# *Court of Tax Appeals*
**QUEZON CITY**

## *Third Division*

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| **NATIONAL POWER CORPORATION ,** Petitioner, | **CTA AC No. 117** |
| | Present: |
| - *versus* - | ***Bautista,** Chairperson* ***Fabon-Victorino,** and* ***Ringpis-Liban, JJ.*** |
| **PROVINCE OF DINAGAT ISLANDS AND ERMILINDA C. BIOL,** Respondents. | **Promulgated:** NOV 16 2015 12:40 p.m. |

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# *DECISION*

*BAUTISTA, J.:*

The Petition for Review filed on June 6, 2014 by petitioner National Power Corporation pursuant *to Section 7(a)(3)*[1] of *Republic Act ("RA") No. 1125*,[2] as amended by *RA No. 9282*[3] and *RA No. 9503*[4], seeks for the Court to reverse and set aside the Judgment dated April 2, 2014 promulgated by the Regional Trial Court, Branch 32 of Dinagat Islands, Surigao City.

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[1] Sec. 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.
(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.

[2] An Act Creating the Court of Tax Appeals, as amended.

[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[4] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

## THE PARTIES[5]

Petitioner National Power Corporation ("NPC") is a government-owned and controlled corporation created and existing by virtue of *RA No. 6395*, as amended, with principal office address at NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman, Quezon City, Philippines.

Respondent Province of Dinagat Islands ("Province") is a local government unit organized and existing under Philippine laws with postal address at Provincial Hall Compound, San Jose, Dinagat Islands.

Respondent Ermilinda C. Biol, of legal age, is the provincial treasurer of the Province of Dinagat Islands.

## THE FACTS OF THE CASE

The facts, as culled from the records,[6] are as follows:

On June 19, 2009, NPC received an Assessment Letter[7] dated June 4, 2009 from respondents, demanding payment of franchise tax obligation of Small Power Utilities Group ("SPUG") for the years 2006 to 2008 pursuant to *Article G, Section 2G.02 of the Revenue Code of the Province of Dinagat Islands.*[8]

On August 12, 2009, NPC filed a Protest Letter[9] dated August 10, 2009 before the Provincial Treasurer pursuant to *Part 1, Chapter VI, Section 195 of the Local Government Code ("LGC")* on the ground that upon effectivity of *RA No. 9136* ("EPIRA") on June 26, 2001, NPC, a generation company, is no longer required to secure a franchise from the government, and that its SPUG is a functional unit of NPC which is not engaged in business as provided in *Section 137 of the LGC.*

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[5] *Rollo, Petition for Review*, pp.5-6.
[6] *Id., Annex "E,"* pp. 28-29.
[7] *Id., Annex "C,"* p.24.
[8] *Id., Petition for Review*, p. 6.
[9] *Id*, p. 7.

For failure of the Provincial Treasurer to resolve the protest filed by NPC within the period of sixty (60) days and to stop the subject Assessment from becoming final and executory in accordance with *Section 195 of the LGC*, NPC filed an Appeal[10] with the RTC, Branch 32 of Dinagat Islands ("RTC"), docketed as Civil Case No. 556, entitled "*National Power Corporation v. Province of Dinagat Islands and Ermilinda C. Biol.*"

Thereafter, the RTC required both parties to file their respective memoranda, to which both parties complied.

In an Order[11] dated July 21, 2010, the RTC archived the case pending resolution on the issue of the creation of the Province of Dinagat Islands. On November 4, 2013, the RTC, in an Order[12], revived the case, considering that a Resolution on the said issue has already been resolved by the Supreme Court.

In the Judgment[13] dated April 2, 2014, the RTC denied petitioner's appeal and affirmed respondent's right to assess petitioner of franchise tax. The dispositive portion of the Judgment states:

> **WHEREFORE**, for lack of merit the appeal is **DISMISSED.**
>
> **SO ORDERED.**

On June 6, 2014, petitioner filed a Petition for Review[14] with the Court of Tax Appeals ("CTA"). The case was docketed as CTA AC No. 117, entitled "*National Power Corporation v. Province of Dinagat Islands and Ermilinda C. Biol,*" which assailed the Judgment of the RTC.

On June 30, 2014,[15] the Court, without necessarily giving due course to the Petition for Review, ordered respondents to file their respective comments within ten (10) days from receipt of the resolution.

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[10] *Id.*, Annex "E," pp. 27-35.
[11] *Id.*, p. 63.
[12] *Id.*, p. 64.
[13] *Id.*, p. 22.
[14] *Id.*, pp. 5-65, with Annexes.
[15] *Id.*, p. 67.

After the filing of respondents' "Comment with Entry of Appearance"[16] on August 7, 2014, the Court, in a Resolution dated August 20, 2014, required both parties to file their respective memoranda. Thereafter, the case was deemed submitted for decision.

On September 25, 2014, petitioner filed its "Memorandum," while respondents filed their "Respondents' Memorandum" by registered mail on October 27, 2014.

Hence, this Decision.

**THE ISSUE**[17]

The sole issue for the Court's consideration is whether or not petitioner, through its Small Power Utilities Group operating in the Province of Dinagat Islands, is liable for payment of franchise tax covering the periods 2006 to 2008.

***Petitioner's Arguments***[18]

Petitioner alleges that pursuant to *Section 6 of the EPIRA Law*, its franchise has ceased to exist or has been cancelled. Since the power of respondent Province to collect franchise tax is entirely dependent upon the effectivity of petitioner's franchise, respondent Province cannot impose franchise tax upon the cancellation of petitioner's franchise.

Furthermore, it alleges that the provision of the EPIRA Law exempting generation companies from securing a franchise has the incidental consequence of removing from the LGU's authority to impose franchise tax on them.

Finally, it alleges that its SPUG is not engaged in business taxable under *Section 137 of the LGC* as its missionary electrification function under *Section 70 of the EPIRA Law* is funded by the revenues from the sales in the missionary areas and from the universal charges to be collected from all electricity end-users as determined by the ERC.

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[16] *Id.*, pp. 69-72.
[17] *Id., Petitioner's Memorandum*, p. 88 and *Respondents' Memorandum*, pp. 98-99.
[18] *Id.*, pp. 88-95.

*Respondents' Arguments*[19]

Respondents argue that petitioner is liable to pay franchise tax as it possesses a secondary or special franchise; that it is exercising a privilege under the said franchise within the territory of respondent Province; that it qualifies as a business enjoying a franchise; and that it is engaged in missionary electrification function through its SPUG.

**THE RULING OF THE COURT**

The power of a province to impose franchise tax is found in *Section 137 of the LGC,* which reads as follows:

> Sec. 137. Franchise Tax. – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on business enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.
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> In the case of a newly started business, the tax shall not exceed one-twentieth of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year; or any faction thereof, as provided herein.

In the case of *National Power Corporation v. City of Cabanatuan*[20], the Supreme Court laid down the following requisites to determine whether petitioner is liable for franchise tax, to wit: (1) that petitioner has a "franchise" in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of respondent city government.

As found by the Supreme Court in the case of *National Power Corporation v. Province of Isabela, represented by Hon. Benjamin G. Dy,*

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[19] *Id.*, pp. 99-102.
[20] G.R. No. 149110, April 9, 2003, 401 SCRA 259.

*Provincial Governor*[21], petitioner fulfills the first and second requisites when it ruled in the following manner:

> Petitioner fulfills the first requisite. Commonwealth Act No. 120, as amended by Rep. Act No. 6395, constitutes petitioner's primary and secondary franchises. It serves as the petitioner's charter, defining its composition, capitalization, the appointment and the specific duties of its corporate officers, and its corporate life span. As its secondary franchise, Commonwealth Act No. 120, as amended, vests the petitioner [with x x x certain] powers which are not available to ordinary corporations x x x
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> x x x x
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> Petitioner also fulfills the second requisite. It is operating within the respondent city government's territorial jurisdiction pursuant to the powers granted to it by Commonwealth Act No. 120, as amended. x x x
>
> Petitioner was likewise characterized therein as a private enterprise for profit, on the following ratiocination:
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> Petitioner was created to "undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis. Pursuant to this mandate, petitioner generates power and sells electricity in bulk. Certainly, these activities do not partake of the sovereign functions of the government. They are purely private and commercial undertakings, albeit imbued with public interest. The public interest involved in its activities, however, does not distract from the true nature of the petitioner as a commercial enterprise, in the same league with similar public utilities like telephone and telegraph companies, railroad companies, water supply and irrigation companies, gas, coal or light companies, power plants, ice plant among others; all of which are declared by this Court as ministrant or proprietary functions of government aimed at advancing the general interest of society.

Following the above-quoted rulings of the Supreme Court, NPC is subjected to franchise tax. For one, it has a franchise in the sense of a secondary or special franchise, and it is selling electricity in

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[21] G.R. No. 165827, June 16, 2006, 491 SCRA 169.

the Province of Dinagat Islands, thus, satisfying the second requisite that it is operating within the respondent's Province territorial jurisdiction.

Furthermore, while it is true that petitioner's transmission function was transferred to TRANSCO pursuant to *Section 8 of the EPIRA Law,* it was not, however, fully divested from such function.

Based on *Section 70 of the EPIRA Law,* NPC performs "Missionary Electrification" function, which provides:

> Section 70. Missionary Electrification. — Notwithstanding the divestment and/or privatization of NPC assets, IPP contacts and spun-off corporations, **NPC shall remain as a National Government Owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system.** The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal change to be collected from all electricity end-users as determined by the ERC. (Emphasis supplied).

Clearly, the SPUG refers to the functional unit of petitioner, created to pursue missionary electrification function, the performance of which involves the provision of basic electricity service in unviable areas.

Thus, since petitioner's function is not limited to power generation and distribution but likewise includes a missionary function as mandated under the *EPIRA Law,* it is liable for the questioned franchise tax assessment by respondents.

However, while petitioner can be subject to franchise tax, this Court could not determine with certainty the amount of franchise tax due. Based on the records of the case, only the letters dated February

19, 2009[22], June 4, 2009[23], and August 10, 2009[24], were forwarded to this Court. These letters do not provide any amount due from NPC.

Moreover, this Court could not determine whether or not petitioner has performed its missionary electrification function in the territorial jurisdiction of the Province of Dinagat Islands for the years 2006 to 2008.

The records of the case show that the parties agreed that the issue involved in the case is purely a question of law, hence, the RTC rendered a summary judgment. Thus, the factual issues on whether or not petitioner performs its missionary function in the Province of Dinagat Islands and the amount of franchise tax liability of petitioner were not fully ventilated by the RTC.[25]

Thus, this Court has no recourse but to remand the case to the RTC for further proceedings to give both petitioner and respondents the opportunity to substantiate their respective claims.

**WHEREFORE**, premises considered, the Assailed Judgment dated April 2, 2014 of Branch 32 of the Regional Trial Court of the Dinagat Islands, Surigao City is hereby **SET ASIDE** and the records of the case are hereby **REMANDED** to the court *a quo* for further proceedings in accordance with the pronouncements in this Decision.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

*WE CONCUR:*

(On Leave)
**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

[22] *RTC Records*, "Annex B."
[23] *Id.*, "Annex C."
[24] *Id.*, "Annex D."
[25] *Rollo, Judgment*, pp. 19-22.

## ATTESTATION

I attest 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's Division.

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution*, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice