REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL GRID CORPORATION OF THE PHILIPPINES, *Petitioner,*	**CTA *EB* NO. 1963** (CBAA Case No. L-133-2016) (LBAA Case Nos. 2014-001 and 2014-002)
-versus-	Present:
CENTRAL BOARD OF ASSESSMENT APPEALS; LOCAL BOARD OF ASSESSMENT APPEALS OF THE CITY OF BATANGAS; GUADALUPE JUDY A. TUMAMBING, in her official capacity as the City Assessor of Batangas, *Respondents.*	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
	Promulgated: JAN 14 2021 3:39p.m.

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RESOLUTION

MANAHAN, J.:

For resolution is petitioner's *Motion for Reconsideration* filed on March 13, 2020, with respondents' *Opposition* posted on October 2, 2020 and received by the Court on October 13, 2020.

Petitioner seeks reconsideration of the Decision (assailed Decision) of the Court *En Banc* promulgated on February 12, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** the Petition for Review filed by petitioner National Grid Corporation of the Philippines on November 9, 2018 is hereby **DISMISSED** for lack of merit."
>
> **SO ORDERED."**

In its motion for reconsideration, petitioner contravenes the finding of the Court that it failed to comply with the mandatory requirement of payment under protest relative to appeals made to the Local Board of Assessment Appeals (LBAA).

Petitioner disagrees with the above finding and submits that its appeal was based on Section 226 of the 1991 Local Government Code of the Philippines (1991 LGC) where payment under protest is not mandatory. Petitioner contends that its appeal was grounded on its exemption from the payment of RPT, hence the remedy provided under Section 226 of the LGC of 1991 is appropriate. Petitioner then proceeded to make a distinction between remedies provided under Section 226 of the 1991 LGC and Section 252 of the same Code. Prominent among the distinctions mentioned by petitioner is that appeals of taxpayers who want to question the billings made by the local treasurer may rely on Section 252 of the LGC of 1991 where payment under protest is necessary.

As to its exempt status, petitioner cites Republic Act (RA) No. 9511 (the NGCP Charter) which allegedly exempts them from all forms of taxes including RPT, except for the 3% franchise tax. Petitioner argues that the phrase "on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is expressly exempted" constitutes an express and categorical statement that NGCP is expressly exempted from the payment of RPT on all properties that are used in the transmission of electricity, including lands, machineries and buildings.

Petitioner claims that the Supreme Court has recognized its exempt status in the case of *NGCP vs. Ofelia M. Oliva and Ofelia M. Oliva vs. NGCP*[1] *(Oliva)* where it was supposedly ruled that NGCP is exempt from the payment of RPT on properties used in connection with its franchise.

In its *Opposition* to the Motion for Reconsideration, respondents contend that the Court did not commit any error in dismissing the Petition for Review on the ground of the failure of petitioner to comply with the procedural requirements of payment under protest under Section 252 (a) of the 1991 LGC. Respondents doubt the wisdom of petitioner when it tries to create a dichotomy between Sections 252 and 226 of the 1991 LGC which should instead be read together with Section 231 of the same Code. Respondents cite the specific provision of Section 231 of the LGC of 1991 that states that appeals on assessment of the property made by the assessor shall not in any way suspend the collection/payment of the corresponding realty taxes on the property involved, so that petitioner should have paid its taxes first to the local government of Batangas when it filed its appeal with the LBAA. Respondents allege that petitioner neither paid under protest when it filed appeals before the LBAA and the Central Board of Assessment Appeals (CBAA).

As to the issue of exemption from the payment of RPT, respondents aver that properties of petitioner, even if used in business are not automatically exempt and must be distinguished from properties owned by the National Power Corporation (NPC). Respondents believe that the properties involved in the instant case belong to NPC and not to petitioner and cites numerous Supreme Court decisions where it was ruled that NPC, in connection with the Build Operate and Transfer (BOT) agreements (with Independent Power Producers), is liable for the real estate tax liability of these entities. Respondents attempt to shatter the claimed RPT exemption of petitioner by arguing that even if its claim is true, such exemption pertains only to properties owned by them and not those owned by NPC.

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[1] G.R. No. 213157 and G.R. No. 213558, August 10, 2016.

RULING OF THE COURT

The fundamental issue for this Court's resolution is whether or not the Court correctly dismissed the Petition for Review for failure of the petitioner to pay under protest before filing an appeal with the LBAA.

Petitioner argues that its appeal with the LBAA is hinged on the provisions of Section 226 of the LGC of 1991 and not on Section 252 of the same Code, hence, payment under protest is not necessary.

We disagree with petitioner.

Based on the nature of the appeal filed by the petitioner, this Court maintains that Section 252 of the LGC of 1991 is applicable and as such payment under protest should first be complied with before filing an appeal with the LBAA.

The assailed Decision held this ruling quite clearly when it distinguished the types of appeal that may be lodged with the LBAA, to wit: (a) one that questions the reasonableness or correctness of the assessment and (b) one that questions the legality or validity of the assessment.

In the instant case, petitioner disputes the assessment for alleged defiiciency RPT on the ground that the subject properties are exempt from the payment of RPT under Section 9 of its franchise or RA 9511. As to the imposition of RPT on its tower poles, petitioner likewise claims that it is exempt under Section 199 (o) of the LGC of 1991.

The Court in the assailed Decision cited the decision of the Supreme Court in the case of *Camp John Hay Development Corporation vs. CBAA, et.al.,*[2] where it was ruled that a claim for tax exemption (as in the instant case) merely raises a question of the reasonableness or correctness of the assessment, in which case the provisions of Section 252 of the LGC of 1991 is required. This conclusion was a result of the analysis made by the Court on the relevant provisions of the LGC of 1991 and applicable

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[2] G.R. No. 169234, October 2, 2013.

jurisprudence which clearly suggests that if a taxpayer disputes the reasonableness or correctness of an assessment, the provisions of Section 252 of the LGC of 1991 applies, hence the taxpayer is required to "first pay the tax" under protest. Although exhaustively discussed in the assailed Decision, it is important to reiterate for emphasis, the process of disputing an assessment issued by a local government unit (LGU) using the relevant provisions of the the LGC of 1991. We quote portions of the assailed Decision, to wit:

> "As to the running of the period to appeal the decision of the treasurer to the LBAA, Section 226 of the LGC of 1991 states that the 60-day period to appeal commences from the receipt of the NOA, however, the said provision must be harmonized with Section 252 (d) of the same Code which provides that if the protest is denied or upon the lapse of the 60-day period given to the treasurer to act on the taxpayer's protest, the taxpayer may avail of the remedies in Chapter 3, Title Two, Book II of the LGC of 1991. In the cases of *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao* and *Dr. Olivarez, et.al., vs. Mayor Marquez,* the Supreme Court in no uncertain terms clarified the 60-day period to seek relief from the adverse decision of the treasurer with the LBAA starts to run from receipt of the written notice of assessment.
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> Further, the protest contemplated under Section 252 of LGC of 1991 is required where there is a question with respect to the reasonableness or correctness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in the RPT assessment, the taxpayer is first required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. On the other hand, if the taxpayer or the owner or person having legal interest in the property questions the very authority and power of the assessor to impose the assessment, or questions the authority and power of the treasurer to collect the tax, the matter becomes a legal question cognizable by the trial court."

The above premise laid down in the assailed Decision is not without jurisprudential basis as it echoes the ruling of the Supreme Court in the case of *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao*[3] which declared that a claim of exemption is actually an act of assailing the correctness of an assessment, and as such, payment under protest under Section 252 (d) of the LGC of

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[3] G.R. No. 171586, January 25, 2010.

1991 applies. We quote the pertinent portions of the said Supreme Court decision, to wit:

> "By providing that real property not declared and proved as tax exempt shall be included in the assessment roll, the above-quoted provision 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. **Since Napocor was simply questioning the correctness of the assessment, it should have first complied with Section 252, particularly the requirement of payment under protest.** Napocor's failure to prove that this requirement has been complied with thus 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." (emphasis supplied).

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Besides, the *Oliva* case on which petitioner hinges its motion for reconsideration involved real property tax assessments which it paid under protest, unlike in the instant case, where no such payment under protest was made. Also, the alleged upholding of its exemption from real property tax under Section 9 of RA 9511 in this case was not unconditional because the Supreme Court remanded the case to the CBAA for factual determination of whether the subject properties were indeed used by petitioner in connection with its franchise. As aptly held by the Court, thus:

> "Section 9 of RA 9511 provides that NGCP shall pay a "franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise." This franchise tax is 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.**
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> <u>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.</u> However, NGCP's tax exempt status on real property due to the "in lieu of all 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." (underlining and emphasis supplied).

In other words, a claim for tax exemption is not automatic and therefore it must satisfy the conditions required under Section 206 of the LGC of 1991[4] which requires the submission of documentary evidence in support of the claim, in consonance with the ruling in *Napocor vs. Province of Quezon, et.al.*[5]

In fine, we affirm the decision of the CBAA that the appeal of the petitioner is dismissible on the ground that petitioner failed to comply with the mandatory requirement of payment under protest under Section 252 (a) of the LGC of 1991. We therefore see no reason to resolve the substantial merits of the other arguments of petitioner against the disputed RPT assessment.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* filed on March 13, 2020 is **DENIED** for lack of merit.

The assailed Decision dated February 12, 2020 is hereby **AFFIRMED.**

SO ORDERED.

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[4] "Section 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, article of incorporation, bylaws, contracts, affidavits, certifications ad 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 proven to be tax exempt, the same shall be dropped from the assessment roll." (emphasis supplied)

[5] *Supra*, footnote 3.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice