REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

NATIONAL POWER CORPORATION, *Petitioner,*	**CTA AC NO. 117**
– versus –	Members: **BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
PROVINCE OF DINAGAT ISLANDS AND ERMILINDA C. BIOL, *Respondents.*	Promulgated: SEP 14 2017 3:24 p.m.

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AMENDED DECISION

BAUTISTA, J.:

For resolution is petitioner's Motion for Reconsideration filed *via* registered mail on December 10, 2015; without comment from respondents.

On November 16, 2015, the Court promulgated a Decision[1], the dispositive portion[2] of which states, *viz.*:

> **WHEREFORE,** premises considered, the Assailed Judgment dated April 2, 2014 of Branch 32 of the Regional Trial Court of the Dinagat Islands, Surigao City is hereby **SET ASIDE** and the records of the case are hereby **REMANDED** to the court *a quo* for further proceedings in accordance with the pronouncement of this Decision.
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> **SO ORDERED.**[3]

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[1] *Records, CTA AC No. 117, Decision,* pp. 115-127.

[2] *Id., Dispositive Portion,* p. 126.

[3] Underscoring ours.

In the assailed Decision, the Court found that National Power Corporation ("NPC") is subject to franchise tax imposed under *Section 137 of the 1991 Local Government Code*[4] *("1991 LGC")* applying the doctrines in the case of *[NPC] v. City of Cabanatuan*[5] *("City of Cabanatuan")* and *[NPC] v. Province of Isabela, represented by Hon. Benjamin G. Dy, Provincial Governor*[6] *("Province of Isabela")*. The Court also found that while NPC's transmission function was transferred to National Transmission Corporation ("TRANSCO") pursuant to *Section 8 of Republic Act ("RA") No. 9136*[7] *("EPIRA Law")*, there remains its missionary electrification function performed through its Small Power Utilities Group ("SPUG") under *Section 70 of the EPIRA Law*. Thus, the Court declared that NPC is liable for the questioned franchise tax assessment by respondents. However, it pointed out that the records of the case are not sufficient to determine with certainty the amount of franchise tax due from NPC, and whether NPC has performed its missionary electrification function through its SPUG in the territorial jurisdiction of the Province of Dinagat Islands ("Province") for the years 2006 to 2008. Accordingly, the Court ruled to set aside the Judgement dated April 2, 2014 of Branch 32 of the Regional Trial Court ("RTC") of the Dinagat Islands, Surigao City, and to remand the records of the case to the court *a quo* for further proceedings.

In its Motion for Reconsideration[8], petitioner avers that the Court disregarded the clear provision of the *EPIRA Law* which declares NPC as not possessing any franchise, and therefore, it is not subject to franchise tax under *Section 137 of the 1991 LGC*. Petitioner maintains that the elements for the imposition of local franchise tax, *i.e.*: *(1)* that an entity is one that is enjoying a franchise; and *(2)* that said entity is carrying on a business within the territory of the province, are non-existent in the present case.

As to the first element, petitioner asserts that *Section 6 of the EPIRA Law* has clearly declared that entities, like NPC, which are engaged in power generation and supply of electricity, are not required to secure a national franchise; that even assuming for the sake of argument that such franchise existed in the past, the only logical consequence of said *Section 6* is that NPC, *ipso jure*, becomes

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[4] Republic Act No. 7160, January 1, 1992.
[5] G.R. No. 149110, April 9, 2003, 401 SCRA 259.
[6] G.R. No. 165827, June 16, 2006, 491 SCRA 169.
[7] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes, June 8, 2001.
[8] *Records, Motion for Reconsideration*, pp. 128-137.

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an entity that has no national franchise to speak of relative to its mandate of power generation and supply of electricity; that the Court's reliance on the cases of *City of Cabanatuan* and *Province of Isabela* is misplaced considering that these cases were decided on the basis of *RA No. 6395*[9], which was enacted prior to the passage of the *1991 LGC* and the *EPIRA Law*. Petitioner then avers that the true issue which needs resolution by this Court is whether NPC has an existing franchise as would render it liable for franchise tax under *Section 137 of the 1991 LGC.*

Anent the second element, petitioner claims that in the conduct of its mandate under *Section 70 of the EPIRA Law* through its SPUG, it is not engaged in business within the meaning of *Section 137 of the 1991 LGC;* that SPUG is not established for the purpose of deriving profit, but specifically for the purpose of undertaking missionary electrification in areas that are not connected to the transmission system, such as the Province; that SPUG's function is for the direct advantage of the constituents of the Province; that by undertaking a missionary electrification, SPUG is able to deliver electricity at a price lower than what it should actually be; and that, thus, the imposition of franchise tax would not only defeat the benevolent purpose of missionary electrification but also seriously obstruct SPUG's mandate.

Finally, petitioner reiterated the pronouncement of the Supreme Court in the case of *Roxas v. Court of Tax Appeals*[10] when it cautioned against unreasonable exercise of the power of taxation.

On December 16, 2015, the Court issued a Resolution[11] ordering respondents to comment on petitioner's Motion for Reconsideration within ten (10) days from notice.

On February 5, 2016, counsel for respondents filed *via* registered mail a Motion for Extension (To File Comment)[12] ("Motion for Extension") seeking for the Court to give an additional ten (10) days or until February 16, 2016 to file the required comment.

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[9] An Act Revising The Charter Of The National Power Corporation, September 10, 1971.
[10] G.R. No. L-25043, April 26, 1968, 23 SCRA 276.
[11] *Records, Resolution,* p. 139.
[12] *Id., Motion for Extension (To File Comment),* pp. 152-154.

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On February 22, 2016, the Court issued a Minute Resolution[13] requiring counsel for respondents to file additional two (2) copies of the Motion for Extension within five (5) days from notice; otherwise, the same shall be deemed as not filed pursuant to *En Banc Resolution No. 04-2012 dated September 3, 2012,* which requires four (4) copies of all pleadings or motions to be filed after the initiatory pleading.

On May 17, 2016, the Judicial Records Division issued a Records Verification Report[14] stating that counsel for respondents failed to submit two (2) additional copies of the Motion for Extension.

Several Letters to Postmaster[15] were issued by this Court, the last being on May 17, 2017, following up the issuance of Certification on the proof of delivery of the Minute Resolution dated February 22, 2016 mailed on March 2, 2016 to counsel for respondents.

On June 21, 2017, the Court received a Certification[16] from Postmaster Adelo E. Edera filed *via* registered mail on June 8, 2017 certifying that the Minute Resolution dated February 22, 2016 was received by counsel of respondents on April 4, 2016.

On June 22, 2017, the Judicial Records Division issued a Records Verification Report[17] stating that counsel for respondents still failed to file two (2) additional copies of the Motion for Extension.

On July 19, 2017, the Court issued a Resolution[18] declaring the Motion for Extension as deemed not filed; and thus, the Motion for Reconsideration is now deemed submitted for resolution.

After a second look and careful examination of the records of the case, the Court finds the instant Motion for Reconsideration partly meritorious.

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[13] *Records, Minute Resolution,* pp. 156, 157.
[14] *Id., Records Verification Report,* p. 158.
[15] *Id., Letters to Postmaster,* pp. 159, 162, 165, & 171.
[16] *Id., Certification from Postmaster,* pp. 172, 173.
[17] *Id., Records Verification Report,* p. 175.
[18] *Id., Resolution,* pp. 177-179.

At the onset, it must be remembered that the issue in the case at hand is whether NPC, through its SPUG operating in the Province, is liable for the payment of franchise tax for the years 2006 to 2008.[19]

Section 137 of the 1991 LGC provides for the power of the province to impose franchise tax, to wit:

> SEC. 137. *Franchise Tax.* - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

Clearly, pursuant to the foregoing, a province may impose franchise tax on businesses enjoying a franchise within its territorial jurisdiction. In the case of NPC, it is subject to franchise tax if it can be considered as a business enjoying a franchise within the territorial jurisdiction of the Province.

The enactment of the *EPIRA Law*, which became effective on June 26, 2001, as well as the creation of the TRANSCO, modified the powers and functions of NPC. The pertinent provisions state the following:

> SEC. 6. *Generation Sector.*
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> xxx xxx xxx
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> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.
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> xxx xxx xxx
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> SEC. 8. *Creation of the National Transmission Company.* - <u>There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the</u>

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[19] *See Records, Petition for Review, Issue,* p. 7; *Records, petitioner's Memorandum, Issue,* p. 88; *Records, respondents' Memorandum, Statement of the Case,* pp. 98-99.

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> electrical transmission function of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
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> Within six (6) months from the effectivity of this Act, the transmission and sub-transmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. ...
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> xxx xxx xxx
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> SEC. 80. *Applicability and Repealing Clause.* - The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Service Act"; Republic Act No. 6395, as amended, revising the charter of NPC; ... shall continue to have full force and effect except insofar as they are inconsistent with this Act.
>
> xxx xxx xxx[20]

Therefore, upon the effectivity of the *EPIRA Law,* NPC ceased to engage in electrical transmission. Further, within six (6) months thereof, TRANCO assumed all the transmission and sub-transmission facilities of NPC together with all other assets related to transmission operations, including the nationwide franchise of NPC. Consequently, NPC ceased to operate a business subject to local franchise tax by operation of law.[21]

In the recent case of *[NPC] v. Provincial Government of Bataan, et. al.*[22] *("Bataan"),* the Supreme Court explained the effect of the *EPIRA Law* on the liability of NPC for local franchise tax under *Section 137 of the 1991 LGC, viz.:*

> The main issue for the court a quo was a legal issue on whether [NPC] was liable for the assessed franchise tax

[20] Underscoring ours.
[21] *National Power Corporation v. Provincial Government of Bataan, et. al.,* G.R. No. 180654, April 21, 2014, 722 SCRA 36.
[22] G.R. No. 180654, March 6, 2017.

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> imposed under [*Section 137 of the 1991 LGC*] by virtue of [the *EPIRA Law*].
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> xxx xxx xxx
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> [*Section 137*] is categorical in stating that franchise tax can only be imposed on businesses enjoying a franchise. This goes without saying that without a franchise, a local government unit cannot impose franchise tax.
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> xxx xxx xxx
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> Indeed, the enactment of the [*EPIRA Law*] separated the transmission and sub-transmission functions of the state-owned [NPC] from its generation function, and transferred all its transmission assets to the then newly-created TRANSCO, which was wholly owned by PSALM Corporation at that time. Power generation is no longer considered a public utility operation, and companies which shall engage in power generation and supply of electricity are no longer required to secure a national franchise. This is expressly provided under [*Section 6 of the EPIRA Law*], which reads:
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> xxx xxx xxx
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> <u>[*EPIRA Law*] effectively removed power generation from the ambit of local franchise taxes. Hence, as regards [NPC's] business of generating electricity, the franchise taxes sought to be collected by the Provincial Government of Bataan for the latter part of 2001 up to 2003 are devoid of any statutory basis.</u>[23]

Considering that the Supreme Court, being the final arbiter of any justiciable controversy, has already established that NPC cannot be assessed of local franchise tax from the time the *EPIRA Law* took effect, the Court has no other option but to apply the same.

Nevertheless, the exemption of NPC from local franchise tax is not absolute. A careful perusal of the *EPIRA Law* also reveals that NPC is not fully divested of its functions, as enunciated under *Sections 47 and 70 of the EPIRA Law*, to wit:

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[23] Underscoring ours.

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> SEC. 47. *NPC Privatization.* - Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act...
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> xxx xxx xxx
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> SEC. 70. *Missionary Electrification.* - Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC.[24]

Based on the above discussion, the assets of the SPUG remain with NPC. Correspondingly, the exemption from local franchise tax granted to NPC by virtue of the *EPIRA Law* cannot be deemed to extend in so far as its missionary electrification function is concerned. This is only logical if *Sections 47 and 70 of the EPIRA Law* are to be read together with *Sections 6 and 8 of the same EPIRA Law*. It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[25] In *Mactan-Cebu International Airport Authority, Department of Public Works and Highways, and Air Transportation Office v. Milagros Urgello*,[26] the Supreme Court explained:

> The law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is [a] cardinal rule in statutory construction that a statutes clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must

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[24] Underscoring ours.

[25] *Land Bank of the Philippines v. AMS Farming Corporation*, G.R. No. 174971, October 15, 2008, 569 SCRA 154.

[26] G.R. No. 162288, April 4, 2007, 520 SCRA 515; citing *Civil Service Commission v. Joson, Jr.*, G.R. No. 154674, May 27, 2004, 429 SCRA 773.

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> be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.

Further, the Supreme Court in the *Bataan* case, which can be traced from the 2014 case of *[NPC] v. Provincial Government of Bataan, Sangguniang Panlalawigan of Bataan, Pastor B. Vichuaco (In His Official Capacity as Provincial Treasurer of Bataan) and The Register of Deeds of the Province of Bataan*[27], discussed only those functions that were transferred to TRANSCO and PSALM, and not the missionary electrification function under *Section 70 of the EPIRA* Law. There was no finding that NPC performs missionary electrification function in the Province of Bataan.

Applying the foregoing to the present case, in so far as the missionary electrification function of NPC, through its SPUGs, is concerned, the exemption from local franchise tax does not apply.

Having settled the application of *Section 137 of the 1991 LGC* to NPC, the Court will now resolve the issue on whether petitioner is liable for the local franchise tax.

The Assessment Letter[28] dated February 19, 2009 sent by the Provincial Treasurer, reads:

> Republic of the Philippines
> Province of Dinagat Islands
> San Jose, Dinagat Islands
>
> **OFFICE OF THE PROVINCIAL TREASURER**
>
> February 19, 2009
>
> **Engr. RENATO P. MIRA**
> Plant Superintendent, NPC-SPUG
> San Jose, Province of Dinagat Islands
>
> **Sir:**
>
> Greetings of peace!
>
> The office of the Provincial Treasurer, in line with its campaign to collect local taxes to raise revenue to support government expenditures would

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[27] G.R. No. 180654, April 21, 2014, 722 SCRA 36.
[28] *Records, Petition for Review, Annex B: Assessment Letter*, p. 23.

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like to inform your company that we will be imposing a Franchise Tax on businesses enjoying a franchise, as mandated under Article G. Section 2G.02 of the Revenue Code of the Province of Dinagat Islands that took effect June 17, 2007. The rate of the imposition is 50% of 1% of your gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within this province for the sale and distribution of electricity in Dinagat Province.

National Power Corporation's Small Power Utilities Group (NPC-SPUG), a government owned and controlled corporation, granted a franchise and is mandated by law to undertake the electrification of areas not connected to the main transmission grid, just like Dinagat Province is covered by the imposition of Franchise tax.

In this connection, we would like to ask for your financial statement indicating the total gross receipts derived from the sale and distribution of electricity in Dinagat Province from 2006 up to 2008, to serve as our basis in the billing of the said tax obligation.

Taxes are the lifeblood of the government and without taxes, the government cannot function and render basic social services to the people.

Thank you very much.

(signature)
ERMELINDA C. BIOL
Provincial Treasurer[29]

A careful reading of the above indicates that the assessment is directed against NPC-SPUG's local franchise tax liability for the years 2006 to 2008 relative to its missionary electrification function. Notably, petitioner admitted in its Petition for Review[30], as well as in its Memorandum[31] submitted with this Court, that the subject of the assessment is the local franchise tax liability of SPUG.

Nevertheless, as pointed out in the Decision, this Court could not determine with certainty the amount of franchise tax due from petitioner considering that only the letters dated February 19, 2009[32], June 4, 2009[33], and August 10, 2009[34], were forwarded to this Court. Moreover, this Court could not ascertain whether petitioner, through its SPUG, has actually performed its missionary electrification function within the territorial jurisdiction of the Province. These

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[29] Emphases retained; underscoring ours.
[30] *Records, Petition for Review, Nature of the Case,* p. 5; *Records, Petition for Review, Statement of Facts and Relevant Proceedings,* p. 6.
[31] *Records, Memorandum, Nature of the Case,* p. 86; *Records, Memorandum, Issue,* p. 88.
[32] *Id., Petition for Review, Annex B: Assessment Letter,* p. 23.
[33] *Id., Annex C: Follow-up Letter,* p. 24.
[34] *Id., Annex D: Protest Letter,* pp. 25-26.

issues were not fully ventilated by the RTC. Hence, this Court has no recourse but to still remand the case to the RTC for further proceedings in order to give both petitioner and respondents the opportunity to substantiate their claims, subject to and in accordance with the pronouncement made herein.

In view of the foregoing, petitioner's Motion for Reconsideration is hereby **PARTIALLY GRANTED**, but only insofar as its prayer for the Court to reconsider its Decision dated December 16, 2015 is concerned.

WHEREFORE, premises considered, the Assailed Judgment dated April 2, 2014 of Branch 32 of the Regional Trial Court of the Dinagat Islands, Surigao City is hereby **SET ASIDE** and the records of the case are hereby **REMANDED** to the court *a quo* for further proceedings in accordance with the pronouncement in this Amended Decision.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice