Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

NATIONAL POWER CORPORATION,
Petitioner,

-versus-

THE PROVINCE OF NUEVA VIZCAYA AND PERFECTO B. MARTINEZ, JR.,
Respondents.

CTA AC NO. 94
For: Local Franchise Tax Assessment

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:
JUN 03 2013
2:18 p.m.

x- x

D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review filed pursuant to Section 7(a)(3) of Republic Act No. 1125,[1] as amended in relation to Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA)[2] and Section 4(a), Rule 8, also of the

[1] Sec. 7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

[2] Rule 4. Section 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

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RRCTA[3], seeking the reversal and setting aside of the Order dated May 23, 2012[4] issued by the Regional Trial Court (RTC) Branch 27 of Bayombong, Nueva Vizcaya in Civil Case No. 6887 entitled "National Power Corporation vs. The Province of Nueva Vizcaya and Perfecto B. Martinez". The Order dated May 23, 2012 in effect sustained the validity of the assessment dated November 8, 2007 issued by the Province of Nueva Vizcaya against petitioner National Power Corporation (NPC) for payment of local franchise tax covering the years 2002 to 2006 in the aggregate amount of ₱8,776,271.35. The dispositive portion of the said Order reads as follows:

> "**WHEREFORE**, for all the foregoing, the instant appeal, is hereby DENIED due course and accordingly DISMISSED.
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> Likewise, the permissive counterclaim of the appellees is hereby DENIED for lack of jurisdiction.
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> Costs against the appellant.
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> SO ORDERED."

Petitioner National Power Corporation is a government-owned and -controlled corporation created and existing by virtue of Republic Act No. 6395, as amended, with principal office address at NPC Office Building Complex, Quezon

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(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.

[3] Rule 8. Section 4. *Where to appeal; mode of appeal.* –

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and <u>the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.</u>

[4] Annex "B", Petition for Review, Docket, pp. 30-35.

Avenue corner BIR Road, East Triangle, Diliman, Quezon City, Philippines.[5]

The Province of Nueva Vizcaya (respondent) is a local government unit organized and existing under the Philippine laws, with postal address at the Provincial Capitol Compound, Bayombong, Nueva Vizcaya; while respondent Perfecto B. Martinez, Jr. is impleaded in his capacity as Provincial Treasurer of Nueva Vizcaya.[6]

On November 21, 2007, petitioner received an Assessment Letter[7] dated November 8, 2007 from Perfecto B. Martinez, Jr., the Provincial Treasurer of Nueva Vizcaya, demanding the payment of local franchise tax for the years 2002 to 2006 in the aggregate amount of ₱8,776,271.35 pursuant to Section 2 of Article Two of Chapter III of Tax Ordinance No. 2003-001 of the Province of Nueva Vizcaya, in relation to Local Finance Circular No. 1-07[8] dated June 28, 2007 issued by the Department of Finance. The demanded local franchise tax is based on the payment made by Nueva Vizcaya Electric Cooperative, Inc. (NUVELCO) to petitioner NPC.

On January 7, 2008, petitioner filed a Protest Letter[9] with the office of respondent Martinez, assailing the assessment of local franchise tax on the ground, among others, that the power generation of petitioner is no longer considered a public utility operation for which a franchise is required as provided under Section 6 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA). Petitioner emphasized that it can no longer be considered as a "business enjoying a franchise" for the purpose of collection of franchise tax under Section 137 of the Local Government Code (LGC). Based on the foregoing premises, petitioner concluded that it is not liable to pay the assailed local franchise tax. c

[5] Petition for Review, Docket, p. 7.
[6] *Id.*
[7] Annex "C", Petition for Review, Docket, p. 36.
[8] Annex "E", Petition for Review, Docket, pp. 38-44.
[9] Annex "D", Petition for Review, Docket, p. 37.

The Province of Nueva Vizcaya failed to resolve the protest filed by petitioner within the period of sixty (60) days, which prompted petitioner to file an Appeal before the RTC of Bayombong, Nueva Vizcaya on February 26, 2008, by mail, to stop the subject assessment from becoming final and executory pursuant to Section 195[10] of the Local Government Code.

Petitioner maintained in its Appeal that it is not liable to pay the local franchise tax, invoking the provision of Section 137 of the LGC and the EPIRA.

In Answer[11], respondents assert that petitioner is clearly liable to pay the local franchise tax pursuant to law, ordinance and jurisprudence, citing the rulings of the Supreme Court in *National Power Corporation vs. City of Cabanatuan*[12] *(Cabanatuan case)* and in *National Power Corporation vs. Province of Isabela*[13] *(Isabela case)*. Respondents also filed a counter-claim[14] in the aggregate amount of ₱8,776,271.35 representing the purported local franchise tax liability of petitioner.

During the pre-trial conference, both petitioner and respondent agreed that there are no factual issues to be

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[10] SEC. 195. *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment, otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day (60) period prescribed herein within which to appeal with the court of competent jurisdiction, otherwise the assessment becomes conclusive and unappealable.
[11] RTC Records, pp. 36-42.
[12] G.R. No. 149110, April 9, 2003.
[13] G.R. No. 165827, June 16, 2006.
[14] RTC Records, p. 41.

resolved, and the only remaining legal issue is whether or not petitioner is liable for local franchise tax to respondent.[15]

On September 29, 2011, the RTC of Bayombong, Nueva Vizcaya, issued an Order dismissing petitioner's Appeal on the ground of prescription. The Court *a quo* explained that petitioner had until February 20, 2008 within which to file its Appeal with the court of competent jurisdiction. The Court *a quo* pointed out that petitioner filed its Appeal through mail only on February 26, 2008. Hence, petitioner's Appeal was filed beyond the mandatory periods provided under Section 195 of the LGC.[16] On November 18, 2011, petitioner filed a Motion for Reconsideration of the Order dated September 29, 2011.

In the Order dated May 23, 2012, the Court *a quo* reconsidered its Order dated September 29, 2011 and consequently proceeded to discuss the merits of the Appeal. In the same Order, the trial court dismissed the Appeal on the ground that petitioner is liable to pay the local franchise tax imposed by respondent. The lower court ratiocinated that even though petitioner is exempted from securing a national franchise, it is not exempted from procuring a local franchise and from payment of local franchise tax, thus:

> "By the foregoing provision, the appellant asserts that it is not considered as a public utility operation and as such shall not be required to secure a franchise. This assertion, to the mind of the court, is misplaced and misleading because traversing this substantive law upon which the appellant bases its appeal, it is national franchise that the appellant may not be required to secure but not so in the case of a local franchise. The law itself has distinguished the kind of franchise that the appellant is not required to secure and this court is not at liberty to include local franchise in the exemption granted by the law to the appellant. It is clear that when the law has made a distinction the court should accordingly follow and apply such distinction. The Congress exempts the appellant from securing national franchise in its power generation and supply of electricity and this exemption,

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[15] Annex "B", Petition for Review, Docket, p. 34; RTC Records, pp. 89-91.
[16] Annex "A", Petition for Review, Docket, pp. 27-29.

> in so clear and emphatic provision, does not include local franchise. Rightly, Congress could not have given through legislation (EPIRA Law) in 2001 what it previously gave away in 1991 (Local Government Code) to the local government units as far as local franchise is concerned. Not even the Joint Congressional Power Commission which approved the Rules and Regulations to Implement Republic Act No. 9136 saw the necessity to exempt the appellant from securing the local franchise. Section 1, paragraph 1, of Rule 5 of the said Rules and Regulations succinctly provides that it is national franchise that a person engaged in generation of electricity is not required to secure. In short, it is a local franchise that the appellant has to secure because it is engaged in generation of electricity in this province."[17]

The Court *a quo* found that petitioner is still required to secure a local franchise tax when it conducted operations in the province during the period from 2002 to 2006 and thereafter.

On June 20, 2012, petitioner received the assailed Order. On July 18, 2012, petitioner filed the instant Petition for Review, praying for this Court to nullify and set aside the assessment dated November 8, 2007 and to declare that petitioner is exempt from payment of franchise tax.[18]

Petitioner argues that it is a power generation company which pursuant to Section 6 of Republic Act No. 9136 or the EPIRA shall not be considered a public utility operation and for this purpose shall not be required to secure a national franchise. It likewise contends that although petitioner was adjudged as liable for payment of franchise tax by the Supreme Court in its ruling in the *Cabanatuan case*, however, with the passage of the EPIRA, petitioner is again exempt from payment of franchise tax. Petitioner further asserts that it should not be held liable for franchise tax considering that it does not even have a power plant located in the province of Nueva Vizcaya.[19]

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[17] Annex "B", Petition for Review, Docket, p. 32.
[18] Docket, p. 21.
[19] Petition for Review, Docket, pp. 13-20.

On September 6, 2012, respondents filed their Comment[20] and prayed that the Petition for Review be dismissed.

On September 12, 2012, this Court issued a Resolution[21], giving both parties a period of thirty (30) days from notice within which to file their respective memoranda. In the same Resolution, the Court ordered the Branch Clerk of Court or the Officer-In-Charge of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27 to elevate the entire original records of Civil Case No. 6887, entitled "National Power Corporation vs. Province of Nueva Vizcaya and Perfecto B. Martinez" within ten (10) days from notice.

Petitioner filed its Memorandum on October 15, 2012; while respondents filed their Memorandum on October 16, 2012. Hence, the case was submitted for decision on October 25, 2012.

The parties raise the following legal issue for the Court's resolution:[22]

> "WHETHER OR NOT NPC IS LIABLE FOR THE PAYMENT OF FRANCHISE TAX."

Petitioner National Power Corporation was created by Commonwealth Act No. 120 in 1936. It was only in 1971 that the tax exemption provision was added to its Charter through the enactment of Republic Act (R.A.) No. 6395.[23] Section 13(b) of R.A. No. 6395 provides:

> "Sec. 13. *Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and other Charges by Government and Governmental Instrumentalities*. - The Corporation shall be non-profit

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[20] Docket, pp. 48-54.
[21] Docket, p. 61.
[22] Docket, pp. 10 and 48.
[23] An Act Revising the Charter of the National Power Corporation.

> and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation is hereby declared exempt:
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> xxx xxx xxx
>
> (b) **From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities**;" *(Emphasis supplied)*

When Republic Act No. 7160 or more popularly known as the "Local Government Code of 1991" was passed, NPC's tax exemption from local franchise tax was held in question. Specifically, there was an alleged express general repeal of NPC's tax exemption from local taxes by Congress as embodied in Section 193 of the LGC, to wit:

> "SEC. 193. *Withdrawal of Tax Exemption Privileges.* - Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."

It was in the cases of *National Power Corporation vs. City of Cabanatuan*[24] and *National Power Corporation vs. Province of Isabela*,[25] where the Supreme Court laid to rest the issue of whether or not NPC is liable to pay for franchise tax under the LGC. The Supreme Court interpreted Sections 137 and 193 of the LGC and declared that NPC is liable for local franchise tax, thus:

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[24] G.R. No. 149110, April 9, 2003.
[25] G.R. No. 165827, June 16, 2006.

"In the case at bar, Section 151 in relation to Section 137 of the LGC clearly authorizes the respondent city government to impose on the petitioner the franchise tax in question.

In its general signification, a franchise is a privilege conferred by government authority, which does not belong to citizens of the country generally as a matter of common right. In its specific sense, a franchise may refer to a general or primary franchise, or to a special or secondary franchise. The former relates to the right to exist as a corporation, by virtue of duly approved articles of incorporation, or a charter pursuant to a special law creating the corporation. The right under a primary or general franchise is vested in the individuals who compose the corporation and not in the corporation itself. On the other hand, the latter refers to the right or privileges conferred upon an existing corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires. The rights under a secondary or special franchise are vested in the corporation and may ordinarily be conveyed or mortgaged under a general power granted to a corporation to dispose of its property, except such special or secondary franchises as are charged with a public use.

In Section 131 (m) of the LGC, Congress unmistakably defined a franchise in the sense of a secondary or special franchise. This is to avoid any confusion when the word franchise is used in the context of taxation. As commonly used, a **franchise tax** is 'a tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state.' It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government. Hence, a corporation need not pay franchise tax from the time it ceased to do business and exercise its franchise. **It is within this context that the phrase 'tax on businesses enjoying a franchise' in Section 137 of the LGC should be interpreted and understood. Verily, to determine whether the petitioner is covered by the franchise tax in question, the following requisites should concur: (1) that petitioner has a 'franchise' in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the respondent city government.** *c*

Petitioner fulfills the first requisite. Commonwealth Act No. 120, as amended by Rep. Act No. 7395, constitutes petitioner's primary and secondary franchises. It serves as the petitioner's charter, defining its composition, capitalization, the appointment and the specific duties of its corporate officers, and its corporate life span. As its secondary franchise, Commonwealth Act No. 120, as amended, vests the petitioner the following powers which are not available to ordinary corporations, *viz:*

xxx xxx xxx

(e) To conduct investigations and surveys for the development of water power in any part of the Philippines;

(f) To take water from any public stream, river, creek, lake, spring or waterfall in the Philippines, for the purposes specified in this Act; to intercept and divert the flow of waters from lands of riparian owners and from persons owning or interested in waters which are or may be necessary for said purposes, upon payment of just compensation therefor; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its works or any part thereof. Provided, That just compensation shall be paid to any person or persons whose property is, directly or indirectly, adversely affected or damaged thereby;

(g) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof, to acquire, construct, install, maintain, operate, and improve gas, oil, or steam engines, and/or other prime movers, generators and machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting systems for the transmission and utilization of its power generation; to sell electric power in bulk to (1) industrial enterprises, (2) city, municipal or provincial systems and other government institutions, (3) electric cooperatives,

(4) franchise holders, and (5) real estate subdivisions xxx;

(h) To acquire, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out the purposes for which the Corporation was created: Provided, That in case a right of way is necessary for its transmission lines, easement of right of way shall only be sought: Provided, however, That in case the property itself shall be acquired by purchase, the cost thereof shall be the fair market value at the time of the taking of such property;

(i) To construct works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require xxx;

(j) To exercise the right of eminent domain for the purpose of this Act in the manner provided by law for instituting condemnation proceedings by the national, provincial and municipal governments;

xxx xxx xxx

(m) To cooperate with, and to coordinate its operations with those of the National Electrification Administration and public service entities;

(n) To exercise complete jurisdiction and control over watersheds surrounding the reservoirs of plants and/or projects constructed or proposed to be constructed by the Corporation. Upon determination by the Corporation of the areas required for watersheds for a specific project, the Bureau of Forestry, the Reforestation Administration and the Bureau of Lands shall, upon written advice by the Corporation, forthwith surrender jurisdiction to the Corporation of all areas embraced within the watersheds, subject to existing private rights, the needs of waterworks systems, and the requirements of domestic water supply;

(o) In the prosecution and maintenance of its projects, the Corporation shall adopt measures to prevent environmental pollution and promote the conservation, development and maximum utilization of natural resources xxx'

> With these powers, petitioner eventually had the monopoly in the generation and distribution of electricity. This monopoly was strengthened with the issuance of Pres. Decree No. 40, nationalizing the electric power industry. Although Exec. Order No. 215 thereafter allowed private sector participation in the generation of electricity, the transmission of electricity remains the monopoly of the petitioner.
>
> Petitioner also fulfills the second requisite. It is operating within the respondent city government's territorial jurisdiction pursuant to the powers granted to it by Commonwealth Act No. 120, as amended. From its operations in the City of Cabanatuan, petitioner realized a gross income of P107,814,187.96 in 1992. **Fulfilling both requisites, petitioner is, and ought to be, subject of the franchise tax in question.**"[26] *(Emphasis supplied)*

In 2001, Congress passed Republic Act No. 9136[27]. The question of whether NPC is liable to pay for local franchise tax resurfaced.

In the advent of the EPIRA, Congress deemed it that NPC should be divested of some of its functions. Pursuant to Section 5 of the EPIRA, the electric power industry shall be divided into four sectors, namely: (1) generation, (2) transmission, (3) distribution, and (4) supply.

The transmission function was transferred to the National Transmission Company (TRANSCO), as provided in Section 8 of R.A. No. 9136, to wit:

> "SECTION 8. *Creation of the National Transmission Company.* - There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission functions of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized

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[26] *National Power Corporation vs. City of Cabanatuan,* G.R.No. 149110, April 9, 2003.
[27] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes

> operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
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> Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).
>
> The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided*, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp."

However, the entire function of transmission of electricity was not completely transferred to TRANSCO. Section 70 of the EPIRA states as follows:

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

NPC is mandated to retain its missionary electrification function through the Small Power Utilities Group (SPUG)[28] as

[28] SECTION 4. *Definition of Terms.* –

also provided by Section 2(a) of Rule 3 of the Implementing Rules and Regulations of the EPIRA, which reads:

> "SECTION 2. *Responsibilities of the NPC.* -
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> (a) Pursuant to Section 70 of the Act, notwithstanding the divestment and/or Privatization of NPC assets, IPP contract and spun-off corporations, NPC shall remain as a National Government-owned and controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the Universal Charge to be collected from all electricity End-users as determined by the ERC."

Missionary Electrification is defined by Rule 4(ddd) of the same Implementing Rules and Regulations of the EPIRA as follows:

> "(ddd) *'Missionary Electrification'* refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels;"

Generally, aside from performing the missionary electrification function through SPUG, NPC is left with the function of generating electricity.

Petitioner argues that before the passage of the EPIRA, it was liable for payment of franchise tax due to the Supreme Court's ruling in the *Cabanatuan case*. However, with the passage of the EPIRA, petitioner is again exempted from payment of franchise tax under the LGC. Petitioner also asserts that being a generation company, and by virtue

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(tt) "Small Power Utilities Group" of "SPUG" refers to the functional unit of NPC created to pursue missionary electrification function (R.A. No. 9136).

of Section 6[29] of the EPIRA, it is exempted from paying the local franchise tax inasmuch as generation of electricity is not considered as a public utility operation and exempted from securing a national franchise.

On the other hand, respondent contends that it is of no moment that Section 6 of R.A. No. 9136 does not require petitioner to secure a franchise because the original Charter of NPC is already its franchise. Respondent also invokes the doctrine laid down in the *Cabanatuan case* and in the *Isabela case*.

Petitioner's contentions are untenable.

While this Court is mindful of some changes in petitioner's circumstances such as the divestment of some of NPC's functions brought about by the enactment of EPIRA, the Court cannot readily accept that petitioner is only left with the function of generating electricity.

As already explained by the Supreme Court in the *Cabanatuan case*, NPC is liable for franchise tax under the LGC because it satisfied the two requisites, namely: (1) that petitioner has a "franchise" in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of respondent city government.

After a careful perusal of the EPIRA, this Court finds that the EPIRA never repealed petitioner's above-mentioned corporate powers. And as long as NPC exercises its rights and privileges bestowed by its Charter, aside from performing its missionary electrification function through

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[29] SECTION 6. *Generation Sector.* - Generation of electric power, a business affected with public interest, shall be competitive and open.
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Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

SPUG, it is considered a business enjoying a franchise that comes within the ambit of Sections 137 and 192 of the LGC.

Petitioner claims that it does not even have a power plant located in the province of Nueva Vizcaya. Petitioner also alleges that the source of energy/power delivered to NUVELCO cannot be specifically identified because the source thereof may reasonably come from other power generation companies, *i.e.*, Independent Power Producers (IPPs), private power plants and the like.

Respondents counter that petitioner is a business enjoying a franchise in the province and as such need not have a power plant in the province in order to be liable for franchise tax.

Again, petitioner's contention is bereft of merit.

Assuming *arguendo*, that indeed petitioner has no power plant located in the province of Nueva Vizcaya, it does not prohibit nor in anyway impede NPC from exercising its rights and privileges given by its Charter.

Petitioner's arguments are based on allegations and nothing more. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules.[30] Section 1 of Rule 131 of the Rules of Court, in relation to Section 3 of Rule 1 of the RRCTA, as amended,[31] states that the "(b)urden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." Petitioner failed to submit the necessary evidence to support his allegations that it did not exercise its rights and privileges given by its Charter in the province of Nueva Vizcaya. It must be pointed out that petitioner had every opportunity to submit evidence to prove its allegations but

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[30] *Manzano vs. Perez, et. al.*, G.R. No. 112485, August 9, 2001.
[31] Section 3. *Applicability of Rules of Court.* – The Rules of Court in the Philippines shall apply suppletorily to these Rules.

intentionally opted not to do so by stipulating that the instant case involved only a legal issue.

Moreover, the assessment made by the Provincial Treasurer of Nueva Vizcaya enjoys the presumption that it was validly issued as a result of a regularly performed official duty. Section 3 of Rule 131 of the Rules of Court provides that:

> "SEC. 3. *Disputable presumptions*. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
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> xxx xxx xxx
>
> (m) That official duty has been regularly performed;"

Since petitioner failed to satisfy its responsibility of presenting evidence to dispute and overcome this presumption, the Court must uphold the Assessment Letter[32] dated November 8, 2007 issued by Perfecto B. Martinez, Jr., the Provincial Treasurer of Nueva Vizcaya, demanding the payment of local franchise tax for the years 2002 to 2006 in the aggregate amount of ₱8,776,271.35.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the assailed Order dated May 23, 2012 of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27 in Civil Case No. 6887 entitled "National Power Corporation vs. Province of Nueva Vizcaya and Perfecto Martinez" is **AFFIRMED**.

SO ORDERED.

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

[32] Annex "C", Petition for Review, Docket, p. 36.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

A T T E S T A T I O N

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.
Associate Justice
Chairperson

C E R T I F I C A T I O N

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice