REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MATERNO ATO, in his capacity as the Officer-In-Charge at the Provincial Assessor's Office of Ilocos Sur and Engr. NESTOR E. APOLONIO, in his capacity as the Municipal Assessor of San Esteban, Ilocos Sur,
Petitioners,

-versus-

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Respondent.

CTA *EB* NO. 1390
(CBAA Case No. 131)

x -- x

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

-versus-

CENTRAL BOARD OF ASSESSMENT APPEALS; LOCAL BOARD OF ASSESSMENT APPEALS OF THE PROVINCE OF ILOCOS SUR; FATIMA A. TENORIO, PROVINCIAL ASSESSOR OF ILOCO SUR; and ENGR. NESTOR E. APOLONIO, MUNICIPAL ASSESSOR OF SAN ESTEBAN, ILOCOS SUR,
Respondents.

CTA *EB* NO. 1391
(CBAA Case No. 131)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

AUG 23 2017 3:42p.m.

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RESOLUTION

BAUTISTA, J:

For resolution are the following:

1. Motion for Reconsideration filed by National Grid Corporation of the Philippines ("NGCP") on May 26, 2017; with the Assessors' Comment and Opposition (Re: Motion for Reconsideration dated May 25, 2017) filed by registered mail on June 13, 2017; and

2. Assessors' Manifestation filed by registered mail on July 12, 2017, with attached Comment and Opposition (Re: Motion for Reconsideration dated May 25, 2017).

On April 26, 2017, the Court *En Banc* promulgated a Decision[1], the dispositive portion[2] thereof reads as follows:

> **WHEREFORE,** the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, the CBAA Decision dated March 27, 2015 and the CBAA Resolution dated August 31, 2015 are hereby **REVERSED and SET ASIDE**; and the Orders dated August 12, 2013 and January 15, 2014, both promulgated by the LBAA, are hereby **AFFIRMED.**
>
> **SO ORDERED.**[3]

In its Decision, the Court *En Banc* first found that it has jurisdiction over the case at bar. However, since petitioner failed to comply with the requirement of payment upon protest, the Court *En Banc* ruled that the Orders dated August 12, 2013 and January 15, 2014 issued by the Local Board of Assessment Appeals ("LBAA") are correct, and that the action filed before the LBAA was premature.

The Court *En Banc* explained that when an assessment is issued, the taxpayer (owner or person with legal interest over the property) may: *(1)* question its reasonableness or correctness; or *(2)* question its legality or validity. In order to determine the proper process to be followed, the Court *En Banc* first looked into the issues brought by NGCP before the LBAA. It noted that while NGCP failed to list down the issues in its Petition filed before the LBAA, its arguments and prayer show that the reason why NGCP is asking for the properties to be re-classified in the assessment roll is because it is

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[1] *Rollo, CTA EB No. 1390 & 1391, Decision,* pp. 197-215.
[2] *Id., Dispositive Portion,* p. 214.
[3] Emphases retained.

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claiming exemption from real property tax ("RPT"). Citing the cases of *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[4] *("Pagbilao")* and *Camp John Hay Development Corporation v. CBAA, et. al.*[5] *("Camp John Hay")*, the Court *En Banc* declared that a claim of exemption pertains to questioning the correctness of the assessment, and as such, payment under protest pursuant to *Section 252(d) of the 1991 Local Government Code ("LGC")* should first be complied with before the taxpayer can file an appeal with the LBAA under *Section 226 of the 1991 LGC*. The Court *En Banc* did not discuss the remaining issues for being moot and academic.

In NGCP's Motion for Reconsideration, it avers that the applicable provision in the filing of the Appeal/Petition before the LBAA is *Section 226* and not *Section 252 of the 1991 LGC*; that *Section 252 of the 1991 LGC* is entirely separate and distinct from *Section 226 of the 1991 LGC*; and that, citing *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City ("Systems Plus")*[6], the remedy of appeal before the LBAA is available from an adverse ruling or action of the provincial, city or municipal assessor in the assessment of property. It went on to state that the ruling in the *John Hay* and *Pagbilao* cases are inapplicable to the case at bar; and that with the Supreme Court Decision in *NGCP v. Oliva*[7] *("Oliva")*, the properties subject of the instant case should be declared exempt from payment of RPT.

The Assessors counter that there is a need to comply with *Section 252 of the 1991 LGC*; that the Petition filed before the LBAA questioned the reasonableness of the assessment made by the assessor; and that NGCP is claiming exemption over the properties assessed for taxation purposes. They argue that the case of *Systems Plus* is inapplicable to the present case; that in that case, petitioner made a request to the assessor to extend tax exemption; and that in the present case, no such request was made, instead NGCP directly filed a Petition with the LBAA. The Assessors likewise posit that payment under protest is provided under the *1991 LGC* (a general law), which takes precedence over the *Consolidated and the Revised Rules of Procedure before the LBAA and the CBAA* (a regulation or issuance of the Department of Finance); that it is a mandatory requirement to pay the assessed RPT before a protest can be rightfully filed; and that if NGCP wanted to prove that the subject

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[4] G.R. No. 171586, January 25, 2010, 611 SCRA 71.
[5] G.R. No. 169234, October 2, 2013, 706 SCRA 547.
[6] G.R. No. 146382, August 7, 2003, 408 SCRA 494.
[7] G.R. Nos. 213157 & 213558, August 10, 2016.

properties were indeed exempt from RPT, it could have complied with *Section 206 of the 1991 LGC*, which it failed to do.

In their Manifestation, the assessors aver that they received a Resolution from the Court directing them to file their comments to NGCP's Motion for Reconsideration; that they already filed their Comment on June 13, 2017; and that they adopt the said Comment in compliance with the order of the Court *En Banc*.

Acting on the Manifestation filed by the assessors, the same is hereby **NOTED**. The Court *En Banc* shall proceed to resolve the present Motion for Reconsideration.

The Court *En Banc* finds no merit in NGCP's Motion for Reconsideration. A perusal of its contents shows that the grounds raised therein are similar to the ones found in its Memorandum or were already touched upon in the assailed Decision. Reproduced hereunder are NGCP's arguments, as appearing in the April 26, 2017 Decision:

> ***NGCP's Arguments***
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> NGCP avers that it is exempt from payment of RPT on the subject properties under *Section 9 of NGCP's Franchise*; that the subject properties, which are integral parts of San Esteban Substation, are exempt from RPT under *Section 234(c) of the 1991 LGC*; that payment under protest is not required for appeals before the LBAA under *Section 226 of the 1991 LGC*; and that NGCP is qualified to claim the special assessment level of 10% applied to machineries and control houses under *Sections 216 and 218 of the 1991 LGC*.[8]

The Court *En Banc*, however, emphasizes that *Section 226 of the 1991 LGC* was taken into consideration in the assailed Decision. It was harmonized with *Section 252(d) of the 1991 LGC* in accordance with the Supreme Court cases of *Pagbilao* and *Dr. Olivarez, et. al. v. Mayor Marquez*[9]. The Court *En Banc* finds no justifiable reason to deviate from the rulings of the Supreme Court. The payment under protest contemplated under *Section 252 of the 1991 LGC* is required

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[8] *Rollo, CTA EB No. 1390, NGCP's Memorandum*, pp. 140-163.
[9] G.R. No. 155591, September 22, 2004, 438 SCRA 679.

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where there is a question as to the reasonableness or correctness of the amount assessed.

While the Supreme Court stated in the case of *Systems Plus* that "[u]nder Section 226 of [1991 LGC], the remedy of appeal to the Local Board of Assessment Appeals is available from an adverse ruling or action of the provincial, city or municipal assessor in the assessment of property," the same was an opinion entirely unnecessary for the decision of the case. In *System Plus*, the taxpayer filed a petition for *mandamus* with the Regional Trial Court ("RTC") which was dismissed for being premature, and its motion for reconsideration was likewise denied. It then filed a petition for *certiorari* with the Supreme Court imputing grave abuse of discretion on the part of the RTC. In determining whether the RTC acted with grave abuse of discretion in dismissing its petition for *mandamus*, the Supreme Court ruled that *mandamus* does not lie against the assessor in the exercise of his function of assessing properties for taxation purposes, and accordingly dismissed the petition for *certiorari*. Its discussion of *Section 226 of the 1991 LGC* is an *obiter dictum*; that is, it does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point.[10] In fact, the Supreme Court was not given an opportunity to determine the correlation between *Section 226 and 252 of the 1991 LGC* in *Systems Plus* since only *Section 226* was discussed therein.

In view of the Court *En Banc*'s determination that NGCP failed to comply with the requirement of payment upon protest, it deems it unnecessary to dwell on the applicability of *Oliva* case.

Hence, the Court *En Banc* finds no cogent reason to reverse its Decision.

WHEREFORE, NGCP's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[10] *Office of the Ombudsman v. Court of Appeals*, G.R. No. 146486, March 4, 2005, 452 SCRA 714.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice