REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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NATIONAL POWER CORPORATION,
Petitioner,

- versus -

PROVINCE OF QUEZON, and MUNICIPALITY OF PAGBILAO,
Respondents.

C.T.A. En Banc NO. 46
(CBAA Case No. L-29)

Present:

Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:
FEB 2 1 2006

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DECISION

UY, J.:

In the Petition for Review before Us, petitioner National Power Corporation, pursuant to Sections 7(a)(5) and 11 of Republic Act No. 9282, challenges the Decision of the Central Board of Assessment Appeals dated August 18, 2003 in CBAA Case No. L-29, and the Board's Resolution dated October 7, 2004, which effectively affirmed the Local Board of Assessment Appeals' Order dated November 13, 2000 denying petitioner's "Petition To Declare Exempt From Real Property Tax, Machineries and Equipment For Generation and Transmission Of

Power, Under Section 234 (c) of the RA 7160, Located At Pagbilao, Quezon", in the total amount of Three Billion Five Hundred Ninety Four Million Four Hundred Eighty Six Thousand Pesos (P3,594,486,000.00) for the period from 1997 until September 2004.

Petitioner, National Power Corporation, is a government owned and controlled corporation created under Commonwealth Act No. 120, as amended[1], with address at the NPC Building Complex, Quezon Avenue corner BIR Road, Diliman, Quezon City. It is engaged in the business of providing electric power to the public.

On the other hand, respondents, the Province of Quezon and the Municipality of Pagbilao, Quezon, are local government units with address at the Office of the Provincial Attorney of Quezon Province, Provincial Capitol Compound, Lucena City. Pursuant to Section 232 of Republic (R.A) Act No. 7160, or the Local Government Code ("LGC"), respondents are empowered to levy ad valorem taxes on real property, not specifically exempted by law.

On November 9, 1991, independent contractor Mirant Pagbilao Corporation ("Mirant"), previously known as Hopewell Energy International Limited and Southern Energy Quezon Incorporated, entered into an Agreement entitled, "Energy Conversion Agreement" or ECA with petitioner National Power Corporation. As stipulated therein by the parties, Mirant shall design, build, operate a 700 megawatts hydraulic plant in Pagbilao, Quezon for the purpose of converting fuel into electricity, while petitioner shall be the recipient of the electricity so generated by the power station conditioned upon payment of fees.[2] The power plant shall be ceded to petitioner after a period of twenty five (25) years.[3]

In a Letter dated March 2, 2000 addressed to Mauro C. Villamar, Mirant's Chief Finance Officer, the Municipality of Pagbilao, Quezon, through its Treasurer, Aristeo G. Catalla, assessed Mirant of realty tax delinquencies on the machineries, and equipment of the thermal power

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[1] Republic Act No. 6395
[2] ECA, p. 53
[3] Petition for Review, p.3

plant located at Pagbilao, Quezon, in the aggregate amount of One Billion Five Hundred Thirty Two Million Seventy Six Thousand Pesos (P1,532,076,000.00), inclusive of interests under Tax Declaration Nos. 22-027-577B and 22-027-578-M.[4]

In the belief that it is exempted from the payment of realty taxes pursuant to the ECA, Mirant apprised petitioner of the action undertaken by the respondents. To protect its interest, petitioner filed a case on April 14, 2000 before the Local Board of Assessment Appeals ("LBAA"), Province of Quezon, Lucena City, entitled "In Re: Petition To Declare Exempt From Real Property Tax Machineries and Equipment For Generation and Transmission Of Power Under Section 234 (c) of the RA 7160, Located At Pagbilao, Quezon" docketed as LBAA Case No. 2-2000. Petitioner claims that it is entitled to an exemption from payment of realty taxes on the machineries and equipment used in the generation and transmission of electricity under Section 234 (c) of LGC and under its Charter, Republic Act (R.A.) No. 6395.[5]

After submitting their Comment therein, respondents filed a Motion to Dismiss for failure of petitioner to pay the assailed taxes under protest pursuant to Section 252(a) of the Local Government Code or LGC which the LBAA found meritorious. Correspondingly, the LBAA issued an Order dated November 13, 2000 denying the petition on the ground that the filing thereof is conditioned upon payment under protest pursuant to Section 252 (a) of LGC which was not complied with by petitioner.[6]

On appeal, the Central Board of Assessment Appeals ("CBAA") took cognizance over the case docketed as CBAA Case No. L-29, and dismissed the same for lack of merit declaring Mirant Pagbilao Corporation as the actual, direct and exclusive user of the power plant liable for realty taxes. The CBAA ruled in this wise:

> " x x x The fact is, that the use of the Pagbilao Power Plant has been granted to Hopewell/Mirant by virtue of the BOT law (R.A. 7718, as amended), and provided for under the Energy Conversion Agreement (ECA) between the National Power Corporation and Hopewell Energy International Limited. This is

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[4] Ibid, p.4
[5] Exhibit C-1
[6] Annex C-2 of the Petition for Review

> the hard fact that vests in Hopewell/Mirant the existing ownership, operation, hence, use of the Pagbilao Power Plant.
>
> In view thereof, the Pagbilao Power Plant, being owned, operated and used by Hopewell/Mirant, a non-exempt entity, is subject to the Real Property Tax."[7]

In the interim of the proceedings, the Sangguniang Panlalawigan of Quezon issued Resolution No. 2004-165 dated October 4, 2004 authorizing Provincial Governor Wilfrido L. Enverga to direct the Provincial Treasurer of Pagbilao, Quezon to enforce real property tax collection and avail of extra-judicial remedies of distraint and/or levy against the real properties. The Sanggunian contended that the welfare of the respondents should not be subordinated to the contractual obligation between petitioner and Mirant in view of the real estate tax exemption clause in favor of Mirant.[8]

On October 7, 2004, the Municipal Treasurer of Pagbilao, Quezon again sent another demand letter to Mirant through its President, Edgardo Bautista, for the payment of realty taxes in the aggregate amount of Three Billion Five Hundred Ninety Four Thousand Four Hundred Eighty Six Thousand Pesos (P3,594,486,000.00) for the period of 1997 until September 2004.[9]

Petitioner filed a Motion for Reconsideration from the CBAA's Decision dated August 18, 2003 with Comment/ Opposition from the respondents.

In a Resolution dated October 7, 2004, the CBAA denied petitioner's Motion for Reconsideration but ordered Mirant to pay realty taxes subject to depreciation allowance on the machineries of the Pagbilao Plant pursuant to Section 225 of the LGC.[10]

Undaunted, petitioner filed the instant Petition for Review dated November 9, 2004 against respondents praying for the issuance of a temporary restraining order and/or order of suspension restraining respondents and any of their officers or agents, from implementing

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[7] Annex "A", pp. 13-14
[8] Annex "H"
[9] Annex "G"
[10] Petition for Review, p. 8

the Central Board of Assessment Appeals Decision and Resolution dated August 18, 2003 and October 7, 2004, respectively. It further prayed that respondents be restrained from further imposing/collecting payment, levy, distraint, and/or sale of the Pagbilao Power Plant or any of its machineries or equipment assessed, pending resolution of this case, subject to the conditions that may be imposed by this Court.

Pursuant thereto, an En Banc Resolution dated November 11, 2004 was issued by this Court requiring respondents to file Comment to the petition and thereafter, petitioner to file Reply, if it so desires. Additionally, and in order to maintain status quo and to preserve the rights of the parties before the application for a writ of preliminary injunction can be heard, a temporary restraining order was issued restraining respondents and any of their officers and agents, from implementing the Central Board of Assessment Appeals' Decision dated August 18, 2003, and Resolution dated October 7, 2004, and from further imposing and/or collecting payment, levy, distraint and/or sale of the Pagbilao Power plant or any of its machineries or equipment assessed, for a period of sixty (60) days from notice thereof.

The application for a writ of preliminary injunction was set for hearing on December 15, 2004 with a directive for both parties to appear and for respondents to show cause why the application for a writ of preliminary injunction should not be granted. On December 6, 2004, respondents filed their Comment to the Petition.

On January 3, 2005, this Court issued a Resolution granting petitioner's application for the issuance of a Writ of Preliminary Injunction enjoining respondents and any of their officers and/or agents from implementing the CBAA's decision dated August 18, 2003 and Resolution dated October 7, 2004 and from further imposing and/or collecting payment, levy, distraint and/or sale of the Pagbilao Power Plant or any of its machineries or equipment assessed until further notice.

After both parties proffered their Memoranda, the instant petition was deemed submitted for resolution as of February 22, 2005. It appearing however that the docket of this case had not been forwarded pursuant to legal requirements, the Central Board of Assessment Appeals was directed to elevate the entire records of CBAA Case No. L-29 in the Resolution dated November 22, 2005.

Meanwhile, respondents filed a Motion to Lift Writ of Preliminary Injunction on November 16, 2005, alleging the following grounds: petitioner National Power Corporation is not the real party-in-interest in the instant case; respondents are collecting real property taxes from Mirant Pagbilao Corporation, not from National Power Corporation; neither Mirant Pagbilao Corporation nor Napocor made payment under protest, tax collection cannot be enjoined as respondents' services to their constituents are affected by Mirant's non-payment. Said motion was set for hearing on November 18, 2005.

On December 1, 2005, the Central Board of Assessment Appeals forwarded the entire records of CBAA Case No. L-29 entitled "National Power Corporation, Petitioner, versus Province of Quezon and The Municipality of Pagbilao, Respondents."

In the Resolution dated December 6, 2005, the Court En Banc, in lieu of hearing, directed petitioner to file its Comment to respondents' aforementioned Motion. Thereafter, petitioner filed its Opposition (To Respondents' Motion to Lift Writ of Preliminary Injunction) on December 7, 2005 while respondents filed their Reply (To Opposition dated 06 December 2005) on January 5, 2006.

Finding that a resolution of respondents' Motion to Lift Writ of Preliminary Injunction would result in a Decision on the merits, and considering that the entire docket of this case has been transmitted to this Court, the Court En Banc resolved in the Resolution dated January 16, 2006, to defer its resolution thereof and to include the same in the final determination of the instant petition.

Hence this Decision.

The Petition interposed the following grounds for the consideration of the Court:

"I. The CBAA ERRED IN EXERCISING APPELLATE JURISDICTION OVER THE LBAA'S SIN PERJUICIO DECISION.

II. THE CBAA ERRED IN RULING THAT PETITIONER IS NOT THE ACTUAL, DIRECT AND EXCLUSIVE USER OF THE PAGBILAO POWER PLANT.

III. THE CBAA ERRED IN RULING THAT PETITIONER'S REAL PROPERTY TAX EXEMPTION WAS WITHDRAWN BY THE LOCAL GOVERNMENT CODE.

IV. THE CBAA ERRED IN RULING THAT PETITIONER MUST BE ENGAGED IN BOTH GENERATION AND TRANSMISSION OF POWER BEFORE THE EXEMPTION UNDER SECTION 234 (c) OF THE LGC APPLIES.

V. THE CBAA ERRED IN NOT CONSTRUING THE EXEMPTIONS UNDER THE LGC IN HARMONY WITH PETITIONER'S CHARTER AND THE BOT LAW.

VI. ASSUMING THE PAGBILAO POWER PLANT IS TAXABLE , THE CBAA NONETHELESS ERRED IN REFUSING TO REMAND THE CASE TO THE LBAA FOR THE PURPOSE OF DETERMINING THE ADJUSTMENTS OF THE REAL ESTATE TAXES DUE ON ACCOUNT OF THE USE OF THE 10% ASSESSMENT LEVEL AND THE EXCLUSION OF POLLUTION REDUCING.

VII. THE CBAA ERRED IN HOLDING THAT PAYMENT UNDER PROTEST OF THE ASSESSED REAL PROPERTY TAXES IS REQUIRED BEFORE THE PETITION FOR EXEMPTION CAN BE GIVEN DUE COURSE."[11]

On the other hand, respondents, in their Comment filed on December 6, 2004 assert the following claims and defenses:

I. The appealed LBAA Decision of November *13, 2*000 is not a *"Sin Perjuicio"* judment and the petitioner National Power Corporation cannot question the appellate jurisdiction of the *CBAA* because it is the same party who invoked such jurisdiction when it filed the instant appeal;

II. The Central Board Of Assessment Appeals did not err in ruling that petitioner NPC is not the actual, direct and exclusive user of the the Pagbilao Power Plant;

III. The CBAA did not err in ruling that petitioner's real property tax exemption was withdrawn by the Local Government Code;

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[11] Petition for Review, pp. 8-9

IV. Payment under protest is a mandatory requirement before any appeal is considered, much more, given due course by the honorable tribunal;

V. It is necessary that the GOCC (NPC) is engaged in both generation and transmission of electricity;

VI. The Energy Conversion Agreement (ECA) acknowledged that the subject real properties of Hopewell (Mirant, Phil.) fall under the category of taxable real properties;

VII. Taken in its entirety, the Energy Conversion Agreement between NPC and Hopewell (Mirant) is a recognition of the latter's ownership of the power plant in Pagbilao until the designated transfer date;

VIII. The Energy Conversion Agreement is a contract executed/consummated for the sole benefit of the contractor acting party-NPC and Hopewell (Mirant, Phil.) on November 09, 1991 – hence, it does not in any way bind(s) the municipal government of Pagbilao and the province of Quezon;

IX. Petitioner National Power Corporation (NPC) is bereft of cause of action and/or right of action to institute the present petition;

X. Petitioner National Power Corporation (NPC) is not the "real party in interest" but Mirant, Phil., sufficiently clothed with the personality as the declared real property owner and in reality, the actual, direct and exclusive "user", and therefore liable for payment of the real property tax who should interpose the instant petition, if it really felt aggrieved by the 3.6 billion RPT imposition.

The pivotal issues raised in this petition are summarized as follows:

1. Whether or not the Decision in LBAA Case No. 2-2000 of the LBAA of the Province of Quezon is a "sin perjuicio" decision;

2. Whether or not the LBAA correctly relied on the provisions of Section 252 (a) of the LGC in dismissing LBAA Case No. 2-2000;

3. Whether or not petitioner is the real-party-in interest to file the instant petition;

4. Whether or not the machineries and equipments of the Pagbilao Power Plant are subject to realty taxes pursuant to Section 234 (c) of the Local Government Code;

5. Whether or not petitioner is liable to pay subject realty taxes;

Before delving into the merits of the petition, We look into the alleged procedural flaws of the case.

On the alleged infirmity of the LBAA's decision being devoid of fact and law, petitioner alleges that the CBAA does not exercise appellate jurisdiction over the LBAA's sin perjuicio decision. Being a defective ruling under Section 14, Article 8 of the 1987 Constitution, the CBAA should have remanded the case to the LBAA for further proceedings, instead of exercising jurisdiction over the case.[12]

Respondents counter that the LBAA's decision is not a decision "sin perjuicio" as it is allegedly founded on fact and law, mandating that payment be made under protest before making any petition or appropriate action relative thereto pursuant to Section 252 (a) of R.A. 7160 reinforced by Article 343".[13]

A "sin perjuicio" decision is a judgment without statement of facts in support of its conclusion, the effect of which is not binding upon the parties.[14]

The Court finds merit in petitioner's claim that the Order of the LBAA of the Province of Quezon, is a "sin perjuicio" Decision. A perusal thereof shows that the assailed Order does not contain findings of facts in support of the dismissal of the case. It merely stated a finding of merit in the contention of the Municipality of Pagbilao that pursuant to Section 252 (a) RA 7160, reinforced by Article 343 which mandates payment under protest before making any petition or appropriate pleadings relative thereto, as the ground for the dismissal of LBAA Case No. 2-2000.

However, on appeal before the CBAA, petitioner assigned several errors, both in fact and in law, pertaining to the LBAA's Decision. Thus, petitioner is bound by the appellate jurisdiction of the CBAA under the principle of equitable estoppel. In this regard, petitioner

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[12] Petition for Review, pp 9-10
[13] Respondent's Comment, p. 3
[14] Herrera, Oscar. Remedial Law, 1994 Revised Edition Vol. II, p.90 and Feria, Jose. Civil Procedure Annotated. Vol 2, 2001 Edition, p.4

is in no position to question the appellate jurisdiction of the CBAA as it is the same party which sought its jurisdiction and participated in the proceedings therein.

The Supreme Court in the case of Odin Security Agency vs. De La Cerna explained the doctrine of equitable estoppel thus:

> "It has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rules, it was further said that the question whether the court had jurisdiction either of the subject matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated –obviously for reasons of public policy.
>
> "Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (Pease vs. Rathbunjones, etc., 243 U.S. 273, 61 L. Ed. 715, 37 S. Ct. 283; St. Louis etc. vs. McBride, 141 U.S. 127, 35 L. Ed. 659). And in Littleton vs. Burgess, 16 Wyo, 58, the Court said it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty."[15]

Concerning the matter on payment under protest, petitioner argues that the LBAA erroneously required payment under protest pursuant to Section 252 (a) of the Local Government Code.

Petitioner's contention is impressed with merit.

Section 252 (a) of the Local Government Code reads:

> "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."

Based on the foregoing legal provision, the taxpayer desiring to protest an assessment made by a local government unit, must first pay the tax so assessed, while the tax receipts shall contain the words "paid under protest" annotated thereon. The protest

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[15] 182 SCRA 472 citing the case of Tijam vs. Sibonghanoy, 23 SCRA 29

contemplated under this provision questions the reasonableness of an assessment and not the legality thereof.

Payment under protest in the assessment of realty taxes is necessary if what is being contested is the correctness of the amount of assessment, as held in the case of Pablo R. Olivarez, et.al. vs. Marquez, to wit:

> "Thus, should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 directs that the taxpayer should first pay the tax due before his protest can be entertained. 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 thirty 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."[16]

On the other hand, Section 252 of the LGC is not applicable when it is the legality of the assessment that is raised in the protest as elucidated in the case of Ty vs. Trampe, to wit:

> "Again, the protest contemplated under Sec. 252 of RA 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to "first pay the tax" under protest. In the case at bench however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase."[17]

Similarly in the case at bar, petitioner is not contesting the reasonableness of the assessment made over subject realties but is questioning the authority of the respondents to assess realty taxes against the machineries and equipment of the Pagbilao Power Plant on the assumption that the same are tax exempt.

Thus, the CBAA aptly gave due course to CBAA No. L-29 in accordance with Section 226 of the LGC which provides that 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

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[16] 250 SCRA 500 (December 1, 1995)
[17] 438 SCRA 679

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.

Relevant to the matter on payment under protest is the issue as to whether or not petitioner has legal interest to file a protest against the assessments for realty taxes over the equipment and machineries of the Pagbilao Power Plant, or simply put, -- is petitioner a real party in interest in this case?

A real party in interest is defined under Section 2, Rule 3 of the 1997 Revised Rules of Court which reads:

> SEC. 2. Parties in interest. -- A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

In the case of Dagadag vs. Tongnawa,[18] the Supreme Court declared that the interest of the parties in the suit or judgment should be material and not a mere contingent interest.

> "The word "interest", as contemplated by the Rules, means material interest or an interest in the issue and to be affected by the judgment, as distinguished from mere interest in the question involved or a mere incidental interest. Stated differently, the rule refers to a real or present substantial interest as distinguished from a mere expectancy, or a future, contingent, subordinate, or consequential interest. As a general rule, one who has no right or interest to protect cannot invoke the jurisdiction of the court as party-plaintiff in an action."

Under Section 2.12, Eight Schedule of the Energy Conversion Agreement ("ECA"), petitioner, from November 9, 1991, the date of execution of the ECA, until transfer date, is not the owner, nor the actual and direct user, of the subject machineries and equipment, to wit:

> "**2.12. OWNERSHIP OF POWER STATION.** From the Effective Date until the Transfer Date, HOPEWELL SHALL, directly or indirectly, own the power station and all the fixtures, fittings, machinery and equipment on the site or used in connection with the Power Station which have been supplied by it or at its cost. HOPEWELL shall operate, manage and maintain the Power Station for the purpose of converting Fuel of NAPOCOR into electricity."

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[18] 450 SCRA 437 (February 3, 2005)

Considering therefore that petitioner is presently not the owner of the machineries and equipment located at the Pagbilao Power Plant, it has no legal standing to claim for exemption from real property taxes imposed upon subject machineries and equipment in LBAA Case No. 2-2000.

Ineluctably, petitioner is not a real party-in-interest. And one having no right or interest to protect cannot invoke the jurisdiction of the court as a party plaintiff in an action.[19] If the suit is not brought in the name of or against the real party in interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action, pursuant to Section 1(g) of Rule 16 of the 1997 Rules of Civil Procedure, as amended.

As invoked by respondents in their Comment and Motion to Lift Writ of Preliminary Injunction, petitioner is not the real party-in-interest to claim for exemption from real property taxes of subject machineries and equipment for the generation and transmission of power. Thus, the dismissal of the case is justified which gives legal basis to grant respondents' Motion to Lift Writ of Preliminary Injunction.

Going to the merits of the case, We shall now ascertain whether the machineries and equipment of the Pagbilao Power Plant are subject to realty taxes?

Realty tax is a direct tax imposed on the privilege to use real property such as land, building, machinery and other improvements, unless specifically exempted.[20] By virtue of Section 234 of the LGC, real properties enjoying exemption from realty taxes are as follows:

> "**Section 234. Exemptions from Real Property Tax.** – The following are exempted from payment of real property tax:
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> (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof had been granted for consideration or otherwise , to a taxable person;
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> (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings and

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[19] Ralla v. Ralla, 199 SCRA 495 [1991]
[20] Domondon.,A. Bar Reviewer in Taxation. Volume I, 2004 Edition, p. 608

> improvements actually, directly, and exclusively used for religious, charitable or educational purposes;
>
> **(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;**
>
> (d) All real property owned by duly registered cooperatives as provided under R.A. No. 6938; and
>
> (e) Machinery and equipment used for pollution control and environmental protection" *(emphasis supplied)*.

Petitioner finds solace on the provision of Section 234 (c) of the LGC in its claim for tax exemption. It must be remembered however, that said law grants realty tax exemption only to machineries and equipment which are actually, directly and exclusively used in the generation and transmission of electricity by a government-owned and controlled corporation such as petitioner. For emphasis, the government owned and controlled corporation must be engaged both in the generation and transmission of electricity.

A perusal of Article 7 Part A of the ECA clearly shows that it is Hopewell, now Mirant, and not petitioner that converts the fuel supplied by the latter into electricity, to wit:

> "7.1 SUPPLY. Subject to NAPOCOR supplying the necessary Fuel and start-up electricity pursuant to Article 6, HOPEWELL agrees to convert such Fuel into electricity and NAPOCOR agrees to take and pay for all electricity requested by NAPOCOR in accordance with the procedures set out in the Sixth Schedule (Electricity Delivery Procedures) and the operating Parameters set out in the Second Schedule (Operating Parameters). HOPEWELL shall dedicate the entire power Station output (net of Power Station usage) to NAPOCOR."

Clearly, Mirant is responsible for generating, supplying and selling electricity exclusively to the petitioner on a wholesale basis. And considering that Mirant is not a government-owned and controlled corporation, but a private foreign corporation primarily engaged in the business of generating electric power, the machineries and equipment of the Pagbilao Power Plant are thus subject to realty taxes.

In this light, petitioner's reliance on Section 234 (c) of the LGC as basis for realty tax exemption is unavailing.

After having established the taxability of the machineries and equipment of the power plant, is petitioner liable to pay the subject realty taxes?

There is no quarrel that until transfer date, Mirant is the owner of the power station and all the fixtures, fittings, machinery and equipment on the site, or used in connection therein, and all acts of administration, operation, control and supervision are all vested with Mirant. And as aptly observed by respondents in their Comment, Mirant is the actual, direct and exclusive user of the Pagbilao Plant, to wit:

> "No matter how NPC plays with words and semantics, the glaring truth cannot be suppressed. NPC has nothing to do with the machineries in the Pagbilao Power Plant Station that is assessed for tax by the Province of Quezon and the Municipality of Pagbilao, because NPC is neither the owner nor the user. "[21]

Thus, the CBAA correctly ruled that Mirant is liable to pay realty taxes and not petitioner.

WHEREFORE, in view of the foregoing considerations, the instant Petition is hereby **DISMISSED** for lack of merit. Accordingly, the Resolution dated January 3, 2005 granting the writ of preliminary injunction is **LIFTED** and **SET ASIDE** and the Writ of Preliminary Injunction issued on January 4, 2005 is hereby **DISSOLVED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[21] Respondent's Comment, p. 58

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Official Business)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice