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Concepcion C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Barredo, Villamor, and *Makasiar, JJ.*, concur.

Teehankee, J., reserved his vote.

Appeal dismissed.

[Nos. L-28739 & L-28902. March 29, 1972]

DAVAO LIGHT & POWER CO., INC., petitioner and appellant, *vs.* THE COMMISSIONER OF CUSTOMS and COURT OF TAX APPEALS, respondents and appellees.

1. TAXATION; TAX EXEMPTION; SECTION 17 OF ACT 3636; NPC NOT COMPETITOR TO PETITIONER'S BUSINESS; INSTANT CASE.– While petitioner, Davao Light and Power Co., Inc. is engaged in a business or profit making venture, the NPC on the other hand, was specifically created to undertake the development of hydraulic power and the production of power from other sources for use of the government and general public. As envisioned by the law creating it, the activity to be pursued by the NPC can hardly be motivated by profit or income and therefore does not fall under the term competitor to petitioner's business. As such, Section 17 of Act 3636 which provides that any favorable terms granted to any "competing individual, association of persons or corporation" shall *ipso facto* become part of a franchise earlier issued will not apply. Hence tax exemption benefits granted to the NPC cannot be invoked by petitioner.

2. ID.; ID.; ID.; ISOLATED SALE OF ELECTRIC POWER NOT ENOUGH TO CLASSIFY THE NPC AS COMPETING WITH PETITIONER'S ENTERPRISE.– The fact that the NPC supplied electric power to the National Development Company (NDC) plant in Davao does not justify the claim that the NPC is competitor to petitioner's business, because Section 10 of Commonwealth Act 120 (NPC charter) made it NPC's duty to supply power to NDC. Be that as it may, such an isolated case of

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sale of electric power to one government-owned plant would not be enough to classify the NPC as a competing concern to petitioner's enterprise, which must be assumed to be catering to the general public to which the NPC has no dealing.

3. ID.; ID.; SECTION 2 REPUBLIC ACT NO. 358 APPLIES ONLY TO NPC.— The provisions of Section 2 of Republic Act 358 granting tax exemption to the NPC, taken in the light of the existing legislation affecting the NPC, notably Republic Act No. 357, must be construed as intended to benefit only the NPC, the lawmakers expecting (as so unequivocally expressed in the law) that by relieving said corporation of tax obligations the NPC would be enabled to pay easily its indebtedness or whatever indebtedness it is certain to incur.

4. ID.; TAX EXEMPTION, NOT PRESUMED.— Petitioner cannot lay claim to the enjoyment of the tax exemption benefits given to NPC because said corporation happened to be operating a power plant in the same locality where petitioner has a franchise. The legal principle on the matter is firmly established and well-observed: exemption from taxation is never presumed; for it cannot be made to rest on vague implication. The possession by petitioner of a permit to operate an electric plant in Davao City does not entitle it to the same tax exemption privileges enjoyed by another operator without an express provision of the law to that effect.

PETITION for review by certiorari of a decision of the Court of Tax Appeals.

The facts are stated in the opinion of the Court.

Abelardo P. Cecilio for petitioner and appellant.

Solicitor General Antonio P. Barredo, Assistant Solicitor General Isidro G. Borromeo and *Solicitor Octavio R. Ramirez* for respondents and appellees.

REYES, J.B.L., *J.:*

These are appeals from the decision of the Court of Tax Appeals in CTA Cases Nos. 1337 and 1551, denying the

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claim of Davao Light & Power Co., Inc., for refund of the amount paid by said company as customs duties, special import taxes, compensating taxes and wharfage fees on the importations of electrical supplies and materials for installation and use at its power plant.

The Davao Light & Power Co., Inc., hereafter referred to as Davao Light, is the grantee of a legislative franchise to install, operate and maintain an electric light, heat and power plant in the city (then Municipality) of Davao, for a period of 50 years. On two different occasions in 1962, it imported electrical supplies, materials and equipment for installation in its power plant. The importations arrived in the port of Cebu City, on which the Collector of Customs imposed, and Davao Light paid under protest, customs duties and taxes in the total amount of P9,928.00. As the Collector of Customs later ruled unfavorably on the protests (Nos. 267, 268, 269 and 278) and denied its claim for refund of the taxes and duties paid on the imported articles, Davao Light appealed to the Commissioner of Customs. And when said official sustained the action of the Collector, Davao Light went to the Court of Tax Appeals, maintaining its claim to exemption from the taxes and duties imposable on the aforementioned importations.

In the Court of Tax Appeals, the parties entered into a stipulation of facts, the pertinent provisions of which read as follows:

> "6. — That the petitioner (Davao Light) is a grantee of a legislative franchise under Philippine Legislature Act No. 3760, * * * ;
>
> "7. — That the petitioner was granted by the Public Service Commission its Certificate of Public Convenience and Necessity in 1931 and by virtue of said franchise has established and has been maintaining and operating a power plant generating electric light, heat and power and distributing the same for sale within the municipality (now City) of Davao;

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"8.– That the National Power Corporation was created by virtue of Commonwealth Act. No. 120, and under Section 2, par. (g) it was empowered and granted authority:

'To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations and other works, for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof; to acquire, construct, install, maintain and operate and improve gas, oil or steam engines and/or other prime movers, generators and other machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate and maintain and administer power and lighting systems for the use of the Government and the general public; to sell electric power and to fix the rates and provide for the collection of the charges for any service rendered: Provided, that the rates of charges shall not be subject to revision by the Public Service Commission.'

"9. – That by virtue of this authority given the National Power Corporation, it established and constructed a power plant, power stations and transmission lines in Davao City, for the purpose of generating electric light, heat and power for the inhabitants of Davao City and its surrounding areas and that it is presently operating and maintaining said power plant, power station and transmission lines and selling electric power, heat and light in the City of Davao;

"10. – That Section 17 of (pre-Commonwealth) Act No. 3636 (Standard Electric Power & Light Franchises Law) provides:

'In the event of any competing individual, association of persons or corporation receiving either a franchise or permission from the Government of the Philippine Islands, or from any province, city or municipality thereof, to conduct a similar business in all or any substantial portion of the territory covered by this franchise to that of the

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> grantee, in which franchise or permission there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual association of persons or corporations.'
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> * * * * * *
>
> "12. – That under Section 2 of Republic Act No. 358, as amended by Republic Act No. 937, it is provided that 'to facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, except real property tax, and from all duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities and municipalities.' "

It was therein petitioner's contention that pursuant to Section 17 of Act 3636, the provision of Republic Act 987 granting tax exemption privileges to the National Power Corporation *ipso facto* became part of its franchise; hence, its claim to exemption from taxes and customs duties on the importations in question.

In its decision of 15 December 1967, the Court of Tax Appeals affirmed the ruling of the Customs Commissioner, the Court holding that the tax exemption privileges granted to the National Power Corporation were intended to benefit only said government corporation and did not extend to other bodies or entities. Davao Light thus brought the present petition for review in this Court, raising the same issue of the correctness of the imposition of taxes and customs duties on its importations of electrical supplies and materials for use in its electric plant.

Petitioner in this instance reiterates the contention that its legislative franchise to construct, maintain and operate an electric light, heat, and power system (granted by Act 3760) was specifically made subject to Act 3636, which Act, in its Section 17, provides that any favorable terms granted to any

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"competing individual, association of persons or corporation" shall *ipso facto* become part of a franchise earlier issued. As the National Power Corporation (NPC) is actually operating a power plant, power stations and transmission lines in Davao City and selling electric power, heat and light in said locality, and said corporation is enjoying exemption from all taxes, duties, fees, imposts and charges collectible by the government, it is argued that such tax exemption benefits *ipso facto* became part of its franchise and are now available to petitioner.

There is no merit in petitioner's contention. Firstly, the aforecited provision of Section 17 of Act 3636 makes mention of franchise or permit issued to "competing" individuals, associations or corporations. In short, by express provision of law favorable terms contained in a subsequent franchise issued to an individual, association, etc. shall automatically be considered incorporated in the franchise or permit earlier issued to another individual, association, etc. engaged in the same business. The idea is to place both competing groups or entities on equal footing and not to give one an advantage over the other. This principle of fair play, which is the basic idea behind the provision, does not find operation in the present case.

It is undeniable that petitioner's purpose in securing a franchise to establish and operate an electric plant and power stations was to engage in a business or profit-making venture. The NPC, on the other hand, was specifically created to undertake the development of hydraulic power throughout the country and the production of power from other sources, for use of the government and the general public.[1] As envisioned by the law creating it, the activity to be pursued by the NPC can hardly be motivated by profit or income.

In operating and maintaining a power plant, power stations and transmission lines in Davao City, as duly authorized in its charter, the NPC can not be considered as posing

[1] Section 1, Commonwealth Act 120.

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competition to petitioner's business. In fact, there is evidence on record that the NPC does not sell electric power directly to the general public; instead, it did sell power to petitioner *for resale* to the latter's customers.[2] In other words, the NPC is even the source of petitioner's merchandise; it is aiding petitioner in its business operations, not competing with it.

Nor would the fact that the NPC supplies electric power to the National Development Company (NDC) plant in Davao justify the claim that the NPC is a competitor to petitioner's business, because Section 10 of Commonwealth Act 120 (NPC charter) made it NPC's duty to supply power to the NDC.

> "Sec. 10. At any time that the Board certifies that the Corporation is able to furnish electric power for lighting and other purposes to any office, shop, or establishment operated and/or owned or controlled by the National Government or by any city, province, municipality or other political subdivision of the Commonwealth of the Philippines, the National Government and the government of said city, province, municipality or other political subdivision shall be compelled to secure from the Corporation as soon as practicable such electric power as it may need for lighting and the operation of its offices, shops or establishment or for any work undertaken by it.
>
> The provisions of this section shall also apply to firms or business owned or controlled by the National Government or by the government of any city, province, municipality or other political subdivision."

Be that as it may, such an isolated case of sale of electric power to one government-owned plant would not be enough to classify the NPC as a "competing" concern to petitioner's

[2] Page 135, CTA Record.

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enterprise, which must be assumed to be catering to the general public to which the NPC has no dealing.

Secondly, petitioner can not rely on the provisions of Republic Act 358, as amended by Republic Act 987 [3], to support its claim for tax exemption.

Section 1 of Republic Act 358, approved on 4 June 1949, amended Section 2 (k) of Commonwealth Act 120, which authorized the NPC to "contract indebtedness and issue bonds subject to the approval of the President of the Philippines, upon recommendation of the Secretary of Finance", in an amount not to exceed one hundred seventy million five hundred pesos. Then in its Section 2, the same law provided:

> "SEC. 2. *To facilitate payment of its indebtedness,* the National Power Corporation shall be exempt from all taxes, duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities, and municipalities." (Italics supplied)

On the same day, 4 June 1949, Republic Act 357 was approved, authorizing the President of the Philippines to negotiate and contract loans from time to time from the International Bank for Reconstruction and Development, on behalf of the NPC, and *to guarantee, absolutely and unconditionally, as primary obligor* and not merely as surety, *the payment* of loans therefore contracted.[4] The provisions of Section 2 of Republic Act 358 granting tax exemptions to the NPC, taken in the light of the existing legislation affecting the NPC, notably Republic Act 357, must be construed as intended to benefit only the NPC, the lawmakers expecting (as so unequivocally expressed in the law) that by relieving said corporation of tax obligations, the NPC

[3] Section 2 of Republic Act 358 was amended so as to exclude from the exemption taxes due on real properties.

[4] Section 3, Republic Act 357.

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would be enabled to pay easily its indebtedness or whatever indebtedness it is certain to incur. In granting such tax exemption, the government actually waived its right to collect taxes from the NPC in order to facilitate the liquidation by said corporation of its liabilities, and the consequential release by the government itself from its obligation (as principal obligor) in the transactions entered into by the President on behalf of the NPC. Such condition, peculiar only to the NPC, cannot be said to exist in petitioner's case; hence, the absolute lack of basis for awarding of equal privileges (granted to the NPC) to said petitioner.

Similarly, petitioner can not lay claim to the enjoyment of the tax exemption benefits given to NPC because said corporation happened to be operating a power plant in the same locality where petitioner has a franchise. The legal principle on the matter is firmly established and well-observed: exemption from taxation is never presumed;[5] for tax exemption to be recognized, the grant must be clear and expressed; it cannot be made to rest on vague implications.[6] The possession by petitioner of a permit to operate an electric plant in Davao City does not entitle it to the same tax exemption privileges enjoyed by another operator without an express provision of the law to that effect.

For the foregoing considerations, the decision of the Court of Tax Appeals is hereby affirmed, with costs against the petitioner.

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[5] Resins, Inc. *vs.* Auditor General, L-17888, 29 Oct. 1968, 25 SCRA 754; Asturias Sugar Central, Inc. *vs.* Commissioner, L-19337, 30 Sept. 1969, 25 SCRA 617; Commissioner *vs.* Visayan Electric Co., L-22611, 27 May 1968, 23 SCRA 715; Commissioner of Internal Revenue *vs.* Guerrero, L-20812, 22 Sept. 1967, 21 SCRA 180, and cases cited herein; Esso Standard Eastern, Inc. *vs.* Acting Commissioner, L-21841, 28 Oct. 1966, 18 SCRA 488, and cases cited therein.

[6] Borja *vs.* Collector, L-12134, 30 November 1961, 3 SCRA 590.

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Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and *Makasiar JJ.*, concur.

Decision affirmed.

[No. L-29123. March 29, 1972]

SY CHNG, petitioner and appellee, *vs.* GAW LIU, respondent-registrant-appellant.

1. TRADEMARKS AND TRADENAMES; REGISTRATION OF TRADEMARK; PRESUMPTION OF VALIDITY; BURDEN OF PROVING INVALIDITY BY PARTY QUESTIONING; INSTANT CASE.— Where the rebuttable character of the validity of registration of the trademark registered in the name of respondent is put in issue, the evidentiary burden of proving invalidity rests upon the petitioner. From the facts as presented though, the conclusion reached is that the presumption had been rebutted, petitioner having shown "that at the time the respondent filed his application for registration and for years prior thereto, he was not the exclusive user of the trademark LION-TIGER. The burden of going forward is thus shifted to the respondent who must show that the subject matter of registration is, in fact, distinctive of his goods."

2. ID.; ID.; ID.; PERSON WITH BETTER RIGHT FOR REGISTRATION; INSTANT CASE.— Where petitioner has in his favor "the chain of circumstances" namely "his use of the trademark in commerce, and a systematic preservation of the records to support his claim of continuous use, such as the making of the design, the printing of the design on labels, the actual use on the goods, advertising in calendars, and other acts of dominion, such as the filing of the instant petition for cancellation," he has superior right over the trademark being registered than respondent who never presented proof required by law to invest him with exclusive, continuous adoption and use of the trademark which should consist in *inter alia*, considerable sale since his