Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

SMART COMMUNICATIONS, INC.,
Petitioner-Appellant,

- versus -

LOCAL BOARD OF ASSESSMENT APPEALS CBAA CASE NO. L-30
CITY OF DAGUPAN,
Appellee,

- and -

CITY ASSESSOR OF DAGUPAN,
Respondent-Appellee.
x - x

D E C I S I O N

Before this Board is the Appeal of Smart Communications, Inc., (SMART), Petitioner-Appellant against the dismissal by the Local Board of Assessment Appeals (LBAA) of the City of Daguapn, Appellee, of its Appeal thereto, for insufficiency of evidence.

Petitioner-Appellant assigned the following errors:

"I.

THE LOCAL BOARD OF ASSESSMENT APPEALS DID NOT TAKE INTO CONSIDERATION PETITIONER-APPELLANT'S EXEMPTION FROM REAL PROPERTY TAX.

"II.

THE LOCAL BOARD OF ASSESSMENTS ASSESSED VALUES FAR EXCEEDED THE FAIR MARKET VALUE OF PETITIONER-APPELLANT'S MACHINERY/EQUIPMENT"

This Board conducted an ocular inspection of Petitioner-Appellant's properties on October 17, 2002 and heard the case at the Conference Room of the National Museum, Dagupan City, on October 18, 2002. Present at the hearing were the Registrar of Deeds, Atty. Cecilia Munar, Chairman, LBAA, Dagupan City; City Prosecutor Pelagio B. Palma, Member, LBAA, Dagupan City; Dagupan City Assessor Jose M. Sanchez and Anthony Fernandez, External Relations Officer, Smart Communications, Inc.

Prosecutor Palma made manifest, among others, the discovery by City Assessor Sanchez, during the ocular inspection, of other improvements in said properties, put therein by Petitioner-Appellant, not included in the previous assessment. In response, Mr. Fernandez of Smart, acknowledged the discrepancies but that so much time has already transpired between the initial and the present inspections. Mr. Fernandez, however, manifested Smart's cooperation to put in order the actual inventory of equipment and improvements in the facility.

The possibility of a Compromise Agreement was then touched and discussed. The parties agreed to negotiate and asked for time to do so. This Board gave the parties up to December 30, 2002 within which to submit a Compromise Agreement, otherwise, as was also manifested by the parties, the case is deemed submitted for resolution.

Even as no Compromise Agreement was submitted as of December 30, 2002, this Board, having in mind and not wanting to preempt the Supreme Court's Alternative Dispute Resolution, encouraging the use of negotiation, arbitration and mediation as alternative modes of settling disputes, this Board gave it more time: the Compromise Agreement might yet be belatedly achieved. Having spent enough time, this Board can no longer wait, hence this Decision.

The record shows that assessments were made on the properties of Smart Communications Inc., located at Dagupan City and Tax Declarations Nos. 23-595-1, 23-598-1 and 231082, serving written Notices of Assessments that were received by Smart on April 8, 1998 and May 23, 1998 respectively. Smart by its Legal Counsel, Roy D. Ibay, thereby addressed a letter to the City Treasurer, Dagupan City, dated August 14, 2000 tendering payment on the assessment in the amount of P541,752.25, covering the period from 1998-2000, but manifested that said payment would be made under protest, consistent with Section 252 of the Local Government Code (LGC) and the words "paid under protest" were annotated in all receipts thereto.

On August 17, 2000, Smart paid the total amount of P541,752.25. Official Receipts Nos. 8126711 to 8126713 were issued thereon with the words “paid under protest”, clearly annotated in all of them. Without the City Treasurer of Dagupan City acting on its protest, Smart appealed before the Local Board of Assessment Appeals of the City of Dagupan. This was dated September 26, 2000.

Smart contended that it is exempt from payment of real property tax because of the passage of R.A. 7925 (the Telecommunications Act of the Philippines) on February 20, 1995, which came after the effectivity of the Local Government Code of 1991 and the grant of Smart’s franchise on March 27, 1992. Sec. 23 of R.A. 7925 provides:

> “Sec. 21. Equality to 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 the previously granted telecommunications franchises 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 authorize by the franchise.”

Smart interposed: “Under the so-called ipso facto provision, the holder of a franchise granted prior or after the effectivity of RA 7925 (such as SMART) can avail of any favorable provision ground in other franchises regardless of whether such franchises were granted prior to or after RA 7925.” The question therefore is: has realty tax exemption to franchises, the likes of SMART, hence SMART itself, been granted prior to or after the effectivity of RA 7925?

Smart’s reference was to GLOBE Telecoms (GLOBE) which acquired a franchise under RA 7229 on March 19, 1992. RA 7229 approved the merger of Globe Mackay Cable and Radio Corp. (GMRC) and Clavecilla Radio Systems (CRS). According to Smart: “RA 7229 extended the benefits acquired under the respective franchises of GMCR and CRS which includes the exemption from real property tax as confirmed by a Bureau of Local Government Finance

(BLGF) letter opinion dated 24 February 1998 issued by its Executive Director to GLOBE x x x to wit:

> "However all real properties not directly, actually and exclusively used in the telecommunication operations or services shall be subject to the real property taxes that provinces and cities levy under the pertinent provisions of the code."

Smart concluded: "there is no doubt that the x x x property tax exemptions favorable to GLOBE are deemed part of and should be read into the franchise of SMART." Evidently Smart adopted the letter opinion of BLGF to Globe and espoused it as final and conclusive. This was not so, as stipulated in the same letter opinion, to wit:

> "Moreover, the corporation shall also be liable to pay the Mayor's permit and other regulator fees or service charges that the local government concerned may have imposed under a duly-enacted ordinance, its exemption being applicable only to local franchise and business taxes.
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> "These views are expressed merely for guidance of that Office and should not be construed as bearing upon the legality or illegality of a duly-enacted local tax ordinance."

Sec. 9 of R.A. 7294, granting the franchise of Smart Communications, Inc., reads:

> "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 finding of the Local Board of Assessment Appeals of Dagupan City is as follows:

> "The assessment of appellant properties under Tax Declaration Nos. 23-595-1, 23-598-1 and 231082 was received by Smart Inc. on April 8, 1998 and on May 23, 1998, respectively. The tax declaration serve as the written notice of assessment. The appeal was filed on October 5, 2000, hence outside the reglementary period.
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> Section 30 of the Real Property Tax Code provides:

> 'Any owner who is not satisfied with the action of the provincial or city assessor in the assessment of his property may, within sixty (60) days from the date of receipt by him of the written notice of assessment as provided in this Code, appeal to the Board of Assessment Appeals of the province of city, by filing with it a petition under oath using the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.'
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> "Regarding the issue on exemption, the contention of the appellant that it is exempt from real property tax is without merit. The exemption is explicitly granted by law. While Republic Act No. 7925 grants favorable terms to telecommunications, it does not necessary (sic) mean that they are exempt from real property tax. Exemption from taxation is highly disfavored by law, and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute (sic). An exemption from the common burden cannot be permitted to exist upon vague implication, (Aseatic Petroleum Co. vs. Llamas, 49 Phil 466).
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> "The taxing power of the local government is recognized by the Constitution and by statute. The real property subject of this case were appraised at their current and fair market value and assessed on the basis of a uniform classification and on actual use of the property. Moreover, it was based on the Schedule of Value approve by the Department of Finance.
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> 'WHEREFORE, in view of the foregoing, the appeal interposed by appellant, Smart Communications Inc. is hereby dismissed for insufficiency of evidence."

Except for Prescription in the above-finding, Appellee Local Board has fully justified why Petitioner-Appellant, Smart Communications Inc., is not exempted from subject realty tax and why the assessed values thereof did not exceed the fair market value of said machinery and equipment.

While it is true that Smart's appeal might have prescribed under Sec. 30 of the Real Property Tax Code, as found by the Board below (supra), or even under Sec. 226 of the Local Government Code of 1991 (R.A. 7160), which proceeded and now prevails over Sec. 30 of the Real Property Tax Code, Smart made it clear that it was going to pay the realty tax under protest. So that, pursuant thereto, the words "paid under protest' were distinctly annotated in all official receipts issued therein.

Evidently, Smart filed its Appeal, not under Sec. 30 of the Real Property Tax Code, now Se. 226 of the Local Government Code of 1991, but under Sec.

252 of the same R.A. 7160. So that consistent thereto, Petitioner-Appellant was yet well within the period of Appeal as provide thus:

> "Sec. 262. Payment Under Protest. – (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial or city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
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> "(b) X x x.
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> "(c) X x x.
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> "(d) In the event that the protest is denied or upon the lapse of the sixty (60) day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in chapter 3, Title Two, Book II of this Code."

Similar, if not identical, is the case of THE CITY GOVERNMENT OF BATANGAS, represented by the Officer-in-Charge, City Treasurer's Office, Plaintiff-Appellant, versus REPUBLIC TELEPHONE COMPANY, INC., Defendant-Appellee, decided by the Court of Appeals in CA –G.R. CV No. 21897, promulgated on January 21, 1992. This case was elevated to the Court of Appeals by the City Government of Batangas against the Decision of the Regional Trial Court, Batangas City, Branch 2, in favour of Republic Telephone Company, Inc. (RETELCO). RETELCO is the owner of certain pieces of real property with permanent improvements thereon situated in Batangas City. The government of Batangas City sought to collect from Retelco real property tax on said property.

Retelco objected to the imposition and collection of said tax, alleging that it is not subject to the payment thereof because the subject property is being used by it in the operation of its franchise. Retelco is a company which is authorized to Republic Act No. 3662 to engage in the installation, operation and maintenance of telephone systems in the Philippines and circuits and stations for international and domestic communications. Retelco maintained that by express provision of the law, particularly Section 7 of R.A. No. 3662, it is exempted from paying real estate tax on its properties directly and primarily devoted to the pursuit of its franchise. Sec. 7, R.A. No. 3662 reads:

> "Sec. 7. The grantee, its successors or assigns, shall be liable to pay the same taxes on its real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition, the grantee, its successors or assigns, shall pay to the Treasurer of the Philippines each year, within ten (10) days after the audit and approval of the accounts as prescribed in Section six of this Act, two per centum of all gross receipts of the telephone or other electrical transmission business transacted under this franchise by the grantee, its successors or assigns, and the said percentage shall be in lieu of all other taxes."

Compare the above-Sec. 7, R.A. No. 3662 with Smart's Sec. 9, R.A. 7294 (supra), aren't they the same? And while Smart claims that its exemption is confirmed by the letter opinion of the BLGF, Retelco, on the other hand, relied on the interpretation given by the Office of the President in its Opinion No. 818, dated September 28, 1981, for its exemption.

The Court of Appeals found for the Plaintiff-Appellant, City Government of Batangas, as follows:

> "We find merit in the foregoing submissions of appellant.
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> "Section 7 of RETELCO'S FRANCHISE (RA 3662) is quite clear in imposing upon RETELCO the obligation t pay two (2) kinds of taxes, namely, the real property tax and the franchise tax. The imposition of the real property tax is provided in the first sentence of said Section 7 and the franchise tax in the second sentence thereof which starts with the words – 'In addition'. Section 7 does not speak of exemption of RETELCO from payment of the real estate tax. It does not state that the property of RETELCO directly used in the operation of its franchise is not subject to the payment of real estate tax. Legislative franchises are always construed strictly against the franchisees. (PLDT vs. NTC. 190.SCRA 717).
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> > "'The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or statute law. x x x when exemption is claimed, it must be shown indubitably to exist. Even presumption is against it. A well-founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported.' (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, citing several American cases).
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> "Reliance is placed by the trial court in the Opinion No. 1818 dated September 1981 of the Office of the President which states that the phrase 'exclusive of this franchise' found in Section 7 of RA 3662 'has been construed to mean as excluding real estate, buildings and personal property of the defendant RETELCO, Inc., directly used in the operation of its franchise, for which the latter is not subject to real estate tax as other persons or corporation are now or hereafter may be required by law to pay.' We disagree. While administrative bodies may make opinions on the provisions of law, their opinions are at most persuasive and should not be given effect when they are erroneous. Administrative interpretations of law are not conclusive upon the courts (People vs. Hernandez, 59 Phil. 272). Here, it is Our well considered view that the opinion of the Office of the President is erroneous because it would render useless and ineffective the clear import of Section 7 of RA 3662 which holds RETELCO liable to pay real estate tax on its 'real estate, building and personal property' without distinction whether or not such property is directly used in the operation of its franchise. It is a settled rule in statutory

construction that words used in a statute are there for some purpose and are not used needlessly. Corrolarily, there is the rule that it is that interpretation of a statute which will give effect to all of the words used therein, which is favoured against one which will render some of the words useless and ineffective.

"The trial court tried to buttress its reasoning based on the meaning of the term 'franchise' in that when applied to a corporation includes the corporate right to select and acquire property for the authorized purposes of the corporation. From this definition, according to the trail court, the real estate, buildings and personal property or RETELCO, Inc. are included in its franchise. Thus, it concludes that 'Since Section 7, x x x, provides for the taxation of all real estate, buildings and personal property owned and belonging to defendant RETELCO, Inc., which are excluded in its franchise, then, it follows that all real estate, buildings and personal property directly and primarily used and included in its franchise and now the subject of plaintiffs' complaint are exempted from taxation'.

"We find the x x x disquisition of the trial court to be erroneous and illogical. The court is wrong in saying that the real estate, buildings and personal property of RETELCO are included in its franchise. In jurisprudence, a franchise as a right and privilege is regarded as property, separate and distinct from the property which the corporation itself may acquire. As property, a franchise if of great value to the corporation and its members. (Fletcher's Cyclopedia of the Law of Private Corporation, Vol. 6A, pages 427-428, citing Horn Silver Min. C. vs. New York, 143 U.S. 305, 36 L. Ed. 164, 12 Sup. Ct. 403; City of Campbell v. Arkansas – Missouri Power Co., 55 F. (2d) 560). In this case, the franchise granted to RETELCO under RA 3662 is in itself a property, separate and distinct from its 'real estate, building and personal property'. Pursuant to the clear wordings of Section 7 of RA 3662, the properties of RETELCO subject to real property tax are its 'real estate, building and personal property'. A real property tax is not imposed on RETELCO'S franchise because of the phrase 'exclusive of this franchise'. Paraphrasing the first sentence of Section 7, RETELCO is liable to pay the real property taxes on its real estate, building and personal property, excluding its franchise. Accordingly for the purpose of computing the real property tax liability of RETELCO, what should be considered is the totality of the assessed value of its 'real estate, building and personal property', excluding the value of its franchise."

Having thus exposed the clarity and vividness of the Court of Appeal's dissertation on the herein RETELCO case, this Board could do no more than to transpose the same to the case at bar, which together with the finding of Appellee Local Board are constituted to arrive at this Board's conclusion, that its franchise, RA 7294, did not confer unto SMART the realty tax exemption that it seeks, hence, the ipso facto provision of RA 7925 does not apply and cannot be applied thereto.

The question of whether or not the assessed values of Petitioner-Appellant's machinery equipment far exceeded its fair market value is settled by Appellee Local Board's finding (supra) that said machinery and equipment "were apprised at their current and fair market value and assessed on the basis

of a uniform classification and on actual use of the property. X x x, it was based on the Schedule of Value approved by the Department of Finance."

In the case of Cagayan Robina Sugar Milling Co., v. Court of Appeals, G.R. No. 122451, promulgated on October 12, 2000, the Supreme Court, citing Commissioner of Internal Revenue, v. Antonion Tuason, Inc., 173 SCRA 397, 401 (1989), said; "Tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise."

In the instant case, Petitioner-Appellant proved nothing in its allegation that "the Assessments levied by the respondent-appellees City Assessor are over valued and exorbitant."

WHEREFORE, in view of the foregoing, the appealed Decision of the Local Board of Assessment Appeals of the City of Dagupan is hereby affirmed; the Appeal of Smart Communications Inc., is hereby dismissed for lack of merit.

SO ORDERED.

Manila, Philippines, October 20, 2003.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

VACANT
Member