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:
JUN 02 2021 4:28pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent National Grid Corporation of the Philippines' (**respondent NGCP's**) "Motion for Reconsideration"[1] (**MR**), filed on 23 October 2020, with petitioner City Assessor's Office of Valenzuela City, represented herein by the City Assessor, Atty. Cecilynne R. Andrade's (**petitioner's**) "Comment (on NGCP's Motion for Reconsideration)"[2], filed *via* registered mail on 04 December 2020[3].

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1 *Rollo*, pp. 423-441.
2 Id., pp. 471-476.
3 Received by the Court on 16 December 2020.

Thereafter, NGCP filed a "Motion (To Admit Reply to the Petitioner's Comment on NGCP's Motion for Reconsideration)"[4], which the Court merely noted without action in the 10 February 2021 Resolution. Pursuant to Rule 15, Section 5(c) of the 2019 Amendments to the 1997 Rules of Civil Procedure[5], upon the filing of the opposing party's comment or opposition to a litigious motion, no other submissions will be considered by the court in the resolution of the said motion.

Petitioner, on the other hand, filed *via* registered mail on 16 February 2021[6] a "Comment (on NGCP's Motion to Admit Reply)". In view of the afore-cited rule, petitioner's comment has likewise been merely noted without action. Similarly, the Court could not consider respondent's Reply and petitioner's Comment thereto in resolving the instant MR.

In its MR, respondent NGCP assails the 23 September 2020 Decision of the Court *En Banc* raising the following arguments:

1. NGCP already submitted the proof of its payment of the 3% franchise tax as a condition for its exemption from payment of real property tax (**RPT**);
2. Compliance with the 30-day period for the submission of proof of exemption under Section 206 of the Local Government Code (**LGC**) is merely directory, not mandatory, as a taxpayer is allowed to subsequently submit proof of its exemption beyond such period;
3. Section 226 of the LGC does not require payment under protest prior to the filing of the petition before the Local Board of Assessment Appeals (**LBAA**) and the provisions of the LGC on the matter are clear;
4. Assuming for the sake of argument that NGCP is liable for the payment of RPT, it should not be made to pay the RPT for the years 2002 to 2008; and,
5. Technical rules may be waived to serve the ends of justice; thus, this Honorable Court should have ruled on the issue of whether the subject properties covered by Notice of Assessment (**NOA**)

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4 Id., pp. 479-486.
5 A.M. No. 19-10-20-SC.
6 Received by the Court on 26 February 2021.

issued by petitioner City Assessor are exempt from payment of RPT.

Respondent NGCP contends further that, despite the Court's recognition of its exemption from RPT by virtue of Republic Act (**RA**) No. 9511[7], it still wants NGCP to show and submit proof of payment of the 3% franchise tax. The Court likewise requires it to follow the procedure under Section 206[8] of the LGC in the submission of such proof before the concerned assessor within thirty (30) days from the declaration of the property.

Respondent NGCP claims it is not liable for RPT as it is not the owner of the transmission lines but the National Transmission Corporation (**TRANSCO**) and that they have been existing even prior to its assumption (of operation) in 2009. Thus, as a result, it could not be held liable for the unpaid RPT for the years 2002 to 2008 absent its actual use, possession and control over the said transmission lines.

Respondent NGCP adds that, while it is true that Section 206 of the LGC requires the submission of proof of exemption from payment of RPT within 30 days, it does not preclude the subsequent submission thereof. According to it, the law provides that the non-submission of proof of exemption in the meantime will only allow the assessor to include the properties in the assessment roll. However, if the properties shall be proven to be exempt, the subject properties will be dropped from the assessment roll. With the submission of proof of exemption and the Supreme Court ruling in *National Grid Corporation of the Philippines v. Ofelia M. Oliva*[9], there should have been no hindrance for this Court to rule on the exemption of the subject properties from RPT.

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[7] 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.

[8] **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.

[9] G.R. Nos. 213157 and 213558, 10 August 2016.

NGCP insists that, under the circumstances, the remedy available to it is Section 226[10] of the LGC, by filing an appeal to the LBAA. Moreover, Section 226 of the LGC does not require prior payment under protest before the filing of the petition with the LBAA. The petition filed with the LBAA was pursuant to Section 226 of the LGC, questioning the assessment on the ground that it is exempt from payment of RPT on properties used in connection with its franchise and that the NOA was erroneous as it declared the subject properties in the name of NGCP as owner instead of TRANSCO.

Furthermore, respondent NGCP posits that appeals before the LBAA may be availed of in two (2) instances. *First*, to appeal directly to the LBAA from the NOA issued by the assessor under Section 226 of the LGC (for which payment under protest is not required). *Second* is an appeal from the denial by the Treasurer's Office of the written protest filed by the taxpayer after payment under protest was made under Section 252[11] of the LGC. It submits that a taxpayer is allowed to contest the assessment issued by the local assessor since it is the latter's responsibility (*not* the local treasurer's) to determine whether the taxpayer's claim is valid or not.

Respondent NGCP asserts that payment under protest is material only if the taxpayer files a written protest before the local treasurer under Section 252 (a) of the LGC, and thereafter files the appeal before the LBAA in case of a denial of the writen protest by the City Treasurer and not by the City Assessor. Thus, Section 226 of the

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10 **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 provincial 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.

11 **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.

LGC pertains to the City assessor's act of assessing the taxpayer's property, while Section 252 of the LGC relates to the City Treasurer's denial of the taxpayer's written protest. It insists that payment under protest is not required for the remedy it availed of under Section 226 of the LGC.

Lastly, respondent NGCP argues that, if it were to be considered liable for payment of RPT, its liability should exclude the years 2002 to 2008 because it did not have the actual use, possession and control over the transmission lines (maintaining that it assumed the operation and maintenance thereof only on 15 January 2009). According to it, it is contrary to law and unjust to impose the RPT upon a taxpayer who is neither the owner nor the beneficial user during that period. Similarly, it is unfair to be required to pay under protest an erroneous assessment before it could even contest the same; especially since the Supreme Court has already decided that it is exempt from paying the RPT on the transmission lines.

Unyielding, petitioner counters that tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority. Section 9 of RA No. 9511[12] is explicit that it does not grant an automatic RPT exemption in respondent NGCP's favor. The latter is obligated to pay RPT for properties exclusive of the franchise; whereas, for franchise related properties, NGCP must pay the 3% franchise tax then submit the receipt to the City Assessor before it can avail of the tax exemption. Hence, there are requirements to comply with before the tax exemption may be availed.

Additionally, petitioner maintains that respondent NGCP is primarily liable to pay the RPT liability from 2002 to 2008 after it failed to declare the said transmission lines within sixty (60) days from 15

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[12] **Sec. 9**. *Tax Provisions*. - In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee 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).

January 2009 (or the purported date of turnover of the properties from TRANSCO). The latter also failed to notify the City Assessor's Office of the transfer of rights to respondent NGCP under its Concessionaire Agreement. Both NGCP and TRANSCO thus failed to comply with the requirements of Sections 203[13] and 208[14] of the LGC.

Petitioner maintains that NGCP's defense that it is not liable for RPT for the years 2002 to 2008 should be directed to TRANSCO since the City Assessor has the authority to declare real property for taxation purposes under the law.

Lastly, petitioner insists that payment under protest under Section 252 of the LGC applies to Section 226 of the same code. It does not distinguish between an appeal to LBAA or a protest before the City Treasurer as both require payment under protest.

We resolve.

Even after a repeated and a more assiduous review of the records of the case, the Court *En Banc* fails to find merit in respondent NGCP's arguments. It is noted as well that the same arguments have already been considered and delved upon in the assailed Decision. Nonetheless, *for emphasis*, We reproduce portions of the assailed Decision, to wit:

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> In [*National Power Corporation v. The Provincial Treasurer of Benguet, et al.*] (***NPC***), the Supreme Court has made clear that payment under protest is required in claiming for exemption from payment of RPT, thus:
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> ...
>
> 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</u>

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13 Sec. 203. *Duty of Person Acquiring Real Property or Making Improvement Thereon.* – It shall also be the duty of any person, or his authorized representative, acquiring at any time real property in any municipality or city or making any improvement on real property, to prepare, or cause to be prepared, and file with the provincial, city or municipal assessor, a sworn statement declaring the true value of subject property, within sixty (60) days after the acquisition of such property or upon completion or occupancy of the improvement, whichever comes earlier.

14 Sec. 208. *Notification of Transfer of Real Property Ownership.* – Any person who shall transfer real property ownership to another shall notify the provincial, city or municipal assessor concerned within sixty (60) days from the date of such transfer. The notification shall include the mode of transfer, the description of the property alienated, the name and address of the transferee.

should first pay the tax due before his protest can be entertained, 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.**

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.

...

Similarly, in [NPC], 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 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:

...

> 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.**
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> ...
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> The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional. A party's failure to comply with the procedure regarding appeal will render the subject matter thereof final, executory and unappealable. 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. 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 NGCP's appeals.[15]
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> ...

Respondent NGCP's contention that the remedy provided under Section 226 of the LGC does not require payment under protest is unavailing. As previously declared in the assailed Decision, Section 226 of the LGC must be read in conjunction with Section 252 of the LGC and the two (2) provisions are not separate remedies, as respondent NGCP so claims.

In the case of *Camp John Hay Development Corporation v. Central Board of Assessment Appeals, et al.*[16], the Supreme Court elucidated in this wise:

> ...
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> Section 252 of RA No. 7160, also known as the LGC of 1991, categorically provides:
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> SEC. 252. Payment Under Protest. – (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be

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[15] Citations omitted; emphasis supplied.

[16] G.R. No. 169234, 02 October 2013.

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.

...

(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.**

Relevant thereto, the remedies referred to under Chapter 3, Title Two, Book II of RA No. 7160 or the LGC of 1991 are those provided for under Sections 226-231. Significant provisions pertaining to the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes, follow:

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.

...

Sec. 231. Effect of Appeal on the Payment of Real Property Tax. – **Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor**, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.

...

...[I]t is obvious that in order for a complete determination of petitioner's alleged exemption from payment of real property tax under RA No. 7610 or the LGC of 1991, there are factual issues needed to be confirmed. Hence, being a question of fact, petitioner cannot do without first resorting to the proper administrative remedies, or as previously discussed, by paying under protest the tax assessed in compliance with Section 252 thereof.

Accordingly, the CBAA and the CTA En Banc correctly ruled that real property taxes should first be paid before any protest thereon may be considered. It is without a doubt that such requirement of "payment under protest" is a condition *sine qua non* before an appeal may be entertained. Thus, remanding the case to the LBAA for further proceedings subject to a full and up-to-date payment, either in cash or surety, of realty tax on the subject properties was proper.

To reiterate, the restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled. The right of local government units to collect taxes due must always be upheld to avoid severe erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of RA No. 7160 or the LGC of 1991 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.

All told, We go back to what was at the outset stated, that is, that a claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax, but merely raises a question of the reasonableness or correctness of such assessment, which requires compliance with Section 252 of the LGC of 1991. Such argument which may involve a question of fact should be resolved at the first instance by the LBAA.[17]

...

WHEREFORE, with the foregoing, respondent National Grid Corporation of the Philippines' Motion for Reconsideration of the Decision dated 23 September 2020 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[17] Citations omitted and emphasis supplied.

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 RL
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice