REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

THE OFFICE OF THE PROVINCIAL TREASURER OF CAMARINES SUR AND MR. MARIO T. ALICAWAY, IN HIS CAPACITY AS PROVINCIAL TREASURER FOR THE PROVINCE OF CAMARINES SUR, *Petitioners,*	**CTA AC NO. 236**
	Members:
	DEL ROSARIO, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
-versus-	
NATIONAL TRANSMISSION CORPORATION AND THE CITY OF NAGA, *Respondents.*	Promulgated: OCT 25 2021, 1:45 p.m.

x- -x

DECISION

DEL ROSARIO, P.J.:

THE CASE

This is a Petition for Review filed through registered mail on February 7, 2020, assailing the Decision dated August 19, 2019 of the Regional Trial Court, 5th Judicial Region, Branch 33, Pili, Camarines Sur (RTC) which enjoined petitioners from selling at public auction the real properties of respondent National Transmission Corporation (TRANSCO), and declared that: (i) the Notice of Publication and Auction Sale dated October 12, 2009 is null and void; (ii) the Province of Camarines Sur has no authority to collect franchise tax from the power cost payments made by Camarines Sur II Electric Cooperative (CASURECO II) and (Camarines Sur III Electric Cooperative (CASURECO III) to TRANSCO; and, (iii) the City of Naga has authority to collect franchise tax from power cost payments made by CASURECO II to TRANSCO from its gross receipts realized within the coverage area of CASURECO II.

THE PARTIES

Petitioners are the Office of the Provincial Treasurer of Camarines Sur and Mr. Mario T. Alicaway in his capacity as the Provincial Treasurer of the Province of Camarines Sur. The Office of the Provincial Treasurer for the Province of Camarines Sur is the office which issued the assailed Notice of Publication and Auction Sale dated October 12, 2009, while Mr. Alicaway is the incumbent Provincial Treasurer of Camarines Sur when the injunction case was filed before the RTC.[1] Under Republic Act (R.A.) No. 7160 or the Local Government Code of 1991 (LGC), the Provincial Treasurer is in charge of the treasury office,[2] and is authorized to collect local taxes and to avail of the civil remedies for collection thereof by administrative action through distraint of personal property and levy of real property, and by judicial action.[3]

Respondent National Transmission Corporation (TRANSCO) is a corporation organized under R.A. No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001. It is wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM). It was organized to acquire all the transmission assets of National Power Corporation (NPC). It assumes the electrical transmission function of NPC and the latter's authority and responsibility for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.[4]

Respondent City of Naga is a local government unit created and existing in accordance with R.A. No. 305, and is classified as an independent component city. It is an intervenor before the RTC.[5]

THE FACTS

Petitioners assessed TRANSCO of franchise tax for the period 2002 to 2007 in the amount of ₱74,535,074.35 in connection with the

---

[1] Parties, Petition for Injunction with Prayer for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order as admitted in petitioner's Answer before the RTC; CTA Records, pp. 49 and 68.
[2] Section 470(d) of Republic Act No. 7160 or the Local Government Code of 1997 (LGC).
[3] Sections 463, 170, 174, 175, 176, 183, LGC.
[4] Sec. 8, RA 9136.
[5] Complaint-in-Intervention as admitted in petitioner's Answer to the Complaint-in-Intervention; RTC Records, pp. 200 and 259.

latter's gross receipts from CASURECO I, II, III and IV.[6] Pending determination of TRANSCO's correct franchise tax liability for its receipts from CASURECO IV, TRANSCO paid the franchise tax on its gross receipts from CASURECO I on December 19, 2008. Petitioners reiterated their claim regarding TRANSCO's franchise tax liability in the amount of ₱72,722,264.47 from its gross receipts from CASURECO II, III and IV in a Letter dated January 29, 2009 addressed to NGCP-SLOM[7] and not to TRANSCO. A final demand dated March 13, 2009 was also issued, which was addressed to NGCP-SLOM.[8]

Allegedly, TRANSCO was not aware of the aforesaid Letters, and was surprised when NGCP forwarded to its office a bunch of documents containing the Warrant of Levy dated August 12, 2009, a Notice of Publication of Auction Sale dated October 12, 2009, and some other documents issued by the petitioners. The subject matters of the public auction sale are the real properties owned by TRANSCO [located in Del Rosario, Naga City], covered by pertinent Transfer Certificates of Title, which were due for sale at a public auction on October 30, 2009 to satisfy the franchise tax liability of TRANSCO amounting to ₱72,722,264.47 covering the period 2002-2007, out of its gross receipts realized from the power cost payments made by CASURECO I - IV. The Notice of Public Auction Sale set on October 30, 2009 was published in a local newspaper.[9]

TRANSCO filed a "Petition for Injunction with Prayer for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order"

---

[6] CASURECO I is an electric cooperative located in Libmanan, Camarines Sur and operating within the areas formerly belonging to the Congressional District I of Camarines Sur. CASURECO II is an electric cooperative with principal office in Del Rosario, Naga City, having an exclusive franchise to supply and distribute electricity not only within Naga City's territorial jurisdiction but also in its neighboring municipalities of Calabanga, Bombon, Magarao, Milaor, Minalabac, Pili, Siruma and Tinambac, all within the Province of Camarines Sur. CASURECO III is an electric cooperative with principal office in San Isidro, Iriga City having exclusive franchise to supply and distribute electricity within Iriga City's territorial jurisdiction and its neighboring municipalities of Nabua, Bato, Buhi, Balatan, Baao and Bombon. CASURECO IV is an electric cooperative with principal office located in Tigaon, Camarines Sur and operating the entire area of Congressional District IV of Camarines Sur (RTC Decision, p. 1352; CTA Records, p. 35).

[7] *"NGCP-SLOM"* was not elaborated in the *"Petition for Injunction With Prayer for Issuance of A Writ of Preliminary Injuction and/or Temporary Restraining Order"* and in the assailed Decision of the RTC. The term *"SLOM"* would refer to *"South Luzon Operation and Maintenance"* viewed in the light of allegation in the said Petition for Injunction relating to the alleged letter of Atty. Pedro M. Redona, Corporate Attorney III of the Regional Legal Services for South Luzon Operation and Maintenance (SLOM) *(RTC Docket, p. 8)*.

[8] RTC Decision, RTC Docket, p. 1350; CTA Records, p. 33.

[9] RTC Decision, RTC Docket, p. 1350; CTA Records, p. 33.

before the RTC on October 27, 2009,[10] to prohibit the Province of Camarines Sur from subjecting its transmission towers and accessories to real property tax, and to enjoin the scheduled public auction sale of its real properties. TRANSCO raised in its said Petition the following points, *viz.:*

1. TRANSCO is not liable for any franchise tax for gross receipts derived from CASURECO II and III because there are certain requirements/conditions before they can be liable for franchise tax and one of these is that TRANSCO's substation/district/branch/regional office must be within the territorial jurisdiction of the province and must not be within the territorial jurisdiction of any city located within the said province. CASURECO II is located in Del Rosario, Naga City, thus, the proper taxing authority is Naga City. As for CASURECO III, petitioner's claim has no legal basis because TRANSCO has no facility/substation in Iriga City which can be the basis of a franchise tax liability for CASURECO III.

2. Petitioner failed to show how it arrived at the alleged total franchise tax due of TRANSCO for CASURECO IV in the amount of P1,767,616.60. Since the parties have different computations as to the total franchise tax liability for CASURECO IV, there is a need to reconcile the correct tax liabilities, thus, the auction sale is still premature.

3. The scheduled public auction sale is in violation of TRANSCO's right to due process of law considering that there was lack of demand to pay and written notice of levy. TRANSCO did not receive a written notice of levy on its real properties from petitioner. The Notice of Publication and Auction Sale was not served upon TRANSCO but to NGCP, an entity which is entirely separate and distinct from TRANSCO.

After summary hearing, the RTC issued a Writ of Preliminary Injunction/Temporary Restraining Order (TRO) effective for twenty (20) days, restraining and enjoining petitioners from proceeding with the public auction sale. After the lapse of the 20-day TRO, a *status quo ante* order was issued pending determination [of the merits] of the case.[11]

Trial on the merits ensued.[12] Thereafter, the RTC rendered the assailed Decision[13] on August 19, 2019 declaring the following:

---

[10] RTC Records, p. 6.
[11] RTC Decision, RTC Records, p. 1345.
[12] RTC Decision, RTC Records, p. 1345.
[13] RTC Records, RTC Records, pp. 1347-1355; CTA Records, pp. 30-38.

1. The Writ of Preliminary Injunction and the *Status Quo Ante* Order issued against the Province of Camarines Sur is declared permanent, thus, petitioner is permanently enjoined from selling at public auction the real properties of TRANSCO;

2. The Notice of Publication and Auction Sale dated October 12, 2009 is null and void;

3. The Province of Camarines Sur has no authority to collect franchise tax from the power cost payments made by CASURECO II and CASURECO III to TRANSCO; and,

4. The City of Naga has authority to collect franchise tax from power cost payments made by CASURECO II to TRANSCO from its gross receipts realized within the coverage area of CASURECO II.

RTC found that the Final Demand dated March 13, 2009 and the Notice of Publication and Auction Sale dated October 12, 2009 were not sent to TRANSCO's office but to NGCP's office in Del Rosario, Naga City. It ruled that a written notice to the delinquent taxpayer under Section 176 of LGC is an important element of due process, and without such notice, any auction made is considered null and void.

On the issue of whether the Provincial Government of Camarines Sur can impose franchise tax on TRANSCO's gross receipts from CASURECO I, II, III and IV, the RTC ruled that (i) it is the Province of Camarines Sur that has the authority to collect franchise tax for gross receipts realized by TRANSCO from CASURECO I and IV since these electric cooperatives are operating not within a city; and, (ii) the Province of Camarines Sur has no authority to collect franchise tax from TRANSCO's gross receipts realized from CASURECO II and III as the gross receipts were sourced from the electric cooperatives operating within a territorial jurisdiction of a city, and the one authorized to collect franchise tax for TRANSCO's gross receipts from CASURECO II and III are the Cities of Naga and Iriga, respectively. It is the conclusion of the RTC that for gross receipts received by TRANSCO from CASURECOs II and III, irrespective of the place where its services are rendered, it is the city where it has its principal office and from where it operates that has the authority to collect the franchise tax.

Petitioner filed their Motion for Reconsideration (of the Decision dated August 19, 2019) on September 26, 2019, stating the following arguments:

1. TRANSCO was never deprived of due process; and,

2. TRANSCO is liable to pay the franchise tax for the gross receipts of CASURECO II and CASURECO III realized from the municipalities within the territorial jurisdiction of the province. Thus, in addition to the gross receipts of CASURECO I and CASURECO IV, TRANSCO is liable to pay the franchise tax for gross receipts received from CASURECO II (excluding gross receipts derived from Naga City) and CASURECO III (excluding gross receipts derived from Iriga City).

The aforesaid Motion for Reconsideration of petitioner was denied by the RTC in the Order dated November 28, 2019.

Dissatisfied, petitioner posted the present Petition for Review on February 7, 2020, which was received by this Court on February 18, 2020.[14] The Petition for Review was filed pursuant to Section 3(c)(2), Rule 4[15] and Sec. 3, Rule 8[16] of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended.

In a Resolution dated March 12, 2020, respondents were ordered to file their comment, not a motion to dismiss, to the Petition for Review, within ten (10) days from receipt thereof.[17]

Respondent TRANSCO filed its Comment (to the Petition for Review dated February 6, 2020) on June 15, 2020,[18] while respondent

---

[14] CTA Docket, pp. 9-136.
[15] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
xxx
(c) Exclusive jurisdiction over tax collections cases, to wit:
xxx
(2) Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them within their respective territorial jurisdiction.
[16] SEC. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.
[17] CTA Docket, pp. 140-141.
[18] CTA Docket, pp. 144-155.

City of Naga posted its Comment through registered mail on July 2, 2020,[19] which was received by this Court on July 20, 2020.[20]

After the transmittal of the entire records of Civil Case No. P-2534, which was noted in the Court's Resolution dated January 20, 2021,[21] this case was submitted for decision in a Resolution dated February 8, 2021.[22]

THE ISSUES

The issues raised by petitioners in their Petition for Review are as follows:

> I
>
> Whether or not TRANSCO is the proper body to assail the subject auction sale if it were true that the NGCP has taken over the nationwide transmission grid of TRANSCO.
>
> II
>
> Whether or not TRANSCO was denied of its right to due process when its real properties were levied and subjected to public auction sale for non-payment of franchise tax.
>
> III
>
> Whether or not TRANSCO is liable for local franchise tax to the Province of Camarines Sur for gross receipts received from CASURECO II (excluding the gross receipts derived from Naga City) and CASURECO III (excluding the gross receipts derived from Iriga City).
>
> IV
>
> Whether or not TRANSCO can still assail the assessment for franchise tax made by the petitioners that has already become final and conclusive for failure to protest the same in accordance with the provisions of the LGC.[23]

---

[19] CTA Docket, pp. 166-174.
[20] CTA Docket, pp. 166-175.
[21] CTA Docket, pp. 193-194.
[22] CTA Docket, p. 196.
[23] CTA Docket, pp. 14-15.

THE PARTIES' ARGUMENTS

In support of the present Petition for Review, petitioners argue the following:

1. If TRANSCO's claim that its nationwide transmission grid was officially taken over by NGCP on January 15, 2009 is true, then it is bereft of the proper personality to maintain the present suit and assail the validity of the auction sale.

2. As NGCP has taken over all its nationwide transmission grid and TRANSCO has in fact denied having received the vital demand letters addressed and sent to its former transmission facilities in Biñan, Laguna and Del Rosario, Naga City, Camarines Sur, TRANSCO is bereft of personality to assail the warrant of levy in consonance with the doctrine laid down by the Supreme Court in NPC vs. Province of Quezon and Municipality of Pagbilao (G.R. No. 171586, July 15, 2009) that tax liabilities attaches to the property but is directly chargeable against the taxable person who has the actual and beneficial use and possession of the property regardless of whether or not that person is the owner.

3. Petitioners duly complied with the provisions of the LGC in the levy and auction of TRANSCO's real properties for the satisfaction of its franchise tax liabilities. There was a proper notice to TRANSCO of the October 30, 2009 Auction, and, TRANSCO was never deprived of its right to due process.

4. Based on Section 176 of LGC, the requirement is merely the sending (by personal service or mail) of the warrant of levy to the assessor, the register of deeds, and the delinquent taxpayer. In this case, the Warrant of Levy addressed to "The Manager of the National Grid Corporation (TRANSCO)" was received by TRANSCO on September 9, 2009 at its office in Del Rosario, Naga City. This is so, because prior demand letters were addressed to TRANSCO, which were either or both served at its address at South Luzon Operation and Maintenance (SLOM) office and at Del Rosario, Naga City. Nonetheless, it should be pointed out that NGCP duly received the letters and/or notices of petitioners without even telling or advising the latter to serve the same to the office of TRANSCO in Manila. Such receipt of NGCP of the letters or notices of the petitioners gave an impression to them that they are receiving the same for on and behalf of TRANSCO and that they are transmitting the same to TRANSCO. The October 23, 2009 letter of Atty. Teodoro Cruz, Jr., General Counsel of NGCP, to TRANSCO endorsing the Notice of Publication and Public Auction bolsters petitioners' claim that whatever communications NGCP received from petitioners, they are forwarding the same to TRANSCO for appropriate action.

5. While it may be submitted that NGCP and TRANSCO are separate and distinct, the fact remains that NGCP took over the maintenance and operation of TRANSCO in 2009 by virtue of the EPIRA Law and within the transition period, it can be considered

ᏅᎷ

that notice to NGCP should serve as notice to TRANSCO. In other words, whatever notice sent to TRANSCO at its address, which has been the address used by petitioners and duly received and acknowledged by NGCP (TRANSCO) should be treated as receipt by and notice to TRANSCO.

6. With regard to the auction sale as provided under Section 178 [of the LGC], the requirements are the posting of the notice of auction sale at the main entrance of the municipal building or city hall, and in a public and conspicuous place in the barangay where the real property is located, and by publication once a week for three (3) weeks in a newspaper of general circulation in the province. In this case, such posting and publication requirements were duly complied with. Thus, whether or not TRANSCO received a copy of the Notice of Publication and Auction Sale is of no significance as long as the posting and publication requirements mandated by Section 178 [of the LGC] were duly complied with by the Province of Camarines Sur.

7. The RTC erred in holding that petitioners' failure to serve the notice of publication and auction sale renders the public auction sale null and void for being violative of TRANSCO's right to due process, because Section 178 of the LGC did not even mention such requirement.

8. TRANSCO was duly notified of the Warrant of Levy as well as the Notice of Auction Sale, which was duly published in the Bikol Reporter.

9. Aside from gross receipts of CASURECO I and IV, TRANSCO is also liable to pay the franchise tax for the gross receipts of CASURECO II and CASURECO III realized from the municipalities within the territorial jurisdiction of the province. Accordingly, while CASURECO II's principal office is located within Naga City, it is operating in certain municipalities within the Province of Camarines Sur like Milaor, Magarao, Bombon, Canaman, Calabanga, Minalabac, Pili, Siruma, and Tinambac. Also, CASURECO III's principal office is at San Isidro, Iriga City, but distributes electricity in the municipalities of Nabua, Bato, Buhi, Balatan, Baao, and Bula. Thus, in addition to the gross receipts of CASURECO I and CASURECO IV, TRANSCO is liable to pay the franchise tax for gross receipts derived from CASURECO II (excluding gross receipts derived from Naga City) and CASURECO III (excluding gross receipts derived from Iriga City).

10. TRANSCO can no longer assail the notice of assessment issued by the petitioners for failure to protest the same within the time prescribed by the LGC.

    TRANSCO's right to impugn the October 22, 2008 Notice of Assessment has already prescribed due to lack of proper protest. It should be remembered that TRANSCO never protested the October 22, 2008 Notice of Assessment, instead it only sent a

> letter dated August 14, 2008, written by Atty. Pedro M. Redona, Regional Legal Service for SLOM, where it laid its ground for TRANSCO's refusal to pay its franchise taxes on the ground, among others, that petitioners' claims for gross receipts are not within its territorial jurisdiction, discounts and value added tax does not form part of gross receipts, TRANSCO cannot be held liable for franchise taxes before June 26, 2001, the effectivity of EPIRA and that the five (5)-year period under Section 194 of the LGC within which petitioners may assess TRANSCO for franchise tax has prescribed.
>
> This step taken by TRANSCO is not the procedure provided for under Section 195 of the LGC.
>
> In the guise of the Petition for Injunction, TRANSCO enforced its right to impugn the assessment, which has already become final, conclusive and unappealable when it failed to observe the remedy afforded to it pursuant to the foregoing provisions of law. On this ground alone, the petition for injunction filed by TRANSCO should have been dismissed.

Respondent TRANSCO, in its Comment (to the Petition for Review dated February 6, 2020) filed on June 15, 2020, prays for the Court to deny the Petition for Review and states the following arguments:

1. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon this Court as the trial court was in a much better position to determine which party was able to present evidence with greater weight.

2. Section 8 of R.A. No. 9136 or the Electric Power Industry Reform Act of 2001 states that no person, company or entity other than TRANSCO shall own any transmission facilities. The levy, if it pushes through, will lead to a third party owning these assets, in violation of the law.

3. Citing *Republic vs. Palacio, 23 SCRA 899 (1968)*, it states that government properties are not subject to levy and execution unless otherwise provided for by the statute. Levy will result to a disruption of public service as a third party will surely have no franchise nor the expertise to operate a transmission asset.

4. In answer to petitioners' claim that it is bereft of personality to assail the warrant of levy, it states that petitioners' reliance on *NPC vs Pagbilao (G.R. No. 171586, July 15, 2009)* is entirely misplaced as NPC is not the owner of the assets in that case and the issue therein is the personality of NPC to claim real property tax exemptions by virtue of an Energy Conversion Agreement. In this case, TRANSCO retained ownership of the Transmission Assets and the Office of the Provincial Treasurer attributes liability to TRANSCO. National Grid Corporation of the

07

Philippines (NGCP) was granted the concession to operate TRANSCO's transmission system and the grid by virtue of the Concession Agreement dated February 28, 2008 with Power Sector Assets and Liabilities Management and TRANSCO. More importantly, R.A. No. 9511 enacted on December 1, 2008 granted a legislative franchise to NGCP. Petitioners cannot feign ignorance of R.A. No. 9511, other existing laws, rules and regulations, especially the proper notices, posting of an auction sale and the levying of franchise tax.

5. On whether the Province of Camarines Sur complied with the provisions of LGC in the levy and auction of TRANSCO's real properties for the satisfaction of its franchise tax liabilities, TRANSCO argues that the demand letters were sent to NGCP and not to TRANSCO and the period prescribed in R.A. No. 7160 (LGC) as to the proper auction of real properties was not followed. TRANSCO was deprived of due process.

6. Aside from the glaring fact that there was no proper levy of real property, [there was violation of the posting requirement] under Section 178 of LGC. The Notice of Publication and Auction Sale dated October 12, 2009, informing TRANSCO of the sale on October 30, 2009, [was issued] less than the thirty (30)-day posting requirement. Further, TRANSCO received the Notice of Publication and Auction Sale only on October 23, 2009 or eleven (11) days after publication.

7. The final demand letter for payment of franchise tax was received together with the Notice of Publication and Auction Sale. Hence, the Notice of Publication and Auction Sale were void because there was no basis for lien enforcement on TRANSCO's real properties by the petitioners. TRANSCO cannot be gainsaid to be in default of its payment of unpaid taxes, if any, for lack of knowledge.

8. On whether TRANSCO is liable for local franchise tax to the Province of Camarines Sur for gross receipts received from CASURECO II (excluding the gross receipts derived from Naga City) and CASURECO III (excluding the gross receipt from Iriga City), it is not accurate to say that TRANSCO paid the franchise tax without any protest. In its Petition for Injunction with Prayer for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order dated October 27, 2009, TRANSCO claimed that as a sign of good faith, and pending correct computation of franchise tax liabilities for CASURECO IV, TRANSCO paid its franchise tax liability for CASURECO I (calendar years 2003 to 2007) on December 19, 2008.

9. The situs of taxation limits the power of taxation.

10. TRANSCO merely passes on the electricity to the municipalities of the Province of Camarines Sur. TRANSCO is regarded as a common carrier of electricity. TRANSCO takes refuge on the provision of Sec. 133(e) of LGC that prohibits Local Government

Units (LGU) from levying taxes on goods that are merely passing through within their territorial jurisdictions. Besides, the electricity is not even owned by TRANSCO but of power generators.

11. The court *a quo* did not rely alone in City of Iriga vs. CASURECO III (G.R. No. 192945, September 5, 2012) but also considered the procedural requirements that the petitioners failed to observe.

12. Collection of franchise tax is proper if the Provincial Government of Camarines Sur has territorial jurisdiction. Similar to the City of Iriga in *City of Iriga vs CASURECO III*, it is the City of Naga which has the tax situs. The Provincial Government has no tax situs nor territorial jurisdiction to assess franchise tax in the Rinconada area.

13. On whether or not TRANSCO can still assail the assessment for franchise tax made by the petitioners that has already become final and conclusive for failure to protest the same in accordance with the provisions of the LGC, TRANSCO states that petitioners' claim that its right to impugn the Notice of Assessment has already prescribed due to lack of protest contradicts their first issue that TRANSCO has no personality to impugn the Notice of Assessment. Such statement deserves a scant consideration as there was no proper service of the alleged demand letters containing the franchise tax liabilities based on gross receipts from inception. A void act can never be a source of a right. The holding of a tax sale despite the absence of the requisite notice, as in this case, is tantamount to a violation of the delinquent taxpayer's substantial right to due process.

Respondent City of Naga, in its Comment posted through registered mail on July 2, 2020,[24] prays for the dismissal of the Petition for Review and advances the following arguments:

1. The interest of the City of Naga in this case is the franchise tax liability of CASURECO II, with principal business address in Brgy. Del Rosario, Naga City. Being within the territorial jurisdiction of the City of Naga, it follows that the gross receipts earned shall be properly taxed by the City, in accordance with the principles of situs in taxation.

2. Franchise taxes can only be imposed by the local government unit with the territorial jurisdiction where the privilege is exercised. In the case of TRANSCO, it shall be liable for franchise tax on its privilege of operating as a nationwide power transmission utility. Since the privilege is being exercised through CASURECO II, franchise taxes shall be imposed on gross receipts for its franchise operations in the City of Naga.

---

[24] CTA Docket, pp. 166-174.

3. Following *City of Iriga vs. CASURECO III,*[25] the gross receipts received by TRANSCO through CASURECO II shall be taxed by the City of Naga, as there was no distinction made as to whether the gross receipts were derived from the City or from its neighboring municipalities.

4. The authority of the Province of Camarines Sur to impose taxes is limited to those subjects within its territorial jurisdiction.

5. The power to collect is limited by the territorial jurisdiction of the LGU, the power to levy real properties is also limited by this territorial boundaries. It becomes an illegal act on the part of the LGU if it acts outside the jurisdiction which the law has properly prescribed.

6. City of Naga is an independent component city geographically located within the Province of Camarines Sur. Being an independent component city, the City of Naga [has the] power to create and broaden its sources of revenues, including the power to impose franchise taxes; therefore, it necessarily possesses the power to resort to legal remedies available to enforce collection.

7. In its Intervention before the RTC, it posits that the Province of Camarines Sur does not have the authority to enforce its civil remedies of levying the real properties of TRANSCO located within the territorial jurisdiction of the city precisely because jurisdiction is only confined within the boundaries of its territory. Since TRANSCO, through CASURECO II, exercises its privilege within the boundaries of the City of Naga, therefore, the gross annual receipts realized by TRANSCO, through CASURECO II, shall be taxed by the City of Naga. The act of the Province in trying to enforce collection through levy of real property within the bounds of the City's territory is an encroachment on the right of the City to pursue the remedy in its favor.

8. The real properties of TRANSCO located within Naga City is not subject to the franchise tax lien of the Province of Camarines Sur against the former. Said properties of TRANSCO in Naga City cannot be sold at public auction by the Province of Camarines Sur, as it is the City of Naga which can enforce the liability and which can avail of the remedies available to collect.

THE RULING OF THE COURT

Jurisdiction over the case

The Court shall first determine whether or not it has jurisdiction over the subject matter presented before it. The Court has a clearly recognized right to determine its own jurisdiction in any proceeding.

---

[25] G.R. No. 192945, September 5, 2012.

This is because jurisdiction is conferred by law, and lack of it affects the very authority of the Court to take cognizance of and to render judgment on the action.[26] Any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.[27]

The present case is a Petition for Review of the assailed Decision rendered by the RTC enjoining the public auction sale of TRANSCO's real properties, which was intended to settle its franchise tax liabilities to the Province of Camarines Sur, and declaring the Notice of Publication and Auction Sale dated October 12, 2009 null and void. The assailed RTC Decision also declared that the Province of Camarines Sur has no authority to collect franchise tax from the power cost payments made by CASURECO II and CASURECO III to TRANSCO, and it is the City of Naga which has the authority to collect franchise tax from power cost payments made by CASURECO II to TRANSCO from its gross receipts realized within the coverage area of CASURECO II.

Evidently, the appealed case concerns a local tax case *(i.e., local franchise tax imposed against TRANSCO by the Province of Camarines Sur and the questioned collection effort of the petitioners by way of levy of real properties)* which was originally decided by the RTC in the exercise of its original jurisdiction over a Petition for Injunction with Prayer for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order filed by TRANSCO before it. The CTA Division is vested with authority to review the said assailed Decision of the RTC pursuant to Section 7(a)(3) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282,[28] in relation to Section 3(a)(3), Rule 4 of RRCTA, as amended.[29]

---

[26] Commissioner of Internal Revenue vs. Mindanao I Geothermal Partnership, G.R. No. 192006, November 14, 2018.
[27] Bilag et al. vs. Ay-ay et al., G.R. No. 189950, April 24, 2017.
[28] Sec. 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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[.]"
[29] 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
(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[.]

After having determined its jurisdiction over the subject matter, the Court shall proceed to determine whether the present case was filed on time. Under Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, a party adversely affected by a decision or ruling of the RTC in the exercise of its original jurisdiction may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling.[30]

It is doctrinal that the right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal. The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional.[31]

As aforestated, the appealed case of herein petitioners concerns a local tax case originally decided by the RTC in the exercise of its original jurisdiction over a Petition for Injunction filed therein by TRANSCO. Under Section 4, Rule 8 of RRCTA,[32] an appeal from a decision or ruling of the RTC in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. Section 2, Rule 42 of the Rules of Court provides the form and contents of the Petition for Review, *viz.:*

> Section 2. *Form and contents.* — The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full

---

[30] SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision, ruling** or inaction **of** the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or **the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein." *(Boldfacing supplied)*

[31] Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.

[32] SEC. 4. *Where to appeal; mode of appeal.* – (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the **Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court**. The Court in Division shall act on the appeal. (Boldfacing supplied)

> names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) **indicate the specific material dates showing that it was filed on time**; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) **be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts**, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings **and other material portions of the record as would support the allegations of the petition**. (Boldfacing supplied)

The provision of the Rules of Court requires that the specific material dates shall be indicated in the Petition for Review for the purpose of showing that it was filed on time, and that the Petition for Review be accompanied by, among others, clearly legible duplicate original or certified true copies of the final orders of the lower court and other material portions of the record as would support petitioner's allegations.

In their Petition for Review, petitioners indicated the date of receipt of the assailed Order of the RTC and appended also a certified photo copy of the assailed Order of the RTC. Petitioners allege that their counsel received the assailed November 28, 2019 Order of the RTC on **January 8, 2020**.[33] The assailed Order of the RTC referred and appended to in petitioners' Petition for Review, which would supposedly support petitioners' allegation, shows a received stamp dated **December 6, 2019**.[34] Clearly, the allegation made by petitioners is inconsistent with the actual attachment in their Petition for Review. Stated differently, the allegation of petitioners' receipt of the assailed Order is not supported by evidence. Petitioners' allegation remains a bare allegation and the same do not prove a fact.[35] It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.[36] The fatal infirmity of this case cannot be disregarded as the timeliness of an appeal is a factual issue that requires a review of the evidence presented.[37]

---

[33] CTA Docket, p. 11.
[34] Annex "C" of Petition for Review, CTA Docket, p. 47.
[35] Sabellina vs. Buray et al., G.R. No. 187727, September 2, 2015.
[36] BP Oil and Chemicals International Philippines, Inc. vs. Total Distribution & Logistic Systems, Inc., G.R. No. 214406, February 6, 2017.
[37] Republic of the Philippines et al. vs. Martinez et al., G.R. Nos. 224438-40, September 3, 2020.

Thus, for purposes of determining the timeliness of the appeal, the date appearing in the certified photocopy of the assailed Order attached to the Petition for Review shall be considered as the date of petitioners' receipt of the assailed Order. Petitioners had thirty (30) days from December 6, 2019 or until **January 5, 2020** within which to file their Petition for Review. The filing of the present Petition for Review via registered mail on **February 7, 2020** was out of time.

The RTC committed no error in declaring that the Notice of Publication and Auction Sale dated October 12, 2009 is null and void

Even assuming *arguendo* that the Petition for Review was filed on time, the same is devoid of merit.

A levy on real property to collect delinquent local tax and the subsequent sale or auction of real property is sanctioned by the LGC, particularly under Sections 176 and 178 thereof, viz.:

> "SECTION 176. Levy on Real Property. – After the expiration of the time required to pay the delinquent tax, fee, or charge, real property may be levied on before, simultaneously, or after the distraint of personal property belonging to the delinquent taxpayer. To this end, the provincial, city or municipal treasurer, as the case may be, shall prepare a duly authenticated certificate showing the name of the taxpayer and the amount of the tax, fee, or charge, and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines. Levy shall be effected by writing upon said certificate the description of the property upon which levy is made. At the same time, **written notice of the levy shall be mailed to or served upon** the assessor and the Register of Deeds of the province or city where the property is located who shall annotate the levy on the tax declaration and certificate of title of the property, respectively, and **the delinquent taxpayer or, if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or if there be none, to the occupant of the property in question**.
>
> In case the levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the taxpayer is not sufficient to satisfy his delinquency, the provincial, city or municipal treasurer, as the case may be, shall within thirty (30) days after execution of the distraint, proceed with the levy on the taxpayer's real property.
>
> A report on any levy shall, within ten (10) days after receipt of the warrant, be submitted by the levying officer to the sanggunian concerned."

xxx xxx xxx

"SECTION 178. Advertisement and Sale. – **Within thirty (30) days after the levy**, the **local treasurer shall proceed to publicly advertise for sale or auction the property** or a usable portion thereof as may be necessary to satisfy the claim and cost of sale; **and such advertisement shall cover a period of at least thirty (30) days.** It shall be effected by posting a notice at the main entrance of the municipal building or city hall, and in a public and conspicuous place in the barangay where the real property is located, and by publication once a week for three (3) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall contain the amount of taxes, fees or charges, and penalties due thereon, and the time and place of sale, the name of the taxpayer against whom the taxes, fees, or charges are levied, and a short description of the property to be sold. At any time before the date fixed for the sale, the taxpayer may stay the proceedings by paying the taxes, fees, charges, penalties and interests. If he fails to do so, the sale shall proceed and shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as determined by the local treasurer conducting the sale and specified in the notice of sale.

Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the sanggunian concerned, and which shall form part of his records. After consultation with the sanggunian, the local treasurer shall make and deliver to the purchaser a certificate of sale, showing the proceedings of the sale, describing the property sold, stating the name of the purchaser and setting out the exact amount of all taxes, fees, charges, and related surcharges, interests, or penalties: Provided, however, That any excess in the proceeds of the sale over the claim and cost of sales shall be turned over to the owner of the property.

The local treasurer may, by ordinance duly approved, advance an amount sufficient to defray the costs of collection by means of the remedies provided for in this Title, including the preservation or transportation in case of personal property, and the advertisement and subsequent sale, in cases of personal and real property including improvements thereon." *(Boldfacing supplied)*

Petitioners argue that whether or not TRANSCO received a copy of the Notice of Publication and Auction Sale is of no significance as long as the posting and publication requirements mandated by Section 178 of the LGC were duly complied with by the Province of Camarines Sur.

Petitioners' argument does not hold water.

The teaching in ***Corporate Strategies Development Corp., and Rafael R. Prieto vs. Norman A. Agojo***,[38] which case concerns a tax sale of real property due to delinquency in real property tax, is enlightening, *viz.:*

> "xxx **a sale of land for tax delinquency is in derogation of property and due process rights of the registered owner. In order to be valid, the steps required by law must be strictly followed**.
>
> The burden to show that such steps were taken lies on the person claiming its validity, for the Court cannot allow mere presumption of regularity to take precedence over the right of a property owner to due process accorded no less than by the Constitution.
>
> It is, thus, **necessary to determine whether respondent has fulfilled his burden of proving compliance with the requirements for a valid tax delinquency sale**.
>
> Under Section 254 of the LGC, it is required that the notice of delinquency must be posted at the mainhall and in a publicly accessible and conspicuous place in each barangay of the local government unit concerned. It shall also be published once a week for two (2) consecutive weeks, in a newspaper of general circulation in the province, city, or municipality.
>
> Section 258 of the LGC further requires that should the treasurer issue a warrant of levy, the same shall be mailed to or served upon the delinquent owner of the real property or person having legal interest therein, or in case he is out of the country or cannot be located, the administrator or occupant of the property. At the same time, the written notice of the levy with the attached warrant shall be mailed to or served upon the assessor and the Registrar of Deeds of the province, city or municipality within the Metropolitan Manila Area where the property is located, who shall annotate the levy on the tax declaration and certificate of title of the property, respectively.
>
> Section 260 of the LGC also mandates that within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale. Such advertisement shall be effected by posting a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located.

---

[38] G.R. No. 208740, November 19, 2014.

> Respondent utterly failed to show compliance with the aforestated requirements. First, no evidence was adduced to prove that the notice of levy was ever received by the CSDC. There was no proof either that such notice was served on the occupant of the property. **It is essential that there be an actual notice to the delinquent taxpayer, otherwise, the sale is null and void although preceded by proper advertisement or publication.** This proceeds from the principle of administrative proceedings for the sale of private lands for non-payment of taxes being in personam.
>
> xxx xxx xxx
>
> Respondent must be reminded that the **requirements for a tax delinquency sale under the LGC are mandatory**. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. Particularly, **the notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfilment of which vitiates the sale**. Thus, the holding of a tax sale despite the absence of the requisite notice, as in this case, is tantamount to a violation of the delinquent taxpayer's substantial right to due process. *(Boldfacing supplied)*

In order for a tax delinquency sale to be considered valid, the steps outlined in Section 176 and 178 of LGC must be strictly observed, namely:

(i) A duly authenticated certificate, showing the name of the taxpayer and the amount of the tax, fee, or charge, and penalty due from the taxpayer, shall be prepared by the provincial, city or municipal treasurer, as the case may be;

(ii) A written notice of the levy shall be mailed to or served upon the assessor and the Register of Deeds of the province or city where the property is located who shall annotate the levy on the tax declaration and certificate of title of the property, respectively;

(iii) **A written notice of the levy shall be mailed to or served upon the delinquent taxpayer** or, if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or if there be none, to the occupant of the property in question;

(iv) A report on any levy shall, within ten (10) days after receipt of the warrant, be submitted by the levying officer to the sanggunian concerned;

(v) **Within thirty (30) days after the levy**, the local treasurer shall **proceed to publicly adverstise for sale or auction the**

Ɣ/|

property. It shall be effected by posting a notice at the main entrance of the municipal building or city hall, and in a public and conspicuous place in the barangay where the real property is located, and by publication once a week for three (3) weeks in a newspaper of general circulation in the province, city or municipality where the property is located;

(vi) The sale shall proceed and shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as determined by the local treasurer conducting the sale and specified in the notice of sale;

(vii) The local treasurer or his deputy shall make a report of the sale to the sanggunian concerned within thirty (30) days after the sale; and,

(viii) After consultation with the sanggunian, the local treasurer shall make and deliver to the purchaser a certificate of sale, showing the proceedings of the sale, describing the property sold, stating the name of the purchaser and setting out the exact amount of all taxes, fees, charges, and related surcharges, interests, or penalties.

Applying the principles laid down in *Agojo* to the present case, strict observance of the mandatory steps and requirements prior to auction sale must be complied with in order that the sale of property may be considered valid.

In the present case, petitioners failed to comply with the requirement of providing TRANSCO with a written notice of the levy before petitioners proceeded with the publication of auction sale. Petitioners did not point to any evidence that would show that they mailed to, or served upon, TRANSCO the written notice of the levy as required by law. In failing to comply with the notice requirement, petitioners violated TRANSCO's right to due process.

No less than Section 1 of the Bill of Rights of the 1987 Constitution mandates that *[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.*[39] The taking or deprivation of one's life, liberty or property must be done upon and with observance of the "due process" clause of the Constitution and the non-observance or violation thereof is, perforce, unconstitutional.[40] The notices and publication, as well as the legal requirements for a tax delinquency

[39] Borlongan vs. Banco De Oro (formerly Equitable PCI Bank), G.R. No. 217617, April 5, 2017.
[40] Legaspi vs. City of Cebu et al., G.R. No. 159110, December 10, 2013.

sale, are mandatory and that failure to comply therewith can invalidate the sale in view of the requirements of due process.[41]

There being a violation of TRANSCO's right to due process, the RTC correctly invalidated the sale.

Petitioners also contend that the notice to NGCP should serve as a notice to TRANSCO as NGCP took over the maintenance and operation of TRANSCO in 2009 by virtue of the EPIRA Law. They further assert that NGCP duly received the letters and/or notices of petitioners without even telling or advising them to serve the same to the office of TRANSCO in Manila, and such receipt of NGCP of the letters or notices of the petitioners gave an impression to them that they are receiving the same for on and behalf of TRANSCO and that they are transmitting the same to TRANSCO.

The contentions of petitioners are bereft of merit.

The RTC correctly ruled that the notice to NGCP is not notice to TRANSCO since the two (2) corporations are separate and distinct from each other. As oft-repeated, the law requires that a written notice of the levy shall be mailed to or served upon the delinquent taxpayer, which in this case is TRANSCO, and not NGCP. To re-echo *Agojo*, the notice of levy to the delinquent taxpayer is an essential requirement for a valid tax delinquency sale, and the non-fulfillment of which vitiates the sale.

Since TRANSCO is a separate entity from NGCP and being the owner of the subject auctioned properties, it has a clear legal personality to assail the validity of the said auction sale.

In light of the foregoing, the Court finds no cogent reason to modify, much more, reverse the assailed Decision of the RTC. The Court will no longer belabor the other issues raised in this case.

WHEREFORE, premises considered, the present Petition for Review filed by petitioners on February 7, 2020 is **DENIED** for having been filed out of time and for lack of merit. Accordingly, the Decision dated August 19, 2019 and the Order dated November 28, 2019 issued by the Regional Trial Court, 5th Judicial Region, Branch 33, Pili, Camarines Sur (RTC) are hereby **AFFIRMED**.

---

[41] Valbueco, Inc. vs. Province of Bataan, et al., G.R. No. 173829, June 10, 2013.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice