

Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
M a n I l a

SMART COMMUNICATIONS, INC.,
Petitioner-Appellant,

- versus -

CBAA CASE NO. V-17
(LBAA CASE NO. 2001-1)

CITY ASSESSOR OF SAN CARLOS CITY,
Respondent-Appellee,

- and -

LOCAL BOARD OF ASSESSMENT
APPEALS OF SAN CARLOS CITY,
Appellee.

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DECISION

It appears from the records that Smart Communications, Inc. ("SMART", for brevity) sent a letter dated July 18, 2001 to the Treasurer of San Carlos City wherein SMART stated:

(a) it received the Real Property Tax Order of Payment Due (RPTOPD) as of June 21, 2001 for One Hundred Thirty-Eight Thousand Eight Hundred Sixty-Six & 82/100 Pesos (P138,866.82) on buildings and machineries of SMART located at Barangay Palampas, San Carlos City, Negros Occidental;

(b) that its payment for the same amount of P138,866.82 covering the years 1998-2000 per Official Receipt No. 0608540-41 dated July 13, 2001 was made under protest consistent with Section 252 of the Local Government Code and requested the Treasurer to annotate on the receipts the phrase "paid under protest";

(c) that it is exempt from payment of the real property tax because of the passage on February 20, 1995 of R.A. 7925, otherwise known as the Telecommunications Act of the Philippines, in relation to R.A. 7229 which approved the merger between Globe Mackay Cable and Radio Corporation and Clavecilla Radio Systems.

The Treasurer of San Carlos City, in a letter dated August 24, 2001, denied SMART's request for exemption from payment of the real property tax because the exemption supposed to have been enjoyed by Globe Telecoms was only from payment of the franchise and business taxes, excluding real property taxes.

Hence, SMART filed its appeal with the Local Board of Assessment Appeals for the City of San Carlos City on September 10, 2001, alleging that (1) "The Treasurer did not take into consideration appellant's exemption from real property tax" and (2) "The Treasurer/Assessor assessed values which far exceeded the fair market value of appellant's real property."

The Local Board, in its decision dated January 31, 2002, dismissed SMART's appeal for lack of merit.

Hence, SMART filed the instant appeal on February 20, 2002 alleging that it received a copy of the Local Board's decision on February 11, 2002. Petitioner-Appellant assigned the following errors:

1. The Local Board of Assessment Appeals did not take into consideration Petitioner-Appellant's exemption from real property tax; and
2. The Local Board of Assessment Appeals assessed values far exceeded the fair market value of Petitioner-Appellant's machinery/equipment.

On the first error or issue, Petitioner-Appellant argues that it is exempt from payment of the real property tax because of the passage of R.A. 7925, otherwise known as the Telecommunications Act of the Philippines, on February 20, 1995, in relation to R.A. 7229 approving the merger between Globe Mackay Cable and Radio Corporation (Globe) and Clavecilla Radio Systems (CRS), Section 23 of R.A. 7925 reads as follows:

"Sec. 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 franchises and shall be accorded immediately and unconditionally to the grantees of such franchises. Provided, however, That the foregoing shall neither apply or affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or type of service authorized by the franchise."

Republic Act 7229 (approving the merger between Globe and CRS) was passed on March 19, 1992. The franchise of CRS was granted under R.A. 402, as amended by R.A. Nos. 1608 and 4540. Section 5 of R.A. 4540 reads as follows:

“SEC. 5. Section twenty of the same Act is hereby amended to read as follows:

“Section 20. This franchise shall not be interpreted to mean an exclusive grant of the privileges herein provided for, however, in the event of any competing individual, partnership, or corporation receiving from the Congress of the Philippines more favorably than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become part of the terms hereof, and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.”

SMART claims that Globe enjoys exemption from the payment of the real property tax per opinion of the Executive Director of the Bureau of Local Government Finance (BLGF) contained in a letter dated February 24, 1998 addressed to Globe Telecom. The conclusion of said opinion reads as follows:

“Considering, therefore, that RA 7229 having been approved on March 19, 1992 is a later law, its provisions should prevail over those of the LGC which took effect on January 1, 1992.

“Accordingly, Globe should be considered exempt from the franchise and business taxes that local governments may impose under Sections 137 and 143, respectively, of the Code. However, all real properties of the corporation 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 argues that, since Globe is exempt from the real property tax, it follows that SMART must likewise be exempt from the same tax because the grant of exemption to Globe *ipso facto* extended the same privilege to SMART.

In *Philippine Long Distance Telephone Company vs. City of Davao, et al* (G.R. No. 143867 August 22, 2001), the Supreme Court said:

“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 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 Section 23 of R.A. 7925. There is, therefore, no basis for claiming expertise for the BLGF that administrative agencies are said to possess in their respective fields.”

The opinion of the BLGF did not expressly state that Globe was exempted from payment of the real property tax but, by saying that “all real properties of the corporation not directly, actually and exclusively used in the telecommunication

operations or services shall be subject to the real property taxes” it, nevertheless, seemed to convey that Globe was indeed exempt from payment of said tax.

The above-quoted pronouncement by the Supreme Court notwithstanding, we are at a loss as to the basis of BLGF’s opinion as far as it concerned the real property tax. We venture to say that the same opinion may have been based on the tax provision common to telecommunications franchises. SMART was granted a franchise under R.A. 7294 which lapsed into law on March 27, 1992, Section 9 of which reads as follows:

“Sec. 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. . .” (Underscoring Supplied.)

With due respect, the BLGF might have misconstrued the phrase “exclusive of this franchise” as to include real property as part of its franchise. We find this interpretation erroneous. 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 is 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. Co vs. New York, 143 U.S. 305 36 L. Ed. 164, 12 Sup. Ct.-403; City of Campbell vs. Arkansas – Missouri Power Co., 55F (2d) 560, as cited in the City Government of Batangas vs. Republic Telephone Company, Inc., CA-G.R. CV No. 21897, January 21, 1992.)

We hasten to add that a franchise as a right and privilege is not even a real property for purposes of the real property tax. The tax provision aforequoted (Sec. 9, R.A. 7294) states that “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.” This could only mean that the grantee shall be liable to pay taxes on all its personal properties, excluding the franchise itself.

The tax exemption must be expressed in the statute in clear language that leaves no doubt of the intention of the legislature to grant such exemption. And, even if it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. [(Commission of Internal Revenue v. Court of Appeals, 298 SCRA 83 (1988); Commissioner of Customs v. Philippine Acetylene Company, 39 SCRA 70 (1971); Commissioner of Internal Revenue v. Guerrero 21 SCRA 180 (1967)]

In *Asiatic Petroleum Co. vs. Llanes* [49 Phil. 466, 472 (1926), cited in PLDT vs. City of Davao, G.R. No. 143867), the Supreme Court held:

“. . . Exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right . . . As was said by the Supreme Court of Tennessee in *Memphis vs. U. & P. Bank* (91, Tenn. 546, 550), “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.” Other utterances equally or more emphatic come readily to hand from the highest authority. In *Ohio Life Ins. And Trust Co. vs. Debolt* (16 Howard, 416), it was said by Chief Justice Taney, that the right of taxation will not be held to have been surrendered, “unless the intention to surrender it is manifested by words too plain to be mistaken.” In the case of the *Delaware Railroad Tax* (18 Wallace, 206 226), the Supreme Court of the United States said that the surrender, when claimed, must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power. If a doubt arises as to the intent of the legislature, that doubt must be solved in favor of the State. In *Erie Railways Company vs. Commonwealth of Pennsylvania* (21 Wallace, 492, 499), Mr. Justice Hunt, speaking for exemptions, observed that a State cannot strip itself of the most essential power of taxation by doubtful words. “It cannot, by ambiguous language, be deprived of this highest attribute of sovereignty.” In *Tennessee vs. Whitworth* (117 U.S., 129, 136), it was said: “In all cases of this kind the question is as to the intent of the legislature, the presumption always being against any surrender of the taxing power.” In *Farrington vs. Tennessee and County of Shelby* (95 U.S., 679, 686), Mr. Justice Swayne said: “. . . When exemption is claimed, it must be shown indubitably to exist. At the outset, every 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.”

In *Philippine Long Distance Telephone Company, Inc. vs. City of Davao, et al* (G.R. No. 143867, August 22, 2001), the Supreme Court said:

“RA 7925 is thus a legislative enactment designed to set the national policy on telecommunications and provide the structures to implement it to keep up with the technological advances in the industry and the needs of the public. The thrust of the law is to promote gradually the deregulation of the entry, pricing, and operations of all public telecommunications entities and thus promote a level playing field in the telecommunications industry. There is nothing in the language of Section 23 of R.A. 7925 nor in the proceedings of both the House of Representatives and the Senate in enacting R.A. 7925 which shows that it contemplates the grant of tax exemptions to all telecommunications entities, including those whose exemptions had been withdrawn by the LGC.” (Underscoring Supplied.)

We believe, therefore, and so hold, that the subject real properties of petitioner-appellant Smart Communications, Inc. located in San Carlos City, Negros Occidental are liable to payment of the real property tax.

On the second issue, SMART offered neither evidence nor arguments to support its claim, except to restate the issue itself. If the appeal on this matter were not frivolous, it would have been smart of petitioner-appellant to present documents of acquisition, installation, etc. of the machineries involved to support its claim.

The market values adopted by the respondent-appellee Assessor for the properties in question were either equal to or lower than the values reported by SMART in its sworn statements for 1997 and 1998, thus:

1997 MARKET VALUES			
	SMART's	Assessor's	Difference
115-ft. Tower & Fixtures	P1,679,000.00	P1,679,000.00	P 0.00
Fuel Tank	23,000.00	23,000.00	0.00
Shelter Van	279,000.00	279,000.00	0.00
Sub-totals	P1,981,000.00	P1,981,000.00	P 0.00
Guardhouse & Gen. Set (15.90 sq.m. x. P6000.00)	-	95,400.00	(95,400.00)
Concrete Fence (2x65 1in.m. x P1,200.00)	-	79,300.00	(79,300.00)
Steel Gate (5x3.1 x P800.00/sq.m.)	-	12,400.00	(12,400.00)
Totals	P1,981,000.00	P2,168,100.00	P(187,100.00)

1998 MARKET VALUES			
	SMART's	Assessor's	Difference
115-ft. Tower & Fixtures	P2,000,000.00	P1,679,000.00	P321,000.00
Fuel Tank	46,000.00	23,000.00	23,000.00
Shelter Van	558,000.00	279,000.00	279,000.00
Sub-totals	P2,604,000.00	P1,981,000.00	P623,000.00
Guardhouse & Gen. Set (15.90 sq.m. x. P6000.00)	-	95,400.00	(95,400.00)
Concrete Fence (2x65 1in.m. x P1,200.00)	-	79,300.00	(79,300.00)
Steel Gate (5x3.1 x P800.00/sq.m.)	-	12,400.00	(12,400.00)
Totals	P2,604,000.00	P2,168,100.00	P 435,900.00

The records do not show that SMART included the Guardhouse, Generating Set, Concrete Fence and Steel Gate in its sworn statements. It is noted, however, that the appeal by SMART covers only machineries. The

records does show that the Assessor adopted the same market values for the years 1997, 1998, 1999 and 2000 (Local Board's decision, page 6).

We find therefore, no cogent reason to disturb the decision of the Local Board on this matter.

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit and the Order of the Local Board of Assessment Appeals of the City of San Carlos, Negros Occidental dated January 31, 2002 is hereby AFFIRMED.

SO ORDERED.

Manila, Philippines, June 28, 2002.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

VACANT
Member