

THIRD DIVISION

[G.R. No. 166408, October 06, 2008]

**QUEZON CITY AND THE CITY TREASURER OF QUEZON CITY,
PETITIONERS, VS. ABS-CBN BROADCASTING CORPORATION,
RESPONDENT.**

D E C I S I O N

REYES, R.T., J.:

CLAIMS for tax exemption must be based on language in law too plain to be mistaken. It cannot be made out of inference or implication.

The principle is relevant in this petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) and that^[2] of the Regional Trial Court (RTC) ordering the refund and declaring invalid the imposition and collection of local franchise tax by the City Treasurer of Quezon City on ABS-CBN Broadcasting Corporation (ABS-CBN).

The Facts

Petitioner City Government of Quezon City is a local government unit duly organized and existing by virtue of Republic Act (R.A.) No. 537, otherwise known as the Revised Charter of Quezon City. Petitioner City Treasurer of Quezon City is primarily responsible for the imposition and collection of taxes within the territorial jurisdiction of Quezon City.

Under Section 31, Article 13 of the Quezon City Revenue Code of 1993,^[3] a franchise tax was imposed on businesses operating within its jurisdiction. The provision states:

Section 31. *Imposition of Tax.* - Any provision of special laws or grant of tax exemption to the contrary notwithstanding, any person, corporation, partnership or association enjoying a franchise whether issued by the national government or local government and, doing business in Quezon City, shall pay a franchise tax at the rate of ten percent (10%) of one percent (1%) for 1993-1994, twenty percent (20%) of one percent (1%) for 1995, and thirty percent (30%) of one percent (1%) for 1996 and the succeeding years thereafter, of gross receipts and sales derived from the operation of the business in Quezon City during the preceding calendar year.

On May 3, 1995, ABS-CBN was granted the franchise to install and operate radio and television broadcasting stations in the Philippines under R.A. No. 7966.^[4] Section 8 of R.A. No. 7966 provides the tax liabilities of ABS-CBN which reads:

Section 8. *Tax Provisions.* - The grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now hereafter may be required by law to pay. 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 radio/television business transacted under this franchise by the grantee, its successors or assigns, and the said percentage tax shall be in lieu of all taxes on this franchise or earnings thereof;** Provided that the grantee, its successors or assigns shall continue to be liable for income taxes under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto. (Emphasis added)

ABS-CBN had been paying local franchise tax imposed by Quezon City. However, in view of the above provision in R.A. No. 9766 that it "shall pay a franchise tax x x x in lieu of all taxes," the corporation developed the opinion that it is not liable to pay the local franchise tax imposed by Quezon City. Consequently, ABS-CBN paid under protest the local franchise tax imposed by Quezon City on the dates, in the amounts and under the official receipts as follows:

<u>O.R. No.</u>	<u>Date</u>	<u>Amount Paid</u>
2464274	07-18-95	P 1,489,977.28
2484651	10-20-95	1,489,977.28
2536134	1-22-96	2,880,975.65
8354906	1-23-97	8,621,470.83
0048756	1-23-97	2,731,135.81
0067352	4-03-97	<u>2,731,135.81</u>
Total		P19,944,672.66 ^[5]

On January 29, 1997, ABS-CBN filed a written claim for refund for local franchise tax paid to Quezon City for 1996 and for the first quarter of 1997 in the total amount of Fourteen Million Two Hundred Thirty-Three Thousand Five Hundred Eighty-Two and 29/100 centavos (P14,233,582.29) broken down as follows:

<u>O.R. No.</u>	<u>Date</u>	<u>Amount Paid</u>
2536134	1-22-96	P 2,880,975.65
8354906	1-23-97	8,621,470.83
0048756	1-23-97	<u>2,731,135.81</u>
Total		P14,233,582.29 ^[6]

In a letter dated March 3, 1997 to the Quezon City Treasurer, ABS-CBN reiterated its claim for refund of local franchise taxes paid.

On June 25, 1997, for failure to obtain any response from the Quezon City Treasurer, ABS-CBN filed a complaint before the RTC in Quezon City seeking the declaration of nullity of the imposition of local franchise tax by the City Government of Quezon City for being unconstitutional. It likewise prayed for the refund of local franchise tax in the amount of Nineteen Million Nine Hundred Forty-Four Thousand Six Hundred Seventy-Two and 66/100 centavos (P19,944,672.66) broken down as follows:

<u>O.R. No.</u>	<u>Date</u>	<u>Amount Paid</u>
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2464274	7-18-95	P 1,489,977.28
2484651	10-20-95	1,489,977.28
2536134	1-22-96	2,880,975.65
8354906	1-23-97	8,621,470.83
0048756	1-23-97	2,731,135.81
0067352	4-03-97	<u>2,731,135.81</u>
Total		P19,944,672.66 ^[7]

Quezon City argued that the "in lieu of all taxes" provision in R.A. No. 9766 could not have been intended to prevail over a constitutional mandate which ensures the viability and self-sufficiency of local government units. Further, that taxes collectible by and payable to the local government were distinct from taxes collectible by and payable to the national government, considering that the Constitution specifically declared that the taxes imposed by local government units "shall accrue exclusively to the local governments." Lastly, the City contended that the exemption claimed by ABS-CBN under R.A. No. 7966 was withdrawn by Congress when the Local Government Code (LGC) was passed.^[8] Section 193 of the LGC provides:

Section 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. (Emphasis added)

On August 13, 1997, ABS-CBN filed a supplemental complaint adding to its claim for refund the local franchise tax paid for the third quarter of 1997 in the amount of Two Million Seven Hundred Thirty-One Thousand One Hundred Thirty-Five and 81/100 centavos (P2,731,135.81) and of other amounts of local franchise tax as may have been and will be paid by ABS-CBN until the resolution of the case.

Quezon City insisted that the claim for refund must fail because of the absence of a prior written claim for it.

RTC and CA Dispositions

On January 20, 1999, the RTC rendered judgment declaring as invalid the imposition on and collection from ABS-CBN of local franchise tax paid pursuant to Quezon City Ordinance No. SP-91, S-93, after the enactment of R.A. No. 7966, and ordered the refund of all payments made. The dispositive portion of the RTC decision reads:

WHEREFORE, judgment is hereby rendered declaring the imposition on and collection from plaintiff ABS-CBN BROADCASTING CORPORATION of local franchise taxes pursuant to Quezon City Ordinance No. SP-91, S-93 after the enactment of Republic Act No. 7966 to be invalid, and, accordingly, the Court hereby orders the defendants to refund all its payments made after the effectivity of its legislative franchise on May 3, 1995.

SO ORDERED.^[9]

In its decision, the RTC ruled that the "in lieu of all taxes" provision contained in Section 8 of R.A. No. 7966 absolutely excused ABS-CBN from the payment of local franchise tax imposed under Quezon City Ordinance No. SP-91, S-93. The intent of the legislature to excuse ABS-CBN from payment of local franchise tax could be discerned from the usage of the "in lieu of all taxes" provision and from the absence of any qualification except income taxes. Had Congress intended to exclude taxes imposed from the exemption, it would have expressly mentioned so in a fashion similar to the proviso on income taxes.

The RTC also based its ruling on the 1990 case of *Province of Misamis Oriental v. Cagayan Electric Power and Light Company, Inc. (CEPALCO)*.^[10] In said case, the exemption of respondent electric company CEPALCO from payment of provincial franchise tax was upheld on the ground that the franchise of CEPALCO was a special law, while the Local Tax Code, on which the provincial ordinance imposing the local franchise tax was based, was a general law. Further, it was held that whenever there is a conflict between two laws, one special and particular and the other general, the special law must be taken as intended to constitute an exception to the general act.

The RTC noted that the legislative franchise of ABS-CBN was granted years after the effectivity of the LGC. Thus, it was unavoidable to conclude that Section 8 of R.A. No. 7966 was an exception since the legislature ought to be presumed to have enacted it with the knowledge and awareness of the existence and prior enactment of Section 137^[11] of the LGC.

In addition, the RTC, again citing the case of *Province of Misamis Oriental v. Cagayan Electric Power and Light Company, Inc. (CEPALCO)*,^[12] ruled that the imposition of the local franchise tax was an impairment of ABS-CBN's contract with the government. The imposition of another franchise on the corporation by the local authority would constitute an impairment of the former's charter, which is in the nature of a private contract between it and the government.

As to the amounts to be refunded, the RTC rejected Quezon City's position that a written claim for refund pursuant to Section 196 of the LGC was a condition *sine qua non* before filing the case in court. The RTC ruled that although Fourteen Million Two Hundred Thirty-Three Thousand Five Hundred Eighty-Two and 29/100 centavos (P14,233,582.29) was the only amount stated in the letter to the Quezon City Treasurer claiming refund, ABS-CBN should nonetheless be also refunded of all payments made after the effectivity of R.A. No. 7966. The inaction of the City Treasurer on the claim for refund of ABS-CBN legally rendered any further claims for refund on the part of plaintiff absurd and futile in relation to the succeeding payments.

The City of Quezon and its Treasurer filed a motion for reconsideration which was subsequently denied by the RTC. Thus, appeal was made to the CA. On September 1, 2004, the CA dismissed the petition of Quezon City and its Treasurer. According to the appellate court, the issues raised were purely legal questions cognizable only by the Supreme Court. The CA ratiocinated:

For another, the issues which appellants submit for this Court's consideration are more of legal query necessitating a legal opinion rather

than a call for adjudication on the matter in dispute.

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The first issue has earlier been categorized in *Province of Misamis Oriental v. Cagayan Electric and Power Co., Inc.* to be a legal one. There is no more argument to this.

The next issue although it may need the reexamination of the pertinent provisions of the local franchise and the legislative franchise given to appellee, also needs no evaluation of facts. It suffices that there may be a conflict which may need to be reconciled, without regard to the factual backdrop of the case.

The last issue deals with a legal question, because whether or not there is a prior written claim for refund is no longer in dispute. Rather, the question revolves on whether the said requirement may be dispensed with, which obviously is not a factual issue.^[13]

On September 23, 2004, petitioner moved for reconsideration. The motion was, however, denied by the CA in its Resolution dated December 16, 2004. Hence, the present recourse.

Issues

Petitioner submits the following issues for resolution:

I.

Whether or not the phrase "in lieu of all taxes" indicated in the franchise of the respondent appellee (Section 8 of RA 7966) serves to exempt it from the payment of the local franchise tax imposed by the petitioners-appellants.

II.

Whether or not the petitioners-appellants raised factual and legal issues before the Honorable Court of Appeals.^[14]

Our Ruling

The second issue, being procedural in nature, shall be dealt with immediately. But there are other resultant issues linked to the first.

I. The dismissal by the CA of petitioners' appeal is in order because it raised purely legal issues, namely:

- 1) Whether appellee, whose franchise expressly provides that its payment of franchise tax shall be in *lieu of all taxes in this franchise* or earnings thereof, is absolutely excused from paying the franchise tax imposed by appellants;
- 2) Whether appellants' imposition of local franchise tax is a