REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CAMARINES SUR II ELECTRIC COOPERATIVE, INC., Petitioner,	**CTA EB NO. 1014 (CBAA CASE NO. L-77)**
-versus-	**Present:** **Del Rosario,** *P.J.,* **Castañeda, Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, Ringpis-Liban,** *JJ.*
PROVINCIAL ASSESSOR OF THE PROVINCE OF CAMARINES SUR, MUNICIPAL ASSESSOR AND MUNICIPAL TREASURER OF CANAMAN, CAMARINES SUR, Respondents.	**Promulgated:** AUG 13 2014 CNApolina 9:05 a.

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DECISION

RINGPIS-LIBAN, J.

Before the Court En Banc is a Petition for Review filed on 22 May 2013 by the Camarines Sur II Electric Cooperative, Inc., as an appeal from the Decision of the Central Board of Assessment Appeals (CBAA) dated 28

August 2012 dismissing the petitioner's appeal from the Decision of the Local Board of Assessment Appeals dated 29 January 2007. These Decisions upheld the assessment of real property tax on the electric poles and electrical transformers of the petitioner located in the Municipality of Canaman, Camarines Sur.

The Parties

Petitioner is an electric cooperative organized and existing under P.D. No. 269 as amended by P.D. No. 1645, with principal office in Del Rosario, Naga City.

The respondents are officials of the Province of Camarines Sur and the Municipality of Canaman, Camarines Sur.

The Factual, Procedural and Legal Antecedents

Since 1979, petitioner has been distributing electricity to consumers, using electrical wires strung on wooden and metal poles erected at intervals along public and private lands, road sides and easements, which lands are not owned by it. On some of these electric poles, transformers are attached; some of the transformers are owned by the petitioner, and others by consumers of electricity. An electrical transformer is "an electrical device that takes electricity of one voltage and changes it into another voltage."[1] Electric transformers are inductively coupled electro-magnetic devices that transfer electrical energy from one circuit to another; all electronically operated equipment depends on power transformers to convert electrical current into voltages that fit a specific application, and current transformers are also required in order to store and transport energy through power lines and grids.[2]

Petitioner was granted a franchise by the National Electrification Commission (now National Electrification Administration) under Presidential Decree No. 269[3] (NEA Decree) to "operate an electric light and power service" starting 6 June 1979, for fifty (50) years, in Naga City and the municipalities of Bonbon, Calabanga, Canaman, Magarao, Milaor, Minabalac, Pili, Siruma and Tinambac, all in the province of Camarines Sur.

Under Section 39 of P.D. No. 269, in addition to permanent exemption from income taxes, electric cooperatives shall be exempt from the payment of all "National Government, local government and municipal taxes and fees," but only "for a period ending on December 31 of the thirtieth full calendar year

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[1] California Energy Commission, "How does a transformer work?", accessed on 25 June 2014 at http://www.energyquest.ca.gov/how_it_works/transformer.html.

[2] Industrial Quick Search Manufacturer Directory (Michigan-based IQSDirectory.com), accessed at on 25 June 2014 at http://www.iqsdirectory.com/electric-transformers/.

[3] Dated 6 August 1973.

after the date of a cooperative's organization or conversion hereunder, or until it shall have become completely free of indebtedness incurred by borrowing, whichever event first occurs."

In October 1979, P.D. No. 269 was amended by P.D. No. 1645, but the amendment made no change in the tax exemption granted to electric cooperatives by the earlier law.

On 10 March 1990, Republic Act No. 6938 (Cooperative Code of the Philippines) was signed into law. Under Section 132 of this Code, electric cooperative that duly register with the Cooperative Development Authority (CDA) and are issued a certificate of registration shall no longer be covered by P.D. No. 269 as amended by P.D. No. 1645, but shall instead be covered by R.A. No. 6938. Under Section 62(3), all duly-registered cooperatives shall be exempt from the payment of local taxes.

On 10 October 1991, Republic Act No. 7160 (Local Government Code of 1991) was signed into law. This law took effect on 1 January 1992. Sections 18 and 129 of this law gave local government units the power to create their own sources of revenue and to levy taxes. Section 234 expressly withdrew "any exemption from payment of real property tax" previously granted to any person, whether natural or juridical, but Section 234(d) provided that "All real property owned by duly registered cooperatives as provided for under R.A. No. 6938" are exempted from real property tax."

On 19 March 1993, the Cooperative Development Authority issued a Certificate of Provisional Registration to the petitioner, which entitled it to the rights and privileges granted to duly-registered cooperatives by R.A. No. 6938 (Cooperative Code) and other special laws. The Certificate contained its validity period: two (2) years from the date of its issuance, during which the petitioner "shall be governed by the provisions of the Cooperative Code."

On 19 September 2006, the petitioner received from the Municipal Assessor and Municipal Treasurer of the Municipality of Canaman notices of assessment and tax bills, informing the petitioner that its electric poles and transformers erected and found within the territory of Canaman were now subject to real property tax pursuant to Sections 219 and 223 of R.A. No. 7160 (Local Government Code of 1991). Section 219 provides that the provincial, city or municipal assessor shall undertake a general revision of real property assessments within two (2) years after the effectivity of the Code and every three years thereafter. Section 223 directs the same officials to give written notice "to the person in whose name the property is declared" of the new or revised assessment on real property. Attached to the notices of assessments were thirty-eight (38) tax declarations.

On 10 November 2006, petitioner questioned the assessment as without legal basis, through a verified petition filed with the Local Board of Assessment Appeals (LBAA) as prescribed by Section 226 of R.A. No. 7160.

On 29 January 2007, the LBAA issued its Decision. It found the petitioner liable to pay real property taxes on its poles and transformers pursuant to Section 222 of R.A. No. 7160. Under Section 222, real property declared for the first time shall be assessed for taxes for the period during which it would have been liable but in no case more than ten (10) years prior to the date of initial assessment. The LBAA ruled that the petitioner's electric poles and attached transformers "are considered real property for purposes of real property taxation" under R.A. No. 7160, the LBAA having deemed them included in the term "machinery" as defined by Section 199(o) of this law.[4]

The petitioner appealed the LBAA's Decision to the Central Board of Assessment Appeals (CBAA), which received the appeal dated 5 March 2007 through registered mail on 13 March 2007. In its Appeal Memorandum, the petitioner ascribed a single error to the LBAA, which was the LBAA's finding that the electric poles and transformers, "despite being personal properties, are subject to real property tax pursuant to Section 199(o) of RA 7160." Much later, through a 21-page Position Paper dated 12 February 2012, the petitioner raised a second issue by invoking exemption from local taxes, citing Section 62(3) in conjunction with Section 122 of R.A. No. 6938 (Cooperative Code) in relation to P.D. No. 269 and R.A. No. 7160.

On 28 August 2012, the CBAA rendered its Decision, dismissing the appeal for lack of merit. On the first issue, it held that the electric poles and transformers "are essential and principal elements of the activity" in which the petitioner is engaged, for "without these equipment, no distribution of electric power could be done"; thus, the CBAA affirmed their inclusion in the term "machinery" taxable as real property.[5] On the second issue, the CBAA held that the petitioner's real properties are not exempt from taxation because the petitioner's Certificate of Provisional Registration issued by the Cooperative Development Authority had expired on 19 March 1995; having ceased to be registered with the CDA, petitioner could no longer avail of real property tax exemption under the Cooperative Code.[6]

The petitioner allegedly received its copy of the CBAA Decision only on 6 November 2012. On 20 November 2012 it filed its Motion for Reconsideration by registered mail, which the CBAA received on 3 December 2012. In this 21-page motion for reconsideration, the petitioner reiterated its assignment of errors. By a three-page Resolution dated 21 March 2013, the CBAA denied the motion for lack of merit.

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[4] See LBAA Decision, p. 4.
[5] See CBAA Decision, pp. 5-6.
[6] *Ibid.*, p. 7.

On 22 May 2013, petitioner appealed the CBAA's Decision to this Court via the instant Petition for Review.

On 27 May 2013, this Court En Banc issued a Resolution ordering the CBAA to elevate to it the complete records of the case. Then, by Resolution dated 15 July 2013, the Court required the respondents to file their Comment within ten (10) days from receipt of notice.

On 11 September 2013, the Court resolved to give due course to the instant Petition for Review, and required the parties to submit their memoranda within a non-extendible period of thirty (30) days from receipt of the Resolution, after which the petition shall be deemed submitted for decision.

On 14 November 2013, petitioner moved for an extension of time for the filing of its memorandum. Upon the Court's order, the petitioner on 13 December 2013 filed an additional nine (9) copies of this motion.

On 16 December 2013, the Court received petitioner's 22-page Memorandum.

On 22 January 2014, noting that the respondents had failed to file their Memoranda within the prescribed period, the Court promulgated a Resolution deeming the case submitted for decision.

The Issues

The issues raised by the petitioner are reiterations of the two (2) issues it presented to the CBAA:

(1) Whether or not the petitioner's electric poles and transformers fall within the definition of "machinery" under Section 199(o) of R.A. No. 7160 so as to be subject to real property tax under Sections 219 and 223 of R.A. No. 7160.

(2) Whether or not the petitioner is exempted from local taxes, as a cooperative, pursuant to Section 62(3) in relation to Section 122 of R.A. No. 6938 (Cooperative Code) in relation to P.D. No. 269, as amended (NEA Charter) and R.A. No. 7160 (Local Government Code of 1991).

RULING OF THE COURT

It is obvious that if the petitioner's claim that it is entitled to exemption from local taxes is upheld, then the first issue will be rendered moot. To avert a discussion that might only be rendered moot in the end, the Court shall first discuss and resolve the second of the issues above.

Petitioner is not exempt from local taxes

The petitioner confronts this Court with two (2) distinct and mutually-exclusive sets of tax exemptions. Evidently, it cannot simultaneously enjoy both of these.

The first and earlier tax exemption was acquired on 6 June 1979, when the petitioner was issued its franchise by the National Electrification Commission (now National Electrification Administration) under P.D. No. 269. Under Section 39 of P.D. No. 269, in addition to permanent exemption from income taxes, electric cooperatives shall be exempt from the payment of all "National Government, local government and municipal taxes and fees."

The tax exemptions granted by Section 39 of P.D. No. 269, however, were not meant to be perpetual. The same Section 39 provided that the exemption from local taxes shall only be "for a period ending on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall have become completely free of indebtedness incurred by borrowing, *whichever event first occurs*."[7] Thus, *at the most*, the petitioner had only thirty (30) years from 1979 – or until 2009 – within which to enjoy exemption from all local taxes.

The petitioner, however, did not wait for the completion of the maximum 30-year exemption from all local taxes that it could have enjoyed under Section 39 of P.D. No. 269. On 19 March 1993, the petitioner became provisionally-registered with the Cooperative Development Authority. By becoming CDA-registered, the petitioner ceased being covered by P.D. No. 269, by express provision of Section 132 of the Cooperative Code (R.A. No. 6938). However, it retained its exemption from the payment of local taxes, this time by virtue of Section 62(3) of the Cooperative Code.

But as under P.D. No. 269, the exemption from local taxes that petitioner obtained under R.A. No. 6938 was not indefinite. The Certificate of Provisional Registration issued to the petitioner by the CDA on 19 March 1993 declared on its face that its validity period was only for two (2) years from the date of its issuance, during which the petitioner "shall be governed by the provisions of the Cooperative Code." Thus, when the petitioner allowed its

[7] Italics added for emphasis.

provisional registration with the CDA to lapse, it also lost its tax-exempt status and privilege under the Cooperative Code.

The Court agrees with the CBAA's observation that "by its own admission, petitioner is not a registered cooperative under the provisions of R.A. 6938" because the petitioner's provisional registration had expired on 19 March 1995. The petitioner, however, laments that the CBAA Decision "failed to discuss in length" the arguments on this issue.[8]

The petitioner would like this Court to believe that its provisional registration with the CDA was sufficient to vest it with the privilege that "thenceforth, all its real properties are exempt from real property tax."[9] The Court cannot indulge the petitioner. The Certificate of Provisional Registration issued by the CDA to the petitioner on 19 March 1993 is the best evidence that after its validity period of two (2) years from issuance expired, the petitioner's rights and privileges thereunder *ipso facto* ceased.

Petitioner argues that there is no mention in R.A. No. 6938 of any "provisional registration," as if such alleged lack would convert its registration into a regular or continuing one. If petitioner had truly undertaken, as it had claimed, a "careful analysis"[10] of R.A. No. 6938, then it would have discerned the rationale why the CDA resorted to provisional registration.

Having cited Section 122 of R.A. No. 6938, which states that "electric cooperatives shall be covered by this Code," it should have dawned on the petitioner why there came to be such a status and process as provisional registration. Section 122 provides for a three-year transition period, during which the CDA and the NEA shall help electric cooperatives to "qualify" under R.A. No. 6938. Petitioner makes much out of the opening sentence of Section 122 that "electric cooperatives shall be covered by this Code," but seems oblivious to the proviso that these cooperatives have to undergo a qualifying process. That not all electric cooperatives may automatically be entitled to the benefits of the Cooperative Code is further emphasized in Section 127, on repeals, which adds: "the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof." From these, it can be gleaned that provisional registration is just an initial step, rather than the completion, of the qualifying process.

There is more: Article 128 of the Cooperative Code provides that all cooperatives registered under previous laws shall be deemed registered with the CDA upon submission of certain requirements within one year. However, cooperatives created under P.D. No. 269, as amended, are given three years within which to qualify and register with the CDA, after which, provisions of

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[8] Petition for Review, p. 14.
[9] *Ibid.*
[10] *Ibid.*

P.D. No. 1645 which expand the powers of the NEA over electric cooperatives, would no longer apply.[11]

Petitioner also invokes Section 62 of R.A. No. 6938, apparently because it offers tax exemptions to "cooperatives transacting business with both members and non-members." These are exemptions from national and local taxes, income taxes, sales taxes, and all other taxes. This Section 62 does not state that these cooperatives must be duly-registered with the CDA – which would suit the petitioner just fine.

Section 62 of R.A. No. 6938, however, has to be construed in relation to Section 61, for "a cardinal rule in statutory construction is that legislative intent must be ascertained from a consideration of the statute as a whole and not merely of a particular provision."[12] Section 61 governs the tax treatment of duly-registered cooperatives which do not transact any business with non-members or the general public, then refers to "the succeeding section" for other cooperatives, *i.e.*, those that do transact business with both members and non-members.

Both Sections 61 and 62 clearly apply only to cooperatives *duly registered* with the CDA. Indeed, it would be absurd for R.A. No. 6938 to extend the benefits of the law to cooperatives that opt not to be regulated by the same law.

If the petitioner, despite the foregoing discussion, might have lingering doubts over the legal consequences of its provisional registration and the expiry thereof, the clincher would be the Supreme Court's decision in *City of Iriga vs Camarines Sur III Electric Cooperative, Inc.*[13] In *City of Iriga*, the Supreme Court held that any exemption from the payment of local taxes can last only during the lifetime of the provisional registration. In that case, CASURECO III's provisional registration was extended by the CDA only until 4 May 1992, and the Court ruled that "thereafter, it can no longer claim any exemption from the payment of local taxes."

The question now is: after the petitioner allowed its provisional registration with the CDA to lapse on 19 March 1995, did it automatically revert to being covered by P.D. No. 269, including the resumption of its tax-exempt status thereunder? As to the tax-exempt status, the answer is in the negative, because on 1 January 1992 when the Local Government Code (R.A. No. 7160) took effect, the exemption from payment of real property tax allowed by P.D. No. 269 was already withdrawn by Section 234 of R.A. No. 7160.

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[11] *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA), et al. vs The Secretary, Department of Interior and Local Government, and The Secretary, Department of Finance*, G.R. No. 143076, 10 June, 2003, en banc.

[12] *Digital Telecommunications Philippines, Inc. vs Province of Pangasinan*, G.R. No. 152534, 23 February 2007, citing *PLDT vs City of Davao*, 415 Phil. 764 (2001).

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

Moreover, when P.D. No. 269 was further amended in 2013 by R.A. No. 10531 (NEA Reform Act of 2013[14]), the law as amended no longer granted tax exemptions to electric cooperatives. Instead, its Section 13 grants non-tax incentives.

Tax exemptions for electric cooperatives under P.D. No. 269, as amended, have been validly repealed by R.A. No. 7160. Any doubts about this were demolished by the decision of the Supreme Court en banc in 2003 in *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA), et al. vs The Secretary, Department of Interior and Local Government, and The Secretary, Department of Finance.*[15] In that case, PHILRECA and its co-petitioners through a petition for prohibition asked the Supreme Court to declare Sections 193 and 234 of R.A. No. 7160 unconstitutional for alleged violation of the equal protection clause. They argued that these sections discriminate against electric cooperatives registered with the NEA under P.D. No. 269, and in favor of those registered with the CDA under R.A. No. 6938. The Supreme Court, however, was not persuaded. Speaking through Justice Reynato Puno, the Court held "that there is reasonable classification under the Local Government Code to justify the different tax treatment between electric cooperatives covered by P.D. No. 269, as amended, and electric cooperatives under R.A. No. 6938."

The Court added in *PHILRECA*: "While we understand petitioners' predicament brought about by the withdrawal of their local tax exemption privileges under the Local Government Code, it is not the province of this Court to go into the wisdom of legislative enactments. Courts can only interpret laws. The principle of separation of powers prevents them from re-inventing the laws."

Thus, under current laws, the only way for the petitioner to obtain exemption from real estate taxation under R.A. No. 7160 is to become duly-registered with the CDA under R.A. No. 6938. If it opts not to register with the CDA, then it "shall not be entitled to the benefits and privileges" under R.A. No. 6938.[16] That is also the effect of ceasing to be duly-registered with the CDA.

Electric posts and transformers may qualify as "machinery"

The petitioner insists that its electric posts and transformers are personal property, and that there is neither statutory nor jurisprudential basis upon which they may be deemed real property and taxed as such.

Petitioner demands the application of the principle of *ejusdem generis* in construing Section 199(o) of R.A. No. 7160. It posits that if this principle of

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[14] Signed into law on 7 May 2013.
[15] G.R. No. 143076, 10 June 2003.
[16] *City of Iriga vs Camarines Sur III Electric Cooperative, Inc.*, G.R. No. 192945, 5 September 2012.

statutory construction is applied, electric poles and transformers cannot possibly be included in the definition of "machinery" supplied by Section 199(o).[17] Petitioner suggests that these poles and transformers should instead be considered as improvements on the land,[18] for which the land owners, not the petitioner, should be liable for realty taxes.[19]

Indeed, in *Board of Assessment Appeals, et al. vs Manila Electric Company,*[20] the Supreme Court en banc held in 1964 that the steel towers erected as electric poles do not constitute real properties subject to real property tax, under the tax law then in force, which the Court observed did "not provide for a definition of real property."

Such lack of definition was partly alleviated in 1974 by P.D. No. 464 (Real Property Tax Code). Although P.D. No. 464 in its definition of terms did not define "real property", it included agricultural lands, commercial lands, industrial lands, mineral lands, residential lands, machineries, and improvements in its definitions. Section 20 made buildings, machineries, and other improvements subject to assessment for real property taxation purposes, and Section 38 imposed an annual *ad valorem* tax on lands and these improvements.

P.D. No. 1383 issued on 25 May 1978, amended the definition of machinery in P.D. No. 464 to read as follows:

> Machinery shall embrace machines, equipment, mechanical contrivances, instruments, appliances and apparatus attached to the real estate. It shall include the physical facilities available for production, as well as the installations and appurtenant service facilities, together with all those not permanently attached to the real estate but are actually, directly and essentially used to meet the needs of the particular industry, business, or works, which by their very nature and purpose are designed for, or essential to manufacturing, commercial, mining, industrial or agricultural purposes.

P.D. 464, as amended, was subsequently repealed by the Local Government Code of 1991,[21] which provided corresponding definitions in its Section 199. Section 199 of R.A. 7160 defines "improvement" and "machinery" as follows:

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[17] See Petition for Review, pp. 5-6.
[18] *Ibid.*, p. 6.
[19] *Ibid.*, p. 7.
[20] G.R. No. L-15334, 31 January 1964.
[21] See *National Power Corporation vs Province of Lanao del Sur*, G.R. No. 96700, 19 November 1996, 264 SCRA 271; *Ty vs Trampe*, G.R. No. 117577, 01 December 1995, 250 SCRA 500, cited in *The Honorable Secretary of Finance vs The Hon. Ricardo M. Ilarde, et al.*, G.R. No. 121782, 9 May 2005, en banc.

> (m) "Improvement" is a valuable addition made to a property or an amelioration in its condition, amounting to more than a mere repair or replacement of parts involving capital expenditures and labor, which is intended to enhance its value, beauty or utility or to adapt it for new or further purposes;
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> (o) "Machinery" embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus which may or may not be attached, permanently or temporarily, to the real property. It includes the physical facilities for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property which are actually, directly, and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes;

It is obvious that neither electric poles nor electrical transformers are mentioned specifically in the foregoing definition of "machinery." This, to the petitioner, justifies the application of the principle of *ejusdem generis* in construing Section 199(o).

The basic statutory construction principle of *ejusdem generis* ("of the same kind or species") states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include – or to be restricted to – things akin to or resembling, or of the same kind or class as, those specifically mentioned.[22]

The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.[23]

However, resort to *ejusdem generis* has been held to be unnecessary or improper where the enumeration of particular words "do not constitute a readily discernible class and are patently not of the same kind;" there is a regulatory intent to give the general phrase a broader meaning; and the

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[22] *Emeteria Liwag vs Happy Glen Loop Homeowners Association, Inc.*, G.R. No. 189755, 4 July 2012, citing *Miranda vs Abaya*, 370 Phil. 642 (1999).
[23] *Pelizloy Realty Corporation vs Province of Benguet*, G.R. No. 183137, 10 April 2013, citing *National Power Corporation v. Angas*, G.R. Nos. 60225-26, May 8, 1992, 208 SCRA 542 (1992).

statutory provision is not restrictive and "not susceptible of narrow interpretation."[24]

Thus, the rule of *ejusdem generis* "applies only where the specific words preceding the general expression are of the same nature. Where they are of different genre, the meaning of the general word remains unaffected by its connection with them."[25]

As is apparent from the petitioner's pleadings, however, the principle of *ejusdem generis* alone cannot be decisive in this case, in the absence of a law or rule categorically including or excluding personal property such as electric poles and transformers from the ambit of Section 199(o) of R.A. No. 7160. Thus, the petitioner had to adduce jurisprudence pertinent to the issue, and chose the decision of the Supreme Court en banc in *Board of Assessment Appeals, et al. vs Manila Electric Company.*[26] Petitioner stated that in this case, "the Supreme Court ruled that electric poles or electric towers are classified as *personal* properties and therefore not subject to real property tax."[27] We note, however, that the Supreme Court never used the term "personal" in describing the steel towers.

The Court finds that the ruling in *Board of Assessment Appeals, et al. vs Manila Electric Company* is not necessarily controlling or applicable in the instant case. In *Board of Assessment Appeals*, what were involved were not ordinary electric posts (whether made of wood, steel or concrete) that are embedded into the ground or mounted on permanent foundations, but steel towers that are "removable and merely attached to a square metal frame by means of bolts, which when unscrewed could easily be dismantled and moved from place to place." Moreover, Par. 9 of the franchise of the Manila Electric Company expressly exempted its poles from taxes and assessments – which made it immaterial whether the poles were machinery or real property. The petitioner in the instant case has not shown that its "electric poles" are in the same class as the steel towers in *Board of Assessment Appeals* and, more importantly, that its charter contains an express tax exemption similar to that of the Manila Electric Company.

Significantly, *Board of Assessment Appeals* was decided more than half a century ago, and around 28 years before R.A. No. 7160 took effect. The choice of this case by the petitioner is not quite in point, given that the petitioner is assailing Section 199(o) of the R.A. No. 7160 for including machineries as taxable real property. Petitioner laments that because of this, its electric poles and transformers "metamorphosed from being personal to real." Petitioner

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[24] *Commissioner of Internal Revenue vs Placer Dome Technical Services (Phils.), Inc.*, G.R. No. 164365, 8 June 2007, citing *Commissioner of Internal Revenue vs American Express International, Inc.*, G.R. No. 152609, 29 June 2005, 462 SCRA 197.
[25] *Commissioner of Customs vs Court of Tax Appeals and Eusebio Dichoso*, G.R. No. L-33471, 31 January 1972, en banc, citing Black, On Interpretation of Laws, 2nd ed., p. 218; 50 Am. Jur., p. 248.
[26] G.R. No. L-15334, 31 January 1964.
[27] Petition for Review, p. 8. Italics supplied for emphasis.

decries the definition in Section 199(o) of the Local Government Code as "an attempt to vaguely categorize" properties.

Petitioner is being selective, or is oblivious to laws and jurisprudence that happen to be contrary to its cause. In fact, it is not just the Local Government Code of 1991 that deems machineries to be real property. Article 415(5) of the Civil Code classifies as immovable properties "machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works." Jurisprudence has held that Article 415(4) and its earlier version, Article 344, "gives the character of real property" to these things.[28]

The Assessment Law (Commonwealth Act No. 470)[29] and the Real Property Tax Code both apply realty tax not just on land but also on "buildings, machinery and other improvements," as pointed out in *Caltex Philippines, Inc. vs Central Board of Assessment Appeals and City Assessor of Pasay.*[30] In the *Caltex* case cited here, underground tanks, elevated tanks, elevated water tanks, water tanks, gasoline pumps, computing pumps, water pumps, car washer, car hoists, truck hoists, air compressors and tireflators installed by Caltex on lands leased for use as fuel pump stations, were held by the Supreme Court to be subject to realty tax:

> We hold that the said equipment and machinery, as appurtenances to the gas station building or shed owned by Caltex (as to which it is subject to realty tax) and which fixtures are necessary to the operation of the gas station, for without them the gas station would be useless, and which have been attached or affixed permanently to the gas station site or embedded therein, are taxable improvements and machinery within the meaning of the Assessment Law and the Real Property Tax Code. xxx
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> Improvements on land are commonly taxed as realty even though for some purposes they might be considered personalty (84 C.J.S. 181-2, Notes 40 and 41). "It is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property" (*Standard Oil Co. of New York vs. Jaramillo*, 44 Phil. 630, 633).
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> This case is also easily distinguishable from *Board of Assessment Appeals vs. Manila Electric Co.*, 119 Phil. 328, where Meralco's steel towers were considered poles within the meaning

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[28] *Mindanao Bus Company vs City Assessor and Treasurer and the Board of Tax Appeals of Cagayan de Oro City*, G.R. No. L-17870, 29 September 1962, en banc, citing *B. H. Berkenkotter vs. Cu Unjieng*, 61 Phil. 663.
[29] Approved on 16 June 1939, this law took effect on 1 January 1940.
[30] G.R. No. L-50466, 31 May 1982.

> of paragraph 9 of its franchise which exempts its poles from taxation. The steel towers were considered personalty because they were attached to square metal frames by means of bolts and could be moved from place to place when unscrewed and dismantled.

In *Caltex*, the Supreme Court in 1982 was not swayed by its ruling in 1964 in *Board of Assessment Appeals*. And in 2007, that Court rendered a decision that included posts among the properties that were subjected to real estate tax, in the case of *Digital Telecommunications Philippines, Inc. vs Province of Pangasinan.*[31]

On 13 November 1992, the Province of Pangasinan granted a franchise to Digital Telecommunications (DIGITEL) under which its telephone posts, apparatus, equipment and communication facilities were expressly exempted from the real estate tax. On 28 December 1992, however, the Province of Pangasinan enacted its real property tax ordinance subjecting to annual *ad valorem* tax real property "such as land, building, machinery, and other improvement not hereinafter specifically exempted." Subsequently, DIGITEL was granted a national franchise effective 17 February 1994, under which it was made liable "to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay." The Supreme Court held that DIGITEL was accountable to the Province of Pangasinan for real property taxes from 13 November 1992 to 28 December 1992 only on its lands and buildings; from 29 December 1992 until 16 February 1994, also on its machineries and other improvements; and from 17 February 1994, on real properties not actually, directly and exclusively used in its franchise. From the foregoing, it emerges that from 29 December 1992 until 16 February 1994, DIGITEL's telephone posts were subject to real property tax.

Below are other cases where the Supreme Court upheld the tax classification of objects other than land as real properties (whether as improvements or machineries):

> (1) *Caltex Philippines, Inc. vs Central Board of Assessment Appeals and City Assessor of Pasay* (G.R. No. L-50466, 31 May 1982): underground tanks, elevated tanks, elevated water tanks, water tanks, gasoline pumps, computing pumps, water pumps, car washer, car hoists, truck hoists, air compressors and tireflators, which were held to be taxable as improvements and machinery;
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> (2) *Benguet Corporation vs Central Board of Assessment Appeals, et al.* (G.R. No. 106041, 29 January 1993, en banc, 218 SCRA 271): mine tailings dam;

[31] G.R. No. 152534, 23 February 2007.

(3) *Manila Electric Company vs CBAA* (G.R. No. L-47943, May 31, 1982, 114 SCRA 273): fuel storage tanks not embedded in the land, along with their foundations and pipelines;

(4) *MERALCO Securities Industrial Corporation vs CBAA* (G.R. No. L-46245, 31 May 1982, 114 SCRA 261): 30 kilometers of steel oil pipelines in Laguna, a case where the Court held that "insofar as the pipeline uses valves, pumps and control devices to maintain the flow of oil, it is in a sense machinery within the meaning of the Real Property Tax Code" and "what are being characterized as real property are not the steel pipes but the pipeline system as a whole";

(5) *Provincial Assessor of Marinduque vs Court of Appeals* (G.R. No. 170532, 30 April 2009): siltation dam and decant system;

(6) *FELS Energy, Inc. vs Province of Batangas* (G.R. No. 168557, 16 February 2007): floating power barges moored in a bay, under Section 199(c) of R.A. No. 7160;

(7) *Radio Communications of the Philippines, Inc. vs Provincial Assessor of South Cotabato, et al.* (G.R. No. 144486, 13 April 2005): relay station tower, although it is neither an equipment nor machinery but a structure;

(8) *Light Rail Transit Authority vs CBAA, et al.* (G.R. No. 127316, 12 October 2000, 342 SCRA 692): carriageways and passenger terminal stations, as private improvements on national roads owned by the government;

(9) *Philippine Ports Authority vs City of Iloilo, et al.* (G.R. No. 143214, 11 November 2004): port facilities and appurtenances; and

(10) *Digital Telecommunications Philippines, Inc. vs City Government of Batangas, et al.* (G.R. No. 156040, 11 December 2008, en banc): fishing boats, under R.A. No. 3218.

It may be noted that none of the things in the foregoing ten (10) cases are categorically mentioned as such in the enumeration of the things that comprise "machinery" or "improvement" under the Local Government Code of 1991, the Assessment Law of 1939 (Commonwealth Act No. 470) and the Real Property Tax Code, but were nonetheless recognized by jurisprudence to be real properties for the purpose of taxation. How then can the petitioner tenably assume and conclude that personal property not categorically included in the definition of "machinery" under Section 199(o) of R.A. No. 7160 – like its electric poles and transformers – must therefore be excluded, merely under the principle of *ejusdem generis*?

All told, the Court finds the scope of Section 119(o) of the LGC to be broad enough to include the petitioner's electric posts and electric transformers as "machinery" subject to real estate taxation. Under the first sentence of the provision, the "machines, equipment, mechanical contrivances, instruments, appliances or apparatus" may or may not be attached, permanently or temporarily to real property." Electric transformers qualify as machinery under this sentence, because these devices are undoubtedly in the class of "equipment, instruments, appliances or apparatus." The second sentence of Section 119(o) includes "physical facilities for production, the installations and appurtenant service facilities," and "those not permanently attached to the real property which are actually, directly, and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes." The second sentence can include both electric posts and electrical transformers, as installations, not permanently attached to the real property, which solely the petitioner uses as necessary for the conduct of its business (the operation of an electric light and power service, per its Certificate of Franchise) as an electric cooperative.

Opinion of Secretary of Energy is not decisive

The petitioner additionally offers in support of its case a "law" or "rule" specifically on the matter of real estate taxability of electric poles, in the form of a Memorandum dated 29 September 2010 (Annex "F") of the Secretary of the Department of Energy, stating that "electric poles are not subject to real property tax," citing therein the decision in *Board of Assessment Appeals*.

The said Memorandum of the Secretary of the Department of Energy cannot be decisive in the instant case. The said Secretary is not the taxing authority in our jurisdiction, and his opinion cannot bind this Court. Moreover, the Secretary of Finance and the Secretary of Interior and Local Government were not even furnished copies of this Memorandum, which was addressed to the administrator of the NEA.

The theory of the petitioner that the said Secretary's memorandum "is binding upon the Department of Finance as a co-equal department in the Executive Branch, and same deserves respect as it partakes the nature of a valid regulation with the same full force of a law, unless, modified and/or abandoned by competent authority," is specious and warrants scant consideration, if any.

Tax laws, rules and regulations are beyond the jurisdiction of the Secretary of the Energy. It is basic that the Secretary of a Department shall have supervision and control only over the bureaus, offices, and agencies under him.[32] Neither the Bureau of Internal Revenue nor the respondents in this case are under the control or supervision of the Secretary of the Department of

[32] See Section 39, Chapter 8, Book IV, Revised Administrative Code of 1987.

Energy. Moreover, a mere memorandum, unlike a memorandum circular, is not a valid issuance for "prescribing policies, rules and regulations promulgated pursuant to law, applicable to individuals and organizations outside the government and designed to supplement provisions of the law or to provide means for carrying them out, including information relating thereto."[33]

Statutory interpretations of executive bodies do not hold decisive sway upon the judiciary but are merely persuasive.[34] In a case, the Supreme Court en banc declared that the Bureau of Local Government Finance "has no authority to rule on claims for exemption from the realty tax."[35]

Finally, it is only the legislature that can grant tax exemptions. Under Section 28(4) of Article VI of the 1987 Constitution, "no law granting any tax exemption shall be passed without the concurrence of a majority of all Members of the Congress."

Onus is upon the person claiming tax exemption

It is stated in Section 5(b) of R.A. No. 7160: "In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer. Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it."

In the instant case, there is no "tax ordinance or revenue measure" in dispute that any of the local government units involved had enacted. What the petitioner disputes are (1) their interpretation of Section 199(o) of the Local Government Code in a manner that subjected its electric poles and transformers to real estate taxation, and (2) the non-recognition of its alleged exemptions from local taxation.

Given the foregoing, and despite the contrary insistence of the petitioner for a liberal interpretation of Section 199(o) of the Local Government Code in its favor, the Court must hew to the precept that "taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and the entity that would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."[36]

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[33] See Section 50, Chapter 11, Book IV, Revised Administrative Code of 1987.
[34] *City of Davao, et al. vs Regional Trial Court, Branch XII, Davao City and the GSIS*, G.R. No. 127383, 18 August 2005. In the case, the executive bodies whose opinions were referred to were the Secretary of Justice and the Office of the President.
[35] *Digital Telecommunications Philippines, Inc. vs City Government of Batangas, et al.*, G.R. No. 156040, 11 December 2008.
[36] *National Power Corporation vs CBAA, et al.*, G.R. No. 171470, 30 January 2009, citing *FELS Energy, Inc. vs Province of Batangas*, G.R. No. 168557, 16 February 2007, 516 SCRA 186.

The right of local government units to collect taxes due must always be upheld to avoid severe tax erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of the Local Government Code that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.[37]

The facts material to this case are plain. *First*, the tax exemption that the petitioner originally enjoyed under P.D. No. 269 no longer exists, having long been withdrawn by R.A. No. 7160 effective 1 January 1992. The latest incarnation of P.D. No. 269, which is R.A. No. 10531 (NEA Reform Act of 2013), no longer grants tax exemptions to electric cooperatives, only non-tax incentives. *Second*, the tax exemption that the petitioner subsequently acquired under R.A. No. 6938 was extinguished after the petitioner's two-year Certificate of Provisional Registration issued by the CDA expired on 19 March 1995. *Third*, its Certificate of Franchise bears no express grant of tax exemption.[38]

A tax exemption cannot arise from vague inference. Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[39]

The burden is upon the taxpayer to prove, by clear and convincing evidence, that his claim for exemption has legal and factual basis.[40]

The Court finds that the petitioner has not identified any law that vested it with exemption from local taxes, particularly real estate taxes, whether at the time that the notices of assessment subject of this case were served upon it, or currently. The petitioner thus has not discharged the burden of proving its claims to tax exemption. The Court has determined, instead, that when the notices of assessment were received by it, the petitioner had lost all of the exemptions that it had previously enjoyed.

The petitioner has also weakened its case because of apparent inconsistencies. For one, it insisted that its electric posts and electrical transformers are *personal* properties, yet it invoked Section 234(d) of R.A. No.

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[37] *National Power Corporation vs CBAA, et al.*, G.R. No. 171470, 30 January 2009.
[38] In contrast, as examples, the legislative charters of the San Fernando Electric Light and Power Company, Inc. (R.A. No. 9967) and of the Angeles Electric Corporation (R.A. No. 9381) contain explicit provisions, in their respective Section 9, granting them limited tax exemptions/privileges.
[39] *Digital Telecommunications Philippines, Inc. vs City Government of Batangas, et al.*, G.R. No. 156040, 11 December 2008, en banc.
[40] Provincial Assessor of Marinduque vs Court of Appeals and Marcopper Mining Corporation, G.R. No. 170532, 30 April 2009, citing *Commissioner of Internal Revenue vs Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, February 16, 2007, 516 SCRA 93, 103.

7160 to claim the tax exemption thereunder.[41] Section 234(d) exempts from real property tax "All real property owned by duly registered cooperatives as provided for under R.A. No. 6938." By invoking Section 234(d), the petitioner impliedly admitted that its electric posts and electrical transformers are indeed real properties, even as it questioned their classification as "machinery" rather than as "improvements on the land."

Second, if the electric posts and electrical transformers are not subject to real property tax, as machineries, why did the petitioner need to explain that electric cooperatives were not included among the entities whose machineries and equipment are exempted from real property tax under Section 234(c) because "electric cooperatives were already granted tax exemptions under Section 62(3) of R.A. 6938 in relation to Section 122 of the same law, which exemption was even reaffirmed on paragraph 234(d) of R.A. 7160"?[42] As the petitioner pointed out, for Section 234(c) of R.A. No. 7160 to provide tax exemption to the machinery and equipment of electric cooperatives "would be a redundancy or superfluity."[43] By this same reasoning, however, Section 234(d) would likewise be "a redundancy or superfluity."

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**, for lack of merit. The Decision dated 28 August 2012 and the Resolution dated 21 March 2013 of the Central Board of Assessment Appeals in CBAA Case No. L-77 are hereby **AFFIRMED**.

SO ORDERED.

Ma. Belen R-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[41] See Memorandum, p. 17.
[42] Memorandum, pp 17-18.
[43] *Ibid.*, p. 18.

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO – MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice