



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

NATIONAL POWER CORPORATION,
Petitioner-Appellant,

CBAA CASE NO. L-93
Re: LBAA Case No. 07-01

- versus -

THE LOCAL BOARD OF
ASSESSMENT APPEALS OF THE
PROVINCE OF BULACAN,
Appellee,

- and -

THE PROVINCE OF BULACAN,
THE MUNICIPALITY OF
NORZAGARAY, BULACAN, AND
GLORIA P. STA. MARIA,
MUNICIPAL ASSESSOR OF
NORZAGARAY, BULACAN,
Respondents-Appellees.

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DECISION

This is an appeal filed by petitioner-appellant National Power Corporation (NPC) from the "JUDGMENT" rendered by the Local Board of Assessment Appeals (LBAA) of the Province of Bulacan on August 14, 2008 dismissing the petition for tax exemption of herein appellant, and upholding the assessments made by co-appellee, Municipal Assessor of Norzagaray, Bulacan, et al.

The dispositive portion of the assailed decision of the Bulacan LBAA states, viz:

"WHEREFORE, the present petition is denied. The petitioner National Power Corporation is directed to pay respondent Municipality of Norzagaray, Bulacan, its tax liabilities amounting to ₱18,475,003.20 over the "Land Assessments" (sic), covering January 1, 1997 to December 31, 2006.

Also for the period beginning January 1, 1996 to December 31, 2005, the amount of ₱113,960,000.00 should also be paid by petitioner to Municipality of Norzagaray, Bulacan, over the "Machineries Assessment."

Hence, this appeal.

THE FACTS OF THE CASE

On December 12, 2006, appellant NPC, owner and operator of the Angat Hydro-Electric Power Plant (AHPP) located at Hilltop, San Lorenzo, Norzagaray, Bulacan, received a Notice of Assessment from the Municipal Assessor of the said municipality for the following properties of AHPP, the so called “machineries assessment”, to wit:

- 1) ARP/Tax Dec. No. 00180 – Main Dam
- 2) “ “ “ 00181 – Spillway with 3 Taintor Gates
- 3) “ “ “ 00182 – Two Units Diversion Canal
- 4) “ “ “ 00183 – Tailrace Tunnel
- 5) “ “ “ 00184 – Penstock
- 6) “ “ “ 00185 – Auxiliary Draft Tube Gates
- 7) “ “ “ 00186 – Draft Tube Gates and Hoists
- 8) “ “ “ 00187 – Power Tunnel
- 9) “ “ “ 00188 – Power Intake Structure
- 10) “ “ “ 00189 – Surge Tunnel
- 11) “ “ “ 00190 – Power Intake Service & Bulkhead Gates

Likewise on December 14, 2006, NPC received another Notice of Assessment, this time for the so called “land assessment” made up of the following:

- 1) ARP/Tax Dec. No. 00191 – Campsite-Land
- 2) “ “ “ 00192 – Spillway-Land
- 3) “ “ “ 00193 – Powerhouse-Land

When the Municipality of Norzagaray tried to demand and collect the corresponding real property taxes over these assessed properties, and after all negotiations to settle the matter amicably failed, NPC challenged the assessments before the LBAA of Bulacan, assigning two errors.

NPC contended that the assessor erred when she assigned a higher assessment level to the “land assessments” contrary to that prescribed for GOCC’s under Sec. 218 of the LGC which states:

x x x

(d) On special classes: the assessment levels for all lands, buildings, machineries and other improvements:

Actual Use	Assessment Level
Cultural	15%

x x x	x x x
x x x	x x x
x x x	x x x
Government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power	10%

NPC also claimed that it is an error to tax the above-listed properties under the termed “machineries assessments” being exempt from taxation under Section 234 par. (c) of the LGC, which provides:

Section 234. Exemptions from real property tax:

- (a) Real property owned by x x x
- (b) x x x
- (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.

The “land assessment” issue became moot and academic when the appellee Municipal Assessor readily admitted that she committed an honest mistake in assigning a higher assessment level to the lands in question. She immediately rectified the error and revised the land tax declarations to conform with the prescribed level for GOCC’s under Sec. 218 of the LGC which is 10% to the satisfaction and conformity of the appellant.

What remains now and the only issue to be resolved by this Board is:

“WHETHER OR NOT THE ELEVEN (11) ABOVE LISTED PROPERTIES UNDER THE “**MACHINERIES ASSESSMENT**” ARE MACHINERIES AND EQUIPMENT ACTUALLY, DIRECTLY, AND EXCLUSIVELY USED FOR GENERATION AND TRANSMISSION OF ELECTRICAL POWER, UNDER SEC. 234(c) OF THE LGC.”

If they are, they are tax-exempt, otherwise they are taxable.

THE FINDINGS AND CONCLUSIONS OF THE BOARD

The instant appeal, being a claim for tax exemption, falls under Section 206 of the LGC which provides:

SEC. 206. Proof of Exemption of Real Property from Taxation. – Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation,

bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

As can be gleaned on the above stated proviso, the law contemplates a situation where an assessee, meaning a person whose real property has been declared for taxation purposes, who claims that said property is tax exempt is given thirty (30) days to file before the Assessor's Office concerned **sufficient** documentary evidence to support his/her claim for tax-exemption. Failing to do so within 30 days, said property will be listed as taxable in the assessment rolls.

This, however, is curative for the law clarifies that in the event that said property is proven to be so tax exempt in some later time or future date, said property will be considered tax-exempt and dropped from the list of taxable properties.

But it must be emphasized that when the law uses the words "be proven" it necessarily means **that proof be presented by the claimant.**

What kind of proof?

Cooley, the foremost authority on taxation has this pronouncement: "The burden is on the claimant to establish his right to exemption and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but **must be beyond reasonable doubt.**" (Cooley, Law on Taxation, Sec. 672, pp. 1404-1407)

Section 206 therefore of the LGC is an expression of these well established rules in property taxation, that taxability is always presumed, and that is incumbent on the claimant to prove to the taxing authority that his property is indeed tax exempt. Taxation being the rule, and exemption the exception, the assessor can well afford to be passive, to just sit around, wait

and see if the claimant can prove beyond any shadow of doubt that his property is so exempt. It is the appellant-claimant that must play the active role, exerting extraordinary effort and diligence to convince the taxing authorities that it is entitled to a relief from the common burden of property taxation. This is also in line with the “strictissimi juris” rule in construing tax exempting provisions of laws.

The appeal of NPC is anchored on the tax exemptions enumerated in Sec. 234 of the LGC, specifically par. c which provides, “the following are exempted from payment of real property tax:

- (a) x x x
- (b) x x x
- (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.

There is no question that appellant NPC is a government owned and controlled corporation engaged in power generation and transmission. This is of public knowledge and admitted by both appellant and appellees. What is contentious and the only issue to be resolved in this appeal is whether or not the questioned properties are machineries and equipment actually, directly, and exclusively used by NPC in the generation and transmission of electric power.

In the case of *Mactan Cebu International Airport Authority vs. Hon. Ferdinand Marcos, et al.*, G.R. No. 120082, Sept. 11, 1996 (Mactan case), the Supreme Court divided the enumerated real property tax exemptions under Section 234 of the LGC into three (3) groups based on (1) ownership (2) character and (3) usage. Paragraph c of Sec. 234 falls under the latter, or usage exemptions in which actual, direct, and exclusive use of the property sought to be exempted are the main criteria.

The phrase “actually, directly and exclusively used” is not an empty requirement. It has deep and solid constitutional moorings. It must be noted

that under the old 1935 Constitution, (Art. VI, Sec. 22, Par. 3) the only requirement to be exempt was exclusive use. Under the 1973 and the present 1987 Constitution, it was changed to actual, direct, and exclusive use which is the basis for the conditions laid down under Sec. 234 of the LGC.

In the Lung Center of the Philippines vs. Quezon City, et al., G.R. No. 144104, June 29, 2004, the Highest Court ruled that “under the 1973 and 1987 Constitutions and Rep. Act No. 7160, (the Local Government Code of 1991), in order to be entitled to the exemption, the petitioner (in this case, the NPC) is **burdened to prove**, by clear and unequivocal proof, that (a) it is a charitable institution; (in this case, a GOCC) (b) it is real properties (in this case, the machineries and equipment) are actually, directly, and exclusively used for charitable purposes. (In this case, for generation and transmission of electric power.)

Furthermore, the Supreme Court likewise held, “the term usage means direct, immediate and **actual application of the property itself to the exempting purpose**. Section 199 of R. A. No. 7160 defines actual use as the purpose for which the property is principally or predominantly utilized by the person in possession thereof. It contemplates concrete, as distinguished from mere potential, use. **Thus, a claim for exemption under sec. 234(e) of R.A. No. 7160 should be supported by evidence that the property sought to be exempt is actually, directly and exclusively used** for pollution and environmental protection, (the Provincial Assessor of Marinduque vs. The Honorable Court of Appeals and Marcopper Mining Corp., G.R. No. 170532, April 30, 2009)”. In the case on appeal, the property sought to be exempt should be actually, directly and exclusively used for generation and transmission of electric power.

Further still, the same high court ruled in Commissioner of Internal Revenue vs. Acesite Hotel Corp., 516 SCRA 93, 103 that “the burden is upon

the taxpayer to prove, by clear and convincing evidence, that his claim for exemption has **legal and factual basis**.

It is important to stress in this appeal that the claimant-appellant has to overcome four (4) presumptions favoring the appellee to avail of the tax exempting privilege. They are as follows:

1. The presumption of taxability under Sec. 206 of the LGC

The law provides that the claimant should present sufficient documentary evidence to bolster his claim, or prove beyond reasonable doubt that the properties should be exempted from real property taxation. Incidentally, the records do not show that the appellant observed the requirements under section 206 of the LGC.

2. The presumption of regularity in the performance of official duties

Official records will reveal that the appellee assessor did not include in her assessments machineries and equipment incontestably are actually, directly, and exclusively devoted to generation and transmission of electric power such as the water turbines, water pumps, generators/alternators, transformers, transmitters, high tension cables and the like. The questioned properties, to the best of her knowledge and ability, **are not used in such a way**, or that they are not machineries and equipment. Erroneous or not the presumption of correctness of the assessment is in her favor and the burden to prove her incorrect lies in the claimant-appellant.

3. The presumption that the court/board of origin is in a better position to ascertain the facts

Decisions of the lower boards and/or administrative bodies are given great weight and respect if not finality in the appellate courts. When the appellee LBAA of Bulacan adjudged that the appellant failed to prove that the questioned properties are being used actually, directly, and exclusively used for generation and transmission of electric power, the appellant should have exerted maximum effort to prove on appeal that such is not a fact. The appellant should have described clearly the detailed roles of the eleven (11) properties, one by one, in the generation and transmission of electric power.

4. The “strictissimi juris” rule in construing tax-exempting provisions of law

This means that tax-exempting provision of laws should be interpreted strictly against the taxpayer and liberally in favor of the taxing authorities. In case of doubt resulting from multiple and/or double edged interpretations, the doubt should be

resolved in favor of taxability. It means that in the presence of the smallest iota of evidence pointing to the contrary, the claim for exemption should be denied. There must be no room for the slightest of doubt in establishing clear and convincing evidence that it is **the kind of property**, used in the **prescribed manner** for the **specified tax exempting** purpose in order that the claim for exemption be granted.

In this light, is the appellant entitled to the tax exempting privilege? Was it able to prove beyond reasonable doubt, through sufficient and convincing factual, documentary, and testimonial evidence that the eleven (11) properties are machineries and equipment used actually, directly and exclusively for generation and transmission of electric power?

The answer is in the negative. No, the appellant totally failed to prove that the eleven questioned properties are machineries and equipment (the kind of property), used actually, directly, and exclusively (the manner prescribed) for generation and transmission of electric power. (The specific tax exempting purpose) to merit tax exemption.

On this principal reason alone, this Board could have opted to immediately and summarily dismiss the appeal were it not for the averment of the petitioner-appellant that it was denied due process when the Board below failed to give the appellant the opportunity to present evidence and prove its case. Failure to observe the clause is an issue that strikes deep and true to the heart of every appellate body more so with the CBAA, who holds the issue dearly and religiously.

It is customary therefore for the CBAA, in the performance of its duty to ascertain the facts, to give every party a day in court, unless the same is frivolous, so belatedly and whimsically done, as to affect substantive rights. To satisfy its search for truth, and to afford the appellant every chance to prove its cause, the CBAA conducted hearings and ocular inspection, received documentary evidence and testimonies of witnesses. The following are the findings of this Board as to whether or not the eleven (11) questioned

properties of the AHPP are machineries and equipment used actually, directly, and exclusively in the generation and transmission of electric power:

A. The Main Dam (ARP/Tax Declaration No. 00180)

It is an immovable massive wall of earth and rockfill with an inclined earthcore with a height of 131 meters and length of 568 meters. Its structural design and operational use is not in any way connected to power generation and transmission. Its main purpose is to receive, hold and impound water coming from the Angat and Umiray rivers besides water from run-offs and rain water in a gigantic reservoir. In turn this big body of water is used primarily to irrigate the agricultural lands of Central Luzon, provide domestic water supply system for Metro Manila and neighboring towns thru the MWSS, and to generate hydroelectric power.

B. The Spillway (TD No. 00181)

This is a massive structure made of reinforced concrete designed to let go or release water from the reservoir once the volume of water exceeds its capacity or overshoots its maximum level. It has inclined chute with retaining walls and concrete flip buckets as well as a drainage gallery. It has no equipment or mechanical contrivances.

C. Three (3) Taintor Gates (TD No. 00181)

These massive steel structures, firmly and permanently attached to the spillway are what their name implies. Their main function is to allow water to flow/spill when opened to the spillways once the volumes of water in the reservoir reach its maximum level. These gates are then closed once the volume of water is down to normal and allowable levels. Together with the spillway, they act as outlets to gradually let out water to prevent flooding and probable loss of lives and property in the event that the dam is breached due to tremendous pressure from an abnormal high volume of water.

D. The two (2) Diversion Canals (TD No. 00182)

These concrete lined canals, one functioning and the other plugged were used to divert water coming from the rivers during the construction of the dam and reservoir. These diversion canals were already in existence long before the water turbines and power generators can produce any amount of electricity.

The spillway with the taintor gates and the diversion canals are auxiliary components of the main dam. Together, they are utilized for varied purposes, mainly for irrigation of the agricultural lands in the neighboring provinces, provide the domestic water needs of Metro Manila, and as a hydropower facility. The volume of water used for irrigation and water supply system is greater than what is being used for power generation.

By their structural design and composition, therefore, the dam and its components are structures and/or taxable improvements.

Granting, arguendo, that they are machineries, still tax exemption would be unavailing considering that the dam and its component auxiliaries are multi-purpose, negating the requirements of actuality and exclusivity in use.

The rest of the subject properties are either water conveyance structures, or utilized for preventive maintenance, periodic check ups and repairs, and as safety measures.

The power tunnel (TD 00187) conveys water from the reservoir to the penstocks (TD No. 00184) down to the main and auxiliary power units where the water turbines and generators are located. After energizing the turbines, the “used” water is let out thru the tail race (TD No. 00183) and surge tunnel (TD No. 00189). The “used” water is then channeled downstream to the Angat River, the Bustos Dam of the NIA for irrigation purposes, and the Ipo Dam of the MWSS for the water supply of the greater Manila Area.

On the other hand, the power intake structures (TD No. 00188), the draft tube gates and hoists (TD No. 00190) are primarily used as safety and preventive mechanisms during repairs and maintenance, periodic and emergency check-ups, by controlling the amount of water in the units, taking water in or letting water out (dewatering) in order that the aforementioned civil works can be done.

The fact-finding ocular inspection therefore revealed that the contested properties are either structures or improvements, and not machineries and equipment used actually, directly, and exclusively for power generation and transmission.

Aside from the fact-finding ocular inspection, this Board likewise conducted hearings to enable the parties to present their testimonial and documentary evidence.

The petitioner-appellant presented the well-experienced and knowledgeable Plant Manager of the Angat Hydroelectric Power Plant himself in the person of Eng. Rodolfo German. Unfortunately for the appellant, the testimony of Eng. German tends to favor more the cause of the appellee. In several instances in the course of his testimony, the appellant's witness stated that the questioned properties are "**structures.**" The witness testified that these structures are used for retention, conservation, diversion, utilization, as well as management and control of water in different aspects.

The testimony failed to show the actual and direct use of the properties to the exempting purpose. Equally damning is the admission that these facilities are also used for irrigation, flood control and water supply system for the Greater Manila Area. This negates the "exclusively used" requisite to fall under the prescribed exempting manner. Nowhere in the whole testimony of Eng. German was it mentioned, much more given emphasis that those

properties are machineries actually, directly, and exclusively used for generation and transmission of electric power.

The lame attempt of the appellant to overemphasize the statement of its witness that “**no water, no power**” fails to impress and holds no water. Failing to elicit a concrete and clear testimony from the witness that the subject properties are actually, directly and exclusively used in the generation and transmission of electric power, appellant tried to equate this rather vague and somewhat inane remark to power generation. Granting that the power alluded is electric power, it must be pointed out that while it is true that the huge volume of water rushing down from the reservoir turns the water turbines that converts mechanical energy thru generators to electricity, **water is not being taxed in this case**. Water is not one of those subjected to the assessment. Granting for the sake of argument, and allowing one’s imagination to run ridiculously wild, that water is some form of machinery that turns the turbines, still water cannot be entitled to exemption as it is also used in irrigation, and domestic water supply, hence not exclusively used for power generation.

Moreover, authorities and jurisprudence are one in saying that bare and vague assertions, implications, and inferences are not enough to merit the surrender of the state’s inherent power of taxation. The basis for tax exemption must be clear, unambiguous and indubitable.

On the other hand, the testimony of the respondents-appellees lone witness in the person of Eng. Gilbert Pascual, a Professor/Instructor of Hydrology and Hydraulics at the Bulacan State University, was more categorical and straightforward. His systematic presentation explaining that the dam complex includes all the other questioned properties as auxiliary components of the dam are all immovables, firmly and permanently attached to the ground, made either of concrete and steel, or both are really structures

and/or improvements by their design, composition, and function, are indeed persuasive.

The appellee's witness likewise testified convincingly that the dam complex, being a multi-purpose facility, can and is performing other functions like providing water for irrigation, flood control and mitigation, and more importantly, the source of potable water, aside from, and at a lesser extent, power generation. This means that the dam and its components and appurtenances are not being used solely and exclusively for power generation. The witness likewise quoted and cited authorities and references to bolster his conclusion.

Incidentally both the testimony of appellant's witness and appellee's witness jived at the very material aspect of the case – that the subject properties are structures and not machineries and that they perform functions other than power generation. While both elucidated that the subject properties are indeed vital, essential, and necessary for power generation, still they are not being used actually, directly and exclusively for the exempting purpose that is generation and transmission of electric power. To give specific details of their testimony regarding these matters would be kilometric. Suffice it is to state that these declarations are reflected in the official transcript of stenographic notes taken during the January 26, 2010 hearing.

Submitting the case for resolution, petitioner-appellant prepared a two set memorandum while the respondent-appellee made a formal offer of documentary evidence. Since the memoranda introduced new matters for the Board's consideration, we will delve first on the appellee's submitted exhibits.

Main bulk of these documentary evidence are supportive of the appellees witness claim that all the subject properties are structures and not machineries. The references and textbook materials, complete with graphics, authored by leading authorities in hydrology and hydraulics lend credence to

the material allegation of the witness that the dam is the main structure while the other subject properties are likewise separate structures but all are auxiliary components of the main dam. That all these are hydraulic structures common to all dams whose main functions are water conservation and utilization thru proper management and control of water applying principles of hydrology and hydraulics. The main dam cannot and will not exist and function properly in the absence of these vital auxiliary components. The power station on the other hand may exist and function even without the spillways, taintor gates, diversion canals, surge tunnels, water gates and valves, etc. although they are necessary especially for the other functions of the dam complex like flood mitigation, water supply, and irrigation, as well as safety measures and for preventive maintenance.

The records will show that these very material and relevant evidence both testimonial and documentary, were not seriously denied much more vehemently contradicted by the appellant.

Simply put, this Board finds that the Angat hydroelectric facility, owned and operated by the appellant consists of two groups or components. One group is the conservation and hydraulic structures subject of this appeal being assessed and taxed by appellee. The other consists of the machineries and equipment that are the ones actually, directly, and exclusively used for power generation and transmission. The latter group is made up of the water turbines, water pumps, generators, transformers, transmitters, etc., were exempted and excluded from the assessments by the appellee.

The roles played by these two groups/components elucidate the kind of property they are and their actual usage in the general scheme of the multi-purpose facility, to wit:

The main dam holds and retains the water from the Angat and Umiray rivers storing the water in a big reservoir. Water is released through a series of tunnel like pipelines of varying sizes and diameters. All these underground concrete and/or steel pipelines are firmly and permanently

attached/embedded in the soil. This water conveyance system starts with the reservoir releasing water to a big power tunnel.

The power tunnel splits into the two penstocks. One penstock delivers water to the main units of the power station and the other to the auxiliary units. The volume of water running down from the penstocks turns the water turbines in the main and auxiliary units. The water turbines then convert mechanical energy to electrical energy by the use of the power generators. The transformers stabilize the electric current, and thru the transmitters deliver the electricity produced to the power lines.

The water used at the power station main and auxiliary units to turn the water turbines is released thru the tailrace tunnels downstream, connected to surge tunnels. These open surge tunnels are used to drain and divert surface run-off water, likewise and more importantly, to ventilate the tailrace, thus preventing pressure to build up. The used water coming from the main power units passing thru the tailrace and surge tunnels is channeled to the Bustos Dam for irrigation purposes by the National Irrigation Administration (NIA). The used water from the auxiliary units is conveyed to the MWSS facilities at Ipo Dam for Greater Manila Area's domestic water supply.

It can be gleaned that this series of interconnected concretized and/or steel lined tunnels and canals, all rendered permanent and immobilized being buried underground or imbedded in the soil are all water conveyance structures. All of them have nothing to do with direct and actual power generation and transmission.

The power intake structures together with the draft tube gates are used more for taking water in or letting water out mostly during periodic and/or emergency inspections and check-up, likewise repair and maintenance. All these are of reinforced concrete or steel plate welded gates. These facilities instead of generating power actually cut down power production by closing the

supply of water to the main and auxiliary units where the turbines and generators are located. The process called “dewatering” empties the chambers of water in order that inspection, check-ups, maintenance and repairs can be done during these standard procedures. There is a cessation of operation or what they call a “**shut down**” during these activities. These auxiliary components therefore play a role other than power generation, just like the spillways, taintor gates, and diversion canals are used for flood mitigation and/or prevention, and as safeguards and preventive measures to protect the integrity of the dam, and not for power generation and transmission.

While it is true that all the properties sought to be exempted by the appellant are indeed vital, essential, and necessary for the operation of the Angat Hydroelectric Power Plant, still they are not used actually, directly, and exclusively for power generation and transmission. The last requirement therefore for tax exemption is lacking.

In this connection, it is important to harmonize the provisions of Sec. 218 and Section 234 (c) of the LGC with regard to land, buildings, machineries and improvements used by GOCC’s in the generation and transmission of electric power. The oft-adverted “seeming and/or apparent” vague and/or conflicting provisions, must be reconciled and settled to end once and for all the feigned ignorance or sometimes intentional misinterpretation and application of the two sections to suit one’s interest and/or convenience.

In Section 218 under par. (d) on special classes of properties, lands, buildings, machineries, and other improvements are included in the enumeration. All that is needed to merit an assessment level of ten (10%) percent is that they be **actually used** in the enumerated purpose. The questioned properties are included in this special class.

On the other hand, Sec. 234 (c) the subject is limited to machineries and equipment not only used actually, but directly and exclusively for power generation and transmission. It follows therefore that in the case at bar, only the water turbines, generators and the like are exempted while the rest of the real properties of NPC are taxable, albeit at a special/lower rate.

The tax exemption of NPC having been withdrawn by the LGC, NPC is granted a special privilege of lower assessment level for rendering a service imbued with public policy, under Section 218 of the LGC.

The assignment of an assessment level, presupposes taxability, the same being a percentage or fraction of the fair market value of the property, resulting in its assessed value which is the basis of the levied tax. It goes without saying therefore that Sec. 218 implies taxability while Sec. 234 confers tax exemption. To construe otherwise is to promote disharmony and render both provisions senseless and devoid of meaning.

The appellant in its memorandum relied heavily on the decision of this board in the case of NPC vs Province of Pampanga, et al., (CBAA Case No. L-36 dated July 15, 2005). The over reliance is quite misplaced and fails to impress. The subject properties are totally dissimilar. What was exempted by this Board in the Pampanga case was the specially designed and constructed structure housing the power generating machineries of NPC. This structure not only houses but provides shelter, protection, and security for the main plant's power generating machineries and equipment. Most of all is that the control rooms are in that building/structure. The presence of the security office and working stations for repairs and maintenance are incidentals. Another main reason for that decision favoring the appellant NPC was the failure of the appellee to contradict and/or deny the allegation of NPC that the subject property is exempt from the real property tax in other assessment jurisdictions.

In the same vein, appellant's claim that it is exempt from paying all kinds of taxes for being a government instrumentality is likewise untenable. NPC's belated assertion that it is included in those exempted by the Supreme Court in its ruling in the MIAA vs. CA Case, G.R. No. 155650, July 20, 2006, is a farfetched afterthought. In that case, the court prescribed the distinction between a government owned/controlled corporation and a government instrumentality, stating that they are not synonymous. Appellant NPC cannot now make a turnaround after admitting in its appeals before the LBAA and the CBAA, as well in its memorandum that it is a GOCC duly organized and existing under and by virtue of R.A. No. 6395, or the NPC charter.

In the light of all foregoing, after affording the appellant of its desired day in court, it is clear that the claim for tax exemption by the appellant has no factual and legal leg to stand on. **It failed to prove beyond reasonable doubt** that the subject properties sought to be exempted are (1) machineries and equipment (2) used actually, directly, and exclusively for the generation and transmission of electrical power.

WHEREFORE, this Board holds and concludes that the petition for tax exemption has no factual and legal basis, hence DENIED. The appeal therefore is DISMISSED, the assessments of the eleven (11) subject properties upheld, and the decision of the LBAA is AFFIRMED.

SO ORDERED.

Manila, Philippines, August 26, 2010.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)

ANGEL P. PALOMARES
Member

(Signed)

RAFAEL O. CORTES
Member