REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

## *EN BANC*

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|---|---|
| **MANILA ELECTRIC COMPANY,** *Petitioner-Appellant,* | **CTA *EB* NO. 2736** (CBAA Case No. L-144-2020) (LBAA Case No. 2018-01) |
| *- versus -* | *Present:* |
| **CENTRAL BOARD OF ASSESSMENT APPEALS, LOCAL BOARD OF ASSESSMENT APPEALS OF BACOOR CITY, CAVITE, OFFICE OF THE CITY TREASURER OF BACOOR, represented by ATTY. EDITH C. NAPALAN, CITY TREASURER OF BACOOR CITY,** *Respondents-Appellees.* | **DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.* Promulgated: AUG 15 2024 4:15 |

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## DECISION

***CUI-DAVID, J.:***

Before the Court *En Banc* is a *Petition for Review*[1] filed by Manila Electric Company (herein referred to as "Petitioner" and/or "MERALCO") on February 27, 2023, seeking the modification of the Central Board of Assessment Appeals' Decision[2] dated August 19, 2022, and Resolution[3] dated January 11, 2023, the dispositive portions of which read as follows:

Assailed Decision dated August 19, 2022:

[1] *En Banc* (*EB*) Docket, pp. 1-33.
[2] *Id.*, pp. 37-50.
[3] *Id.*, pp. 81-82.

**WHEREFORE**, in view of all the foregoing, the appeal is hereby **PARTIALLY GRANTED**, the ruling of the LBAA that the transformers, electric posts, transmission lines, insulators and electric meters of MERALCO are **NOT EXEMPTED** from real property tax under the Local Government Code is hereby **AFFIRMED**.

On the Summary of Collectibles dated 10 September 2017, the declaration of the LBAA that the Summary of Collectibles dated 10 September 2017 as violating the right to due process of MERALCO for not complying with the requirements of the Local Government Code, is likewise, **AFFIRMED**. However, the Board hereby **DIRECTS** that a new appraisal and assessment of the subject properties be conducted by the City Assessor of Bacoor from **10 April 2012** to present in accord with the provisions of the Local Government Code and its implementing rules and regulations.

**SO ORDERED**.

Assailed Resolution dated January 11, 2023:

**WHEREFORE**, absent any cogent reason to disturb said Decision, the instant Motion for Reconsideration is hereby DENIED for utter lack of merit.

**SO ORDERED**.

## THE PARTIES[4]

MERALCO is a private corporation organized and existing under the laws of the Philippines to operate as a public utility company. It is a grantee of a legislative franchise under Act No. 484, extended by Republic Act (RA) No. 9209. MERALCO may be served with orders and other processes of this Court through its counsel at the 8th Floor, Lopez Building, MERALCO Compound, Ortigas Avenue, Pasig City.

Respondent-Appellee Central Board of Assessment Appeals (CBAA) may be served with a summons, orders, and other legal processes at the 7th Floor, EDPC Bldg., BSP Complex, Roxas Blvd., Manila.

Respondent-Appellee Local Board of Assessment Appeals of Bacoor City, Cavite (LBAA), represented by Atty. Marites C. Tamayo, as the Chairperson of the LBAA, may be served with summons, orders, and other legal processes at the Registry of

[4] Paragraphs 1 to 4, *Petition for Review*, *EB* Docket, pp. 1-2.

Deeds, New City Hall of Bacoor, Brgy. Bayanan, Molino Blvd., Bacoor City.

Respondent-Appellee Office of the City Treasurer, represented by Atty. Edith C. Napalan, City Treasurer of Bacoor City (respondent City Treasurer), is a local government entity with an address at the Office of the City Treasurer, Bacoor City Hall, Bacoor City, where summons and other legal processes may be served.

## THE FACTS AND THE PROCEEDINGS

The factual antecedents, as found by the CBAA in the assailed Decision of August 19, 2022, are as follows:

> On 27 June 2017, Petitioner-Appellant received a copy of the "Summary of Collectibles – Electrical Poles as of June 2017" ("Summary of Collectibles") with attached various Real Property Tax Bills requiring it to settle the real property taxes due on its electric poles in the total amount of Fourteen Million Three Hundred Forty-Five Thousand Five Hundred Fifty-Eight Pesos and 18/100 (PHP14,345,558.18) covering the taxable period from 1996 to 2017. The pertinent details of the Summary of Collectibles and Real Property Tax Bills provide:

| ANNEX | Tax Declaration Number | Assessed Value | Period | Tax Due |
|---|---|---|---|---|
| "A-1" | 03-0001-02107 | 217,680.00 | 1996-2017 | 159,646.66 |
| "A-2" | 03-0003-02272 | 728,110.00 | 1996-2017 | 533,995.80 |
| "A-3" | 03-0004-00428 | 671,730.00 | 1996-2017 | 492,646.94 |
| "A-4" | 03-0006-00108 | 380,050.00 | 1996-2017 | 278,728.68 |
| "A-5" | 03-0007-00043 | 795,830.00 | 1996-2017 | 583,661.88 |
| "A-6" | 03-0008-00083 | 903,740.00 | 1996-2017 | 662,802.98 |
| "A-7" | 03-0009-06409 | 1,476,690.00 | 1996-2017 | 1,083,004.52 |
| "A-8" | 03-0010-00240 | 486,820.00 | 1996-2017 | 357,033.64 |
| "A-9" | 03-0013-00842 | 846,910.00 | 1996-2017 | 621,123.72 |
| "A-10" | 238-0014-11206 | 1,766,770.00 | 1996-2017 | 1,295,748.96 |
| "A-11" | 03-0017-07758 | 1,362,600.00 | 1996-2017 | 1,526,657.04 |
| "A-12" | 03-0018-00101 | 716,930.00 | 1996-2017 | 525,796.62 |
| "A-13" | 238-0019-14348 | 4,324,560.00 | 1996-2017 | 3,171,632.24 |
| "A-14" | 03-0021-00358 | 904,330.00 | 1996-2017 | 663,235.78 |
| "A-15" | 03-0022-00911 | 1,752,690.00 | 1996-2017 | 1,285,422.92 |
| "A-16" | 03-0016-01997 | 1,505,890.00 | 1996-2017 | 1,104,419.80 |
| | | | | **14,345,558.18** |

> On 11 September 2017, Petitioner-Appellant filed a protest on the Summary of Collectibles before the Office of the City Treasurer for the period covering 1996-2017. Petitioner-Appellant paid under protest the said collectibles by a (*sic*) posting a Surety Bond issued in the same amount as the collectibles.

On 8 January 2018, Petitioner-Appellant filed an Appeal with the LBAA on the ground of the denial by inaction of the Bacoor City Treasurer on the letter-protest dated 10 September 2017 questioning the validity of the Summary of Collectibles.

The LBAA in its Resolution dated 9 January 2019, found the appeal partially meritorious, the dispositive portion of the Resolution reads:

> "WHEREFORE, premises considered, the Board finds the instant protest PARTIALLY meritorious. The Board HOLDS that the transformers, electric posts, transmission lines, insulators and electric meters of MERALCO are NOT EXEMPTED from real property tax under the Local Government Code. However, the Board also DECLARES the Summary of Collectibles dated September 10, 2017 as violating the right to due process of MERALCO for not complying with the requirements of the Local Government Code and, DIRECTS that a new appraisal and assessment of the same properties be conducted by the City Assessor of Bacoor from 1996 to present in accord with the provisions of the Local Government Code and its implementing rules and regulations."

Hence, on 21 March 2019, Petitioner-Appellant filed a Motion for Partial Reconsideration on the said Resolution.

On 11 December 2019, Petitioner-Appellant received an Order dated 14 November 2019 issued by the LBAA denying Petitioner-Appellant's Motion.

On 09 January 2020, and 10 January 2020, Petitioner filed an appeal to this Board, through registered mail and by personal service, respectively.

On August 19, 2022, the CBAA rendered the assailed Decision granting, *albeit* partially, MERALCO's *Appeal.* In the assailed Decision, the CBAA ruled that while it agrees with the LBAA in holding that MERALCO's electric posts may qualify as "machinery" subject to real property tax under the Local Government Code of 1991 (LGC), the CBAA, however, ruled that the City of Bacoor has no authority to assess and demand real property tax before April 10, 2012.

CBAA explained that under Section 232 of the LGC, the power to levy real property tax belongs to (1) a province, (2) a city, and (3) a municipality within the Metropolitan Manila Area. According to the CBAA, the municipality of Bacoor became the City of Bacoor on April 10, 2012, by virtue of RA No. 10160, otherwise known as the "Charter of the City of Bacoor." Under Section 4 of its Charter, the City of Bacoor can levy an annual ad valorem tax on real property such as land, buildings, machinery, and other improvements not explicitly exempted under the LGC. Thus, consistent with Article 4 of the Civil Code, which states that laws shall have no retroactive effect unless the contrary is provided, the power of the City of Bacoor to levy an annual *ad valorem* tax on real property took effect only on April 10, 2012.

MERALCO moved for a reconsideration[5] but the same was denied in the equally assailed Resolution dated January 11, 2023.

Hence, the instant *Petition for Review* filed on February 27, 2023, raising the following errors allegedly committed by the CBAA, to wit:

> A. WITH ALL DUE RESPECT, CBAA DEVIATED FROM THE SUPREME COURT'S DECISION IN THE CASE OF MANILA ELECTRIC COMPANY VS. THE CITY ASSESSOR AND CITY TREASURER OF LUCENA CITY[6] (*LUCENA CASE*) AND COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT AFFIRMED THE LBAA'S RULING THAT MERALCO'S ELECTRIC POSTS ARE NOT EXEMPTED FROM REAL PROPERTY TAX UNDER THE LGC, WITHOUT QUALIFICATIONS (I.E., REGARDLESS WHETHER THE POSTS ARE OR ARE NOT ACTUALLY, DIRECTLY AND EXCLUSIVELY USED BY MERALCO).
>
> B. RESPONDENT CBAA SERIOUSLY ERRED WHEN IT FAILED TO DIRECT THE CITY ASSESSOR OR HIS DEPUTY TO DETERMINE, CONFORMABLY WITH THE *LUCENA CASE*, "WHETHER OR NOT THE ELECTRIC POSTS OF MERALCO ARE ACTUALLY BEING USED BY OTHER COMPANIES OR INDUSTRIES" ON THE BASIS OF THE LATTER'S "AUTHORITY TO TAKE EVIDENCE UNDER ARTICLE 304 OF THE RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE OF 1991".

[5] Motion for Partial Reconsideration, *EB* Docket, pp. 51-57.
[6] G.R. No. 166102, August 5, 2015.

MERALCO submits that the CBAA committed serious and reversible error when it affirmed the LBAA's ruling that MERALCO's electric posts are not exempted from real property tax under the LGC, without qualifications, i.e., regardless of whether the posts are or are not actually, directly, and exclusively used by MERALCO.

Citing Section 199(o) of the LGC, as allegedly interpreted by the Supreme Court in the *Lucena case*, MERALCO contends that its electric posts are not subject to real property tax since MERALCO is not exclusively using them. According to MERALCO, the fact that the poles are not exclusively used by it is relevant in the determination of the taxability or non-taxability of the subject poles. It added that had the Supreme Court deemed it immaterial or irrelevant whether other companies are utilizing or using the poles, it would have easily ruled categorically that MERALCO's poles are subject to real property tax, irrespective of whether other companies are utilizing the same. Hence, for MERALCO, the assessment of machinery and the subsequent action to collect the real property tax from a person, natural or juridical, is rendered null and void if the assessment failed to consider whether the item (i.e., machinery) is actually, directly, and exclusively used by the said person.

MERALCO likewise submits that the Supreme Court, in interpreting Section 199(o) of the LGC, allegedly ruled in *Lucena case* that for machinery to be subject to real property tax, the physical facilities for the production, installations, and appurtenant service facilities (a) must be actually, directly, and exclusively used to meet the needs of the particular industry, business, or activity; and (b) by their very nature and purpose, are designed for, or necessary for manufacturing, mining, logging, commercial, industrial, or agricultural purposes. Exclusivity, according to the Supreme Court, is a factual issue to be determined by the Assessor, and such determination is limited to "whether or not the electric posts of MERALCO are actually being used by the other companies or industries." For MERALCO, the word "exclusively," which forms part of the definition of machinery in Section 199(o) of the LGC, is not subject to any interpretation other than the fact that, for a property to be considered machinery, it should be used solely by the owner thereof. In short, MERALCO merely emphasizes that the Supreme Court, in the Lucena case, considered the necessity of determining the "exclusive use" of MERALCO's

electric posts before the same may be subjected to real property tax.

MERALCO also claims that the CBAA and LBAA correctly declared, in their respective decisions, that the "Summary of Collectibles (Electrical Poles) as of June 2017" violates MERALCO's right to due process for not complying with the requirements of the LGC. As pointed out by the CBAA and LBAA, there was *no notice of assessment* on the subject properties to provide factual support to the issuance of the assailed Real Property Tax Bills. For MERALCO, without Real Property Tax assessments issued to and received by MERALCO prior to issuing the Summary of Collectibles and Real Property Tax Bills, the City Treasurer has no basis to demand that MERALCO settle the alleged tax deficiencies.

Moreover, MERALCO submits that respondent City Treasurer cannot collect real property tax from MERALCO beyond the five (5)-year prescriptive period provided under Section 270 of the LGC or from 1996 to 2017. MERALCO adds that the suspension of the running of the prescriptive period under the said law is also not applicable in this case since respondent City Treasurer was not legally prevented from collecting the tax. Hence, the CBAA's resolution directing respondent City Treasurer to appraise and assess properties "from 10 April 2012 to present" must be modified because the assessment would be pertinent to collecting real property tax which had already prescribed.

Finally, MERALCO submits that the CBAA, in accord with the *Lucena case*, should have directed the City Assessor of Bacoor to determine "whether or not the electric posts of MERALCO are actually being used by other companies or industries" based on the latter's "authority to take evidence under Article 304 of the Rules and Regulations Implementing the Local Government Code of 1991." Like in the *Lucena case*, the City Assessor failed to make an independent determination as regards the exclusive or non-exclusive use of the poles and also failed to summon and require MERALCO to provide under oath and with supporting documents all necessary and relevant facts and circumstances bearing on the nature and value of the assessed realties. Since the assessment allegedly lacked a specific description or identification of the machinery covered, MERALCO was unable to refute the claims stated therein and present proof of non-exclusivity of each facility, if applicable.

In its *Comment (To: Petition for Review dated 23 February 2023),*[7] respondent City Treasurer submits that the instant *Petition for Review* should be denied.

*First,* respondent City Treasurer claims that MERALCO erred in its view that its *Petition* is not a claim for exemption but a claim under Section 199(o) of the LGC of 1991. According to respondent City Treasurer, to claim that a property is not within the bounds of taxation is a claim for exemption since to assert non-taxability is to contend that one is exempted from the burden of paying tax and exclude itself entirely from the confines of taxation. Since MERALCO's claim is one for a tax exemption, the burden of proving that the electric poles cannot be subjected to tax must be on MERALCO, having claimed its non-taxability.

*Second,* respondent City Treasurer claims that MERALCO's insistence on qualifying electric poles by whether they are actually, directly, and exclusively used by MERALCO to be taxable is misplaced. According to respondent City Treasurer, the qualification in Section 199(o) of the LGC that a property must be "actually, directly and exclusively used" pertains to "appurtenant service facilities," as allegedly mentioned by the Supreme Court in the *Lucena case.*

*Third,* assuming that the subject electric poles were not exclusively used by MERALCO, respondent City Treasurer submits that such does not axiomatically make said properties non-taxable and exempt from real property tax. According to respondent City Treasurer, if the Supreme Court determined that the "electric posts" were not taxable for not being exclusively used, then the Supreme Court would have definitively ruled as such. However, the Supreme Court explicitly ruled in the *Lucena case* that such are not exempt.

Further, in its *Petition* before the Court of Tax Appeals and in its pleadings before the CBAA and the LBAA, MERALCO merely alleged that the subject electric poles are not exclusively used by it without offering evidence in support thereof. For respondent City Treasurer, mere allegations are not evidence, and the burden of proof of tax exemption lies with the taxpayer. Hence, before any determination can be made on the exclusive use of the subject poles, the burden of proving the claim of its

[7] *EB* Docket, pp. 320-336.

non-taxable nature is upon MERALCO. However, MERALCO failed to overcome such a burden.

Furthermore, even assuming that other entities use the electric poles, the same will not definitively affect the taxability of MERALCO, given the last phrase of Section 199(o) of the LGC, which allegedly provides that so long as the object of taxation is necessary to its purpose, the same shall be taxable even if the taxpayer does not exclusively use it. According to respondent City Treasurer, the electric poles, considered machinery, are used to distribute electricity commercially. Hence, they are not exempt from real property tax under the law.

*Fourth*, respondent City Treasurer submits that MERALCO's legal basis in support of its argument that its right to due process is violated is inapplicable. For one, the case of *Manila Electric Company v. Barlis*[8] is inapplicable, considering that the law controlling therein is the repealed Real Property Tax Code and that the subject taxes being collected were from 1986 to 1989. For another, the cases of *Commissioner of Internal Revenue v. Liquigas Philippines Corporation*[9] and *Commissioner of Internal Revenue v. Reyes*[10] are inapplicable because the law applicable in the said cases is the National Internal Revenue Code.

*Fifth*, respondent City Treasurer submits that MERALCO's contention that the authority granted to the City Assessor to take evidence under Article 304 of the rules and regulations implementing the LGC of 1991 includes the task of determining the nature of the use of the subject electric poles is erroneous. According to respondent City Treasurer, the authority of the Assessor to take evidence is limited to determine the market value of the object of taxation. Such authority is discretionary on the part of the assessor concerned. In fact, according to respondent City Treasurer, even the Supreme Court in the *Lucena case* did not order or direct the concerned Assessor therein to exercise the authority of the Assessor to receive evidence.

*Lastly*, in refutation to MERALCO's claim of prescription, respondent City Treasurer contends that errors committed by certain administrative officers cannot jeopardize the collection of taxes. Invoking the dictum that "*taxes are the lifeblood of the*

[8] G.R. No. 114321, June 19, 2004.
[9] G.R. No. 215534, April 18, 2016.
[10] G.R Nos. 159694 & 163581, January 27, 2006.

*government,*" respondent City Treasurer asserts that the City Government of Bacoor is not bound by the mistake or negligence of its employees.

## THE COURT EN BANC'S RULING

Before delving into the merits of the case, the Court *En Banc* shall first determine whether the present *Petition for Review* was timely filed.

Section 3(c), Rule 8 of the Revised Rules of the Court of Tax Appeals states:

> **SEC. 3**. *Who may appeal; period to file petition.* — xxx
>
> xxx xxx xxx
>
> (c) A party adversely affected by a decision or ruling of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of their appellate jurisdiction may appeal to the Court by filing before it a petition for review **within thirty days from receipt of a copy of the questioned decision or ruling**. (*Emphasis supplied*)

Records show that MERALCO received the assailed Resolution dated January 11, 2023,[11] which denied its *Motion for Partial Reconsideration (Of the Decision dated 19 August 2022)* on February 1, 2023. Accordingly, MERALCO had thirty (30) days from February 1, 2023, or until March 3, 2023, to file its *Petition for Review* before the Court *En Banc.*

Clearly, the filing of the present *Petition for Review* on February 27, 2023, is on time. Hence, the Court *En Banc* has jurisdiction to take cognizance of it.

Now, on the merits.

In support of its *Petition* before the Court, MERALCO submits that the CBAA and the LBAA, in their respective rulings, declared as null and void the Summary of Collectibles as of June 2017 "as violating the right to due process of MERALCO for not complying with the requirements of the Local Government Code." However, MERALCO claims that the CBAA committed serious and reversible error when it affirmed the LBAA's ruling that its electric posts are not exempted from real

[11] Notice of Resolution. *EB* Docket, p. 79.

property tax under the LGC, *sans* any qualification as to whether the same are actually, directly, and exclusively used by MERALCO. According to MERALCO, the ruling disregarded the Supreme Court's declaration in the *Lucena case.*

MERALCO further claims that the CBAA seriously erred when it failed to direct the City Assessor or their deputy to determine, in conformity with the *Lucena case,* whether its electric poles are actually being used by other companies based on the latter's authority to take evidence under Article 304 of the Rules and Regulations Implementing the LGC of 1991.

In closing, MERALCO claims that respondent City Treasurer is already barred from collecting the real property taxes from 1996 to 2017 pursuant to Section 270 of the LGC. Hence, the CBAA erred when it directed the City Assessor to conduct a new appraisal and assessment of the subject electric posts.

The Court *En Banc* finds MERALCO's assertions partly meritorious.

***The CBAA did not err in affirming the LBAA's ruling that MERALCO's electric posts are not exempt from real property tax under the Local Government Code without qualification, and not directing the City Assessor to determine whether other companies or industries are using them.***

In the oft-cited *Lucena case*, the Supreme Court unequivocally ruled at the outset, **without qualification**, that beginning January 1, 1992, MERALCO can no longer claim exemption from real property tax for its transformers, **electric posts**, transmission lines, insulators, and electric meters based on its franchise, *viz.*:

> *Beginning January 1, 1992, MERALCO can no longer claim exemption from real property tax of its transformers, electric posts, transmission lines, insulators, and electric meters based on its franchise.*

... ... ...

In the *1964 MERALCO case*, the City Assessor of Quezon City considered the steel towers of MERALCO as real property and required MERALCO to pay real property taxes for the said steel towers for the years 1952 to 1956. MERALCO was operating pursuant to the franchise granted under Ordinance No. 44 dated March 24, 1903 of the Municipal Board of Manila, which it acquired from the original grantee, Charles M. Swift. Under its franchise, MERALCO was expressly granted the following tax exemption privilege:

> Par 9. The grantee shall be liable to pay the same taxes upon its real estate, buildings, plant (**not including poles,** wires, transformers, and insulators), machinery and personal property as other persons are or may be hereafter required by law to pay...

Given the express exemption from taxes and assessments of the "**poles**, wires, transformers, and insulators" of MERALCO in the afore quoted paragraph, the sole issue in the *1964 MERALCO case* was whether or not the steel towers of MERALCO qualified as "**poles**" which were exempted from real property tax. The Court ruled in the affirmative, ratiocinating that: ...

... ... ...

In CBAA Case No. 248 (and LBAA-89-2), the City Assessor assessed the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO located in Lucena City beginning 1985 under Tax Declaration No. 019-6500. The CBAA in its Decision dated April 10, 1991 in CBAA Case No. 248 **sustained the exemption of the said properties of MERALCO from real property tax** on the basis of paragraph 13 of Resolution No. 2679 and the *1964 MERALCO case*.

Just when the franchise of MERALCO in Lucena City was about to expire, the Local Government Code took effect on January 1, 1992, Sections 193 and 234 of which provide:

> **Section 193. *Withdrawal of Tax Exemption Privileges.*** — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

> **Section 234. *Exemptions 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, nonprofit 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, <u>any exemption from payment of real property tax</u> previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations <u>are hereby withdrawn upon the effectivity of this Code.</u>**
>
> ... ... ...

Taking into account the above-mentioned provisions, the evident intent of the Local Government Code is to withdraw/repeal all exemptions from local taxes, unless otherwise provided by the Code. ...

Section 234 of the Local Government Code particularly identifies the exemptions from payment of real property tax, based on the **ownership, character**, and **use** of the property, *viz.*: ...

> **2. *Other Exemptions Withdrawn.*** All other exemptions previously granted to natural or juridical persons, including government-owned or controlled corporations, are withdrawn upon the effectivity of the Code.
>
> **The last paragraph of Section 234 had unequivocally withdrawn**, upon the effectivity of the Local Government Code, **exemptions from payment of real property taxes granted to natural or juridical persons**, including government-owned or controlled corporations, except as provided in the same section.
>
> **MERALCO**, a private corporation engaged in electric distribution, and its transformers, electric posts, transmission lines, insulators, and electric meters used commercially **do not qualify under any of the ownership, character, and usage exemptions enumerated in Section 234 of the Local Government Code**. ...
>
> **It is worthy to note that the subsequent franchises for operation granted to MERALCO,** *i.e.*, under the Certificate of Franchise dated October 28, 1993, issued by the National Electrification Commission and Republic Act No. 9209 enacted on June 9, 2003, by Congress, **are completely silent on the matter of exemption from real property tax of MERALCO or any of its properties.**
>
> It is settled that tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer. **MERALCO has failed to present herein any express grant of exemption from real property tax of its transformers, electric posts, transmission lines, insulators, and electric meters that is valid and binding even under the Local Government Code.** *(Emphases supplied)*

As reiterated in the *Lucena case,* MERALCO's transformers, **electric posts**, transmission lines, insulators, and electric meters were exempt from real property tax pursuant to the franchise granted to it by the Municipal Board of Lucena City through Resolution No. 2679 and the *1964 MERALCO* case. However, this tax exemption was **expressly withdrawn** with the effectivity of the LGC on January 1, 1992, as provided under Section 234.

The subsequent franchises granted to MERALCO for operation, such as its franchise under Republic Act No. 9209,[12] were silent on the matter of exemption from real property tax for MERALCO or any of its properties.[13] Therefore, as held in the *Lucena case,* MERALCO's **electric posts** and other properties **are no longer exempt from real property tax** and may qualify as "machinery" subject to real property tax, *viz.*:

> *MERALCO's transformers, electric posts, transmission lines, insulators, and electric meters may qualify as "machinery" under the Local Government Code and are subject to real property tax.*
>
> Through the years, **the relevant laws have consistently considered "machinery" as real property subject to real property tax. It is the definition of "machinery" that has been changing and expanding**, as the following table will show:
>
> ... ... ...
>
> The Court highlights that under Section 199(o) of the Local Government Code, machinery, to be deemed real property subject to real property tax, need no longer be annexed to the land or building as these "may or may not be attached, permanently or temporarily to the real property," and in fact, such machinery may even be "mobile." The same provision, though, requires that to be machinery subject to real property tax, the physical facilities for production, installations, and appurtenant service facilities, those which are mobile, self-powered or self-propelled, or not permanently attached to the real property **(a) must be actually, directly, and exclusively used to meet the needs of the particular industry, business, or activity; and (2) by their very nature and purpose, are designed for, or necessary for manufacturing, mining, logging, commercial, industrial, or agricultural purposes**. Thus, Article 290(o) of the Rules and Regulations Implementing the Local Government Code of 1991 recognizes the following exemption:
>
> > Machinery which are of general purpose use including but not limited to office equipment, typewriters, telephone equipment, breakable or easily damaged containers (glass or cartons), microcomputers, facsimile machines, telex machines, cash dispensers, furnitures and

[12] Act No. 484, extended by Republic Act No. 9209, which was enacted on June 9, 2003.
[13] *MERALCO v. The City Assessor and City Treasurer of Lucena City*, G.R. No. 166102, August 5, 2015.

> fixtures, freezers, refrigerators, display cases or racks, fruit juice or beverage automatic dispensing machines which are not directly and exclusively used to meet the needs of a particular industry, business or activity shall not be considered within the definition of machinery under this Rule.
>
> ... ... ...
>
> While the Local Government Code still does not provide for a specific definition of "real property," Sections 199(o) and 232 of the said Code, respectively, gives an extensive definition of what constitutes "machinery" and unequivocally subjects such machinery to real property tax. The Court reiterates that **the machinery subject to real property tax under the Local Government Code "may or may not be attached, permanently or temporarily to the real property," and the physical facilities for production, installations, and appurtenant service facilities, those which are mobile, self-powered or self-propelled, or are not permanently attached must (a) be actually, directly, and exclusively used to meet the needs of the particular industry, business, or activity; and (2) by their very nature and purpose, be designed for, or necessary for manufacturing, mining, logging, commercial, industrial, or agricultural purposes**.
>
> ... ... ...
>
> Therefore, for determining whether machinery is real property subject to real property tax, **the definition and requirements under the Local Government Code are controlling.**
>
> MERALCO maintains that its electric posts are not machinery subject to real property tax because said posts are not being exclusively used by MERALCO; these are also being utilized by cable and telephone companies. This, however, is a factual issue which the Court cannot take cognizance of in the Petition at bar as it is not a trier of facts. Whether or not the electric posts of MERALCO are actually being used by other companies or industries is best left to the determination of the City Assessor or his deputy, who has been granted the authority to take evidence under Article 304 of the Rules and Regulations Implementing the Local Government Code of 1991. (*Emphasis supplied*)

Indeed, for machinery to be subject to real property tax under the LGC, the **physical facilities** for production, installations, and appurtenant service facilities must 1) be actually, directly, and exclusively used to meet the needs of the

particular industry, business, or activity; and 2) by their very nature and purpose, are designed for, or necessary for manufacturing, mining, logging, commercial, industrial, or agricultural purposes.

MERALCO is a public utility engaged in electric distribution. Its transformers, **electric posts**, transmission lines, insulators, and electric meters constitute the **physical facilities** through which MERALCO delivers electricity to its consumers.[14]

Similar to the *Lucena case*, MERALCO, in the instant case, claims that its electric posts are not machinery subject to real property tax since they are **NOT** being exclusively used by MERALCO, as other businesses, such as cable and telecommunications companies, also use them.

Moreover, pursuant to MERALCO's franchise under Section 2, RA No. 9209, it may allow interested parties the use of free spaces in its poles, to wit:

> **Section 2. Manner of Operations of Facilities.** - ...Whenever practicable and for purposes of maintaining order, safety, and aesthetics along the highways, roads, streets, alleys or right-of-way, **the grantee may allow the use of free spaces in its poles,** facilities or right-of-way by interested parties upon reasonable compensation to the grantee considering costs incurred to accommodate and administer the use of the grantee's facilities by such parties. ...[15] (*Emphasis supplied*)

As ruled in the *Lucena case,* determining whether other companies or industries are utilizing the electric posts is a factual issue best left to the City Assessor of Bacoor or his deputy, who may receive evidence under Art. 304 of the Rules and Regulations Implementing the Local Government Code of 1991.[16]

To recall, the LBAA found the Summary of Collectibles as of June 2017 with attached Real Property tax Bills issued by the City Treasurer of Bacoor for the period covering 1996-2017 null and void due to the failure of the City Assessor to issue the

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[14] *Id.*
[15] Section 2 of Republic Act No. 9209.
[16] "Article 304. Authority of Local Assessors to Take Evidence. - For the purpose of obtaining information on which to base the market value of any real property, the assessor of the province, city, or municipality or his deputy may summon the owners of the properties to be affected or persons having legal interest therein and witnesses, administer oaths, and take deposition concerning the property, its ownership, amount, nature, and value."

notices of assessment. Both the CBAA and LBAA ruled that the Summary of Collectibles violated MERALCO's right to due process by failing to comply with the requirements of the LGC.

The Supreme Court declared, in the *Lucena case,* that every machinery **must** be individually appraised and assessed and that the Local Government Code **mandates** that the taxpayer be given a notice of assessment, *viz.*:

> The Local Government Code defines "**appraisal**" as the "act or process of determining the value of property as of a specific date for a specific purpose." "**Assessment**" is "the act or process of determining the value of a property, or proportion thereof subject to tax, including the discovery, listing, classification, and appraisal of the properties[.]" When it comes to machinery, its appraisal and assessment are particularly governed by Sections 224 and 225 of the Local Government Code, which read: ...
>
> It is apparent from these two provisions that **every machinery must be individually appraised and assessed** depending on its acquisition cost, remaining economic life, estimated economic life, replacement or reproduction cost, and depreciation.
>
> Article 304 of the Rules and Regulations Implementing the Local Government Code of 1991 expressly authorizes the local assessor or his deputy to receive evidence for the proper appraisal and assessment of the real property: ...
>
> **The Local Government Code further mandates that the taxpayer be given a notice of the assessment of real property** in the following manner: ...
>
> A **notice of assessment**, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, **should be sufficiently informative to apprise the taxpayer the legal basis of the tax.** In *Manila Electric Company v. Barlis,* the Court described the contents of a valid notice of assessment of real property and differentiated the same from a notice of collection:
>
> > A notice of assessment as provided for in the Real Property Tax Code should effectively inform the taxpayer of the value of a specific property, or proportion thereof subject to tax, including the discovery, listing, classification, and appraisal of properties. The September 3, 1986 and October 31, 1989 notices do not contain the essential information that a notice of assessment must specify, namely, the value of a specific property or

> proportion thereof which is being taxed, nor does it state the discovery, listing, classification and appraisal of the property subject to taxation. In fact, the tenor of the notices bespeaks an intention to collect unpaid taxes, thus the reminder to the taxpayer that the failure to pay the taxes shall authorize the government to auction off the properties subject to taxes . ...
>
> Although the ruling quoted above was rendered under the Real Property Tax Code, **the requirement of a notice of assessment has not changed under the Local Government Code.** *(Emphasis supplied)*

Considering the foregoing, the Court *En Banc* sustains the rulings of the CBAA and LBAA declaring the Summary of Collectibles as of June 2017 void, as it was issued without an appraisal and assessment of the electric posts and without serving a notice of assessment to MERALCO.

Given the rulings of this Court, the CBAA, and the LBAA on the invalidity of the Summary of Collectibles, **directing** the City Assessor or his deputy to determine whether other companies or industries used the electric posts and **declaring** that MERALCO did not exclusively use the posts to avoid holding MERALCO liable for real property tax for the years 1996 to 2017, would be a futile exercise.

Furthermore, as discussed below, the right of the City Treasurer of Bacoor to collect real property tax from 1996 to 2017 has already prescribed.

***The City Treasurer of Bacoor is already barred from collecting the real property tax from 1996 to 2017.***

As discussed, the CBAA and LBAA ruled that the Summary of Collectibles as of June 2017 is void for violating MERALCO's right to due process. Nonetheless, the CBAA directed the City Assessor of Bacoor to conduct a new appraisal and assessment of the subject properties from "**10 April 2012 to present**," modifying the LBAA's directive, which covered the period from "**1996 to present.**"

In its *Petition for Review* before the Court *En Banc*, MERALCO claimed that the City Treasurer was already barred from collecting real property taxes from 1996 to 2017 due to the lapse of the five (5) year prescriptive period. MERALCO prayed that the period of assessment be modified in accordance with the provisions of Section 270 of the LGC.

The Court *En Banc* agrees with MERALCO.

Section 270 of the LGC provides the period to collect real property taxes. It states:

> Section 270. *Periods Within Which To Collect Real Property Taxes.* - The basic **real property tax** and any other tax levied under this Title **shall be collected within five (5) years from the date they become due**. No action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period. In case of fraud or intent to evade payment of the tax, such action may be instituted for the collection of the same within ten (10) years from discovery of such fraud or intent to evade payment.
>
> The **period of prescription** within which to collect **shall be suspended** for the time during which:
>
> 1. The local treasurer is legally prevented from collecting the tax;
>
> 2. The owner of the property or the person having legal interest therein requests for reinvestigation and executes a waiver in writing before the expiration of the period within which to collect; and
>
> 3. The owner of the property or the person having legal interest therein is out of the country or otherwise cannot be located. (*Emphasis supplied*)

Based on Section 270, the real property tax shall be collected within five (5) years from the date it becomes due since the prescribed period was not suspended. Moreover, no action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period.

Section 250 of the LGC provides for the payment of real property taxes in installments, to wit:

> Section 250. *Payment of Real Property Taxes in Installments.* – The owner of the real property or the person having legal interest therein may pay the basic real property tax and the additional tax for Special Education Fund (SEF) due thereon without interest in four (4) equal installments; the first installment to be **due and payable** on or before March Thirty-first (31st); the second installment, on or before June Thirty (30); the third installment, on or before September Thirty (30); and the last installment on or before December Thirty-first (31st), except the special levy the payment of which shall be governed by ordinance of the sanggunian concerned.

Based on the above provisions, the Court *En Banc* concurs with MERALCO's contention that the City Treasurer is barred from collecting the real property taxes from 1996 to 2017 as the City Treasurer's right to collect them has prescribed on the last quarters of the respective years, to wit:

- 31st day of December 2012 for **2007**;
- 31st day of December 2013 for **2008**;
- 31st day of December 2014 for **2009**;
- 31st day of December 2015 for **2010**;
- 31st day of December 2016 for **2011**;
- 31st day of December 2017 for **2012**;
- 31st day of December 2018 for **2013**;
- 31st day of December 2019 for **2014**;
- 31st day of December 2020 for **2015**;
- 31st day of December 2021 for **2016;** and
- 31st day of December 2022 for **2017**.

Following the foregoing, the 5-year period to collect the real property tax for **2017**, the last year covered by the Summary of Collectibles, would be **December 31, 2022**.

Thus, directing the City Assessor to appraise and assess MERALCO's electric posts for the period from 1996 to 2017 would be pointless. Even if a notice of assessment for the period covered by the Summary of Collectibles is issued, the City Treasurer **cannot** collect the assessed real property taxes as the right to do so for those years has already prescribed.

The law on prescription should be liberally construed to protect taxpayers.[17] In *Republic of the Philippines v. Ablaza,*[18] the Supreme Court underscored that the law on prescription for the collection of taxes is beneficial to both the Government and its citizens; the Government because tax officers would be obliged to act promptly in the making of assessment and to

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[17] *Commissioner of Internal Revenue v. B.F. Goodrich*, G.R. 104171, February 24, 1999, 303 SCRA 546.
[18] G.R. No. L-14519, July 26,1960, 108 Phil. 1105.

citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens.

**WHEREFORE**, premises considered, the *Petition for Review* filed by Manila Electric Company is **PARTIALLY GRANTED**, and the Decision of the Central Board of Assessment Appeals dated August 19, 2022 in CBAA Case No. L-144-2020 is **AFFIRMED with MODIFICATION**.

The Court **DECLARES** that Manila Electric Company's electric posts are **NOT EXEMPTED** from real property tax and may qualify as machinery subject to real property tax under the Local Government Code, conformably with *Manila Electric Co. v. City Assessor.* [19] However, the Court also **DECLARES** the Summary of Collectibles and Real Property Tax Bills as of 2017 as **NULL and VOID** and **ORDERS** their **CANCELLATION**, due to non-compliance with the requirements of the Local Government Code, thereby violating Manila Electric Company's right to due process, but **WITHOUT PREJUDICE** to the conduct of a new appraisal and assessment of the same electric posts by the City Assessor of Bacoor for the unprescribed period and in accord with the provisions of the Local Government Code, its Implementing Rules and Regulations, and the guidelines issued by the Bureau of Local Government Finance.

**SO ORDERED.**

**LANEE S. CUI-DAVID**
Associate Justice

*WE CONCUR:*

**ROMAN G. DEL ROSARIO**
Presiding Justice

[19] G.R. No. 166102, August 5, 2015.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

*(On Official Business)*
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice

**HENRY S. ANGELES**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice