



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

**NATIONAL GRID CORPORATION OF
THE PHILIPPINES (NGCP),**
Petitioner-Appellant,

-versus-

CBAA CASE NO. L-120
(LBAA Case No. 2011-001)
Cabanatuan City

**LOCAL BOARD OF ASSESSMENT
APPEALS OF CABANATUAN CITY,**
Appellee,

-and-

**HEIDE D. PANGILINAN, in her capacity
as City Assessor of Cabanatuan City,
Nueva Ecija,**
Respondent-Appellee.

X-----/

DECISION

BEFORE Us is an Appeal filed on October 19, 2011 by Petitioner-Appellant National Grid Corporation of the Philippines (NGCP) from the Joint Resolution dated July 25, 2011, as well as from the Order dated September 14, 2011 both issued by the Local Board of Assessment Appeals of Cabanatuan City, Province of Nueva Ecija, respectively dismissing NGCP's "Petition" docketed as LBAA Case No. 2011-001 and denying NGCP's "Motion for Reconsideration".

BRIEF STATEMENT OF FACTS

(As narrated by NGCP)

"13. Petitioner NGCP is a corporation duly established and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City.

“14. Pursuant to the mandate of Republic Act (RA) No. 6395 (*Republic Act No. 6395, Revised Charter of the National Power Corporation, § 2 (1971)*), the National Power Corporation (hereinafter referred to as “NPC” for brevity) undertook 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. All properties in connection with such utilization, including properties for power generation and transmission, are owned and operated by NPC.

“15. NPC was exempt from real property taxation from the time of its creation in 1936 until 31 December 1991. Upon the effectivity of the Local Government Code of 1991 (“LGC”) on 01 January 1992, however, NPC’s exemption from real property tax was withdrawn, except that which pertains to machineries and equipment actually, directly and exclusively used in the generation and transmission of electric power pursuant to Section 234 (c) of the LGC. As regards the lands, buildings and improvements that are owned and used by NPC in the generation and transmission of electric power these properties were classified as Special Class and were assessed at a ten percent (10%) assessment level, in accordance with Sections 216 and 218 of the LGC.

“16. With the effectivity of RA No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (“EPIRA”), the National Transmission Corporation (hereinafter referred to as “TRANSCO” for brevity) assumed the electrical transmission function(s) of NPC (*Republic Act No. 9136, Electric Power Industry Reform Act, § 8, par. 2(2001)*). All the assets owned by NPC relative to the power transmission operation, including its franchise for the operation of the transmission system and grid, were accordingly transferred to TRANSCO. The real property tax exemption and privileges under Sections 234 (c) and 216 and 218 (Special Class) of the LGC were similarly applied to TRANSCO.

“17. The power transmission operation of TRANSCO was subsequently privatized and formally turned-over to petitioner NGCP on 15 January 2009. R.A. No. 9511, enacted on 01 December 2008, granted a legislative franchise to NGCP to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected power transmission lines, substations and related facilities, and for other purposes (**ANNEX “D”** hereof).

“18. On December 30, 2010, petitioner received the Notice(s) of Assessment dated 22 December 2010 and Real Property Field Appraisal and Assessment Sheet-Machinery from Ms. Heide D. Pangilinan, City Assessor of Cabanatuan City, Nueva Ecija, pertaining to the two (2) properties of the petitioner located in

Sumacab Este, Cabanatuan City, Nueva Ecija (**ANNEXES “E” and “F**, *(sic)* respectively, of the Petition).

“19. The Notice of Assessment is for the real property tax on the land located at petitioner NGCP’s Cabanatuan City substation, which is covered by Tax Declaration No. 06-09081-07381 (**ANNEX “G”** hereof), while the property referred to in the Real Property Field Appraisal and Assessment Sheet-Machinery is the 100 MVA Transformer located within the substation and covered by ARP No. 06-09081-07360.

“20. It bears stressing that Tax Declaration No. 06-09081-07381 was formerly covered by Tax Declaration No. 06-09081-04104 with a market value of Five Million Seven Hundred Twenty Four Thousand Pesos (PhP5,724,000.00) and an assessed value of Two Million Eight Hundred Sixty Two Thousand Pesos (PhP2,862,000.00) at assessment level of ten percent (10%) (**ANNEX “H”** hereof).

“21. Likewise, the 100 MVA Transformer covered by ARP No. 06-09081-07360 was formerly covered by Tax Declaration No. 06-09081-07334 and described as 30 MVA with a market value of Eighteen Million Pesos (PhP18,000,000.00) and with an assessed value of Fourteen Million Four Hundred Thousand Four Hundred Pesos at assessment level of Eighty Percent (80%) (**ANNEX “I”** of the Petition).

“22. Based on the aforesaid Tax Declaration No. 06-09081-07381 (Annex “G” hereof), the property is now classified as INDUSTRIAL with an assessment level of FIFTY PERCENT (50%) but it was previously at the ten percent (10%) level only. Moreover, the Real Property Field Appraisal Assessment Sheet-Machinery provides that the 100 MVA Transformer is now also classified as INDUSTRIAL with an assessment level of EIGHTY PERCENT (80%) but from the period of 2001 to first quarter of 2009, the same was declared as exempt from the payment of real property tax.

“23. Moreover, both of the aforesaid properties were included in the written protest which herein petitioner sent to and duly filed before the Office of the Treasurer of the City of Cabanatuan on 30 November 2010 (**ANNEX “J”** hereof).

“24. On 02 February 2011, petitioner sent a correspondence to respondent in response to both the Notice of Assessment dated 22 December 2010, as well as the Property Field Appraisal Assessment Sheet-Machinery. It is the petitioner’s contention that the real property covered by Tax Declaration No. 06-09081-07381 (land at petitioner NGCP’s Cabanatuan Substation) is exempt from the payment of real property tax or in the alternative, be classified as “Special Class” and the assessed value be computed using the

rate not exceeding ten percent (10%) of the fair market value as what had been previously applied to compute the value during the operation of TRANSCO. It was likewise invoked that the property covered by Tax Declaration No. 06-9081-07360 (100 MVA Transformer) be classified as exempt from the payment of real property tax in the same manner that it was previously classified as exempt during the operation of TRANSCO (**ANNEX "K"** hereof).

"25. However, the petitioner has neither received any response whatsoever from respondent Heide Pangilinan or from the City Treasurer's Office of Cabanatuan City relative to the aforementioned protest sent by petitioner to respondent.

"26. Pursuant to the explicit provisions of Chapter 3, Title II, Book II, particularly Section 226 of the LGC, herein petitioner filed before the Local Board of Assessment Appeals of Cabanatuan City, Nueva Ecija the necessary "appeal" pursuant to the following rules, thus:

"Section 226. Local Board of Assessment Appeals- **Any owner or person having legal interest in the property who is not satisfied with the action of the Provincial, City and (sic) Municipal Assessor in the Assessment of his property may, within sixty (60) days from the date of receipts (sic) of the written notice of assessment, appeal to the Board of Assessment Appeals of the provincial (sic) or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.**"

"27. Said "appeal/petition" was, however, denied as per the "Joint Resolution" dated 25 July 2011 rendered by the Honorable Local Board of Assessment Appeals of Cabanatuan City, Nueva Ecija.

"28. The "Motion for Reconsideration" filed by petitioner-appellant NGCP was likewise denied as per the "Order" dated 14 September 2011 rendered by the Honorable Local Board of Assessment Appeals of Cabanatuan City, Nueva Ecija, which Order was received by the undersigned counsel for petitioner-appellant NGCP on **September 22, 2011**.

"29. The instant appeal is therefore filed with the Honorable Central Board of Assessment Appeals within the mandated/reglementary period explicitly provided for by the rules.

"ARGUMENTS AND DISCUSSIONS"

**"PETITIONER NGCP IS EXEMPT FROM
THE PAYMENT OF THE REAL
PROPERTY TAXES SUBJECT MATTER**

**OF THE NOTICE OF ASSESSMENT AND
REAL PROPERTY FIELD APPRAISAL
ASSESSMENT SHEET DATED 30
DECEMBER 2010.**

“30. Petitioner NGCP is exempt from real property tax, or any other tax for that matter, for reasons set out hereunder.

“31. Section 9 of RA No. 9511 (*Annex “D” hereof*) explicitly provides, thus:

‘SEC. 9. Tax Provisions. – **In consideration of the franchise and rights granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee 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 (*sic*) (should be “hereafter”) 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).’ (Emphasis and underscoring supplied.)

“32. It is clear from the foregoing provisions that apart from the 3% franchise tax due to the national government, petitioner NGCP is **exempt from** payment of the real property 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**, including local government units.

“33. The properties subject of the Notice of Assessment and Real Property Field Appraisal Assessment Sheet-Machinery dated 30 December 2010 are, by their very nature and purpose, necessary for the operation and maintenance of petitioner NGCP’s electric power transmission system. The properties are, thus, clearly exempt from real property taxation under RA No. 9511.

“34. In the fairly recent case of *Smart vs. City of Davao, G.R. No.155491, 16 September 2008*, the Honorable Supreme Court ruled in the following wise, thus:

‘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:

"xxx in lieu of any of (*sic*) all taxes of any kind, nature and description, levied collected by any authority whatsoever, municipal and provincial or national, from which the grantee is hereby expressly exempted, xxx (Emphasis supplied.)"

'However, Congress did not expressly exempt Smart from local taxes, xxx'

'Smart's legislative franchise under RA 7229 states:

"Section 9. Tax Provisions. The grantee, its successor or assign shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other person (*sic*) or corporations which (*sic*) are now or thereafter (*sic*) may be required by law to pay. **In addition thereto, the grantee, its successor-in-interest 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 (*sic*) thereof: xxx.**"(Omission and emphasis ours.)

"35. If Congress intended to make petitioner NGCP liable to pay the real property tax in connection with its franchise, an exception should have been provided in its franchise following the Honorable Supreme Court's declaration in the very recent case of *Commissioner of Internal Revenue vs. Philippine Airlines, G.R. No. 180043, 04 July 2009*, to wit:

'The language used in Section 13 of Presidential Decree No. 1590, granting respondent tax exemption, is clearly all-inclusive. **The basic corporate income tax or franchise tax paid by respondent shall be "in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed or collected by any municipal, city, provincial, or national authority or government agency, now or in the future xxx," except only real property tax.** Even a meticulous examination of Presidential Decree No. 1590 will not reveal any provision therein limiting the tax exemption of respondent to final withholding tax on interest income or excluding from said exemption the OCT.'

"36. Unlike Section 234 (c) of R.A. No. 7160, R.A. No. 9511 does not limit the coverage of petitioner NGCP's exemption to 'machineries and equipment', nor does it distinguish between real and personal properties. As long as the properties are used in

connection with petitioner NGCP's nationwide power transmission business, they are not subject to real property taxation.

"37. Moreover, it is respectfully submitted that while the petitioner NGCP took over the nationwide electricity transmission operation of TRANSCO, NGCP and TRANSCO remain separate, distinct and independent juridical personalities. There was no corporate dissolution on the part of TRANSCO as a result of petitioner NGCP's assumption of the former's power transmission business. The foregoing truthful factual circumstance was even recognized by the Honorable Local Board of Assessment Appeals of Cabanatuan City, Nueva Ecija in its Order dated September 14, 2011 (*Annex "B" hereof*) when it stated that **the Real Tax Delinquencies for the years 1997 to 2008 remains to be the liability of NPC/TRANSCO subject for refund to the petitioner.**

"38. Needless to say, TRANSCO is still existing and operating as an on-going concern. In fact, under Sections 5.08 (e) and (f) of the Concession Agreement by and among the Power Sector Assets and Liabilities Management Corporation (PSALM), TRANSCO and petitioner NGCP, TRANSCO remains liable for (i) existing and future claims before the Commencement Date arising from its own acts or omissions; and (ii) unpaid taxes that are payable in respect of tax periods ending before the Commencement Date. (*Please see Order dated September 14, 2011 issued by LBAA Cabanatuan City, Nueva Ecija (Annex "B" hereof) stating that the Real Tax Delinquencies for the years 1997 to 2008 remains to be the liability of NPC/TRANSCO subject for refund to the petitioner.*)

"39. In the case of *Concordia T. Lim vs. City of Manila, G.R. No. 90639, 21 February 1990*, the Honorable Supreme Court stated that, '[i]n real estate taxation, **the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.**'

"40. The foregoing ruling was reiterated by the Honorable Supreme Court in the case of *Manila Electric Company vs. Nelia Barlis. et al., G.R. No. 114231, May 18, 2001, to wit:*

'The fact that NAPOCOR is the present owner of the Sucat power plant machineries and equipment does not constitute a legal barrier to the collection of delinquent taxes from the previous owner, MERALCO, who has defaulted in its payment. In *Testate Estate of Concordia T. Lim v. City of Manila*, the Court held that the **unpaid tax attaches to the property and is chargeable against the person who had actual or beneficial use and possession of it regardless of whether or not he is the owner. In that case, the Court declared that to impose the real property tax on the subsequent owner which was neither the owner nor the beneficial user of the**

property during the designated periods would not only be contrary to law but also unjust. Correspondingly, petitioner MERALCO, not NAPOCOR, is liable for the payment of the back taxes on said properties.' (Emphasis and underscoring supplied.)

"41. Further, the succeeding statement in Section 9 of R.A. No.9511 (*which*) states that **'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 their (*sic*) franchise, as other corporations are now or hereby (*sic*) (should be "hereafter") may be required by law to pay.'**, shows the clear intent of the law to make petitioner NGCP liable to pay only for the taxes on the real estate, buildings and personal properties that are **not used or related to the operation** of its franchise of nationwide electric power transmission system of the Philippine grid and other ancillary business that maximizes the utilization of the assets.

"42. In other words, **NGCP is given a tax exemption and is not required to pay taxes on real estate, buildings and personal property including machineries that are used or related to the operation of its franchise for nationwide power transmission system of the Philippine grid and other ancillary business that capitalize on the utilization of assets.**

"43. Indeed, the clause "on properties used in connection with its franchise" in Section 9 of R.A. No. 9511 **refers to all properties of NGCP used in connection with its franchise.** The tax provision does not distinguish whether the properties referred to are personal or real, tangible or intangible, or transmission lines, or substations or machineries and appurtenances thereto.

"44. As a matter of fact, the tax provision does not even distinguish how these properties are used. All that is required is that, these properties are used in connection with the franchise of NGCP. When the law does not distinguish the properties referred to, then there is no reason to distinguish the same.

"45. It is also the contention of herein petitioner NGCP that the real property taxes due for the period 1997 to 2008 are NPC and TRANSCO retained obligations under paragraph (f), Section 5.08 of the Concession Agreement between and among NGCP, TRANSCO and PSALM, and that petitioner NGCP is not liable to pay these real property tax obligations of TRANSCO. (*Please see Order dated September 14, 2011 issued by LBAA Cabanatuan City, Nueva Ecija (Annex "B" hereof) stating that the Real Tax Delinquencies for the years 1997 to 2008 remains to be the liability of NPC/TRANSCO subject for refund to the petitioner.*)

“46. The machinery and equipment subject matter of the subject appeal are owned by TRANSCO, a government-owned and controlled corporation (GOCC) created under RA No. 9136 (EPIRA). Petitioner NGCP was granted a concession to operate the electric power transmission facilities of TRANSCO under the Concession Agreement dated 28 February 2008. Subsequently, petitioner NGCP was extended a franchise under R.A. No. 9511 which became effective on 20 December 2008, to assume the electric power transmission functions of TRANSCO.

“47. However, under both the Concession Agreement and R.A. No. 9511, petitioner NGCP was granted a privilege to operate and maintain the electric power transmission assets merely as a Concessionaire **but the ownership over the properties is retained by TRANSCO.**

“THE NOTICE OF ASSESSMENT AND REAL PROPERTY FIELD APPRAISAL ASSESSMENT SHEET-MACHINERY ARE NOT IN ACCORDANCE WITH LEVEL OF ASSESSMENT APPLICABLE TO THE SPECIAL CLASS OF REAL PROPERTIES WHICH THE SUBJECT REAL PROPERTIES OF NGCP BELONG.

“48. Based on the aforesaid Tax Declaration No. 06-09081-07381, the property is now classified as INDUSTRIAL with an assessment level of FIFTY PERCENT (50%) but it was previously at the ten percent (10%) level only. Moreover, the Real Property Field Appraisal Assessment Sheet-Machinery provides that the 100 MVA Transformer is now also classified as INDUSTRIAL with an assessment level of EIGHTY PERCENT (80%) but from the period of 2001 to first quarter of 2009, the same was declared as exempt from the payment of real property tax. Hence, this is not in accordance with the level of assessment applicable to the special class of real property which the subject properties belong.

“49. Under the Concession Agreement, **it was agreed that during the concession period, petitioner NGCP will only assume the obligation of TRANSCO to pay real property taxes on its properties not otherwise exempt from the payment of real property taxes, as there was no transfer of properties ownership.** *(Please see Order dated September 14, 2011 issued by LBAA Cabanatuan City, Nueva Ecija (Annex “B” hereof) stating that the Real Tax Delinquencies for the years 1997 to 2008 remains to be the liability of NPC/TRANSCO subject for refund to the petitioner.)*

“50. Therefore, even assuming *arguendo* that the subject properties are not exempt from the payment of real property taxes

under R.A. No. 9511, the same should have been classified as Special Class under Sections 216 and 218 of the Local Government Code (LGC).

“51. Under both the Concession Agreement and R.A. No. 9511, NGCP was granted a privilege to operate and maintain the transmission assets merely as a Concessionaire but the ownership over the properties remained with TRANSCO.

“52. It is worthy to reiterate that under the Concession Agreement, NGCP merely assumed the responsibility of TRANSCO to pay real property taxes on its properties, not otherwise exempt from the payment thereof, during the concession period as there was no transfer of assets ownership. Considering that the ownership of the assets retained by TRANSCO and that NGCP only agreed to pay the tax obligation of TRANSCO on its properties, not otherwise exempt from payment thereof, NGCP shall only be made to pay the same taxes which TRANSCO was paying prior to the commencement date of January 15, 2009. *(Please see Order dated September 14, 2011 issued by LBAA Cabanatuan City, Nueva Ecija (Annex “B” hereof) stating that the Real Tax Delinquencies for the years 1997 to 2008 remains to be the liability of NPC/TRANSCO subject for refund to the petitioner.)*

“53. On the basis that TRANSCO has retained ownership of the properties, and that petitioner NGCP only agreed to pay the tax obligation of TRANSCO on these properties, petitioner NGCP shall only be made to pay the same taxes which TRANSCO was paying prior to the Commencement Date of 15 January 2009. In this case, the real properties subject matter of the protest should continue to be classified as special class of properties pursuant to Section 216 of the LGC, which provides, thus:

‘Section 216. Special Classes of Real Property. – All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and **those owned and used by local water districts, and government-owned and controlled corporations** rendering essential public services in the supply and distribution of water **and/or generation and transmission of electric power shall be classified as special.**’ (emphasis ours)

“54. Under Section 216 of the Local Government Code (LGC), there are two categories of ‘Special Class’ of real property. The first category comprises all lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes. **The second category comprises those owned and used by local water districts, and government-owned and controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power.**

“55. Under the second category, **it is not required that the real property is actually, directly and exclusively used by a government-owned and -controlled corporation in the generation and transmission of power. The determining factors being that the real property is owned and used by a government owned and controlled corporation in the generation and transmission of power.**

“56. In case the owned and used factors are present, then that real property should be classified as SPECIAL CLASS under the second category. Section 218 of the LGC provides, thus:

‘Section 218. Assessment Levels. The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within (sic) Metropolitan Manila Area, at the rates not exceeding the following:

‘xxx

‘(d) On **Special Classes:** The assessment levels for **all lands, buildings, machineries and other improvements:**

‘xxx

‘Actual Use Assessment Levels

‘xxx

‘**government-owned and (sic) controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power – 10%**’ (emphasis ours)

“57. Under Section 218 (d) of the LGC, as long as the land, machinery, equipment, building and other improvements are owned and used by government-owned-and-controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power, that real property is considered as Special Class and should be assessed at an Assessment Level not exceeding Ten Percent (10%) of the Fair Market Value.

“58. Even assuming for the sake of argument that the beneficial use of the said properties had been granted to herein petitioner NGCP by virtue of the Concession Agreement, petitioner NGCP should only be made to pay the real property tax based on the Assessment Level not exceeding ten percent (10%) of the Fair Market Value, it being a Concessionaire of TRANSCO, a GOCC.

“59. It must be emphasized that prior to execution of the Concession Agreement and prior to the Commencement Date (15

January 2009) TRANSCO had been assessed and had been paying real property taxes on such buildings at the assessment level applied to special class of properties under Sections 216 and 218 (d) of the LGC.”

“PRAYER

“**WHEREFORE**, premises considered, petitioner-appellant NGCP most respectfully prays of this Honorable Central Board of Assessment Appeals that Judgment be rendered **REVERSING AND SETTING ASIDE** the **Joint Resolution dated 25 July 2011**, as well as the **Order dated 14 September 2011**, both issued by the Local Board of Assessment of Cabanatuan City, Province of Nueva Ecija.

“Petitioner-appellant NGCP likewise most respectfully prays of this Honorable Central Board of Assessment Appeals that a Decision be rendered **REVERSING, SETTING ASIDE AND/OR CANCELLING** the “Assessment dated 22 December 2010” rendered and issued by the respondent Office of the City Assessor of Cabanatuan City, Province of Nueva Ecija, and concomitantly **GRANTING** petitioner NGCP’s prayer for reliefs, as follows:

“1. Declaring the properties covered by the Notice of Assessment dated 22 December 2010 and Real Property Field Appraisal and Assessment Sheet-Machinery for payment of real property tax covered by Tax Declaration No. 06-09081-07381 and ARP No. 06-09081-07360, as **EXEMPT** from the payment of real property tax in accordance with RA No. 9511;

“2. Directing that the subject real properties be re-classified in the Assessment Roll as Exempt from the payment of real property tax;

“OR in the ALTERNATIVE:

“3. Declaring the subject real property covered by Tax Declaration No. 06-09081-07381 (land at NGCP’s Cabanatuan Substation) as Special Class and the assessed value be computed using the rate not exceeding ten percent (10%) of the fair market value as what had been previously applied to compute the value during the operation of TRANSCO and pursuant to Section 218 (d) of the Local Government Code. And that the property covered b ARP No. 06-09081-07360 (100 MVA Transformer) be classified as exempt from the payment of real property tax in the same manner that it was previously classified as exempt during the operation of TRANSCO and pursuant to the foregoing provision of Section 218 (d) of the Local Government Code.

“Other reliefs, just and equitable, are likewise prayed for.:

CBAA'S FINDINGS/RULINGS

Culled from Petitioner-Appellant's lengthy and repetitious allegations, the issues in this instant appeal are the following:

1. **WHETHER OR NOT NGCP IS EXEMPTED FROM PAYMENT OF THE REAL PROPERTY TAX ON SUBJECT PROPERTIES BY VIRTUE OF THE PROVISIONS OF SECTION 9 OF R.A. 9511, NGCP'S LEGISLATIVE FRANCHISE;**
2. **WHETHER OR NOT THE SUBJECT REAL PROPERTIES ARE EXEMPTED FROM PAYMENT OF THE REAL PROPERTY TAX UNDER THE PROVISIONS OF SECTION 234(C) OF THE LGC; AND**
3. **WHETHER OR NOT THE SUBJECT PROPERTIES CAN BE CLASSIFIED AS "SPECIAL CLASS OF REAL PROPERTIES" UNDER SECTION 216 OF THE LGC.**

**Issue No. 1:
WHETHER OR NOT NGCP IS
EXEMPTED FROM PAYMENT OF THE
REAL PROPERTY TAX ON SUBJECT
PROPERTIES BY VIRTUE OF SECTION 9
OF R.A. 9511, NGCP'S LEGISLATIVE
FRANCHISE.**

NGCP says that it is exempted from payment of the real property tax by virtue of Section 9 of R.A. 9511, NGCP's franchise, enacted by Congress on December 1, 2008 and made effective on December 20, 2008. As quoted by NGCP, said Section 9 of R.A. 9511 provides as follows:

"SEC. 9. Tax Provisions. – In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee 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 (*sic*)

(should be “hereafter”) 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).”

From NGCP’s point of view, “It is clear from the foregoing provisions that apart from the 3% franchise tax due to the national government, petitioner NGCP is **exempt from** payment of the real property 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**, including local government units.”

NGCP conveniently omitted the phrase “on its franchise, rights, privileges, receipts, revenues and profits”. The phrase “any and all taxes” contemplated by the “in lieu of all taxes” clause in the first paragraph of Section 9, R.A. 9511, refers to **franchise tax** and other taxes that any authority may try to impose on the **franchise, or earnings thereof** – apart from, and in addition to, the three percent (3%) franchise tax imposed under Section 9, R.A. 9511.

In Allegation No. 41 of its instant Appeal stated thus:

“41. Further, the succeeding statement in Section 9 of R.A. No.9511 (*which*) states that ‘**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 their (*sic*) franchise, as other corporations are now or hereby (*sic, should be “hereafter”*) may be required by law to pay.**’, shows the clear intent of the law to make petitioner NGCP liable to pay only for the taxes on the real estate, buildings and personal properties that are **not used or related to the operation** of its franchise of nationwide electric power transmission system of the Philippine grid and other ancillary business that maximizes the utilization of the assets.”

NGCP apparently believes that the phrase “exclusive of this franchise” means that “NGCP is liable to pay only for the taxes on the real estate, buildings and personal properties that are **not used or related to the operation** of its franchise.” This reminds us of the rulings by the Supreme

Court in the cases of *The City Government of Quezon City, et al. vs. Bayan Telecommunications Incorporated* (Bayantel)¹ and *Digital Telecommunications Philippines, Incorporated* (Digitel) vs. *Province of Pangasinan, et al.*² which the Court *en banc* admitted later to be erroneous.

Section 11 of RA 7633, which amended on July 20, 1992 RA 3259 (Bayantel's original franchise), reads as follows:

"SEC. 11. 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 are now or hereafter may 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 telephone or other telecommunications businesses 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 x x x." (Emphasis supplied)

Section 5 of RA 7678 (Digitel's franchise approved on February 17, 1994), states:

"SECTION 5. Tax Provisions. - The grantee 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 are now or hereafter may be required by law to pay. **In addition thereto**, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee: Provided, That the grantee shall continue to be liable for income tax 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 xxx." (Emphasis supplied)

The Second Division of the Supreme Court ruled in the Bayantel case that the phrase "**exclusive of** this franchise" means that "all of the franchisee's (Bayantel's) properties that are actually, directly and **exclusively** used in the pursuit of its franchise" are exempt from realty taxes. The Third Division of the

¹ G.R. No. 162015, March 6, 2006.

² G.R. No. 152534, February 23, 2007.

Court, in the Digitel case, adopted the Second Division's ruling in the Bayantel case.

Webster's Third International Dictionary of the English Language Unabridged (1966 ed., p. 793) defines the phrase "**exclusive of**" as a preposition meaning "**not taking into consideration; excluding from consideration**". Webster's New World Dictionary, Warner Books Paperback Edition (1990), and Webster's New World Pocket Dictionary, Third Edition (1997), both define the phrase "**exclusive of**" as "**not including**".

Reader's Digest Encyclopedic Dictionary, First Edition (1994), classifies the phrase "**exclusive of**" as a quasi-adverb meaning "**not including; not counting**".

In jurisprudence, a franchise, as a right and privilege, is regarded as property, separate and distinct from the property which the corporation itself may acquire.³

Applying the above-cited meaning of the phrase "exclusive of" and considering the fact that a franchise is an intangible personal property, the opening sentence of the second paragraph of Section 9, R.A. 9511, as simplified, would read as follows:

"Provided, That the Grantee, its successors or assigns, shall be liable to pay the same taxes as other persons or corporations are now or hereafter may be required by law to pay on their (a) real estate, buildings and (b) personal property, **not including** this franchise, . . ."

³ Fletcher's Cyclopedic of the Law of Private Corporation, Vol. 6A, pages 427-428, citing Horn Silver Min. Co. vs. New York, 143 U.S. 305 36, L. Ed. 164 12 Sup. Ct.-403; City of Campbell vs. Arkansas-Missouri Power Co., 55F (2d) 560, as quoted in *The City Government of Batangas vs. Republic Telephone Company, Inc.* CA-G.R. CV No. 21897, January 21, 1992.

There is nothing in the wording of Section 9 of R.A. 9511 which remotely exempts NGCP from payment of the real property tax on the subject real properties. On the contrary, it is clearly stated in the second paragraph of said Section 9, that “the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings . . . as other corporations are now or hereafter may be required by law to pay.”

Anyway, in *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, et al.*⁴ the Supreme Court, *en banc*, reversed the decisions of its Second and Third Divisions in the *Bayantel* and *Digitel* cases, respectively, saying that:

“The interpretation of the phrase “exclusive of this franchise” in the *Bayantel* and *Digitel* cases goes against the basic principle of construing tax exemptions. In *PLDT v. City of Davao* (G.R. No. 143867, 25 March 2003, 399 SCRA 442, 453), the Court held that tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.”

NGCP argues that **“properties used in connection with its franchise”** are exempt from payment of the real property tax. A similar provision is found in R.A. 2036, as amended by R.A. 4054, the franchise of Radio Communications of Philippines, Inc. (RCPI), Section 14 of which provides:

“Sec. 14. In consideration of the franchise and rights hereby granted and any provision of law to the contrary notwithstanding, **the grantee shall pay the same taxes as are now or may hereafter be required by law** from other individuals, co-partnerships, private, public or quasi-public associations, corporations or joint stock companies, **on real estate, buildings and other personal property except radio equipment, machinery and spare parts needed in connection with the business of the grantee, which shall be exempt from customs duties, tariffs and other taxes**, as well as those properties declared exempt in this section. **In consideration of the franchise**, a tax equal to one and one-half per centum of all gross receipts from the business transacted under this franchise by the grantee shall be paid to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act. Said tax shall be **in lieu of any and all taxes of any kind, nature or description** levied, established or

⁴ G.R. No. 156040, December 11, 2008.

collected by any authority whatsoever, municipal, provincial or national, from which taxes the grantee is hereby expressly exempted.” (Emphasis supplied

In *RCPI vs. Provincial Assessor of South Cotabato, et al.*⁵, the Supreme Court ruled that “The ‘in lieu of all taxes’ clause in Section 14 of RA 2036, as amended by RA 4054, **cannot exempt RCPI from the real estate tax** because the same Section 14 expressly states that RCPI “shall pay the same taxes xxx on real estate, buildings xxx.”

As in the case of RCPI, the exemption of the **properties used in connection with its franchise** is from customs duties, tariffs and other taxes. These items are **personal properties**. Personal properties are not subject to real property taxation.

NGCP quoted the case of *Smart vs. City of Davao*⁶ where the Supreme Court, as quoted by NGCP itself, ruled:

“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 in Section 9(b) of Clavecilla’s old franchise, as follows:

‘xxx in lieu of any or all taxes of any kind, nature and description, levied, collected by any authority whatsoever, municipal and provincial or national, from which the grantee is hereby expressly exempted, xxx (Emphasis supplied.)’

“However, **Congress did not expressly exempt Smart from local taxes, xxx.** (Emphasis CBAА’s)

“Smart’s legislative franchise under R.A 7229 states:

‘Section 9. Tax Provisions. The grantee, its successor or assign 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 are now or hereafter may be required by law to pay. **In addition thereto**, the grantee, its successor-in-interest 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:** xxx.’ (Omission NGCP’s)

⁵ G.R. No. 144486, April 13, 2005.

⁶ G.R. No. 155491, 16 September 2008.

NGCP also cited the case of *Commissioner of Internal Revenue vs. Philippine Airlines*⁷ where the Supreme Court, also as quoted by NGCP, ruled:

“The language used in Section 13 of Presidential Decree No. 1590, granting respondent tax exemption, is clearly all-inclusive. The basic corporate income tax or franchise tax paid by respondent **shall be in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed or collected by any municipal, city, provincial, or national authority or government agency, now or in the future xxx, **except only real property tax**. Even a meticulous examination of Presidential Decree No. 1590 will not reveal any provision therein limiting the tax exemption of respondent to final withholding tax on interest income or excluding from said exemption the OCT.”

NGCP did not bother to quote the provisions of Section 13 of P.D. 1590, upon which the Court based the above-quoted “ruling.” The pertinent portions of Section 13 of Presidential Decree No. 1590, as quoted by the Court in the above-entitled case, follow:

“Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise, whichever of subsections (a) and (b) hereunder will result in a lower tax:

- (a) The basic corporate income tax based on the grantee’s annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
- (b) A franchise tax of two per cent (2%) of the gross revenues, derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed or collected by any municipal, city, provincial, or national authority or government agency, now or in the future xxx

xxxx

The grantee, shall, however, pay the tax on its real property in conformity with existing law.” (Emphasis supplied)

⁷ G.R. No. 180043, 04 July 2009.

Simply stated, the Philippine Airlines was exempted from all taxes, duties, etc., **except**: (a) The basic corporate income tax; **or** (b) A franchise tax of two per cent (2%), whichever is lower; **AND real property tax in conformity with existing law.**

As the Supreme Court pointed out in both the *Smart* and *Philippine Airlines* cases, the imposition of the franchise tax does not in any way affect the liability to pay the real property tax.

**Issue No. 2:
WHETHER OR NOT THE SUBJECT
REAL PROPERTIES ARE EXEMPTED
FROM PAYMENT OF THE REAL
PROPERTY TAX UNDER THE
PROVISIONS OF SECTION 234(C) OF
THE LGC.**

Pursuant to the Concession Agreement dated 28 February 2008, the power transmission operation of TRANSCO was formally turned-over to NGCP, along with the properties used in connection with said operation, on 15 January 2009.

NGCP states that, before it (NGCP) took over the power transmission operation from TRANSCO, the latter (TRANSCO) and NPC before it were exempted from payment of the real property tax on their machinery and equipment pursuant to the provisions of Section 234(c) of the LGC and their lands, buildings and other improvements were classified as Special Class of Real Property with an assessment level of ten percent (10%), pursuant to the provisions of Sections 216 and 218 of the LGC.

NGCP argues that, since it is just a Concessionaire and the ownership of the properties used in the concession were not transferred from TRANSCO to NGCP, the latter should enjoy the same privileges as TRANSCO enjoyed before 15 January 2009.

The provision of law which is applicable to Issue No. 2 is Section 234 of the LGC, which provides:

“SEC. 234. *Exemption from Real Property Tax.* – The following are exempted from payment of the real property tax:

“(a) Real property owned by the Republic of the Philippines or any of its political subdivisions **except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;**

“(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

“(c) All **machineries and equipment** that are **actually, directly and exclusively used by** local water districts and **government-owned or –controlled corporations engaged in the** supply and distribution of water and/or **generation and transmission of electric power;**

“(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

“(e) Machinery and equipment used for pollution control and environmental protection.

“Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.” (emphasis supplied)

As this case is concerned, Section 234(c) of the LGC clearly requires that, in order to be exempt from real property tax, the machineries and equipment must be actually, directly, and exclusively used: (1) by local water districts or government-owned or –controlled corporations (2) in the supply and distribution of water and/or generation and transmission of electric power.

The exemption from real property tax under Section 234(c) of the LGC cannot be applied to the subject machinery and equipment because the subject machinery and equipment are: (1) **NOT actually, directly, and exclusively used by a local water district or by a government-owned or –controlled corporation**; and (2) **NOT actually, directly, and exclusively used in the supply and distribution of water or generation AND transmission of electric power**. NGCP is neither a local water district nor a government-owned or –controlled corporation and its business does not include generation – but only transmission - of electric power.

NGCP points out that, although the subject real properties were turned-over to NGCP for the latter's use, TRANSCO retains the ownership of the same properties. This does not matter since, the Supreme Court, in *National Power Corporation v. Province of Quezon, et al.*⁸, citing the case of *Testate of Concordia Lim v. Manila*⁹, had ruled that **“the unpaid realty tax attaches to the property and is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner.”**

**Issue No. 3:
WHETHER OR NOT THE SUBJECT
PROPERTIES CAN BE CLASSIFIED AS
“SPECIAL CLASS OF REAL
PROPERTIES” UNDER SECTION 216 OF
THE LGC.**

The provisions of the LGC which are applicable to Issue No. 3 are Sections 216 and 218 thereof, thus:

⁸ G.R. No. 171586, July 15, 2009.

⁹ G.R. No. 90639, February 21, 1990, 182 SCRA, 482.

“SEC. 216. *Special Classes of Real Property.* – All lands, buildings, and other improvements thereon, actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and **those owned and used by local water districts, and government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special.**” (emphasis supplied)

“SEC. 218. *Assessment Levels.* – The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

“x xx

“(d) On Special Classes: The assessment levels for all lands, buildings, **machineries and other improvements:**

Actual Use	Assessment Level
Cultural	15%
Scientific	15%
Hospital	15%
Local water districts	10%
Government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power (emphasis supplied)	10%”

Again, as far as this case is concerned, the subject properties do not fall under the category of “Special Classes” of real property because (a) they are **NOT** used by a local water district or by a government-owned or -controlled corporation, but by a private entity, the NGCP; and (b) they are **NOT** used in the supply and distribution of water or in the generation and transmission of electric power. As stated under Issue No. 2 herein, NGCP is neither a local water district nor a government-owned or –controlled corporation and its business does not include generation – but only transmission - of electric power.

Therefore, the subject properties do not fall under the classification of “Special Classes of Real Property” under Section 216 of the LGC.

WHEREFORE, premises considered, the instant Appeal is hereby
DISMISSED for lack of merit.

SO ORDERED.

Manila, Philippines, January 30, 2013.

SIGNED
OFELIA A. MARQUEZ
Chairman

ROBERTO D. GEOTINA
Member

SIGNED
CAMILO L. MONTENEGRO
Member