

## SECOND DIVISION

[ G.R. No. 171586, July 15, 2009 ]

**NATIONAL POWER CORPORATION, PETITIONER, VS. PROVINCE OF QUEZON AND MUNICIPALITY OF PAGBILAO, RESPONDENTS.**

### DECISION

**BRION, J.:**

We resolve in this petition for review on *certiorari* the question of whether the National Power Corporation (*NPC*), as a government-owned and controlled corporation, can claim tax exemption under Section 234 of the Local Government Code (*LGC*) for the taxes due from the Mirant Pagbilao Corporation (*Mirant*)<sup>[1]</sup> whose tax liabilities the NPC has contractually assumed.

### BACKGROUND FACTS

The NPC is a government-owned and controlled corporation mandated by law to undertake, among others, the production of electricity from nuclear, geothermal, and other sources, and the transmission of electric power on a nationwide basis.<sup>[2]</sup> To pursue this mandate, the NPC entered into an Energy Conversion Agreement (*ECA*) with Mirant on November 9, 1991. The ECA provided for a build-operate-transfer (*BOT*) arrangement between Mirant and the NPC. Mirant will build and finance a coal-fired thermal power plant on the lots owned by the NPC in Pagbilao, Quezon for the purpose of converting fuel into electricity, and thereafter, operate and maintain the power plant for a period of 25 years. The NPC, in turn, will supply the necessary fuel to be converted by Mirant into electric power, take the power generated, and use it to supply the electric power needs of the country. At the end of the 25-year term, Mirant will transfer the power plant to the NPC without compensation. According to the NPC, the power plant is currently operational and is one of the largest sources of electric power in the country.<sup>[3]</sup>

Among the obligations undertaken by the NPC under the ECA was the payment of all taxes that the government may impose on Mirant; Article 11.1 of the ECA<sup>[4]</sup> specifically provides:

11.1 RESPONSIBILITY. **[NPC] shall be responsible for the payment of** (a) all taxes, import duties, fees, charges and other levies imposed by the National Government of the Republic of the Philippines or any agency or instrumentality thereof to which [Mirant] may at any time be or become subject in or in relation to the performance of their obligations under this Agreement (other than (i) taxes imposed or calculated on the basis of the net income [of Mirant] and (ii) construction permit fees, environmental permit fees and other similar fees and charges), and **(b)**

**all real estate taxes and assessments, rates and other charges in respect of the Site, the buildings and improvements thereon and the Power Station.** [Emphasis supplied.]

In a letter dated March 2, 2000, the **Municipality of Pagbilao assessed Mirant's real property taxes** on the power plant and its machineries in the total amount of P1,538,076,000.00 for the period of 1997 to 2000. The Municipality of Pagbilao furnished the NPC a copy of the assessment letter.

To protect its interests, the NPC filed a petition before the Local Board of Assessment Appeals (LBAA) entitled "*In Re: Petition to Declare Exempt from Payment of Property Tax on Machineries and Equipment Used for Generation and Transmission of Power, under Section 234(c) of RA 7160 [LGC], located at Pagbilao, Quezon xxx*"<sup>[5]</sup> on April 14, 2000. **The NPC objected to the assessment against Mirant** on the claim that it (the NPC) is entitled to the tax exemptions provided in Section 234, paragraphs (c) and (e) of the LGC. These provisions state:

Section 234. *Exemptions from Real Property Tax.* - The following are exempted from payment for the real property tax:

xxx xxx xxx

**(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;**

xxx xxx xxx

**(e) Machinery and equipment used for pollution control and environmental protection.**

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including government-owned or -controlled corporations are hereby withdrawn upon the effectivity of the Code.

Assuming that it cannot claim the exemptions stated in these provisions, the NPC alternatively asserted that it is entitled to:

- a. the lower assessment level of 10% under Section 218(d) of the LGC for government-owned and controlled corporations engaged in the generation and transmission of electric power, instead of the 80% assessment level for commercial properties as imposed in the assessment letter; and

- b. an allowance for depreciation of the subject machineries under Section 225 of the LGC.

The LBAA dismissed the NPC's petition on the Municipality of Pagbilao's motion, through a one-page Order dated November 13, 2000.<sup>[6]</sup>

The NPC appealed the denial of its petition with the Central Board of Assessment Appeals (CBAA). Although it noted the incompleteness of the LBAA decision for failing to state the factual basis of its ruling, the CBAA nevertheless affirmed, in its decision of August 18, 2003, the denial of the NPC's claim for exemption. The CBAA likewise denied the NPC's subsequent motion for reconsideration, prompting the NPC to institute an appeal before the Court of Tax Appeals (CTA).

Before the CTA, the NPC claimed it was procedurally erroneous for the CBAA to exercise jurisdiction over its appeal because the LBAA issued a *sin perjuicio*<sup>[7]</sup> decision, that is, the LBAA pronounced a judgment without any finding of fact. It argued that the CBAA should have remanded the case to the LBAA. On substantive issues, the NPC asserted the same grounds it relied upon to support its claimed tax exemptions.

The CTA *en banc* resolved to dismiss the NPC's petition on February 21, 2006. From this ruling, the NPC filed the present petition seeking the reversal of the CTA *en banc*'s decision.

### **THE PETITION**

The NPC contends that the CTA *en banc* erred in ruling that the NPC is estopped from questioning the LBAA's *sin perjuicio* judgment; the LBAA decision, it posits, cannot serve as an appealable decision that would vest the CBAA with appellate jurisdiction; a *sin perjuicio* decision, by its nature, is null and void.

The NPC likewise assails the CTA *en banc* ruling that the NPC was not the proper party to protest the real property tax assessment, as it did not have the requisite "legal interest." The NPC claims that it has legal interest because of its beneficial ownership of the power plant and its machineries; what Mirant holds is merely a naked title. Under the terms of the ECA, the NPC also claims that it possesses all the attributes of ownership, namely, the rights to enjoy, to dispose of, and to recover against the holder and possessor of the thing owned. That it will acquire and fully own the power plant after the lapse of 25 years further underscores its "legal interest" in protesting the assessment.

The NPC's assertion of beneficial ownership of the power plant also supports its claim for tax exemptions under Section 234(c) of the LGC. The NPC alleges that it has the right to control and supervise the entire output and operation of the power plant. This arrangement, to the NPC, proves that it is the entity actually, directly, and exclusively using the subject machineries. Mirant's possession of the power plant is irrelevant since all of Mirant activities relating to power generation are undertaken *for and in behalf of the NPC*. Additionally, all the electricity Mirant generates is utilized by the NPC in supplying the power needs of the country; Mirant therefore operates the power plant for the exclusive and direct benefit of the NPC.

Lastly, the NPC posits that the machineries taxed by the local government include anti-pollution devices which should have been excluded from the assessment under Section 234(e) of the LGC.

Assuming that the NPC is liable to pay the assessed real property tax, it asserts that a reassessment is necessary as it is entitled to depreciation allowance on the machineries and to the lower 10% assessment level under Sections 225 and 218(d) of the LGC, respectively. This position is complemented by its prayer to have the case remanded to the LBAA for the proper determination of its tax liabilities.

### **THE COURT'S RULING**

This case is not one of first impression. We have previously ruled against the NPC's claimed exemptions under the LGC in the cases of *FELS Energy, Inc. v. Province of Batangas*<sup>[8]</sup> and *NPC v. CBAA*.<sup>[9]</sup> Based on the principles we declared in those cases, as well as the defects we found in the NPC's tax assessment protest, **we conclude that the petition lacks merit.**

#### ***The NPC is estopped from questioning the CBAA's jurisdiction***

The assailed CTA *en banc* decision brushed aside the NPC's *sin perjuicio* arguments by declaring that:

The court finds merit in [NPC'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 xxx.

**However, on appeal before the CBAA, [NPC] 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, [NPC] 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.**<sup>[10]</sup> [Emphasis supplied.]

We agree that the NPC can no longer divest the CBAA of the power to decide the appeal after invoking and submitting itself to the board's jurisdiction. We note that even the NPC itself found nothing objectionable in the LBAA's *sin perjuicio* decision when it filed its appeal before the CBAA; the NPC did not cite this ground as basis for its appeal. What it cited were grounds that went into the merits of its case. In fact, its appeal contained no prayer for the remand of the case to the LBAA.

A basic jurisdictional rule, essentially based on fairness, is that a party cannot invoke a court's jurisdiction to secure affirmative relief and, after failing to obtain the requested relief, repudiate or question that same jurisdiction.<sup>[11]</sup> Moreover, a

remand would be unnecessary, as we find the CBAA's and the CTA *en banc*'s denial of NPC's claims entirely in accord with the law and with jurisprudence.

***The entity liable for tax has the right to protest the assessment***

Before we resolve the question of the NPC's entitlement to tax exemption, we find it necessary to determine first whether the NPC initiated a **valid** protest against the assessment. A taxpayer's failure to question the assessment before the LBAA renders the assessment of the local assessor final, executory, and demandable, thus precluding the taxpayer from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.<sup>[12]</sup>

Section 226 of the LGC lists down the two entities vested with the personality to contest an assessment: the owner and the person with legal interest in the property.

A person legally burdened with the obligation to pay for the tax imposed on a property has legal interest in the property and the personality to protest a tax assessment on the property. This is the logical and legal conclusion when Section 226, on the rules governing an assessment protest, is placed side by side with Section 250 on the payment of real property tax; both provisions refer to the same parties who may protest and pay the tax:

SECTION 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 xxx.

SECTION 250. *Payment of Real Property Taxes in Instalments.* - **The owner of the real property or the person having legal interest therein** may pay the basic real property tax xxx due thereon without interest in four (4) equal instalments xxx.

The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership.<sup>[13]</sup> However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property.<sup>[14]</sup> **In either case, the unpaid realty tax attaches to the property<sup>[15]</sup> but is directly chargeable against the taxable person who has *actual and beneficial use and possession* of the property regardless of whether or not that person is the owner.<sup>[16]</sup>**