



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **23 June 2021** which reads as follows:

“G.R. Nos. 218289-90 (*National Grid Corporation of the Philippines v. Central Board of Assessment Appeals, et al.*).<sup>1</sup> – Commonwealth Act No. 120, otherwise known as the Original Charter of the National Power Corporation (NPC) took effect in 1936. In 1971, the NPC Charter was revised through Republic Act (RA) No. 6395<sup>2</sup>. Under this law, the NPC was charged with the task of electric power generation and transmission to the entire country.<sup>3</sup>

Since 1936, the NPC had been granted an exemption from real property tax. Upon the effectivity of the Local Government Code (LGC) on January 1, 1992, however, this exemption was withdrawn, except for real property taxes

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<sup>1</sup> NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) v. CENTRAL BOARD OF ASSESSMENT APPEALS, THE LOCAL BOARD OF ASSESSMENT APPEALS OF CABANATUAN CITY, and HEIDI PANGILINAN, in her official capacity as the CITY ASSESSOR OF CABANATUAN CITY / NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) v. CENTRAL BOARD OF ASSESSMENT APPEALS, THE LOCAL BOARD OF ASSESSMENT APPEALS OF CABANATUAN CITY, and FLORIDA R. OCA, in her official capacity as the CITY TREASURER OF CABANATUAN CITY.

<sup>2</sup> Entitled “AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION”, approved on September 10, 1971.

<sup>3</sup> Section 1 of Republic Act No. 6395 states:

Section 1. The Charter of the National Power Corporation is hereby revised, and shall henceforth read as follows:

“Sec. 1. *Declaration of Policy* – Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of the government, including its financial institutions.” (Underscoring supplied)

due on the NPC's machineries and equipment being actually, directly, and exclusively used in electric power generation and transmission. As regards other lands, buildings, and improvements owned and used by the NPC for electric power generation and transmission, the same are classified as Special Class and assessed at ten percent (10%) of their fair market values in accord with Sections 216 and 218 of the LGC.<sup>4</sup>

When RA 9136<sup>5</sup> otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) subsequently got enacted, all the assets owned by the NPC including its franchise were transferred to the National Transmission Commission (TRANSCO). The real property tax exemption and privileges granted to the NPC had since been similarly applied to TRANSCO.<sup>6</sup>

On January 15, 2009, TRANSCO's power transmission operation was privatized and turned-over to National Grid Corporation of the Philippines (NGCP; petitioner).<sup>7</sup>

On December 30, 2010, petitioner received from the City Assessor of Cabanatuan, Nueva Ecija the following:

1) **Notice of Assessment** for the real property tax on land located at petitioner's substation in Cabanatuan City. The subject land was classified as **industrial** with an assessment level of **fifty percent (50%)**; and

2) **Real Property Field Appraisal and Assessment Sheet-Machinery** for payment of real property tax on the transformer located within the above-mentioned substation. The subject transformer was likewise classified as **industrial** with an assessed level of **eighty percent (80%)**.<sup>8</sup>

Petitioner filed its protest before the Office of the Treasurer, Cabanatuan City. It alleged that during TRANSCO's operation as a power generation and transmission company, the subject properties were both classified as Special Class under the LGC. Each was assessed at ten percent (10%) of its fair market value. On the other hand, the transformer was declared exempt from real property tax. Since it is simply TRANSCO's successor, the same classification should also apply to it.<sup>9</sup>

Since the Office of the Treasurer, Cabanatuan City did not respond to the protest, petitioner was constrained to appeal before the Local Board of Assessment Appeals (LBAA).<sup>10</sup>

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<sup>4</sup> *Rollo*, pp. 51-52.

<sup>5</sup> Entitled "An Act Ordaining Reforms In The Electric Power Industry, Amending For The Purpose Certain Laws and For Other Purposes," approved on June 8, 2001.

<sup>6</sup> *Rollo*, p. 15.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 52-53.

<sup>9</sup> *Id.* at 53-54.

<sup>10</sup> *Id.* at 54.

Meanwhile, on October 11, 2010, petitioner received yet another set of **Notices of Real Tax Delinquencies** from the City Treasurer of Cabanatuan City for its various properties assessed either at 30%, 35%, 50%, 70% and 80% assessment levels. The alleged real property taxes due were for the period January 15, 2009 to 2010.<sup>11</sup>

Petitioner paid the real property taxes under protest.<sup>12</sup>

The City Treasurer, thereafter, dismissed petitioner's protest and held that the latter was not exempt from real property tax. Petitioner further appealed to the LBAA which then ordered the consolidation of petitioner's first and second protests.

<sup>11</sup> *Id.* at 55-57. See matrix below:

KIND OF PROPERTY CLASSIFICATION	TAX DEC ARP NO.	MARKET VALUE	ASSESSED VALUE	ASSESSMENT LEVEL	AMOUNT DUE (P)	DECLARED OWNER
Industrial Bldg. (Warehouse)	07323/06-09081	3,738,000.00	2,616,600.00	70%	165,140.17	NATIONAL TRANSMISSION CORPORATION
Commercial Bldg.	07324/06-09081	308,700.00	108,050.00	35%	5,360.65	NATIONAL TRANSMISSION CORPORATION
Industrial Bldg. (Old Control Bldg/Bodega) Corporation	07325/06-09081	201,160.00 363,030.00	80,460.00 145,210.00	40% 40%	15,156.68	NATIONAL POWER CORPORATION
Industrial (New Control Building)	07326/06-09081	2,538,250.00	1,776,780.00	70%	135,621.53	NATIONAL TRANSMISSION CORPORATION
Commercial (Administration) Bldg.	07327/06-09081	924,710.00	462,360.00	50%	30,179.33	NATIONAL TRANSMISSION CORPORATION
Industrial Building (Repair Bay/Stockroom)	07328/06-09081	153,260.00 114,950.00	45,980.00 34,490.00	30% 30%	5,658.32	NATIONAL POWER CORPORATION
Industrial (Lineman's Quarter/ Stockroom)	07329/06-09081	71,000.00 139,850.00	21,300.00 41,960.00	30% 30%	4,448.09	NATIONAL POWER CORPORATION
Commercial Building	07330/06-09081	572,440.00	228,980.00	40%	17,598.86	NATIONAL POWER CORPORATION
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30 MVA Transformer/ Machinery	07334/06-09081	18,000,000.00	14,400,000.00	80%	714,420.00	NATIONAL TRANSMISSION CORPORATION
50 MVA Transformer/ Machinery	07335/06-09081	30,000,000.00	24,000,000.00	80%	1,190,700.00	NATIONAL TRANSMISSION CORPORATION
Land/ Residential	06-10025-00525 RL	37,100.00	3,710.00	10%	354.38	NATIONAL POWER CORPORATION
Land/ Residential	06-10053-00336 SL				516.50	NATIONAL POWER CORPORATION
Land/ Residential	06-09084-00267	5,724,000.00	2,862,000.00	50%	753,314.17	NATIONAL POWER CORPORATION
Land/ Residential	06-09081-04104	5,724,000.00	2,862,000.00	10%	384,116.17	NATIONAL POWER CORPORATION
					TOTAL	₱4,976,829.90

<sup>12</sup> *Id.* at 55-56.

### **Ruling of the LBAA**

By Joint Resolution<sup>13</sup> dated July 25, 2011, the LBAA ruled that petitioner is liable for real property tax. The tax exemption under Section 234 of the LGC cannot apply to petitioner because unlike NPC and TRANSCO, it is not a Government-Owned and Controlled Corporation (GOCC), but a private entity.

Petitioner's motion for reconsideration was denied under Order<sup>14</sup> dated September 14, 2011.

### **Ruling of the Central Board of Assessment Appeals (CBAA)**

On appeal, the CBAA affirmed under Decision<sup>15</sup> dated January 30, 2013. The CBAA rejected petitioner's claim that under its franchise, RA 9511, it is exempt from real property taxes on subject properties. The CBAA cited Section 234(a) of the LGC as the specific governing law which states, in no uncertain terms, that taxable entities like petitioner are liable to pay real property tax.<sup>16</sup>

Too, the subject properties do not qualify as a special class of real properties under Sections 216 and 218(d) of the LGC just because the same are actually or directly used by NGCP, a taxable private entity, in its electric power generation and transmission.<sup>17</sup>

Under Resolution<sup>18</sup> dated June 18, 2013, petitioner's motion for reconsideration was also denied.

### **Ruling of the Court of Tax Appeal (CTA) *En Banc***

Petitioner sought further relief from the CTA *En Banc* where the two cases were, respectively, docketed as CTA EB Case No. 1052 and CTA EB Case No. 1053. These cases were also consolidated and jointly decided per assailed Decision dated January 28, 2015, affirming the ruling of the CBAA.<sup>19</sup>

According to the CTA *En Banc*, petitioner's reliance on the phrase "in lieu of all taxes" in claiming for tax exemption is misplaced. The historical usage of this phrase in franchise laws shows that it is not a blanket grant of tax exemption, but only an exemption from paying the franchise tax. In other words, while petitioner is exempt from paying its franchise tax, it is liable to pay real property tax. Also, petitioner is not qualified to avail of the special

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<sup>13</sup> *Id.* at 164-169.

<sup>14</sup> *Id.* at 170-171.

<sup>15</sup> *Id.* at 201-224.

<sup>16</sup> *Id.* at 217-220.

<sup>17</sup> *Id.* at 222-223.

<sup>18</sup> *Id.* at 244-250.

<sup>19</sup> *Id.* at 45-75.

tax rate of ten percent (10%) of the fair market value of the property under the LGC because: 1) petitioner is not a GOCC, and 2) while it is engaged in electric power transmission, it is not engaged in power generation.<sup>20</sup>

### The Present Petition

Petitioner now prays for the reversal of the assailed disposition of the CTA *En Banc*. It argues that under RA 9511, it is only liable to pay a three percent (3%) franchise tax and no other, whether the tax or taxes are levied by the local or national authority. While it is given the franchise to operate and assume the electric power transmission functions of TRANSCO, the latter remains the owner of the subject lands, buildings, and machineries. Hence, these properties are still GOCC-owned which continue to be used and devoted for the delivery of essential public service, *i.e.*, the transmission of electric power. As beneficial user of these properties, it is exempt from payment of real property taxes thereon. In the alternative, it asserts that the lands should only be assessed at ten percent (10%) level in accord with Sections 216 and 218(d) of the LGC, while the transformer should be totally exempt pursuant to Section 234(c) of the LGC.<sup>21</sup>

On the other hand, respondents maintain that the properties in question are subject to real property tax since under RA 9511, petitioner is only exempt from paying the franchise tax. Congress did not expressly exempt petitioner from paying local taxes.<sup>22</sup>

### Core Issue

Is petitioner liable to pay real property tax?

### Ruling

All laws granting tax exemptions are construed against the taxpayer because an exemption restricts the collection of taxes necessary for the existence of the government.<sup>23</sup> Thus, *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*<sup>24</sup> ordained:

A person claiming exemption from tax payments has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a

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<sup>20</sup> *Id.* at 65-74.

<sup>21</sup> *Id.* at 15-38.

<sup>22</sup> *Id.* at 341-346.

<sup>23</sup> *See Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*, 805 Phil. 607, 619 (2017).

<sup>24</sup> 686 Phil. 944 (2012).

clear and unequivocal provision of law on the basis of language too plain to be mistaken.<sup>25</sup>

Here, Section 9 of RA 9511 reads:

Section 9. *Tax Provisions.* – In consideration of the franchise and rights hereby granted, the Grantee [NGCP], its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee [NGCP] from its operation under this franchise. **Said tax shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted:** Provided, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, **exclusive of this franchise,** as other corporations are now or hereby may be required by law to pay: Provided, further, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT). (Emphases and underscoring supplied)

Petitioner asserts that since its legislative franchise contains an “in lieu of all taxes” clause it is therefore exempt from paying all kinds of taxes whether levied or collected by any authority on any property used in connection with its franchise. Since the law is clear, it must be given its literal meaning and applied without attempt at any interpretation.

Respondents, on the other hand, riposte that since petitioner’s legislative franchise also includes the phrase “exclusive of this franchise,” it means that the exemption exclusively pertains only to the payment of the franchise tax, not the real property tax.

The case is not novel. In *National Grid Corporation of the Philippines v. Oliva*,<sup>26</sup> the Court settled, once and for all, the extent of the tax exemption granted to NGCP per its legislative franchise under **RA 9511**, specifically Section 9 thereof, thus:

Back in 2003, this *ponente* discussed the “in lieu of all taxes” clause in a separate opinion in *PLDT v. City of Davao*. The Court struck down PLDT’s argument that the “in lieu of all taxes” clause in Smart’s franchise exempts PLDT from the payment of the local franchise tax imposed by the City of Davao. At first glance, it may seem that the “in lieu of all taxes” clause in Smart’s franchise is similarly worded to that of NGCP. Smart’s tax provisions in Section 9 of Republic Act No. 7294 read as follows:

*Tax provisions.* – The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may

<sup>25</sup> *Id.* at 966.

<sup>26</sup> 792 Phil. 769, 784-787 (2016).

be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be **in lieu of all taxes** on this franchise or earnings thereof: Provided, that the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue.

x x x x

Smart's franchise states that the 3 percent "franchise tax" shall be "in lieu of all taxes." Clearly, it is the franchise tax that shall be in lieu of all taxes referred to in Section 9, and not the VAT or any other tax. Following the rule on strict interpretation of tax exemptions, the "in lieu of all taxes" clause cannot apply when what is paid is a tax other than the franchise tax. Since the franchise tax on telecommunications companies has been abolished, the "in lieu of all taxes" clause has now become *functus officio*, rendered inoperative for lack of a franchise tax.

x x x

x x x x

**x x x Nothing is mentioned in Section 9 about local taxes. The clear intent is for the "in lieu of all taxes" clause to apply only to taxes under the National Internal Revenue Code and not to local taxes.** Even with respect to national internal revenue taxes, the "in lieu of all taxes" clause does not apply to income tax.

If Congress intended the "in lieu of all taxes" clause in Smart's franchise to also apply to local taxes, Congress would have expressly mentioned the exemption from municipal and provincial taxes. Congress could have used the language in Section 9 (b) of Clavecilla's old franchise, as follows:

x x x in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which the grantee is hereby expressly exempted, x x x.

However, Congress did not expressly exempt Smart from local taxes. Congress used the "in lieu of all taxes" clause only in reference to national internal revenue taxes. The only interpretation, under the rule on strict construction of tax exemptions, is that the "in lieu of all taxes" clause in Smart's franchise refers only to national and not to local taxes.

We take note of the pronouncements made in the separate opinion, and apply them to the present set of facts.

*First.* Tax exemptions must be clear and unequivocal, and must be directly stated in a specific legal provision.

In the present case, Section 9 of RA 9511 provided for NGCP's tax liabilities and exemptions.

*Second.* The "in lieu of all taxes" clause is strictly limited to the kind of taxes, taxing authority, and object of taxes specified in the law.

**Section 9 of RA 9511 states that NGCP's payment of franchise tax is in lieu of payment of "income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise."** Thus, in contrast to Smart's franchise as quoted above, Section 9 of RA 9511 clearly stated that the NGCP's "in lieu of all taxes" clause includes taxes imposed by the local government on properties used in connection with NGCP's franchise.<sup>27</sup> (Emphasis supplied).

Verily, petitioner's franchise constitutes an express and categorical statement that it is exempt from payment of real property taxes on the properties it actually and directly uses for its electric power transmission.

The next question: does petitioner actually and directly use the subject properties for its electric power transmission?

Applying *Oliva*, a prior factual determination of the actual use of subject properties is a condition *sine qua non* to their exemption from paying real property tax. Should it be determined that these properties are actually and directly used for petitioner's electric power transmission, then they are exempt, otherwise, they are not.

The following matrix shows the particulars of the subject properties here:<sup>28</sup>

KIND OF PROPERTY CLASSIFICATION	TAX DEC ARP NO.	MARKET VALUE	ASSESSED VALUE	ASSESSMENT LEVEL	AMOUNT DUE (P)	DECLARED OWNER
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<sup>27</sup> *Id.* at 787.

<sup>28</sup> *Rollo*, pp 55-57.



Corporation						
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					TOTAL	₱4,976,829.90

Records, however, are devoid of any information regarding the nature or actual use of these properties. In *Oliva*, the Court noted the same deficiency, thus, it ordered the remand of the case to the CBAA to ascertain the actual and direct use of therein subject properties of NGCP, viz.:

The CBAA should determine whether the subject properties are properties used in connection with NGCP's franchise. If the subject properties are used in connection with NGCP's franchise, then NGCP is exempt from paying real property taxes on the subject properties. If the subject properties are not used in connection with NGCP's franchise, then the assessment level should be based on actual use, in accordance with Section 218 (a-c) of the Local Government Code.

x x x x

**WHEREFORE**, we **GRANT** the petition. The Decision promulgated on 13 November 2013 and the Resolution promulgated on 23 June 2014 by the Court of Tax Appeals En Banc in CTA EB Case No. 849 are **SET ASIDE**.

We **REMAND** this case to the Central Board of Assessment Appeals which is directed to determine the following:

1. whether the properties covered by RPT-DS-FNOD0909-16-020, RPT-DSFNOD09090-21-030, and RPT-DS-FNOD0909-21-002 belong to the special classes of real property described in Section 216 of the Local Government Code, and assess the appropriate amount of real property taxes for the years 2001 to 2008; and

2. whether the properties covered by RPT-DS-FNOD0909-16-020, RPT-DS-FNOD0909-21-030, and RPT-DS-FNOD0909-21-002 are used by the National Grid Corporation of the Philippines in connection with its franchise. If the subject properties are not used in connection with NGCP's franchise, then the CBAA should assess the appropriate amount of real property taxes for the year 2009.

The City Treasurer of Cebu City shall refund to the NGCP any payment which it made in excess of the correct amount.

**SO ORDERED.**<sup>29</sup>

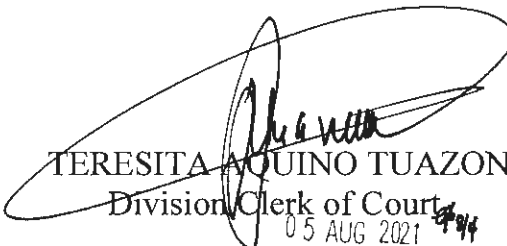
Clearly, there is also a need to remand this case to the CBAA to determine the actual and direct use of subject machineries, buildings, and lands for the purpose of resolving the merits of petitioner's claim for exemption from paying real property taxes thereon.

**WHEREFORE**, the petition is **PARTLY GRANTED**, and the assailed Decision dated January 28, 2015 in CTA EB Case No. 1052 and CTA EB Case No. 1053, is **SET ASIDE**.

The case is remanded to the Central Board of Assessment Appeals which is directed to determine whether the subject machineries, buildings, and lands are actually and directly used in connection with the franchise of the National Grid Corporation of the Philippines, and based on the result thereof, render a new judgment on its claim for exemption from payment of real property tax.

**SO ORDERED.**" (J. Lopez, J., designated additional member per Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court  
05 AUG 2021

<sup>29</sup> Supra note 26, at 793-794.

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