

THIRD DIVISION

[G.R. NO. 168557, February 16, 2007]

**FELS ENERGY, INC., PETITIONER, VS. THE PROVINCE OF
BATANGAS AND THE OFFICE OF THE PROVINCIAL ASSESSOR OF
BATANGAS, RESPONDENTS.**

[G.R. NO. 170628]

**NATIONAL POWER CORPORATION, PETITIONER, VS. LOCAL
BOARD OF ASSESSMENT APPEALS OF BATANGAS, LAURO C.
ANDAYA, IN HIS CAPACITY AS THE ASSESSOR OF THE PROVINCE
OF BATANGAS, AND THE PROVINCE OF BATANGAS
REPRESENTED BY ITS PROVINCIAL ASSESSOR, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before us are two consolidated cases docketed as G.R. No. 168557 and G.R. No. 170628, which were filed by petitioners FELS Energy, Inc. (FELS) and National Power Corporation (NPC), respectively. The first is a petition for review on *certiorari* assailing the August 25, 2004 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 67490 and its Resolution^[2] dated June 20, 2005; the second, also a petition for review on *certiorari*, challenges the February 9, 2005 Decision^[3] and November 23, 2005 Resolution^[4] of the CA in CA-G.R. SP No. 67491. Both petitions were dismissed on the ground of prescription.

The pertinent facts are as follows:

On January 18, 1993, NPC entered into a lease contract with Polar Energy, Inc. over 3x30 MW diesel engine power barges moored at Balayan Bay in Calaca, Batangas. The contract, denominated as an Energy Conversion Agreement^[5] (Agreement), was for a period of five years. Article 10 reads:

10.1 **RESPONSIBILITY.** **NAPOCOR** 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 **POLAR** may be or become subject to 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 **POLAR** and Personal Income Taxes of its employees 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 Power Barges.^[6]

Subsequently, Polar Energy, Inc. assigned its rights under the Agreement to FELS. The NPC initially opposed the assignment of rights, citing paragraph 17.2 of Article 17 of the Agreement.

On August 7, 1995, FELS received an assessment of real property taxes on the power barges from Provincial Assessor Lauro C. Andaya of Batangas City. The assessed tax, which likewise covered those due for 1994, amounted to P56,184,088.40 per annum. FELS referred the matter to NPC, reminding it of its obligation under the Agreement to pay all real estate taxes. It then gave NPC the full power and authority to represent it in any conference regarding the real property assessment of the Provincial Assessor.

In a letter^[7] dated September 7, 1995, NPC sought reconsideration of the Provincial Assessor's decision to assess real property taxes on the power barges. However, the motion was denied on September 22, 1995, and the Provincial Assessor advised NPC to pay the assessment.^[8] This prompted NPC to file a petition with the Local Board of Assessment Appeals (LBAA) for the setting aside of the assessment and the declaration of the barges as non-taxable items; it also prayed that should LBAA find the barges to be taxable, the Provincial Assessor be directed to make the necessary corrections.^[9]

In its Answer to the petition, the Provincial Assessor averred that the barges were real property for purposes of taxation under Section 199(c) of Republic Act (R.A.) No. 7160.

Before the case was decided by the LBAA, NPC filed a Manifestation, informing the LBAA that the Department of Finance (DOF) had rendered an opinion^[10] dated May 20, 1996, where it is clearly stated that power barges are not real property subject to real property assessment.

On August 26, 1996, the LBAA rendered a Resolution^[11] denying the petition. The *fallo* reads:

WHEREFORE, the Petition is DENIED. FELS is hereby ordered to pay the real estate tax in the amount of P56,184,088.40, for the year 1994.

SO ORDERED.^[12]

The LBAA ruled that the power plant facilities, while they may be classified as movable or personal property, are nevertheless considered real property for taxation purposes because they are installed at a specific location with a character of permanency. The LBAA also pointed out that the owner of the barges—FELS, a private corporation—is the one being taxed, not NPC. A mere agreement making NPC responsible for the payment of all real estate taxes and assessments will not justify the exemption of FELS; such a privilege can only be granted to NPC and cannot be extended to FELS. Finally, the LBAA also ruled that the petition was filed out of time.

Aggrieved, FELS appealed the LBAA's ruling to the Central Board of Assessment Appeals (CBAA).

On August 28, 1996, the Provincial Treasurer of Batangas City issued a Notice of

Levy and Warrant by Distrainment^[13] over the power barges, seeking to collect real property taxes amounting to P232,602,125.91 as of July 31, 1996. The notice and warrant was officially served to FELS on November 8, 1996. It then filed a Motion to Lift Levy dated November 14, 1996, praying that the Provincial Assessor be further restrained by the CBAA from enforcing the disputed assessment during the pendency of the appeal.

On November 15, 1996, the CBAA issued an Order^[14] lifting the levy and distraint on the properties of FELS in order not to preempt and render ineffectual, nugatory and illusory any resolution or judgment which the Board would issue.

Meantime, the NPC filed a Motion for Intervention^[15] dated August 7, 1998 in the proceedings before the CBAA. This was approved by the CBAA in an Order^[16] dated September 22, 1998.

During the pendency of the case, both FELS and NPC filed several motions to admit bond to guarantee the payment of real property taxes assessed by the Provincial Assessor (in the event that the judgment be unfavorable to them). The bonds were duly approved by the CBAA.

On April 6, 2000, the CBAA rendered a Decision^[17] finding the power barges exempt from real property tax. The dispositive portion reads:

WHEREFORE, the Resolution of the Local Board of Assessment Appeals of the Province of Batangas is hereby reversed. Respondent-appellee Provincial Assessor of the Province of Batangas is hereby ordered to drop subject property under ARP/Tax Declaration No. 018-00958 from the List of Taxable Properties in the Assessment Roll. The Provincial Treasurer of Batangas is hereby directed to act accordingly.

SO ORDERED.^[18]

Ruling in favor of FELS and NPC, the CBAA reasoned that the power barges belong to NPC; since they are actually, directly and exclusively used by it, the power barges are covered by the exemptions under Section 234(c) of R.A. No. 7160.^[19] As to the other jurisdictional issue, the CBAA ruled that prescription did not preclude the NPC from pursuing its claim for tax exemption in accordance with Section 206 of R.A. No. 7160. The Provincial Assessor filed a motion for reconsideration, which was opposed by FELS and NPC.

In a complete *volte face*, the CBAA issued a Resolution^[20] on July 31, 2001 reversing its earlier decision. The *fallo* of the resolution reads:

WHEREFORE, premises considered, it is the resolution of this Board that:

- (a) The decision of the Board dated 6 April 2000 is hereby reversed.
- (b) The petition of FELS, as well as the intervention of NPC, is dismissed.
- (c) The resolution of the Local Board of Assessment Appeals of Batangas is hereby affirmed,

(d) The real property tax assessment on FELS by the Provincial Assessor of Batangas is likewise hereby affirmed.

SO ORDERED.^[21]

FELS and NPC filed separate motions for reconsideration, which were timely opposed by the Provincial Assessor. The CBAA denied the said motions in a Resolution^[22] dated October 19, 2001.

Dissatisfied, FELS filed a petition for review before the CA docketed as CA-G.R. SP No. 67490. Meanwhile, NPC filed a separate petition, docketed as CA-G.R. SP No. 67491.

On January 17, 2002, NPC filed a Manifestation/Motion for Consolidation in CA-G.R. SP No. 67490 praying for the consolidation of its petition with CA-G.R. SP No. 67491. In a Resolution^[23] dated February 12, 2002, the appellate court directed NPC to re-file its motion for consolidation with CA-G.R. SP No. 67491, since it is the *ponente* of the latter petition who should resolve the request for reconsideration.

NPC failed to comply with the aforesaid resolution. On August 25, 2004, the Twelfth Division of the appellate court rendered judgment in CA-G.R. SP No. 67490 denying the petition on the ground of prescription. The decretal portion of the decision reads:

WHEREFORE, the petition for review is **DENIED** for lack of merit and the assailed Resolutions dated July 31, 2001 and October 19, 2001 of the Central Board of Assessment Appeals are **AFFIRMED**.

SO ORDERED.^[24]

On September 20, 2004, FELS timely filed a motion for reconsideration seeking the reversal of the appellate court's decision in CA-G.R. SP No. 67490.

Thereafter, NPC filed a petition for review dated October 19, 2004 before this Court, docketed as G.R. No. 165113, assailing the appellate court's decision in CA-G.R. SP No. 67490. The petition was, however, denied in this Court's Resolution^[25] of November 8, 2004, for NPC's failure to sufficiently show that the CA committed any reversible error in the challenged decision. NPC filed a motion for reconsideration, which the Court denied with finality in a Resolution^[26] dated January 19, 2005.

Meantime, the appellate court dismissed the petition in CA-G.R. SP No. 67491. It held that the right to question the assessment of the Provincial Assessor had already prescribed upon the failure of FELS to appeal the disputed assessment to the LBAA within the period prescribed by law. Since FELS had lost the right to question the assessment, the right of the Provincial Government to collect the tax was already absolute.

NPC filed a motion for reconsideration dated March 8, 2005, seeking reconsideration of the February 5, 2005 ruling of the CA in CA-G.R. SP No. 67491. The motion was denied in a Resolution^[27] dated November 23, 2005.

The motion for reconsideration filed by FELS in CA-G.R. SP No. 67490 had been earlier denied for lack of merit in a Resolution^[28] dated June 20, 2005.

On August 3, 2005, FELS filed the petition docketed as G.R. No. 168557 before this Court, raising the following issues:

A.

Whether power barges, which are floating and movable, are personal properties and therefore, not subject to real property tax.

B.

Assuming that the subject power barges are real properties, whether they are exempt from real estate tax under Section 234 of the Local Government Code ("LGC").

C.

Assuming arguendo that the subject power barges are subject to real estate tax, whether or not it should be NPC which should be made to pay the same under the law.

D.

Assuming arguendo that the subject power barges are real properties, whether or not the same is subject to depreciation just like any other personal properties.

E.

Whether the right of the petitioner to question the patently null and void real property tax assessment on the petitioner's personal properties is imprescriptible.^[29]

On January 13, 2006, NPC filed its own petition for review before this Court (G.R. No. 170628), indicating the following errors committed by the CA:

I

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE APPEAL TO THE LBAA WAS FILED OUT OF TIME.

II

THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE POWER BARGES ARE NOT SUBJECT TO REAL PROPERTY TAXES.

III

THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE ASSESSMENT ON THE POWER BARGES WAS NOT MADE IN ACCORDANCE WITH LAW.^[30]

Considering that the factual antecedents of both cases are similar, the Court ordered the consolidation of the two cases in a Resolution^[31] dated March 8, 2006.

In an earlier Resolution dated February 1, 2006, the Court had required the parties to submit their respective Memoranda within 30 days from notice. Almost a year