

## FIRST DIVISION

[ G.R. No. 166102, August 05, 2015 ]

**MANILA ELECTRIC COMPANY, PETITIONER, VS. THE CITY  
ASSESSOR AND CITY TREASURER OF LUCENA CITY,  
RESPONDENTS.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Manila Electric Company (MERALCO), seeking the reversal of the Decision<sup>[1]</sup> dated May 13, 2004 and Resolution<sup>[2]</sup> dated November 18, 2004 of the Court of Appeals in CA-G.R. SP No. 67027. The appellate court affirmed the Decision<sup>[3]</sup> dated May 3, 2001 of the Central Board of Assessment Appeals (CBAA) in CBAA Case No. L-20-98, which, in turn, affirmed with modification the Decision<sup>[4]</sup> dated June 17, 1998<sup>[5]</sup> of the Local Board of Assessment Appeals (LBAA) of Lucena City, Quezon Province, as regards Tax Declaration Nos. 019-6500 and 019-7394, ruling that MERALCO is liable for real property tax on its transformers, electric posts (or poles), transmission lines, insulators, and electric meters, beginning 1992.

MERALCO is a private corporation organized and existing under Philippine laws to operate as a public utility engaged in electric distribution. MERALCO has been successively granted franchises to operate in Lucena City beginning 1922 until present time, particularly, by: (1) Resolution No. 36<sup>[6]</sup> dated May 15, 1922 of the Municipal Council of Lucena; (2) Resolution No. 108<sup>[7]</sup> dated July 1, 1957 of the Municipal Council of Lucena; (3) Resolution No. 2679<sup>[8]</sup> dated June 13, 1972 of the Municipal Board of Lucena City;<sup>[9]</sup> (4) Certificate of Franchise<sup>[10]</sup> dated October 28, 1993 issued by the National Electrification Commission; and (5) Republic Act No. 9209<sup>[11]</sup> approved on June 9, 2003 by Congress.<sup>[12]</sup>

On February 20, 1989, MERALCO received from the City Assessor of Lucena a copy of Tax Declaration No. 019-6500<sup>[13]</sup> covering the following electric facilities, classified as capital investment, of the company: (a) transformer and electric post; (b) transmission line; (c) insulator; and (d) electric meter, located in Quezon Ave. Ext., Brgy. Gulang-Gulang, Lucena City. Under Tax Declaration No. 019-6500, these electric facilities had a market value of P81,811,000.00 and an assessed value of P65,448,800.00, and were subjected to real property tax as of 1985.

MERALCO appealed Tax Declaration No. 019-6500 before the LBAA of Lucena City, which was docketed as **LBAA-89-2**. MERALCO claimed that its capital investment consisted only of its substation facilities, the true and correct value of which was only P9,454,400.00; and that MERALCO was exempted from payment of real property tax on said substation facilities.

The LBAA rendered a Decision<sup>[14]</sup> in LBAA-89-2 on July 5, 1989, finding that under its franchise, MERALCO was required to pay the City Government of Lucena a tax equal to 5% of its gross earnings, and "[s]aid tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature, or description levied, established, or collected x x x, on its poles, wires, insulators, transformers and structures, installations, conductors, and accessories, x x x, from which taxes the grantee (MERALCO) is hereby expressly exempted."<sup>[15]</sup> As regards the issue of whether or not the poles, wires, insulators, transformers, and electric meters of MERALCO were real properties, the LBAA cited the 1964 case of *Board of Assessment Appeals v. Manila Electric Company*<sup>[16]</sup> (1964 MERALCO case) in which the Court held that: (1) the steel towers fell within the term "poles" expressly exempted from taxes under the franchise of MERALCO; and (2) the steel towers were personal properties under the provisions of the Civil Code and, hence, not subject to real property tax. The LBAA lastly ordered that Tax Declaration No. 019-6500 would remain and the poles, wires, insulators, transformers, and electric meters of MERALCO would be continuously assessed, but the City Assessor would stamp on the said Tax Declaration the word "exempt." The LBAA decreed in the end:

WHEREFORE, from the evidence adduced by the parties, the Board overrules the claim of the [City Assessor of Lucena] and sustain the claim of [MERALCO].

Further, the Appellant (Meralco) is hereby ordered to render an accounting to the City Treasurer of Lucena and to pay the City Government of Lucena the amount corresponding to the Five (5%) per centum of the gross earnings in compliance with paragraph 13 both Resolutions 108 and 2679, respectively, retroactive from November 9, 1957 to date, if said tax has not yet been paid.<sup>[17]</sup>

The City Assessor of Lucena filed an appeal with the CBAA, which was docketed as **CBAA Case No. 248**. In its Decision<sup>[18]</sup> dated April 10, 1991, the CBAA affirmed the assailed LBAA judgment. Apparently, the City Assessor of Lucena no longer appealed said CBAA Decision and it became final and executory.

Six years later, on October 29, 1997, MERALCO received a letter<sup>19</sup> dated October 16, 1997 from the City Treasurer of Lucena, which stated that the company was being assessed real property tax delinquency on its machineries beginning 1990, in the total amount of P17,925,117.34, computed as follows:

TAX DEC. #	ASSESSED VALUE	COVERED PERIOD	TAX DUE	PENALTY	TOTAL
019- 6500	P65,448,800.00	1990-94	P3,272,440.00	P2,356,156.80	P5,628,596.80
019- 7394	78,538,560.00	1995	785,385.60	534,062.21	1,319,447.81
		1996	785,385.60	345,569.66	1,130,955.26
		1 <sup>st</sup> -3 <sup>rd</sup> /1997	589,039.20	117,807.84	706,847.04
		4 <sup>th</sup> 1997	196,346.40	(19,634.64)	<u>176,711.76</u>

BASIC----- P8,962,558.67  
SEF----- 8,962,558.67  
TOTAL TAX DELINQUENCY----P17,925,117.34

The City Treasurer of Lucena requested that MERALCO settle the payable amount soon to avoid accumulation of penalties. Attached to the letter were the following documents: (a) Notice of Assessment<sup>[20]</sup> dated October 20, 1997 issued by the City Assessor of Lucena, pertaining to Tax Declaration No. 019-7394, which increased the market value and assessed value of the machinery; (b) Property Record Form;<sup>[21]</sup> and (c) Tax Declaration No. 019-6500.<sup>[22]</sup>

MERALCO appealed Tax Declaration Nos. 019-6500 and 019-7394 before the LBAA of Lucena City on December 23, 1997 and posted a surety bond<sup>[23]</sup> dated December 10, 1997 to guarantee payment of its real property tax delinquency. MERALCO asked the LBAA to cancel and nullify the Notice of Assessment dated October 20, 1997 and declare the properties covered by Tax Declaration Nos. 019-6500 and 019-7394 exempt from real property tax.

In its Decision dated June 17, 1998 regarding Tax Declaration Nos. 019-6500 and 019-7394, the LBAA declared that Sections 234 and 534(f) of the Local Government Code repealed the provisions in the franchise of MERALCO and Presidential Decree No. 551<sup>[24]</sup> pertaining to the exemption of MERALCO from payment of real property tax on its poles, wires, insulators, transformers, and meters. The LBAA refused to apply as *res judicata* its earlier judgment in LBAA-89-2, as affirmed by the CBAA, because it involved collection of taxes from 1985 to 1989, while the present case concerned the collection of taxes from 1989 to 1997; and LBAA is only an administrative body, not a court or quasi-judicial body. The LBAA though instructed that the computation of the real property tax for the machineries should be based on the prevailing 1991 Schedule of Market Values, less the depreciation cost allowed by law. The LBAA ultimately disposed:

WHEREFORE, in view of the foregoing, it is hereby ordered that:

- 1) MERALCO's appeal be dismissed for lack of merit;
- 2) MERALCO be required to pay the realty tax on the questioned properties, because they are not exempt by law, same to be based on the 1991 level of assessment, less depreciation cost allowed by law.<sup>[25]</sup>

MERALCO went before the CBAA on appeal, which was docketed as **CBAA Case No. L-20-98**. The CBAA, in its Decision dated May 3, 2001, agreed with the LBAA that MERALCO could no longer claim exemption from real property tax on its machineries with the enactment of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, thus:

Indeed, the Central Board of Assessment Appeals has had the opportunity of ruling in [MERALCO's] favor in connection with this very same issue. The matter was settled on April 10, 1991 where this

Authority ruled that "wires, insulators, transformers and electric meters which are mounted on poles and can be separated from the poles and moved from place to place without breaking the material or causing [the] deterioration of the object, are deemed movable or personal property". The same position of MERALCO would have been tenable and that decision may have stood firm prior to the enactment of R.A. 7160 but not anymore in this jurisdiction. The Code provides and now sets a more stringent yet broadened concept of machinery, x x x:

x x x x

The pivotal point where the difference lie between the former and the current case is that by the very wordings of [Section 199(0)], the ground being anchored upon by MERALCO concerning the properties in question being personal in nature does not hold anymore for the sole reason that these come now within the purview and new concept of Machineries. The new law has treated these in an unequivocal manner as machineries in the sense that they are instruments, mechanical contrivances or apparatus though not attached permanently to the real properties of [MERALCO] are actually, directly and exclusively used to meet their business of distributing electricity.

x x x x

Clearly, [Section 234 of the Local Government Code] lists down the instances of exemption in real property taxation and very apparent is the fact that the enumeration is exclusive in character in view of the wordings in the last paragraph. Applying the maxim "Expressio Unius est Exclusio Alterius", we can say that "Where the statute enumerates those who can avail of the exemption, it is construed as excluding all others not mentioned therein". Therefore, the above-named company [had] lost its previous exemptions under its franchise because of non-inclusion in the enumeration in Section 234. Furthermore, all tax exemptions being enjoyed by all persons, whether natural or juridical, including all government-owned or controlled corporations are expressly withdrawn, upon effectivity of R.A. 7160.

In the given facts, it has been manifested that the Municipal Board of Lucena passed Resolution No. 108 on July 1, 1957 extending the franchise of MERALCO to operate in Lucena city an electric light system for thirty-five years, which should have expired on November 9, 1992 and under Resolution No. 2679 passed on June 13, 1972 by the City Council of Lucena City awarding [MERALCO] a franchise to operate for twenty years an electric light, heat and power system in Lucena City, also to expire in the year 1992. Under those franchises, they were only bound to pay franchise taxes and nothing more.

Now, granting arguendo that there is no express revocation of the exemption under the franchise of [MERALCO] since, unquestionably [MERALCO] is a recipient of another franchise granted this time by the National Electrification Commission as evidenced by a certificate issued on October 28, 1993, such conferment does not automatically include

and/or award exemption from taxes, nor does it impliedly give the franchisee the right to continue the privileges like exemption granted under its previous franchise. It is just a plain and simple franchise. In countless times, the Supreme Court has ruled that exemption must be clear in the language of the law granting such exemption for it is strictly construed and favored against the person invoking it. In addition, a franchise though in the form of a contract is also a privilege that must yield to the sublime yet inherent powers of the state, one of these is the power of taxation.

Looking into the law creating the National Electrification Administration (Commission), P.D. 269 as amended by P.D. 1645, nowhere in those laws can we find such authority to bestow upon the grantee any tax exemption of whatever nature except those of cooperatives. This we believe is basically in consonance with the provisions of the Local Government Code more particularly Section 234.

Furthermore, Section 534(f) of R.A. 7160 which is taken in relation to Section 234 thereof states that "All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly". Anent this unambiguous mandate, P.D. 551 is mandatorily repealed due to its contradictory and irreconcilable provisions with R.A. 7160.<sup>[26]</sup>

Yet, the CBAA modified the ruling of the LBAA by excluding from the real property tax deficiency assessment the years 1990 to 1991, considering that:

In the years 1990 and 1991, the exemption granted to MERALCO under its franchise which incidentally expired upon the effectivity of the Local Government Code of 1991 was very much in effect and the decision rendered by the Central Board of Assessment Appeals (CBAA) classifying its poles, wires, insulators, transformers and electric meters as personal property was still controlling as the law of the case. So, from 1990 to 1991, it would be inappropriate and illegal to make the necessary assessment on those properties, much more to impose any penalty for nonpayment of such.

But, assessments made beginning 1992 until 1997 by the City Government of Lucena is legal, both procedurally and substantially. When R.A. 7160, which incorporated amended provisions of the Real Property Tax Code, took effect on January 1, 1992, as already discussed, the nature of the aforecited questioned properties considered formerly as personal metamorphosed to machineries and the exemption being invoked by [MERALCO] was automatically withdrawn pursuant to the letter and spirit of the law. x x x.<sup>[27]</sup>

Resultantly, the decretal portion of said CBAA Decision reads: