

## SECOND DIVISION

[ G.R. No. 177332, October 01, 2014 ]

**NATIONAL CORPORATION, PETITIONER. POWER VS. CITY OF CABANATUAN, REPRESENTED BY ITS CITY MAYOR, HON. HONORATO PEREZ, RESPONDENTS.**

### D E C I S I O N

**LEONEN, J.:**

This is a petition for review<sup>[1]</sup> under Rule 45, seeking to annul and set aside the January 15, 2007 decision<sup>[2]</sup> and April 3, 2007 resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP. No. 88377. The questioned decision dismissed petitioner's petition for certiorari and affirmed the October 25, 2004 order<sup>[4]</sup> of the Regional Trial Court of Cabanatuan City (Branch 30) directing the issuance of a writ of execution against petitioner for the satisfaction of the amount of P11,172,479.55, representing the balance of petitioner's franchise tax liabilities plus 25% surcharge from 1992 to 2002. The resolution denied petitioner's motion for reconsideration.

#### *Antecedents*

The City of Cabanatuan (the City) assessed the National Power Corporation (NAPOCOR) a franchise tax amounting to P808,606.41, representing 75% of 1% of its gross receipts for 1992. NAPOCOR refused to pay, arguing that it is exempt from paying the franchise tax.<sup>[5]</sup> Consequently, on November 9, 1993, the City filed a complaint<sup>[6]</sup> before the Regional Trial Court of Cabanatuan City, demanding NAPOCOR to pay the assessed tax due plus 25% surcharge and interest of 2% per month of the unpaid tax, and costs of suit.

In the order<sup>[7]</sup> dated January 25, 1996, the trial court declared that the City could not impose a franchise tax on NAPOCOR and accordingly dismissed the complaint for lack of merit. In the March 12, 2001 decision<sup>[8]</sup> of the Court of Appeals (Eighth Division) in CA-G.R. CV No. 53297, the appellate court reversed the trial court and found NAPOCOR liable to pay franchise tax, as follows:

**IN VIEW OF THE FOREGOING**, the decision appealed from is **SET ASIDE** and **REVERSED**. Defendant-appellee National Power Corporation is hereby ordered to pay the City of Cabanatuan, to wit:

1. The sum of P808,606.41 representing business tax based on gross receipts for the year 1992, and
2. The tax due every year thereafter based [o]n the gross receipts earned by NPC,

3. In all cases, to pay a surcharge of 25% of the tax due and unpaid, and

4. The sum of P10,000.00 as litigation expenses.

SO ORDERED.<sup>[9]</sup>

In its April 9, 2003 decision,<sup>[10]</sup> this court affirmed the Court of Appeals' March 12, 2001 decision and July 10, 2001 resolution. In its August 27, 2003 resolution,<sup>[11]</sup> this court denied with finality NAPOCOR's motion for reconsideration.

After the court's decision had become final, the City filed with the trial court a motion for execution<sup>[12]</sup> dated December 1, 2003 to collect the sum of P24,030,565.26<sup>[13]</sup> (inclusive of the 25% surcharge of P13,744,096.69). In its comment,<sup>[14]</sup> NAPOCOR prayed that the issuance of the writ be suspended pending resolution of its protest letter dated December 12, 2003 filed with the City Treasurer of Cabanatuan City on the computation of the surcharge. NAPOCOR also informed the court of its payment to the City Treasurer of P12,868,085.71 in satisfaction of the judgment award.<sup>[15]</sup>

Subsequently, the City filed a supplemental motion for execution<sup>[16]</sup> dated January 29, 2004, claiming that the gross receipts upon which NAPOCOR's franchise tax liabilities are to be determined should include transactions within the coverage area of Nueva Ecija Electric Cooperative III and sales from the different municipalities of the provinces of Tarlac, Pangasinan, Baler, and Dingalan, Aurora. According to information allegedly gathered by the City, these were transacted and consummated at NAPOCOR's sub-station in Cabanatuan City.<sup>[17]</sup>

NAPOCOR filed its comment/opposition<sup>[18]</sup> dated March 29, 2004, praying that the supplemental motion be denied for having raised new factual matters. NAPOCOR emphasized that "the Court of Appeals Decision limits the franchise tax payable based on the gross receipts from sales to Cabanatuan City's electric cooperative."<sup>[19]</sup>

The City filed an amended motion for execution dated June 29, 2004,<sup>[20]</sup> praying that "a writ of execution be issued by [the] Court directing [NAPOCOR] to pay . . . the amount of P69,751,918.19 without prejudice to the collection of the balance, if any."<sup>[21]</sup> NAPOCOR filed its comment<sup>[22]</sup> again, praying that 'the grant of the amended motion be denied and/or suspended pending final resolution of its protest.

On October 25, 2004, the trial court issued the order<sup>[23]</sup> resolving the pending motions filed by the City and NAPOCOR's corresponding comments. The trial court agreed with NAPOCOR that "the tenor of the decision [sought to be executed] limits the franchise tax payable on gross receipts from sales to [the City's] electric cooperative."<sup>[24]</sup> However, the trial court sustained the City's computation of the surcharge totalling P13,744,096.69 over NAPOCOR's claim of P2,571,617.14 only.<sup>[25]</sup>

NAPOCOR assailed the trial court's order dated October 25, 2004 through a petition for certiorari<sup>[26]</sup> with the Court of Appeals.

On January 15, 2007, the Court of Appeals promulgated the assailed decision dismissing NAPOCOR's petition for certiorari and affirming the trial court's order. It held that since the franchise tax due was computed yearly, the 25%) surcharge should also be computed yearly based on the total unpaid tax for each particular year.<sup>[27]</sup> The appellate court agreed with the City's reasoning that non-imposition of the surcharge on a cumulative basis would encourage rather than discourage non-payment of taxes.<sup>[28]</sup> In its resolution<sup>[29]</sup> dated April 3, 2007, the Court of Appeals also denied NAPOCOR's motion for reconsideration.

Hence, the present petition for review<sup>[30]</sup> was filed.

According to petitioner, the trial court and the Court of Appeals disregarded the provisions of Section 168 of Republic Act No. 7160 or the Local Government Code of 1991, which provides:

*SECTION 168. Surcharges and Penalties on Unpaid Taxes, Fees, or Charges. — The sanggunian may impose a surcharge not exceeding twenty-five (25%) of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding two percent (2%) per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months. (Emphasis supplied)*

Petitioner submits that from the foregoing provision, the surcharge should only be P2,571,617.14, computed by applying the 25% surcharge against the total amount of taxes not paid on time, which is the total amount of tax due from 1992 to 2002, or P10,286,468.57. In imposing a surcharge of P13,744,096.69 instead of P2,571,617.14, the trial court allegedly "varied and/or exceeded the terms of the judgment sought to be executed."<sup>[31]</sup>

#### *Issue*

The sole issue before the court is the proper interpretation for purposes of execution of the dispositive portion of the Court of Appeals' decision in CA-G.R. CV No. 53297, promulgated on March 12, 2001 (which was affirmed by this court's April 9, 2003 decision in G.R. No. 149110). The dispositive portion reads:

**IN VIEW OF THE FOREGOING**, the decision appealed from is **SET ASIDE** and **REVERSED**. Defendant-appellee National Power Corporation is hereby ordered to pay the City of Cabanatuan, to wit:

1. The sum of P808,606.41 representing business tax based on gross receipts for the year 1992, and
2. The tax due every year thereafter based [o]n the gross receipts earned by NPC,

3. *In all cases, to pay a surcharge of 25% of the tax due and unpaid, and*
4. The sum of P10,000.00 as litigation expenses.<sup>[32]</sup>  
(Emphasis supplied)

In other words, the crucial point to be resolved is what the Court of Appeals meant by "[i]n all cases, to pay a surcharge of 25% of the tax due and unpaid" in the dispositive portion.

The trial court resolved the question, as follows:

[Petitioner] obtained the amount of P2,571,617.14 by getting the 25% of P10,256,468.57, the total unpaid tax due. Whereas, the [respondent], by further studying the data on record, obtained the 25% of the tax due yearly. The total unpaid tax due for example in year 1992 (P808,606.41) would be added the tax due for 1993 (P821.401.17), obtaining the sum of P1,630,007.58 as unpaid tax due. From this amount of P1,630,007.58 is to be taken the 25% surcharge, giving the amount of P407,501.89 to be added to the amount of P202.151.60, the 25% of the unpaid amount of P808,606.41. The same computation was made on the succeeding years up to the year 2002 giving the total amount of the surcharge/penalty of P13,744,096.69.

This Court finds the computation of the [respondent] more in accord with the decision in this case. The [petitioner] was imposed taxes based on the gross receipts yearly. *The tax due was computed yearly and therefore, it can be interpreted to mean that the 25% surcharge should also be computed yearly based on the unpaid tax due for each particular year.*

Based on these computations, by adding the total tax due for the year 1992 to 2002 (P10,286,468.57), the total surcharge/penalty (P13,744,096.69) and the litigation expenses (P10,000.00) as contained in the dispositive portion, the [petitioner] has a total liability of P24,040,565.26. Since the [petitioner] has already paid the sum of P12,868,085.71; its total liability therefore is P11,172,479.55.<sup>[33]</sup>  
(Emphasis supplied)

The trial court sustained respondent's computation of the surcharge based on the total unpaid tax for each year [proper tax for the year + unpaid tax of the previous year/s], which, in effect, resulted in the imposition of the 25% surcharge for every year of default in the payment of a franchise tax, thereby arriving at the total amount of P13,744,096.69. Petitioner, on the other hand, insists a one-time application of the 25% surcharge based on the total franchise tax due and unpaid (P10,286,468.57 from 1992 to 2002), arriving at the sum of only P2,571,617.14.

*This court's ruling*

The petition is meritorious.

**The trial court's order of execution,  
as affirmed by the Court of Appeals,  
exceeded the judgment sought to be  
executed**

Respondent's computation of the surcharge, as sustained by the trial court and the Court of Appeals, varies the terms of the judgment sought to be executed and contravenes Section 168 of the Local Government Code.

To repeat, respondent computed the surcharge based on the total unpaid tax for each particular year. For example, in 1993, the proper tax due (P821,401.17) was added the unpaid tax due in year 1992 (P808,606.41), obtaining the sum of P1,630,007.58 as total unpaid tax. To this amount of P1,630,007.58 was applied the 25% surcharge, giving the amount of P407,501.89. In 1994, the proper tax due (P1,075,855.62) was added the unpaid taxes for 1992 and 1993 (P1,630,007.58), yielding a total unpaid tax of P2,705,863.20. To this sum of P2,705,863.20 was applied the 25% surcharge, obtaining the amount of P676,465.80. The same computation was made on the succeeding years up to the year 2002. The surcharges from 1992 to 2002 were added, giving the total amount of P13,744,096.69. Thus:

<b>Year</b>	<b>Tax Due</b>	<b>Unpaid</b>	<b>Surcharge</b>
1992	P 808,606.41	P 808,606.41	P 202,151.60
1993	821,401.17	1,630,007.58	407,501.89
1994	1,075,855.62	2,705,863.20	676,465.80
1995	1,161,016.63	3,866,879.83	966,719.96
1996	449,599.84	4,316,479.67	1,079,119.92
1997	614,608.97	4,931,088.65	1,232,722.16
1998	519,967.33	5,451,055.97	1,362,763.99
1999	238,439.87	5,689,495.84	1,422,373.96
2000	1,030,108.81	6,719,604.65	1,679,901.16
2001	1,851,231.76	8,570,836.40	2,142,709.10
2002	<u>1,715,632.16</u>	<u>10,286,468.57</u>	<u>2,571,617.14</u>
<b>Total</b>	<b>10,286,468.57</b>		<b>P13,744,096.69<sup>[34]</sup></b>

In effect, respondent's computation resulted in the imposition of the 25% surcharge for every year of default in the payment of a franchise tax. To illustrate, the surcharge for the 1992 franchise tax is 25% of P808,606.41 [proper tax due] multiplied by 11 years [1992 to 2002]; for the 1993 franchise tax, 25% of P821,401.17 [proper tax due] multiplied by 10 years [1993 to 2002]; for the 1994 franchise tax, 25% of P1,075,855.62 [proper tax due] multiplied by 9 years [1994 to 2002]; and so on, as detailed below:

<b>Year</b>	<b>Tax Due</b>	<b>+</b>	<b>Surcharge</b>
1992	P808,606.41		P2,223,668 (25% x 808,606.41 x 11)
1993	821,401.17		2,053,503 (25% x 821,401.17x10)