REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MATERNO ATO, in his capacity as the Officer-In-Charge at the Provincial Assessor's Office of Ilocos Sur and Engr. NESTOR E. APOLONIO, in his capacity as the Municipal Assessor of San Esteban, Ilocos Sur, *Petitioners,*	**CTA *EB* NO. 1390** *(CBAA Case No. L-131)*
-versus-	
NATIONAL GRID CORPORATION OF THE PHILIPPINES, *Respondent.*	

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NATIONAL GRID CORPORATION OF THE PHILIPPINES, *Petitioner,*	**CTA *EB* NO. 1391** *(CBAA Case No. L-131)*
	Present:
-versus-	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,**
CENTRAL BOARD OF ASSESSMENT APPEALS; LOCAL BOARD OF ASSESSMENT APPEALS OF THE PROVINCE OF ILOCOS SUR; FATIMA A. TENORIO, PROVINCIAL ASSESSOR OF ILOCOS SUR; and ENGR. NESTOR E. APOLONIO, MUNICIPAL ASSESSOR OF SAN ESTEBAN, ILOCOS SUR, *Respondents.*	**FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *JJ.*** **Promulgated:** APR 26 2017 2:53 p.m.

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DECISION

BAUTISTA, J:

The Case

These are two (2) consolidated Petitions for Review[1] under *Section 2(e)*[2], *Rule 4* and *Section 4(c)*[3], *Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")* praying for the Court *En Banc* to:

1. *CTA EB No. 1390* – reverse and set aside the Central Board of Assessment Appeals ("CBAA") Decision dated March 27, 2015 ("CBAA Decision") and the CBAA Resolution dated August 31, 2015 ("CBAA Resolution"); declare the need for National Grid Corporation of the Philippines ("NGCP") to comply with the requirement of payment under protest; declare that the machineries and equipment of NGCP shall have an assessment level of eighty percent (80%) pursuant to *Section 218(c) of the 1991 Local Government Code, as amended ("1991 LGC")*; and order NGCP to pay taxes due, including interest and penalties;[4] and

2. *CTA EB No. 1391* - reverse and set aside the CBAA Decision and the CBAA Resolution; declare NGCP exempt from payment of real property tax ("RPT") on properties used in connection with its franchise under *Section 9 of Republic Act ("RA") No. 9511*[5] *("NGCP's Franchise")* or declare the properties described as "machineries and control house" subject of Notices of Assessment ("NOA") dated August 11, 2012 and Tax Declaration Nos. 0008-00576 to 0008-00590 and 0008-00598 as exempt from payment of RPT under *Section 234(c) of the 1991 LGC;* and declare that the properties described as "machineries and control house" subject of the assessment be

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[1] *Rollo, CTA EB No. 1390, Petition for Review,* pp. 1-98, with annexes; *Rollo, CTA EB No. 1391, Petition for Review,* pp. 1-396, with annexes.

[2] SECTION 2. *Cases Within the jurisdiction of the Court En Banc.* - The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

> xxx xxx xxx
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> (e) Decisions of the Central Board of Assessment Appeals (CBAA) in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

[3] SECTION 4. *Where to Appeal, Mode of Appeal.* -

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> (c) An appeal from a decision or ruling of the Central Board of Assessment Appeals or the Regional Trial Court in the exercise of their appellate jurisdiction shall be taken to the Court by filing before it a petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

[4] *Rollo, CTA EB No. 1390, Petition for Review, Prayer,* p. 19.

[5] An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-Bone System of Interconnected Transmission Lines, Substations and Related Facilities, and for Other Purposes; December 1, 2008.

reclassified and reverted to their classification as exempt from RPT in the tax declarations and assessment roll.[6]

The Parties

The Province of Ilocos Sur is a local government unit ("LGU") created and existing under the laws of the Philippines. Mr. Materno Ato ("Mr. Ato") is its Officer-In-Charge at the Provincial Assessor's Office and Engr. Nestor E. Apolonio ("Engr. Apolonio") is the Municipal Assessor of San Esteban, Ilocos Sur.

NGCP was granted a legislative franchise to engage in the business of conveying or transmitting electricity through high voltage backbone system of interconnected transmission lines, substations and related facilities, and for other purposes through *NGCP's Franchise,* subject to the provisions of the *1987 Philippine Constitution*[7] and applicable laws, rules and regulations, and to the terms and conditions of the concession agreement and other documents executed with the National Transmission Corporation ("TRANSCO") and the Power Sector Assets & Liabilities Management Corporation ("PSALM") pursuant to *Section 21 of RA No. 9136*[8] otherwise known as the *Electric Power Industry Reform Act of 2001 ("EPIRA Law").*

The Facts

Pursuant to the mandate of *RA No. 6395*[9], National Power Corporation ("NPC") undertook the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and rural electrification.[10] All properties in connection with such utilization, including properties for power generation and transmission, are owned and operated by NPC.[11]

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[6] *Rollo, CTA EB No. 1391, Petition for Review, Prayer,* pp. 21-22.
[7] The Constitution of the Republic of the Philippines, effective February 2, 1987.
[8] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes, otherwise known as the "Electric Power Industry Reform Act of 2001" ("EPIRA Law"), June 8, 2001, effective June 26, 2001.
[9] An Act Revising the Charter of the National Power Corporation, approved September 10, 1971.
[10] *CBAA Records, Vol. 1, CBAA Decision,* p. 122; see *Memorandum on Appeal, par. 7,* p. 7.
[11] *Id.*

NPC was exempt from payment of RPT from the time of its creation in 1936 until December 31, 1991.[12] However, upon effectivity of the *1991 LGC* on January 1, 1992, said exemption was withdrawn, save for those pertaining to machineries and equipment actually, directly and exclusively used in the generation and transmission of electric power pursuant to *Section 234(c) of the 1991 LGC.*[13] As regards lands, buildings and improvements that were owned and used by NPC in the generation and transmission of electric power, these properties were classified as Special, with an assessment level of ten percent (10%) in accordance with *Sections 216 and 218 of the 1991 LGC.*[14]

With the effectivity of the *EPIRA Law,* TRANSCO assumed the electric power transmission function of NPC and all assets owned by NPC relative to the power transmission operation, including its franchise for the operation of the transmission system and grid, were accordingly transferred to TRANSCO.[15] The RPT exemption and privileges under *Sections 234(c) and 218 of the 1991 LGC* were similarly applied to TRANSCO.[16]

NGCP's Franchise was enacted on December 1, 2008, granting a legislative franchise to NGCP to engage in the business of conveying or transmitting electricity through high voltage backbone system of interconnected power transmission lines, substations and related facilities, and for other purposes.[17] The power transmission operation of TRANSCO was subsequently privatized and formally turned-over to NGCP on January 15, 2009.[18] Hence, pursuant to the Concession Agreement executed among PSALM, TRANSCO, and NGCP, and the latter's franchise, NGCP officially assumed and took over the operation, management, and maintenance of TRANSCO's nationwide electric power transmission business, including TRANSCO's real properties actually, directly and exclusively devoted to the transmission of electric power,[19] but the ownership over the transmission assets and the real properties was retained by TRANSCO.[20]

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[12] *CBAA Records, Vol. 1, CBAA Decision,* p. 122; see *Memorandum on Appeal, par. 8,* pp. 7-8.
[13] *Id.*
[14] *Id.*
[15] *Id.,* see *Memorandum on Appeal, par. 9,* pp. 8-9.
[16] *Id.*
[17] *Id.,* see *Memorandum on Appeal, par. 10,* p. 9.
[18] *CBAA Records, Vol. 1, CBAA Decision,* p. 122; see *Memorandum on Appeal, par. 10,* p. 9.
[19] *Id.,* see *Memorandum on Appeal, pars. 11 and 12,* p. 9.
[20] *Id.,* see *Memorandum on Appeal, par. 12,* p. 9.

On August 14, 2012, NGCP received NOAs signed by Engr. Apolonio for the properties located in San Esteban Substation, San Esteban, Ilocos Sur.[21] The details of the properties identified as "machineries and control house" are as follows:[22]

ARP NO. OLD		ARP NO. NEW		KIND OF PROPERTY	MARKET VALUE	ASS. LEVEL	ASSESSED VALUE
0008-00096	Exempt	0008-00576	Taxable	Machinery	Php 1,491,300.00	80%	Php 1,193,040.00
0008-00095	Exempt	0008-00577	Taxable	Machinery	257,010.00	80%	205,610.00
0008-00094	Exempt	0008-00578	Taxable	Machinery	143,960.00	80%	115,170.00
0008-00093	Exempt	0008-00579	Taxable	Machinery	564,820.00	80%	451,860.00
0008-00098	Exempt	0008-00580	Taxable	Machinery	701,400.00	80%	561,120.00
0008-00101	Exempt	0008-00581	Taxable	Machinery	3,185,410.00	80%	2,548,330.00
0008-00102	Exempt	0008-00582	Taxable	Machinery	3,188,960.00	80%	2,551,170.00
0008-00103	Exempt	0008-00583	Taxable	Machinery	786,021.00	80%	628,820.00
0008-00104	Exempt	0008-00584	Taxable	Machinery	12,238,322.00	80%	9,790,660.00
0008-00105	Exempt	0008-00585	Taxable	Machinery	14,743,041.00	80%	11,794,430.00
0008-00106	Exempt	0008-00586	Taxable	Machinery	467,230.00	80%	373,780.00
0008-00100	Exempt	0008-00587	Taxable	Machinery	3,876,046.00	80%	3,100,840.00
0008-00097	Exempt	0008-00588	Taxable	Machinery	1,981,975.00	80%	1,585,580.00
0008-00107	Exempt	0008-00589	Taxable	Machinery	329,100.00	80%	263,280.00
0008-00099	Exempt	0008-00590	Taxable	Machinery	1,522,563.00	80%	1,218,050.00
0008-00089	Control House	0008-00598	Taxable	Control House	3,114,720.00	80%	2,180,300.00

Attached to the said NOAs are copies of the old tax declarations wherein the aforementioned properties are described as tax exempt, with 2008 as the effective date of assessment; and copies of the revised tax declarations classifying the same as taxable, with the second quarter of 2012 as effective date of assessment and with NGCP as administrator/beneficial user.[23]

NGCP filed a Petition[24] with the Local Board of Assessment Appeals ("LBAA") on October 12, 2012 against Ms. Fatima A. Tenorio ("Ms. Tenorio"), in her capacity as the Provincial Assessor of Ilocos Sur, and Engr. Apolonio, praying for the LBAA to render a decision declaring the NOAs and the revised tax declarations as null and void; and directing that the subject real properties or machineries be re-classified and reverted back to their old classification as exempt from RPT in the assessment roll.[25]

On November 21, 2013[26], NGCP received an Order[27] promulgated by the LBAA on August 12, 2013 finding that NGCP failed to comply with *Section 7 of Rule V of the Governing Proceedings*

[21] *CBAA Records, Vol. 1, CBAA Decision,* pp. 123-124; see *Memorandum on Appeal,* par. 13, pp. 9-10.
[22] *Id.*
[23] *Id.* at 124; see *Memorandum on Appeal, par. 13,* p. 10.
[24] *Id., CBAA Memorandum on Appeal, Annex "B," LBAA Petition,* pp. 35-88, with annexes.
[25] *Id., Prayer,* p. 43.
[26] *Id., Annex "C," LBAA Order,* p. 89.
[27] *CBAA Records, Vol. 1, CBAA Memorandum on Appeal, Annex "C," LBAA Order,* pp. 89-91.

Before the LBAA issued by the Department of Finance ("DOF") on January 2, 1996, for failure to pay the RPT under protest or to give a surety bond, the dispositive portion of the Order[28] states the following:

> WHEREFORE, premises considered[,] [NGCP] is hereby directed to strictly comply with the aforementioned Rules and to pay the necessary taxes with the Municipal Treasurer of San Esteban, Ilocos Sur within fifteen (15) days from receipt hereof. The collecting officer is given five (5) days from payment to notify this office that payment by [NGCP] has been already made and only then will this Board commence to entertain the Petition. Failure to comply with this order within the period given shall be ground for the dismissal of the Petition in accordance with law.
>
> SO ORDERED.[29]

After filing a Motion for Reconsideration[30] by registered mail on December 5, 2013, NGCP received an Order[31] on January 28, 2014[32] dated January 15, 2014 denying the Motion for Reconsideration for lack of merit.

On February 25, 2014[33], NGCP filed its Memorandum on Appeal with the CBAA against the LBAA, Ms. Tenorio, and Engr. Apolonio, which was docketed as CBAA Case No. L-131, praying for the CBAA to render a decision reversing and setting aside the Orders of the LBAA; declaring the NOA and the revised tax declarations as null and void; directing that the subject real properties or machineries be re-classified and reverted back to their old classification as exempt from RPT in the assessment roll; and declaring NGCP as exempt from payment of RPT on the properties which are the subject matter of the Petition before the LBAA and of the Memorandum on Appeal, pursuant to TRANSCO's exemption under *Section 234(c) of the 1991 LGC* and under *NGCP's Franchise*.[34] N

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[28] *CBAA Records, Vol. 1, CBAA Memorandum on Appeal, Annex "C," LBAA 2013 Order, Dispositive Portion,* p. 90.
[29] Emphases retained.
[30] *CBAA Records, Vol. 1, CBAA Memorandum on Appeal, Annex "D," LBAA Motion for Reconsideration,* pp. 92-99.
[31] *Id.* at 31-34.
[32] *Id., Annex "A," LBAA 2014 Order,* p. 31.
[33] *CBAA Records, Vol. 1, CBAA Memorandum on Appeal,* pp. 5-99, with annexes.
[34] *Id., Prayer,* p. 26.

On May 19, 2015[35], NGCP received the CBAA Decision[36] promulgated on March 27, 2015, the dispositive portion[37] thereof reads in the following manner:

> **WHEREFORE,** in view of all the foregoing, this Board hereby renders JUDGMENT as follows:
>
> 1. Finding merit in the instant Appeal, and declaring the ORDERS of [the] LBAA dated August 12, 2013 and January 15, 2014 null and void for being contrary to law;
>
> 2. DENYING the prayer of [] NGCP that the subject properties/machineries be RECLASSIFIED and REVERTED to their classification as EXEMPT from [RPT]; and
>
> 3. WITH MODIFICATION, that the subject properties/machineries be CLASSIFIED under SPECIAL CLASS under Section 216 and Section 218 of [the 1991 LGC] subject to the 10% assessment level, to be paid by [] NGCP.
>
> **SO ORDERED.**[38]

In the CBAA Decision, the CBAA declared the Orders of the LBAA as null and void for being contrary to law; and agreed with NGCP in its claim that payment under protest pursuant to *Section 252 of the 1991 LGC* pertains only to a protest filed by a taxpayer before the treasurer and does not apply to an appeal filed by a taxpayer under *Section 226 of the 1991 LGC.*[39] Proceeding from this, the CBAA went on to rule on the issue of exemption from RPT of NGCP.[40]

On June 10, 2015, NGCP filed its Motion for Partial Reconsideration[41] with the CBAA; while the LBAA and its co-respondents filed their Motion for Partial Reconsideration (Re: Decision dated March 27, 2015)[42] on June 15, 2015.

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[35] *CBAA Records, Vol. 2, NGCP's CBAA Motion for Partial Reconsideration, Annex "A,"* p. 164.
[36] *Id., Vol. 1, CBAA Decision,* pp. 121-149.
[37] *Id., Dispositive Portion,* p. 149.
[38] Emphases retained.
[39] *CBAA Records, Vol. 1, CBAA Decision,* pp. 125-128.
[40] *Id.* at 129-149.
[41] *Id., Vol. 2, NGCP's CBAA Motion for Partial Reconsideration,* pp. 150-200, with annexes.
[42] *Id., LBAA's CBAA Motion for Partial Reconsideration,* pp. 205-217C.

On October 30, 2015[43] and November 3, 2015[44], Mr. Ato and Engr. Apolonio, and NGCP respectively received the CBAA Resolution[45] dated August 31, 2015, with a dispositive portion[46] to wit:

> **WHEREFORE,** in view of all the foregoing, this Board hereby renders this RESOLUTION:
>
> 1. DENYING the MOTION FOR PARTIAL RECONSIDERATION OF [NGCP]; and
>
> 2. DENYING the MOTION FOR PARTIAL RECONSIDERATION OF [LBAA and its co-respondents].
>
> **SO ORDERED.**[47]

On December 1, 2015, Mr. Ato and Engr. Apolonio filed their Petition for Review[48] against NGCP, docketed as CTA *EB* No. 1390; and NGCP filed its Petition for Review[49] against CBAA, Ms. Tenorio and Engr. Apolonio on December 2, 2015, docketed as CTA *EB* No. 1391; with the Court *En Banc*.

On February 9, 2016, the Court *En Banc* resolved[50] to consolidate CTA *EB* No. 1391 with CTA *EB* No. 1390, the case bearing the lower docket number.

In response, NGCP filed its Comment (To the Petition for Review dated 27 November 2015)[51] on May 6, 2016; while Mr. Ato and Engr. Apolonio filed their Comment (Re: Petition for Review dated November 27, 2015)[52] by registered mail on May 16, 2016.

[43] *Rollo, CTA EB No. 1390, Petition for Review, par. 5,* p. 4.
[44] *Id., par. 28,* p. 9.
[45] *CBAA Records, Vol. 2, CBAA Resolution,* pp. 246-273.
[46] *Id., Dispositive Portion,* p. 273.
[47] Emphases retained.
[48] *Rollo, CTA EB No. 1390, Petition for Review,* pp. 1-98, with annexes.
[49] *Id., CTA EB No. 1391, Petition for Review,* pp. 1-396, with annexes.
[50] *Id., CTA EB No. 1390,* p. 102 p-2.
[51] *Id., Comment (To the Petition for Review dated 27 November 2015),* pp. 106-119.
[52] *Id.* at 120-127.

On July 1, 2016, the Court *En Banc* gave due course to the Petitions for Review and granted the parties a period of thirty (30) days from notice to file their respective memoranda.[53]

On August 8, 2016, NGCP filed its Memorandum[54], while Mr. Ato and Engr. Apolonio filed their Memorandum[55] on August 10, 2016 *via* registered mail.

On September 8, 2016, the Court *En Banc* promulgated a Resolution[56] submitting the case for decision; hence, this Decision.

The Issues

Based on the Petition for Review filed by Mr. Ato and Engr. Apolonio, they submit the following assignment of errors:

> THAT THE CBAA COMMITTED A REVERSIBLE ERROR IN DECLARING THE ORDERS OF THE LBAA DATED AUGUST 12, 2013 AND JANUARY 15, 2014 AS NULL AND VOID FOR BEING CONTRARY TO LAW, THEREBY DISREGARDING THE REQUIREMENT OF PAYMENT UNDER PROTEST; AND IN RULING THAT THE SUBJECT PROPERTIES OR MACHINERIES OF NGCP SHOULD BE CLASSIFIED AS SPECIAL UNDER *SECTIONS 216 AND 218 OF THE 1991 LGC* SUBJECT TO THE 10% ASSESSMENT LEVEL.[57]

NGCP submits the following assignment of errors:

> THAT THE CBAA ERRED IN RULING THAT THE MACHINERIES AND CONTROL HOUSE ARE NOT EXEMPT FROM RPT UNDER *SECTION 9 OF NGCP's FRANCHISE*; AND IN HOLDING THAT THE SUBJECT PROPERTIES ARE NOT EXEMPT FROM RPT UNDER *SECTION 234(C) OF THE 1991 LGC*.[58]

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[53] *Rollo, CTA EB No. 1390,* pp. 129-130.
[54] *Id., NGCP's Memorandum,* pp. 131-167.
[55] *Id., Ato and Apolonio's Memorandum,* pp. 168-191.
[56] *Id., CTA EB No. 1390,* pp. 194-195.
[57] *Id., Petition for Review, Assignment of Errors,* pp. 8-9.
[58] *Id., CTA EB No. 1391, Petition for Review, Grounds for the Allowance of the Petition,* p. 10.

Mr. Ato and Engr. Apolonio's Arguments[59]

Mr. Ato and Engr. Apolonio claim that payment under protest is required before an appeal to the LBAA can be made; that NGCP is disqualified to claim the special assessment level at the rate of 10%; that NGCP is not exempt from RPT under *Section 9 of NGCP's Franchise;* and that the subject properties are not exempt from RPT under *Section 234(c) of the 1991 LGC.*

NGCP's Arguments[60]

NGCP avers that it is exempt from payment of RPT on the subject properties under *Section 9 of NGCP's Franchise;* that the subject properties, which are integral parts of San Esteban Substation, are exempt from RPT under *Section 234(c) of the 1991 LGC;* that payment under protest is not required for appeals before the LBAA under *Section 226 of the 1991 LGC;* and that NGCP is qualified to claim the special assessment level of 10% applied to machineries and control houses under *Sections 216 and 218 of the 1991 LGC.*

The Ruling of the Court En Banc

The Court *En Banc* has jurisdiction over the case at bar.

The CTA is a court of special jurisdiction, hence, it can only take cognizance of matters that are clearly within its jurisdiction.[61] Its jurisdiction is expressly provided in *RA No. 1125,* as amended by *RA No. 9282. Section 7(a)(5) of RA No. 1125* regarding the CTA's jurisdiction over decisions of the CBAA are quoted hereunder, to wit:

> SECTION 7. *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

[59] *Rollo, CTA EB No. 1390, Ato and Apolonio's Memorandum,* pp. 173-189.
[60] *Id., NGCP's Memorandum,* pp. 140-163.
[61] *Allied Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 175097, February 5, 2010, 611 SCRA 657.

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5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;[62]

Moreover, *Section 2(e), Rule 4 of the RRCTA* accorded this jurisdiction specifically to the Court *En Banc, viz.*:

RULE 4
Jurisdiction of the Court

xxx xxx xxx

SECTION 2. *Cases Within the Jurisdiction of the Court En Banc.* — The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

xxx xxx xxx

(e) Decisions of the Central Board of Assessment Appeals (CBAA) in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;[63]

As to the prescriptive period for the aggrieved parties to raise an appeal to the *Court En Banc, Section 11 of RA No. 1125*[64] provides the period of thirty (30) days from receipt of the ruling, to wit:

SECTION 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* —

Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the

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[62] Underscoring ours.
[63] *Id.*
[64] An Act Creating the Court of Tax Appeals, June 16, 1954.

> expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Mr. Ato and Engr. Apolonio received the CBAA Resolution on October 30, 2015[65] and NGCP received the same on November 3, 2015[66]. Therefore, the former had until December 1, 2015[67] and the latter until December 3, 2015 to file their respective Petitions for Review; which were timely filed on December 1, 2015 and December 2, 2015, respectively. Hence, the Court *En Banc* has jurisdiction to entertain the parties' appeals.

Payment under protest is required before an appeal before the LBAA can be filed.

The Court now deems it necessary to discuss the procedure that should be followed in an instance wherein a taxpayer contests an assessment made by an LGU. This is provided under *Section 252 of the 1991 LGC*, which reads as follows:

> Section 252. *Payment under Protest.* -
>
> (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
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> (b) xxx
>
> (c) xxx
>
> (d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code.[68]

[65] *Rollo, CTA EB No. 1390, Petition for Review, par. 5,* p. 4.
[66] *Id., CTA EB No. 1391, Petition for Review, par. 28,* p. 9.
[67] November 29, 2015 fell on a Sunday and November 30, 2015 fell on a Holiday.
[68] Underscoring ours.

Corollary, the above-cited *Chapter 3, Title Two, Book II of the 1991 LGC* pertains to the procedural and substantive aspects of appeal before the LBAA and the CBAA, to wit:

> Sec. 226. *Local Board of Assessment Appeals.* – <u>Any owner or person having legal interest in the property who is not satisfied with the action of the</u> provincial, city or <u>municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city</u> 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 in support of the appeal.
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> xxx xxx xxx
>
> Sec. 229. *Action by the Local Board of Assessment Appeals.* –
> (a) <u>The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal.</u> The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.
>
> (b) In the exercise of its appellate jurisdiction, the Board shall have the powers to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena *duces tecum*. 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.
>
> (c) The secretary of the Board shall furnish the owner of the property having legal interest therein and the provincial or city assessor with a copy of the decision if the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. <u>The owner of the property or the person having legal interest therein</u> or the assessor <u>who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the CBAA, as herein provided. The decision of the CBAA shall be final and executory.</u>
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> xxx xxx xxx

> Sec. 231. *Effect of Appeal on the Payment of Real Property Tax.* - Appeal on 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.[69]

As to the running of the sixty (60)-day period to appeal with the LBAA from the decision of the treasurer, while *Section 226 of the 1991 LGC* provides that it runs from the date of receipt of the NOA, it must be harmonized with *Section 252(d) of the 1991 LGC* which provides that if the protest is denied or upon the lapse of the sixty (60)-day period given to the treasurer to act on the taxpayer's protest, the taxpayer may avail of the remedies in *Chapter 3, Title Two, Book II of the 1991 LGC.* Hence, in the cases of *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[70] and *Dr. Olivarez, et. al. v. Mayor Marquez*[71] the Supreme Court has clarified that the period shall commence from the receipt of the denial of the protest.

From the foregoing, it can be deduced that when an assessment is issued, the taxpayer (owner or person with legal interest over the property) may: *(1)* question its reasonableness or correctness; or *(2)* question its legality or validity.

On one hand, should the taxpayer question the reasonableness, correctness, or excessiveness of the assessment, he/she/it should first pay under protest, then file a protest with the treasurer thirty (30) days after payment. The treasurer has sixty (60) days to act on the said protest. In case of denial or upon the lapse of the sixty (60)-day period, the taxpayer may then file an appeal with the LBAA within sixty (60) days from the date of receipt of the treasurer's denial of the protest. The LBAA has one hundred and twenty (120) days from the date of receipt of such appeal to issue a decision. Should the taxpayer/the assessor be unsatisfied with the decision of the LBAA, he/she/it may, within thirty (30) days after receipt of the decision of the LBAA, appeal to the CBAA, whose decision shall be final and executory. Thereafter, the taxpayer may file an appeal with the CTA *En Banc* pursuant to

[69] Underscoring ours.
[70] G.R. No. 171586, January 25, 2010, 611 SCRA 71.
[71] G.R. No. 155591, September 22, 2004, 438 SCRA 679.

Sections 7(a)(5) and 11 of RA No. 1125 and *Section 2(e), Rule 4 of the RRCTA.*

On the other hand, if the question deals with the legality or validity of the assessment (*e.g.* authority and power of the assessor to impose the assessment, and of the treasurer to collect the real property tax), or a question of law, direct judicial action may prosper.[72] That is, the taxpayer may appeal directly to the RTC, any appeal from the latter's decision should be made before the Court in Division.

In the case at bar, NGCP received two (2) NOAs[73] on August 14, 2012 both dated August 11, 2012, with a total amount of Php774,395.60, broken down as follows:

ARP NO.	CLASS.	MARKET VALUE		ASSESSED VALUE		BASIC TAX		SEF TAX		TOTAL	
0008-00576	Industrial	Php	1,491,300.00	Php	1,193,040.00	Php	11,930.40	Php	11,930.40	Php	23,860.80
0008-00577	Industrial		257,010.00		205,610.00		2,056.10		2,056.10		4,112.20
0008-00578	Industrial		143,960.00		115,170.00		1,151.70		1,151.70		2,303.40
0008-00579	Industrial		564,820.00		451,860.00		4,518.60		4,518.60		9,037.20
0008-00580	Industrial		701,400.00		561,120.00		5,611.20		5,611.20		11,222.40
0008-00581	Industrial		3,185,410.00		2,548,330.00		25,483.30		25,483.30		50,966.60
0008-00582	Industrial		3,188,960.00		2,551,170.00		25,511.70		25,511.70		51,023.40
0008-00583	Industrial		786,021.00		628,820.00		6,288.20		6,288.20		12,576.40
0008-00584	Industrial		12,238,322.00		9,790,660.00		97,906.60		97,906.60		195,813.20
0008-00585	Industrial		14,743,041.00		11,794,430.00		117,944.30		117,944.30		235,888.60
0008-00586	Industrial		467,230.00		373,780.00		3,737.80		3,737.80		7,475.60
0008-00587	Industrial		3,876,046.00		3,100,840.00		31,008.40		31,008.40		62,016.80
0008-00588	Industrial		1,981,975.00		1,585,580.00		15,855.80		15,855.80		31,711.60
0008-00589	Industrial		329,100.00		263,280.00		2,632.80		2,632.80		5,265.60
0008-00590	Industrial		1,522,563.00		1,218,050.00		12,180.50		12,180.50		24,361.00
TOTAL		**PHP**	**45,477,158.00**	**PHP**	**36,381,740.00**	**PHP**	**363,817.40**	**PHP**	**363,817.40**	**PHP**	**727,634.80**

ARP NO.	CLASS.	MARKET VALUE		ASSESSED VALUE		BASIC TAX		SEF TAX		TOTAL	
0008-00598	Industrial	Php	3,114,720.00	Php	2,180,300.00	Php	21,803.00	Php	21,803.00	Php	43,606.00
0008-00596	Industrial		33,600.00		10,080.00		100.80		100.80		201.60
0008-00599	Industrial		421,890.00		147,660.00		1,476.60		1,476.60		2,953.20
TOTAL		**PHP**	**3,570,210.00**	**PHP**	**2,338,040.00**	**PHP**	**23,380.40**	**PHP**	**23,380.40**	**PHP**	**46,760.80**

Instead of paying under protest and actually filing a protest with the Treasurer, NGCP filed a Petition[74] with the LBAA on October 12, 2012. In its Memorandum, NGCP explained that the Petition filed before the LBAA is an appeal from the action of the assessors pertaining to the re-assessment of its properties; that it is not an appeal from the action or decision of the Treasurer on a written protest for the collection of RPT; and that the requirement of payment under protest applies only to appeals taken under *Section 252 of the 1991 LGC* and not

[72] *National Power Corporation v. Municipal Government of Navotas, Sangguniang Bayan of Navotas and Manual T. Enriquez, in his capacity as Municipal Treasurer of Navotas,* G.R. No. 192300, November 24, 2014.
[73] *CBAA Records, Vol. 1, CBAA Memorandum on Appeal, Annex "B," LBAA Petition, "Annex "B," Notice of Assessments,* pp. 55-56.
[74] *Id., LBAA Petition,* pp. 35-88, with annexes.

to appeals directly made before the LBAA under *Section 226 of the 1991 LGC.*

To determine the proper process to be followed, the Court finds it necessary to determine the issues brought by NGCP before the LBAA. While NGCP failed to list down the issues in its Petition filed before the LBAA, it raised the following arguments in appealing the re-assessment: *(1)* the machineries, which are the subject matter of the re-assessment are exempt from payment of RPT because the ownership thereof is retained by TRANSCO, a government owned and controlled corporation; and *(2)* NGCP is exempt from payment of RPT under *NGCP's Franchise.*[75] In its Prayer, it asked for the LBAA to render a decision declaring the NOAs and the revised tax declarations as null and void; and directing that the subject real properties or machineries be re-classified and reverted back to their old classification as exempt from RPT in the assessment roll.[76]

From its arguments and prayer, it is clear that the reason why NGCP is asking for the properties to be re-classified in the assessment roll is because it is claiming exemption from RPT. In the case of *Camp John Hay Development Corporation v. CBAA, et. al.*[77], the Supreme Court declared that a claim for tax exemption merely raises a question of the reasonableness or correctness of the assessment, which requires compliance with *Section 252 of the 1991 LGC,* and such argument which may involve a question of fact should be resolved at the first instance by the LBAA. Moreover, in *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[78], the Supreme Court had the occasion to state that a claim of exemption pertains to questioning the correctness of the assessment, and as such, payment under protest under *Section 252(d) of the 1991 LGC* should first be complied with before the taxpayer can file an appeal with the LBAA under *Section 226 of the 1991 LGC,* to wit:

> Like Olivarez, Napocor, <u>by claiming exemption from realty taxation, is simply raising a question of the correctness of the assessment.</u> <u>A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax.</u> This may be inferred from Section 206 which states that: N

[75] *CBAA Records, Vol. 1, CBAA Memorandum on Appeal, Annex "B," LBAA Petition, Arguments and Discussions,* pp. 38-42.
[76] *Id., Prayer,* p. 42.
[77] G.R. No. 169234, October 2, 2013, 706 SCRA 547.
[78] G.R. No. 171586, January 25, 2010, 611 SCRA 71.

xxx xxx xxx

> By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Since Napocor was simply questioning the correctness of the assessment, it should have first complied with Section 252, particularly the requirement of payment under protest. Napocor's failure to prove that this requirement has been complied with thus renders its administrative protest under Section 226 of the LGC without any effect. No protest shall be entertained unless the taxpayer first pays the tax.
>
> It was an ill-advised move for Napocor to directly file an appeal with the LBAA under Section 226 without first paying the tax as required under Section 252. Sections 252 and 226 provide successive administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226, in declaring that 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 xxx appeal to the Board of Assessment Appeals xxx, should be read in conjunction with Section 252 (d), which states that in the event that the protest is denied xxx, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. The action referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252. Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked. Napocor's action before the LBAA was thus prematurely filed.[79]

Considering that petitioner failed to comply with the requirement of payment upon protest, the Court finds that the Orders dated August 12, 2013 and January 15, 2014 issued by the LBAA are correct; and that the action filed before the LBAA was premature.

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[79] Underscoring ours.

As to the other remaining issues, the Court *En Banc* finds it unnecessary to discuss the same for being moot and academic.

WHEREFORE, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, the CBAA Decision dated March 27, 2015 and the CBAA Resolution dated August 31, 2015 are hereby **REVERSED and SET ASIDE**; and the Orders dated August 12, 2013 and January 15, 2014, both promulgated by the LBAA, are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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