REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

NATIONAL GRID CORPORATION OF THE PHILIPPINES, Petitioner,	**CTA EB CASE NO. 849** (CBAA Case No. V-31)
- *versus* -	Present: *Del Rosario, P.J. Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas,* and *Ringpis-Liban, JJ.*
OFELIA M. OLIVA, in her capacity as the CITY TREASURER of CEBU CITY, Respondent.	**Promulgated:** NOV 13 2013 9:20 a.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a "Verified Petition for Review Pursuant to Rule 43 of the Revised Rules of Court,"[1] filed on December 16, 2011, assailing the Decision dated May 30, 2011,[2] and Order dated November 16, 2011,[3] both issued by the Central Board of Assessment Appeals; and accordingly, praying for the Court *En Banc*, as follows:

1) To declare the real properties covered by Tax Declaration Nos. C00-019-05574, C00-019-05581, and C00-019-05580, as exempt

[1] *Rollo*, CTA EB Case No. 849 (CBAA Case No. V-31), pp. 1-117, with Annexes.
[2] *Id.*, at pp. 27-43; *Annex "A."*
[3] *Id.*, at pp. 44-45; *Annex "B."*

from the payment of real property tax in accordance with Republic Act No. 9511;

2) To direct the subject real properties to be re-classified in the assessment roll as exempt from the payment of real property tax;

3) To cancel the real property tax billing attached to the Second and Final Notices of Demand dated September 16, 2009 and September 21, 2009;

4) To direct respondent to refund the payment made under protest in favor of petitioner; and

5) In the alternative, to declare the subject real properties as Special Class under Section 216 of the Local Government Code, and the real property taxes assessed at ten percent (10%) of the Fair Market Value based on Section 218(d) of the same Code.

The Parties

Petitioner, National Grid Corporation of the Philippines ("NGCP"), is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at the NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City.

On the other hand, respondent, Ofelia M. Oliva, is being sued in her official capacity as the City Treasurer of Cebu City, who holds office at the Office of the City Treasurer, City Hall Compound, Cebu City.

The Antecedent Facts

The relevant antecedents as culled from the records of the case:

On September 16, 2009, the Office of the City Treasurer of Cebu City issued a Second and Final Notice of Demand RPT-DS-FNOD0909-16-020, against petitioner for incurred tax delinquency in the amount of

₱1,456,459.68, covering Tax Declaration No. C-019-05574 for the taxable years 2003 to 2009.[4]

On September 21, 2009, the Office of the City Treasurer of Cebu City also issued two (2) Second and Final Notices of Demand RPT-DS-FNOD0909-21-030 and RPT-DS-FNOD0909-21-002, against petitioner respectively for incurred tax delinquencies in the amount of ₱787,957.11, covering Tax Declaration No. C00-019-05881 for the taxable years 2001 to 2009,[5] and in the amount of ₱548,445.62, covering Tax Declaration No. C00-019-05580 for the taxable years 2004 to 2009.[6]

On November 11, 2009, respondent received petitioner's Protest of Assessment re: Second and Final Notices of Demand dated October 6, 2009.[7]

On October 12, 2010, the Local Board of Assessment Appeals ("LBAA") promulgated an Order, dismissing the Petition, entitled "*National Grid Corporation, Owner-Appellant v. City Assessor, Respondent-Appellee,*" filed by petitioner, for being filed out of time.[8]

On May 30, 2011, the Central Board of Assessment Appeals ("CBAA") rendered a Decision, ordering for the dismissal of the Appeal, entitled "*National Grid Corporation of the Philippines (NGCP), Petitioner-Appellant v. Local Board of Assessment Appeals of Cebu City and Ofelia M. Oliva, in her capacity [as] the City Treasurer of Cebu City, Respondent-Appellee,*" filed by petitioner for lack of merit.[9]

And on November 16, 2011, the CBAA issued an Order, denying the Motion for Partial Reconsideration filed by petitioner, there being no cogent reason to disturb the Decision dated May 30, 2011.[10]

Thus, on December 16, 2011, petitioner filed the present "Verified Petition for Review Pursuant to Rule 43 of the Revised Rules of Court."[11]

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[4] *Id.*, at pp. 83-85; *Annexes "J," "J-1,"* and *"J-2."*
[5] *Id.*, at pp. 86-90; *Annexes "K," "K-1," "K-2," "K-3"* and *"K-4."*
[6] *Id.*, at pp. 91-94; *Annexes "L," "L-1," "L-2"* and *"L-3."*
[7] *Id.*, at pp. 96-100; *Annex "N."*
[8] *Id.*, at p. 104; *Annex "P."*
[9] *Supra*, note 2.
[10] *Supra*, note 3.
[11] *Supra*, note 1.

On June 8, 2012, respondent filed by registered mail her "Comment/Opposition (To Petitioner's Verified Petition for Review)."[12]

On November 13, 2012, the Court submitted the case for decision,[13] taking into consideration the "Memorandum for the Petitioner" filed on July 17, 2012,[14] and respondent's "Memorandum" filed by registered mail on August 23, 2012.[15]

Hence, this Decision.

The Order of the Local Board of Assessment Appeals

The LBAA in an Order dated October 12, 2010, ruled as follows:

> "After careful examination of the pleadings filed, this Board found merit to the opposition of the respondent. Hence, the Board hereby DISMISSES the instant petition, as having been filed out of time.
>
> WHEREFORE, the Petition is hereby DISMISSED for lack of merit.
>
> SO ORDERED."[16]

The Ruling of the Central Board of Assessment Appeals

The CBAA in a Decision dated May 30, 2011, disposed of as follows:

> "WHEREFORE, premises considered, for lack of merit, the instant appeal is hereby ordered dismissed.
>
> SO ORDERED."[17]

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[12] *Rollo*, pp. 147-158, with Annexes.
[13] *Id.*, at pp. 211-212.
[14] *Id.*, at pp. 162-187.
[15] *Id.*, at pp. 191-204.
[16] *Supra*, note 8.

Aggrieved, petitioner filed a Motion for Partial Reconsideration, which was denied by CBAA in an Order dated November 16, 2011.[18]

The Issues

Hence, the present Petition for Review, where petitioner assigns the following issues of:

I. WHETHER OR NOT PETITIONER IS EXEMPT FROM REAL PROPERTY TAX PURSUANT TO REPUBLIC ACT NO. 9511; and

II. WHETHER OR NOT THE SUBJECT PROPERTIES QUALIFY AS SPECIAL CLASS OF REAL PROPERTY UNDER SECTION 216 OF THE LOCAL GOVERNMENT CODE.

Petitioner's Arguments

Petitioner claims that pursuant to Section 9 of Republic Act ("RA") No. 9511,[19] apart from the three percent (3%) franchise tax due to the national government, and by the very nature and purpose of the property necessary for the operations and maintenance in its power transmission business, it is exempt from payment of real property tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, including local government units.

Petitioner also points out that for the years 2001 to 2008, the National Power Commission/ National Transmission Corporation ("NPC/TRANSCO") had the actual or beneficial use and/or possession of the properties subject of the Final Notices of Demand.

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[17] *Supra*, note 2; p. 43.
[18] *Supra*, note 3.
[19] 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, dated December 1, 2008.

Petitioner further maintains that since it is a concessionaire of TRANSCO, it should only be made to pay the real property tax based on the assessment level of ten percent (10%) pursuant to Sections 216 and 218 of the Local Government Code ("LGC").

Respondent's Counter-Arguments

On the other hand, respondent counters that the exemptions mentioned under Section 9 of RA No. 9511 should not be interpreted as a blanket exemption; the same only refers to income tax, business tax, among others, except real property tax.

Respondent also insists that since she is not a privy to the concession agreement between TRANSCO and petitioner, and the latter being the successor of the former, petitioner is likewise liable for the subject assessments.

Respondent finally argues that the assessment made by the City Assessor on the subject properties as "Commercial" were done in the year 2003, and neither petitioner, nor its predecessor-in-interest objected to the said assessment; thus, it cannot now belatedly claim that it should be classified as "Special Classes of Properties."

The Ruling of the Court En Banc

In the assailed Decision dated May 30, 2011, the CBAA resolving the issues at hand, discussed as follows:

> "III. The third issue raised by petitioner-appellant is that it is exempt from the filing of real property tax pursuant to the provisions of Sec. 9 of RA 9511, the Act granting the NGCP a franchise to engage in the business of conveying or transmitting electricity xxx (*Annex 'L'*).
>
> xxx xxx xxx
>
> We disagree.
>
> The three (3) main categories of properties covered in Sec. 9 of RA 9511 are:

(1) The franchise and all rights and privileges granted thereto, and the receipts, revenues and profits derived from the operations thereof;

(2) The properties used in connection with its franchise; and

(3) The real estate, buildings and personal property, exclusive of this franchise.

The properties falling under the first category are personal properties which are subject to 3% tax [and] exempt from any other taxes.

The properties falling under the second category are personal properties imported from abroad, free from duties and other import charges.

The properties falling under the 3rd category consist of the following:

(1) Real properties (real estate, buildings) – subject to taxes as owners may be required to pay; [and]

(2) Personal properties, excluding the franchise, subject of taxes as other persons are required by law to pay.

Sec. 9 of RA 9511, NGCP's franchise, does not exempt it from the payment of real property taxes on subject properties. On the contrary, petitioner-appellant NGCP, as the beneficial user of the subject buildings, is liable for the realty taxes pursuant to RA 7160, which provides:

xxx xxx xxx

At any rate, the respondent Treasurer's duty is to collect the real property tax based on the assessment made by the City Assessor. Section 247 of the LGC provides:

xxx xxx xxx

It is not within the power of the respondent Treasurer to decide whether or not subject properties are exempt from payment of the real property tax. This power belongs to the Office of the City Assessor as provided in the same Code as follows:

xxx xxx xxx

IV. We now tackle the fourth issue. Whether or not NGCP is liable for the realty taxes due on subject properties for the years 2001 through 2008.

Petitioner-appellant states that the power transmission operation of TRANSCO was formally turned-over to NGCP on January 15, 2009; that, under the Concession Agreement by and among PSALM, TRANSCO and NGCP, it was agreed that during the concession period, the NGCP will only assume the obligation of TRANSCO to pay real property taxes on its properties not otherwise exempt from the payment of real property taxes; and that NGCP should not be made liable for the realty taxes due on subject properties for the years 2001 through 2009. For the real property tax from 15 January 2009, however, NGCP reiterates its supposed exemption therefrom pursuant to Section 9 of RA No. 9511.

Records show that subject properties are declared in the name of NATIONAL POWER CORPORATION/TRANSCO. A '2nd & FINAL NOTICE OF DEMAND' was served upon the 'Manager, NATIONAL POWER CORPORATION/TRANSCO, Bgy. Kabancalan, Cebu City for each of the TDs: on September 16, 2009 for TD COO-019-05574 and on September 21, 2009 for TDs COO-019-005580 *(sic)* and COO-019-05581. The Final Notices of Demand stated that a 'NOTICE OF DELINQUENCY IN THE PAYMENT OF REAL PROPERTY TAXES' was served on NPC/TRANSCO for Tax Declaration (TD') COO-019-05581 on August 3, 2008; for TD COO-019-05580 on September 3, 2008; and for TD COO-019-05574 on October 6, 2008.

NGCP, as a consequence of the formal turnover of the NPC/TRANSCO property, received the Notices of Final Demand on September 24, 2009. Conscious of the fact that its operations might be adversely affected if [r]espondent City Treasurer went through the process of selling the subject properties at public auction, NGCP paid under protest the total amount of ₱2,792,862.41 as demanded in the Notices of Final Demand.

As stated in paragraph 27 of NGCP's Memorandum on Appeal, the said amount of ₱2,792,862.41 included taxes due for the years 2001 to 2008. The Final Demands by the Office of the City Treasurer were directed at or intended for the NPC/TRANSCO, not petitioner-appellant NGCP. The latter voluntarily paid the whole amount demanded without, perhaps, conferring first with NPC/TRANSCO as to who is ultimately liable for taxes for the years 2001 to 2008. If we order the respondent-appellee City Treasurer to refund to petitioner-appellant the amount corresponding to the taxes due for the years 2001 to 2008, respondent-appellee City Treasurer may just exercise her duty to sell the subject properties at public auction to protect the City of Cebu's interest. Moreover, it must be recalled that the procedures set forth in Section 206 were not observed by the petitioner-appellant.

Therefore, we believe that the recourse of petitioner-appellant is to claim from NPC/TRANSCO for refund of the said taxes due for the years 2001 to 2008.

V. The fifth and final issue is: Whether or not the subject properties should be classified as 'Special Classes' of Real Property.

Petitioner-appellant states that, assuming *arguendo*, that the subject properties are not exempt from the payment of real property tax under R.A. 9511, the same should have been classified as Special Class under Sections 216 and 218 of the Local Government Code (LGC); that on the basis that TRANSCO has retained ownership of the properties and that NGCP only agreed to pay the tax obligation of TRANSCO on these properties, NGCP shall only be made to pay the same taxes which TRANSCO had been paying prior to the Commencement Date of 15 January 2009; that it is not required that the real property is actually, directly and exclusively used by a government-owned and -controlled corporation in the generation and transmission of power; that, even assuming for the sake of argument that the beneficial use of the said properties had been granted to NGCP by virtue of the Concession Agreement, NGCP should only be made to pay the real property tax based on the Assessment Level of ten percent (10%), it being a Concessionaire of TRANSCO, a GOCC; and that it must be emphasized that prior to the execution of the Concession Agreement and prior to the Commencement Date (15 January 2009), TRANSCO had been assessed and had been paying real property taxes on such buildings at the assessment level applied to special class of properties under Sections 216 and 218(d) of the LGC.

Sections 216 and 218 of the LGC provide as follows:

xxx xxx xxx

Section 216 of the LGC provides the qualifications of properties which are considered Special Classes of Real Property. Section 218(d) of the LGC, on the other hand, simply provides the assessment levels applicable to the said special classes of real properties, as defined by the provisions of Section 216. The Special Classes of Real Property are:

xxx xxx xxx

Based on (d) above, the subject properties do not qualify as special classes of real property under Section 216 of the LGC. Although they are owned by TRANSCO, a GOCC, the said properties are being used by NGCP, a private entity. It does not matter that the NGCP happens to be engaged in the generation and transmission of electric power as a concessionaire of TRANSCO."[20]

For easy reference, Section 9 of Republic Act No. 9511[21] provides as follows:

"SECTION 9. *Tax Provisions.* – In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: ***Provided,* That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay:** *Provided, further,* That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT)." (*Boldfacing supplied.*)

A plain reading of the foregoing provision shows that petitioner is liable for a franchise tax equivalent to three percent (3%) on its gross receipts derived from its operation; the same is in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and

[20] *Rollo*, pp. 36-43.
[21] *Supra*, note 19.

profits, and on properties used in connection with its franchise. However, the second paragraph expressly provides that petitioner "*shall be liable to pay the same taxes on their real estate, buildings and personal property,* exclusive of this franchise, *as other corporations are now or hereby may be required by law to pay.*" Thus, while the first paragraph may have stated the "*in lieu of all taxes*" clause in favor of petitioner, the second paragraph provided the exception thereof by qualifying that petitioner shall be liable to pay taxes on its real estate, buildings and personal property, as other corporations are now or hereby may be required by law to pay. The phrase "*exclusive of this franchise*" is an affirmation further that in addition to the three percent (3%) franchise tax, petitioner is also liable for taxes on its real estate, buildings and personal property.

Basic is the rule that tax exemptions must be clear and unequivocal. Therefore, a taxpayer claiming a tax exemption must point to a specific provision of law, conferring onto the taxpayer, in clear and plain terms, the exemption from a common burden, and any doubt whether a tax exemption exists is resolved against the taxpayer.[22]

Hence, while it claims exemption under the "*in lieu of all taxes*" clause provided under the first paragraph, petitioner should also take note of the succeeding paragraph which states its liability to pay taxes on its real estate, buildings and personal property, as other corporations are now or hereby may be required by law to pay. With this, petitioner is clearly liable to pay taxes on its real estate, buildings and personal property, as other corporations are now or hereby may be required by law to pay.

In addition, as alleged by petitioner, NPC's exemption from real property tax was withdrawn upon the effectivity of the LGC of 1991; that with the effectivity of Republic Act ("RA") No. 9136,[23] TRANSCO assumed the electrical power transmission function of NPC, thus, all assets owned by NPC relative thereto, including its franchise for the operation of the transmission and grid, were accordingly transferred to TRANSCO; and that with RA No. 9511,[24] the power transmission operation of TRANSCO was subsequently privatized and formally turned-over to petitioner on January 15, 2009,[25] clearly confirms the stance that petitioner cannot claim

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[22] PLDT *v.* City of Davao, G.R. No. 143867, March 25, 2003, 399 SCRA 442 (447 Phil. 571).
[23] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose of Certain Laws and for Other Purposes.
[24] *Supra*, note 19.
[25] *Rollo*, pp. 8-9.

for exemption under the *"in lieu of all taxes"* clause, considering that its predecessors were not likewise exempt from the subject tax.

The Court *En Banc* further notes the case of *Republic of the Philippines v. City of Parañaque*,[26] to quote:

> "It is clear from Section 234 that real property owned by the Republic of the Philippines (the Republic) is exempt from real property tax unless the beneficial use thereof has been granted to a taxable person. In this case, there is no proof that PRA granted the beneficial use of the subject reclaimed lands to a taxable entity. There is no showing on record either that PRA leased the subject reclaimed properties to a private taxable entity.
>
> This exemption should be read in relation to Section 133(o) of the same Code, which prohibits local governments from imposing '[t]axes, fees or charges of any kind on the National Government, its agencies and instrumentalities . . . .' The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax.
>
> Indeed, the Republic grants the beneficial use of its real property to an agency or instrumentality of the national government. This happens when the title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption, unless 'the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.'"

From the foregoing, and considering that petitioner is neither an agency nor an instrumentality of the national government, and moreover, having the beneficial use of the properties in issue as a taxable person, the Court *En Banc* agrees with the ruling of the CBAA that petitioner is not exempt from real property tax; the same way that Sections 216 and 218(d) of the LGC cannot be made to apply to petitioner. To quote:

> "SECTION 216. *Special Classes of Real Property.* – All lands, buildings, and other improvements thereon actually, directly and

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[26] G.R. No. 191109, July 18, 2012, 677 SCRA 246.

exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and **government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power** shall be classified as special.

xxx xxx xxx

SECTION 218. *Assessment Levels.* – The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

xxx xxx xxx

(d) On Special Classes: The assessment levels for all lands buildings, machineries and other improvements;

Actual Use	*Assessment Level*
Cultural	15%
Scientific	15%
Hospital	15%
Local water districts	10%
Government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power	**10%**" (*Boldfacing supplied.*)

Based on the foregoing, Section 216 applies to special classes of real property, one of which is "*government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power.*" Likewise, Section 218(d) provides for the assessment levels for all lands, buildings, machineries and other improvements owned by said genre of "*government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power.*"

Evident from the records is that petitioner is not a government-owned or -controlled corporation. It is engaged in the generation and transmission of electric power but it does not fall among the classifications mentioned under Sections 216 and 218(d) of the LGC.

The Court *En Banc* must, nevertheless, point out that the subject assessments cover the years 2001 to 2009, while the properties were turned-over to petitioner only on January 15, 2009.[27] Thus, prior to the said date, the NPC, a government-owned corporation pursuant to RA No. 6395,[28] and TRANSCO, created pursuant to RA No. 9136,[29] are the owners on record of the subject properties.

Based on the records of the case, petitioner paid the aggregate amount of ₱2,792,862.41,[30] broken down as follows:

RPT-DS-FNOD0909-16-020[31]				
Year	**Tax Due**	**Interest**	**Discount**	**Total Amount Due**
2003	₱108,486.00	₱78,109.92	-	₱186,595.92
2004	108,486.00	78,109.92	-	186,595.92
2005	108,486.00	78,109.92	-	186,595.92
2006	150,322.20	108,231.98	-	258,554.18
2007	150,322.20	102,219.10	-	252,541.30
2008	150,322.20	66,141.77	-	216,463.97
2009	150,332.20	22,548.33	₱3,758.06	169,112.47
Total	**₱926,746.80**	**₱533,470.94**	**₱3,758.06**	**₱1,456,459.68**
RPT-DS-FNOD0909-21-030[32]				
Year	**Tax Due**	**Interest**	**Discount**	**Total Amount Due**
2001	₱40,324.20	₱29,033.42	-	₱69,357.62
2002	40,324.20	29,033.42	-	69,357.62
2003	40,324.20	29,033.42	-	69,357.92
2004	40,324.20	29,033.42	-	69,357.92
2005	40,324.20	29,033.42	-	69,357.92
2006	73,959.60	53,250.91	-	127,210.51
2007	73,959.60	50,292.53	-	124,252.13
2008	73,959.60	32,542.22	-	106,501.82
2009	73,959.60	11,093.94	₱1,848.99	83,204.55
Total	**₱497,459.40**	**₱292,346.70**	**₱1,848.99**	**₱787,957.11**

[27] *Rollo*, p. 9.
[28] An Act Revising the Charter of the National Power Corporation.
[29] *Supra*, note 23.
[30] *Annex "M"*; *Rollo*, p. 95.
[31] *Annexes "J"* and *"J-1"*; *Rollo*, pp. 83-84.
[32] *Annexes "K"* and *"K-1"*; *Rollo*, pp. 86-87.

RPT-DS-FNOD0909-21-002[33]				
Year	**Tax Due**	**Interest**	**Discount**	**Total Amount Due**
2004	₱26,636.40	₱19,178.21	-	₱45,814.61
2005	26,636.40	19,178.21	-	45,814.61
2006	76,582.80	55,139.62	-	131,722.42
2007	76,582.80	52,076.30	-	128,659.10
2008	76,582.80	33,696.43	-	110,279.23
2009	76,582.80	11,487.42	₱1,914.57	86,155.65
Total	**₱359,604.00**	**₱190,756.19**	**₱1,914.57**	**₱548,445.62**
GRAND TOTAL				**₱2,792,862.41**

As discussed earlier, NPC and TRANSCO were the owners of the subject properties before the year 2009. Therefore, not being the owner or the beneficial user during the period before the year 2009, petitioner cannot be made liable for real property taxes covered for the years 2001 to 2008. Stated otherwise, petitioner is only liable for the real property tax incurred for the year 2009, and not before it was even transferred or conveyed to it, as covered by the assessments.

Petitioner is thus liable for real property tax in the reduced amount of ₱338,472.67, computed as follows:

RPT-DS-FNOD0909-16-020[34]				
Year	**Tax Due**	**Interest**	**Discount**	**Total Amount Due**
2009	150,332.20	22,548.33	₱3,758.06	169,112.47
RPT-DS-FNOD0909-21-030[35]				
Year	**Tax Due**	**Interest**	**Discount**	**Total Amount Due**
2009	73,959.60	11,093.94	₱1,848.99	83,204.55
RPT-DS-FNOD0909-21-002[36]				
Year	**Tax Due**	**Interest**	**Discount**	**Total Amount Due**
2009	76,582.80	11,487.42	₱1,914.57	86,155.65
TOTAL				**₱338,472.67**

[33] *Annexes "L"* and *"L-1"*; *Rollo*, pp. 91-92.
[34] *Supra*, note 31.
[35] *Supra*, note 32.
[36] *Supra*, note 33.

And it is but fair and just to return the amount of ₱2,454,389.74 to petitioner, paid under protest, covering the period before the year 2009. To compute:

Total Amount Paid	₱2,792,862.41
Less	₱338,472.67
TOTAL	**₱2,454,389.74**

In sum, the Court *En Banc* finds compelling reason to warrant a partial reversal of the assailed Decision and Order.

WHEREFORE, the Petition for Review is hereby **PARTLY GRANTED**. Accordingly, the Decision dated May 30, 2011, and Order dated November 16, 2011 issued by the Central Board of Assessment Appeals are hereby **REVERSED** and **SET ASIDE**.

Respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of ₱2,454,389.74.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(with a Concurring and Dissenting Opinion)
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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(I concur with the Concurring and Dissenting Opinion of Presiding Justice Roman G. Del Rosario)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP), Petitioner,	**CTA EB NO. 849** (CBAA CASE NO. V-31)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, RINGPIS-LIBAN,** *J.J.*
OFELIA M. OLIVA, in her capacity as the CITY TREASURER of CEBU CITY, Respondents.	Promulgated: NOV 13 2013 9:20 a.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I concur in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Lovell R. Bautista, in so far as it holds that Sections 216[1]

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[1] **Section 216.** *Special Classes of Real Property.* - All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special.

and 218 (d)[2] of the Local Government Code (LGC) cannot be made to apply to petitioner. Considering that petitioner is not a government-owned or controlled corporation, albeit it is engaged in the transmission of electricity, its real properties cannot be classified as special under Sections 216 and 218 (d) of the LGC.

I also concur with the opinion of the *ponente* that petitioner, not being the owner or beneficial user of the buildings prior to January 15, 2009, it cannot be made liable for real property taxes imposed on said buildings for the years 2001 and 2008. This is consistent with the ruling of the Supreme Court in *Meralco vs. Barlis*[3] which states:

> "Respondent Municipal Treasurer claims that petitioner MERALCO misdeclared and/or failed to declare the true value of the Sucat power plant machineries and equipment during the taxable years 1976-1978 when it was still the owner thereof, and that it is the deficiency in the realty tax on the real property's reassessed value which it seeks to collect. Based on the foregoing, the notice of assessment and collection was directed to petitioner, not because it is still the present owner of the subject real property including the machineries and equipment thereon, but because it is the defaulting owner thereof who has failed to make proper tax declaration and the

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[2] **Section 218.** *Assessment Levels.* - The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

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(d) On Special Classes: The assessment levels for all lands buildings, machineries and other improvements;

Actual Use	Assessment Level
Cultural	15%
Scientific	15%
Hospital	15%
Local water districts	10%
Government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power	10%

[3] G.R. No. 114231, May 18, 2001.

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> proper tax payment thereon. Thus, petitioner is the taxpayer contemplated under Sec. 64 of the RPTC, and payment under protest of the tax assessed is necessary for the trial court to acquire jurisdiction over its petition.
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> **The fact that NAPOCOR is the present owner of the Sucat power plant machineries and equipment does not constitute a legal barrier to the collection of delinquent taxes from the previous owner, MERALCO, who has defaulted in its payment.** In *Testate Estate of Concordia T. Lim v. City of Manila*, the Court held that **the unpaid tax attaches to the property and is chargeable against the person who had actual or beneficial use and possession of it regardless of whether or not he is the owner**. In that case, the Court declared that **to impose the real property tax on the subsequent owner which was neither the owner nor the beneficial user of the property during the designated periods would not only be contrary to law but also unjust**. Correspondingly, **petitioner MERALCO, not NAPOCOR, is liable for the payment of the back taxes on said properties**." (Emphases supplied; Citation omitted)

On the other hand, with utmost respect, I dissent on the *ponencia's* interpretation of Section 9 of Republic Act (RA) No. 9511.[4] Section 9 of RA No. 9511 provides:

> "**Section 9. *Tax Provisions.*** - In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, **and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted**: *Provided*, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: *Provided, further*, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT)." (Emphasis supplied)

The first part of Section 9 of RA No. 9511 categorically states that the grantee shall pay a franchise tax, which shall be in lieu of all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, <u>local or national</u>, on its *franchise*, rights, privileges, receipts, revenues and profits, and on *properties* <u>used in connection with its franchise</u>

[4] 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.

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from which taxes the grantee is expressly exempted. Hence, when the real properties are used in connection with the grantee's franchise, the grantee shall not be made liable for real property tax, as the franchise tax is in lieu of all taxes otherwise due on said real properties. Stated differently, the franchise tax imposed under Section 9 of RA No. 9511 is in lieu of all taxes, local or national, including real property tax on grantee's real properties used in connection with its franchise.

Truth to tell, there is a *proviso* found on Section 9 of RA No. 9511 which states that "the [g]rantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay". This *proviso*, however, reasonably refers to those properties which are not used in connection with the grantee's franchise.

Since records do not indicate that the Central Board of Assessment Appeals (CBAA) and the Local Board of Assessment Appeals (LBAA) made a determination on the use of the buildings in connection with petitioner's franchise, it is my humble view that the case should be remanded to the CBAA which shall make a proper determination of whether or not the buildings are used in connection with petitioner's franchise. As discussed, if it is found that the buildings are used in connection with petitioner's franchise, the buildings are exempt from real property tax pursuant to the first part of Section 9 of RA No. 9511; otherwise, the buildings are subject to real property tax pursuant to the *proviso* found on the afore-said Section.

ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice