524 Phil. 483

FIRST DIVISION

[G.R. NO. 165827, June 16, 2006]

NATIONAL POWER CORPORATION, PETITIONER, VS. PROVINCE OF ISABELA, REPRESENTED BY HON. BENJAMIN G. DY, PROVINCIAL GOVERNOR, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) dated October 21, 2004 affirming the decision of the Regional Trial Court (RTC) of Ilagan, Isabela, Branch 17, which ordered petitioner National Power Corporation (NPC) to immediately deposit in escrow with the Land Bank of the Philippines the franchise tax due.

The antecedents are as follows:

Respondent Province of Isabela filed an action for sum of money against petitioner NPC, a government-owned and controlled corporation engaged in the generation and sale of electric power.

Respondent alleged in the complaint that petitioner's Magat River Hydro-Electric Plant is located within its territory and that, for this reason, it imposed a franchise tax on petitioner pursuant to Section 137[2] of Republic Act No. 7160 (Local Government Code of 1991). It averred that petitioner paid the franchise tax for the years 1992 and 1993 in the amount of P9,473,275.00 but failed and refused to pay, despite demands, the franchise tax for the year 1994 in the amount of P7,116,949.00. Respondent likewise sought the payment of legal interest amounting to P854,033.88 plus damages.[3]

In its Answer, petitioner averred that the Magat River Hydro-Electric Plant is constructed on the land owned by the National Irrigation Administration, which is situated at Susoc, Sto. Domingo, Potia, Ifugao. It admitted that it paid franchise tax to the respondent for the years 1992 and 1993, but that it did so only upon respondent's representation that the Magat Hydro-Electric Plant is located within its territorial jurisdiction. It alleged that, due to the boundary dispute between the respondent and the Province of Ifugao, it is in a quandary as to whom it should pay the franchise tax. Petitioner averred that the lower court had no jurisdiction over the subject matter of the action by virtue of Presidential Decree No. 242 prescribing the procedure for the administrative settlement or adjudication of

disputes, claims, and controversies between or among government offices, agencies and instrumentalities, including government-owned and controlled corporations. Moreover, respondent did not exhaust administrative remedies by first settling its boundary dispute with the Province of Ifugao. The controversy on the payment of franchise tax could be settled in an action for interpleader, which petitioner intended to file against respondent and the Province of Ifugao.[4]

With leave of court, the Province of Ifugao filed a Complaint-in-Intervention, later amended, against both petitioner and respondent, claiming that the Magat Hydro-Electric Power Plant from which petitioner derives its income subject to franchise tax is situated within its territory. All the principal structures of the power plant are within its jurisdiction; only those incidental structures which have nothing to do with the production of hydroelectric power are located within the respondent's territory. It alleged that it is the one actually maintaining the power plant, as it maintains the watershed that ensures the continuous flow of water to plant's reservoir. It averred that, through misrepresentation, respondent succeeded in claiming and receiving payment of franchise tax from the petitioner for the years 1992 and 1993. The intervenor also claimed that it is not precluded from asserting its lawful claim despite the undue payment of the franchise tax to the respondent. It maintained that respondent has no legal basis to assert a claim over the franchise tax over the power plant.[5] It prayed that judgment be rendered-

1. Ordering the National Power Corporation to pay unto intervenor the sum of P7,116,949.00 representing the franchise tax for 1994 and all franchise tax accruing thereafter;
2. Ordering the Province of Isabela to pay unto intervenor the aggregate amount of P9,473,275.00 representing the franchise tax for the years 1992 and 1993 plus legal interest;
3. Ordering defendants to pay jointly and severally attorney's fee and litigation expenses.

Other reliefs just and equitable under the premises.[6]

In answer to the amended complaint-in-intervention, respondent asserted that the Magat Hydro-Electric Power Plant is located within its territory. It averred that the power plant is an expansion of the Magat River Irrigation System, constructed in 1957 and located in Ramon, Isabela, and the Siffu River Irrigation System, located along the boundaries of San Mateo and Ramon, Isabela. All communications received and sent during the construction of the power plant were addressed to the respondent and not the intervenor. If the power plant is located within the intervenor's territorial boundary, it should have laid its claim over it during its construction in 1974. Petitioner and the intervenor are guilty of laches and estoppel because they have known way back in 1976 that the location of the power plant is within respondent's territory. In fact, this has been well publicized all throughout the Philippines.[7]

Petitioner, for its part, asserts in its answer to the complaint-in-intervention that it is a non-

profit corporation pursuant to Section 13 of Rep. Act No. 6395 (its charter); as such, it is not covered by the Local Government Code, and therefore not obliged to pay franchise tax. The imposition of the franchise tax on appellant would run counter to Section 13 of its charter.[8]

In a Decision dated July 30, 1997, the RTC ruled in favor of respondent and the intervenor, thus:

> WHEREFORE, for and in consideration of all the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendant: declaring the defendant National Power Corporation liable for payment of Franchise Tax and ordering said defendant, to immediately deposit, in escrow, in favor of the plaintiffs, with the Land Bank of the Philippines, Ilagan Branch, the amount of P7,116,949.00, representing Franchise Tax for the year 1994, plus legal interest amounting to P854,033.00 for the same year 1994; and to pay the costs of this suit.
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> SO ORDERED.[9]

Petitioner then filed an appeal with the CA. On October 21, 2004, the CA rendered a decision affirming the RTC Decision. Citing the case of *National Power Corporation v. City of Cabanatuan,*[10] the CA ruled that the petitioner is not exempt from paying the franchise tax. It held that Section 193 of the Local Government Code withdrew the tax exemption provided under the petitioner's charter. Petitioner, however, contended that the court *a quo* had no basis in ordering it to pay franchise tax to respondent since the latter's territorial dispute with the intervenor has not yet been resolved; the RTC likewise had no jurisdiction because respondent failed to exhaust administrative remedies before filing the complaint. In answer to this argument, the appellate court pointed out that the court *a quo* did not order petitioner to pay the franchise tax specifically to respondent, but merely to deposit the amount in escrow pending final determination in the proper forum of which province is entitled thereto. Thus, the CA upheld the dismissal of the complaint-in-intervention as against respondent since the matter refers to a boundary dispute and the legal steps for its resolution should have been followed.[11]

Petitioner, through the Office of the Solicitor General, filed this petition for review with only the Province of Isabela as respondent. It ascribes the following error to the CA:

> THE COURT OF APPEALS ERRED IN HOLDING THAT THE NATIONAL POWER CORPORATION IS LIABLE FOR THE PAYMENT OF FRANCHISE TAX UNDER THE LOCAL GOVERNMENT CODE.[12]

Petitioner urges this Court to take a second look at its ruling in *National Power Corporation v. City of Cabanatuan,*[13] which held it liable for franchise tax by virtue of the LGC. It contends that Section 193 thereof did not withdraw the tax exemption provided

under Section 13 of its charter, Rep. Act No. 6395, which provides:

> Section 13. *Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities*. - The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared, exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.

Petitioner stresses that there was no provision in the LGC expressly repealing the said provision; neither was there an implied repeal thereof. It points out that repeals by implication are not favored. Moreover, a general law, such as the LGC, cannot repeal a special law, such as Rep. Act No. 6395, unless it clearly appears that the legislature intended to do so.[14] Petitioner argues that, in this case, there was clearly no intention to repeal; on the contrary, the intention to exempt it from local taxes is clearly manifest in said Section 13. This is bolstered by the Declaration of Policy which provides that "the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal, and the needs of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities of the government, including its financial institutions." In addition, petitioner cites the case of *Maceda v. Macaraig, Jr.*[15] to show the intent of lawmakers to exempt it from all forms of taxes. Petitioner further maintains that it is a government-owned and controlled corporation with an original charter and its shares of stock are owned by the National Government; as such, it is exempt from local taxes.[16]

In any case, petitioner argues that, assuming that Section 13 of its charter has been repealed by Section 193 of the LGC, it will still not be liable for franchise tax for the following reasons:

First. Section 137 of the LGC is not applicable to it, as the said provision empowers local government units to impose franchise tax only with respect to private individuals and corporations. Thus, Section 137 of the Code provides:

> 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 receipt, or realized, within its territorial jurisdiction.

Petitioner stresses that, under the LGC, "business" means a trade or commercial activity regularly engaged in as a means of livelihood or with a view to a profit.[17] On the other

hand, "franchise" means a right or privilege, affected with public interest which is conferred upon private persons or corporations, under such terms and conditions as the government and its political subdivisions may impose in the interest of public welfare, security and safety.[18] Petitioner thus asserts that it cannot be held liable to pay franchise tax because it is neither a private corporation nor a business created for profit.

Second. Petitioner contends that the authority of respondent to tax does not extend to it. Section 133 (o) of the LGC states that

> Section 133. *Common Limitations on the Taxing Powers of the Local Government Units*.- Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities and barangays shall not extend to the levy of the following:
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> x x x x
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> (o) Taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

Petitioner claims that it is an instrumentality of the National Government, which is beyond the authority of local government units to tax. It points out that it remits the profits derived from its operations to the National Government; Congress approves its yearly budget, which forms part of the General Appropriations Act; and all of its indebtedness, foreign or domestic, is guaranteed by the National Government.[19]

Finally, petitioner posits that to require it to pay franchise tax could have deleterious effects on its operations. It would compel petitioner to borrow from domestic and foreign financial institutions to meet both its operational expenses and the franchise tax. Ultimately, it is the national government that will pay the tax, and the burden shouldered by the Filipino people.

Respondent, for its part, maintains that petitioner has failed to overcome the presumption that it is taxable. It stresses that tax exemptions are highly disfavored and construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Petitioner, as the taxpayer, had the burden of proving that it is exempt from paying the franchise tax. Respondent avers that petitioner cannot find solace in the tax exemption privilege provided in its charter because this has already been withdrawn by the LGC. Contrary to petitioner's assertion, respondent contends that such tax exemption privilege has been expressly repealed by the LGC, and cites the *City Government of San Pablo, Laguna v. Reyes*[20] where the Court declared that the legislative purpose to withdraw tax privileges enjoyed under existing law is clearly manifested by the language used in Sections 137 and 193 which categorically withdrew such exemptions subject only to the exceptions enumerated.

Respondent avers that petitioner's status as a non-profit government corporation does not exempt it from liability to pay franchise tax to local government units. Petitioner, as a

corporation created to undertake ministrant or proprietary function, has long been treated in this jurisdiction as akin to a private commercial corporation. Its dealings are considered to be purely private and commercial undertakings although imbued with public interest.[21]

The fundamental issue to be resolved in this case is whether or not petitioner is subject to franchise tax under the LGC.

The petition has no merit. The case is on all fours with the case of *National Power Corporation v. City of Cabanatuan*,[22] where this very same issue was settled by the Court. In the *Cabanatuan* case, petitioner likewise refused to pay franchise tax to the City of Cabanatuan by invoking the tax exemption provided under its charter. It argued that Section 137 of the LGC does not apply to it because its stocks are wholly owned by the National Government, and its charter characterizes it as a "non-profit" organization. The Court, however, declared that petitioner is not exempt from paying franchise tax.

Indeed, taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[23] Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.[24] In this case, petitioner relies solely on the exemption granted to it by its charter, arguing that its exemption from franchise tax remained despite the enactment of the LGC.

The Court also addressed this issue in the *Cabanatuan* case where it held that the LGC has expressly withdrawn such exemption, thus:

> x x x [S]ection 193 of the LGC withdrew, subject to limited exceptions, the sweeping tax privileges previously enjoyed by private and public corporations. Contrary to the contention of petitioner, Section 193 of the LGC is an express, albeit general, repeal of all statutes granting tax exemptions from local taxes. It reads:
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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. (italics supplied)
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> It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. Not being a local water district, a cooperative registered under R.A. No. 6938, or a non-stock and non-

> profit hospital or educational institution, petitioner clearly does not belong to the exception. It is therefore incumbent upon the petitioner to point to some provisions of the LGC that expressly grant it exemption from local taxes.
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> But this would be an exercise in futility. Section 137 of the LGC clearly states that the LGUs can impose franchise tax *"notwithstanding any exemption granted by any law or other special law."* This particular provision of the LGC does not admit any exception. x x x[25]

Even prior to the *Cabanatuan* case, the Court already declared in *City Government of San Pablo, Laguna v. Reyes*[26] that the franchise tax may still be imposed despite any exemption enjoyed under special laws, explaining thus:

> x x x The legislative purpose to withdraw tax privileges enjoyed under existing law or charter is clearly manifested by the language used in Sections 137 and 193 categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would be not only tedious and impractical to attempt to enumerate all the existing statutes providing for an express, albeit general, withdrawal of such exemptions or privileges. No more unequivocal language could have been used.[27]

Nonetheless, petitioner seeks to avoid paying the franchise tax by arguing further that it is not liable therefor under Section 137 of the LGC because said tax applies only to a "business enjoying a franchise." It contends that it is not a private corporation or a business for profit. Again, we do not agree. The Court also declared in the *Cabanatuan* case that petitioner qualifies as a "business enjoying a franchise":

> In section 131 (m) of the LGC, Congress unmistakably defined a franchise in the sense of a secondary or special franchise. This is to avoid any confusion when the word franchise is used in the concept of taxation. As commonly used, a franchise tax is "a tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state." It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government. Hence, a corporation need not pay franchise tax from the time it ceased to do business and exercise its franchise. It is within this context that the phrase "tax on businesses enjoying a franchise" in Section 137 of the LGC should be interpreted and understood. Verily, to determine whether the petitioner is covered by the franchise tax in question, the following requisites should concur: (1) that petitioner has a "franchise" in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the respondent city government.
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> Petitioner fulfills the first requisite. Commonwealth Act No. 120, as amended by Rep. Act No. 6395, constitutes petitioner's primary and secondary franchises.

> It serves as the petitioner's charter, defining its composition, capitalization, the appointment and the specific duties of its corporate officers, and its corporate life span. As its secondary franchise, Commonwealth Act No. 120, as amended, vests the petitioner [with x x x certain] powers which are not available to ordinary corporations x x x
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> x x x x
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> Petitioner also fulfills the second requisite. It is operating within the respondent city government's territorial jurisdiction pursuant to the powers granted to it by Commonwealth Act No. 120, as amended. x x x[28]

Petitioner was likewise characterized therein as a *private enterprise for profit*, on the following ratiocination:

> Petitioner was created to "undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis. Pursuant to this mandate, petitioner generates power and sells electricity in bulk. Certainly, these activities do not partake of the sovereign functions of the government. They are purely private and commercial undertakings, albeit imbued with public interest. The public interest involved in its activities, however, does not distract from the true nature of the petitioner as a commercial enterprise, in the same league with similar public utilities like telephone and telegraph companies, railroad companies, water supply and irrigation companies, gas, coal or light companies, power plants, ice plant among others; all of which are declared by this Court as ministrant or proprietary functions of government aimed at advancing the general interest of society.[29]

Petitioner nevertheless contends that respondent cannot impose a franchise tax on it because it is an instrumentality of the National Government. It also cites the case of *Basco v. Philippine Amusements and Gaming Corporation*[30] which held that a government-owned and controlled corporation whose shares of stock are owned by the national government is exempt from local taxes.

This contention, however, is without merit. Although as a general rule, LGUs cannot impose taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, this rule admits of an exception, *i.e.,* when specific provisions of the LGC authorize the LGUs to impose taxes, fees or charges on the aforementioned entities.[31] Section 137 of the LGC is one of those exceptions. It authorizes the province 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 based on the incoming receipt, or realized, within its territorial jurisdiction.

Thus, the doctrine laid down in the *Basco* case is no longer true. In the *Cabanatuan* case,

the Court noted primarily that the *Basco* case was decided prior to the effectivity of the LGC, when no law empowering the local government units to tax instrumentalities of the National Government was in effect.[32] It further explained that in enacting the LGC, Congress empowered the LGUs to impose certain taxes even on instrumentalities of the National Government.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision of the Court of Appeals dated October 21, 2004, is **AFFIRMED**.

SO ORDERED.

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

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[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Godardo A. Jacinto and Jose C. Mendoza, concurring; *rollo*, pp. 44-54.

[2] 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 receipt, or realized, within its territorial jurisdiction.

[3] Records, p. 2.

[4] Id. at 13-15.

[5] Id. at 185.

[6] Id. at 185-186.

[7] Id. at 191-194.

[8] Id. at 199-200.

[9] *Rollo*, pp. 67-68.

[10] 449 Phil. 233, 256 (2003).

[11] *Rollo*, pp. 49-53.

[12] Id. at 20.

[13] Supra note 10, at 259.

[14] *Rollo*, pp. 24-25.

[15] G.R. No. 88291, June 8, 1993, 223 SCRA 217.

[16] *Rollo*, pp. 25-27.

[17] Section 131 (d), Rep. Act No. 7160.

[18] Section 131 (m), Rep. Act No. 7160.

[19] *Rollo*, pp. 28-35.

[20] 364 Phil. 842, 854 (1999).

[21] *Rollo*, pp. 85-86.

[22] Supra note 10.

[23] *Cyanamid Philippines, Inc. v. Court of Appeals,* 379 Phil. 689, 703 (2000).

[24] *Philippine Long Distance Telephone Company, Inc. v. City of Davao,* 447 Phil. 571, 585-586 (2003).

[25] *National Power Corporation v. City of Cabanatuan,* supra note 10, at 259-260.

[26] Supra note 20.

[27] Id. at 854.

[28] *National Power Corporation v. City of Cabanatuan,* supra note 10, at 252-255.

[29] Id. at 257.

[30] 274 Phil. 323, 339 (1991).

[31] *National Power Corporation v. City of Cabanatuan,* supra note 10, at 250.

[32] Id.
