



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
M a n i l a

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

- versus -

LOCAL BOARD OF ASSESSMENT
APPEALS OF CEBU CITY,
Appellee,

- and -

OFELIA M. OLIVA, in her official capacity
the CITY TREASURER OF CEBU CITY,
Respondent-Appellee.

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CBAA CASE NO. V-31

LBAA Case No. 6730A-B-C

TD Nos. C00-019-05574

TD Nos. C00-019-05581

TD Nos. C00-019-05580

D E C I S I O N

This is an appeal filed by petitioner-appellant NGCP against the LBAA of Cebu City and its City Treasurer in a case involving Tax Declaration Nos. C00-019-05574, C00-019-05581 and C00-019-0558 wherein the Board in its Order dated October 12, 2010 ruled as follows:

“After careful examination of the pleadings filed, this Board found merit to the opposition of the respondent. Hence, the Board hereby DISMISSES the instant petition, as having been filed out of time.

Wherefore, the Petition is hereby DISMISSED for lack of merit.” (Records, p. 39).

Claiming that it received the above Order on November 15, 2010, petitioner-appellant instituted this appeal seeking the reversal of said Order on grounds of: (a) abuse of discretion of the LBAA; (b) serious errors in the findings of facts of the LBAA; (c) the Order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction; and (d) the Order was issued on justifications that are contrary to existing laws, rules and jurisprudence.

Appellant summarizes the antecedent facts thus:

On September 24, 2009, NGCP received from the Office of the City Treasurer of Cebu City, three (3) Final Notices of Demand, all dated September 16, 2009, addressed to National Power Corporation/Transco for the following:

TAXPAYER'S NAME	TAX DEC. NO.	CLASSIFICATION	PERIOD ASSESSED	VALUE (P)	AMOUNT DUE (P)
NPC/TRANSCO	C00-019-05574	BLDG. COMM.	2003-2009	5,010,740.00	1,456,459.68
NPC/TRANSCO	C00-019-05581	BLDG. COMM.	2001-2009	2,465,320.00	787,957.11
NPC/TRANSCO	C00-019-05580	BLDG. COMM.	2004-2009	2,552,760.00	548,445.62
				TOTAL	₱2,792,862.41

It was stated in the Notices of Demand that Transco/NPC was served Notices of Delinquency for all the above properties in 2008 and that failure to pay the amount demanded would result in the Public Auction of the properties above-mentioned.

Pursuant to Sec. 252 of the Local Government Code, petitioner NGCP paid the total amount demanded under protest on November 11, 2009 for ₱2,792,862.41. The written protest was filed on the same day at the office of the City Treasurer of Cebu City. (Records, pp. 95 – 99)

The City Treasurer of Cebu did not act on petitioner's written protest. Petitioner NGCP, with main office in Q. C., sent its appeal, by way of registered mail on May 11, 2010, to the LBAA of Cebu City. On April 22, 2010, petitioner NGCP received copies of its verified Petition from the Post Office of Diliman, Q. C. with notation "RTS, insufficient address, 4-14-10". On April 26, 2010, NGCP filed its Motion to Admit Petition with the LBAA of Cebu City. In July, 2010 the LBAA directed the City Treasurer and City Assessor of Cebu City to file their Comment on petitioner's Motion. The City Assessor on his own, did not interpose any objection. The City Attorney, however, opposed the same in his Comment/Opposition on ground that the NGCP's Petition was filed out of time

and prayed the Local Board to dismiss the same accordingly. On October 12, 2010, the Local Board of Assessment Appeals of Cebu City issued the assailed Order.

Hence, the instant appeal.

Petitioner-Appellant advanced the following arguments, to wit:

I. The Petition in the LBAA of Cebu City was timely filed.

Petitioner-appellant points out that the envelop containing its Petition was addressed to the Local Board of Assessment Appeals, Cebu City. For reasons known only to the post office staffs, the subject Petition did not reach its intended destination and was returned "unserved" to petitioner NGCP. Appellant claim that its petition could have been easily delivered to the LBAA of Cebu City had extra efforts and more diligent search been exerted by the postal employees in finding the intended addressee.

Additionally, appellant stresses that dismissals based on mere technicalities should be avoided when the parties have substantially complied with the Rules. When a petition presents prima facie allegations of errors committed by a lower tribunal, the reviewing Court should, as much as possible, endeavor to decide the case on the merits.

II. Appellant NGCP has the legal personality to file the Petition before the LBAA of Cebu City.

Petitioner-Appellant states that the City Assessor of Cebu City, in his Comment before the LBAA of Cebu City points out that the subject tax declarations were in the name of NAPOCOR/TRANSCO implying that petitioner NGCP has no personality to file the subject petition before the LBAA of Cebu City.

Appellant counters this by asserting that:

“70. As the concessionaire of the electric power transmission of TRANSCO starting 15 January 2009, certainly petitioner-appellant NGCP possesses legal interest over the properties subject of real property tax albeit the latter are registered in the name of NATIONAL POWER CORPORATION/TRANSCO. Petitioner-appellant NGCP’s operation of the electric power transmission assets would be definitely affected if these properties are sold at public auction by the City Government of Cebu. On this basis, petitioner-appellant NGCP was constrained to pay the real property taxes under protest and to file before the LBAA the subject petition.

III. NGCP is exempt from the payment of real property taxes subject of the Second and Final Notices of Demand in the total sum of ₱2,762,862.41.

In support of its position, petitioner stresses as follows:

(1) RA 9511, which is the law that granted NGCP a franchise to engage in the business of transmitting electricity explicitly provides as follows:

*“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 **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, and 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**”*

(2) *Under the above provision, appellant NGCP is exempt from paying real property tax and any and all taxes, duties, fees and charges of any kind, nature and description levied, established or collected **by any authority whatsoever, local or national, including local government units**;*

(3) *The properties subject of this appeal are, by their nature and purpose, necessary for the operation and maintenance of appellant NGCP’s power transmission business and therefore, exempt from real property taxation under RA 9511;*

(4) *While appellant 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 of Transco as a result of NGCP’s assumption of the former’s power transmission business. Transco is still existing and operating as a going concern;*

- (5) *From 2001 to 2008, NPC/TRANSCO had the actual or beneficial use and/or possession of the subject properties. Hence, petitioner-appellant cannot be held liable therefore;*
- (6) *The buildings, subject of this appeal, are owned by TRANSCO, a government-owned and controlled corporation (GOCC) created under RA No. 9136 (EPIRA). Appellant NGCP was granted a concession to operate the electric power transmission facilities of Transco under a Concession Agreement dated February 28, 2008. Subsequently, NGCP was extended a franchise under RA 9511 which became effective on December 20, 2008;*
- (7) *Under the Concession Agreement and RA 9511, petitioner NGCP was granted a privilege to operate and maintain the electric power transmission functions of Transco and its assets merely as a concessionaire but the ownership over the properties remained with Transco;*
- (8) *Under the Concession Agreement, it was agreed that NGCP will assume the obligation of TRANSCO to pay the real property taxes on its properties not otherwise exempt from payment of real property taxes, as there was no transfer of the properties ownership;*
- (9) *Even assuming that the properties herein are not exempt from payment of real property taxes under RA 9511, the same should have been classified as Special Class under Secs. 216 & 218 of the Local Government Code of 1991 (RA 7160);*
- (10) *Because TRANSCO has retained ownership of the properties and that petitioner NGCP only agreed to pay the tax obligation of TRANSCO had been paying prior to the Commencement Date of January 15, 2009. The Buildings, subject matter of this protest should still be classified as special class of properties pursuant to Sec. 216 of the LGC;*
- (11) *Under Sec. 218 (d) of LGC, as long as the land, machinery, equipment, building and other improvements is owned and used by gov't-owned and controlled corporations rendering essential public services in the supply and distribution/transmission of electric power, that real property is considered as special class and should be assessed at an Assessment Level of 10%; and,*
- (12) *Even assuming that the beneficial use of said properties had been granted to appellant NGCP by virtue of the Concession Agreement, NGCP should only be made to pay the real property tax based on the Assessment Level of 10%, it being a Concessionaire of Transco, a GOCC.*

In the instant appeal, Petitioner-Appellant prays as follows:

- (1) *That the real properties covered by the Second and Final Notices of Demand be declared exempt from the payment of real property tax;*
- (2) *That the payment made under protest by petitioner under O.R. Receipt No. 9527512 be refunded to appellant; and*

(3) To declare the subject real properties as Special Class under Sec. 216 of the LGC and the real property taxes be assessed at 10% of the fair market value based on Sec. 218 (d) of the LGC.

After going over the records before Us, it appears that appellant has raised the following issues, to wit:

- (1) Whether appellant's appeal before the LBAA of Cebu City was filed on time;*
- (2) Whether appellant has the personality to institute its appeal before the LBAA of Cebu City;*
- (3) Whether appellant is exempt from the payment of real property taxes on subject properties pursuant to Sec. 9 of RA 9511;*
- (4) Whether NGCP is liable to pay realty taxes on the subject properties for the years 2001 to 2008; and*
- (5) Whether subject properties could be classified as Special Classes of Real Property.*

I. The Board resolves the first issue thus:

On November 11, 2009, appellant paid, under protest, the sum of ₱2,792,862.41 (Annex "P", Appeal). On same day, appellant filed a written Protest of Assessment dated November 6, 2009.

Respondent Treasurer did not act on its written protest. On March 11, 2010, petitioner, which office is based in Quezon City, filed, by way of registered mail in QC Post Office a Petition for Review addressed to the:

- 1) Local Board of Assessment Appeals
Cebu City
- 2) Ms. Ofelia M. Oliva
OIC City Treasurer
- 3) The City Assessor
Cebu City

March 11, 2010 is the last day for petitioner to file its appeal with the LBAA of Cebu City. A copy of the Petition was returned to petitioner on April 22, 2010 with notation "RTS, Insufficient Address, 4-4-10."

On April 26, 2010, petitioner-appellant filed in the LBAA of Cebu City a Motion to Admit Petition attaching therewith the verified Petition which was returned by the postal authorities for “insufficient address.”

The City Assessor of Cebu did not interpose any objection to appellant’s Motion to Admit Petition. However, the City Assessor of Cebu opposed said Motion for having been filed out of time. In his Comment/Opposition submitted to the LBAA of Cebu City, he pointed out that:

- “5. Thus, based on its own allegations, it is clear that the instant Petition was filed out of time in view of NGCP’s counsel’s own negligence. The reason that was given by NGCP as to why the instant Petition was returned to its sender was the wrong address that was written on the two (2) sending envelopes and the corresponding return cards;*
- 6. A closer scrutiny, however, would reveal that the error committed by NGCP or its counsel was not due merely to inadvertence or excusable mistake. Based on Annexes “C” & “C-1”, the Petition was addressed to the Local Board of Assessment Appeals only. It did not even care to specify as to what City they are filing the instant Petition. Obviously, the reason for this is NGCP’s or its counsel’s failure to verify before hand as to where to file the instant Petition;*
- 7. It is submitted that NGCP should bear the consequences of its counsel’s own negligence considering that they have more than sufficient time to file the instant Petition. From November 11, 2009, the time NGCP paid under protest the amount of real property taxes and it filed the Written Protest, it had one hundred twenty (120) days or a period of four (4) whole months to file the instant Petition and within this period, NGCP or its counsel should have verified already where to address its Petition;*
- 8. As a general rule, a client is bound by the mistakes of his counsel. (Que vs. CA, G.R. No. 54169, Nov. 10, 1980)*
- 9. Negligence must be excusable and generally imputable to the party but the negligence of counsel is binding on the client just as the latter is bound by the mistakes of his lawyer. (Gaba vs. Castro, G.R. No. 56171, Jan. 31, 1983)*

As mentioned earlier, the LBAA of Cebu City dismissed petitioner’s appeal finding merit in the City Attorney’s Comment/Opposition.

We do not agree. The assailed Order dated October 12, 2010 dismissing the Petition was based on technicalities and not on the merits of

the case. Litigations must be resolved on the merits and not on technicality. A strict interpretation of the rule would amount to a deprivation of petitioner-appellant's right to appeal before the LBAA of the alleged erroneous assessment and collection of taxes by the City Treasurer of Cebu City. Our SC has held in a number of cases that the right to appeal is an essential part of the judicial system, hence, courts as well as administrative bodies, should proceed with caution so as not to unduly and hastily divest a party of the right to appeal (Santos vs. CA, 253 SCRA 632)

The addresses on the sending envelopes containing appellant's petition for the City Assessor, City Treasurer and LBAA stated "Cebu City." The Petitions reached the City Assessor and the City Treasurer of Cebu City. However, the envelope addressed to the LBAA of Cebu City did not. The reason is simple. Most people probably know the locations of the offices of the City Assessor & City Treasurer at the Cebu City Hall. On the other hand, we could not expect the ordinary postal courier to know the address of LBAA in Cebu City, as most people – even lawyers – do not know that LBAA offices exist.

RA 7160, the Local Government Code of 1991 provides that:

"Sec. 229. Action by the Local Board of Assessment Appeals –

x x x

x x x

x x x

(b) x x The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

Based on the above, we have decided to rule, as we hereby rule, that the Petition of NGCP mailed on March 11, 2010 in the QC Post Office for the LBAA of Cebu City was filed on time.

II. Anent the second issue, we resolve it thus:

As concessionaire of the electric transmission of Transco, NGCP uses the subject properties owned by NPC/Transco. If respondent City Treasurer were to sell the subject properties at public auction to satisfy the realty taxes due, the operations of NGCP would be affected. Therefore, NGCP has a legal interest in the properties of NPC/Transco that are being taxed by respondent City Treasurer.

RA 7160 provides as follows:

*“Sec. 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 or municipal assessor** in the assessment of his property may, within 60 days from the date of receipt of the written notice of assessment, appeal to the LBAA of the province 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.” (Underscoring supplied)*

We, therefore, rule that petitioner-appellant NGCP has the legal personality to institute this appeal.

III. The third issue raised by appellant is that it is exempt from the filing of real property tax pursuant to the provisions of Sec. 9 of RA 9511, the Act granting the NGCP a franchise to engage in the business of conveying or transmitting electricity x x x (Annex “L”).

RA 9511 provides:

“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 in lieu of income tax and any all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted:

“Provided, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: Provided, further, That payment by Grantee of the concession fees due to PSALM under the concession

agreement shall not be subject to income tax and value-added tax (VAT)."

Appellant argues that from the above provision, it is clear that apart from the 3% franchise tax due the national government, NGCP is exempt from the payment of real property tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established and collected **by any authority whatsoever, local or national**, including local governments.

We disagree.

The three (3) main categories of properties covered in Sec. 9 of RA 9511 are:

- (1) The franchise and all rights and privileges granted thereto, and the receipts, revenues and profits derived from the operation thereof;
- (2) The properties used in connection with its franchise; and
- (3) The real estate, buildings and personal property, exclusive of this franchise.

The properties falling under the first category are personal properties which are subject to 3% tax & exempt from any other taxes.

The properties falling under the second category are personal properties imported from abroad, free from duties and other import charges.

The properties falling under the 3rd category consist of the following:

- (1) Real properties (real estate, bldg.) – subject to taxes as owners may be required to pay;
- (2) Personal property, excluding the franchise, subject of taxes as other persons are required by law to pay;

Sec. 9 of RA 9511, NGCP's franchise, does not exempt it from the payment of real property taxes on subject properties. On the contrary,

appellant NGCP, as the beneficial user of the subject buildings, is liable for the realty taxes pursuant to RA 7160, which provides:

“Sec. 234. Exemptions from real property tax – The following are exempted from payment of 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**”*
(Underscoring ours)

At any rate, the respondent Treasurer’s duty is to collect the real property tax based on the assessment made by the City Assessor. Section 247 of the LGC provides:

*“**Sec. 247. Collection of Tax** – The **collection of the real property tax** with interest thereon and related expenses, and the enforcement of the remedies provided for in this Title or any applicable law, **shall be the responsibility of the City or Municipal Treasurer concerned.**”*

It is not within the power of the respondent Treasurer to decide whether or not subject properties are exempt from payment of the real property tax. This power belongs to the Office of the City Assessor as provided in the same Code as follows:

*“Section 206. **Proof of Exemption of Real Property for 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 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, by-laws, 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.”

IV. We now tackle the fourth issue. Whether or not NGCP is liable for the realty taxes due on subject properties for the years 2001 through 2008.

Petitioner-Appellant states that the power transmission operation of TRANSCO was formally turned-over to NGCP on January 15, 2009; that, under the Concession Agreement by and among PSALM, TRANSCO and NGCP, it was agreed that during the concession period, 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; and that NGCP should not be made liable for the realty taxes due on subject properties for the years 2001 through 2009. For the real property tax from 15 January 2009, however, NGCP reiterates its supposed exemption therefrom pursuant to Section 9 of RA No. 9511.

Records show that subject properties are declared in the name of NATIONAL POWER CORPORATION/TRANSCO. A "2nd & FINAL NOTICE OF DEMAND" was served upon the "Manager, NATIONAL POWER CORPORATION/TRANSCO, Bgy. Kabancalan, Cebu City for each of the TDs: on September 16, 2009 for TD COO-019-05574 and on September 21, 2009 for TDs COO-019-005580 and COO-019-05581. The Final Notices of Demand stated that a "NOTICE OF DELINQUENCY IN THE PAYMENT OF REAL PROPERTY TAXES" was served on NPC/TRANSCO for Tax Declaration (TD) COO-019-05581 on August 3, 2008; for TD COO-019-05580 on September 3, 2008; and for TD COO-019-05574 on October 6, 2008.

NGCP, probably as occupant of the NPC/TRANSCO property, received the Notices of Final Demand on September 24, 2009. Conscious of the fact that its operations might be adversely affected if Respondent City Treasurer went through the process of selling the subject properties at public auction, NGCP paid under protest the total amount of ₱2,792,862.41 as demanded in the Notices of Final Demand.

As stated in paragraph 27 of NGCP's Memorandum on Appeal, the said amount of ₱2,792,862.41 included taxes due for the years 2001 to 2008. The Final Demands by the Office of the City Treasurer were directed at or intended for the NPC/TRANSCO, not petitioner-appellant NGCP. The latter voluntarily paid the whole amount demanded without, perhaps, conferring first with NPC/TRANSCO as to who is ultimately liable for taxes for the years 2001 to 2008. If we order the Respondent City Treasurer to refund to petitioner-appellant the amount corresponding to the taxes due for the years 2001 to 2008, Respondent City Treasurer may just exercise her duty to sell the subject properties at public auction to protect the City of Cebu's interest.

Therefore, we believe that the recourse of petitioner-appellant is to claim from NPC/TRANSCO for refund of the said taxes due for the years 2001 to 2008.

V. The fifth and final issue is: Whether or not the subject properties should be classified as "Special Classes of Real Property.

Petitioner-Appellant states that, assuming *arguendo*, that the subject properties are not exempt from the payment of real property tax under R.A. 9511, the same should have been classified as Special Class under Sections 216 and 218 of the Local Government Code (LGC); that on the basis that TRANSCO has retained ownership of the properties and that NGCP only agreed to pay the tax obligation of TRANSCO on these properties, NGCP shall only be made to pay the same taxes which TRANSCO had been paying prior to the Commencement Date of 15 January 2009; that 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; that, even assuming for the sake of argument that the beneficial use of the said

properties had been granted to NGCP by virtue of the Concession Agreement, NGCP should only be made to pay the real property tax based on the Assessment Level of ten percent (10%), it being a Concessionaire of TRANSCO, a GOCC; and that it must be emphasized that prior to the 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.

Sections 216 and 218 of the LGC provide as follows:

“SEC. 216. Special Classes of Real Property. – All lands, buildings, and other improvement 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.”

“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 x x

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

<u>Actual use</u>	<u>Assessment Levels</u>
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	10%

Section 216 of the LGC provides the **qualifications** of properties which are considered *Special Classes of Real Property*. Section 218(d) of the LGC, on the other hand, merely provides the assessment levels applicable to the said

special classes of real properties, as **defined** by the provisions of Section 216.

The *Special Classes of Real Property* are:

(a) *Those real properties (lands, buildings and other improvements thereon) which are actually, directly and exclusively used for hospitals, cultural, or scientific purposes;*

(b) *Those real properties **owned and used** by local water districts;*

(c) *Those real properties **owned and used** by government-owned or government-controlled corporations rendering essential public services in the supply and distribution of water; and*

(d) *Those real properties **owned and used** by government-owned or government-controlled corporations rendering essential public services in the generation and transmission of electric power.*

WHEREFORE, premises considered, for lack of merit, the instant appeal is hereby ordered dismissed.

SO ORDERED.

Manila, Philippines, May 30, 2011.

(Signed)

OFELIA A. MARQUEZ
Chairman

(Signed)

RAFAEL O. CORTES
Member

(Signed)

ROBERTO D. GEOTINA
Member