

Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

FELS ENERGY, INC.,
Petitioner-Appellant,

- versus -

CBAA Case No. L-19

LOCAL BOARD OF ASSESSMENT
APPEALS OF BATANGAS,
Appellee,

- and -

LAURO C. ANDAYA, Assessor
PROVINCE OF BATANGAS,
Respondent-Appellee,

NATIONAL POWER CORPORATION,
Intervenor-Appellant.

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R E S O L U T I O N

Before us is the Motion for Reconsideration dated 12 October 2000 filed by respondent-appellee, the Provincial Assessor of Batangas, seeking a review of our Decision dated 6 April 2000, as well as the respective oppositions thereto of petitioner FELS and intervenor National Power Corporation (NPC).

At the outset, the Board wishes to state, with all humility, that it is the better part of valor and justice to admit and correct one's mistake rather than to perpetuate it.

In brief, our review was guided by the following considerations, to wit:

(1) Taking a second hard look at the facts, it is now apparent that what is actually involved in this case is the assessment for real estate taxes imposed by the Provincial Assessor of Far East Livingstone Shipbuilding Ltd. (Fels Energy, Inc.) relative to its power barges operating in Balayan Bay, Calaca, Batangas.

(2) Although it was NPC which filed an appeal of the assessment before the Local Board of Assessment Appeals, it did so, not in its personal capacity as NPC, but merely as an attorney-in-fact of FELS.

(3) NPC became an intervenor-appellant before the Central Board of Assessment Appeals.

(4) It is not disputed that the Province of Batangas, under Section 232 of RA 7160 (The Local Government Code of 1991) has the power to levy a real property tax “on land, buildings, machinery and other improvements not hereinafter specifically exempted.” It is not also disputed that under Section 234(c) of this law, “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” are exempted from the real property tax.

(5) It is not also disputed that NPC, under its Charter (RA 395 Sec. 13) has been granted exemption from real property taxes by the Government.

Going now directly to the legal issues, it is the resolution of this Board that:

(1) The power barges owned and operated by FELS (as confirmed in the ECA or Energy Conversion Agreement with NPC) are real property pursuant to Section 199(o), RA 7160 as well as to Art. 415(9) of the Civil Code, i.e. docks and other structures which, though floating, are intended by their nature and object to remain at a fixed place in a river, lake or coast. They are, therefore, within the taxing power of the province as “machineries” pursuant to Sec. 232 of RA 7160 (The Local Government Code).

(2) FELS, the subject of the assessment, is not tax-exempt. FELS, the subject of the assessment, cannot validly claim the tax-exemption granted by the Legislature to NPC. Obviously, this tax-exemption was granted by the Legislature solely to NPC, and to nobody else.

“It is a universal rule that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him.”

(Gov’t. vs. Monte de Piedad, 35 Phil. 42)

“An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction. Such an intention must be

expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well-settled principle that, when a special privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owned and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, and the burden is on a claimant to establish clearly 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. In other words, since taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all.”

(Cooley, Taxation, 4th ed. Pp. 1403-1414).

(3) The stipulation in No. 10 of the ECA that NPC shall be responsible for taxes is a private agreement between FELS and NPC, and does not bind the Province of Batangas.

(4) This case is not really concerned with a claim for real property tax exemption by NPC. The procedure for such a tax exemption is laid down in Sec. 9 of PD 464 or the Real Property Tax Code, which sets certain requirements as to time and documentation.

This Board’s Decision in Land Bank of the Philippines, Petitioner-Appellant, vs. Board of Assessment Appeals of Manila, Appellee, and City Assessor of Manila, Respondent-Appellee, CBA Case No. 195, Re: Tax Declaration No. 073-0073 City of Manila, provide for the answer as follows:

“It has long been settled that failure to appeal within the statutory period renders the Local Board without jurisdiction to entertain an appeal and is a ground to dismiss the case. X x x.

“Besides, the right to appeal is a mere statutory privilege and may be exercised only in the manner and in accordance with the provision of law.

“Wherefore, the appealed decision is hereby affirmed. However, Petitioner-Appellant LBP is not precluded from pursuing its claim for tax exemption in accordance with Section 9 of PD No. 464, the Real Property Tax Code, which provides as follows:

“Section 9. 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 Code shall file with the Provincial or City Assessor within thirty (30) days from date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, titles of ownership, articles of incorporation, by laws, contracts, affidavits and certifications and mortgage deeds, and similar documents.

‘If required evidence is not submitted within the period herein specified, the property shall be listed in the assessment roll as taxable. However, if it shall be proven to be tax exempt the same shall be dropped from the roll of taxable properties.’”

“Incidentally, the above-mentioned Section 9 of the Real Property Tax Code is reproduced en toto as Section 206 of R.A. 7160, otherwise known as the Local Government Code of 1991.

It is quite revealing that in the two identical legal provisions, both mandate that failure to submit the required evidence for tax exemption within the prescribed period render the property of the declarant automatically taxable. This is an expressed recognition of the basic principle in property taxation that “taxability is the rule, and exemption, the exception.”

This is so because a tax exemption is an expressed constitutional or legislative grant of immunity and/or a special privilege. It is a freedom from a charge or burden to which others are subject. (*Greenfield vs. Meer*, 77 Phil. 394)

The mandatory nature of the above-cited provisions stem from the fact that an exemption becomes effectual only from the time the constitution, statute, ordinance or charter, in case of a corporation takes effect. There are also instances wherein the statute provides for certain conditions to be met in order that the exemption can be enjoyed or that the grant of tax exemption be postponed subject to the accomplishment or performance of a condition precedent.

It is also of vital importance for the local government unit’s officials like the assessor and treasurer to know when the tax exemption commences and in certain cases, when such exemption ends. This is so because if the property is not exempt on the tax day, it is liable to taxation for the year although it becomes exempt later on, and vice-versa. This is not something to sneeze at, if tens of millions in taxes are involved in just a year, like in the case at bar.

It must likewise be borne in mind that the tax exemptions are usually granted by statutes, ordinances, and charters for certain periods of time only

and generally, like all other special privileges, are revocable and subject to the pleasure of the authority granting them. It is a reality in this country that tax exemptions of certain corporations depend on the prevailing winds of politics.

These are the reasons why taxpayers seeking tax exemption must go through the provisions of Section 206 of R.A. 7160. It is incumbent upon them to inform and show proof to the assessor that they indeed are tax exempt on such a date and until such time, subject or not to any prescribed condition/s/

Unfortunately, there is no showing in the records that the Petitioner-Appellant complied with these legal requirements so necessary for tax-exemption claims under R.A. 7160.

Consequently, this Board cannot delve on whether the power barges of FELS are “actually, directly, and exclusively used” by a government-owned or controlled corporation in the generation of electric power” because this is moot and academic for the reasons previously stated.

(5) Finally, in so far as FELS is concerned as the subject of the assessment, its right to question the assessment, having been filed beyond the 60-day period has already prescribed, and therefore, its petition to this Board is correspondingly dismissed.

“It is well settled that the sixty-day-period-rule for perfecting an appeal starts from receipt of the Notice of Assessment. Request for Reconsideration does not interrupt such period. Reckoned from August 7, 1995, the date of receipt of letter of assessment to November 6, 1995, the date of receipt of the Appeal by the Local Board is ninety one (91) days; or even to the date of Appeal, purportedly October 24, 1995, from August 7, 1995 is seventy eight (78) days. Either way, therefore, Prescription has attached.”

WHEREFORE, premises considered, it is the resolution of this Board that:

- (a) The decision of the Board dated 6 April 2000 is hereby reversed.
- (b) The petition of FELS, as well as the intervention of NPC, is dismissed.
- (c) The resolution of the Local Board of Assessment Appeals of Batangas is hereby affirmed,

(d) The real property tax assessment on FELS by the Provincial Assessor of Batangas is likewise hereby affirmed.

SO ORDERED.

Manila, Philippines.

July 31, 2001.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

(Signed)
BENJAMIN M. KASALA
Member