the same exemption to it.

In rejecting PLDT's contention, this Court ruled in *City of Davao* as follows:

The acceptance of petitioner's theory would result in absurd consequences. To illustrate: In its franchise, Globe

is required to pay a franchise tax of only one and one-half percentum (1/2% [sic]) of all gross receipts from its transactions while Smart is required to pay a tax of three percent (3%) on all gross receipts from business transacted. Petitioner's theory would require that, to level the playing field, any "advantage, favor, privilege, exemption, or immunity" granted to Globe must be extended to all telecommunications companies, including Smart. If, later, Congress again grants a franchise to another telecommunications company imposing, say, one percent (1%) franchise tax, then all other telecommunications franchises will have to be adjusted to "level the playing field" so to speak. This could not have been the intent of Congress in enacting Section 23 of Rep. Act 7925. Petitioner's theory will leave the Government with the burden of having to keep track of all granted telecommunications franchises, lest some companies be treated unequally. It is different if Congress enacts a law specifically granting uniform advantages, favor, privilege, exemption or immunity to all telecommunications entities.

On PLDT's motion for reconsideration in Davao, the Court added in its en banc Resolution of March 25, 2003,[12] that even as it is a state policy to promote a level playing field in the communications industry, Section 23 of Rep. Act No. 7925 does not refer to tax exemption but only to exemption from certain regulations and requirements imposed by the National Telecommunications Commission:

xxx. The records of Congress are bereft of any discussion or even mention of tax exemption. To the contrary, what the Chairman of the Committee on Transportation, Rep. Jerome V. Paras, mentioned in his sponsorship of H.B. No. 14028, which became R.A. No. 7925, were 'equal access clauses' in interconnection agreements, not tax exemptions. He said:

There is also a need to promote a level playing field in the telecommunications industry. New entities must be granted protection against dominant carriers through the encouragement of equitable access charges and equal access clauses in interconnection agreements and the strict policing of predatory pricing by dominant carriers. Equal access should be granted to all operators connecting into the interexchange network. There should be no discrimination against any carrier in terms of priorities and/or quality of services.

Nor does the term 'exemption' in § 23 of R.A. No. 7925 mean tax exemption. The term refers to exemption from certain regulations and requirements imposed by the National Telecommunications Commission (NTC). For instance, R.A. No. 7925, § 17 provides: 'The Commission shall exempt any specific telecommunications service from its rate or tariff regulations if the service has sufficient competition to ensure fair and reasonable rates or tariffs.' Another exemption granted by the law in line with its policy of deregulation is the exemption from the requirement of securing permits from the NTC every time a telecommunications company imports equipment.[13]

In the same en banc Resolution, the Court even rejected PLDT's contention that the "in-lieu-of-all-taxes" clause does not refer to "tax exemption" but to "tax exclusion" and hence, the strictissimi juris rule does not apply, explaining that these two terms actually mean the same thing, such that the rule that tax exemption should be applied in strictissimi juris against the taxpayer and liberally in favor of the government applies equally to tax exclusions. Thus:

Indeed, both in their nature and in their effect there is no difference between tax exemption and tax exclusion. Exemption is an immunity or privilege; it is freedom from a charge or burden to which others are subjected. Exclusion, on the other hand, is the removal of otherwise taxable items from the reach of taxation, e.g., exclusions from gross income and allowable deductions. Exclusion is thus also an immunity or privilege which frees a taxpayer from a charge to which others are subjected. Consequently, the rule that tax exemption should be applied in strictissimi juris against the taxpayer and liberally in favor of the government applies equally to tax exclusions. To construe otherwise the 'in lieu of all taxes' provision invoked is to be inconsistent with the theory that R.A. No. 7925, § 23 grants tax exemption because of a similar grant to Globe and Smart.[14]

PLDT likewise argued in said case that the RTC at Davao City erred in not giving weight to the ruling of the

BLGF which, according to petitioner, is an administrative agency with technical expertise and mastery over the specialized matters assigned to it. But then again, we held in *Davao*:

To be sure, the BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in the courts. The authorities cited by petitioner pertain to the Court of Tax Appeals, a highly specialized court which performs judicial functions as it was created for the review of tax cases. In contrast, the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation, real property assessment, and other related matters, among others. The question raised by petitioner is a legal question, to wit, the interpretation of §23 of R.A. No. 7925. There is, therefore, no basis for claiming expertise for the BLGF that administrative agencies are said to possess in their respective fields.^[15]

We note, quite interestingly, that apart from the particular local government unit involved in the earlier case of *PLDT vs. Davao*, the arguments presently advanced by petitioner on the issue herein posed are but a mere reiteration if not repetition of the very same arguments it has already raised in *Davao*. For sure, the errors presently assigned are substantially the same as those in *Davao*, all of which have been adequately addressed and passed upon by this Court in its decision therein as well as in its en banc resolution in that case.

WHEREFORE, the instant petition is DENIED and the assailed decision dated July 23, 2001 of the lower court AFFIRMED.

Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.
Panganiban, (Chairman), no part, former counsel of the party.

[1] Rollo, pp. 110-116.

[2] An Act Further Amending Act No. 3436, as amended, "xxx Consolidating the Terms and Conditions of the Franchise Granted to the [PLDT], And Extending the Said Franchise by Twenty-Five (25) Years from the Expiration Thereof xxx".

[3] Rollo, p. 80.

[4] Rollo, p. 85.

[5] Rollo, pp. 86-88.

[6] Rollo, pp. 89-90.

[7] Rollo, pp. 67-71.

[8] Rollo, pp. 94-108.

[9] Rollo, pp. 110-116.

[10] G.R. No. 143867; 415 Phil. 769 [2001].

[11] *Id.*, p. 780.

[12] 447 Phil. 571 [2003].

[13] Id., pp. 580-581.

[14] Id., p. 584.

[15] Supra, pp. 779-780.

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