Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NATIONAL POWER CORPORATION Petitioner, - versus - **PHILIPPINE NATIONAL BANK and MUNICIPALITY OF SUAL, PANGASINAN,** Respondents.	**G.R. No. 226716** Present: CAGUIOA, *J.*, *Chairperson,* INTING, GAERLAN, DIMAAMPAO, and SINGH, *JJ.* Promulgated: July 10, 2023 MisADCBath

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DECISION

DIMAAMPAO, *J.:*

This Petition for Review on *Certiorari*[1] impugns the Decision[2] and the Resolution[3] of the Court of Tax Appeals (CTA) sitting *en banc*, which declared final and collectible the Notice of Assessment of Local Business Tax for the Year 2010[4] (Notice of 2010 Assessment) against the National Power Corporation (petitioner), and denied the Motion for Reconsideration[5] thereof,

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1 *Rollo*, pp. 12-70.

2 Id. at 72-90. The Decision dated September 24, 2015 was penned by Associate Justice Ma. Belen M. Ringpis-Liban, with the concurrence of Associate Justices Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas. Presiding Justice Roman G. Del Rosario penned his Concurring and Dissenting Opinion, id. at 91-98. Associate Justice Juanito C. Castañeda, Jr. joined the Separate Opinion of Associate Justice Erlinda P. Uy, id. at 99-102.

3 Id. at 104-107. The Resolution dated August 12, 2016 was penned by Associate Justice Ma. Belen M. Ringpis-Liban, with the concurrence of Associate Justice Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Presiding Justice Roman G. Del Rosario maintained his Concurring and Dissenting Opinion in the Decision dated September 24, 2015, id. at 108-112. Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy likewise maintained their Separate Opinion. Associate Justice Amelia R. Cotangco-Manalastas penned a Separate Opinion, id. at 113-115.

4 Id. at 169-170.

5 Id. at 137-161.

respectively, in CTA EB No. 1104.

The salient facts of this case are uncontroverted.

On September 23, 2010, petitioner received a Notice of 2010 Assessment[6] from the Municipality of Sual, Pangasinan (respondent Municipality), demanding the payment of local business taxes for taxable year 2010. Purportedly, this was pursuant to the "decision of the Supreme Court in the case of *National Power Corporation v. City of Cabanatuan* and other subsequent cases ruling that the National Power Corporation is liable for taxes imposed by the local government units" and the provisions of Sual Municipal Ordinance No. 121.[7]

Thereafter, respondent Municipality instituted a Complaint[8] for collection of local business tax for taxable years 2006 to 2009 against petitioner before Branch 69 of the Regional Trial Court (RTC) of Lingayen, Pangasinan. The case was docketed as Civil Case No. 19070.

Petitioner, on the other hand, initiated an appeal[9] pursuant to Section 195[10] of Republic Act (RA) No. 7160, otherwise known as the Local Government Code, against respondent Municipality before Branch 38 of the RTC of Lingayen, Pangasinan. Petitioner prayed that it be declared not liable for business tax covering taxable years 2006 to 2009. The appeal was docketed as Civil Case No. 19076.

Ensuingly, on January 3, 2011, petitioner received a Notice of Seizure or Confiscation[11] from respondent Municipality of its personal properties to the extent of ₱48,703,713.14 as of December 2010. This amount represented unpaid local business tax and accrued monthly interest for taxable year 2010.

As it happened, petitioner received a letter[12] from respondent Philippine

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6 Id. at 169-170.

7 Id. at 169.

8 Id. at 171-174.

9 Id. at 175-199.

10 SECTION 195. *Protest of Assessment.*— When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

11 *Rollo,* p. 200.

12 Id. at 201.

National Bank (respondent Bank), informing it of the existence of a Warrant of Distraint issued by respondent Municipality in the amount of ₱48,703,713.14. In reply, petitioner reiterated the pendency of Civil Case No. 19076.[13]

On January 31, 2011, petitioner received another letter[14] from respondent Bank, this time notifying it that unless the said Warrant of Distraint is discharged, dissolved, lifted or its implementation and enforcement enjoined, the bank would be constrained to deliver the garnished funds to respondent Municipality. Subsequently, respondent Bank informed petitioner that it had put on hold its accounts in different branches and that it would be compelled to deliver the garnished funds to respondent Municipality, when so required.[15]

Thence, petitioner instituted against both respondent Municipality and respondent Bank (collectively, respondents) a Petition for Injunction with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[16] before the RTC of Quezon City in order to restrain the collection of its purported business tax for taxable year 2010. The injunction case, docketed as Civil Case No. Q-11-68711, was raffled off to Branch 99.

In the Order dated February 18, 2011, however, the injunction case was dismissed on grounds of forum shopping and pursuant to the doctrine of non-interference between concurrent and coordinate courts.[17] Petitioner's subsequent motion for a reconsideration[18] of the order was denied.[19]

Disgruntled, it sought recourse before the CTA through a Petition for Review,[20] anchored on the following grounds—

I

THE HONORABLE RTC ERRED IN DISMISSING CIVIL CASE NO. Q-11-68711 BASED ON THE GROUNDS OF DOCTRINE OF NON-INTERFERENCE BETWEEN COURTS OF EQUAL RANK AND FORUM SHOPPING.

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13 Id. at 204-205.
14 Id. at 202-203.
15 Id. at 206-207.
16 Id. at 208-232.
17 Id. at 233-234. The Order dated February 18, 2011 was penned by Presiding Judge Ma. Victoria Alba-Estoesta.
18 Id. at 235-243.
19 Id. at 265-267. The RTC Resolution dated October 30, 2012 was penned by Acting Presiding Judge Maria Amifaith S. Fider-Reyes.
20 Id. at 268-298.

II

THERE IS NO PROOF THAT A MUNICIPAL ORDINANCE HAS BEEN VALIDLY PASSED BY THE RESPONDENT MUNICIPALITY TO IMPOSE BUSINESS TAX AGAINST PETITIONER.

III

UPON THE EFFECTIVITY OF REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS *"ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA)"* IN JUNE 2001, PETITIONER NO LONGER OPERATES, CONDUCTS AND/OR MAINTAINS ANY BUSINESS ACTIVITY IN THE MAIN GRID LOCATED WITHIN THE TERRITORIAL JURISDICTION OF THE RESPONDENT MUNICIPALITY BECAUSE THESE ACTIVITIES WERE ALREADY TRANSFERRED TO THE POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM).

IV

ASSUMING THAT THERE IS A VALID MUNICIPAL ORDINANCE AND THAT PETITIONER HAS A BUSINESS ACTIVITY WITHIN THE MUNICIPALITY OF SUAL, PANGASINAN, THE TASK OF GENERATING ELECTRICITY IS NOT ONE OF THE BUSINESSES UNDER THE LOCAL GOVERNMENT CODE THAT IS LIABLE FOR BUSINESS TAX.

V

PETITIONER IS A GOVERNMENT INSTRUMENTALITY THAT IS EXEMPT FROM PAYMENT OF BUSINESS TAX.

VI

ASSUMING FOR THE SAKE OF ARGUMENT THAT PETITIONER IS LIABLE FOR THE PAYMENT OF BUSINESS TAX TO RESPONDENT MUNICIPALITY, THE TOTAL AMOUNT OF P48,703,713.14 FOR CALENDAR YEAR 2010 HAS NO FACTUAL BASIS.

VII

THE ISSUANCE OF THE SEPTEMBER 23, 2010 NOTICE OF ASSESSMENT, WARRANT OF DISTRAINT AND OTHER PROCESSES BY THE RESPONDENT MUNICIPALITY IS ILLEGAL AND WITHOUT ANY FACTUAL BASIS.

VIII

THE IMPLEMENTATION OF THE SEPTEMBER 23, 2010 NOTICE OF ASSESSMENT, WARRANT OF DISTRAINT, AND THE CONDUCT OF FURTHER DISTRAINT, LEVY AND/OR PROCEEDINGS TO COLLECT THE ALLEGED BUSINESS TAX FOR YEAR 2010 BY THE RESPONDENTS, ANY OF THEIR OFFICERS, REPRESENTATIVES AND AGENTS WILL RESULT IN THE DEPRIVATION OF ELECTRIC POWER IN ONE OR MORE OF THE PROVINCES BEING PRESENTLY SERVED BY PETITIONER.[21]

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[21] Id. at 274-276.

The case was docketed as CTA Case No. 101 and raffled off to the Second Division. On September 6, 2013, the CTA Second Division dismissed the petition,[22] disposing in this wise—

> **WHEREFORE, PREMISES CONSIDERED**, the Regional Trial Court's Order dated February 18, 2011 and Resolution dated October 30, 2012 are hereby **AFFIRMED** for the reasons stated above. The instant Petition for Review is hereby **DISMISSED on the basis that the 2010 Assessment Notice of local business taxes has become final and collectible**.
>
> **SO ORDERED**.[23]

Anent the issue on forum shopping, the CTA Second Division declared that in determining whether a party is guilty thereof, the most important question to ask is whether the elements of *litis pendentia* are present or whether a final judgment in one case will result in *res judicata* in another. Otherwise stated, to determine forum shopping, the test is to see whether in the two or more cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[24] Thus, it held that the rule on forum shopping was not violated since there was no identity of rights asserted as such were based on different causes of action. There was likewise no identity of reliefs prayed for since the petition for injunctive relief filed with Branch 99 of the RTC of Quezon City pertained to taxable year 2010, while the other pending cases in RTC Branch Nos. 38 and 69 of Lingayen, Pangasinan covered the taxable years 2006 to 2009.[25]

However, apropos the issue of validity or propriety of the assessment, the CTA Second Division ruled that appeal to the CTA was not the proper remedy considering that the 2010 Notice of Assessment had already become final and executory.[26] It ratiocinated:

> x x x As correctly pointed out by respondent Municipality in its Comment, nowhere in the instant Petition for Review did petitioner mention or allege any filing of protest for the 2010 Notice of Assessment before the municipal treasurer within the allotted period provided by law. Since petitioner failed to protest said Notice of Assessment, it became conclusive and unappealable.
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> The Assessment Notice issued on September 23, 2010 by respondent Municipality, through Municipal Treasurer Prescila L. Ramos,

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22 Id. at 117-132. The Decision dated September 6, 2013 was penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justice Caesar A. Casanova. Associate Justice Amelia R. Cotangco-Manalastas was on leave.

23 Id. at 131.

24 Id. at 126.

25 Id.

26 Id. at 127.

was received by petitioner on September 27, 2010. Section 195 of the Local Government Code of 1991 provides:

> "SEC. 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. **Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory.** The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)[-]day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**" (Emphasis supplied)

The above-quoted provision states that the taxpayer has sixty days from receipt of the Notice of Assessment to file a written protest; while the local treasurer has sixty days from the date of filing of the protest within which to decide the same. The provision further provides that the taxpayer has thirty days, either from the receipt of the denial of the protest, or from the lapse of the sixty-day period prescribed for the local treasurer to decide on the protest, within which to appeal with the court of competent jurisdiction. In the instant case, petitioner has sixty (60) days from September 27, 2010 or until November 27, 2010 within which to file its protest. Unfortunately, this petitioner failed to do.[27]

Petitioner's bid for a reconsideration[28] of the foregoing Decision having been denied,[29] it elevated the matter to the CTA *En Banc via* a Petition for Review,[30] docketed as CTA EB No. 1104.

Petitioner avouched that it had been relieved of its local tax liabilities by RA No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA).[31] It asserted that by virtue of the EPIRA, it was no longer engaged

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27 Id. at 127-128.

28 Id. at 342-359.

29 Id. at 134-136. The Resolution dated November 27, 2013 was penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas.

30 Id. at 379-416.

31 Approved on June 8, 2001.

in the generation and distribution of electric power in the Municipality of Sual in 2010. Thence, petitioner claimed that it should not be held liable for the payment of the business tax assessed for that taxable year.[32]

The CTA *En Banc* rendered the challenged Decision affirming *in toto* the Decision of the CTA Second Division.

Among the various issues raised by petitioner, the CTA *En Banc* stressed that with regard to its assertion that it no longer operated, conducted or maintained any business activity in the main grid located within the Municipality of Sual upon the effectivity of the EPIRA, considering that these activities were already transferred to the Power Sector Assets and Liabilities Management Sector Corporation (PSALM), the EPIRA did not immediately and fully result in the transfer of all of petitioner's assets and operations to PSALM. Petitioner continued to do business in the municipality.[33]

Petitioner's plea for a reconsideration[34] of the foregoing disposition likewise proved futile as the CTA *En Banc* denied its motion in the disputed Resolution.

With the denial of its motion for reconsideration, petitioner instituted the present Petition, reiterating the arguments similarly raised before the CTA and summarized hereunder:

> *First*, the 2010 Notice of Assessment issued by respondent Municipality against NPC is an illegal assessment, hence, void. Accordingly, being an illegal assessment, the same could not attain finality, notwithstanding the failure on the part of NPC to file a written protest within the prescribed period provided under Section 195 of the Local Government Code. Thus, immediate resort to the court is proper.[35]
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> *Second*, the 2010 Assessment Notice is illegal as it was issued against an improper party or a party not liable for business tax.[36]
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> *Third*, in any case, even assuming that the Notice of Assessment was properly directed to NPC, still, the same is void, as there is no proof that a Municipal Ordinance has been validly passed by the respondent Municipality to impose business tax against NPC. Hence, the Assessment Notice lacks proper basis.[37]
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> *Fourth*, even assuming *arguendo* that there is a valid Municipal Ordinance and NPC has a business activity within the territory of the respondent

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32 Id. at 392-393.
33 Id. at 87.
34 Id. at 137-161.
35 Id. at 28.
36 Id. at 32.
37 Id. at 35.

> Municipality, the task of generating electricity is not one of the businesses under the Local Government Code that can be the proper subject of business tax.[38]
>
> *Fifth*, NPC is not the owner of the 1200-megawatt Sual Coal-Fired Thermal Power Plant located within the territory of respondent Municipality.[39]
>
> *Sixth*, NPC is a government instrumentality, hence, exempt from the payment of local business tax.[40]
>
> *Seventh*, the CTA *En Banc* erroneously concluded that the *Bataan case* is not applicable to the present case.[41]
>
> *Finally,* contrary to the ruling of the CTA *En Banc*, there are exceptionally meritorious reasons warranting the liberal application of the law in favor of NPC.[42]

Simply put, the pivotal issue for this Court's resolution is whether the CTA *En Banc* erred in affirming the dismissal of petitioner's injunction petition and in consequently declaring the 2010 Notice of Assessment against it as final and collectible.

The Petition carries weight and conviction.

Before a local tax case may be elevated to the court of competent jurisdiction, it is mandatory for the taxpayer to protest first the deficiency assessment by contesting its legality in accordance with Section 195 of the Local Government Code of 1991.[43] This section states that:

> SECTION 195. *Protest of Assessment.*— When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall **issue a notice of assessment** stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. **Within sixty (60) days from the receipt** of the notice of assessment, the **taxpayer may file a written protest** with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall **decide the protest within sixty (60) days from the time of its filing**. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent

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38 Id.
39 Id. at 40.
40 Id. at 49.
41 Id. at 50.
42 Id. at 56.
43 *Mactel Corp. v. City Government of Makati*, G.R. No. 244602, July 14, 2021.

> jurisdiction otherwise the assessment becomes conclusive and unappealable. [Emphases supplied]

The foregoing provision notwithstanding, there is a well-settled exception in cases where the controversy does *not* involve questions of fact but only of law.[44] This exception to the principle of exhaustion of administrative remedies has its genesis in the 1976 case of *Hon. Ramon D. Bagatsing, et al. v. Hon. Pedro A. Ramirez and the Federation of Manila Market Vendors, Inc.*,[45] where the Court enunciated—

> The principle of exhaustion of administrative remedies is strongly asserted by petitioners as having been violated by private respondent in bringing a direct suit in court. This is because Section 47 of the Local Tax Code provides that any question or issue raised against the legality of any tax ordinance, or portion thereof, shall be referred for opinion to the city fiscal in the case of tax ordinance of a city. The opinion of the city fiscal is appealable to the Secretary of Justice, whose decision shall be final and executory unless contested before a competent court within thirty (30) days. But, the petition below plainly shows that the controversy between the parties is deeply rooted in a pure question of law: whether it is the Revised Charter of the City of Manila or the Local Tax Code that should govern the publication of the tax ordinance. In other words, the dispute is sharply focused on the applicability of the Revised City Charter or the Local Tax Code on the point at issue, and *not* on the legality of the imposition of the tax. **Exhaustion of administrative remedies before resort to judicial bodies is not an absolute rule. It admits of exceptions. Where the question litigated upon is purely a legal one, the rule does not apply.** The principle may also be disregarded when it does not provide a plain, speedy and adequate remedy. It may and should be relaxed when its application may cause great and irreparable damage.[46] [Emphasis supplied]

Clearly, where the question involved is purely legal and shall eventually have to be resolved by the courts of justice,[47] exhaustion of administrative remedies seems futile and the taxpayer may directly resort to judicial action. For this reason, the Court *disagrees* with the tax court's findings that the 2010 Notice of Assessment against petitioner attained finality and became executory by reason of its failure to file a written protest with the local treasurer against the said assessment.

Having established the propriety of petitioner's direct resort to judicial action, the next query leaps to the eye— *is petitioner the rightful subject of the tax assessment issued by respondent Municipality?*

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[44] See *Alejandro B. Ty and MVR Picture Tube Inc. v. Hon. Aurelio C. Trampe, et al.*, 321 Phil. 81, 101 (1995).

[45] 165 Phil. 909 (1976).

[46] Id. at 916-917.

[47] See *Marichu G. Ejera v. Beau Henry L. Merto and Erwin Vergara*, 725 Phil. 180, 203 (2014).

The Court answers in the negative.

The issue at hand has been squarely passed upon and settled in a precedent setting case. What the Court enunciated in the case of *National Power Corporation v. Provincial Government of Bataan (Bataan)*[48] applies *mutatis mutandis* to the case at bench. Invariably, the Court decreed the following doctrinal polestar—

> The RTC found that the NPC failed to present evidence that it no longer owned or operated the business subject to local franchise tax and that the properties the Province levied on did not belong to it. But **proving these things did not require the presentation of evidence in this case since these events took place by operation of law**, particularly the EPIRA. Thus, Section 8 of the EPIRA provides:
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> > SEC. 8. *Creation of the National Transmission Company.* — There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the power and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
> >
> > **Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO**. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).
> >
> > The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided,* That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.
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> > TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such

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[48] 733 Phil. 34 (2014).

> subtransmission facilities not later than two (2) years from the effectivity of this act or the start of open access, whichever comes earlier: x x x
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> x x x x

The above created the TRANSCO and transferred to it the NPC's electrical transmission function with effect on June 26, 2001. **The NPC, therefore, ceased to operate that business in Bataan by operation of law**. Since the local franchise tax is imposed on the privilege of operating a franchise, not a tax on the ownership of the transmission facilities, it is clear that such tax is not a liability of the NPC.

Nor could the Province levy on the transmission facilities to satisfy the tax assessment against the NPC since, as Section 8 above further provides, the latter ceased to own those facilities six months from the effectivity of the EPIRA. Those facilities have since belonged to TRANSCO.

The legislative emasculation of the NPC also covered its former power generation function, which was the target of the Province's effort to collect the local franchise tax for 2001, 2002, and 2003. Section 49 of the EPIRA provides:

> SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation.* — There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation," hereinafter referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

Section 49 above created the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.) and transferred to it all of the NPC's "generation assets" which would include the Bataan Thermal Plant. Clearly, **the NPC had ceased running its former power transmission and distribution business** in Bataan **by operation of law from June 26, 2001**. It is, therefore, **not the proper party subject to the local franchise tax for operating that business**. Parenthetically, Section 49 also transferred "all existing ...liabilities" of the NPC to PSALM Corp., presumably including its unpaid liability for local franchise tax from January 1 to June 25, 2001. Consequently, such tax is collectible solely from PSALM Corp.[49] [Emphases supplied]

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49 Id. at 38-40.

Albeit the aforesaid case involved local franchise tax, by parity of reasoning, the same conclusion necessarily follows—***PSALM, not petitioner, is the proper party subject of the 2010 Notice of Assessment***. *Undoubtedly, respondent Municipality is barking up the wrong tree.*

The Court discerns that in the assailed Decision, the CTA *En Banc* acknowledged the *Bataan* case but nonetheless ruled against its applicability, *viz.*:

> The Supreme Court's ruling in Bataan, however, cannot apply to the instant case. In Bataan, the NPC *did not ignore* the notice of tax delinquency that it received on March 28, 2003, but reserved its right to contest the computation pending the decision of the Supreme Court in *NPC vs. City of Cabanatuan* (which would be decided on April 9, 2003). Thus[,] the NPC had reserved its right before the provincial government sent it tax notices anew on May 12 and 14, 2003 — the reservation of the right was made well within the 60-day period for protesting a tax assessment.[50]

In essence, the CTA *En Banc* brushed off the *Bataan* case on account of petitioner's failure to protest the tax assessment. However, as heretofore explicated, the question involved in this case is purely legal; hence, immediate resort to judicial action is justified.

It is thus clear upon this point that: *first*, the 2010 Notice of Assessment against petitioner did not attain finality, and *second*, petitioner is not the proper party subject thereof. Now, another query comes down to pike: *what becomes of the 2010 tax assessment?*

In the 2014 *Bataan* case, the Court remanded the case to the RTC in order that the PSALM and petitioner may be impleaded as proper parties. In so ruling, the Court made this illuminating discourse—

> An indispensable party is one who has an interest in the controversy or subject matter and in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable. Here, since the subject properties belong to PSALM Corp. and TRANSCO, they are certainly indispensable parties to the case that must be necessarily included before it may properly go forward. For this reason, the proceedings below that held the NPC liable for the local franchise tax is a nullity. It did not matter where the RTC Decision was appealed, whether before the CA or the CTA.[51]

Nevertheless, the Court reconsidered its 2014 Decision in *Bataan* insofar as it ordered the remand of the case to the RTC.[52] The Court, this time

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50 *Rollo*, p. 83.

51 Supra note 48 at 40.

52 *NPC v. Provincial Government of Bataan (Resolution)*, 806 Phil. 688 (2017).

speaking through Senior Associate Justice Leonen, edifyingly clarified:

> A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." In the instant case, petitioner's complaint has sought not only the nullification of the foreclosure sale but also a declaration from the trial court that it is exempt from the local franchise tax. The action began when respondent ignored petitioner's claim for exemption from franchise tax, and pursued its collection of the franchise tax delinquency by issuing the warrant of levy and conducting the sale at public auction — where the Provincial Government of Bataan was declared as purchaser — of the transmission assets, despite the purported prior mutual agreement to suspend administrative remedies for the collection of taxes. The assets were sold to enforce collection of a franchise tax delinquency against the petitioner. Petitioner thus had to assail the correctness of the local franchise tax assessments made against it by instituting the complaint with the Regional Trial Court; otherwise, the assessment would become conclusive and unappealable. Certainly, petitioner is a real party in interest, which stands to gain or lose from the judgment that the trial court may render.[53]

Ineludibly, the foreclosure sale in *Bataan* was declared null and void.

The Court echoes the same disposition in the present case. Accordingly, the 2010 Notice of Assessment, as well as the Warrant of Distraint, are null and void for having been issued against an improper party. It is well to reiterate that petitioner's power generation business had ceased by operation of law upon the enactment on June 26, 2001 of the EPIRA. Petitioner has thus had no more business activity within the territorial jurisdiction of respondent Municipality that may be subject to business taxes during the period in question for the same had already been transferred to PSALM pursuant to the EPIRA.

WHEREFORE, the Court hereby **GRANTS** the Petition for Review on *Certiorari* and **SETS ASIDE** the Decision dated September 24, 2015 and the Resolution dated August 12, 2016 of the Court of Tax Appeals *En Banc* in CTA EB No. 1104.

The Notice of Assessment dated September 23, 2010 and the Warrant of Distraint dated December 28, 2010 issued against petitioner National Power Corporation are declared **NULL and VOID**.

SO ORDERED.

JAPAR B. DIMAAMPAO
Associate Justice

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[53] Id. at 699-700.

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest 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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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 this Court.

ALEXANDER G. GESMUNDO
Chief Justice