

## THIRD DIVISION

[ G.R. No. 155491, September 16, 2008 ]

**SMART COMMUNICATIONS, INC., PETITIONER, VS. THE CITY OF DAVAO, REPRESENTED HEREIN BY ITS MAYOR HON. RODRIGO R. DUTERTE, AND THE SANGGUNIAN PANLUNGSOD OF DAVAO CITY, RESPONDENTS.**

### DECISION

**NACHURA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Smart Communications, Inc. (Smart) against the City of Davao, represented by its Mayor, Hon. Rodrigo R. Duterte, and the Sangguniang Panlungsod of Davao City, to annul the Decision<sup>[1]</sup> dated July 19, 2002 of the Regional Trial Court (RTC) and its Order<sup>[2]</sup> dated September 26, 2002 in Sp. Civil Case No. 28,976-2002.

#### *The Facts*

On February 18, 2002, Smart filed a special civil action for declaratory relief<sup>[3]</sup> under Rule 63 of the Rules of Court, for the ascertainment of its rights and obligations under the Tax Code of the City of Davao,<sup>[4]</sup> particularly Section 1, Article 10 thereof, the pertinent portion of which reads:

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.

Smart contends that its telecenter in Davao City is exempt from payment of franchise tax to the City, on the following grounds: (a) the issuance of its franchise under Republic Act (R.A.) No. 7294<sup>[5]</sup> subsequent to R.A. No. 7160 shows the clear legislative intent to exempt it from the provisions of R.A. 7160;<sup>[6]</sup> (b) Section 137 of R.A. No. 7160 can only apply to exemptions already existing at the time of its effectivity and not to future exemptions; (c) the power of the City of Davao to impose a franchise tax is subject to statutory limitations such as the "*in lieu of all taxes*" clause found in Section 9 of R.A. No.

7294; and (d) the imposition of franchise tax by the City of Davao would amount to a violation of the constitutional provision against impairment of contracts.<sup>[7]</sup>

On March 2, 2002, respondents filed their Answer<sup>[8]</sup> in which they contested the tax exemption claimed by Smart. They invoked the power granted by the Constitution to local government units to create their own sources of revenue.<sup>[9]</sup>

On May 17, 2002, a pre-trial conference was held. Inasmuch as only legal issues were involved in the case, the RTC issued an order requiring the parties to submit their respective memoranda and, thereafter, the case would be deemed submitted for resolution.<sup>[10]</sup>

On July 19, 2002, the RTC rendered its Decision<sup>[11]</sup> denying the petition. The trial court noted that the ambiguity of the "*in lieu of all taxes*" provision in R.A. No. 7294, on whether it covers both national and local taxes, must be resolved against the taxpayer.<sup>[12]</sup> The RTC ratiocinated that tax exemptions are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority and, thus, those who assert a tax exemption must justify it with words too plain to be mistaken and too categorical not to be misinterpreted.<sup>[13]</sup> On the issue of violation of the non-impairment clause of the Constitution, the trial court cited *Mactan Cebu International Airport Authority v. Marcos*,<sup>[14]</sup> and declared that the city's power to tax is based not merely on a valid delegation of legislative power but on the direct authority granted to it by the fundamental law. It added that while such power may be subject to restrictions or conditions imposed by Congress, any such legislated limitation must be consistent with the basic policy of local autonomy.<sup>[15]</sup>

Smart filed a motion for reconsideration which was denied by the trial court in an Order<sup>[16]</sup> dated September 26, 2002.

Thus, the instant case.

Smart assigns the following errors:

[a.] THE LOWER COURT ERRED IN NOT HOLDING THAT UNDER PETITIONER'S FRANCHISE (REPUBLIC ACT NO. 7294), WHICH CONTAINS THE "IN LIEU OF ALL TAXES" CLAUSE, AND WHICH IS A SPECIAL LAW ENACTED SUBSEQUENT TO THE LOCAL GOVERNMENT CODE, NO FRANCHISE TAX MAY BE IMPOSED ON PETITIONER BY RESPONDENT CITY.

[b.] THE LOWER COURT ERRED IN HOLDING THAT PETITIONER'S FRANCHISE IS A GENERAL LAW AND DID NOT REPEAL RELEVANT PROVISIONS REGARDING FRANCHISE TAX OF THE LOCAL

GOVERNMENT CODE, WHICH ACCORDING TO THE COURT IS A SPECIAL LAW.

[c.] THE LOWER COURT ERRED IN NOT HOLDING THAT SECTION 137 OF THE LOCAL GOVERNMENT CODE, WHICH, IN RELATION TO SECTION 151 THEREOF, ALLOWS RESPONDENT CITY TO IMPOSE THE FRANCHISE TAX, AND SECTION 193 OF THE CODE, WHICH PROVIDES FOR WITHDRAWAL OF TAX EXEMPTION PRIVILEGES, ARE NOT APPLICABLE TO THIS CASE.

[d.] THE LOWER COURT ERRED IN NOT HOLDING THAT SECTIONS 137 AND 193 OF THE LOCAL GOVERNMENT CODE REFER ONLY TO EXEMPTIONS ALREADY EXISTING AT THE TIME OF ITS ENACTMENT BUT NOT TO FUTURE EXEMPTIONS.

[e.] THE LOWER COURT ERRED IN APPLYING THE RULE OF STATUTORY CONSTRUCTION THAT TAX EXEMPTIONS ARE CONSTRUED STRICTLY AGAINST THE TAXPAYER.

[f.] THE LOWER COURT ERRED IN NOT HOLDING THAT PETITIONER'S FRANCHISE (REPUBLIC ACT NO. 7294) HAS BEEN AMENDED AND EXPANDED BY SECTION 23 OF REPUBLIC ACT NO. 7925, "THE PUBLIC TELECOMMUNICATIONS POLICY ACT," TAKING INTO ACCOUNT THE FRANCHISE OF GLOBE TELECOM, INC. (GLOBE) (REPUBLIC ACT NO. 7229), WHICH ARE SPECIAL PROVISIONS AND WERE ENACTED SUBSEQUENT TO THE LOCAL GOVERNMENT CODE, THEREBY PROVIDING AN ADDITIONAL GROUND WHY NO FRANCHISE TAX MAY BE IMPOSED ON PETITIONER BY RESPONDENT CITY.

[g.] THE LOWER COURT ERRED IN DISREGARDING THE RULING OF THE DEPARTMENT OF FINANCE, THROUGH ITS BUREAU OF LOCAL GOVERNMENT FINANCE, THAT PETITIONER IS EXEMPT FROM THE PAYMENT OF THE FRANCHISE TAX IMPOSABLE BY LOCAL GOVERNMENT UNITS UNDER THE LOCAL GOVERNMENT CODE.

[h.] THE LOWER COURT ERRED IN NOT HOLDING THAT THE IMPOSITION OF THE LOCAL FRANCHISE TAX ON PETITIONER WOULD VIOLATE THE CONSTITUTIONAL PROHIBITION AGAINST IMPAIRMENT OF CONTRACTS.

[i.] THE LOWER COURT ERRED IN DENYING THE PETITION BELOW.

[17]

In sum, the pivotal issue in this case is whether Smart is liable to pay the franchise tax imposed by the City of Davao.

### ***The Ruling of the Court***

We rule in the affirmative.

#### *I. Prospective Effect of R.A. No. 7160*

On March 27, 1992, Smart's legislative franchise (R.A. No. 7294) took effect. Section 9 thereof, quoted hereunder, is at the heart of the present controversy:

Section 9. *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 which are now or 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 business 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.*** *Provided,* That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Emphasis supplied.)

Smart alleges that the "in lieu of all taxes" clause in Section 9 of its franchise exempts it from all taxes, both local and national, except the national franchise tax (now VAT), income tax, and real property tax.<sup>[18]</sup>

On January 1, 1992, two months ahead of Smart's franchise, the Local Government Code (R.A. No. 7160) took effect. Section 137, in relation to Section 151 of R.A. No. 7160, allowed the imposition of franchise tax by the local government units; while Section 193 thereof provided for the withdrawal of tax exemption privileges granted prior to the issuance of R.A. No. 7160 except for those expressly mentioned therein, *viz.:*

**Section 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 the 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.**

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein.

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 RA No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code. (Emphasis supplied.)

Smart argues that it is not covered by Section 137, in relation to Section 151 of R.A. No. 7160, because its franchise was granted after the effectivity of the said law. We agree with Smart's contention on this matter. The withdrawal of tax exemptions or incentives provided in R.A. No. 7160 can only affect those franchises granted prior to the effectivity of the law. The intention of the legislature to remove all tax exemptions or incentives granted prior to the said law is evident in the language of Section 193 of R.A. No. 7160. No interpretation is necessary.

## *II. The "in lieu of all taxes" Clause in R.A. No. 7294*

The "in lieu of all taxes" clause in Smart's franchise is put in issue before the Court. In order to ascertain its meaning, consistent with fundamentals of statutory construction, all the words in the statute must be considered. The grant of tax exemption by R.A. No. 7294 is not to be interpreted from a consideration of a single portion or of isolated words or clauses, but from a general view of the act as a whole. Every part of the statute must be construed with reference to the context.<sup>[19]</sup>

Smart is of the view that the only taxes it may be made to bear under its franchise are the

national franchise tax (now VAT), income tax, and real property tax.<sup>[20]</sup> It claims exemption from the local franchise tax because the "in lieu of taxes" clause in its franchise does not distinguish between national and local taxes.<sup>[21]</sup>

We pay heed that R.A. No. 7294 is not definite in granting exemption to Smart from local taxation. Section 9 of R.A. No. 7294 imposes on Smart a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under the franchise and the said percentage shall be in lieu of all taxes on the franchise or earnings thereof. R.A. No. 7294 does not expressly provide what kind of taxes Smart is exempted from. It is not clear whether the "in lieu of all taxes" provision in the franchise of Smart would include exemption from local or national taxation. What is clear is that Smart shall pay franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under its franchise. But whether the franchise tax exemption would include exemption from exactions by both the local and the national government is not unequivocal.

The uncertainty in the "in lieu of all taxes" clause in R.A. No. 7294 on whether Smart is exempted from both local and national franchise tax must be construed strictly against Smart which claims the exemption. Smart has the burden of proving that, aside from the imposed 3% franchise tax, Congress intended it to be exempt from all kinds of franchise taxes - whether local or national. However, Smart failed in this regard.

Tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority.<sup>[22]</sup> They can only be given force when the grant is clear and categorical.<sup>[23]</sup> The surrender of the power to tax, when claimed, must be clearly shown by a language that will admit of no reasonable construction consistent with the reservation of the power. If the intention of the legislature is open to doubt, then the intention of the legislature must be resolved in favor of the State.<sup>[24]</sup>

In this case, the doubt must be resolved in favor of the City of Davao. The "in lieu of all taxes" clause applies only to national internal revenue taxes and not to local taxes. As appropriately pointed out in the separate opinion of Justice Antonio T. Carpio in a similar case<sup>[25]</sup> involving a demand for exemption from local franchise taxes:

[T]he "in lieu of all taxes" clause in Smart's franchise refers only to taxes, other than income tax, imposed under the National Internal Revenue Code. The "in lieu of all taxes" clause does not apply to local taxes. The proviso in the first paragraph of Section 9 of Smart's franchise states that the grantee shall "continue to be liable for income taxes payable under Title II of the National Internal Revenue Code." Also, the second paragraph of Section 9 speaks of tax returns filed and taxes paid to the "Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code." Moreover, the same paragraph declares that the tax returns "shall be subject to audit by the Bureau of Internal Revenue." Nothing is mentioned in Section 9 about local taxes. The clear intent is for the "in lieu of all taxes"

clause to apply only to taxes under the National Internal Revenue Code and not to local taxes. Even with respect to national internal revenue taxes, the "in lieu of all taxes" clause does not apply to income tax.

If Congress intended the "in lieu of all taxes" clause in Smart's franchise to also apply to local taxes, Congress would have expressly mentioned the exemption from municipal and provincial taxes. Congress could have used the language in Section 9(b) of Clavecilla's old franchise, as follows:

x x x in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, *omunicipal, provincial* or national, from which the grantee is hereby expressly exempted, x x x. (Emphasis supplied).

However, Congress did not expressly exempt Smart from local taxes. Congress used the "in lieu of all taxes" clause only in reference to national internal revenue taxes. The only interpretation, under the rule on strict construction of tax exemptions, is that the "in lieu of all taxes" clause in Smart's franchise refers only to national and not to local taxes.

It should be noted that the "in lieu of all taxes" clause in R.A. No. 7294 has become *functus officio* with the abolition of the franchise tax on telecommunications companies.<sup>[26]</sup> As admitted by Smart in its pleadings, it is no longer paying the 3% franchise tax mandated in its franchise. Currently, Smart along with other telecommunications companies pays the uniform 10% value-added tax.<sup>[27]</sup>

The VAT on sale of services of telephone franchise grantees is equivalent to 10% of gross receipts derived from the sale or exchange of services.<sup>[28]</sup> R.A. No. 7716, as amended by the *Expanded Value Added Tax Law* (R.A. No. 8241), the pertinent portion of which is hereunder quoted, amended Section 9 of R.A. No. 7294:

**SEC. 102. Value-added tax on sale of services and use or lease of properties.**  
**-- (a) Rate and base of tax. -- There shall be levied assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.**

**The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts;**

proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air, and water relative to their transport of goods or cargoes; **services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code**; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances) including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. x x x.<sup>[29]</sup>

R.A. No. 7716, specifically Section 20 thereof, expressly repealed the provisions of all special laws relative to the rate of franchise taxes. It also repealed, amended, or modified all other laws, orders, issuances, rules and regulations, or parts thereof which are inconsistent with it.<sup>[30]</sup> In effect, the "in lieu of all taxes" clause in R.A. No. 7294 was rendered ineffective by the advent of the VAT Law.<sup>[31]</sup>

However, the franchise tax that the City of Davao may impose must comply with Sections 137 and 151 of R.A. No. 7160. Thus, the local franchise tax that may be imposed by the City must not exceed 50% of 1% of the gross annual receipts for the preceding calendar year based on the income on receipts realized within the territorial jurisdiction of Davao.

### *III. Opinion of the Bureau of Local Government Finance (BLGF)*

In support of its argument that the "in lieu of all taxes" clause is to be construed as an exemption from local franchise taxes, Smart submits the opinion of the Department of Finance, through the BLGF, dated August 13, 1998 and February 24, 1998, regarding the franchises of Smart and Globe, respectively.<sup>[32]</sup> Smart presents the same arguments as the Philippine Long Distance Telephone Company in the previous cases already decided by this Court.<sup>[33]</sup> As previously held by the Court, the findings of the BLGF are not conclusive on the courts:

[T]he BLGF opined that §23 of R.A. No. 7925 amended the franchise of petitioner and in effect restored its exemptions from local taxes. Petitioner contends that courts should not set aside conclusions reached by the BLGF because its function is precisely the study of local tax problems and it has necessarily developed an expertise on the subject.

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.

Petitioner likewise argues that the BLGF enjoys the presumption of regularity in the performance of its duty. It does enjoy this presumption, but this has nothing to do with the question in this case. This case does not concern the regularity of performance of the BLGF in the exercise of its duties, but the correctness of its interpretation of a provision of law.<sup>[34]</sup>

#### *IV. Tax Exclusion/Tax Exemption*

Smart gives another perspective of the "in lieu of all taxes" clause in Section 9 of R.A. No. 7294 in order to avoid the payment of local franchise tax. It says that, viewed from another angle, the "in lieu of all taxes" clause partakes of the nature of a tax exclusion and not a tax exemption. A tax exemption means that the taxpayer does not pay any tax at all. Smart pays VAT, income tax, and real property tax. Thus, what it enjoys is more accurately a tax exclusion.<sup>[35]</sup>

However, as previously held by the Court, both in their nature and effect, there is no essential difference between a tax exemption and a tax exclusion. An exemption is an immunity or a privilege; it is the freedom from a charge or burden to which others are subjected. An 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. An exclusion is, thus, also an immunity or privilege which frees a taxpayer from a charge to which others are subjected. Consequently, the rule that a tax exemption should be applied in *strictissimi juris* against the taxpayer and liberally in favor of the government applies equally to tax exclusions.<sup>[36]</sup>

#### *V. Section 23 of R.A. No. 7925*

To further its claim, Smart invokes Section 23 of the Public Telecommunications Policy Act (R.A. No. 7925):

**SECTION 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 franchise 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 service authorized by the franchise. (Emphasis supplied.)

In sum, Smart wants us to interpret anew Section 23 of R.A. No. 7925, in connection with the franchise of Globe (R.A. No. 7227),<sup>[37]</sup> which was enacted on March 19, 1992.

Allegedly, by virtue of Section 23 of R.A. No. 7925, otherwise known as the "most favored treatment clause" or the "equality clause," the provision in the franchise of Globe exempting it from local taxes is automatically incorporated in the franchise of Smart.<sup>[38]</sup> Smart posits that, since the franchise of Globe contains a provision exempting it from municipal or local franchise tax, this provision should also benefit Smart by virtue of Section 23 of R.A. No. 7925. The provision in Globe's franchise invoked by Smart reads:

(b) The grantee shall further pay to the Treasurer of the Philippines each year after the audit and approval of the accounts as prescribed in this Act, one and one-half per centum of all gross receipts from business transacted under this franchise by the said grantee in the Philippines, **in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which the grantee is hereby expressly exempted**, effective from the date of the approval of Republic Act Numbered Sixteen hundred eighteen.<sup>[39]</sup>

We find no reason to disturb the previous pronouncements of this Court regarding the interpretation of Section 23 of R.A. No. 7925. As aptly explained in the *en banc* decision of this Court in *Philippine Long Distance Telephone Company, Inc. v. City of Davao*,<sup>[40]</sup> and recently in *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan*,<sup>[41]</sup> Congress, in approving Section 23 of R.A. No. 7925, did not intend it to operate as a blanket tax exemption to all telecommunications entities.<sup>[42]</sup> The language of Section 23 of R.A. No. 7925 and the proceedings of both Houses of Congress are bereft of anything that would signify the grant of tax exemptions to all telecommunications entities, including those whose exemptions had been withdrawn by R.A. No. 7160.<sup>[43]</sup> The term "*exemption*" in Section 23 of R.A. No. 7925 does not mean tax exemption. The term refers to exemption from certain regulations and requirements imposed by the National Telecommunications Commission.<sup>[44]</sup>

Furthermore, in the franchise of Globe (R.A. No. 7229), the legislature incontrovertibly stated that it will be liable for one and one-half per centum of all gross receipts from business transacted under the franchise, in lieu of any and all taxes of any kind, nature, or description levied, established, or collected by any authority whatsoever, municipal, provincial, or national, from which the grantee is hereby expressly exempted.<sup>[45]</sup> The grant of exemption from municipal, provincial, or national is clear and categorical - that aside from the franchise tax collected by virtue of R.A. No. 7229, no other franchise tax may be collected from Globe regardless of who the taxing power is. No such provision is found in

the franchise of Smart; the kind of tax from which it is exempted is not clearly specified.

As previously explained by the Court, the stance of Smart would lead to absurd consequences.

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 (1½%) 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 §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.<sup>[46]</sup>

#### *VI. Non-impairment Clause of the Constitution*

Another argument of Smart is that the imposition of the local franchise tax by the City of Davao would violate the constitutional prohibition against impairment of contracts. The franchise, according to petitioner, is in the nature of a contract between the government and Smart.<sup>[47]</sup>

However, we find that there is no violation of Article III, Section 10 of the 1987 Philippine Constitution. As previously discussed, the franchise of Smart does not expressly provide for exemption from local taxes. Absent the express provision on such exemption under the franchise, we are constrained to rule against it. The "in lieu of all taxes" clause in Section 9 of R.A. No. 7294 leaves much room for interpretation. Due to this ambiguity in the law, the doubt must be resolved against the grant of tax exemption.

Moreover, Smart's franchise was granted with the express condition that it is subject to amendment, alteration, or repeal.<sup>[48]</sup> As held in *Tolentino v. Secretary of Finance*:<sup>[49]</sup>

It is enough to say that the parties to a contract cannot, through the exercise of prophetic discernment, fetter the exercise of the taxing power of the State. For not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a basic postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a

government which retains adequate authority to secure the peace and good order of society.

In truth, the Contract Clause has never been thought as a limitation on the exercise of the State's power of taxation save only where a tax exemption has been granted for a valid consideration. x x x.

**WHEREFORE**, the instant petition is **DENIED** for lack of merit. Costs against petitioner.

**SO ORDERED.**

*Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.*

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[1] Penned by Judge Renato A. Fuentes; *rollo*, pp. 101-108.

[2] *Id.* at 121-123.

[3] Records, pp. 2-11.

[4] City Ordinance No. 519, series of 1992, amending Ordinance No. 230, series of 1991, otherwise known as the Tax Code of the City of Davao.

[5] An act granting Smart Information Technologies, Inc. (Smart) a franchise to establish, install, maintain, lease and operate integrated telecommunications/computer/electronic services, and stations throughout the Philippines for public domestic and international telecommunications, and for other purposes.

[6] Smart's franchise lapsed into law on March 27, 1992 without the President's signature in accordance with Article VI, Section 27(1) of the Constitution.

[7] Records, pp. 7-8.

[8] *Id.* at 21-26.

[9] CONSTITUTION, Art. X, Sec. 5.

[10] Records, p. 62.

[11] *Supra* note 1.

[12] Id. at 104.

[13] Id. at 106.

[14] G.R. No. 120082, September 11, 1996, 261 SCRA 667.

[15] *Rollo*, p. 107.

[16] Id. at 121-123.

[17] Id. at 24-26.

[18] Id. at 258.

[19] *Aquino v. Quezon City*, G.R. No. 137534, August 3, 2006, 497 SCRA 497, 507.

[20] *Rollo*, p. 258.

[21] Id.

[22] *Commissioner of Internal Revenue v. Visayan Electric Company*, 132 Phil. 203, 215 (1968).

[23] *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corporation*, G.R. Nos. 83583-84, September 30, 1991, 202 SCRA 137.

[24] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, 415 Phil. 764, 775 (2001).

[25] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, 447 Phil. 571, 594 (2003).

[26] Id. at 593.

[27] *Rollo*, p. 269.

[28] Section 108, National Internal Revenue Code, as amended by the Tax Reform Act of 1997 (R.A. No. 8424).

[29] Now Section 108, R.A. No. 8424, as amended. (Emphasis supplied.)

[30] SECTION 20. Repealing Clauses. -- The provisions of any special law relative to the rate of franchise taxes are hereby expressly repealed. Sections 113, 114 and 116 of the National Internal Revenue Code are hereby repealed.

Paragraphs (c), (d), and (e) of Article 39 of Executive Order No. 226, otherwise as the Omnibus Investment Code of 1987, are hereby repealed: Provided, however, That the benefits and incentives under said paragraphs shall continue to be enjoyed by enterprises registered with the Board of Investments before the effectivity of this Act.

Unless otherwise excluded by the President pursuant to Section 17 hereof, Sections 19 and 20 of the National Internal Revenue Code shall be repealed upon the expiration of two (2) years from the effectivity of this Act. During the period that the freight services rendered by international cargo vessels are not covered by the value-added tax imposed under this Act, said services shall pay a tax at a rate of three per centum (3%) of their quarterly gross receipts derived from outgoing cargoes.

All other laws, orders, issuances, rules and regulations of parts thereof inconsistent with this Act are hereby repealed, amended or modified accordingly.

[31] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, supra note 24.

[32] *Rollo*, pp. 303-309.

[33] *Philippine Long Distance Telephone Company, Inc. v. Province of Cebu*, G.R. No. 151208, October 16, 2006; *Philippine Long Distance Telephone Company, Inc. v. Province of Laguna*, G.R. No. 151899, August 16, 2005, 467 SCRA 93; *Philippine Long Distance Telephone Company, Inc. v. City of Bacolod*, G.R. No. 149179, July 15, 2005, 463 SCRA 528; *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, supra note 25; *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, supra note 24.

[34] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, supra note 24, at 779-780.

[35] *Rollo*, pp. 276-277.

[36] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, supra note 24, at 775.

[37] An Act approving the merger between Globe Mackay Cable and Radio Corporation and Clavecilla Radio System and the consequent transfer of the franchise of Clavecilla Radio System granted under Republic Act No. 402, as amended, to Globe Mackay Cable and Radio Corporation, extending the life of said franchise and repealing certain sections

of RA No. 402, as amended.

[38] *Rollo*, p. 256.

[39] Section 9 of R.A. No. 4540. (Emphasis supplied).

[40] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, supra note 24.

[41] G.R. No. 152534, February 23, 2007, 516 SCRA 541.

[42] *Id.*

[43] *Id.*

[44] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, supra note 25.

[45] Section 11 of R.A. No. 7229 provides: "All other provisions of Republic Act No. 402, as amended by Republic Act Nos. 1618 and 4540, and the provisions of Batas Pambansa Blg. 95 which are not inconsistent with the provisions of this Act and are still unrepealed shall continue to be in full force and effect."

In view of the above-mentioned provision, Section 3 of R.A. No. 4540, the pertinent portion of which is quoted herein, is incorporated into R.A. No. 7229: "(b) The grantee shall further pay to the Treasurer of the Philippines each year after the audit and approval of the accounts as prescribed in this Act, one and one-half per centum of all gross receipts from business transacted under this franchise by the said grantee in the Philippines, in lieu of any and all taxes of any kind, nature or description levied, established or collected by an authority whatsoever, municipal, provincial or national, from which the grantee is hereby expressly exempted, effective from the date of the approval of Republic Act Numbered Sixteen hundred eighteen."

[46] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, supra note 24, at 776.

[47] *Rollo*, pp. 310-313.

[48] CONSTITUTION, Art. XII, Sec. 11.

[49] G. R. No. 115455, August 25, 1994, 235 SCRA 630, 685.

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