

## THIRD DIVISION

[ G.R. No. 127708, March 25, 1999 ]

**CITY GOVERNMENT OF SAN PABLO, LAGUNA, CITY TREASURER OF SAN PABLO, LAGUNA, AND THE SANGGUNIANG PANGLUNSOD OF SAN PABLO, LAGUNA, PETITIONERS, VS. HONORABLE BIENVENIDO V. REYES, IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 29, SAN PABLO CITY AND THE MANILA ELECTRIC COMPANY, RESPONDENTS.**

### DECISION

**GONZAGA-REYES, J.:**

This is a petition under Rule 45 of the Rules of Court to review on a pure question of law the decision of the Regional Trial Court (RTC) of San Pablo City, Branch 29 in Civil Case No. SP-4459(96), entitled "Manila Electric Company vs. City of San Pablo, Laguna, City Treasurer of San Pablo Laguna, and the Sangguniang Panglunsod of San Pablo City, Laguna." The RTC declared the imposition of franchise tax under Section 2.09 Article D of Ordinance No. 56 otherwise known as the Revenue Code of the City of San Pablo as ineffective and void insofar as the respondent MERALCO is concerned for being violative of Act No. 3648, Republic Act No. 2340 and PD 551. The RTC also granted MERALCO'S claim for refund of franchise taxes paid under protest.

The following antecedent facts are undisputed:

Act No. 3648 granted the Escudero Electric Services Company, a legislative franchise to maintain and operate an electric light and power system in the City of San Pablo and nearby municipalities Section 10 of Act No. 3648 provides:

"x x x In consideration of the franchise and rights hereby granted, the grantee shall pay unto the municipal treasury of each municipality in which it is supplying electric current to the public under this franchise, a tax equal to two percentum of the gross earnings from electric current sold or supplied under this franchise in each said municipality. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or insular, now or in the future, on its poles, wires, insulators, switches, transformers, and structures, installations, conductors, and accessories place in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits from which taxes the grantee is hereby expressly exempted."

Escudero's franchise was transferred to the plaintiff (herein respondent) MERALCO under Republic Act No. 2340.

Presidential Decree No. 551 was enacted on September 11, 1974. Section 1 thereof provides the following:

"Section 1. Any provision of law or local ordinance to the contrary notwithstanding, the franchise tax payable by all grantees of franchise to generate, distribute and sell electric current for light, heat and power shall be two percent (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."

Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" (hereinafter referred to as the LGC) took effect on January 1, 1992. The said Code authorizes the province/city to impose a tax on business 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 realized within its jurisdiction.

On October 5, 1992, the Sangguniang Panglunsod of San Pablo City enacted Ordinance No. 56, otherwise known as the Revenue Code of the City of San Pablo. The said Ordinance took effect on October 30, 1992:<sup>[1]</sup>

Section 2.09 Article D of said Ordinance provides:

"Sec. 2.09. Franchise Tax - There is hereby imposed a tax on business enjoying a franchise, at a rate of fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within the city."

Pursuant to the above-quoted Section 2.09, the petitioner City Treasurer sent to private respondent a letter demanding payment of the aforesaid franchise tax. From 1994 to 1996, private respondent paid "under protest" a total amount of P1,857,711.67.<sup>[2]</sup>

The private respondent subsequently filed this action before the Regional Trial Court to declare Ordinance No. 56 null and void insofar as it imposes the franchise tax upon private respondent MERALCO<sup>[3]</sup> and to claim for a refund of the taxes paid.

The Court ruled in favor of MERALCO and upheld its argument that the LGC did not expressly or impliedly repeal the tax exemption/incentive enjoyed by it under its charter. The dispositive portion of the decision reads:

"WHEREFORE, the imposition of a franchise tax under Sec. 2.09 Article D of Ordinance No. 56 otherwise known as the Revenue Code of the City of San Pablo, is declared ineffective and null and void insofar as the plaintiff MERALCO is concerned for being violative of Republic Act No. 2340, PD 551, and Republic Act No. 7160 and the defendants are ordered to refund to the plaintiff the amount of ONE MILLION EIGHT HUNDRED FIFTY SEVEN THOUSAND SEVEN HUNDRED ELEVEN & 67/100 (P1,857,711.67) and such other amounts as may have been paid by the plaintiff under said Revenue Ordinance No. 56 after the filing of the complaint.<sup>[4]</sup>

SO ORDERED."

Its motion for reconsideration having been denied by the trial court<sup>[5]</sup> the petitioners filed the instant petition with this Court raising pure questions of law based on the following grounds:

- I. RESPONDENT JUDGE GRAVELY ERRED IN HOLDING THAT ACT NO. 3648, REPUBLIC ACT NO. 2340 AND PRESIDENTIAL DECREE NO. 551 AS AMENDED, INsofar AS THEY GRANT TAX INCENTIVES, PRIVILEGES AND IMMUNITIES TO PRIVATE RESPONDENT, HAVE NOT BEEN REPEALED BY REPUBLIC ACT NO. 7160.
- II. RESPONDENT JUDGE GRAVELY ERRED IN RULING THAT SECTION 193 OF REPUBLIC ACT NO. 7160 HAS NOT WITHDRAWN THE TAX INCENTIVES, PRIVILEGES AND IMMUNITIES BEING ENJOYED BY THE PRIVATE RESPONDENT UNDER ACT NO. 3648, REPUBLIC ACT NO. 2340 AND PRESIDENTIAL DECREE NO. 551, AS AMENDED.
- III. RESPONDENT JUDGE GRAVELY ERRED IN HOLDING THAT THE FRANCHISE TAX IN QUESTION CONSTITUTES AN IMPAIRMENT OF THE CONTRACT BETWEEN THE GOVERNMENT AND THE PRIVATE RESPONDENT.

Petitioners' position is the RA 7160 (LGC) expressly repealed Act No. 3648, Republic Act No. 2340 and Presidential Decree 551 and that pursuant to the provisions of Sections 137 and 193 of the LGC, the province or city now has the power to impose a franchise tax on a business enjoying a franchise. Petitioners rely on the ruling in the case of *Mactan Cebu International Airport Authority vs. Marcos*<sup>[6]</sup> where the Supreme Court held that the exemption from real property tax granted to Mactan Cebu International Airport Authority under its charter has been withdrawn upon the effectivity of the LGC.

In addition, the petitioners cite in their Memorandum dated December 8, 1997 an administrative interpretation made by the Bureau of Local Government Finance of the Department of Finance in its 3<sup>rd</sup> indorsement dated February 15, 1994 to the effect that the earlier ruling of the Department of Finance that holders of franchise which contain the phrase "in lieu of all taxes" proviso are exempt from the payment of any kind of tax is no longer applicable upon the effectivity of the LGC in view of the withdrawal of tax exemption privileges as provided in Sections 193 and 234 thereof.

We resolve to reverse the court a quo.

The pivotal issue is whether the City of San Pablo may impose a local franchise tax pursuant to the LGC upon the Manila Electric Company which pays a tax equal to two percent of its gross receipts in lieu of all taxes and assessments of whatever nature imposed by any national or local authority on savings or income.

It is necessary to reproduce the pertinent provisions of the LGC.

Section 137 - *Franchise Tax* - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on business 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 receipts, or realized, within its territorial jurisdiction. xxx"

Section 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.

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.

Section 534 (f) - *Repealing Clause* - All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this code are hereby repealed or modified accordingly.

Section 534 (f), the repealing clause of the LGC, provides that all general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations or parts thereof which are inconsistent with any of the provisions of the Code are hereby repealed or modified accordingly.

This clause partakes of the nature of a general repealing clause.<sup>[7]</sup> It is certainly not an express repealing clause because it fails to designate the specific act or acts identified by number or title, that are intended to be repealed.<sup>[8]</sup>

Was there an implied repeal by Republic Act No. 7160 of the MERALCO franchise insofar as the latter impose a 2% tax "in lieu of all taxes and assessments of whatever nature"?