REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

KEPCO PHILIPPINES CORPORATION,
Petitioner,

- versus -

THE CITY OF MAKATI,
Respondent.

C.T.A. AC NO. 23

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
AUG 2 4 2007

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DECISION

UY, J.:

Before Us is a Petition for Review filed on May 18, 2006 pursuant to Rule 8, Section 4 (a) of the Revised Rules of the Court of Tax Appeals seeking to set aside the Decision dated December 16, 2005, and the Order dated April 4, 2006, both rendered by Branch 57 of the Regional Trial Court of the City of Makati in Civil Case No. 05-438 entitled "Kepco Philippines Corporation v. The City of Makati", the respective dispositive portions of which read as follows:

DECISION dated December 16, 2005:

"**WHEREFORE**, premises considered, the instant Appeal is hereby ordered DISMISSED for lack of merit.

SO ORDERED."

ORDER dated April 4, 2006:

"WHEREFORE, the afore-stated motion is hereby DENIED.

SO ORDERED."

THE FACTS

Petitioner, Kepco Philippines Corporation (KEPHILCO), is a domestic corporation duly organized and existing under and by virtue of Philippine Laws with principal business address at the 18th Floor Citibank Tower, 8741 Paseo de Roxas, Salcedo Village, Makati City. On the other hand, respondent, City of Makati is sued in its capacity as a local government unit, which classified petitioner as a "contractor" for purposes of local business tax, and may be served with summons, notices and other legal processes through its City Legal Officer, at the Makati City Hall, Makati City.

It appears that sometime in May 1995, Korea Electric Power Corporation (KEPCO) and the National Power Corporation (NPC) entered into a Rehabilitation, Operation, Maintenance and Management (ROMM) Agreement whereby the former undertook to rehabilitate and manage the 650 MW Malaya Thermal Power Plant. As a subsidiary of KEPCO, petitioner assumed the latter's rights and obligations under the ROMM Agreement pursuant to an Accession Undertaking on July 3, 1995.

Prior to its transfer to the City of Makati, petitioner's principal office was located in Pasig City where it was issued a Mayor's Permit under the classification of "manufacturer" for the payment of local business taxes thereat. Upon the expiration of its income tax holiday in 2001, it paid the required local business tax owing to the said city under the classification of "manufacturer".

Sometime in 2003, petitioner transferred its principal office to Makati City and applied for a new Mayor's Permit thereat, and was issued the same on January 28, 2004 classifying it as "specialty contractor" for local business tax purposes. Upon renewal thereof in 2005, petitioner was again classified as a "contractor" and was issued an assessment for the payment of local business tax for the first quarter of said year under said classification. Petitioner correspondingly paid taxes in the amount of P1,908,590.75, and filed its protest to the said assessment in a Letter dated March 17, 2005 to the City Treasurer of Makati City [1], indicating that it is protesting its classification as a "contractor" for purposes of paying the local business tax for the first quarter of 2005.

The City Treasurer, Dulce P. Cruz, in her Letter dated April 14, 2005, denied petitioner's protest stating that the activities of KEPHILCO fall within the purview of contractor, as contemplated under Section 131 (h) of the Local Government Code of 1991 (LGC), making it subject and liable to pay the business tax under Section 143 (e) of the same Code."[2]

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[1] Annex "E", Docket, p. 25.
[2] Annex "F", Docket, p. 28.

Not satisfied, petitioner filed its appeal with the Regional Trial Court of the City of Makati, Branch 57, on May 18, 2005 in accordance with Section 195 of the LGC.[3] Two issues were raised by petitioner in said case, to wit: (1) whether Mr. Hwang, Soo-Hwan, appellant's Accounting Manager, has the authority to institute the action and; (2) whether or not the appellant should be re-classified from contractor to manufacturer with respect to the payment of the necessary local business taxes due the appellee.

On December 16, 2005, the lower court rendered the assailed Decision[4] dismissing petitioner's appeal for lack of merit for failure of petitioner to append thereto, a copy of the Board of Directors' Resolution, or a Secretary's Certificate showing appropriate authority of its accounting manager, Mr. Hwang, Soo-Hwan, to institute said case. Further, it denied petitioner's prayer that it should be re-classified as "manufacturer" and not as "contractor" for local business tax purposes, and held that petitioner is not a "manufacturer" because it does not undertake some kind of processing of raw materials to produce a special product or some combination of such materials with other materials or products to produce a finished product of a different kind; and that by a simple reading of the primary purpose of which KEPHILCO was established, as indicated in its Article of Incorporation, to wit: to "*build, operate, maintain and manage the 1200MW Combined cycle Power Plant in Ilijan, Batangas, Philippines* x x x", clearly shows that these pertain to the rendition of services covered under the definition of a contractor - that which

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[3] Annex "G", Docket, pp. 29-38.

[4] Decision rendered by the Hon. Reinato G. Quilala, Presiding Judge of Branch 57, Regional Trial Court of Makati City, Docket, pp. 18-21.

includes persons whose activity consists essentially of the sale of all kinds of services for a fee.

Petitioner filed its Motion for Reconsideration of the aforesaid Decision on March 27, 2006, and the same was likewise denied by the lower court on April 4, 2006 on a procedural ground, to wit: that the said motion was fatally defective for failure to comply with the notice requirement, as mandated under Sections 4 and 5, Rule 15 of the Rules of Court.

Having allegedly received said Order on April 20, 2006, petitioner filed this Petition for Review on May 18, 2006. In the Resolution dated May 25, 2006[5], respondent was directed to file its Comment thereto, but respondent did not comply with said directive. Thereafter, on August 2, 2006, a Resolution was issued by this Court requiring the parties to submit their respective memorandum within thirty (30) days from notice.[6] Both parties complied. Petitioner filed its Memorandum on September 5, 2006 and respondent on September 8, 2006 and this case was considered submitted for resolution on September 18, 2006[7]. Subsequently, however, this Court directed the Branch Clerk of Court of Branch 57 of the Regional Trial Court of the City of Makati to forward the entire records of this case in the Resolution dated April 10, 2007[8] pursuant to the provisions of Section 4(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals, to enable this Court to fully appreciate and review the facts of this case.

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[5] Docket, p. 40.
[6] Ibid., at p. 43.
[7] Id., at p. 81.
[8] Id., at p. 83.

On May 29, 2007, the Officer-in-Charge of said court forwarded the entire records of Civil Case No. 05-438 to this Court. Hence, this Decision.

PETITIONER'S ARGUMENTS

In the instant petition, it is petitioner's contention that the absence of the Secretary's Certificate when the appeal was originally filed is not sufficient ground to dismiss the appeal, and that the absence of the date and time in the notice of hearing in its Motion for Reconsideration are not fatal omissions which would justify the denial of said motion; that it is a manufacturer not a contractor, since the nature of its business activity is not, in any way, directly or indirectly, engaged in the construction industry, and in fact has no other line of business wherein any income or profits can be earned, other than to operate the power plant and sell electricity to NPC. Allegedly, its Articles of Incorporation even specifically state that "xxx in no event shall the Corporation itself engage in the general supply, or distribution of electricity, in retail trade or in the public utility, or furnish electricity to end-users or consumers, or provide a public service xxx".

According to petitioner, it cannot be denied that, devoid of any technical details, it alters the steam which the turbines of its plants produce, and convert these into electricity. Without the process of alteration, steam or any other type of raw material alone, cannot be used as electricity or transformed into energy. The operation and maintenance of the plant is merely incidental to its main line of business activity – that is to sell electricity.

The nature of the business activity of the petitioner is all but consistent with the definition of a generation company provided under the law.[9]

Furthermore, petitioner asserts that the difference between the nature of business of a manufacturer and a contractor, is that a manufacturer sells what is commonly known as commodity, while a contractor, on the other hand, sells services; and, with respect to the basis of payment, manufacturers are paid by the quantity of the commodity they produce, while contractors are paid on the number of days or man-hour it takes to complete a certain project.

RESPONDENT'S COUNTER-ARGUMENTS

Respondent, for its part, maintains that the lower court committed no grave abuse of discretion in dismissing petitioner's appeal. The finding by the lower court that there was no compliance with the required verification/certification is proper since the filing of the appeal by one Mr. Hwang, Soo Hwan, Finance Manager of petitioner, was without a showing of authority by the latter's duly constituted Board of Directors through a Board Resolution, nor was there a Secretary Certificate annexed to the appeal. Respondent likewise avers that there was no error on its part in classifying petitioner as a contractor instead of a manufacturer, because petitioner's main and sole purpose of establishment, as indicated in its Articles of Incorporation is, "to rehabilitate, operate, maintain and manage the Malaya Power Complex". Clearly then petitioner is engaged in the sale of service covered under the definition of a contractor.

[9] Citing Section 4 (x) (y) of Republic Act No. 9136 or the EPIRA Law of 2001.

THE ISSUES

The issues for resolution of this Court are:

(1) Whether or not the lower court erred and committed grave abuse of discretion amounting to lack of or excess of jurisdiction when it denied petitioner's appeal and later, its motion for reconsideration, on mere procedural grounds; and

(2) Whether or not the lower court erred and committed grave abuse of discretion amounting to lack of or excess of jurisdiction when it classified the petitioner as a contractor and not as a manufacturer, without taking into consideration the nature of its business activity.

THE COURT'S RULING

Is the dismissal of petitioner's appeal for failure to attach the Board of Director's Resolution or Secretary's Certificate showing the authority of the signatory to sign the Verification/Certification valid?

It is axiomatic that a corporation may exercise the powers expressly conferred upon it by the Corporation Code, and those that are implied by or are incidental to its existence through its board of directors and/or duly authorized officers and agents.[10] Hence, physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by specific act of the board of directors.[11] In the absence of authority from the board of directors, no person, not even the officers of the corporation, can bind the corporation.[12]

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[10] BPI Leasing Corporation v. Court of Appeals, 416 SCRA 4 (2003).
[11] Yao Ka Sin Trading vs. Court of Appeals, 209 SCRA 763 (1992).
[12] Public Estates Authority vs. Uy, 372 SCRA 180 (2001).

Petitioner contends that the failure to attach a Secretary's Certificate is not fatal to its case and a mere omission as to form, but does not in any way affect the jurisdiction of the lower court nor deprive the respondent of any of its procedural rights.

We do not agree.

A careful review of the original records of this case in Civil Case No. 05-438, Branch 57 of the Regional Trial Court of Makati City, reveals that petitioner's appeal thereat, did not indicate that the person who signed the Certification (on non-forum shopping)/Verification, Mr. Hwang, Soo Hwan, was duly authorized to do so. In fact, no power of attorney, secretary's certificate or board resolution to prove the affiant's authority was attached to the appeal filed before the lower court. Thus, the appeal was not properly verified. Since the appeal lacked proper verification, the same is to be treated as an unsigned pleading subject to dismissal.[13]

The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are not accompanied by proof that said signatory is authorized to file a petition on behalf of the corporation. In the instant case, it took petitioner fifty (50) days from filing of its initiatory pleading with the lower court, or on July 7, 2005, to realize its patent mistake. And in its attempt to cure such mistake, petitioner merely appended its Secretary's Certificate to its Reply/Manifestation that it filed with the lower court without the proper motion to admit the same.

[13] San PabloMfg. Corporation vs. Commissioner of Internal Revenue, G.R. No. 147749, June 22, 2006, citing Soller v. Commission on Elections, 339 SCRA 685 (2000).

Hence, the lower court correctly ruled that said submission, being an after-thought, cannot be deemed substantial compliance with the rules. Petitioner clearly failed to take appropriate measure to remedy an obvious procedural lapse. It is also worth noting that petitioner has failed to amply explain the reason for the delay, in fact there was nothing in the petition for review it filed with this Court that satisfactorily explains the unreasonable delay.

Well established is the rule that the right to appeal is a statutory right and a party who seeks to avail of this right must faithfully comply with the rules and it would be incorrect to perceive the requirement of the rules on appeal as trivial technicalities that can be trifled and dispensed with. Therefore, We find no grave abuse of discretion committed by the lower court in dismissing petitioner's appeal for failure to comply with the requisite verification/certification.

Is the denial of petitioner's Motion for Reconsideration due to the lack of time and date in the notice of hearing valid?

It must be stressed that a notice of hearing is an integral component of procedural due process. It is intended to afford adverse parties a chance to be heard before the motion is resolved by a Court.[14] In this case, the time and date in the notice of hearing of a motion for reconsideration is wanting. However, since respondent was personally served a copy of the motion on the same day petitioner filed it in court, it does not appear that respondent's

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[14] Gloria M. Estipona and Manuel Estipona vs. Miguel R. Navarro and Roberto Miguel, 69 SCRA 285 (1976).

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right to procedural due process was unduly hampered. In fact, respondent was able to intelligibly prepare its opposition to the motion and was able to argue both procedural and substantive issues affecting the case.

As correctly pointed out by petitioner, what the law eschews is not the lack of previous notice of hearing, but the lack of opportunity to be heard.[15] There being no injury on the part of the adverse party, herein respondent, as it was able to timely and comprehensively prepare its opposition to the motion, the strict application of Sections 4 and 5 of Rule 15 of the 1997 Rules of Civil Procedure may be relaxed in the instant case.

But even if the aforementioned procedural infirmities were to be disregarded, the instant petition must still fail on the substantive issue raised as discussed herein below.

Whether or not petitioner should be classified as "manufacturer" or "contractor" for payment of the local business tax purposes?

To determine the nature of petitioner's business activity, it is primordial that We look into the primary purpose for its incorporation as embodied in its Articles of Incorporation, to wit:

"**PRIMARY PURPOSE**

> To rehabilitate, operate, maintain and manage the Malaya Power Complex in Pililia, Rizal, Philippines, and other power generating plants and related facilities for the conversion into electricity of fuel; provided, that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service, or engage in industries or activities reserved by the

[15] Rafael Patricio vs. Oscar Leviste and Bienvenido Bacalocos, 172 SCRA 774 (1989).

Constitution or by law to corporations wholly or partially-owned by Filipino citizens".[16]

Based on the aforequoted primary purpose, it is clear that petitioner-corporation was established to rehabilitate, operate, maintain and manage the Malaya Power Complex in Pililia, Rizal, Philippines, and other power generating plants and related facilities for the conversion into electricity of fuel, with the proscription that it shall not engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service, or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially-owned by Filipino citizens.

In pursuit of the purpose for which it was created, petitioner subsequently entered into an Accession Undertaking[17] with KEPCO and NPC wherein it assumed the responsibilities of KEPCO to NPC under a "Rehabilitation, Operation, Maintenance and Management (ROMM) Agreement"[18] entered into sometime in May, 1999.

What then is the true nature of petitioner's business? We take a closer look at some pertinent provisions of the ROMM Agreement as We quote pertinent portions thereof to assist this Court in resolving this issue, to wit:

"ARTICLE 2
SCOPE OF AGREEMENT

2.1 <u>CONTRACTUAL INTENT.</u>

(a) In entering into this Agreement, the parties hereby declare and affirm that their primary contractual intent is for CONTRACTOR

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[16] Amended Articles of Incorporation of KEPCO Philippines Corporation, Docket, p. 69.
[17] Accession Undertaking, Civil Case No. 05-438, Records, pp. 79-81.
[18] ROMM Agreement, Civil Case No. 05-438, Records, pp. 12-78.

(referring to Korea Electric Power Corporation), subject to the terms and conditions herein set forth, to rehabilitate, operate, maintain and manage the Power Complex at its own cost, for NPC to supply the Fuel requirements of the Power Complex at its own cost and pay the CONTRACTOR the agreed fees in converting such Fuel into electricity and for CONTRACTOR to transfer the Power Complex to NPC on the Transfer Date.

(b) All the provisions of this Agreement shall be interpreted to accomplish the foregoing contractual intent.

(c) In furtherance of their contractual intent, the parties have set out in this Agreement their rights and obligations and the necessary steps to be taken for the implementation of the Project.

2.2 <u>REHABILITATION, OPERATION, MAINTENANCE, AND MANAGEMENT OF POWER COMPLEX.</u> CONTRACTOR, subject to the terms and conditions herein set forth, shall cause and be responsible for the rehabilitation, operation, maintenance and management of the Power Complex, at its own cost, in accordance with Schedule 1 (Scope of Works). Following the Completion Date, the Units shall be capable of operating within the Operating Parameters of the respective Units.

2.3 <u>RESPONSIBILITIES OF CONTRACTOR.</u>

(a) CONTRACTOR shall be responsible for the execution and implementation of the works enumerated and described herein, including related works that may be necessary to restore the Units to their designed or guaranteed conditions as set forth in this Agreement.

(b) CONTRACTOR shall be responsible for obtaining visas and work permits for foreign personnel, the recruitment of local labor and compliance with all local and other regulations including the payment of all fees and costs thereof.

(c) CONTRACTOR shall be responsible for all costs of CONTRACTOR in connection with the rehabilitation of the Power Complex.

(d) **CONTRACTOR shall be responsible for the rehabilitation, operation, maintenance and management of the Power Complex.**

(e) CONTRACTOR shall guarantee that in the operation of the Power Complex, environmental regulations and other national and local laws are complied with, subject to the provisions of Article 2.3(f), Article 5.7, Article 7.15 and Article 9.4.

(f) CONTRACTOR shall be responsible for securing all necessary environmental permits and all licenses and approvals required for the fulfillment of its obligations under this Agreement.

"2.4 <u>**RESPONSIBILITIES OF NPC**</u>

(a) NPC shall assist CONTRACTOR with respect to its responsibilities under Article 3 on a best efforts basis and shall extend reasonable assistance to CONTRACTOR in obtaining visas and work permits for CONTRACTOR's foreign personnel.

(b) **NPC shall, at its own cost, supply Fuel in accordance with the specifications set out in Schedule 4 (Fuel Management)** and if necessary, construct, install and connect additional transmission lines, substations and any other ancillary equipment and systems.

(c) **NPC shall take all electricity generated by the Power Complex, and shall pay to CONTRACTOR the fees as provided in Schedule 7 (Delivery of Power and Energy).** NPC shall pay for all electricity requested by it and for the Minimum Energy Off-Take as specified in Schedule 7 (Delivery of Power and Energy) on a take-or-pay basis.

(d) **NPC shall pay to CONTRACTOR the fees stipulated in Article 7 and Schedule 7 (Delivery of Power and Energy) and such other amounts which may be due and owing to CONTRACTOR under this Agreement**

(e) NPC shall, at its own cost, ensure that the transmission line from the outgoing gantry of the switching facility within the Site is capable of operating to the maximum capacity of the Power Complex; otherwise, NPC shall, within a period of one (1) year from the date such transmission line is incapable of operating as aforesaid, upgrade and rectify the transmission line system provided that, in no case shall NPC's obligation to pay CONTRACTOR for all electricity requested and for the Minimum Energy Off-Take be affected. In the event that NPC shall not have sufficient funds for upgrading and rectifying the transmission line system, the parties may agree that CONTRACTOR shall upgrade and rectify the transmission line system upon mutually acceptable terms and conditions.

(f) NPC shall be responsible for and shall bear all costs incurred by it in connection with the performance of its obligations hereunder

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2.7 <u>OWNERSHIP.</u>

(a) **NPC shall retain legal ownership over all the assets of the Power Complex and all improvements thereon, however, for the duration of this Agreement, NPC shall transfer the possession of the Power Complex to CONTRACTOR subject to the conditions set forth in Article 8.1 (a).**

x x x x x

2.8 **<u>TRANSFER.</u> On the Transfer Date, and upon full payment by NPC of all its outstanding accounts with CONTRACTOR, CONTRACTOR shall, as provided in Article 8.1, transfer to NPC full possession of the Power Complex and of any and all the improvements, works and structures rehabilitated, constructed, improved, and introduced by CONTRACTOR in the Power Complex, free from any lien, encumbrance or claim that may have been created by the CONTRACTOR** (*Emphasis Ours).*" [19]

Based on the contractual intent of the parties, petitioner, under its Accession Undertaking stepped into the shoes of the CONTRACTOR in the ROMM Agreement, and as defined therein, bears the obligation to rehabilitate, operate, maintain and manage the Malaya Power Plant in Barrio Malaya, Pililia, Rizal at its own cost (Sec. 2.1 [a]), while the NPC is obligated to supply and shoulder the cost of the fuel requirements of the Power

[19] Ibid, pp. 24-28.

Complex to be used by petitioner in converting said fuel into electricity (Sec. 2.4 [b]). NPC then pays the petitioner the stipulated "**fees**" in converting such fuel into electricity (Sec. 2.4 [d]). Thereafter, on transfer date agreed upon, petitioner shall transfer the Power Complex to NPC upon full payment by NPC of all its outstanding accounts with petitioner. It was also stipulated that NPC retains legal ownership over all the assets of the Power Complex and all improvements thereon for the duration of the ROMM Agreement (Section 2.7 [a]).

There is no argument that the undertakings of petitioner to rehabilitate, operate, maintain and manage the Malaya Power Plant come in the form of services. The controversy lies in the additional undertaking of petitioner to convert fuel (supplied by NPC) into electricity. Is this act of converting fuel into electricity allegedly through the alteration of the steam produced by the turbine of its plant into electricity, sufficient to classify petitioner as a manufacturer instead of a contractor?

We rule in the negative.

For a clearer understanding of what is a contractor and a manufacturer, We look into the definitions thereof as provided in Sections 131 (h) and (o) of the Local Government Code of 1991,[20] to wit:

> "SEC. 131. *Definition of Terms.* –When used in this Title, the term:
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> x x x x x
>
> (h) '**Contractor' includes persons, natural or juridical,** not subject to professional tax under Section 139 of this Code, **whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of**

[20] Republic Act No. 7160.

the physical or mental faculties of such contractor or his employees.

As used in this Section, the term 'contractor' shall include general engineering, general building, and specialty contractors as defined under applicable laws; filling, demolition and salvage works contractors; proprietors or operators of mine drilling apparatus; proprietors or operators of dockyards; persons engaged in the installation of water system, and gas or electric light, heat or power; proprietors or operators of smelting plants; engraving, plating and plastic lamination establishments; proprietors or operators of establishments for repairing, repainting, upholstering, washing or greasing of vehicles, heavy equipment, vulcanizing, recapping and battery charging; proprietors or operators of furniture shops and establishments for planing or surfacing and recutting of lumber, and sawmills under contract to saw, or cut logs belonging to others; proprietors or operators of dry-cleaning or dyeing establishments, steam laundries and laundries using washing machines; proprietors or owners of shops for the repair of any kind of mechanical and electrical devices, instruments, apparatus, or furniture and shoe repairing by machine or any mechanical contrivance; proprietors or operators of establishments or lots for parking purposes; proprietors or operators of tailor shops, dress shops, milliners and hatters, beauty parlors, barbershops, massage clinics, sauna, Turkish and Swedish baths, slenderizing and building saloons and similar establishments; photographic studios; funeral parlors; proprietors or operators of hotels, motels and lodging houses; proprietors or operators of arrastre and stevedoring, warehousing, or forwarding establishments; master plumbers; smiths, and house or sign painters; printers, bookbinders, lithographers; publishers except those engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of advertisements; business agents, private detective or watchman agencies, commercial and immigration brokers, and cinematographic film owners, lessors and distributors." *(Emphasis Ours)*

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"(o) **'Manufacturer'** includes every person who, by physical or chemical process, alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any raw material or manufactured or partially manufactured products so as to reduce it to marketable shape or prepare it for any of the use of the industry, or who by any such process, combines any such raw materials or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished products of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition, alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption."

Petitioner's main assertion that it is a manufacturer rests on its obligation to transform fuel, the raw material needed, into electricity. If indeed it is a manufacturer, it is quite peculiar that NPC owns the power plant complex, the improvements thereon, supplies the raw-material/fuel needed to generate electricity, and receives all the electricity generated by the Malaya Power Plant Complex for transmission and sale to end-users. Evidently, what was merely turned over to petitioner was the physical possession of the power plant complex during the entire duration and effectivity of the ROMM Agreement, for several purposes: to rehabilitate, operate, maintain and manage the power plant complex and to convert fuel into electricity, which all come in the nature of rendition of services for a fee. All these circumstances lead to the conclusion that petitioner is indeed a "contractor" as defined under the Local Government Code.

Lastly, the ROMM Agreement speaks of specified **"fees"** for the conversion of fuel into electricity, a terminology correlated with the rendition of service. As defined under Black's Law Dictionary, a "**fee"** is a recompense for an official or professional service or a charge or emolument or compensation for a particular act or service. It is a fixed charge or perquisite charged as recompense for labor; reward, compensation, or wage given to a person for performance of services or something done or to be done.[21]

In the light of the foregoing discussions, We affirm the ruling of the lower court that petitioner is a "contractor" rather than a "manufacturer". All the stipulated undertakings and obligations acceded to by petitioner under the ROMM Agreement, definitely pertain to the rendition of services for a fee, rather than the manufacture of a specific product by a manufacturer as contemplated under the Local Government Code.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[21] Black's Law Dictionary, 5th Edition, p. 553.

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.

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

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.

ERNESTO D. ACOSTA
Presiding Justice