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[G.R. No. 143867, March 25, 2003]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC., PETITIONER, VS. CITY OF DAVAO AND ADELAIDA B. BARCELONA, IN HER CAPACITY AS THE CITY TREASURER OF DAVAO, RESPONDENTS.

R E S O L U T I O N

MENDOZA, J.:

Petitioner seeks a reconsideration of the decision of the Second Division in this case. Because the decision bears directly on issues involved in other cases brought by petitioner before other Divisions of the Court, the motion for reconsideration was referred to the Court en banc for resolution.[1] The parties were heard in oral arguments by the Court en banc on January 21, 2003 and were later granted time to submit their memoranda. Upon the filing of the last memorandum by the City of Davao on February 10, 2003, the motion was deemed submitted for resolution.

To provide perspective, it will be helpful to restate the basic facts.

Petitioner PLDT paid a franchise tax equal to three percent (3%) of its gross receipts. The franchise tax was paid "in lieu of all taxes on this franchise or earnings thereof" pursuant to R.A. No. 7082 amending its charter, Act. No. 3436. The exemption from "all taxes on this franchise or earnings thereof" was subsequently withdrawn by R.A. No. 7160 (Local Government Code of 1991), which at the same time gave local government units the power to tax businesses enjoying a franchise on the basis of income received or earned by them within their territorial jurisdiction. The Local Government Code (LGC) took effect on January 1, 1992.

The pertinent provisions of the LGC state:

> 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. 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duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

Pursuant to these provisions, the City of Davao enacted Ordinance No. 519, Series of 1992, which in pertinent part provides:

> Notwithstanding any exemption granted by any law or other special law, there is hereby imposed a tax on businesses enjoying a franchise, at a rate of Seventy-five percent (75%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the income or receipts realized within the territorial jurisdiction of Davao City.

Subsequently, Congress granted in favor of Globe Mackay Cable and Radio Corp. (Globe)[2] and Smart Information Technologies, Inc. (Smart)[3] franchises which contained "in lieu of all taxes" provisos. In 1995, it enacted R.A. No. 7925 (Public Telecommunications Policy of the Philippines), § 23 of which provides that "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." The law took effect on March 16, 1995.

In January 1999, when PLDT applied for a mayor's permit to operate its Davao Metro Exchange, it was required to pay the local franchise tax for the first to the fourth quarter of 1999 which then had amounted to P3,681,985.72. PLDT challenged the power of the city government to collect the local franchise tax and demanded a refund of what it had paid as local franchise tax for the year 1997 and for the first to the third quarters of 1998. For this reason, it filed a petition in the Regional Trial Court of Davao. However, its petition was dismissed and its claim for exemption under R.A. No. 7925 was denied. The trial court ruled that the LGC had withdrawn tax exemptions previously enjoyed by persons and entities and authorized local government units to impose a tax on businesses enjoying franchises within their territorial jurisdictions, notwithstanding the grant of tax exemption to them. Petitioner, therefore, brought this appeal.

In its decision of August 22, 2001, this Court, through its Second Division, held that R.A. No. 7925, § 23 cannot be so interpreted as granting petitioner exemption from local taxes because the word "exemption," taking into consideration the context of the law, does not mean "tax exemption." Hence this motion for reconsideration.

The question is whether, by virtue of R.A. No. 7925, § 23, PLDT is again entitled to exemption from the payment of local franchise tax in view of the grant of tax exemption to Globe and Smart.

Petitioner contends that because their existing franchises contain "in lieu of all taxes" clauses, the same grant of tax exemption must be deemed to have become *ipso facto* part of its previously granted telecommunications franchise. But the rule is that tax exemptions should be granted only by clear and unequivocal provision of law "expressed in a language too plain to be mistaken."[4] If, as PLDT contends, the word "exemption" in R.A. No. 7925 means "tax exemption" and assuming for the nonce that the charters of Globe and of Smart grant tax exemptions, then this runabout way of granting tax exemption to PLDT is not a direct, "clear and unequivocal" way of communicating the legislative intent.

But the best refutation of PLDT's claim that R.A. No. 7925, § 23 grants tax exemption is the fact that after its enactment on March 16, 1995, Congress granted several franchises containing both an "equality clause" similar to § 23 and an "in lieu of all taxes" clause. If the equality clause automatically extends the tax exemption of franchises with "in lieu of all taxes" clauses, there would be no need in the same statute for the "in lieu of all taxes" clause in order to extend its tax exemption to other franchises not containing such clause. For example, the franchise of Island Country Telecommunications, Inc., granted under R.A. No. 7939 and which took effect on March 22, 1995, contains the following provisions:

> Sec. 8. *Equality Clause*. — If any subsequent franchise for telecommunications service is awarded or granted by the Congress of the Philippines with terms, privileges and conditions more favorable and beneficial than those contained in this Act, then the same privileges or advantages shall *ipso facto* accrue to the herein grantee and be deemed part of this Act.
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> Sec. 10. *Tax Provisions*. — The grantee shall be liable to pay the same taxes on their real estate, buildings and personal property exclusive of this franchise, as other persons or telecommunications entities are now or hereafter may be required by law to pay. In addition hereto, the grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts transacted under this franchise, and the said percentage shall be <u>in lieu of all taxes on this franchise or earnings thereof</u>; *Provided*, That the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code. The grantee shall file the return with and pay the taxes due thereon to the Commissioner of Internal Revenue or his duly authorized representatives in accordance with the National Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Emphasis added)

Similar provisions ("in lieu of all taxes" and equality clauses) are also found in the franchises of Cruz Telephone Company, Inc.,[5] Isla Cellular Communications, Inc., [6] and Islatel Corporation.[7]

We shall now turn to the other points raised in the motion for reconsideration of PLDT.

First. Petitioner contends that the legislative intent to promote the development of the telecommunications industry is evident in the use of words as "development," "growth," and "financial viability," and that the way to achieve this purpose is to grant tax exemption or exclusion to franchises belonging in this industry. Furthermore, by using the words "advantage," "favor," "privilege," "exemption," and "immunity" and the terms "ipso facto," "immediately," and "unconditionally," Congress intended to automatically extend whatever tax exemption or tax exclusion has been granted to the holder of a franchise enacted after the LGC to the holder of a franchise enacted prior thereto, such as PLDT.

The contention is untenable. The thrust of the law is to promote the gradual deregulation of entry, pricing, and operations of all public telecommunications entities and thus to level the playing field in the telecommunications industry. An intent to grant tax exemption cannot even be discerned from the law. 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 service.[8]

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.[9]

Second. PLDT says that the policy of the law is to promote healthy competition in the telecommunications industry.[10] According to PLDT, the LGC did not repeal the "in lieu of all taxes" provision in its franchise but only excluded from it local taxes, such as the local franchise tax. However, some franchises, like those of Globe and Smart, which contain "in lieu of all taxes" provisions were subsequently granted by Congress, with the result that the holders of franchises granted prior to January 1, 1992, when the LGC took effect, had to pay local franchise tax in view of the withdrawal of their local tax exemption. It is argued that it is this disparate situation which R.A. No. 7925, § 23 seeks to rectify.

One can speak of healthy competition only between equals. For this reason, the law seeks to break up monopoly in the telecommunications industry by gradually dismantling the barriers to entry and granting to new telecommunications entities protection against dominant carriers through equitable access charges and equal access clauses in interconnection agreements and through the strict policing of predatory pricing by dominant carriers.[11] Interconnection among carriers is made mandatory to prevent a dominant carrier from delaying the establishment of connection with a new entrant and to deter the former from imposing excessive access charges.[12]

That is also the reason there are franchises[13] granted by Congress after the effectivity of R.A. No. 7925 which do not contain the "in lieu of all taxes" clause, just as there are franchises, also granted after March 16, 1995, which contain such exemption from other taxes.[14] If, by virtue of § 23, the tax exemption granted under existing franchises or thereafter granted is deemed applicable to previously granted franchises (*i.e.*, franchises granted before the effectivity of R.A. No. 7925 on

March 16, 1995), then those franchises granted after March 16, 1995, which do not contain the "in lieu of all taxes" clause, are not entitled to tax exemption. The "in lieu of all taxes" provision in the franchises of Globe and Smart, which are relatively new entrants in the telecommunications industry, cannot thus be deemed applicable to PLDT, which had virtual monopoly in the telephone service in the country for a long time,[15] without defeating the very policy of leveling the playing field of which PLDT speaks.

Third. Petitioner argues that the rule of strict construction of tax exemptions does not apply to this case because the "in lieu of all taxes" provision in its franchise is more a tax exclusion than a tax exemption. Rather, the applicable rule should be that tax laws are to be construed most strongly against the government and in favor of the taxpayer.

This is contrary to the uniform course of decisions[16] of this Court which consider "in lieu of all taxes" provisions as granting tax exemptions. As such, it is a privilege to which the rule that tax exemptions must be interpreted strictly against the taxpayer and in favor of the taxing authority applies. Along with the police power and eminent domain, taxation is one of the three necessary attributes of sovereignty. Consequently, statutes in derogation of sovereignty, such as those containing exemption from taxation, should be strictly construed in favor of the state. A state cannot be stripped of this most essential power by doubtful words and of this highest attribute of sovereignty by ambiguous language.[17]

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.[18] 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.[19] 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.

Petitioner cites *Cagayan Electric Power & Light Co., Inc. v. Commissioner of Internal Revenue*[20] in support of its argument that a "tax exemption" is restored by a subsequent law re-enacting the "tax exemption." It contends that by virtue of R.A. No. 7925, its tax exemption or exclusion was restored by the grant of tax exemptions to Globe and Smart. *Cagayan Electric Power & Light Co., Inc.*, however, is not in point. For there, the re-enactment of the exemption was made in an amendment to the charter of Cagayan Electric Power and Light Co.

Indeed, petitioner's justification for its claim of tax exemption rests on a strained interpretation of R.A. No. 7925, § 23. For petitioner's claim for exemption is not based on an amendment to its charter but on a circuitous reasoning involving inquiry into the grant of tax exemption to other telecommunications companies and the lack of such grant to others,[21] when Congress could more clearly and directly have granted tax exemption to all franchise holders or amend the charter of PLDT to