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SECOND DIVISION

[G.R. No. 125948. December 29, 1998]

FIRST PHILIPPINE INDUSTRIAL CORPORATION, *petitioner, vs.* **COURT OF APPEALS, HONORABLE PATERNO V. TAC-AN, BATANGAS CITY and ADORACION C. ARELLANO, in her official capacity as City Treasurer of Batangas,** *respondents.*

SYNOPSIS

Petitioner is a grantee of a pipeline concession under Republic Act No. 387 to contract, install and operate oil pipelines. The original pipeline concession was granted in 1967 and renewed by the Energy Regulatory Board in 1992. Before the mayor's permit could be issued, the respondent City Treasurer required petitioner to pay a local tax based on its gross receipts for the fiscal year 1993 pursuant to the Local Government Code. In order not to hamper its operations, petitioner paid the tax under protest for the first quarter of 1993. The respondent City Treasurer denied the protest contending that petitioner cannot be considered engaged in transportation business, thus it cannot claim exemption under Sec 133 (j) of the Local Government Code. Petitioner filed with the Regional Trial Court of Batangas City a complaint for tax refund with prayer for writ of preliminary injunction against respondents City of Batangas and the City Treasurer. The trial court rendered a decision dismissing the complaint. Petitioner assailed the said decision before the Supreme Court. The Court referred the case to the respondent Court of Appeals (CA) for consideration and adjudication. The Court of Appeals affirmed the trial court's dismissal of the complaint and denied petitioner's motion for reconsideration. Hence, this petition.

The definition of "common carriers" in the Civil Code makes no distinction as to the means of transporting, as long as it is by land, water or air. Under the Petroleum Act of the Philippines (Republic Act 387), petitioner is considered a "common carrier." The Bureau of Internal Revenue likewise, considers the petitioner a "common carrier." There is no

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doubt that petitioner is a "common carrier" and therefore, exempt from the business tax as provided for in Section 133 (j) of the Local Government Code. The legislative intent in excluding from the taxing power of the local government unit the imposition of business tax against common carriers is to prevent a duplication of the so-called "common carrier's tax." The petition was granted.

SYLLABUS

1. CIVIL LAW; TRANSPORTATION; COMMON CARRIER, DEFINED; APPLICATION IN CASE AT BAR. — A "common carrier" may be defined, broadly, as one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally. Article 1732 of the Civil Code defines a "common carrier" as "any person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public." The test for determining whether a party is a common carrier of goods is: 1. He must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for person generally as a business and not as a casual occupation; 2. He must undertake to carry goods of the kind to which his business is confined; 3. He must undertake to carry by the method by which his business is conducted and over his established roads; and 4. The transportation must be for hire. Based on the above definitions and requirements, there is no doubt that petitioner is a common carrier. It is engaged in the business of transporting or carrying goods, *i.e.*, petroleum products, for hire as a public employment. It undertakes to carry for all persons indifferently, that is, to all persons who choose to employ its services, and transports the goods by land and for compensation. The fact that petitioner has a limited clientele does not exclude it from the definition of a common carrier. As correctly pointed out by petitioner, the definition of "common carrier" in the Civil Code makes no distinction as to the means of transporting, as long as it is by land, water or air. It does not provide that the transportation of the passengers or goods should be by motor vehicle. In fact,

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in the United States, oil pipe line operators are considered common carriers.

2. **TAXATION; WHEN COMMON CARRIER MAY BE EXEMPT FROM BUSINESS TAX; CASE AT BAR.** — Under the Petroleum Act of the Philippines (Republic Act 387), petitioner is considered a "common carrier." Thus, Article 86 thereof provides that: "Art. 86. Pipe line concessionaire as common carrier. — A pipe line shall have the preferential right to utilize installations for the transportation of petroleum owned by him, but is obligated to utilize the remaining transportation capacity pro rata for the transportation of such other petroleum as may be offered by others for transport, and to charge without discrimination such rates as may have been approved by the Secretary of Agriculture and Natural Resources." Republic Act 387 also regards petroleum operation as a public utility. Pertinent portion of Article 7 thereof provides: "that everything relating to the exploration for and exploitation of petroleum x x x and everything relating to the manufacturer, refining, storage, or *transportation by special methods of petroleum*, is hereby declared to be a public utility." The Bureau of Internal Revenue likewise considers the petitioner a "common carrier." In BIR Ruling No. 069-83, it declared: "x x x since [petitioner] is a pipeline concessionaire that is engaged only in transporting petroleum products, it is considered a common carrier under Republic Act No. 387 x x x. Such being the case, it is not subject to withholding tax prescribed by Revenue Regulations No. 13-78, as amended." From the foregoing disquisition, there is no doubt that petitioner is a "common carrier" and, therefore, exempt from the business tax as provided for in Section 133 (j), of the Local Government Code, to wit: "Section 133. *Common Limitations on the Taxing Powers of 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: x x x (j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code."

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APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres & Ibarra for petitioner.
Teodulfo A. Deguito for respondents.

D E C I S I O N

MARTINEZ, *J.*:

This petition for review on *certiorari* assails the Decision of the Court of Appeals dated November 29, 1995, in CA-G.R. SP No. 36801, affirming the decision of the Regional Trial Court of Batangas City, Branch 84, in Civil Case No. 4293, which dismissed petitioners' complaint for a business tax refund imposed by the City of Batangas.

Petitioner is a grantee of a pipeline concession under Republic Act No. 387, as amended, to contract, install and operate oil pipelines. The original pipeline concession was granted in 1967[1] and renewed by the Energy Regulatory Board in 1992.[2]

Sometime in January 1995, petitioner applied for a mayor's permit with the Office of the Mayor of Batangas City. However, before the mayor's permit could be issued, the respondent City Treasurer required petitioner to pay a local tax based on its gross receipts for the fiscal year 1993 pursuant to the Local Government Code.[3] The respondent City Treasurer assessed a business tax on the petitioner amounting to ₱956,076.04 payable in four installments based on the gross receipts for products

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[1] *Rollo*, pp. 90-94.

[2] Decision of the Energy Regulatory Board in ERB Case No. 92-94, renewing the Pipeline Concession of petitioner First Philippine Industrial Corporation, formerly known as Meralco Securities Industrial Corporation , (*Rollo*, pp. 95-100).

[3] Sec. 143. *Tax on Business*. The municipality may impose taxes on the following business:

x x x x x x x x x

(e) On contractors and other independent contractors, in accordance with the following schedule:

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pumped at GPS-1 for the fiscal year 1993 which amounted to ₱181,681,151.00. In order not to hamper its operations, petitioner paid the tax under protest in the amount of ₱239,019.01 for the first quarter of 1993.

On January 20, 1994, petitioner filed a letter-protest addressed to the respondent City Treasurer, the pertinent portion of which reads:

"Please note that our Company (FPIC) is a pipeline operator with a government concession granted under the Petroleum Act. It is engaged in the business of transporting petroleum products from the Batangas refineries, via pipeline, to Sucat and JTF Pandacan Terminals. As such, our Company is exempt from paying tax on gross receipts under Section 133 of the Local Government Code of 1991 x x x

"Moreover, Transportation contractors are not included in the enumeration of contractors under Section 131, paragraph (h) of the Local Government Code. Therefore, the authority to impose tax 'on contractors and other independent contractors' under Section 143, paragraph (e) of the Local Government Code does not include the power to levy on transportation contractors.

"The imposition and assessment cannot be categorized as a mere fee authorized under Section 147 of the Local Government Code. The said section limits the imposition of fees and charges on business to such amounts as may be commensurate to the cost of regulation, inspection, and licensing. Hence, assuming *arguendo* that FPIC is liable for the license fee, the imposition thereof based on gross receipts is violative of the aforecited provision. The amount of ₱956,076.04 (₱239,019.01 per quarter) is not commensurate to the cost of regulation, inspection and licensing. The fee is already a revenue raising measure, and not a mere regulatory imposition."[4]

With gross receipts for the preceding calendar year in the amount:	Amount of Tax Per Annum
x x x	x x x
₱2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one (1%)

[4] Letter Protest dated January 20, 1994, *Rollo*, pp. 110-111.

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On March 8, 1994, the respondent City Treasurer denied the protest contending that petitioner cannot be considered engaged in transportation business, thus it cannot claim exemption under Section 133 (j) of the Local Government Code.[5]

On June 15, 1994, petitioner filed with the Regional Trial Court of Batangas City a complaint[6] for tax refund with prayer for writ of preliminary injunction against respondents City of Batangas and Adoracion Arellano in her capacity as City Treasurer. In its complaint, petitioner alleged, *inter alia*, that: (1) the imposition and collection of the business tax on its gross receipts violates Section 133 of the Local Government Code; (2) the authority of cities to impose and collect a tax on the gross receipts of "contractors and independent contractors" under Secs. 141 (e) and 151 does not include the authority to collect such taxes on transportation contractors for, as defined under Sec. 131 (h), the term "contractors" excludes transportation contractors; and, (3) the City Treasurer illegally and erroneously imposed and collected the said tax, thus meriting the immediate refund of the tax paid.[7]

Traversing the complaint, the respondents argued that petitioner cannot be exempt from taxes under Section 133 (j) of the Local Government Code as said exemption applies only to "transportation contractors and persons engaged in the transportation by hire and common carriers by air, land and water." Respondents assert that pipelines are not included in the term "common carrier" which refers solely to ordinary carriers such as trucks, trains, ships and the like. Respondents further posit that the term "common carrier" under the said code pertains to the mode or manner by which a product is delivered to its destination.[8]

On October 3, 1994, the trial court rendered a decision dismissing the complaint, ruling in this wise:

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[5] Letter of respondent City Treasurer, *Rollo*, p. 112.

[6] Complaint, Annex "C", *Rollo*, pp. 51-56.

[7] *Rollo*, pp. 51-57.

[8] Answer, Annex "J", *Rollo*, pp. 122-127.

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"x x x Plaintiff is either a contractor or other independent contractor.

x x x the exemption to tax claimed by the plaintiff has become unclear. It is a rule that tax exemptions are to be strictly construed against the taxpayer, taxes being the lifeblood of the government. Exemption may therefore be granted only by clear and unequivocal provisions of law.

"Plaintiff claims that it is a grantee of a pipeline concession under Republic Act 387, (Exhibit A) whose concession was lately renewed by the Energy Regulatory Board (Exhibit B). Yet neither said law nor the deed of concession grant any tax exemption upon the plaintiff.

"Even the Local Government Code imposes a tax on franchise holders under Sec. 137 of the Local Tax Code. Such being the situation obtained in this case (exemption being unclear and equivocal) resort to distinctions or other considerations may be of help:

1. That the exemption granted under Sec. 133 (j) encompasses only *common carriers* so as not to overburden the riding public or commuters with taxes. *Plaintiff* is not a common carrier, but a special carrier extending its services and facilities to a single specific or "special customer" under a "special contract."

2. The Local Tax Code of 1992 was basically enacted to give more and effective local autonomy to local governments than the previous enactments, to make them economically and financially viable to serve the people and discharge their functions with a concomitant obligation to accept certain devolution of powers, x x x So, consistent with this policy even franchise grantees are taxed (Sec. 137) and contractors are also taxed under Secs. 143 (e) and 151 of the Code."[9]

Petitioner assailed the aforesaid decision before this Court *via* a petition for review. On February 27, 1995, we referred the case to the respondent Court of Appeals for consideration and adjudication.[10] On November 29, 1995, the respondent

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[9] RTC Decision, *Rollo*, pp. 58-62.

[10] *Rollo*, p. 84.

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court rendered a decision[11] affirming the trial court's dismissal of petitioner's complaint. Petitioner's motion for reconsideration was denied on July 18, 1996.[12]

Hence, this petition. At first, the petition was denied due course in a Resolution dated November 11, 1996.[13] Petitioner moved for a reconsideration which was granted by this Court in a Resolution[14] of January 22, 1997. Thus, the petition was reinstated.

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[11] CA-G.R. SP No. 36801; Penned by Justice Jose C. De la Rama and concurred in by Justice Jaime M. Lantin and Justice Eduardo G. Montenegro; *Rollo*, pp. 33-47.

[12] *Rollo*, p. 49.

[13] Resolution dated November 11, 1996 excerpts of which are hereunder quoted:

"The petition is unmeritorious.

"As correctly ruled by respondent appellate court, petitioner is not a common carrier as it is not offering its services to the public.

"Art. 1732 of the Civil Code defines Common Carriers as: persons, corporations, firms or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

"We sustain the view that petitioner is a special carrier. Based on the facts on hand, it appears that petitioner is not offering its services to the public.

"We agree with the findings of the appellate court that the claim for exemption from taxation must be strictly construed against the taxpayer. The present understanding of the concept of "common carriers" does not include carriers of petroleum using pipelines. It is highly unconventional to say that the business of transporting petroleum through pipelines involves "common carrier" business. The Local Government Code intended to give exemptions from local taxation to common carriers transporting goods and passengers through moving vehicles or vessels and not through pipelines. The term common carrier under Section 133 (j) of the Local Government Code must be given its simple and ordinary or generally accepted meaning which would definitely not include operators of pipelines."

[14] G.R. No. 125948 (*First Philippine Industrial Corporation vs. Court of Appeals, et al.*) — Considering the grounds of the motion for reconsideration, dated December 23, 1996, filed by counsel for petitioner, of the resolution of November 11, 1996 which denied the petition for review on *certiorari*, the Court Resolved:

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Petitioner claims that the respondent Court of Appeals erred in holding that (1) the petitioner is not a common carrier or a transportation contractor, and (2) the exemption sought for by petitioner is not clear under the law.

There is merit in the petition.

A "common carrier" may be defined, broadly, as one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally.

Article 1732 of the Civil Code defines a "common carrier" as "any person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public."

The test for determining whether a party is a common carrier of goods is:

1. He must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for person generally as a business and not as a casual occupation;
2. He must undertake to carry goods of the kind to which his business is confined;
3. He must undertake to carry by the method by which his business is conducted and over his established roads; and
4. The transportation must be for hire.[15]

Based on the above definitions and requirements, there is no doubt that petitioner is a common carrier. It is engaged in the business of transporting or carrying goods, *i.e.* petroleum products,

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(a) to GRANT the motion for reconsideration and to REINSTATE the petition; and

(b) to require respondent to COMMENT on the petition, within ten (10) days from notice

[15] Agbayani, *Commercial Laws of the Phils.*, 1983 Ed., Vol. 4, p. 5.

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for hire as a public employment. It undertakes to carry for all persons indifferently, that is, to all persons who choose to employ its services, and transports the goods by land and for compensation. The fact that petitioner has a limited clientele does not exclude it from the definition of a common carrier. In *De Guzman vs. Court of Appeals*[16] we ruled that:

"The above article (Art. 1732, Civil Code) makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity (in local idiom, as a 'sideline'). Article 1732 x x x *avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the 'general public,' i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population. We think that Article 1877 deliberately refrained from making such distinctions.*

So understood, the concept of 'common carrier' under Article 1732 may be seen to coincide neatly with the notion of 'public service,' under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. Under Section 13, paragraph (b) of the Public Service Act, 'public service' includes:

> 'every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, *with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier,* railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, *engaged in the transportation of* passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system gas,

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[16] 168 SCRA 617-618 [1998].

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> electric light heat and power, water supply and *power petroleum*, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services.'" (Italics Supplied)

Also, respondent's argument that the term "common carrier" as used in Section 133 (j) of the Local Government Code refers only to common carriers transporting goods and passengers through moving vehicles or vessels either by land, sea or water, is erroneous.

As correctly pointed out by petitioner, the definition of "common carriers" in the Civil Code makes no distinction as to the means of transporting, as long as it is by land, water or air. It does not provide that the transportation of the passengers or goods should be by motor vehicle. In fact, in the United States, oil pipe line operators are considered common carriers.[17]

Under the Petroleum Act of the Philippines (Republic Act 387), petitioner is considered a "common carrier." Thus, Article 86 thereof provides that:

> "Art. 86. *Pipe line concessionaire as a common carrier.* — A pipe line shall have the preferential right to utilize installations for the transportation of petroleum owned by him, but is obligated to utilize the remaining transportation capacity pro rata for the transportation of such other petroleum as may be offered by others for transport, and to charge without discrimination such rates as may have been approved by the Secretary of Agriculture and Natural Resources."

Republic Act 387 also regards petroleum operation as a public utility. Pertinent portion of Article 7 thereof provides:

> "that everything relating to the exploration for and exploitation of petroleum x x x and everything relating to the manufacture, refining, storage, or *transportation by special methods of petroleum*, is hereby declared to be a *public utility*." (Italics Supplied)

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[17] *Giffin v. Pipe Lines*, 172 Pa. 580, 33 Alt. 578; *Producer Transp. Co. v. Railroad Commission*, 241 US 228, 64 L ed 239, 40 S Ct 131.

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The Bureau of Internal Revenue likewise considers the petitioner a "common carrier." In BIR Ruling No. 069-83, it declared:

"x x x since [petitioner] is a pipeline concessionaire that is engaged only in transporting petroleum products, it is considered a common carrier under Republic Act No. 387 x x x. Such being the case, it is not subject to withholding tax prescribed by Revenue Regulations No. 13-78, as amended."

From the foregoing disquisition, there is no doubt that petitioner is a "common carrier" and, therefore, exempt from the business tax as provided for in Section 133 (j), of the Local Government Code, to wit:

"Section 133. *Common Limitations on the Taxing Powers of 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 :

x x x x x x x x x

(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code."

The deliberations conducted in the House of Representatives on the Local Government Code of 1991 are illuminating:

"MR. AQUINO (A). Thank you, Mr. Speaker.

Mr. Speaker, we would like to proceed to page 95, line 1. It states: "SEC.121 [now Sec. 131]. Common Limitations on the Taxing Powers of Local Government Units." x x x

MR. AQUINO (A.). Thank you Mr. Speaker.

Still on page 95, subparagraph 5, on taxes on the business of transportation. This appears to be one of those being deemed to be exempted from the taxing powers of the local government units. *May we know the reason why the transportation business is being excluded from the taxing powers of the local government units?*

MR. JAVIER (E.). Mr. Speaker, there is an exception contained in Section 121 (now Sec. 131), line 16, paragraph 5. It states that

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local government units may not impose taxes on the business of transportation, except as otherwise provided in this code.

Now, Mr. Speaker, if the Gentleman would care to go to page 98 of Book II, one can see there that provinces have the power to impose a tax on business enjoying a franchise at the rate of not more than one-half of 1 percent of the gross annual receipts. So, transportation contractors who are enjoying a franchise would be subject to tax by the province. That is the exception, Mr. Speaker.

What we want to guard against here, Mr. Speaker, is the imposition of taxes by local government units on the carrier business. Local government units may impose taxes on top of what is already being imposed by the National Internal Revenue Code which is the so-called "common carriers tax." *We do not want a duplication of this tax, so we just provided for an exception* under Section 125 [now Sec. 137] that a province may impose this tax at a specific rate.

MR. AQUINO (A.). *Thank you for that clarification, Mr. Speaker.*
x x x[18]

It is clear that the legislative intent in excluding from the taxing power of the local government unit the imposition of business tax against common carriers is to prevent a duplication of the so-called "common carrier's tax."

Petitioner is already paying three (3%) percent common carrier's tax on its gross sales/earnings under the National Internal Revenue Code.[19] To tax petitioner again on its gross receipts in its transportation of petroleum business would defeat the purpose of the Local Government Code.

WHEREFORE, the petition is hereby *GRANTED*. The decision of the respondent Court of Appeals dated November 29, 1995 in CA-G.R. SP No. 36801 is *REVERSED* and *SET ASIDE*.

SO ORDERED.

Bellosillo (Chairman), Puno, and *Mendoza, JJ.,* concur.

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[18] Journal and Record of the House of Representatives, Fourth Regular Session, Volume 2, pp. 87-89, September 6, 1990; Italics Ours.

[19] Annex "D" of Petition, *Rollo*, pp. 101-109.