REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY ASSESSOR'S OFFICE OF VALENZUELA CITY, rep. herein by the City Assessor, ATTY. CECILYNNE R. ANDRADE,
Petitioner,

- versus -

NATIONAL GRID CORPORATION OF THE PHILIPPINES and CENTRAL BOARD OF ASSESSMENT APPEALS,
Respondents.

CTA EB NO. 2100
(CBAA Case No. L-130)
(LBAA Case No. 2012-004)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
SEP 23 2020
10:43 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner City Assessor's Office of Valenzuela City, represented by the City Assessor, Atty.

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[1] **A.M. No. 05-11-07-CTA**, otherwise known as the ***2005 Revised Rules of the CTA, as amended.***
...
Rule 4 – JURISDICTION OF THE COURT
Section 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
...

Cecilynne R. Andrade (**petitioner/Atty. Andrade**) against respondents National Grid Corporation of the Philippines (**respondent NGCP**) and Central Board of Assessment Appeals (**respondent CBAA**), seeking the reversal and setting aside of the Decision dated 08 October 2018[2] and Resolution dated 31 May 2019[3] of the CBAA, respectively. The assailed Decision and Resolution granted respondent NGCP's appeal and set aside the Decision dated 22 August 2013[4] of the Local Board of Assessment Appeals (**LBAA**) of Valenzuela City. The CBAA declared that NGCP's transmission lines, subject of petitioner's Notice of Assessment (**NOA**), are exempt from payment of real property tax (**RPT**). The assailed Decision of the CBAA reads:

> ...
>
> **WHEREFORE**, in view of the above findings, this Board SETS ASIDE the decision rendered by the Local Board of Assessment Appeals and DECLARES Petitioner-Appellant [herein respondent NGCP] exempt from payment of real property tax for the properties subject of the Notice of Assessment and the cancellation of the Tax Declarations in connection with the Notice of Assessment to wit:

Tax Dec. No.	**Kind of Property**	**Classification**	**Assessment Level**	**Market Value**	**Assessed Value**
C-018-03188	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-04086	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-04087	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-04088	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015203	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015204	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015205	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015207	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015208	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015209	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015210	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00

(e) Decisions of the Central Board of Assessment Appeals (CBAA) in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals.

2 *Rollo*, pp. 22-31.

3 Id., pp. 33-37.

4 Id., pp. 91-94.

x -x

C-023-0152011	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015212	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015213	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015214	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-023-015215	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-026-005806	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-026-005807	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-026-005808	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-027-003705	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-027-003706	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-027-003707	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-027-003708	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-027-006569	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-027-006570	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-027-006571	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-027-006572	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-027-006573	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-030-009584	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-030-009586	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-030-009587	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-030-009588	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-030-009589	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-030-009590	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-033-000862	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-033-000863	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00
C-033-000865	Machinery	Commercial	80%	P18,070,320.00	P14,456,260.00

> The City Assessor is also ordered to classify the above-mentioned properties as EXEMPT from real property tax in its Assessment Roll.
>
> **SO ORDERED.**
>
> ...

Petitioner filed a Motion for Reconsideration (**MR**) but respondent CBAA denied the same:

> ...
>
> **WHEREFORE**, the Respondent-Appellee's [herein petitioner] Motion for Reconsideration is DENIED for lack of merit.
>
> **SO ORDERED.**
>
> ...

PARTIES

Petitioner City Assessor's Office of Valenzuela City is an office in the City Government of Valenzuela, charged with the assessment and collection of RPT in Valenzuela City. It is herein represented by its City Assessor, Atty. Andrade, who holds office at 2nd Floor, New Government Center, MacArthur Highway, Brgy. Karuhatan, Valenzuela City, Metro Manila, Philippines. Petitioner may be served with notices, orders and other processes through the undersigned counsel with office address located at the City Legal Office, 3rd Floor Executive Building, New Government Center, MacArthur Highway, Brgy. Karuhatan, Valenzuela City, Metro Manila, Philippines.

Respondent NGCP, on the other hand, is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address located at NGCP Building, Quezon Avenue corner Bureau of Internal Revenue (**BIR**) Road, Diliman, Quezon City.

NGCP is a corporation granted with franchise to engage in the business of conveying electricity through its power transmission lines and facilities in several parts of the Philippines, including various barangays in Valenzuela City by virtue of Republic Act (**RA**) No. 9511[5]. It took over the operation and maintenance of electric power transmission business of National Transmission Corporation (**TRANSCO**) through a Concession Agreement commencing on 15 January 2009 which includes the transmission lines traversing through different barangays in Valenzuela City.

Respondent CBAA, on the other hand, is an agency created by law to try and decide appeals on actions involving decisions of LBAA with office address located at 7th Floor, EDPC Building, BSP Complex, Roxas Boulevard, Manila.

FACTS OF THE CASE

On 09 October 2012, petitioner issued a NOA, notifying respondent NGCP of its RPT liability for its transmission lines amounting to ₱534,881,620.00 for the years 2002 to 2012 covered by the subject Tax Declarations. Respondent NGCP received the NOA on 16 October 2012.

On 06 December 2012, respondent NGCP filed a petition before the LBAA where it prayed for: (1) the nullification of the NOA and its corresponding Tax Declarations on the transmission lines; and, (2) for the subject properties to be classified as exempt from RPT in petitioner's assessment roll.

Before the LBAA, respondent NGCP argued that its franchise provides for its exemption from RPT. Additionally, TRANSCO, the owner of the transmission lines, is a government-owned and controlled corporation and is likewise exempt from RPT.

The LBAA, in a Decision dated 22 August 2013, upheld petitioner's assessment for RPT against respondent NGCP:

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5 AN ACT GRANTING THE NATIONAL GRID CORPORATION OF THE PHILIPPINES A FRANCHISE TO ENGAGE IN THE BUSINESS OF CONVEYING OR TRANSMITTING ELECTRICITY THROUGH HIGH VOLTAGE BACK-BONE SYSTEM OF INTERCONNECTED TRANSMISSION LINES, SUBSTATIONS AND RELATED FACILITIES, AND FOR OTHER PURPOSES.

> ...
>
> **WHEREFORE**, premises considered, the assailed Tax Declaration Nos. C-018-031888; C-023-004086 to 004088; C-023-015203 to 015215; C-026-005806 to 0005808; C-027-003705 to 0003708; C-027-006569 to 006573; C-030-009584; C-030-009586 to 009590; C-033-000862 to 000863; and C-033-000865 are subject to re-assessment from January 15, 2009 and a new notice of assessment be issued accordingly.
>
> **SO ORDERED.**
>
> ...

Aggrieved, respondent NGCP appealed the LBAA's decision to respondent CBAA. The latter took a different stance and set aside LBAA's decision. In its Decision dated 08 October 2018[6], respondent CBAA declared NGCP exempt from payment of RPT for the properties subject of the NOA. The CBAA held:

> ...
>
> The Ruling of the LBAA upholding the validity of the subject Notice of Assessment and Tax Declarations subject to a reassessment starting January 15, 2009 cites Section 9 of R.A. [Republic Act] 9511 (NGCP Franchise) as providing [respondent NGCP's] liabilities for the payment of assessed real property tax and finds further that:
>
>> *"Tax exemptions are granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. The 'in lieu of all taxes' in the franchise refers only to income taxes and does not apply to real property taxes. If the law intended for the three percent (3%) franchise tax to be the sole liability of NGCP and nothing more, then the same law should not have provided that NGCP is obliged to pay same taxes paid by other corporations on its real estate, buildings and personal properties.*
>>
>> *Neither may petitioner seek refuge on the claim of TRANSCO exemption. The Honorable Supreme Court in Philippine Long Distance Company, Inc. vs. City of Davao... held that a statute authorizing or directing the grant or transfer of the 'privileges' of a corporation which enjoys immunity from taxation or regulation should not be interpreted as including that immunity."*

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6 Supra at note 2.

The Supreme Court in NGCP vs. Oliva however ruled:

> *"It is very clear that NGCP's payment of franchise tax exempts it from payment of real property taxes on properties used in connection with its franchise. However, NGCP's tax exempt status on real property due to the "in lieu of taxes" clause is qualified: NGCP shall be liable to pay the same tax as other corporations on real estate, buildings and personal property exclusive of their franchise. The phrase "exclusive of this franchise" means that real estate, buildings and personal property used in the exercise of the franchise are not subject to the same tax as other corporations.*
>
> ...
>
> *If the subject properties are used in connection with NGCP's franchise, then NGCP is exempt from paying real property taxes on the subject properties. If the subject properties are not used in connection with NGCP's franchise, then the assessment level should be based on actual use in accordance with Section 218 (a-c) of the Local Government Code.*

Clearly, the properties, classified as machinery and transmission lines, which are subject of the Notice of Assessment and Tax Declarations under Appeal, are used in connection with NGCP's exercise of its franchise. As such, the Supreme Court has ruled that these are EXEMPT from payment of real property taxes.

As to the failure of the NGCP, in its claim for exemption, to submit evidence within 30 days that the properties are tax exempt and should therefore be removed from the assessment roll as taxable properties, the Supreme Court, in NGCP versus Oliva [***NGCP v. Oliva***], has established that:

> *"First. Tax exemptions must be clear and unequivocal and must be directly stated in a specific legal provision. In the present case, Section 9 of RA 9511 provided for NGCP's tax liabilities and exemptions.*
>
> *Second. The 'in lieu of all taxes' clause is strictly limited to the kind of taxes, taxing authority and object of taxes specified in the law."*[7]

...

[7] Italics in the original text.

Petitioner filed an MR with respondent CBAA but the same was denied in a Resolution dated 31 May 2019.[8]

Undaunted, petitioner filed the instant Petition for Review[9] before the Court *En Banc* on 17 July 2019.

ISSUES

In its bid for the reversal of the assailed actions of respondent CBAA, petitioner forwards these issues for resolution[10], to wit:

> I.
> WHETHER THE TRANSMISSION LINES OWNED BY RESPONDENT NATIONAL GRID CORPORATION OF THE PHILIPPINES, TRAVERSING VARIOUS BARANGAYS IN VALENZUELA CITY, ARE UNCONDITIONALLY EXEMPT FROM REAL PROPERTY TAX UNDER SECTION 9 OF REPUBLIC ACT 9511.
>
> II.
> WHETHER THE TAX EXEMPTION OF RESPONDENT NATIONAL GRID CORPORATION OF THE PHILIPPINES UNDER SECTION 9 OF REPUBLIC ACT 9511 SUPERSEDES THE EVIDENTIARY REQUIREMENTS UNDER SECTION 206 OF THE LOCAL GOVERNMENT CODE.
>
> III.
> WHETHER PAYMENT UNDER PROTEST MANDATED BY SECTION 252[11] OF THE LOCAL GOVERNMENT CODE IS A DEFENSE THAT MAY BE WAIVED.

ARGUMENTS

Petitioner assigns gross error in respondent CBAA's action stating essentially that it misinterpreted Section 9[12] of RA 9511 and misapplied the ruling of the Supreme Court in *NGCP v. Oliva.*[13]

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8 Supra at note 3.
9 *Rollo*, pp. 1-18.
10 See Petition, *Rollo*, page 5.
11 **Sec. 252.** *Payment Under Protest.*
12 **Sec. 9.** *Tax Provisions.* - In consideration of the franchise and rights hereby granted, the Grantee [NGCP], its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all

According to petitioner, from both Section 9 of RA 9511 and the case of *NGCP v. Oliva,* for the exemption to apply, two crucial requirements must be submitted to it, namely: (1) proof of payment of the franchise tax from 2009 to 2012; and, (2) proof that the transmission lines subject of the NOA were functional and used in connection with the franchise. A claimant for exemption from RPT must show that it paid its franchise tax and that the property sought to be exempted from tax is used in connection with its franchise. With these mentioned requirements, petitioner maintains that it is error to conclude or even assume that respondent NGCP's exemption from the payment of RPT is without condition or automatic.

Petitioner contends further that respondent NGCP did not show proofs of payment of its franchise tax for the periods of 2009 to 2012 and that the subject transmission lines are used in connection with its franchise. Instead, it went straight to LBAA and then to CBAA where it did not likewise present proofs for both requirements. Without substantiation or compliance, the inclusion of the subject transmission lines in the assessment roll by the City Assessor's Office is thus justified.

Petitioner likewise argues that respondent NGCP is liable to pay the unpaid RPT of TRANSCO from 2002 to 2008 as it allegedly assumed the latter's obligations by reason of the Concession Agreement, specifically Item No. 3.03 (c) thereof.[14]

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gross receipts derived by the Grantee [NGCP] from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: *Provided,* That the Grantee, its successors or [assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: *Provided, further,* That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).

13 G.R. No. 213157, 10 August 2016.

14 (c) Notwithstanding and without limiting Subsection 3.03(a) above, **the Concessionaire shall during the Concession Period assume all of the responsibilities as if it is an owner of the Transmission Assets (other than the Excluded Assets), Documented Property Rights and Intellectual Property Rights including the obligation to pay license fees, taxes, renewal fees and other charges payable that fall due for payment during the Concession Period**, and shall defend and indemnify PSALM and TRANSCO and hold them harmless against any and all liabilities, claims, losses, costs and expenses (including attorneys' fees) that they may incur during the Concession Period unless they are incurred as a result of PSALM's or TRANSCO's breach of any of the Transaction Documents. (Emphasis supplied)

...

Petitioner also insists that respondent NGCP's tax exemption under RA 9511 did not supersede the evidentiary requirements under Section 206[15] of RA 7160 or the Local Government Code of 1991 (**LGC**). Petitioner reasons that, if it (respondent NGCP) really believed that it is exempt from payment of RPT, then it should have submitted the documentary requirements under Section 206 with the City Assessor instead of directly filing an appeal before the LBAA when it received the NOA.

Lastly, petitioner points out that respondent NGCP's non-payment of RPT under protest touches on the issue of jurisdiction and its failure to raise the same before the LBAA cannot be deemed waived, as it is not one of the waivable defenses.

Respondent NGCP, on the other hand, counters that the operation and maintenance of the subject transmission lines are covered by its franchise, thus its exemption from paying RPT. It argues that the requirements of Section 9 of RA 9511 are satisfied when: (1) the properties classified as transmission lines that traversed various barangays in Valenzuela City are indisputably used by it in connection with the transmission of electricity not only within Valenzuela City, but also within Metro Manila and islands of Luzon; and, (2) it paid the 3% franchise tax derived from the operation of its franchise for the years 2009 to 2019.

Moreover, respondent NGCP contends that it is not liable for the unpaid RPT of TRANSCO, a government-owned and controlled corporation, from 2002 to 2008 as these transmission lines were actually, directly and exclusively used by TRANSCO for the

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15 AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991.
Sec. 206. *Proof of Exemption of Real Property from Taxation.* - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

transmission of electricity. Hence, the transmission lines are exempt from RPT pursuant to Section 234(c)[16] of the LGC.

Likewise, respondent NGCP invokes the ruling in *Manila Electric Company v. Nelia A. Barlis, et al.*[17] (**Manila Electric Company**), where the Supreme Court declared that imposing the real property tax on the subsequent owner which was neither the owner nor the beneficial user of the property during the designated periods would not only be contrary to law but likewise unjust. As it officially assumed the operation and maintenance of the transmission lines and facilities of TRANSCO only on 15 January 2009, it maintains that it should not be held liable for the unpaid RPT, if any, on the said transmission lines from 2002-2008. In support of this argument, it quoted Section 5.08(f) of the Concession Agreement.[18]

As regards the non-compliance with Section 206 of the LGC, respondent NGCP explains that it did comply with the said provision when it filed a petition before the LBAA precisely to contest and appeal the assessment issued by petitioner on the transmission lines. Its petition before the LBAA under Section 226[19] of the LGC should be considered as substantial compliance with Section 206 of the same Code. The subject transmission lines should have then been classified as exempt and dropped from the assessment roll. According to respondent NGCP, the transmission lines-machinery are undoubtedly instruments or apparatus that are indispensable parts of the nationwide power transmission system or grid, without these, it

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16 **Sec. 234.** *Exemptions from Real Property Tax.* - The following are exempted from payment of the real property tax:

...

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power ...

17 G.R. No. 114231, 18 May 2001.

18 ...

5.08. TRANSCO-Retained Obligations. – TRANSCO shall be liable for the following:

...

(f) liability for unpaid Taxes that are payable in respect of tax periods ending before the Commencement Date.

...

19 **Sec. 226.** *Local Board of Assessment Appeals.* - Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

cannot operate the transmission system or grid and transmit and deliver electricity to the public.

Lastly, respondent NGCP emphasizes that payment under protest is a waivable defense and since it paid the 3% franchise tax, it cannot be made to pay the RPT on the transmission lines for 2009 to 2012 and succeeding years under protest pursuant to Section 252[20] of the LGC. For NGCP, requiring the payment under protest despite the payment of the franchise tax and the categorical ruling that NGCP is exempted from RPT would be unjust and unfair.

<u>RULING OF THE COURT *EN BANC*</u>

The issues raised center on (1) respondent NGCP's exemption from the payment of RPT; (2) the applicability of the documentary requirements in Section 206 of the LGC for its claim of exemption pursuant to its franchise; and, (3) the need for payment under protest under Section 252 of the LGC for the perfection of its appeal questioning petitioner's NOA against it.

The first two (2) issues being intertwined, they shall be dicussed simultaneously.

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20 **Sec. 252.** *Payment Under Protest.* -
(a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.
(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.
(d) In the event that the protest is denied or upon the lapse of the sixty day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.

EXEMPTION OF RESPONDENT FROM PAYMENT OF REAL PROPERTY TAX and DOCUMENTARY REQUIREMENTS IN SECTION 206 (LGC)

Respondent NGCP's exemption from RPT by virtue of Section 9 of RA 9511 is clear and indisputable. However, contrary to its claim, it does not exempt its compliance with the documentary requirements under the LGC. Neither is its exemption without condition or automatic.

In *NGCP v. Oliva*[21], the Supreme Court held that the tax provision of RA 9511 granting franchise to NGCP contained an "in lieu of all taxes clause", including *local* taxes:

> ...
>
> NGCP'S tax provisions in RA 9511 contained an "in lieu of all taxes" clause. We reproduce Section 9 of RA 9511, the tax provisions of NGCP's franchise, below:
>
>> Section 9. Tax Provisions. – In consideration of the franchise and rights hereby granted, the Grantee [NGCP], its successors or assigns, <u>shall</u> pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee [NGCP] from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: Provided, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: Provided, further, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).
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> ...

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21 Supra at note 12.

> *Second.* The "in lieu of all taxes" clause is strictly limited to the kind of taxes, taxing authority, and object of taxes specified in the law.
>
> Section 9 of RA 9511 states that NGCP's payment of franchise tax is in lieu of payment of "income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, **local or national**, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise..."[22]
>
> ...

As shown above, the exemption is premised on its payment of franchise tax in lieu of payment of "income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, **local or national**, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise".[23] The payment is likewise mandatory with the use of the word "shall". Thus, unless the franchise tax is shown or proven to have been paid, the exemption is neither absolute nor automatic.

The Court *En Banc* sees no incongruity between Section 9 of RA 9511 that provides the basis for exemption from payment of RPT and Section 206 of the LGC that requires the submission of proof for the exemption to pay RPT. Section 206 of the LGC reads:

> ...
>
> **Sec. 206.** *Proof of Exemption of Real Property from Taxation.* – Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title **shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim** including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.
>
> **If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall**

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22 Italics and emphasis in the original text; underscoring supplied.
23 Section 9, RA 9511, supra.

> **be <u>proven</u> to be tax exempt, the same shall be dropped from the assessment roll.**[24]
>
> ...

As stated, Section 206 of the LGC does not run counter to RA 9511, particularly Section 9 thereof. Rather, the former complements, if not reinforces the mandate of RA 9511. Notwithstanding that RA 9511 is a special law and enacted later than the LGC, it did not in any way repeal or supersede the particular provision of the LGC, either expressly or impliedly.

A repeal may be express or implied. An express repeal is one wherein a statute declares, usually in its repealing clause, that a particular and specific law, identified by its number or title is repealed. An implied repeal, on the other hand, transpires when a substantial conflict exists between the new and the prior laws. In the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and the old laws.[25]

Neither of the two forms of repeal is present. RA 9511 did not contain any repealing clause or any *proviso* to the effect of dispensing with the requirements of the LGC. Much less, as earlier stated, the two provisions are not repugnant with each other that it would be impossible to apply the provisions of RA 9511 without being totally inconsistent with the provisions of the LGC.

Well-settled is the rule in statutory construction that implied repeals are disfavored. In order to effect a repeal by implication, the latter statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of implied repeal may be drawn, for inconsistency is never presumed.[26]

In *National Power Corporation v. The Provincial Treasurer of Benguet, et al.*[27] (**NPC**), the Supreme Court held that "Section 206 of

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[24] Supra at note 14; Emphasis and underscoring supplied.
[25] *Gov. Javier v. Commission on Elections, et al.*, G.R. No. 215847, 12 January 2016.
[26] Id.
[27] G.R. No. 209303, 14 November 2016.

the LGC categorically provides that every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property, shall file with the provincial, city or municipal assessor sufficient documentary evidence in support of such claim".[28] It added that, "[t]he burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, [Section 206] implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim".[29] If there is failure to substantiate the claim for exemption, then necessarily, the property being taxed will remain in the assessment roll.[30]

In a previous case, this Court likewise already declared that the exemption from RPT is not automatic even by virtue of a legislative franchise. In *National Grid Corporation of the Philippines v. Central Board of Assessment Appeals, et al.*[31] (**NGCP v. CBAA**), the Court *En Banc*, ruling unanimously, declared:

> ...
>
> It is clear from the foregoing provision, that exemption of certain real property from RPT is not automatic even by the virtue of a legislative franchise but involves a process by which the provincial, city or municipal assessor evaluates various documents submitted by the taxpayer to prove entitlement to said exemption. The process of evaluation entails an examination/investigation of facts as may be determined by the documents submitted such that the claim for exemption from RPT then devolves into a question of fact, i.e., whether or not the documents submitted by the taxpayer is sufficient to prove exemption from RPT. It is incumbent on the part of herein petitioner to follow this process as explicitly required by the cited provision of the LGC of 1991. The LBAA, on the other hand, should resolve the question of exemption guided by the same provisions.
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> ...

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28 Id.
29 Id.
30 Id.
31 CTA EB No. 1459, 27 February 2018.

NON-COMPLIANCE WITH THE
REQUIREMENTS OF PAYMENT
UNDER PROTEST

Likewise, contrary to respondent NGCP's insistence, "payment under protest" is an indispensable requirement before petitioner's NOA may be questioned before the LBAA and the CBAA.

In *NPC*[32], the Supreme Court has made clear that payment under protest is required in claiming for exemption from payment of RPT, thus:

> ...
>
> At the outset, <u>settled is the rule that should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 of the LGC of 1991 directs that the taxpayer should first pay the tax due before his protest can be entertained</u>, thus:
>
>> Sec. 252. *Payment Under Protest.* – (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be **annotated on the tax receipts the words "paid under protest"**. The **protest in writing must be filed within thirty (30) days from payment of the tax** to the provincial, city, treasurer, or municipal treasurer, in the case of a municipality within Metropolitan Area, who shall decide the protest within sixty (60) days from receipt.
>>
>> (b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.
>>
>> (c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credits against his existing or future tax liability.
>>
>> (d) In the **event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code.**

32 Supra at note 27.

> There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within 30 days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.
>
> Relevant thereto, Chapter 3, Title Two, Book II of the LGC of 1991, Sections 226 to 231, provides for the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected, particularly, the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes.
>
> ...
>
> We are not persuaded. As settled in jurisprudence, a claim for exemption from the payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA. The same may be inferred in Section 206 of the LGC of 1991...
>
> ...

Similarly, in *National Power Corporation v. The Provincial Treasurer of Benguet, et al.*[33], the Supreme Court has held that a claim for exemption neither involves the legality of assessment nor the assessor's authority to assess and collect taxes, but relates to the reasonableness or correctness of the assessment, a question of fact that should have been raised before the LBAA. It further held that any protest involving such issue requires "payment under protest"; without which, the protest should not be entertained.

From the foregoing, it is evident that Section 252 must be correlated with Section 226[34] of the LGC. Respondent NGCP cannot thus escape the requirement of payment under protest by going straight to the LBAA to appeal the NOA. Its non-compliance is fatal to its appeal. In the afore-cited case of *NPC*, the Supreme Court stated:

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[33] G.R. No. 209303, 14 November 2016.
[34] Supra at note 19.

> ...
>
> Based on the foregoing backdrop and the above-cited jurisprudence, it is evident **that NPC's failure to comply with the mandatory requirement of payment under protest in accordance with Section 252 of the LGC was fatal to its appeal.** We note that it is not the first occasion where this Court ruled that the NPC, in claiming tax exemption, questions the reasonableness or correctness of the assessment by the local assessor and not the legality of the assessment or his authority to assess real property tax. As such, **petitioner should have first complied with Section 252. Its failure to prove that this requirement has been complied with renders its administrative protest under Section 226 of the LGC without any effect. No protest shall be entertained unless the taxpayer first pays the tax.**[35]
>
> ...

The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional.[36] A party's failure to comply with the procedure regarding appeal will render the subject matter thereof final, executory and unappealable.[37] If the taxpayer fails to appeal in due course, the right to collect the taxes due becomes absolute upon expiration of such period, with respect to the taxpayer's property.[38] Here, for petitioner's failure to properly observe the procedure, the NOA has thus become final, executory and unappealable. Neither the LBAA nor respondent CBAA should have acted on respondent NGCP's appeals.

WHEREFORE, premises considered, petitioner City Assessor's Office of Valenzuela City's Petition for Review is **GRANTED.** The Decision dated 22 August 2013 of the Local Board of Assessment Appeals (LBAA) and the assailed 08 October 2018 Decision and 31 May 2019 Resolution of the Central Board of Assessment Appeals (CBAA) are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Notice of Assessment dated 09 October 2012 is hereby **DECLARED** final, executory and unappealable.

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[35] Emphasis supplied.

[36] *Jaime L. Yaneza v. The Honorable Court of Appeals, et al.*, G.R. No. 149322, 28 November 2008; *Videogram Regulatory Board v. Court of Appeals*, G.R. No. 106564, 28 November 1996, 265 SCRA 50; *Petilla v. Court of Appeals*, G.R. No. 150792, 03 March 2004.

[37] *Felisa L. Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, 19 September 2006; *Lapulapu Development and Housing Corp. v. Group Management Corporation*, 437 Phil. 297 (2002).

[38] *Manila Electric Company v. Nelia A. Barlis, et al.*, G.R. No. 114231, 29 June 2004.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice