

Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

NATIONAL POWER CORPORATION,
Petitioner-Appellant,

-versus-

CBAA CASE NO. L-29

LOCAL BOARD OF ASSESSMENT
APPEALS, PROVINCE OF QUEZON,
Appellee,

-and-

THE MUNICIPALITY OF PAGBILAO,
QUEZON,
Respondent-Appellee.

x ----- x

R E S O L U T I O N

Over the dismissal of its Appeal before this Board for lack of merit, Petitioner-Appellant, National Power Corporation (NAPOCOR/NPC) filed this Motion for Reconsideration, praying that this Board's "Decision dated August 18, 2003 be reconsidered and set aside and instead a new one be rendered declaring that the machineries and equipment of Pagbilao Coal fire Thermal Power Plant and subject of the questioned assessments as exempt from the payment of real property tax". Respondent-Appellees filed their COMMENT/OPPOSITION thereto, dated October 6, 2003, on October 10, 2003; Petitioner-Appellant's REPLY (To Respondent-Appellees' Comment/Opposition), dated October 23, 2003, on November 4, 2003; and Respondent-Appellees'REJOINDER (To Petitioner-Appellant's Reply Dated October 23, 2003), dated August 2, 2004, on August 4, 2004.

Petitioner-Appellant introduced the following grounds:

"I

THE HONORABLE BOARD COMMITTED A GRAVE ERROR WHEN IT TOOK COGNIZANCE OF THE CASE NOTWITHSTANDING THAT THE LBAA DECISION ON WHICH IT EXERCISES APPELLATE JURISDICTION DID NOT STATE THE FACTS AND THE LAW UPON WHICH IT WAS BASED AND THEREFORE INVALID.

"II

PETITIONER-APPELLANT NPC IS THE BENEFICIAL OWNER AND THE ACTUAL, DIRECT AND EXCLUSIVE USER OF THE PAGBILAO COAL FIRED THERMAL POWER PLANT

“III

PETITIONER-APPELLANT NPC's REAL PROPERTY TAX EXEMPTION WAS NEVER WITHDRAWN BY THE LOCAL GOVERNMENT CODE

“IV

THE RULE OF STRICT CONSTRUCTION ON TAX EXEMPTION DOES NOT APPLY AGAINST PETITIONER-APPELLANT NPC, A GOVERNMENT OWNED AND CONTROLLED CORPORATION

“V

THE LOCAL GOVERNMENT CODE MUST BE CONSTRUED IN HARMONY WITH THE BOT LAW AND PETITIONER-APPELLANT NPC's CHARTER

“VI

PETITIONER-APPELLANT NPC NEED NOT BE ENGAGED BOTH IN GENERATION AND TRANSMISSION TO QUALIFY FOR REAL PROPERTY TAX EXEMPTION UNDER SEC. 234 (C) OF THE LOCAL GOVERNMENT CODE

“VII

THE AMOUNT OF REAL PROPERTY TAX BEING ASSESSED IS ERRONEOUS AND EXORBITANT”

Petitioner-Appellant's first ground faults this Board for not remanding the case to the LBAA, as it is mandated to do by the jurisprudence it cited, the Honorable Board still proceeded to take cognizance of the case, arrogating unto itself the power to decide the case despite the lack of any valid decision from which to base the exercise of its appellate jurisdiction”.

Anent the LBAA Decision: this Board said that the LBAA of the province of Quezon rendered a “sin perjuicio” Decision, which was a mere pronouncement of its judgment without stating any of the facts in support of its conclusion. Unwittingly, however, neither Petitioner-Appellant nor Respondents-Appellees took notice of it. This Board cited the case of Director of Lands vs. Sanz (45 Phil. 121-122) citing Braga vs. Millora (3 Phil. 458). Since this Board proceeds only on findings of fact, this Board took cognizance of the case and exercised jurisdiction, as indeed it has jurisdiction thereto.

Paragraph 3 and 4 Sec. 230, .R.A. 7160 provides:

“X x x . The Hearing Officers shall try and receive evidences on the appealed assessment cases a may be directed by the Board.

“The Central Board of Assessment Appeals, in the performance of its powers and duties, may x x x adopt its own rules and regulations”.

Section 1, RULE III of the RULES OF PROCEDURE BEFORE THE CENTRAL BOARD OF ASSESSMENT APPEALS provides:

“Appellate Jurisdiction. – The Central Board shall have exclusive jurisdiction to hear and decide all appeals from the decisions, orders and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits or overpayment of taxes”.

Section 2, RULE VIII thereof provides:

“Duties and Functions of the Hearing Officers. – The Hearing Officers shall, upon direction of the Central Board, conduct hearings of all appeals before the Central Board in their respective venues upon direction of the Central Board. They may receive new evidence pertinent or relevant to issues raised and decided in the Local board relative to appeals in the Central Board. For this purpose, they are authorized to summon witnesses, take depositions, issue subpoena duces tecum, administer oaths on all matters or proceedings related to the performance of their duties and, after due notice to parties concerned, conduct ocular inspections of real properties subjects of the appeals whenever such inspections are deemed necessary”.

Definitely therefore, we have enough means to get into the bottom of the facts of the cases before us, this Board heard the instant case on May 31, 2001, on June 15, 2001 and on November 15, 2001 and conducted an ocular inspection on subject Pagbilao Power Plant on October 29, 2001.

How then could Petitioner-Appellant blatantly and audaciously reproach this Board for depriving NPC of its right to due process? “Or at the very least, ordered a hearing to thresh out the issues not heard by the LBAA”? Does Petitioner-Appellant know what it is talking about?

In the Braga vs. Millora case (3 Phil. 460), the Supreme Court remanded the case to the Court of First Instance of the Province of Zambales because in the Supreme Court’s own words, “this court has no authority to examine the evidence adduced in the case for the purpose of deciding upon questions of fact”.

In Director of Lands vs. Sanz (45 Phil. 121-122), the Supreme Court declared:

“In view of the decision of this court in the case of Braga vs. Millora, 3 Phil. 458 and many other published decisions, in which the doctrine there

announced has been followed, we are of the opinion, and so declare, that the appellant, even though he attempted to perfect an appeal against the 'sin perjuicio' decision, had a perfect right to wait until the final decision was filed, x x x and then to perfect his appeal, thereby avoiding a possible delay of having the record returned to the lower court x x x". (Underscoring supplied.)

Petitioner-Appellant, obviously, was referring to the jurisprudence on the above Director of Lands vs. Sanz case citing Braga vs. Millora. Pursuant thereto, why did Petitioner-Appellant not wait for the final decision before filing its Appeal before this Board, only to denounce this Board's Decision, asserting that the same should be remanded to the Board below?

It can be said that filing an appeal before the Central Board then later on questioning its jurisdiction after an adverse decision smacks of, if not amounts to forum shopping.

Rightfully, this Board has the full mandate to take cognizance and jurisdiction of an appeal despite the "sin persjuicio" decision of the Board below: Petitioner-Appellant should not have raised the issue, in the firs place.

Evidently, the rest of Petitioner-Appellant's grounds for reconsideration provided nothing more than a mere semantic rehash of its arguments on the dismissed appeal. The facts of this case have been carefully looked into, deliberated on and duly resolved.

There is no dispute if NPC is the actual, direct and exclusive user of the Pagbilao Power Plant, it is not taxable. Arguments however, no matter how strong, dauntless and decisive cannot alter the fact. The fact is that presently, MIRANT, not NPC, is the real owner and the actual, direct and exclusive user of the Pagbilao Power Plant machineries and equipment. NPC's claim of actual, direct and exclusive use of said machineries and equipment is founded only in assertions, not in fact.

Let therefore MIRANT be taxed on its machineries and equipment, as indeed it is taxable:

Sec. 231, R.A. 7160 provides:

"Effect of Appeal on the Payment of Real Property Tax. – Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the

property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal”.

Pursuant thereto, Section 7, RULE IV of the RULES OF PROCEDURE BEFORE THE CENTRAL BOARD OF ASSESSMENT APPEALS provides:

“Effect of appeal on collection of taxes – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the assessor concerned without prejudice to subsequent adjustment depending upon the final outcome of the appeal.

“If the corresponding realty taxes are not paid, the Central Board may nevertheless entertain an appeal by requiring the appellant to file a bond to guarantee the payment of the said taxes if found to be due, subject to the approval by the Central Board”.

We have always upheld said provision of law in such cases before us, there is no reason why the same should not be done in this case: the Provincial Treasurer of Quezon therefore, is hereby ordered to act accordingly. The Provincial Assessor is likewise ordered to grant depreciation allowance to Petitioner-Appellant’s machineries in accordance with section 225 of RA 7160 for each year of use to be reflected in revised tax declarations.

WHEREFORE, the herein Motion for Reconsideration is hereby denied and dismissed for lack of merit.

SO ORDERED.

Manila, Philippines, October 7, 2004.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

(Signed)
RAFAEL O. CORTES
Member