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or orders are "final and executory unless appealed" to the National Labor Relations "within ten (10) days from receipt of such awards, orders or decisions."[8] The conferment of such authority upon the afore-mentioned organs of the Department of Labor was to make possible the speedy settlement of labor disputes, unencumbered by technical and procedural strictures.

Accordingly, the writ of *certiorari* and prohibition prayed for is hereby granted, and the preliminary injunction heretofore issued by this Court is hereby made permanent. Respondent Court is directed to dismiss the aforesaid Civil Case No. Q-10360, without prejudice. With costs against private respondents.

Barredo (Actg. Chairman), Aquino, Concepcion, Jr., and *Martin, JJ.*, concur.

Fernando (Chairman), J., is on leave.

Martin, J., was designated to sit in the Second Division.

FIRST DIVISION

[G.R. No. L-29987. October 22, 1975]

MANILA ELECTRIC COMPANY, *petitioner, vs.* **MISAEL P. VERA, in his capacity as Commissioner of Internal Revenue,** *respondent.*

[G.R. No. L-23847. October 22, 1975]

MANILA ELECTRIC COMPANY, *petitioner, vs.* **BENJAMIN N. TABIOS, as Commissioner of Internal Revenue,** *respondent.*

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[8] Article 222, *Ibid.*

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SYLLABUS

1. **TAXATION; TAX EXEMPTION; STRICTLY CONSTRUED AGAINST TAXPAYER.** — One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and 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; it cannot be allowed to exist upon a mere vague implication or inference. The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken, for the State cannot step itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty. So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim.

2. **ID.; ID.; APPLICATION ON PERCENTAGE TAX ON FRANCHISE.** — A provision in the franchise expressly stating that the grantee like any other taxpayer shall pay "taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery and personal property," means that while the grantee is to pay tax on its plant, its poles, wires, transformers, and insulators as forming part of the plant or installation are exempt and as such are not to be included in the assessment of the property tax to paid. These are direct taxes imposed upon the thing or the property itself. What the provision exempts the grantee from, is the payment of property tax on its poles, wires, transformers, and insulators; it does not exempt it from payment of taxes like the excise or compensating tax which, by mere necessity or consequence alone, fall upon property. The ending clause of a provision in a franchise providing that the percentage tax imposed upon the grantee shall be in lieu of "all taxes and assessments of whatsoever nature and by whatsoever authority" cannot be said to have granted it exemption from payment of compensating tax. The phrase "all taxes and assessments of whatsoever nature and by whatsoever authority" is not so board and sweeping as to include the tax in question because there is an immediately

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succeeding phrase which limits the scope of exemption to taxes and assessments "upon the privileges, earnings, income, franchise, and *poles, wires, transformers*, and *insulators* of the grantee." The clause merely reaffirms, with regards to poles, wires, transformers, and insulators, what has been expressed in the first sentence of the same provision namely, exemption of the grantee from payment of property tax. It is a principle of statutory construction that the general terms may be restricted by specific words, with the result that the general language will be limited by the specific language which indicates the statute's object and purpose.

3. ID.; COMPENSATING TAX; NOT A PROPERTY TAX BUT AN EXCISE TAX. — A compensating tax is not a property tax but is an excise tax. An excise tax is one that is imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege. A tax levied upon property *because of its use* is an excise duty. Thus, where a tax is not on the property as such, but is upon certain kinds of property, having reference *to their origin* and their intended use, that is an excise tax.

4. ID.; ID.; AN IMPOST ON USE OF IMPORTED ARTICLES. — An impost on the *use of imported articles* is a compensating tax and is not in the nature of a direct tax on the articles themselves. Thus, in a case involving the collection of a compensating tax from the taxpayer on business machine imported by it, the Supreme Court stated that "it is not the act of importation that is taxed under Section 190, but *the use of imported goods not subject to a sales tax*" because "the compensating tax was expressly designed as a substitute to make up on compensate for the revenue lost to the government through the avoidance of sales taxes by means of direct purchases abroad."

5. ID.; EXCISE TAX; A TAX IMPOSED ON PERFORMANCE OF ACT OR ENJOYMENT OF PRIVILEGE. — The fact that upon the collection of a compensating tax on poles, wires, transformers, and insulators purchased from abroad, the tax falls on the goods themselves does not by itself make the tax a property tax. One should not lose sight of the principle that "every excise necessarily must finally fall upon and be paid by property, and so many be indirectly a tax upon property; but if it is really

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imposed upon the *performance of an act,* the *enjoyment of a privilege*, or the engaging in an occupation, it will be considered *an excise*." Hence, if what is being taxed is the *use of goods* purchased from out of the country, the imposition is in the nature of an excise tax.

6. **ID.; ID.; TAX EXEMPTION; CONSTRUCTION AND INTERPRETATION.** — The provision in the franchise of an electric company that the payment of the percentage tax on the gross earnings shall be "in lieu of all taxes and assessments of whatsoever nature, and whatsoever authority" is *not* to be given a literal meaning as to preclude the imposition of compensating tax. In construing the act it is the duty of the court to seek the real intent of the legislature, even though by so doing it may limit the literal meaning of the broad language used. *It is not reasonable to assume that the legislature intended by the said provision that the tax on gross earnings should take the place of taxes of a kind not then anywhere imposed and entirely outside its knowledge*. Thus, since "compensating tax" was not generally known or in use in 1902 when the Philippine Commission enacted a law providing that the gross earnings imposed on the grantee of an electric franchise shall be in lieu of all taxes and assessments, the Court cannot assume that the Philippine Commission, in so providing the exemption, meant to include impositions in the nature of a compensating tax which came into use in this country only upon the enactment of Commonwealth Act 466 in 1939.

7. **ID.; ID.; ELECTRIC COMPANY CANNOT CLAIM SAME EXEMPTION AS NEW AND NECESSARY INDUSTRY.** — There can be no analogy between a known and developed venture as an electric and power industry and what is considered as a new and necessary industry under Republic Act 35, as superseded by Republic Act 901. The rationale of Republic Act 901 is "to encourage the establishment or exploitation of new and necessary industries to promote the economic growth of the country," and because "an entrepreneur engaging in a new and necessary industry faces uncertainty and assumes a greater risk than one engaging in a venture already known and developed the law grants him tax exemption to lighten onerous financial burdens and reduce losses." This intendment of the legislature in enacting Republic Act 901 is not the motivation behind the exemption clause found in petitioner Meralco's franchise. The

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argument, therefore, that just as a new and necessary industry was held to be exempt from paying a compensating tax on its imports under the tax exemption provision of Republic Act 901, so should an electric company be exempt from such a tax under the general clause of its franchise, to wit: "in lieu of all taxes and assessments of whatsoever authority upon poles, wires, etc.," cannot be sustained.

APPEARANCES OF COUNSEL

Salcedo, Del Rosario, Bito, Misa & Lozada for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

MUÑOZ PALMA, *J.*:

Manila Electric Company, petitioner in these two cases, poses a single issue before Us: is Manila Electric Company (MERALCO for short) exempt from payment of a compensating tax on poles, wires, transformers, and insulators *imported* by it for use in the operation of its electric light, heat, and power system? MERALCO answers the query in the affirmative while the Commissioner of Internal Revenue asserts the contrary.

MERALCO is the holder of a franchise to construct, maintain, and operate an electric light, heat, and power system in the City of Manila and its suburbs.[1]

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[1] Act No. 484 of the Philippine Commission enacted on October 20, 1902, granted to the Municipal Board of the City of Manila authority to award to the person or persons making the most favorable bid a franchise to construct and maintain in the streets of Manila and its suburbs an electric street railway and a franchise to construct, maintain, and operate an electric light, heat, and power system in the city of Manila and its suburbs. (Sec. 1) Pursuant to this authority, the Municipal Board of Manila in its Ordinance No. 44 granted the franchise to Charles M. Swift who on March 27, 1903 transferred said franchise to Manila Railway and Light Company now known as the Manila Electric Company. (see Sec. 1, Act No. 1112 of the Philippine Commission, Vol. IV, Public Laws Annotated, Guevara, p. 101) The franchise of the Manila Electric Company was extended for a period of twenty years

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In 1962, MERALCO imported and received from abroad on various dates copper wires, transformers, and insulators for use in the operation of its business on which, the Collector of Customs, as Deputy of Commissioner of Internal Revenue levied and collected a compensating tax amounting to a total of ₱62,335.00. A claim for refund of said amount was presented by MERALCO and because no action was taken by the Commissioner of Internal Revenue on its claim, it appealed to the Court of Tax Appeals by filing a petition for review on February 25, 1964 (CTA Case No. 1495). On November 28, 1968 the Court of Tax Appeals denied MERALCO's claim forthwith the case was elevated to this Court on appeal (L-29987).

Again in 1963, MERALCO imported certain quantities of copper wires, transformers and insulators also to be used in its business and again a compensating tax of ₱6,587.00 on said purchases was collected. Its claim for refund of the amount having been denied by the Commissioner of Internal Revenue on January 23, 1964, MERALCO filed with the Court of Tax Appeals CTA Case No. 1493. On September 23, 1964 the Court of Tax Appeals decided against petitioner, and the latter filed with this Court the corresponding Petition for Review of said decision docketed herein as G.R. No. L-23847.

Inasmuch as the two appeals raise the same issue, they are consolidated in this Decision.

The law under which the Commissioner of Internal Revenue, respondent in these two cases, assessed and collected the corresponding compensating taxes in 1962 and 1963 was found in Section 190 of the National Internal Revenue Code (Commonwealth Act No. 466, as amended) the pertinent provision of which read at the time as follows:

"Sec. 190. *Compensating Tax.* — All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise,

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under Republic Act 150, and was further extended for another thirty years under Republic Act 4159, approved on June 20, 1964.

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excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission and all similar charges, a compensating tax equivalent to the percentage taxes imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid before the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office: .x x x."[2]

In deciding against petitioner, the Court of Tax Appeals held that following the ruling of the Supreme Court in the cases of *Panay Electric Co. vs. Collector of Internal Revenue*, G.R. No. L-6753, July 30, 1955, *Manila Gas Corp. vs. Collector of Internal Revenue*, G.R. No. L-11784, October 24, 1958, and *Borja vs. Collector of Internal Revenue*, G.R. No. L-12134, November 30, 1961, MERALCO is *not exempt* from paying the compensating tax provided for in Section 190 of the National Internal Revenue Code, the purpose of which is to "place casual importers, who are not merchants on equal putting with established merchants who pay sales tax on articles imported by them." The court further stated that MERALCO's claim for exemption from the payment of the compensating tax is not clear or expressed, contrary to the cardinal rule in taxation that "exemptions from taxation are highly disfavored in law, and he who claims exemption must be able to justify his claim

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[2] The original text of Sec. 190 of Commonwealth Act 466 was amended by:

CA 503 sections 4 and 6 effective October 1, 1939;

RA 48 sections 8 and 14 effective October 1, 1946;

RA 253 sections 2 and 4 effective July 1, 1948;

RA 361 sections 1 and 2 effective June 9, 1949;

RA 1511 sections 2 and 3 effective June 16, 1956;

RA 1612 sections 11 and 21 effective August 24, 1956;

RA 2362 sections 1 and 2 effective June 20, 1959;

RA 3176 sections 1 and 2 effective June 17, 1961;

RA 4103 sections 1 and 2 effective June 19, 1964.

After the proclamation of martial law, Sec. 190 saw several changes under Presidential Decrees Nos. 69, 237, and 413.

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by the clearest grant of organic or statute law." (pp. 10-11, L-23847, *rollo*).

Petitioner, on the other hand, bases its claim for exemption from the compensating tax on poles, wires, transformers and insulators purchased by it from abroad on paragraph 9 of its franchise which We quote from its brief:

"PARAGRAPH 9. The grantee shall be liable to pay the same taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery, and personal property as other persons are or may be hereafter required by law to pay. In consideration of Part Two of the franchise herein granted, to wit, the right to build and maintain in the City of Manila and its suburbs a plant for the conveying and furnishing of electric current for light, heat, and power, and to charge for the same, the grantee shall pay to the City of Manila a five per centum of the gross earnings received from its business under this franchise in the City and its suburbs: I PROVIDED, That two and one-half per centum of the gross earnings received from the business of the line to Malabon shall he paid to the Province of Rizal. Said percentage shall be due and payable at the times stated in paragraph nineteen of Part One hereof, and after an audit, like that provided in paragraph twenty of Part One hereof, and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted." (Petitioner's brief, p. 4, G.R. No. L-29987; see also pp. 3-4, petitioner's brief, L-23847).

Petitioner argues that the abovequoted provision in plain and unambiguous terms makes two references to the exemption of the articles in question from all taxes except the franchise tax. Thus, after prescribing in the opening sentence that "the grantee shall be liable to pay the said taxes upon its real estate, buildings, plant (*not including poles, wires, transformers and insulators*), machinery and personal property as other persons are or may be hereinafter required by law to pay," par. 9, specifically provides that the percentage tax payable by petitioner as fixed therein "*shall be in lieu of all taxes and assessments of whatsoever nature*, and by whatsoever authority upon the privileges, earnings, income, franchise, and *poles, wires, transformers and*

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insulators of the grantee from which taxes and assessments *the grantee is hereby expressly exempted.*" Petitioner further states that while par. 9 does not specifically mention the compensating tax for the obvious reason that petitioner's original franchise was an earlier enactment, the words "in lieu of all taxes and assessments of whatsoever nature and by whatsoever authority" are broad and sweeping enough to include the compensating tax. (p. 5, petitioner's brief, L-29987; pp. 4-5, *ibid*, L-23847).

Petitioner also contends that the ruling of this Court in cases of *Panay Electric Co., Manila Gas Corporation,* and *Borja* (*supra*) are not applicable to its situation.

We find no merit in petitioner's cause.

1. One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and 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; it cannot be allowed to exist upon a mere vague implication or inference.[3] The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (*Ohio Life Insurance & Trust Co. vs. Debolt*, 60 Howard, 416), for the 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 (*Erie Railway Co. vs. Commonwealth of Pennsylvania*, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to

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[3] *Asiatic Petroleum vs. Llanes*, 49 Phil. 466, 471; *Union Garment Co., Inc. vs. Court of Tax Appeals*, L-16809, January 31, 1962, 4 SCRA 304; *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue,* L-19707, August 17, 1967, 20 SCRA 1056; *Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue*, L-25602, February 18, 1970, 31 SCRA 520; *Commissioner of Customs vs. Philippine Acetylene Co. & CTA*, L-22443, May 29, 1971, 39 SCRA 71; *Davao Light and Power Co., Inc. vs. Commissioner of Customs*, L-28902 March 29, 1972, 44 SCRA 122.

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exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (*Farrington vs. Tennessee & County of Shelby*, 95 U.S. 679, 686).[4]

2. Petitioner's- submission that its right to exemption is supported by the "plain and unambiguous" terms of paragraph 9 of its franchise is positively without basis.

First, the Court cannot overlook the tax court's finding that, and We quote:

"At the outset it should be noted that the franchise granted by the Municipal Board of the City of Manila to Mr. Charles M. Swift and later assumed and taken over by petitioner (see Rep. Act No. 150, CTA rec. p. 84), is a *municipal franchise* and not a legislative franchise. While it is true that Section 1 of Act No. 484 of the Philippine Commission of 1902 authorizes the Municipal Board of the City of Manila to grant a franchise to the person or persons making the most favorable bid for the construction and maintenance of an electric street railway and the construction, maintenance, and operation of an electric light, heat, and power system in Manila and its suburbs, Section 2 of the same Act authorizes the said Municipal Board to make necessary amendments to be fixed by the terms of the successful bid; otherwise, the form of the franchise to be granted shall be in the words and figures appearing in Act No. 484 of the Philippine Commission, which includes Par. 9, Part Two, thereof, *supra*.

"This Court is not aware whether or not the tax exemption provisions contained in Par. 9, Part Two of Act No. 484 of the Philippine Commission of 1902 was incorporated in the municipal franchise granted to Mr. Charles M. Swift by the Municipal Board of the City of Manila and later assumed and taken over by petitioner because no admissible copy of Ordinance No. 44 of the said Board was ever presented in evidence by the herein petitioner. Neither is this Court aware of any amendment to the terms of the franchise granted by the aforesaid Municipal Board to the successful bidder in the absence of Ordinance No. 44 and the amendments thereto, if any. In the circumstances, we are at a loss to interpret and apply the tax exemption provisions relied upon by petitioner." (pp. 11-13, *rollo* L-29987).

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[4] see *Asiatic Petroleum Co. vs. Llanes, supra*, wherein all the above mentioned American doctrines are cited and quoted with approval.

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Second, and this is the controlling reason for the denial of petitioner's claim in these cases, We do not see in paragraph 9 of its petitioner's franchise, on the assumption that it does exist as worded, what may be considered as "plain and unambiguous terms" declaring petitioner MERALCO exempt from paying a compensating tax on its imports of poles, wires, transformers, and insulators. What MERALCO really wants Us to do, but which We cannot under the principles enumerated earlier, is to *infer* and *imply* that there is such an exemption from the following phrase: ". . . the grantee shall pay to the City of Manila five per centum of the gross earnings received from its business . . . and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and *poles*, *wires*, *transformers*, and *insulators* of the grantee, from which taxes and assessments the grantee is hereby expressly exempted."

Note that what the above provision exempts petitioner from, is the payment of property tax on its poles, wires, transformers, and insulators; it does not exempt it from payment of taxes like the one in question which, by mere necessity or consequence alone, fall upon property. The first sentence of paragraph 9 petitioner's franchise expressly states that the grantee like any other taxpayer shall pay taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery, and personal property. These are direct taxes imposed upon the thing or property itself. Thus, while the grantee is to pay tax on its *plant*, its poles, wires, transformers, and insulators as forming part of the plant or installation (significantly the enumeration is in parenthesis and follows the word "plant") are exempt and as such are not to be included in the assessment of the property tax to be paid.

The ending clause of paragraph 9 providing in effect that the percentage tax imposed upon petitioner shall be in lieu of "all taxes and assessments of whatsoever nature and by whatsoever authority" cannot be said to have granted it exemption from payment of compensating tax. The phrase "all taxes and assessments of whatsoever nature and by whatsoever authority" is not so broad and sweeping, as petitioner would have Us

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think, as to include the tax in question because there is an immediately succeeding phrase which limits the scope of exemption to taxes and assessments "upon the privileges earnings, income, franchise, and *poles*, *wires*, *transformers*, and *insulators* of the grantee." The last clause of paragraph 9 merely reaffirms, with regards to poles, wires, transformers and insulators, what has been expressed in the first sentence of the same paragraph namely, *exemption of petitioner from payment of property tax*. It is a principle of statutory construction that general terms may be restricted by specific words, with the result that the general language will be limited by the specific language which indicates the statute's object and purpose. (Statutory Construction by Crawford, 1940 ed. p. 324-325)

3. It is a well-settled rule or principle in taxation that a compensating tax is not a property tax but is an excise tax.[5] Generally stated, an excise tax is one that is imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege.[6] A tax levied upon property because of its ownership is a direct tax, whereas one levied upon property *because of its use* is an excise duty. (*Manufacturer's Trust Co. vs. United States,* Ct. Cl., 32 F. Supp. 289, 296) Thus, where a tax which is not on the property as such, is upon certain kinds of property, having reference *to their origin* and their *intended use*, that is an excise tax. (*State v. Wynne*, 133 S.W. 2d 951, 956, 957, 133 Tex. 622).

The compensating tax being imposed upon petitioner herein, MERALCO, is an impost on its *use of imported articles* and is not in the nature of a direct tax on the articles themselves, the latter tax falling within the exemption. Thus, in *International Business Machine Corp. vs. Collector of Internal Revenue*,

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[5] 129 A.L.R. p. 223, 230; 103 A.L.R. 93; *Henneford v. Silas Mason Co.*, 81 L Ed 814; *Connecticut Light and Power Co. v. Walsh*, 1 A.L.R. 2d 453; *Watson Industries v. Shaw*, 69 SE 2d 505, 510; *Northern P.R. Co. v. Henneford* [1936; DC], 15 E Supp 302.

[6] *State vs. Brown,* 148 N.E. 95, 112 Ohio St. 590; *Buckstaff Bath House Co. vs. McKinley,* 127 S.W. 2d 802, 806, 198 Ark. 91; *State vs. Fields, Ohio App.*, 35 N.E. 2d 744, 747.

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1956, 98 Phil. Reports 595, 593, which involved the collection of a compensating tax from the plaintiff-petitioner on business machines imported by it, this Court stated in unequivocal terms that "it is not the act of importation that is taxed under section 190, but *the use of imported goods not subjected to a sales tax*" because "the compensating tax was expressly designed as a substitute to make up or compensate for the revenue lost to the government through the avoidance of sales taxes by means of direct purchases abroad . . ."

It is true that upon the collection of a compensating tax on petitioner's poles, wires, transformers, and insulators purchased from abroad, the tax falls on the goods themselves; this fact leads petitioner to claim that what is being imposed upon it is a property tax. But petitioner loses sight of the principle that "every excise necessarily must finally fall upon and be paid by property, and so may be indirectly a tax upon property; but if it is really imposed upon the *performance of an act*, the *enjoyment of a privilege*, or the engaging in a occupation, it will be considered *an excise*." (51 Am. Jur. *Id.*, Taxation, Sec. 34, emphasis supplied) And so, to reiterate, what is being taxed here is the *use of goods* purchased from out of the country, and the imposition is in the nature of an excise tax.

4. There is no valid reason for Us not to apply to petitioner the ruling of the Court in *Panay Electric Co.* and *Borja, supra,* for MERALCO is similarly situated.

Panay Electric Co. sought exemption from payment of a compensating tax on equipments purchased abroad for use in its electric plant. A provision in its franchise reads:

"Sec. 8. *** Said percentage shall be due and payable quarterly and shall be lieu of all taxes of any kind levied, established, or collected by any authority whatsoever, now or in the future, on its poles, wires, insulators, switches, transformers and other structures, installations, conductors, and accessories, placed in and over the public streets, avenues, roads, thoroughfares, squares, bridges, and other places on its franchise, from which taxes the grantee is hereby expressly exempted." (113 Phil. 570).

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This Court rejected the exemption sought by *Panay Electric* and held that the cited provision in its franchise exempts from taxation those rights and privileges which are not enjoyed by the public in general but only by the grantee of a franchise, but do not include the common right or privilege of every citizen to make purchases anywhere; and that we must bear in mind the purpose for the imposition of compensating tax which as explained in the report of the Tax Commission is as follows:

"The purpose of this proposal is to place persons purchasing goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. Under the present tax law, the former bear the burden of the local sales tax because it is shifted to them as part of the selling price demanded by the local merchants, while the latter do not. The proposed tax will do away with this inequality and render justice to merchants and firms of all nationalities who are in legitimate business here, paying taxes and giving employment to a large number of people. (113 Phil. 571).

In *Borja*, petitioner Consuelo P. Borja, a grantee of a legislative franchise, also claimed to be free from paying the compensating tax imposed on the materials and equipment such as wires, insulators, transformers, conductors, etc. imported from Japan, on the basis of Sec. 10 of Act No. 3636 (Model Electric Light and Power Franchise Act) which has been incorporated by reference in her franchise under Act No. 3810. Section 10 provides:

"The grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, copartnership, private, public or quasi-public associations, corporations, or joint-stock companies, on his (its) real estate, buildings, plants, machinery; and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of the (of each) municipality in which it is supplying electric current to the public under this franchise, a tax equal to two per centum of the gross earnings from electric current sold or supplied under this franchise in said (each) municipality. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial or insular, now or in the future,

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on its poles, wires, insulators, switches; transformers and structures, installations, conductors, and accessories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted." (113 Phil. 569-570)

The Court applying the ruling in *Panay Electric* denied the exemption with the added statement that

"Considering, therefore, the fact that section 190 of the Tax Code is a sort of an equalizer, to place casual importers, who are not merchants on equal footing with established merchants who pay sales tax on articles imported by them. . . . We may conclude that it was not the intention of the law to exempt the payment of compensating tax on the personal properties in question. The principle and legal philosophy underlying the imposition of compensating tax, as enunciated in the above case (referring to Borja), are fundamentally correct, and no plausible reason is advanced for their non-application to the case at bar." (p. 572, *ibid.*)

Petitioner claims that there exists a difference between paragraph 9 of its franchise and the corresponding provisions of the franchise of *Panay Electric* and *Borja* in that in the latter, unlike in the former, there is no statement that the grantee is exempt from "all taxes of whatsoever nature and whatsoever authority." In addition, petitioner points out, the franchise of *Panay Electric* and *Borja* contains a qualifying phrase, to wit: "placed in and over the public streets, avenues, road, thoroughfares, etc."

A comparison of the pertinent provisions mentioned by petitioner and which are quoted in the preceding pages reveals no substantial or fundamental distinction as to remove petitioner MERALCO from the ambit of the *Panay Electric* and *Borja* ruling. There may be differences in the phraseology used, but the intent to exempt the grantee from the payment only of *property tax* on its poles, wires, transformers, and insulators is evidently common to the three; withal, in all the franchises in question there is no specific mention of exemption of the grantee from the payment of compensating tax.

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Petitioner disputes, however, the applicability of the *stare decisis* principle to its case claiming that this Court should not blindly follow the doctrine of *Panay Electric* and *Borja*, that in *Philippine Trust Co. et al. vs. Mitchell,* 59 Phil. 30, 36, the Court had occasion to state: "The rule of *stare decisis* entitled to respect. Stability in the law, particularly in the business field, is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right." (pp. 18-19, petitioner's brief, L-29987).

But what possible ground can there be for deviating from the decisions of this Court in these two cases? A doctrine buttressed by the law, reason, and logic is not to be simply brushed aside to suit the convenience of a particular party or interest or to avoid hardship to one. As We view this legal problem, no justification can be found for giving petitioner herein preferential treatment by reading into its franchise an exemption from a particular kind of tax which is not there. If it had been the legislative intent to exempt from paying a tax on the use of imported equipments, the legislative body could have easily done so by expanding the provision of paragraph 9 and adding to the exemption such words as "compensating tax" or "purchases from abroad for use in its business," and the like. We cannot ignore the principle that express mention in a statute of one exemption precludes reading others into it. (*Hoard vs. Sears, Roebuck & Co.*, 122 Conn. 185, 193, 188 A. 269).

On this point, the Government correctly argues that the provision in petitioner's franchise that the payment of the percentage tax on the gross earnings shall be "in lieu of all taxes and assessments of whatsoever nature, and whatsoever authority" is *not* to be given a literal meaning as to preclude the imposition of the compensating tax in this particular case, and cites for its authority the Opinion of the Supreme Court of Connecticut rendered in *Connecticut Light & Power Co., et al. vs. Walsh*, 1948, which involved the construction of a statute imposing a sales and use tax, and which *inter alia* held:

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"The *broad statement* that the tax upon the gross earnings of telephone companies shall be 'in lieu of all other taxation' upon them *is not necessarily to be given a literal meaning.* 'In construing the act it is our duty to seek the real intent of the legislature, even though by so doing we may limit the literal meaning of the broad language used.' *Greenwich Trust Co. v. Tyson,* 129 Conn. 211, 222, 27 A. 2d 166, 172. *It is not reasonable to assume that the General Assembly intended by the provisions we have quoted that the tax on gross earnings should take the place of taxes of a kind not then anywhere imposed and entirely outside its knowledge.* x x x." (57 A.R., 2d S, pp. 129, 133-134, italics supplied).

In 1902 when Act 484 of the Philippine Commission was enacted, "compensating tax" was certainly not generally known or in use, hence, to paraphrase the above-mentioned Connecticut decision, the Court cannot assume the Philippine Commission in providing that the gross earnings taxes imposed on the grantee of the electric light franchise shall be in lieu of all taxes and assessments, meant to include impositions in the nature of a compensating tax which came into use in this country only upon the enactment of Commonwealth Act 466 in 1939.

5. One last argument of petitioner to support its cause is that just as a new and necessary industry was held to be exempt from paying a compensating tax on its imports under the tax exemption provision of Republic Act 901, so should MERALCO be exempt from such a tax under the general clause in its franchise, to wit: ". . . in lieu of all taxes and assessments of whatsoever nature and whatsoever authority upon poles, wires, etc."

We agree with the court below that there can be no analogy between MERALCO and what is considered as a new and necessary industry under Republic Act 35 now superseded by Republic Act 901.

The rationale of Republic Act 901 is "to encourage the establishment or exploitation of new and necessary industries to promote the economic growth of the country," and because "an entrepreneur engaging in a new and necessary industry faces uncertainty and assumes a risk bigger than one engaging in a venture already known and developed . . . the law grants

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him tax exemption — to lighten onerous financial burdens and reduce losses." (*Marcelo Steel Corporation vs. Collector of Internal Revenue,* 109 Phil. 921, 926) This intendment of the legislature in enacting Republic Act 901 is not the motivation behind the tax exemption clause found in petitioner MERALCO's franchise; consequently, there can be no analogy between the two.

IN VIEW OF THE FOREGOING, We find no merit in these Petitions for Review and We hereby AFFIRM the decision of the Court of Tax Appeals in these two cases, with costs against petitioner in both instances.

SO ORDERED.

Castro, Actg. C. J., Teehankee, Aquino, and *Martin JJ.,* concur.

Makasiar, J., a regular member of the Division, took no part being the Solicitor General in L-29987 at the time.

SECOND DIVISION

[G.R. No. L-33300. October 22, 1975]

NATIVIDAD T. RAMIREZ, NIÑO T. RAMIREZ, LOURDES U. RAMIREZ, EDWIN U. RAMIREZ, RODOLFO U. RAMIREZ, PAULINA U. RAMIREZ and HON. JUDGE VICTORINO C. TELERON OF THE COURT OF FIRST INSTANCE OF BOHOL, BRANCH III, *petitioners, vs.* **THE COURT OF APPEALS and THE SHELL COMPANY OF THE PHILIPPINES, LTD.,** *respondents.*