REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MUNICIPALITY OF LABRADOR PANGASINAN AND THE OFFICE OF THE MUNICIPAL TREASURER OF LABRADOR, PANGASINAN,
Petitioners,

-versus-

NATIONAL TRANSMISSION CORPORATION,
Respondent.

CTA AC Case No. 112

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
SEP 03 2014
3:15 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This is an appeal by way of a Petition for Review, filed on August 14, 2013, seeking to reverse the Decision dated December 26, 2012 and the Order dated June 28, 2013 of the Regional Trial Court (RTC), Branch 37 of Lingayen, Pangasinan in Civil Case No. 19086 entitled *National Transmission Corporation vs. Municipality of Labrador, Pangasinan and the Municipal Treasurer represented by Edualino Casipit in his capacity as the Municipal Treasurer.*

THE FACTS

Petitioner Municipality of Labrador, Pangasinan is a local government unit created by law and with capacity to sue and be sued, with its office at the Municipal Hall, Poblacion, Labrador, Pangasinan; while petitioner Office of Municipal Treasurer is a department of the Municipality of Labrador, with its office at Municipal Hall, Labrador, Pangasinan.[1]

On the other hand, respondent National Transmission Corporation (TRANSCO) is a government-owned and -controlled Corporation created under Republic Act (RA) No. 9136, with capacity to sue and be sued, with office at TRANSCO Main Building, Power Center, BIR Road corner Quezon Avenue, Quezon City.[2]

On March 13, 2006, TRANSCO received a Notice of Assessment (1st Assessment) from the Municipal Treasurer of Labrador, Pangasinan, assessing respondent for alleged local business tax for the period covering November 1999 to December 2005 in the amount of P816,294,130.74.[3]

Respondent protested the assessment in a letter dated May 9, 2006, arguing, among others, that (a) the assessment was based on mere presumptions and not on actual and true facts; (b) the local government units cannot impose taxes, fees or charges of any kind on the agencies and instrumentalities of the government; (c) the imposition of business tax amounts to double taxation; (d) the assessment was issued beyond the prescriptive period; and (e) the assessment is erroneous.[4]

Thereafter, a collection suit was instituted against respondent for the tax for the period December 26, 2002 to December 31, 2005 amounting to P104,869,800.00.[5]

Respondent received another Notice of Assessment (2nd Assessment) dated July 22, 2008 on July 24, 2008, where it was

[1] The Parties, Petition for Review, docket, p. 13.
[2] The Parties, Petition for Review, docket, p. 13.
[3] Exhibit "A", RTC Records, volume (vol.) I, pp. 22-24.
[4] Exhibit "B", RTC Records, vol. I, pp. 25-29.
[5] As found by the RTC in the assailed Decision, Annex "A", Petition for Review, docket, p. 64.

again assessed for alleged local business tax liability for taxable years 2006 to 2007 amounting to P76,283,700.00.[6]

On September 22, 2008, respondent protested the assessment on the ground that the assessment was premature.[7]

Another Notice of Assessment (3rd Assessment) was issued by petitioners to respondent on February 23, 2009, assessing respondent for local business tax for the year 2008 in the amount of P73,799,167.46.[8]

Respondent protested the 3rd Assessment on March 16, 2009, reiterating its previous arguments that the assessment is still premature as the authority of petitioners to impose business tax on respondent is still at issue before Branch 38 of RTC Lingayen.[9]

However, the protest was denied by petitioners, the notice of which was received by respondent on June 22, 2009.[10]

Another collection case was instituted against respondent for the year 2008 covered by the 3rd Assessment, docketed as Civil Case No. 18931 before RTC Branch 39 of Lingayen, Pangasinan, entitled *Municipal Treasurer of Labrador, Pangasinan vs. National Transmission Corporation.*[11]

On January 8, 2009, petitioners issued an "Order of Seizure" to Land Bank of the Philippines (LBP) where respondent maintained an account.[12]

On February 3, 2009, petitioners issued another order to Ms. Gilda E. Pico, President of LBP, this time an "Order to Deliver Money" to the extent of P76,283,700.00, representing the alleged local business tax for the period 2006 to 2007.[13]

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[6] Exhibit "C", RTC Records, vol. I, pp. 30-31.
[7] As found by the RTC in the assailed Decision, Annex "A", Petition for Review, docket, p. 64.
[8] Exhibit "E", RTC Records, vol. I, p. 33.
[9] Exhibit "F", RTC Records, vol. I, pp. 34-39.
[10] As found by the RTC in the assailed Decision, Annex "A", Petition for Review, docket, p. 64.
[11] *Ibid.*
[12] Exhibit "G", RTC Records, vol. I, pp. 40-43.
[13] Exhibit "H", RTC Records, vol. I, p. 44.

On February 11, 2009, petitioners issued Official Receipt No. 1026801 for the payment of basic tax in the amount of P76,283.700.00 for the year 2006 and 2007, indicating therein that the same was "paid under protest".[14]

A receipt was likewise issued by the Municipal Treasurer of the Municipality of Labrador, Pangasinan on July 24, 2009, stating that he received from the Office of the Legal Counsel of the Development Bank of the Philippines (DBP) a Manager's Check No. 0001304172 dated July 23, 2009 in the amount of P22,380,016.38 for the account of the Office of the Municipal Treasurer of Labrador, Pangasinan in compliance with the Order of Seizure/Confiscation and Order to Deliver Bank Account of respondent for the unpaid municipal business taxes for the year 2008, inclusive of surcharges and monthly interests dated May 27, 2009.[15]

On November 3, 2010, in the case of *National Transmission Corporation vs. Municipal Treasurer of Labrador, Pangasinan, represented by Edualino Casipit in his Capacity as the Municipal Treasurer*, docketed as CTA AC No. 67, involving the notice of assessment received by respondent on February 23, 2009 for its local business tax liability for taxable year 2008, this Court ordered the suspension of collection of tax while the Court is determining the power of herein petitioners to impose and collect local business tax against herein respondent.[16]

On March 23, 2009, respondent wrote to petitioners a letter claiming the refund of the illegally collected business tax for the years 2006 to 2007, which was later denied by petitioners in their reply letter dated April 7, 2009.[17]

Another letter was sent by respondent to petitioners on January 24, 2011 to claim the refund of the alleged illegally collected local business taxes with a total of P101,933,820.91, which were collected by petitioners from respondent's depositary banks.[18]

Subsequently, a Complaint for refund was filed by respondent with RTC Branch 37 of Lingayen, Pangasinan on February 9, 2011,

[14] Exhibit "K", RTC Records, vol. I, p. 48.
[15] Exhibit "M", RTC Records, vol. I, p. 51.
[16] Exhibit "P", RTC Records, vol. I, pp. 56-63.
[17] Exhibit "R", RTC Records, vol. I, pp. 68-69.
[18] Exhibit "S", RTC Records, vol. I, pp. 70-72.

alleging that it is a government instrumentality not liable to pay local tax; that the municipality has no power to impose local tax upon respondent because it is enjoying a franchise since only provinces or cities are empowered to levy local business taxes; that the municipal ordinance lacks reference to the business of electric power transmission; and that the situs of taxation is lacking.[19]

After the filing of the parties' respective Memorandum and defendant's Reply Memorandum, the case was submitted for judgment on the pleadings.[20]

On December 26, 2012, RTC Branch 37 of Lingayen, Pangasinan issued the assailed Decision[21], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, judgment is hereby rendered directing defendants to refund in favor of TRANSCO the business tax collected in the total amount of ONE HUNDRED ONE MILLION NINE HUNDRED THIRTY-THREE THOUSAND EIGHT HUNDRED TWENTY AND 91/100 PESOS (P101,933,820.91).
>
> SO ORDERED."

Aggrieved by the Decision of the RTC, petitioners filed their Motion for Reconsideration and Supplement to the Motion for Reconsideration, which were denied by the RTC in its Order dated June 28, 2013 and was received by respondent on July 18, 2013.[22] As a result, petitioners filed the instant Petition for Review on August 14, 2013.

On September 13, 2013, respondent filed its Comment (On the Petition for Review), praying that the petition be denied due course and be dismissed for lack of merit.[23]

Petitioners filed their Reply to the Comment on September 30, 2013.[24]

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[19] RTC Records, vol. I, pp. 1-19.
[20] RTC Records, vol. I, p. 315.
[21] Annex "A", Petition for Review, docket, pp. 51-65.
[22] Annex "B", Petition for Review, docket, pp. 66-73.
[23] Docket, pp. 338-352.

On October 2, 2013, this Court granted both parties thirty (30) days within which to file their memoranda.[25]

On November 8, 2013, a Manifestation was filed by respondent, through registered mail, stating that it is adopting its Comment filed on September 13, 2013 in compliance with the Court's Resolution dated October 2, 2013.[26] On the other hand, petitioners failed to file a Memorandum as per Records Verification dated December 9, 2013.[27]

Consequently, the Court submitted the case for decision on April 29, 2014.[28]

THE ISSUES

Petitioners interposed the following issue for this Court's resolution:[29]

Whether or not the RTC committed error when it granted the complaint for refund of respondent based on its ruling:

1. That there is no situs of taxation of the Municipality of Labrador as to the business activity of respondent;
2. That the municipal ordinance of Labrador, Pangasinan has no reference to the activity of transmission of electricity;
3. That the notices of assessment are invalid even though respondent did not appeal the same by holding that the lack of reference of the municipal ordinance to the business of transmission of electricity and the lack of situs invalidated the assessment notices; and
4. That the representations of respondent to the Energy Regulatory Commission (ERC) that it is liable to pay local business tax to the municipalities where it operated transmission grids do not constitute estoppel

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[24] Docket, pp. 362-365.
[25] Resolution dated October 2, 2013, docket, p. 367.
[26] Docket, pp. 368-371.
[27] Docket, p. 374.
[28] Docket, p. 381.
[29] Petition for Review, docket, pp. 28-29.

and even if there is estoppel, only the ERC can invoke it but not the municipalities like the Municipality of Labrador, Pangasinan.

THE COURT'S RULING

The Court will resolve first the issue pertaining to whether the RTC erred in declaring that the assessment notices issued by petitioners are invalid even if respondent did not appeal the said assessment notices.

On this matter, the assailed Decision and Order stated that the failure to appeal the assessment notices is academic in the light of the RTC's finding that there is no ordinance of petitioners which imposes business tax on the activity of transmission of electricity and that petitioners have no tax situs to impose business tax against respondent. The RTC concluded that there can be no business tax assessment to speak of as there is no right to impose the tax in the first place.

It must be noted that the Complaint filed by respondent before the RTC sought the refund of business taxes by assailing petitioners' alleged illegal imposition and collection of business tax pursuant to the assessment notices issued by petitioners for taxable years 1999 to 2008. In relation thereto, the following grounds were raised:

1. TRANSCO is a government instrumentality not liable to pay local tax;
2. The municipality has no power to impose local tax upon TRANSCO since it is enjoying a franchise because it is only the provinces or cities that are empowered to levy local business taxes;
3. The municipal ordinance lacks reference to the business of electric power transmission;
4. The lack of situs of taxation; and
5. The methodology used by petitioners in the three assessments, which were all based on the kilowatt hour transmitted by Kadampat Substation located in Labrador multiplied by the amount of transmission delivery charge to get the tax base and then applied the two percent (2%) tax rate, is erroneous.

From the foregoing, it appears that respondent's claim for refund of the taxes collected relies heavily on the cancellation of the assessments issued by petitioners.

Since the claim for refund before the RTC was actually seeking the cancellation of the assessments issued by petitioners against respondent, the applicable provisions are Sections 195 and 196 of the Local Government Code (LGC) of 1991, which are quoted as follows:

> SEC. 195. ***Protest of Assessment***. - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**
>
> SEC. 196. ***Claim for Refund of Tax Credit***. - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge **erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer.** No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the

taxpayer is entitled to a refund or credit. *(Emphases supplied)*

Under Section 195, if the taxpayer disagrees with the assessment, a protest or appeal may be filed, and the requirements to question the assessment are laid down in Section 195.

In the case of *San Juan vs. Castro, in his capacity as City Treasurer of Marikina City*[30], the Supreme Court held that a taxpayer who disagrees with a tax assessment made by a local treasurer may file a written protest thereof in accordance with Section 195 of the LGC of 1991.

Section 195 of the LGC of 1991 clearly provides that "the taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period xxx within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable".

On the other hand, the taxpayer may, instead of filing a written protest, opt to pay the tax, fee or charge and then seek a refund thereof within the 2-year statute of limitation. The payment, if an assessment is issued, must be made before the lapse of the 60-day period from receipt thereof, otherwise, the assessment becomes final and executory and it may no longer thus be disputed.[31]

Records of this case reveal that respondent claims the refund of local business taxes which petitioners collected from respondent's depositary banks in the total amount of P101,933,820.91, which was allegedly released on February 11, 2009, July 29, 2009, August 3, 2009 and July 24, 2009[32] pursuant to the three assessments issued by petitioners against respondent. As found by the RTC, for the Notice of Assessment dated March 13, 2006 covering the period November 1999 to December 2005, respondent filed a protest on May 11, 2006. Before the 60-day period to file an appeal could elapse, it became a collection suit via Civil Case No. 18717 before RTC Branch 38 for the tax covering the period December 26, 2002 to December 31, 2005 amounting to P104,869,800.00. For the Notice

[30] G.R. No. 174617, December 27, 2007.
[31] Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 2nd edition, Rex Book Store, Manila, Philippines, 2000, pp. 463-464.
[32] Exhibit "S", RTC Records, vol. I, pp. 70-72.

of Assessment dated February 23, 2009 covering the year 2008, respondent filed a protest on March 16, 2009. Again, before the expiration of the 60-day period to appeal on May 16, 2009, respondent became a respondent in Civil Case No. 18931 before RTC Branch 39. It also received a treasurer's denial of its protest dated March 16, 2009 on June 22, 2009. The Notice of Assessment on July 24, 2008 for the period 2006 to 2007 was protested by respondent on September 22, 2008 for being premature as there is still a pending case contesting the right to tax before RTC Branch 38.

It is clear from the foregoing that respondent filed letters of protest on the assessment notices issued by petitioners instead of paying the amount indicated in the assessment within the 60-day period to protest pursuant to Section 195 of the LGC. Furthermore, the RTC itself found in the assailed Decision that there was no original action on the part of respondent to appeal the three assessment notices with the competent court.[33]

In view of respondent's failure to appeal the assessment notices issued by petitioners, the said assessment notices from which the alleged illegal collection of taxes was based were already final, executory and unappealable pursuant to Section 195 of the LGC.[34]

Accordingly, the Court cannot sustain the grant by the RTC of respondent's claim for refund considering that a grant of the refund claim would necessarily violate Section 195 of the LGC, which specifically renders an assessment final and executory when no appeal from the denial of the protest on the assessment or from the lapse of the sixty-day period within which to appeal with the court of competent jurisdiction was made.

As already held by the Court sitting *En Banc* in the case of *International Container Terminal Services, Inc. vs. The City of Manila, et al.*[35], a taxpayer is given every remedy in law to protect itself against possible abuses that a taxing authority may commit and these remedies should not be ignored or taken lightly but should be taken advantage of.

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[33] Annex "A", Petition for Review, docket, p. 64.
[34] See *China Banking Corporation v. City Treasurer of Manila*, C.T.A. EB Case No. 738, April 17, 2012 and *City Treasurer of Manila v. China Banking Corporation*, C.T.A. AC NO. 20, May 4, 2007.
[35] CTA EB No. 277, September 5, 2008.

In this case, respondent should have appealed the denial of its protest within thirty (30) days from the receipt of the denial or from the lapse of the sixty-day period within which to appeal with the court of competent jurisdiction. Due to respondent's failure in this regard, the assessment notices issued by petitioners against respondent became conclusive and unappealable. Accordingly, the claim for refund on taxes collected based on the final and executory assessments issued by petitioners must necessarily fail.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The assailed **ORDER** of the RTC dated June 28, 2013 which upheld the **DECISION** dated December 26, 2012, both in Civil Case No. 19086 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Complaint filed by respondent TRANSCO in the RTC in Civil Case No. 19086 is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinión of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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