



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

NATIONAL CORPORATION,

Petitioner,

POWER G.R. No. 177332

Present:

CARPIO, *J.*, Chairperson,
 BRION,
 DEL CASTILLO,
 MENDOZA, and
 LEONEN, *JJ.*

-versus-

CITY OF CABANATUAN,
 represented by its **CITY MAYOR,**
HON. HONORATO PEREZ,

Respondents.

Promulgated:

OCT 01 2014 *AW Cabalag Perfecto*

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DECISION

LEONEN, J.:

This is a petition for review¹ under Rule 45, seeking to annul and set aside the January 15, 2007 decision² and April 3, 2007 resolution³ of the Court of Appeals in CA-G.R. SP. No. 88377. The questioned decision dismissed petitioner’s petition for certiorari and affirmed the October 25,

¹ Rollo, pp. 12–46.
² Id. at 53–67. The decision was penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Renato C. Dacudao (Chair) and Hakim S. Abdulwahid.
³ Id. at 68–69. The resolution was penned by Associate Justice Arturo G. Tayag, and concurred in by Associate Justices Renato C. Dacudao (Chair) and Hakim S. Abdulwahid.

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2004 order⁴ of the Regional Trial Court of Cabanatuan City (Branch 30) directing the issuance of a writ of execution against petitioner for the satisfaction of the amount of ₱11,172,479.55, representing the balance of petitioner's franchise tax liabilities plus 25% surcharge from 1992 to 2002. The resolution denied petitioner's motion for reconsideration.

Antecedents

The City of Cabanatuan (the City) assessed the National Power Corporation (NAPOCOR) a franchise tax amounting to ₱808,606.41, representing 75% of 1% of its gross receipts for 1992. NAPOCOR refused to pay, arguing that it is exempt from paying the franchise tax.⁵ Consequently, on November 9, 1993, the City filed a complaint⁶ before the Regional Trial Court of Cabanatuan City, demanding NAPOCOR to pay the assessed tax due plus 25% surcharge and interest of 2% per month of the unpaid tax, and costs of suit.

In the order⁷ dated January 25, 1996, the trial court declared that the City could not impose a franchise tax on NAPOCOR and accordingly dismissed the complaint for lack of merit. In the March 12, 2001 decision⁸ of the Court of Appeals (Eighth Division) in CA-G.R. CV No. 53297, the appellate court reversed the trial court and found NAPOCOR liable to pay franchise tax, as follows:

IN VIEW OF THE FOREGOING, the decision appealed from is **SET ASIDE** and **REVERSED**. Defendant-appellee National Power Corporation is hereby ordered to pay the City of Cabanatuan, to wit:

1. The sum of ₱808,606.41 representing business tax based on gross receipts for the year 1992, and
2. The tax due every year thereafter based [o]n the gross receipts earned by NPC,
3. In all cases, to pay a surcharge of 25% of the tax due and unpaid, and
4. The sum of ₱10,000.00 as litigation expenses.

SO ORDERED.⁹

In its April 9, 2003 decision,¹⁰ this court affirmed the Court of

⁴ Id. at 326–330.

⁵ See *National Power Corporation v. City of Cabanatuan*, G.R. No. 149110, April 9, 2003, 401 SCRA 259, 262 [Per J. Puno, Third Division].

⁶ *Rollo*, pp. 77–79. The complaint was docketed as Civil Case No. 1659 AF.

⁷ Id. at 93–102.

⁸ Id. at 126–134.

⁹ Id. at 133–134.

Appeals' March 12, 2001 decision and July 10, 2001 resolution. In its August 27, 2003 resolution,¹¹ this court denied with finality NAPOCOR's motion for reconsideration.

After the court's decision had become final, the City filed with the trial court a motion for execution¹² dated December 1, 2003 to collect the sum of ₱24,030,565.26¹³ (inclusive of the 25% surcharge of ₱13,744,096.69). In its comment,¹⁴ NAPOCOR prayed that the issuance of the writ be suspended pending resolution of its protest letter dated December 12, 2003 filed with the City Treasurer of Cabanatuan City on the computation of the surcharge. NAPOCOR also informed the court of its payment to the City Treasurer of ₱12,868,085.71 in satisfaction of the judgment award.¹⁵

Subsequently, the City filed a supplemental motion for execution¹⁶ dated January 29, 2004, claiming that the gross receipts upon which NAPOCOR's franchise tax liabilities are to be determined should include transactions within the coverage area of Nueva Ecija Electric Cooperative III and sales from the different municipalities of the provinces of Tarlac, Pangasinan, Baler, and Dingalan, Aurora. According to information allegedly gathered by the City, these were transacted and consummated at NAPOCOR's sub-station in Cabanatuan City.¹⁷

NAPOCOR filed its comment/opposition¹⁸ dated March 29, 2004, praying that the supplemental motion be denied for having raised new factual matters. NAPOCOR emphasized that "the Court of Appeals Decision limits the franchise tax payable based on the gross receipts from sales to Cabanatuan City's electric cooperative."¹⁹

The City filed an amended motion for execution dated June 29, 2004,²⁰ praying that "a writ of execution be issued by [the] Court directing [NAPOCOR] to pay . . . the amount of P69,751,918.19 without prejudice to the collection of the balance, if any."²¹ NAPOCOR filed its comment²²

¹⁰ Id. at 228–255. The case was docketed as G.R. No. 149110. The decision was penned by Associate Justice Reynato S. Puno (Chair) and concurred in by Associate Justices Artemio V. Panganiban, Angelina Sandoval-Gutierrez, Renato C. Corona, and Conchita Carpio Morales.

¹¹ Id. at 282.

¹² Id. at 283–285.

¹³ Tax due 1992 to 2002 ₱10,286,468.57
 Surcharge/Penalty 13,744,096.69
 Total ₱24,030,565.26

¹⁴ *Rollo*, pp. 286–293.

¹⁵ Id. at 286.

¹⁶ Id. at 298–300.

¹⁷ Id. at 299.

¹⁸ Id. at 301–305.

¹⁹ Id. at 303.

²⁰ Id. at 306–308.

²¹ Id. at 307.

²² Id. at 313–325.

again, praying that the grant of the amended motion be denied and/or suspended pending final resolution of its protest.

On October 25, 2004, the trial court issued the order²³ resolving the pending motions filed by the City and NAPOCOR's corresponding comments. The trial court agreed with NAPOCOR that "the tenor of the decision [sought to be executed] limits the franchise tax payable on gross receipts from sales to [the City's] electric cooperative."²⁴ However, the trial court sustained the City's computation of the surcharge totalling ₱13,744,096.69 over NAPOCOR's claim of ₱2,571,617.14 only.²⁵

NAPOCOR assailed the trial court's order dated October 25, 2004 through a petition for certiorari²⁶ with the Court of Appeals.

On January 15, 2007, the Court of Appeals promulgated the assailed decision dismissing NAPOCOR's petition for certiorari and affirming the trial court's order. It held that since the franchise tax due was computed yearly, the 25% surcharge should also be computed yearly based on the total unpaid tax for each particular year.²⁷ The appellate court agreed with the City's reasoning that non-imposition of the surcharge on a cumulative basis would encourage rather than discourage non-payment of taxes.²⁸ In its resolution²⁹ dated April 3, 2007, the Court of Appeals also denied NAPOCOR's motion for reconsideration.

Hence, the present petition for review³⁰ was filed.

According to petitioner, the trial court and the Court of Appeals disregarded the provisions of Section 168 of Republic Act No. 7160 or the Local Government Code of 1991, which provides:

SECTION 168. *Surcharges and Penalties on Unpaid Taxes, Fees, or Charges.* – The sanggunian may impose a *surcharge not exceeding twenty-five (25%) of the amount of taxes, fees or charges not paid on time* and an interest at the rate not exceeding two percent (2%) *per month* of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months. (Emphasis supplied)

²³ Id. at 326–330.

²⁴ Id. at 328–329.

²⁵ Id. at 329.

²⁶ Id. at 331–364.

²⁷ Id. at 64.

²⁸ Id.

²⁹ Id. at 68–69.

³⁰ The petition was received by the court on May 25, 2007. Respondent filed its comment on October 5, 2007. Subsequently, pursuant to the court's resolution dated June 16, 2008, petitioner and respondent filed their memoranda on August 22, 2008 and September 11, 2008, respectively.

Petitioner submits that from the foregoing provision, the surcharge should only be ₱2,571,617.14, computed by applying the 25% surcharge against the total amount of taxes not paid on time, which is the total amount of tax due from 1992 to 2002, or ₱10,286,468.57. In imposing a surcharge of ₱13,744,096.69 instead of ₱2,571,617.14, the trial court allegedly “varied and/or exceeded the terms of the judgment sought to be executed.”³¹

Issue

The sole issue before the court is the proper interpretation for purposes of execution of the dispositive portion of the Court of Appeals’ decision in CA-G.R. CV No. 53297, promulgated on March 12, 2001 (which was affirmed by this court’s April 9, 2003 decision in G.R. No. 149110). The dispositive portion reads:

IN VIEW OF THE FOREGOING, the decision appealed from is **SET ASIDE** and **REVERSED**. Defendant-appellee National Power Corporation is hereby ordered to pay the City of Cabanatuan, to wit:

1. The sum of ₱808,606.41 representing business tax based on gross receipts for the year 1992, and
2. The tax due every year thereafter based [o]n the gross receipts earned by NPC,
3. *In all cases, to pay a surcharge of 25% of the tax due and unpaid*, and
4. The sum of ₱10,000.00 as litigation expenses.³² (Emphasis supplied)

In other words, the crucial point to be resolved is what the Court of Appeals meant by “[i]n all cases, to pay a surcharge of 25% of the tax due and unpaid” in the dispositive portion.

The trial court resolved the question, as follows:

[Petitioner] obtained the amount of P2,571,617.14 by getting the 25% of P10,286,468.57, the total unpaid tax due. Whereas, the [respondent], by further studying the data on record, obtained the 25% of the tax due yearly. The total unpaid tax due for example in year 1992 (P808,606.41) would be added the tax due for 1993 (P821,401.17), obtaining the sum of P1,630,007.58 as unpaid tax due. From this amount of P1,630,007.58 is to be taken the 25% surcharge, giving the amount of

³¹ *Rollo*, p. 30.

³² *Id.* at 133–134.

P407,501.89 to be added to the amount of P202,151.60, the 25% of the unpaid amount of P808,606.41. The same computation was made on the succeeding years up to the year 2002 giving the total amount of the surcharge/penalty of P13,744,096.69.

This Court finds the computation of the [respondent] more in accord with the decision in this case. The [petitioner] was imposed taxes based on the gross receipts yearly. *The tax due was computed yearly and therefore, it can be interpreted to mean that the 25% surcharge should also be computed yearly based on the unpaid tax due for each particular year.*

Based on these computations, by adding the total tax due for the year 1992 to 2002 (P10,286,468.57), the total surcharge/penalty (P13,744,096.69) and the litigation expenses (P10,000.00) as contained in the dispositive portion, the [petitioner] has a total liability of P24,040,565.26. Since the [petitioner] has already paid the sum of P12,868,085.71, its total liability therefore is P11,172,479.55.³³ (Emphasis supplied)

The trial court sustained respondent's computation of the surcharge based on the total unpaid tax for each year [proper tax for the year + unpaid tax of the previous year/s], which, in effect, resulted in the imposition of the 25% surcharge for every year of default in the payment of a franchise tax, thereby arriving at the total amount of ₱13,744,096.69. Petitioner, on the other hand, insists a one-time application of the 25% surcharge based on the total franchise tax due and unpaid (₱10,286,468.57 from 1992 to 2002), arriving at the sum of only ₱2,571,617.14.

This court's ruling

The petition is meritorious.

The trial court's order of execution, as affirmed by the Court of Appeals, exceeded the judgment sought to be executed

Respondent's computation of the surcharge, as sustained by the trial court and the Court of Appeals, varies the terms of the judgment sought to be executed and contravenes Section 168 of the Local Government Code.

To repeat, respondent computed the surcharge based on the total unpaid tax for each particular year. For example, in 1993, the proper tax due (₱821,401.17) was added the unpaid tax due in year 1992 (₱808,606.41),

³³ Id. at 329–330.

obtaining the sum of □1,630,007.58 as total unpaid tax. To this amount of □1,630,007.58 was applied the 25% surcharge, giving the amount of □407,501.89. In 1994, the proper tax due (□1,075,855.62) was added the unpaid taxes for 1992 and 1993 (□1,630,007.58), yielding a total unpaid tax of □2,705,863.20. To this sum of □2,705,863.20 was applied the 25% surcharge, obtaining the amount of □676,465.80. The same computation was made on the succeeding years up to the year 2002. The surcharges from 1992 to 2002 were added, giving the total amount of □13,744,096.69. Thus:

Year	Tax Due	Unpaid	Surcharge
1992	□ 808,606.41	□ 808,606.41	□ 202,151.60
1993	821,401.17	1,630,007.58	407,501.89
1994	1,075,855.62	2,705,863.20	676,465.80
1995	1,161,016.63	3,866,879.83	966,719.96
1996	449,599.84	4,316,479.67	1,079,119.92
1997	614,608.97	4,931,088.65	1,232,722.16
1998	519,967.33	5,451,055.97	1,362,763.99
1999	238,439.87	5,689,495.84	1,422,373.96
2000	1,030,108.81	6,719,604.65	1,679,901.16
2001	1,851,231.76	8,570,836.40	2,142,709.10
2002	<u>1,715,632.16</u>	<u>10,286,468.57</u>	<u>2,571,617.14</u>
Total	□10,286,468.57		□13,744,096.69³⁴

In effect, respondent's computation resulted in the imposition of the 25% surcharge for every year of default in the payment of a franchise tax. To illustrate, the surcharge for the 1992 franchise tax is 25% of □808,606.41 [proper tax due] multiplied by 11 years [1992 to 2002]; for the 1993 franchise tax, 25% of □821,401.17 [proper tax due] multiplied by 10 years [1993 to 2002]; for the 1994 franchise tax, 25% of □1,075,855.62 [proper tax due] multiplied by 9 years [1994 to 2002]; and so on, as detailed below:

Year	Tax Due	+	Surcharge
1992	□808,606.41		□2,223,668 (25% x 808,606.41 x 11)
1993	821,401.17		2,053,503 (25% x 821,401.17 x 10)
1994	1,075,855.62		2,420,675 (25% x 1,075,855.62 x 9)
1995	1,161,016.63		2,322,033 (25% x 1,161,016.63 x 8)
1996	449,599.84		786,799 (25% x 449,599.84 x 7)
1997	614,608.97		921,913 (25% x 614,608.97 x 6)
1998	519,967.33		649,959 (25% x 519,967.33 x 5)
1999	238,439.87		238,439 (25% x 238,439.87 x 4)
2000	1,030,108.81		772,581 (25% x 1,030,108.81 x 3)
2001	1,851,231.76		925,615 (25% x 1,851,231.76 x 2)
2002	<u>1,715,632.16</u>		<u>428,908 (25% x 1,715,632.16 x 1)</u>
Total	□10,286,468.57	+	~□13,744,093

There is nothing in the Court of Appeals' decision that would *justify* the interpretation that the statutory penalty of 25% *surcharge* should be

³⁴ Id. at 488.

charged yearly from *due date* until full payment. If that was the intention of the Court of Appeals, it should have so expressly stated in the dispositive portion of its decision.

Respondent contends that in its complaint before the trial court, it prayed that petitioner be ordered to pay the franchise tax due, plus 25% surcharge and 2% monthly interest in accordance with Section 168 of the Local Government Code.³⁵ However, the appellate court allegedly did not award the 2% monthly interest, and the only probable reason why it did not do so notwithstanding the express provision of law was because of Article 1226³⁶ of the Civil Code stating that the “penalty [25% surcharge] shall substitute the indemnity for damages and the payment of interest in case of non-compliance.”³⁷ Hence, it contended that *sans* the payment of monthly interest, the “one time [sic] imposition of the [surcharge] regardless of the number of years of delay [would] be a great transgression of [its] right.”³⁸

Respondent’s theory is implausible.

Article 1226 of the Civil Code refers to penalties prescribed in contracts, not to penalties embodied in a judgment. We must yield to the specific language of the *fallo* which is controlling and construe its meaning in the light of the applicable laws.

For clarity, we reiterate the pertinent portion of the dispositive:

1. The sum of ₱808,606.41 representing business tax based on gross receipts for the year 1992, and
2. The tax due every year thereafter based [o]n the gross receipts earned by NPC,
3. *In all cases, to pay a surcharge of 25% of the tax due and unpaid, and. . .*³⁹ (Emphasis supplied)

The *fallo* says “tax due and unpaid,” which simply means tax owing or owed or “tax due that was not paid.” The “and” is “a conjunction used to denote a joinder or union, ‘binding together,’ ‘relating the one to the

³⁵ Id. at 485.

³⁶ ART. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

³⁷ *Rollo*, p. 486.

³⁸ Id.

³⁹ Id. at 133–134.

other.”⁴⁰ In the context of the decision rendered, there is no ambiguity.

As understood from the common and usual meaning of the conjunction “and,” the words “tax due” and “unpaid” are inseparable. Hence, when the taxpayer does not pay its tax due for a particular year, then a surcharge is applied on the *full* amount of the tax due. However, when the taxpayer makes a partial payment of the tax due, the surcharge is applied only on the balance or the part of the tax due that remains unpaid. It is in this sense that the *fallo* of the Court of Appeals decision should be read, i.e., a 25% surcharge is to be added to the proper franchise tax so *due and unpaid* for each year.

The proper franchise tax due each year is computed, with paragraphs 1 and 2 of the *fallo* being applied, based on the gross receipts earned by NAPOCOR:

Year		Tax Due
1992	□	808,606.41
1993		821,401.17
1994		1,075,855.62
1995		1,161,016.63
1996		449,599.84
1997		614,608.97
1998		519,967.33
1999		238,439.87
2000		1,030,108.81
2001		1,851,231.76
2002		<u>1,715,632.16</u>
Total	□	10,286,468.57⁴¹

Since the franchise tax due was not paid on time, a surcharge of 25% is imposed as an addition to the main tax required to be paid. This is the proper meaning of paragraph 3 of the *fallo*. Thus:

Year		Tax Due	+	Surcharge	
1992	□	808,606.41	□	202,151.60	(25% x 808,606.41)
1993		821,401.17		205,350.29	(25% x 821,401.17)
1994		1,075,855.62		268,963.91	(25% x 1,075,855.62)
1995		1,161,016.63		290,254.16	(25% x 1,161,016.63)
1996		449,599.84		112,399.96	(25% x 449,599.84)
1997		614,608.97		153,652.24	(25% x 614,608.97)
1998		519,967.33		129,991.83	(25% x 519,967.33)
1999		238,439.87		59,609.97	(25% x 238,439.87)
2000		1,030,108.81		257,527.20	(25% x 1,030,108.81)
2001		1,851,231.76		462,807.94	(25% x 1,851,231.76)
2002		<u>1,715,632.16</u>		<u>428,908.04</u>	<u>(25% x 1,715,632.16)</u>
Total	□	10,286,468.57	□	2,571,617.14	

⁴⁰ Concurring opinion of J. Castro in *Phil. Constitution Association, Inc. v. Mathay*, 124 Phil. 890, 924 (1966) [Per J. J.B.L. Reyes, En Banc].

⁴¹ *Rollo*, p. 488.

It is a fundamental rule that the execution cannot be wider in scope or exceed the judgment or decision on which it is based; otherwise, it has no validity.⁴² "It is the final judgment that determines and stands as the source of the rights and obligations of the parties."⁴³ In *Collector of Internal Revenue v. Gutierrez*,⁴⁴ this court did not allow the collection of the 5% surcharge and 1% monthly interest because the decision sought to be executed did not expressly provide for the payment of the same.

It is the final judgment that determines and stands as the source of the rights and obligations of the parties. The judgment in this case made no pronouncement as to the payment of surcharge and interest, but specifically stated the amount for the payment of which respondents were liable. The Collector by virtue of the writ of execution, may not vary the terms of the judgment by including in his motion for execution the payment of surcharge and interest.

"The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has *pro tanto* no validity." (Moran, Comments on the Rules of Court, 1957 ed., Vol. I, p. 556, and authorities cited therein.)⁴⁵

In *The Philippine American Accident Insurance Co., Inc. v. Hon. Flores*,⁴⁶ the trial court's order directing the issuance of an alias writ of execution for the satisfaction of the compound interest computed by private respondent was set aside by this court, ruling that the judgment sought to be executed ordered only the payment of a simple interest:

The questioned Order cannot be sustained. The judgment which was sought to be executed ordered the payment of simple "legal interest" only. It said nothing about the payment of compound interest. Accordingly, when the respondent judge ordered the payment of compound interest he went beyond the confines of his own judgment which had been affirmed by the Court of Appeals and which had become final. Fundamental is the rule that execution must conform to that ordained or decreed in the dispositive part of the decision. Likewise, a court can not [sic], except for clerical errors or omissions, amend a judgment that has become final.⁴⁷ (Citation omitted)

Respondent should have filed an appeal from the judgment or at the least sought clarification insofar as it failed to provide for the payment of the

⁴² *Pamantasan ng Lungsod ng Maynila v. Hon. Intermediate Appellate Court*, 227 Phil. 289, 292–293 (1986) [Per J. Gutierrez, Jr., Second Division].

⁴³ *Collector of Internal Revenue v. Gutierrez*, 108 Phil. 215, 219 (1960) [Per J. Montemayor, En Banc].

⁴⁴ 108 Phil. 215 (1960) [Per J. Montemayor, En Banc].

⁴⁵ Id. at 219–220.

⁴⁶ 186 Phil. 563 (1980) [Per J. Abad Santos, Second Division].

⁴⁷ Id. at 565–566.

2% monthly interest. Instead, it erroneously presumed that the surcharge was to be applied yearly with the omission of the payment for monthly interest in the judgment. Hence, respondent alone is to blame and should suffer the consequences of its neglect. With the finality of the Court of Appeals' judgment, all the issues between the parties are deemed resolved and laid to rest. Neither the trial court nor even this court can amend or add to the dispositive portion of a decision that has attained finality.

The judgment directing the payment of surcharge on taxes due and unpaid should be read in consonance with Section 168 of the Local Government Code

Section 168 of the Local Government Code categorically provides that the local government unit may impose a surcharge not exceeding 25% of the amount of taxes, fees, or charges not paid on time.

SECTION 168. *Surcharges and Penalties on Unpaid Taxes, Fees, or Charges.* – The sanggunian may impose a *surcharge not exceeding twenty-five (25%) of the amount of taxes, fees or charges not paid on time* and an interest at the rate not exceeding two percent (2%) *per month* of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months. (Emphasis supplied)

The surcharge is a civil penalty imposed once for late payment of a tax.⁴⁸ Contrast this with the succeeding provisions on interest, which was imposable at the rate not exceeding 2% *per month* of the unpaid taxes until fully paid. The fact that the interest charge is made proportionate to the period of delay, whereas the surcharge is not, clearly reveals the legislative intent for the different modes in their application.

Indeed, both the surcharge and interest are imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment. The surcharge is imposed to hasten tax payments and to *punish* for evasion or neglect of duty,⁴⁹ while interest is imposed to *compensate* the State “for the

⁴⁸ See the computation of the 25% surcharge in *Commissioner of Internal Revenue v. Japan Air Lines, Inc.*, 279 Phil. 499 (1991) [Per J. Paras, En Banc].

⁴⁹ *Philippine Refining Company v. CA*, 326 Phil. 680, 691 (1996) [Per J. Regalado, Second Division]. In *Jamora v. Meer*, 74 Phil. 22 (1942) [Per J. Moran, En Banc], this court ruled: “Tax laws imposing penalties for delinquencies are clearly intended to hasten tax payments or to punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the government and its multifarious activities would be as precarious as tax payers are willing or unwilling to pay their obligations to the state in time. Imperatives of public welfare will not approve of this

delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands."⁵⁰

A surcharge regardless of how it is computed is already a deterrent. While it is true that imposing a higher amount may be a more effective deterrent, it cannot be done in violation of law and in such a way as to make it confiscatory. We find this reasoning not compelling for us to deviate from the express provisions of Section 168 of the Local Government Code. When a law speaks unequivocally, it is not the province of this court to scan its wisdom or its policy.

This court has steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its plain terms, interpretation being called for only when such literal application is impossible. Neither the court nor the City has the power to modify the penalty.⁵¹

If the legislative intent was to make the 25% surcharge proportionate to the period of delay, the law should have provided for the same in clear terms.

Generally, tax statutes are construed strictly against the government and in favor of the taxpayer.⁵² “[S]tatutes levying taxes or duties [are] not to extend their provisions beyond the clear import of the language used”,⁵³ and “tax burdens are not to be imposed, nor presumed to be imposed beyond what the statute[s] expressly and clearly [import]. . . .”⁵⁴ Similarly, we cannot impose a penalty for non-payment of a tax greater than what the law provides.⁵⁵ To do so would amount to a deprivation of property without due

result.”

⁵⁰ See *Aguinaldo Industries Corporation v. Commissioner of Internal Revenue*, 197 Phil. 822, 832 (1982) [Per J. Plana, First Division].

⁵¹ In *Republic v. Luzon Industrial Corporation*, 102 Phil. 189, 193 (1957) [Per J. Bengzon, En Banc], the appellant requested that the surcharge be reduced in accordance with Article 1154 of the Civil Code that gives the judge power to "equitably modify the penalty when the principal obligation has been partly or irregularly fulfilled by the debtor" in view of its good faith and efforts to pay its obligation on time. The court refused, holding that Article 1154 refers to penalties prescribed in contracts; the law directing the collection of 25% surcharge is mandatory on the collector who has no discretion in the matter; and the court cannot equitably modify the penalty.

⁵² *Commissioner of Internal Revenue v. SM Prime Holdings, Inc.*, G.R. No. 183505, February 26, 2010, 613 SCRA 774, 800 [Per J. Del Castillo, Second Division]; *Quimpo v. Mendoza*, 194 Phil. 66, 76 (1981) [Per J. Guerrero, First Division].

⁵³ *Manila Railroad Company v. Insular Collector of Customs*, 52 Phil. 950, 952 (1929) [Per J. Malcolm, En Banc].

⁵⁴ *CIR v. Court of Appeals*, 363 Phil. 130, 139 (1999) [Per J. Purisima, Third Division], citing *Province of Bulacan v. Court of Appeals*, 359 Phil. 779, 796 (1998) [Per J. Romero, Third Division]; *Republic v. Intermediate Appellate Court*, 273 Phil. 573, 579 (1991) [Per J. Griño-Aquino, First Division]; *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 86785, November 21, 1991, 204 SCRA 182, 189 [Per J. Regalado, Second Division].

⁵⁵ In *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals*, 321 Phil. 1, 29–30 (1995) [Per J. Feliciano, En Banc], this court held that Picop is not liable for surcharge and interest on unpaid transaction tax. According to this court, “the authority to impose what the present Tax Code calls (in Section 248) *civil penalties* consisting of additions to the tax due, must be expressly given in

process of law.

Respondent's computation of the surcharge is oppressive and unconscionable

The yearly accrual of the 25% surcharge is unconscionable. Respondent's computation of the total tax due plus surcharge is reproduced below for easy reference.

Year	Tax Due	Unpaid	Surcharge (.25 x Unpaid)	Total
1992	☐ 808,606.41	☐ 808,606.41	☐ 202,151.60	☐ 1,010,758.01
1993	821,401.17	1,630,007.58	407,501.89	1,228,903.06
1994	1,075,855.62	2,705,863.20	676,465.80	1,752,321.42
1995	1,161,016.63	3,866,879.83	966,719.96	2,127,736.59
1996	449,599.84	4,316,479.67	1,079,119.92	1,528,719.76
1997	614,608.97	4,931,088.65	1,232,722.16	1,847,381.13
1998	519,967.33	5,451,055.97	1,362,763.99	1,882,731.32
1999	238,439.87	5,689,495.84	1,422,373.96	1,660,813.83
2000	1,030,108.81	6,719,604.65	1,679,901.16	2,710,009.97
2001	1,851,231.76	8,570,836.40	2,142,709.10	3,993,940.86
2002	1,715,632.16	10,286,468.57	2,571,617.14	4,287,249.31
Total	☐ 10,286,468.57	☐ 54,976,386.76	☐ 13,744,096.69	☐ 24,030,565.26 ⁵⁶

Respondent's yearly imposition of the 25% surcharge, which was sustained by the trial court and the Court of Appeals, resulted in an aggregate penalty that is way higher than petitioner's basic tax liabilities.

Furthermore, it effectively exceeded the prescribed 72% ceiling for interest under Section 168 of the Local Government Code. The law allows the local government to collect an interest at the rate not exceeding 2% *per month* of the unpaid taxes, fees, or charges including surcharges, until such amount is fully paid. However, the law provides that the total interest on the unpaid amount or portion thereof should not exceed thirty-six (36) months or three (3) years. In other words, respondent cannot collect a total interest on the unpaid tax including surcharge that is effectively higher than 72%. Here, respondent applied the 25% cumulative surcharge for more than three years. Its computation undoubtedly exceeded the 72% ceiling imposed under Section 168 of the Local Government Code. Hence, respondent's computation of the surcharge is oppressive and unconscionable.

the enabling statute, in language too clear to be mistaken. The grant of that authority is not lightly to be assumed to have been made to administrative officials, even to one as highly placed as the Secretary of Finance." This court noted that Section 51(c)(1) and (e)(1) and (3) of the 1977 Tax Code authorize the imposition of surcharge and interest only with respect to a "tax imposed by this Title," that is to say, Title II on "Income Tax"; while the 35% transaction tax is imposed by Section 210(b) which Section is embraced in Title V on "Taxes on Business" of that Code. While such omission seemed to this court to be an "inadvertent error in legislative draftsmanship," it refrained from filling in such a legislative lacuna.

⁵⁶ *Rollo*, p. 488.

We conclude that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its order dated October 25, 2004, which adopted respondent's computation and effectively varied the terms of the judgment sought to be executed insofar as it imposed a surcharge of ₱13,744,096.69 on the total tax due (₱10,286,468.57) from 1992 to 2002 instead of only ₱2,571,617.14.


Taxes and its surcharges and penalties cannot be construed in such a way as to become oppressive and confiscatory. Taxes are implied burdens that ensure that individuals and businesses prosper in a conducive environment assured by good and effective government. A healthy balance should be maintained such that laws are interpreted in a way that these burdens do not amount to a confiscatory outcome. Taxes are not and should not be construed to drive businesses into insolvency. To a certain extent, a reasonable surcharge will provide incentive to pay; an unreasonable one delays payment and engages government in unnecessary litigation and expense.

Since it is undisputed that petitioner had already paid the amount of ₱12,868,085.71⁵⁷ (including litigation expenses of ₱10,000.00) to the City Treasurer of Cabanatuan City, the judgment has accordingly been fully satisfied.

WHEREFORE, the petition is **GRANTED** and the Court of Appeals decision and resolution dated January 15, 2007 and April 3, 2007 are **REVERSED AND SET ASIDE**. The order dated October 25, 2004 of the Regional Trial Court of Cabanatuan City, Branch 30, in Civil Case No. 1659 AF granting the writ of execution for the satisfaction of the amount of ₱11,172,479.55 is **ANNULLED AND SET ASIDE**.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

⁵⁷ Id. at 295-296.



ARTURO D. BRION

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO

Acting Chief Justice