REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

JETTI PETROLEUM, INC.,
Petitioner,

-*versus*-

MS. EMERLINDA S. TALENTO, in her capacity as Provincial Treasurer of the Province of Bataan, **ENGR. RICARDO C. HERRERA,** in his capacity as Provincial Assessor of the Province of Bataan, and **ATTY. EFREN C. LIZARDO,** in his capacity as Provincial Legal Officer of the Province of Bataan,
Respondents.

CTA *EB* NO. 2093
(CTA Case No. AC 211)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 14 2020
2:40 p.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **Petition for Review ("Petition") with Application for Cease and Desist Order ("CDO"), and Status Quo Ante Order ("SQO") ("Application for CDO and SQO")**[1] filed last 18 July 2019[2] with respondents' **Comment to the Petition for Review ("Comment")** filed on 29 August 2019;[3] and **Consignation of Tender (Re:**

[1] See Petition, Records, Vol. 1, pp. 97-102.
[2] See Petition, Records, Vol. 1, pp. 23-110.
[3] See Comment, Records, Vol. 1, pp. 459-472.

("Comment") filed on 29 August 2019;[3] and **Consignation of Tender (Re: Redemption Payment Under Protest) ("Consignation") with Urgent Motion to Resolve Application for CDO/SQO ("Urgent Motion to Resolve CDO/SQO") and/or for Early Resolution on the Main ("Motion for Early Resolution") filed last 2 January 2019.**[4]

The Motion for Early Resolution is hereby ***GRANTED.***

The Parties

Petitioner **JETTI PETROLEUM, INC.** is a domestic corporation with office address at Jetti Business Center Pres. Diosdado Macapagal Boulevard, CBP1-A, Pasay City.[5] It is alleged to be engaged in the blending, storage, marketing, and distribution of petroleum products and was issued by the Board of Investments a Certificate of Registration granting, among others, an exemption from real property tax on production equipment or machinery from 1 March 2014 to 28 February 2019.[6]

Respondents **MS. EMERLINDA S. TALENTO, ENGR. RICARDO C. HERRERA,** and **ATTY. EFREN C. LIZARDO** are being sued in their official capacities as Provincial Treasurer, Provincial Assessor and Provincial Legal Officer, respectively, of the Province of Bataan, and may be served with notices and processes at the Bataan Provincial Capitol Compound, Balanga City, Bataan.[7]

The Facts

On 11 October 2012, the Department of Trade and Industry ("DTI"), and the Board of Investment ("BOI") issued petitioner a Certificate of Registration No. 2012-218 ("COR") certifying it as an "Industry Participant with New Investments for the Construction of North Luzon Storage Terminal in Mariveles, Bataan with 10 Retail Stations."[8] With the COR are the Specific Terms and Conditions enumerating petitioner's incentives which include Real Property Tax ("RPT") exemption on its production equipment or machinery.[9]

On 6 September 2016, petitioner received a Notice of Assessment from the Municipal Assessor of Mariveles, Bataan for property with PIN 018-07-

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[3] See Comment, Records, Vol. 1, pp. 459-472.
[4] Records, Vol. 1.
[5] See Petition; Records, Vol. 1, p. 26.
[6] See RTC-Balanga Resolution dated 7 August 2018; Annex "Q" of the Petition; Records, Vol. 1, p. 202.
[7] See Petition; Records, Vol. 1, pp. 26-27.
[8] See COR, Annex "D" of the Petition, Records, Vol. 1, p. 139.
[9] See Section 7 (g) of the Specific Terms and Conditions, Annex "E" of the Petition, Records, Vol. 1, p. 145.

011-006-068-2001.[10] Subsequently, on 9 January 2017, herein respondent Provincial Treasurer of Bataan, Ms. Emerlinda S. Talento, issued a Notice of Realty Tax Delinquency demanding payment of Php54,240,000.00 covering RPT due from petitioner's machineries and equipment for taxable years ("TY") 2016-2017, inclusive of penalties.[11] On 30 March 2017, respondent Ms. Talento issued petitioner a Final Notice of Realty Tax Delinquency in the amount of Php57,120,000.00 for the same machineries and equipment for TY 2016-2017, inclusive of penalties and interest as of 30 April 2017.[12]

In a Letter dated 22 May 2017, petitioner requested respondents to cease and desist from assessing and collecting RPT against its machineries and equipment. In the said Letter, petitioner insisted on its RPT exemption based on ***Section 9 of Republic Act No. 8479 ("RA 8479") or the National Deregulation Act.***[13]

On 22 September 2017, petitioner received a copy of respondents' Letter dated 18 July 2017 denying petitioner's Letter dated 22 May 2017 claiming that since petitioner's machineries and equipment are being used solely for storage purposes, the same are not covered by ***Section 9 of RA 8479.***[14]

On 7 October 2017, petitioner filed a Letter dated 28 September 2017 requesting respondents to reconsider their position in the Letter dated 18 July 2017.[15] On 7 May 2018, petitioner received respondents' Letter dated 16 March 2018 denying its Letter dated 28 September 2017.[16]

On 5 July 2018, petitioner filed a Petition for Prohibition and Mandamus under Rule 65 of the Rules of Court before the ***Regional Trial Court ("RTC")-Balanga*** allegedly to challenge respondents' authority to assess and collect RPT against petitioner "by interpreting that storage is not encompassed by the exemption under Section 9, R.A. No. 8479."[17]

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[10] See Notice of Assessment, Annex "F" of the Petition, Records, Vol. 1, p. 147.
[11] See Petition, Records, Vol. 1, p. 29; See Notice of Realty Tax Delinquency, Annex "G" of the Petition, Records, Vol. 1, p. 148.
[12] See Petition, Records, Vol. 1, p. 29; See Final Notice of Realty Tax Delinquency, Annex "H" of the Petition, Records, Vol. 1, p. 149.
[13] See Petition, Records, Vol. 1, p. 29; See Letter dated 22 May 2017, Annex "I" of the Petition, Records, Vol. 1, pp. 151-155.
[14] See Petition, Records, Vol. 1, pp. 29-30; See Letter dated 18 July 2017, Annex "J" of the Petition, Records, Vol. 1, pp. 156-157.
[15] See Petition, Records, Vol. 1, p. 30; See Letter dated 28 September 2017, Annex "K" of the Petition, Records, Vol. 1, pp. 158-159.
[16] See Petition, Records, Vol. 1, pp. 30-31; See Letter dated 16 March 2018, Annex "L" of the Petition, Records, Vol. 1, pp. 160-161.
[17] See Petition, Records, Vol. 1, p. 31; See Petition for Prohibition and Mandamus, Annex "M" of the Petition, Records, Vol. 1, pp. 162-179.

On 20 July 2018, petitioner received a Warrant of Levy dated 19 July 2018 from respondents.[18]

On 24 August 2018, petitioner received a Resolution from ***RTC-Balanga*** dated 7 August 2018[19] dismissing the Petition for Prohibition and Mandamus for failure to exhaust administrative remedies under the ***Local Government Code ("LGC").***

On 7 September 2018, petitioner filed a Motion for Reconsideration to the 7 August 2018 Resolution,[20] which was denied by the ***RTC-Balanga*** in a Resolution dated 25 October 2018.[21]

On 20 November 2018, petitioner filed a Petition for Review with Application for Suspension Order, Temporary Restraining Order, Writ of Preliminary Injunction or Any Other Protective Order before the ***Court of Tax Appeals ("CTA")-Second Division.***[22]

On 3 January 2019, respondents conducted a public auction of petitioner's facility.[23]

On 21 February 2019, petitioner received the ***CTA-Second Division's*** Resolution dated 18 February 2019 dismissing petitioner's Petition for Review with Application for Suspension Order, Temporary Restraining Order, Writ of Preliminary Injunction or Any Other Protective Order for lack of jurisdiction.[24]

On 7 March 2019, petitioner filed a Motion for Reconsideration on the Resolution dated 18 February 2019,[25] which the ***CTA-Second Division*** denied in a Resolution dated 03 June 2019 that was received by petitioner on 18 June 2019.[26]

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18 See Petition, Records, Vol. 1, p. 31; See Warrant of Levy, Annex "N" of the Petition, Records, Vol. 1, p. 180.

19 See Petition, Records, Vol. 1, pp. 31-32; See Resolution dated 7 August 2018, Annex "Q" of the Petition, Records, Vol. 1, pp. 202-204.

20 See Petition, Records, Vol. 1, p. 32; See Motion for Reconsideration dated 7 September 2018, Annex "R" of the Petition, Records, Vol. 1, pp. 205-214.

21 See Petition, Records, Vol. 1, p. 32; See Resolution dated 25 October 2018, Annex "T" of the Petition, Records, Vol. 1, pp. 222-224.

22 See Petition, Records, Vol. 1, p. 32; See Petition for Review filed 20 November 2018, Annex "U" of the Petition, Records, Vol. 1, pp. 225-298.

23 See Petition, Records, Vol. 1, p. 33.

24 See Petition, Records, Vol. 1, p. 34; See Resolution dated 18 February 2019, Annex "B-1" of the Petition, Records, Vol. 1, pp. 120-125.

25 See Petition, Records, Vol. 1, p. 34; See Motion for Reconsideration filed on 6 March 2019, Annex "GG" of the Petition, Records, Vol. 1, pp. 372-410.

26 See Petition, Records, Vol. 1, p. 34; See Motion for Reconsideration filed on 6 March 2019, Annex "B" of the Petition, Records, Vol. 1, pp. 112-119.

On 2 July 2019, petitioner timely moved for an extension of fifteen (15) days from 3 July 2019 or until 18 July 2019 to file the Petition before this Court *En Banc*,[27] which was granted in a Resolution dated 4 July 2019.[28]

Hence, the Petition.

The Assigned Errors

The Petition did not provide for Assigned Errors but from the arguments raised by petitioner,[29] it can be derived that the issue to be resolved is **WHETHER THE *RTC-BALANGA* AND THE *CTA-SECOND DIVISION* HAVE JURISDICTION OVER THE PRESENT CASE.**

Arguments of the Parties

In the Petition, it is alleged that both ***RTC-Balanga*** and the ***CTA-Second Division*** have jurisdiction over the present case, due to the following reasons:

1. Petitioner's machineries and equipment are exempt from real property taxes ("RPT") under ***Section 9 of RA 8479***, as certified by the DTI/BOI. This DTI/BOI certification provides a factual, legal, final, and absolute exemption from RPT for petitioner, which cannot be challenged by the local government unit ("LGU") of Bataan;[30]

2. As the exemption of petitioner from RPT is factually final following the DTI/BOI certification, the only issue involved in this case is legal. In fact, petitioner is not raising an issue as to the "reasonableness" of the assessment (*i.e.*, a question of fact) but is questioning respondents' "authority to assess and collect" the subject RPT, (*i.e.*, a question of law). As it is merely raising a question of law, its direct resort to ***RTC-Balanga*** for prohibition and mandamus was well-founded and in accordance with recent jurisprudence;[31]

3. In the case of ***City of Lapu-Lapu v. PEZA and Province of Bataan v. PEZA***,[32] the Supreme Court had the occasion to rule that erroneous RPT assessments are appealed differently from illegal RPT assessments. According to the High Court, if an RPT assessment is erroneous (*i.e.*, presupposes that the taxpayer is subject to the tax but is

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27 See Motion for Extension of Time to File Petition for Review, Records, Vol. 1, pp. 1-21.
28 See Resolution dated 4 July 2019, Records, Vol. 1, p. 22.
29 See Grounds for Allowance of the Petition for Review, Records, pp. 35-44.
30 See Petition, Records, Vol. 1, pp. 44-49.
31 See Petition, Records, Vol. 1, pp. 51-61.
32 G.R. Nos. 184203 and 187583, 26 November 2014.

disputing the correctness of the amount assessed), the proper mode would be to exhaust the administrative remedies (which include, in the following order: (a) payment under protest, (b) appeal to the Local Board of Assessment Appeals ("LBAA"), and (c) appeal to the Central Board of Assessment Appeals ("CBAA")) before an appeal can be made to the CTA. On the other hand, if an RPT assessment is illegal (*i.e.*, the assessment was made without authority), a taxpayer may immediately seek recourse to the courts (without paying under protest and filing an appeal with the LBAA and the CBAA).[33] Similarly, in ***Ty v. Trampe,***[34] the Supreme Court ruled that a taxpayer has a right to file a petition for prohibition to question the authority and power of an assessor, acting solely and independently, to prepare a schedule of market values and issue assessments based thereon.[35] Moreover, in ***Capitol Wireless, Inc. v. The Provincial Treasurer of Batangas,***[36] the High Court instructed that "prior resort to administrative action is required when among the issues raised is an allegedly erroneous assessment, like when the reasonableness of the amount is challenged, while direct court action is permitted when only the legality, power, validity or authority of the assessment itself is in question... the exception of direct court action is allowed when pure questions of law are involved";[37]

4. The LBAA and CBAA have no authority and jurisdiction to review the propriety of exemptions under a law other than the ***LGC;***[38]

5. The ***RTC-Balanga's*** reliance on the case of ***NAPOCOR v. Province of Quezon***[39] is misplaced as it is inapplicable, *viz:* (a) In the said case, the claim for exemption is based on the LGC which respondents would have to first evaluate and appraise. In the present case, petitioner's claim for RPT exemption emanates from ***RA 8479*** as certified by the DTI/BOI, to which respondents are conclusively bound; (b) Unlike petitioner, NAPOCOR has no certification from a government agency on its claimed tax incentive or exemption; (c) NAPOCOR's claim for exemption appears to be doubtful as it must first be ascertained. On the other hand, herein petitioner's RPT exemption has the imprimatur of the BOI which is the primary agency in charge of granting tax incentives to new businesses; and (d) Unlike NAPOCOR, petitioner only raised a question of law since the fact of its RPT exemption need no longer be ascertained;[40] and

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[33] See Petition, Records, Vol. 1, pp. 64-65 and 73-77.
[34] G.R. No. 117577, 1 December 1995.
[35] See Petition, Records, Vol. 1, pp. 72-73.
[36] G.R. No. 180110, 30 May 2016.
[37] See Petition, Records, Vol. 1, pp. 77-79.
[38] See Petition, Records, Vol. 1, pp. 79-82.
[39] G.R. No. 171586, 25 January 2010.
[40] See Petition, Records, Vol. 1, pp. 82-85.

6. The ***CTA-Second Division*** has exclusive appellate jurisdiction to review by appeal the ***RTC-Balanga's*** dismissal of petitioner's local tax case pursuant to ***Section 7 (a) (3)***[41] ***of Republic Act No. 1125, as amended ("RA 1125").*** The ***CTA-Second Division's*** jurisdictional dismissal based on ***Section 7 (a) (5)***[42] ***of RA 1125*** is improper.[43]

In their Comment, respondents allege that the courts *a quo* properly issued a dismissal based on lack of jurisdiction:

1. While petitioner anchors the validity of its direct resort to the ***RTC-Balanga*** by asserting that its claim for exemption is a challenge to respondent's authority to assess, and not merely a contest against the reasonability of the assessment made, petitioner's action shows that what it is contesting is actually the correctness of the assessment made upon it. "To seek or challenge the non-granting by an LGU of a tax exemption is inconsistent with challenging the LGU's power to assess. Clearly, what petitioner is seeking from respondents is an acknowledgment of its supposed examination, and therefore implicitly recognized respondents' authority to make the questioned assessment." This is in accordance with ***NAPOCOR v. Province of Quezon;***[44]

2. In unequivocal terms, ***Sections 226*** in relation to ***Section 252 of the LGC*** provide that jurisdiction over contested assessments are granted to the LBAA and not to the regular courts, leading to the only conclusion of the validity of the dismissal a quo;[45]

3. Petitioner's reliance with ***Ty v. Trampe*** is misplaced. In said case, the High Court took cognizance of the petition because there were no questions of fact requiring initial resolution by the proper administrative, judicial, or quasi-judicial tribunal. Whereas, in the present case, a question of fact exists whether or not the property of petitioner is exempted from real property tax. The issue necessitates a factual resolution (*i.e.*, evidence must be submitted to the LGU to justify RPT exemption). Petitioner's claim for RPT

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41 Sec. 7. Jurisdiction. - The CTA shall exercise:
"a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx xxx xxx
"3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

42 Sec. 7. Jurisdiction. - The CTA shall exercise:
"a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx xxx xxx
"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;"

43 See Petition, Records, Vol. 1, pp. 86-91.

44 See Comment, Records, Vol. 1, pp. 460-461.

45 See Comment, Records, Vol. 1, pp. 462-463.

exemption is hinged upon a BOI certification; the application of which is a question of fact. In ***Olivares v. Marquez,***[46] the High Court tempered ***Ty v. Trampe*** by stating that petitions for certiorari, prohibition, and mandamus are not applicable when the correctness of the assessment, which are questions of fact, are put in issue;[47] and

4. ***City of Lapu-Lapu v. PEZA and Province of Bataan v. PEZA*** is equally not applicable considering that petitioner in said case, PEZA, is a government instrumentality which by itself is not subject to tax, unlike herein petitioner. ***Capitol Wireless, Inc. v. The Provincial Treasurer of Batangas*** in fact strengthens respondent's position considering that the claims of exemption of therein petitioner were dismissed by the court on the same basis that ***RTC-Balanga*** dismissed the present case.[48]

In its Reply (Re: Respondent's Comment dated 29 August 2019) filed on 10 October 2019,[49] petitioner reiterated its position that the ***RTC-Balanga*** and ***CTA-Second Division*** have jurisdiction over the present case by re-pleading its arguments from the Petition.

The Ruling of the Court En Banc

Following a studied review of the arguments, we ***DENY*** *the Petition and the corresponding Application for CDO and SQO. The Court in Division, indeed, has no jurisdiction over the Petition for Review filed therein.*

The manner by which an RPT assessment is contested depends on whether a question of fact exists.

Jurisprudence provides two ways to contest an RPT assessment. The method to be chosen depends on what is being contested by the taxpayer. If the taxpayer assails the "reasonableness" of the amount involved in the RPT assessment, the proper recourse would be to first pay the assailed RPT assessment and protest the same with the local treasurer and/or assessor, as the case may be, within thirty (30) days from payment, in accordance with ***Section 252 of the LGC.***[50] The local treasurer and/or assessor shall have sixty

[46] G.R. No. 155591, 22 September 2004.

[47] See Comment, Records, Vol. 1, pp. 463-466.

[48] See Comment, Records, Vol. 1, pp. 466-467.

[49] Records, Vol. 1.

[50] 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

(60) days from receipt within which to decide the protest. Should the decision of the local treasurer and/or assessor be unfavorable, the taxpayer may appeal, within sixty (60) days from the date of receipt of the written notice of assessment, to the LBAA, in accordance with ***Section 226 of the LGC.***[51] If the decision of the LBAA remains unfavorable, the taxpayer may, within thirty (30) days from receipt of the decision, appeal to the CBAA, in accordance with ***Section 229 (c) of the LGC.***[52] Thereafter, if the decision of the CBAA is still unfavorable, the taxpayer may file an appeal with the CTA *En Banc*, in accordance with ***Section 7 (a) (5)***[53] ***of RA 1125***, in relation to ***Section 2 (e), Rule 4***[54] ***of the Revised Rules of the CTA ("RRCTA")***. Under this method, administrative remedies are required to be exhausted prior to an appeal to the CTA because the issue of "reasonableness" of an RPT assessment involves questions of fact which the local treasurer and/or assessor, LBAA, and CBAA are specifically competent to adjudicate on. The case of ***Camp John Hay Development Corporation v. Central Board of Assessment Appeals,***[55] is instructive, *to wit:*

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of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.
(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.
(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 II, Book II of this Code.

51 Section 226. *Local Board of Assessment Appeals.* - Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the provincial or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

52 Section 229. *Action by the Local Board of Assessment Appeals.* -
xxx xxx xxx
(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of 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. The owner of the property or the person having legal interest therein or the assessor 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 Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory.

53 Sec. 7. Jurisdiction. - The CTA shall exercise:
"a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx xxx xxx
"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;"

54 RULE 4
JURISDICTION OF THE COURT
xxx xxx xxx
SEC. 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:

55 G.R. No. 169234, 2 October 2013.

"Section 252 of RA No. 7160, also known as the LGC of 1991, categorically provides:

> SEC. 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.
> (b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.
> (c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.
> (d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the tax payer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code.

Relevant thereto, the remedies referred to under Chapter 3, Title Two, Book II of RA No. 7160 or the LGC of 1991 are those provided for under Sections 226 to 231. Significant provisions pertaining to the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes, follow:

> SEC. 226. Local Board of Assessment Appeals. – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within 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 by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.
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> SEC. 229. Action by the Local Board of Assessment Appeals. --
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> (a)The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. 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 or the person having legal interest therein and the provincial or city assessor with a copy of the decision of 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. The owner of the property or the person having legal interest therein

> or the assessor 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 Central Board of Assessment Appeals, as here in provided. The decision of the Central Board shall be final and executory.
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> SEC. 231. 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.

The above-quoted provisions of RA No. 7160 or the LGC of 1991 clearly sets forth the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected.

The language of the law is clear. No interpretation is needed. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. Verba legis non est recedendum. From the words of a statute there should be no departure.

To begin with, Section 252 emphatically directs that the taxpayer/real property owner questioning the assessment should first pay the tax due before his protest can be entertained. As a matter of fact, the words "paid under protest" shall be annotated on the tax receipts. Consequently, only after such payment has been made by the taxpayer may he file a protest in writing (within thirty (30) days from said payment of tax) to the provincial, city, or municipal treasurer, who shall decide the protest within sixty (60) days from its receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

Secondly, within the period prescribed by law, any owner or person having legal interest in the property not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his property may file an appeal with the LBAA of the province or city concerned, as provided in Section 226 of RA No. 7160 or the LGC of 1991. Thereafter, within thirty (30) days from receipt, he may elevate, by filing a notice of appeal, the adverse decision of the LBAA with the CBAA, which exercises 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 overpayments of taxes.

Significantly, in Dr. Olivares v. Mayor Marquez, this Court had the occasion to extensively discuss the subject provisions of RA No. 7160 or the LGC of 1991, in relation to the impropriety of the direct recourse before the courts on issue of the correctness of assessment of real estate taxes. The pertinent articulations follow:

> 'x x x A perusal of the petition before the RTC plainly shows that what is actually being assailed is the correctness of the assessments made by the local assessor of Parañaque on petitioners' properties. The allegations in the said petition purportedly questioning the assessor's authority to assess and collect the taxes were obviously made in order to justify the filing of the petition with the RTC. In fact, there is nothing in the said petition that supports their claim regarding the assessor's alleged lack of authority. What petitioners raise are the following:
>
> (1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) **some properties have been doubly taxed/assessed**; (3) some properties being taxed are no longer existent: (4)some properties are exempt from taxation as they are being used exclusively for educational purposes; and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making the 'improper, excessive and unlawful the collection of taxes against the petitioners.'
>
> Moreover. **these arguments essentially involve questions of fact. Hence, the petition should have been brought, at the very first instance, to the LBAA.**
>
> **Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. But an appeal shall not suspend the collection of the tax assessed without prejudice to a later adjustment pending the outcome of the appeal.**
>
> **Even assuming that the assessor's authority is indeed an issue, it must be pointed out that in order for the court a quo to resolve the petition, the issues of the correctness of the tax assessment and collection must also necessarily be dealt with.**
>
> x x x x
>
> **In the present case, the authority of the assessor is not being questioned. Despite petitioners' protestations, the petition filed before the court a quo primarily involves the correctness of the assessments, which are questions of fact that are not allowed in a petition for certiorari, prohibition and mandamus. The court a quo is therefore precluded from entertaining the petition, and it appropriately dismissed the petition.'"**

(Emphasis Ours)

On the other hand, the cases of ***Ty v. Trampe*** and ***City of Lapu-Lapu v. PEZA and Province of Bataan v. PEZA*** provide another option for appealing RPT assessments. This option, however, is solely limited to illegal RPT assessments, where the legality and authority of the assessment is questioned. Under this option, a taxpayer may directly resort to the regular courts (*i.e.*, RTC) to question an RPT assessment. Should the regular courts decide against the taxpayer, the latter may file an appeal with the CTA

Division, in accordance with ***Section 7 (a) (3)***[56] ***of RA 1125,*** in relation to ***Section 3 (a) (3), Rule 4***[57] ***of the RRCTA.*** Afterwards, the taxpayer may appeal an adverse decision with the CTA *En Banc,* in accordance with ***Section 2 (a) (2), Rule 4***[58] ***of the RRCTA.*** Under this option, direct resort to the regular courts is allowed since only a question of law (*i.e.*, no need for presentation of evidence) is involved which does not require the expertise of the local treasurer/and or assessor, LBAA, and CBAA. ***City of Lapu-Lapu v. PEZA and Province of Bataan v. PEZA*** citing ***Ty v. Trampe*** clarifies, *viz:*

> "On the other hand, an assessment is illegal if it was made without authority under the law. In case of an illegal assessment, the taxpayer may directly resort to judicial action without paying under protest the assessed tax and filing an appeal with the Local and Central Board of Assessment Appeals.
>
> In *Ty v. Trampe*, the Municipal Assessor of Pasig sent Alejandro B. Ty a notice of assessment with respect to Ty's real properties in Pasig. Without resorting to the administrative remedies under the Local Government Code, Ty filed before the Regional Trial Court a petition, praying that the trial court nullify the notice of assessment. In assessing the real property taxes due, the Municipal Assessor used a schedule of market values solely prepared by him. This, Ty argued, was void for being contrary to the Local Government Code requiring that the schedule of market values be jointly prepared by the provincial, city, and municipal assessors of the municipalities within the Metropolitan Manila Area.
>
> This court ruled that the assessment was illegal for having been issued without authority of the Municipal Assessor. Reconciling provisions of the Real Property Tax Code and the Local Government Code, this court held that the schedule of market values must be jointly prepared by the provincial, city, and municipal assessors of the municipalities within the Metropolitan Manila Area.

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56 Sec. 7. Jurisdiction. - The CTA shall exercise:
"a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx xxx xxx
"3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

57 RULE 4
JURISDICTION OF THE COURT
xxx xxx xxx
SEC. 3. Cases within the jurisdiction of the Court in Divisions. -- The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
xxx xxx xxx
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;

58 RULE 4
JURISDICTION OF THE COURT
xxx xxx xxx
SEC. 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:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
xxx xxx xxx
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction;

> As to the issue of exhaustion of administrative remedies, this court held that Ty did not err in directly resorting to judicial action. According to this court, payment under protest is required only 'where there is a question as to the reasonableness of the amount assessed.' As to appeals before the Local and Central Board of Assessment Appeals, they are 'fruitful only where questions of fact are involved.'
>
> Ty raised the issue of the legality of the notice of assessment, an issue that did not go into the reasonableness of the amount assessed. Neither did the issue involve a question of fact. Ty raised a question of law and, therefore, need not resort to the administrative remedies provided under the Local Government Code."[59]

RPT exemption arising from availment of incentives provided under a law is a question of fact.

Petitioner insists that its direct resort to ***RTC-Balanga*** was well-founded considering that only questions of law (*i.e.*, whether the LGU of Bataan had authority to issue the RPT assessment against petitioner) were raised. Petitioner hinges this contention on the fact that its RPT exemption is allegedly already legal, final, and absolute due to a certification issued by the DTI/BOI,[60] which certification, according to petitioner, is paramount and controlling[61] as the DTI/BOI is the office primarily in charge of overseeing investments.

This is misplaced.

In ***Tongohan Holdings and Development Corporation v. Atty. Francisco Escano, Jr.,***[62] the High Court had a chance to distinguish a "question of law" with a "question of fact", as follows:

> "In *Republic of the Philippines v. Malabanan*, this Court distinguished a question of law from a question of fact. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

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59 G.R. Nos. 184203 and 187583, 26 November 2014.
60 See Annex A of the Petition, Records, Vol. 1, p. 111.
61 See Petition, Records, Vol. 1, p. 56.
62 G.R. No. 190994, 7 September 2011.

> Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact."

Contrary to petitioner's contention that the issues raised in the Petition for Prohibition and Mandamus with ***RTC-Balanga*** were limited to questions of law, petitioner's first argument therein addresses the issue of whether its Mariveles Facility was a blending and storage facility, in accordance with ***Republic Act No. 9367, Biofuels Act of 2006,*** or purely a storage facility.[63] Logically, this issue can only be resolved by presenting evidence thereon; thus a question of fact. Above this apparent specific factual issue is the present case's general and overall question of fact, that is, whether petitioner is RPT exempt under ***Section 9 of RA 8479.***

In the case of ***NAPOCOR v. Province of Quezon,***[64] the High Court ruled that claiming exemption from RPT raises a question as to the correctness of an assessment, thus, it involves a question of fact which requires exhaustion of administrative remedies, *viz:*

> "The cases of Ty and Olivarez must be placed in their proper perspective.
>
> The petitioner in Ty v. Trampe questioned before the trial court the increased real estate taxes imposed by and being collected in Pasig City effective from the year 1994, premised on the legal question of whether or not Presidential Decree No. 921 (PD 921) was repealed by the LGC. PD 921 required that the schedule of values of real properties in the Metropolitan Manila area shall be prepared jointly by the city assessors in the districts created therein; while Section 212 of the LGC stated that the schedule shall be prepared by the provincial, city or municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the Sanggunian concerned. The private respondents assailed Ty's act of filing a prohibition petition before the trial court contending that Ty should have availed first the administrative remedies provided in the LGC, particularly Sections 252 (on payment under protest before the local treasurer) and 226 (on appeals to the LBAA).
>
> The Court, through former Chief Justice Artemio Panganiban, declared that Ty correctly filed a petition for prohibition before the trial court against the assailed act of the city assessor and treasurer. The administrative protest proceedings provided in Section 252 and 226 will not apply. The protest contemplated under Section 252 is required where there is a question as to the reasonableness or correctness of the amount assessed. Hence, if a taxpayer disputes the

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[63] See Annex "M" of the Petition, Records, Vol. 1, pp. 169-170.
[64] G.R. No. 171586, 25 January 2010.

reasonableness of an increase in a real property tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. Ty however was questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These were not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase. Moreover, Ty was raising a legal question that is properly cognizable by the trial court; no issues of fact were involved. In enumerating the power of the LBAA, Section 229 declares that 'the proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts x x x.' Appeals to the LBAA (under Section 226) are therefore fruitful only where questions of fact are involved.

Olivarez v. Marquez, on the other hand, involved a petition for certiorari, mandamus, and prohibition questioning the assessment and levy made by the City of Parañaque. Olivarez was seeking the annulment of his realty tax delinquency assessment. Marquez assailed Olivarez' failure to first exhaust administrative remedies, particularly the requirement of payment under protest. Olivarez replied that his petition was filed to question the assessor's authority to assess and collect realty taxes and therefore, as held in Ty v. Trampe, the exhaustion of administrative remedies was not required. The Court however did not agree with Olivarez's argument. It found that there was nothing in his petition that supported his claim regarding the assessor's alleged lack of authority. What Olivarez raised were the following grounds: '(1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; (4) **some properties are exempt from taxation** as they are being used exclusively for educational purposes; and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making the improper, excessive and unlawful the collection of taxes against the petitioner.' The Olivarez petition filed before the trial court primarily involved the correctness of the assessments, which is a question of fact that is not allowed in a petition for certiorari, prohibition, and mandamus. Hence, we declared that the petition should have been brought, at the very first instance, to the LBAA, not the trial court.

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

> SEC. 206. Proof of Exemption of Real Property from Taxation. - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim

> including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents. If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll. [Emphasis provided]

> 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 x x x appeal to the Board of Assessment Appeals x x x.' should be read in conjunction with Section 252 (d), which states that 'in the event that the protest is denied x x x, 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."

> (Emphasis Ours)

Moreover, in the case of ***Camp John Hay Development Corporation v. CBAA, et al.,***[65] the Supreme Court declared that a claim for tax exemption merely raises a question of the "reasonableness" or "correctness" of the assessment, in which case, compliance with prior exhaustion of administrative remedies under the ***LGC*** is required.

Clearly, by insisting that it is RPT exempt under ***Section 9 of RA 8479,*** as certified by the DTI/BOI, petitioner is actually disputing the "reasonableness" or "correctness" of the assessment. Consequently, petitioner

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[65] See Note 30.

should have initially paid under protest the RPT assessment; filed a protest with the local treasurer and/or assessor; filed an appeal with the LBAA; and filed an appeal with the CBAA, prior to filing a petition for review with this Court *En Banc*. Petitioner's failure to exhaust these administrative remedies puts an end to the current Petition.

Petitioner argues that ***NAPOCOR v. Province of Quezon*** is inapplicable to its circumstances;[66] and that ***City of Lapu-Lapu v. PEZA and Province of Bataan v. PEZA,*** and ***Ty v. Trampe*** are controlling to the present Petition. *This is baseless.*

These cases are consistent with each other and do not show a change of the Supreme Court's stance. While both ***NAPOCOR v. Province of Quezon*** and ***City of Lapu-Lapu v. PEZA and Province of Bataan v. PEZA*** concerned a claim for RPT exemption, the source of such claim differed in each case. In ***Napocor v. Province of Quezon,***[67] NAPOCOR is claiming RPT exemption under ***Section 234 (c)*** and ***(e) of the LGC;***[68] while in ***City of Lapu-Lapu v. PEZA and Province of Bataan v. PEZA,***[69] PEZA is claiming RPT exemption under ***Presidential Decree No. 66 ("PD 66")***[70] and ***Republic Act No. 7916 ("RA 7916").***[71] ***Section 234 of the LGC*** merely provides a criterion of what real properties are exempt from RPT. It does not specifically name or point to specific persons and entities who and which will be RPT exempt. To avail of the RPT exemption under ***Section 234 of the LGC,*** a taxpayer must first prove its entitlement to its application. As such, NAPOCOR in ***Napocor v. Province of Quezon*** had to provide evidence showing that its real properties qualify as RPT exempt under ***Section 234 of the LGC,*** a question of fact necessitating the expertise of the local treasurer and/or assessor, LBAA, and CBAA.

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66 See Petition, Records, Vol. 1, pp. 82-85.

67 G.R. Nos. 184203 and 187583, 26 November 2014.

68 Section 234. Exemptions from Real Property Tax. The following are exempted from payment of the real property tax:
xxx xxx xxx
(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;
xxx xxx xxx
(e) Machinery and equipment used for pollution control and environmental protection...

69 G.R. Nos. 184203 and 187583, 26 November 2014.

70 Section 21. *Non-profit Character of the Authority; Exemption from Taxes.* The Authority shall be non-profit and shall devote and use all its returns from its capital investment, as well as excess revenues from its operations, for the development, improvement and maintenance and other related expenditures of the Authority to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section 1 of this Decree. In consonance therewith, the Authority is hereby declared exempt:
xxx xxx xxx
(b) From all income taxes, franchise taxes, realty taxes and all other kinds of taxes and licenses to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities

71 Section 11, RA 7916 provides: "... The existing Export Processing Zone Authority (EPZA) created under Presidential Decree No. 66 shall evolve into the PEZA in accordance with the guidelines and regulations set forth in an executive order issued for this purpose... "

On the other hand, ***PD 66*** specifically named the EPZA as exempt from RPT. Considering that the EPZA evolved to the PEZA under ***RA 7916,*** it was a matter for the High Court in ***City of Lapu-Lapu v. PEZA and Province of Bataan v. PEZA*** to simply interpret whether the EPZA's RPT exemption under ***PD 66*** equally extended to the PEZA, a mere question of law without need to present any evidence. Thus, direct resort to the regular courts was proper.

Similarly, in ***Ty v. Trampe,*** as already discussed above, only a pure question of law was raised. As such, the High Court validated the direct resort to the regular courts. In said case, the entire Schedule of Values was contested as void because it was solely prepared by the local assessor therein; hence, any RPT assessment arising therefrom was similarly invalid. The resolution of this issue was dependent on whether ***Presidential Decree No. 921*** was repealed by the ***LGC,*** a question of law that needed no evidence to be presented.

In the case before us, petitioner is claiming RPT exemption under ***Section 9 of RA 8479.*** The said law does not specifically name petitioner as RPT exempt but only provides a criterion on what entities may avail of the tax exemption, *to wit:*

> "Section 9. Incentives for New Investments. To the extent applicable, persons with new investments as determined by the DOE and registered with the BOI in refining, storage, marketing and distribution of petroleum products, shall be extended the same incentives granted to BOI-registered enterprises engaged in a preferred area of investments pursuant to Executive Order No. 226, otherwise known as the 'Omnibus Investments Code of 1987'.
>
> Such incentives shall include:
>
> (1) Income tax holiday;
>
> (2) Additional deduction for labor expenses;
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> (3) Minimum tax and duty of three percent (3%) and value-added tax (VAT) on imported capital equipment;
>
> (4) Tax credit on domestic capital equipment;
>
> (5) Exemption from contractor's tax;
>
> (6) Unrestricted use of consigned equipment;
>
> (7) Exemption from the real property tax on production equipment or machineries;
>
> (8) Exemption from taxes and duties on imported spare parts; and

> (9) Such other applicable incentives under Article 39 of Executive Order No. 226.
>
> Any provision of the law to the contrary notwithstanding, the said incentives may be availed by persons with new investments for a period of five (5) years from registration with the BOI: Provided, however, That in the storage, marketing and distribution of petroleum products, only the investments of new industry participants shall be entitled to incentives provided in the said Code. As used herein, "marketing of petroleum products" shall include the establishment of gasoline stations.
>
> For this purpose, the industry shall be included in the annual Investment Priorities Plan (IPP): Provided, That nothing in herein contained shall preclude qualified persons or entities as provided under the 'Omnibus Investments Code' from applying from or continue enjoying incentives and benefits under the said Code."

Consequently, petitioner still needs to adduce evidence to prove that it is covered by the application of this provision. A mere interpretation of ***RA 8479*** will not instantly determine petitioner's entitlement to RPT exemption. If petitioner is entitled to RPT exemption under ***Section 9 of RA 8479*** as it claims, petitioner should have proven this before respondents by following ***Section 206 of the LGC,*** which provides:

> "SEC. 206. Proof of Exemption of Real Property from Taxation. - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents. If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll."

Moreover, while petitioner's DTI/BOI certification enjoys the presumption of regularity,[72] and may be considered, at best, *prima facie* evidence of the facts stated therein,[73] it is still not conclusive (*i.e.,* that petitioner is RPT exempt). Respondents can contest petitioner's *prima facie* RPT exemption by presenting contrary evidence.

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72 See Commissioner of Internal Revenue v. Filminera Resources Corporation, CTA EB No. 1395, CTA Case No. 8610, 23 March 2017.

73 Section 23, Rule 132 of the Rules of Court, provides:
"Section 23. *Public documents as evidence.* - Documents consisting of entries in public records made in the performance of a duty by a public officer are ***prima facie* evidence of the facts therein stated**. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter." (Emphasis, Ours)

In fact, without presenting the DTI/BOI certification as evidence, no court is duty bound to give *prima facie* recognition of petitioner's alleged RPT exemption considering that neither the DTI/BOI certification nor petitioner's alleged RPT exemption fall under those enumerated in ***Section 1, Rule 129 of the Rules of Court,***[74] which courts are mandatorily required to take judicial notice of.

All told, petitioner's alleged RPT exemption under ***Section 9 of RA 8479,*** is a factual matter that is required to be belabored upon by the administrative specialists (*i.e.*, local treasurer and/or assessor, LBAA, and CBAA) prior to a recourse with this Court.

As a question of fact exists, petitioner availed of the wrong method of appeal. Hence, the RTC-Balanga and the CTA-Second Division have no jurisdiction.

As a question of fact exists in the present case, namely, whether petitioner is RPT exempt under ***Section 9 of RA 8479,*** petitioner incorrectly resorted to a direct action with ***RTC-Balanga*** and therefrom inappropriately appealed its decision with the ***CTA-Second Division.*** It should have initially exhausted its administrative remedies prior to appealing with this Court *En Banc:* First, it should have paid the assailed RPT assessment, and filed a protest against it, in accordance with ***Section 252 of the LGC;***[75] Afterwards, petitioner should have appealed the unfavorable decision on the protest to the LBAA, in accordance with ***Section 226 of the LGC;***[76] Then, the unfavorable

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74 RULE 129
What Need Not Be Proved
Section 1. Judicial notice, when mandatory. A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (1a)

75 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.
(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.
(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.
(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 II, Book II of this Code.

76 Section 226. *Local Board of Assessment Appeals.* - Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the provincial or city by filing a

decision of the LBAA should have been appealed to the CBAA, in accordance with ***Section 229 (c) of the LGC;***[77] Finally, the unfavorable CBAA decision should have been appealed by petitioner with this Court *En Banc,* in accordance with ***Section 7 (a) (5)***[78] ***of RA 1125,*** in relation to ***Section 2 (e), Rule 4***[79] ***of the RRCTA.***

As petitioner's direct resort to the ***RTC-Balanga*** and the subsequent appeal of its decision to the ***CTA- Second Division*** for relief from respondent's RPT assessment and collection efforts are not in accordance with law, the ***RTC-Balanga*** and the ***CTA- Second Division*** appropriately ruled that they have no jurisdiction over the present case.

WHEREFORE, the instant Petition for Review, and its corresponding Application for Cease and Desist Order, and Status Quo Ante Order; and Consignation of Tender (Re: Redemption Payment Under Protest) ("Consignation") with Urgent Motion to Resolve Application for Cease and Desist Order/Status Quo Ante Order filed by petitioner, **JETTI PETROLEUM, INC.,** are hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated 3 June 2019 and 18 February 2019 promulgated by the Court in Division are hereby **AFFIRMED.**

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petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

77 Section 229. *Action by the Local Board of Assessment Appeals.* -
xxx xxx xxx
(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of 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. The owner of the property or the person having legal interest therein or the assessor 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 Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory.

78 Sec. 7. Jurisdiction. - The CTA shall exercise:
"a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx xxx xxx
"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;"

79 RULE 4
JURISDICTION OF THE COURT
xxx xxx xxx
SEC. 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;

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(Joins the Dissenting Opinion of Associate Justice Ma. Belen M. Ringpis-Liban)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Joins the Dissenting Opinion of Associate Justice Ma. Belen M. Ringpis-Liban)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

C E R T I F I C A T I O N

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

JETTI PETROLEUM INC.,
Petitioner,

-versus-

MS. EMERLINDA S. TALENTO, in her capacity as Provincial Treasurer of the Province of Bataan, **ENGR. RICARDO C. HERRERA,** in his capacity as Provincial Assessor of the Province of Bataan, and **ATTY. EFREN C. LIZARDO,** in his capacity as Provincial Legal Officer of the Province of Bataan,
Respondents.

CTA EB NO. 2093
(CTA AC No. 211)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

Promulgated:

JUL 14 2020
2:40 p.m.

x---x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect, I respectfully register my dissent.

I believe that the *RTC-Balanga* and the *CTA-Second Division* have jurisdiction over the instant case. The Petition filed before the *RTC-Balanga* was to challenge the authority of the respondents in assessing and collecting Real Property Tax (RPT) against petitioner by interpreting that the storage is not encompassed by the exemption under Section 9, of Republic Act No. 8479, otherwise known as *"An Act Deregulating the Downstream Oil Industry, and for Other Purposes."* The issue in this case is not the reasonableness of the assessment issued by the respondents but the respondents' power to review petitioner's national DTI/BOI RPT exemption pursuant to the Oil Deregulation Law. Thus, the question whether the Oil Deregulation Law, a special law, or the Local Government Code (LGC), a general law, should prevail is a pure question of law.

The *RTC-Balanga's* reliance on the case of *NAPOCOR vs. Province of Quezon*[1] is misplaced. NAPOCOR's claim for exemption was based on the LGC itself, such that NAPOCOR's claim would have to be first evaluated and approved by the Local Government Unit (LGU). On the other hand, petitioner's claim for tax exemption is not based on the LGC but on R.A. No. 8479. Since NAPOCOR's claim is based on the LGC, NAPOCOR must prior register with the LGU for the issuance of the requisite LGU Certification for the LGU based exemption. NAPOCOR had no certification from a separate national government agency nor under a special law to support its claimed tax incentive or exemption. As regards herein petitioner, the latter had sufficiently shown its entitlement to the RPT exemption by presenting its DTI/BOI tax incentive certification exempting it from the RPT starting March 2014 until February 2019 in accordance with Section 9 of R.A. No. 8479. By claiming exemption based on the LGC itself, NAPOCOR's claim certainly had to be ascertained, evaluated and approved by the LGU. NAPOCOR raised factual issues of fact that the LGU had to properly consider and evaluate. On the other hand, petitioner challenges the illegal jurisdiction of the LGU to still tax, even if petitioner has a national DTI/BOI RPT exemption. The power and authority of the LGU to still assess and collect the subject RPT in spite of petitioner's tax incentive certification raised a pure question of law.

In the case of *Villamor, Jr. vs. Umale*,[2] the Supreme Court held that: "There is a question of law "when there is doubt or controversy as to what the law is on a certain [set] of facts." The test is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence." Meanwhile, there is a question of fact when there is "doubt... as to the truth or falsehood of facts." The question must involve the examination of probative value of the evidence presented."

The LGU, whose power stems from the LGC, must confine itself within the 1991 LGC. Thus, it has no jurisdiction over taxation and exemption matters beyond the LGC or those granted by special laws.

I agree with the petitioner that it can directly resort to the lower court *(RTC-Balanga)*, and need not undergo administrative proceedings before the Local Board of Assessment Appeals (LBAA) and Central Board of Assessment Appeals (CBAA) to challenge respondents' RPT assessment in relation to its DTI/BOI RPT exemption for its blending and storage equipment. The cases

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[1] G.R. No. 171586, 25 January 2010.
[2] 744 Phil. 31 (2014)

of *Ty vs. Trampe*[3] and *City of Lapulapu vs. PEZA and Province of Bataan vs. PEZA*[4] as cited by petitioner fully support direct resort to courts where a taxpayer challenges the very authority, power and jurisdiction of an LGU to impose, assess and collect taxes. Accordingly, there can be no other remedy than a Petition for Prohibition and Mandamus against the respondents that undoubtedly falls under the jurisdiction of the lower court.

In my opinion, this Court should assume jurisdiction over the instant Petition.

I therefore vote to **ASSUME JURISDICTION** over the Petition for Review and **REVERSE** or **SET ASIDE** the assailed Resolutions of the CTA-Second Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[3] G.R. No. 117577, December 1, 1995.
[4] G.R. Nos. 184203 and 187583, November 26, 2014.