

PROVINCE OF TARLAC, PETITIONER, VS. HON. FERNANDO S. ALCANTARA, PRESIDING JUDGE, BRANCH LXIII, REGIONAL TRIAL COURT AND TARLAC ENTERPRISES, INC., RESPONDENTS.

G.R. No. 65230, December 23, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

The present petition for review on certiorari questions the August 12, 1983 decision of the Regional Trial Court of Tarlac, Branch LXIII dismissing the complaint filed by the Province of Tarlac against Tarlac Enterprises, Inc. for collection of real property tax, and the order of September 28, 1983 denying the motion for the reconsideration of said decision.

The complaint, which was filed by Tarlac Provincial Treasurer Jose M. Meru on January 14, 1983, alleged among others:

"x x x x x x x x x x

2. That defendant Tarlac Enterprises, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, x x x;

3. That defendant is the owner of the following properties, to wit:

a) A parcel of land located at Mabini, Tarlac, Tarlac

Area. 1,767 sq. meters

Market Value P187,704.00

Assessed Value 93,850.00

b) Ice Drop factory located at Mabini, Tarlac, Tarlac

Market Value P3,440.00

Assessed Value. . . . 1,720.00

c) A machinery shed located at Mabini, Tarlac, Tarlac

Assessed at P12,530.00

Market Value. 50,000.00

d) A machinery of Diesel Elect. Sets - Make MAN Cylinders Type C.U. 4160 Sno. 40556; 226P H.P. Generator; Fated KRUPP 4265; AC Generator 5528042; ER MORCEL 816826, and Worthington 2901.

Assessed at. . . . P4,019,550.00

Market Value. . . . 5,024,443.00

declared for purposes of taxation in the Provincial Assessor's Office under Tax Declarations Nos. 8778, 8897, 8898 and 8899, inclusive, x x x;

4. That real estate taxes of the aforesaid properties from 1974 to December 31, 1982, in the total amount of FIVE HUNDRED THIRTY TWO (sic) FOUR HUNDRED THIRTY FIVE PESOS AND FIFTY FIVE CENTAVOS (P532,435.55) including principals and penalties has (sic) not been paid by the defendant as per STATEMENT OF REALTY TAXES issued by the Municipal Treasurer of Tarlac, Tarlac xxx.

5. That said taxes is (sic) now past due and demandable and despite several demands made against the defendant, the last demand made in writing by Mr. Jose Meru (sic) was December 3, 1982, but the defendant refused and continues to refuse payment to the irreparable damage of the plaintiff.

x x x x x x x x"[1]

Hence, petitioner prayed that private respondent be ordered to pay the sum of P532,435.55 representing the accrued real estate taxes, as well as damages and the costs of the suit.

On March 2, 1983, the private respondent filed a motion to dismiss the complaint which was opposed by the petitioner. In its order of March 30, 1983,[2] the lower court denied the motion. A motion for the reconsideration of the said order was subsequently filed by the private respondent but it was likewise denied by the lower court.[3]

Thereafter, the petitioner set the auction sale of the private respondent's properties to satisfy the real estate taxes due. This prompted the private respondent to file a motion praying that petitioner be directed to desist from proceeding with the public auction sale.[4] On April 15, 1983, the lower court issued an order granting said motion to prevent mootness of the case considering that the properties to be sold were the subjects of the complaint.[5]

Consequently, the private respondent filed its answer[6] admitting that demands for the payment of real property taxes had been made by the petitioner but it refused to pay the same for the reason that under Sec. 40, paragraph (g) of Presidential Decree No. 464 in relation to P.D. No. 551, as amended, it was exempt from paying said tax. It also raised as affirmative defenses that the complaint stated no cause of action and that the claims had been waived, abandoned or otherwise extinguished or barred by the statute of limitations.

On August 12, 1983, the lower court rendered the decision dismissing the complaint. It ruled that P.D. No. 551 expressly exempts private respondent from paying the real property taxes demanded, it being a grantee of a franchise to generate, distribute and sell electric current for light. The court held that in lieu of said taxes, private respondent had been required to pay two percent (2%) franchise tax in line with the intent of the law to give assistance to operators such as the private respondent to enable the consumers to enjoy cheaper rates. Citing the case of Butuan Sawmill, Inc. v. City of Butuan,[7] the court ruled that local governments are without power to tax the electric companies already subject to franchise tax unless their franchise allows the imposition of additional tax.

Petitioner filed a motion for the reconsideration of said decision which was duly opposed by private respondent but the court, in its Order of September 28, 1983, denied said motion.[8]

Hence, the present recourse. Petitioner contends that respondent judge erred in: (a) holding that private respondent is exempt from the payment of realty tax under P.D. No. 551, as amended; (b) ruling, under the authority of Butuan Sawmill, Inc. v. Butuan City, that it is without power to impose said realty tax on private respondent, and

(c) dismissing the complaint and denying its motion for the reconsideration of its decision.

The instant petition revolves around the issue of whether or not private respondent Tarlac Enterprises, Inc. is exempt from the payment of real property tax under Sec. 40 (g) of P.D. No. 464 in relation to P.D. No. 551, as amended.

Sec. 40(g) of P.D. No. 464, the Real Property Tax Code, provides:

"SEC. 40. Exemptions from Real Property Tax. – The exemption shall be as follows:

x x x x x x x x

(g) Real property exempt under other laws."

Private respondent contends that the "other laws" referred to in this Section is P.D. No. 551 (Lowering the Cost to Consumers of Electricity by Reducing the Franchise Tax Payable by Electric Franchise Holders and the Tariff on Fuel Oils for the Generation of Electric Power by Public Utilities). Its pertinent provisions state:

"SECTION 1. Any provision of law or local ordinance to the contrary notwithstanding, the franchise tax payable by all grantees of franchises to generate, distribute and sell electric current for light, heat and power shall be two (2%) of their gross receipts received from the sale of electric current and from transactions incident to the generation, distribution and sale of electric current.

Such franchise tax shall be payable to the Commissioner of Internal Revenue or his duly authorized representative on or before the twentieth day of the month following the end of each calendar quarter or month as may be provided in the respective franchise or pertinent municipal regulation and shall, any provision of the Local Tax Code or any other law to the contrary notwithstanding, be in lieu of all taxes and assessments of whatever nature imposed by any national or local authority on earnings, receipts, income and privilege of generation, distribution and sale of electric current."[9] (Underscoring supplied)

P.D. No. 551 was amended on December 19, 1975 by P.D. No. 852[10] with the insertion of the phrase "and for the manufacture, distribution and sale of city gas" between the phrases "x x x light, heat and power" and "shall be two (2%) x x x."

We do not agree with the lower court that the phrase "in lieu of all taxes and assessments of whatever nature" in the second paragraph of Sec. 1 of P.D. No. 551 expressly exempts private respondent from paying real property taxes. As correctly observed by the petitioner, said proviso is modified and delimited by the phrase "on earnings, receipts, income and privilege of generation, distribution and sale" which specifies the kinds of taxes and assessments which shall not be collected in view of the imposition of the franchise tax. Said enumerated items upon which taxes shall not be imposed, have no relation at all to, and are entirely different from, real properties subject to tax.

If the intention of the law is to exempt electric franchise grantees from paying real property tax and to make the two (2%) percent franchise tax the only imposable tax, then said enumerated items would not have been added when P.D. No. 852 was enacted to amend P.D. No. 551. The legislative authority would have simply stopped after the phrase "national or local authority" by putting therein a period. On the contrary, it went on to enumerate what should not be subject to tax thereby delimiting the extent of the exemption.

We likewise do not find merit in private respondent's contention that the real properties being taxed, viz., the machinery for the generation and distribution of electric power, the building housing said machinery, and the land on which said building is constructed, are necessary for the operation of its business of generation, distribution and sale of electric current and, therefore, they should be exempted from taxation. Private respondent apparently

does not quite comprehend the distinction among the subject matters or objects of the taxes involved. It bears emphasis that P.D. No. 551 as amended by P.D. No. 852 deals with franchise tax and tariff on fuel oils and the "earnings, receipts, income and privilege of generation, distribution and sale of electric current" are the items exempted from taxation by the imposition of said tax or tariff duty. On the other hand, the collection complaint filed by petitioner specified only taxes due on real properties. While P.D. No. 551 was intended to give "assistance to the franchise holders by reducing some of their tax and tariff obligations," to construe said decree as having granted such franchise holders exemption from payment of real property tax would unduly extend the ambit of exemptions beyond the purview of the law.

The annexes attached to private respondent's comment on the petition to prove by contemporaneous interpretation its claimed tax exemption are not of much help to it. Department Order No. 35-74 dated September 16, 1974[11] regulating the implementation of P.D. No. 551 merely reiterates the "in lieu of all taxes" proviso. Local Tax Regulations No. 3-75[12] issued by then Secretary of Finance Cesar Virata and addressed to all Provincial and City Treasurers enjoins strict compliance with the directive that "the franchise tax imposed under Local Tax Ordinances pursuant to Section 19 of the Local Tax Code, as amended, shall be collected from business holding franchises but not from establishments whose franchise contains the 'in lieu of all taxes' proviso," thereby clearly indicating that said proviso exempts taxpayers like private respondent from paying the franchise tax collected by the provinces under the Local Tax Code. Lastly, the letter[13] of the then Bureau of Internal Revenue Acting Commissioner addressed to the Matic Law Office granting exemption to the latter's client from paying the "privilege (fixed) tax which is an excise tax on the privilege of engaging in business" clearly excludes realty tax from such exemption.

We also find misplaced the lower court's and the private respondent's reliance on *Butuan Sawmill, Inc. v. City of Butuan*. In that case, the questioned tax is a tax on the gross sales or receipts of said sawmill while the tax involved herein is a real property tax. The City of Butuan is categorically prohibited therein by Sec. 2(j) of the Local Autonomy Act from imposing "taxes of any kind x x x on person paying franchise tax." On the other hand, P.D. No. 551 is not as all-encompassing as said provision of the Local Autonomy Act for it enumerates the items which are not taxable by virtue of the payment of franchise tax.

It has always been the rule that "exemptions from taxation are construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority"[14] primarily because "taxes are the lifeblood of government and their prompt and certain availability is an imperious need." [15] Thus, to be exempted from payment of taxes, it is the taxpayer's duty to justify the exemption "by words too plain to be mistaken and too categorical to be misinterpreted." [16] Private respondent has utterly failed to discharge this duty.

We, therefore, find the lower court to have erred in exempting private respondent from paying real property tax on its properties which are enumerated in the complaint. However, in its decision, the lower court found that private respondent owns only three real properties consisting of the parcel of land, machinery shed and machinery, noticeably omitting the ice drop factory mentioned in its complaint by the petitioner. In view, however, of the petitioner's failure to assign such omission as an error, the same should be considered waived.

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE. This case is REMANDED to the lower court for the proper determination of the real property tax liability of the private respondent. This decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Melo, JJ., concur.

- [1] Annex "A" to Petition, Rollo, pp. 9-11.
- [2] Records, p. 24.
- [3] Ibid, p. 54.
- [4] Ibid, p. 26.
- [5] Ibid, p. 53.
- [6] Annex "B" to Petition, Rollo, p. 12.
- [7] 123 Phil. 575 (1966).
- [8] Annex "E" to Petition, Rollo, p. 21.
- [9] 73 O.G. 2589-16 - 2589-17 (April 1977).
- [10] 72 O.G. 1056 (February 1976).
- [11] Rollo, pp. 37-41.
- [12] Ibid, pp. 42-43.
- [13] Ibid, p. 44.
- [14] Philippine Petroleum Corp. v. Municipality of Pililla, Rizal, G.R. No. 90776, June 3, 1991, 198 SCRA 82, 90 citing Esso Standard Eastern, Inc. v. Acting Commissioner of Customs, L-21841, October 28, 1966, 18 SCRA 488, 490.
- [15] Commissioner of Internal Revenue v. Pineda, L-22734, September 15, 1967, 21 SCRA 105, 110.
- [16] Commissioner of Internal Revenue v. P.J. Kiener Co., Ltd., L-24754, July 18, 1975, 65 SCRA 142, 153 citing Reagan v. Commissioner of Internal Revenue, L-26379, December 27, 1969, 30 SCRA 968.

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