

SECOND DIVISION

[G.R. No. 210191, March 04, 2019]

NATIONAL POWER CORPORATION, PETITIONER, VS. THE PROVINCE OF PANGASINAN AND THE PROVINCIAL ASSESSOR OF PANGASINAN, RESPONDENTS.

DECISION

REYES, JR. J., J.:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, questioning the Decision^[2] dated November 11, 2013 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 937, which affirmed the uniform rulings of the Local Board of Assessment Appeals (LBAA) in LBAA Case Nos. P-03-001 and P-06-001 and Central Board of Assessment Appeals (CBAA) in CBAA Case Nos. L-52 and L-81.

Factual Antecedents

Petitioner National Power Corporation (NPC) is a government-owned and controlled corporation, created and existing under Republic Act (R.A.) No. 6395, as amended. NPC is mandated to undertake the production of electricity from nuclear, geothermal, other sources, and the transmission of electric power nationwide.^[3]

Pursuant to its mandate, on May 20, 1994, NPC entered into an Energy Conversion Agreement^[4] (ECA) with CEPA Pangasinan Electric Limited (CEPA), a private corporation, for the construction, operation, and maintenance of the Sual Coal-Fired Thermal Power Plant, whereby CEPA agreed to supply a coal-fired thermal power station to NPC on a Build-Operate-Transfer (BOT) basis to generate electricity, which electricity will in turn be sold exclusively to NPC. CEPA subsequently became Mirant Sual Corporation (Mirant) and now also known as Team Energy Power Holdings Corporation (Team Energy). For purposes of this case, we shall use "Mirant" to refer to CEPA, Mirant, or Team Energy as the company was called "Mirant" when this case started with the LBAA.^[5]

Among the obligations undertaken by the NPC under the ECA was the assumption of all real property taxes. Paragraph 11.1, Article 11 of the ECA, *viz.*:

11.1 *Tax Responsibilities.* NPC shall be responsible for the payment of x x x (ii) all real estate taxes and assessments, rates and other charges in respect of the Site, the Ash Disposal Sites, the Pipelines, the buildings and improvements thereon, the Infrastructure and the Power Station.^[6]

On December 3, 1994, a Memorandum of Agreement^[7] (MOA) was entered into by Pangasinan Electric Corporation (PEC) (Mirant's predecessor-in-interest) with NPC,

the Province of Pangasinan, the Municipality of Sual, and the Barangay of Pangascasan.^[8]

Pertinent provisions of the MOA state:

A. RESPONSIBILITIES OF NPC, DENR, PEC,
PROVINCE/MUNICIPALITY/BARANGAY

NPC

x x x x

6. Conform with the Local Government Code's regulations on the payment of the following taxes:

- Realty tax to be paid upon the project site acquisition by NPC.

x x x x

PEC started operating the power plant sometime in 1998.^[9]

NPC religiously paid real property taxes from 1998 up to the first quarter of 2003 for the land, buildings, machinery, and equipment pertaining to the power plant. Notably, said machinery and equipment were declared in the name of Mirant under Tax Declaration No. 3694. On the second quarter of 2003, NPC stopped paying said taxes, purportedly pursuant to the provisions of R.A. No. 7160, which grants certain exemptions from real property tax liabilities.^[10]

This prompted the Office of the Municipal Treasurer of Sual, Pangasinan to issue a Notice of Assessment dated September 10, 2003 for the payment of real property taxes thereon.^[11]

Invoking its entitlement to an exemption under the provisions of R.A. No. 7160, NPC filed a petition for exemption with the LBAA, docketed as LBAA Case No. P-03-001, praying for an order to be issued: (a) recalling the Notice of Assessment dated September 10, 2003; (b) declaring the machinery and equipment of the power to be exempt from real property tax, arguing that the same are actually, directly, and exclusively used for power generation, and as such are exempted from said taxes under Section 234(c)^[12] of R.A. No. 7160; and (c) if not exempt, declaring that the subject properties be classified as special under Section 216^[13] of the same Act and as such be given a lower assessment level.^[14]

LBAA Ruling

In its Resolution^[15] dated April 15, 2004, the LBAA dismissed NPC's petition for exemption for lack of merit. The LBAA ruled that NPC and/or Mirant's failure to file any claim for exemption within the 30 days from the date of the declaration of the real property under Section 206^[16] of R.A. No. 7160, coupled with the fact that NPC used to pay the real property taxes thereon from 1998 up to the first quarter of 2003, estopped NPC from claiming an exemption. More importantly, the LBAA found Mirant to be the actual, direct, exclusive, and beneficial owner and user of the

power, buildings, machinery, and equipment, not NPC. Hence, the subject real properties do not come under the coverage of Section 234(c) of R.A. No. 7160 nor to the special assessment providing for a lower assessment level of ten percent (10%) under Section 216 of the same Act.

Accordingly, the subject real properties are not exempted from payment of real property tax and, likewise, cannot be classified as a special class with an assessment level of ten percent (10%) but should be assigned with the assessment level of eighty percent (80%).

Aggrieved, NPC filed an appeal to the CBAA, docketed as CBAA Case No. L-52.^[17]

In the meantime, the Municipal Treasurer of Sual issued a letter with the Updated Notice of Assessment and Tax Bill. Thus, NPC filed another petition before the LBAA, docketed as LBAA Case No. P-06-001, which was likewise dismissed by the LBAA in its Order dated July 18, 2007.^[18]

NPC also appealed the said Order to the CBAA, docketed as CBAA Case No. L-81.^[19]

CBAA Ruling

On April 2, 2009, the CBAA issued an Order consolidating the two appeals.^[20]

After evaluation of the arguments of both parties, the CBAA rendered the assailed Decision^[21] dated April 12, 2012, dismissing the appeals for lack of merit. In the main, the CBAA ruled that NPC has no personality to claim real property tax exemption for the subject machinery and equipment considering that said machinery and equipment are actually, directly, and exclusively used by Mirant, not NPC. In fact, Mirant is the owner of said facilities until they were turned over to NPC.

The same reasoning was used in ruling that the subject machinery and equipment cannot be classified as a special class of real property for purposes of being subject to a lower assessment level of ten percent (10%) under Section 216 of the same Act. The subject facilities are owned by Mirant, a private entity, hence, not covered by the special privilege under the said provision.

Likewise, the CBAA ruled that NPC has no legal personality to claim for exemption under Section 234(e)^[22] of R.A. No. 7160, as well as the depreciation allowance under Section 225 thereof, as the subject facilities are not owned by NPC but by Mirant.

NPC's motion for reconsideration of the said Decision was also denied by the CBAA in its Order^[23] dated July 31, 2012.

CTA Ruling

The CTA scrutinized the agreement between NPC and Mirant under the BOT system and found that the ownership of the subject machinery and equipment is clearly vested with Mirant until the transfer of the project to NPC. Since the ownership and actual use of the subject facilities are with Mirant, a non-exempt entity, the CTA

sustained the LBAA and CBAA ruling that NPC may not rightfully claim that it has the requisite legal interest to question the assessment and assert tax exemptions under Sections 234(c) and (e) of R.A. No. 7160, as well as the privilege under Section 225 thereof.

Neither was there basis, according to the CTA, for NPC to claim that respondents are estopped from questioning NPC's legal interest as respondents already acknowledged the same in their MOA. The CTA found that apart from the enumeration of the parties' respective obligations under the MOA, there was nothing therein that says respondents acknowledged NPC as the owner and user of the power plant and the equipment therein.

Further, the stipulated undertaking of NPC to pay the real property taxes does not justify the exemption as it has already been previously ruled by the Supreme Court that such undertaking is essentially wrong as to rule otherwise would be tantamount to allowing an exempt entity to use its privilege to favor a non-exempt entity and debase our tax system, citing this Court's ruling in *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*.^[24]

Finding that NPC is not the actual owner nor the beneficial owner or possessor of the subject machinery and equipment, the CTA came to the same conclusion as the LBAA and the CBAA, that NPC has no legal personality to claim for exemptions and privileges under Sections 234(c) and (e), as well as Section 225^[25] of R.A. No. 7160.

Thus, the CTA sustained the findings and conclusions of the LBAA and the CBAA and dismissed the appeal for lack of merit.

Hence, this petition.

Issue

The issues raised by NPC in this petition - whether the subject machinery and equipment are exempted from real property tax under Section 234(c) or Section 234(e) of R.A. 7160; whether the same can be considered as a special class of real property under Section 216 of the same Act for a lower assessment of real property tax; or whether NPC is entitled to the depreciation allowance under Section 225 thereof - all boil down to the pivotal issue of whether NPC has legal personality and interest to claim for such exemptions and privileges.

Our Ruling

This case is definitely not of first impression. In NPC's previous cases with this Court, *i.e.*, *FELS Energy, Inc. v. The Province of Batangas*,^[26] *National Power Corporation v. Central Board of Assessment Appeals*^[27] and *National Power Corporation v. Province of Quezon*,^[28] the implications of a contract and/or a BOT agreement between a government-owned and controlled corporation that enjoy tax exemption, and a private corporation with regard to real property tax liabilities, have already been exhaustively explained and discussed by this Court. Specifically, the Court has concluded that the tax exemptions and privileges claimed by NPC cannot be recognized since it is not the actual, direct, and exclusive user of the facilities,

machinery and equipment subject of the cases.

The Court emphasized therein its guiding principle in resolving the said cases, *i.e.*, taxation is the rule and exemption is the exception.

Guided by Our pronouncements in the said strikingly similar cases, we find this petition bereft of merit.

NPC argues that the CTA erred in denying its claim for exemption on the ground that it is not the owner of the subject facilities. NPC insists that, as project owner, it has legal interest over the power plant and as such, it has the legal personality to question the assessment and claim for exemption therefor. NPC argues that legal interest over the properties subject of real property tax is not limited to ownership considering that for such tax purposes, real properties are classified, valued, and assessed on the basis of their actual use, highlighting the phrase "regardless of where located, whoever owns it, and whoever uses it" in Section 217 of R.A. No. 7160.

Indeed, real property tax liability rests on the owner of the property or on the person with the beneficial use thereof such as taxes on government property leased to private persons or when tax assessment is made on the basis of the actual use of the property.^[29] In either case, the unpaid realty tax attaches to the property 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.^[30] NPC was, therefore, correct in arguing that a beneficial user may also be legally burdened with the obligation to pay for the tax imposed on a property and as such, has legal interest therein and the personality to protest an assessment or claim exemption from tax liability.^[31]

In this case, however, NPC is neither the owner nor the possessor or beneficial user of the subject facilities. Hence, it cannot be considered to have any legal interest in the subject property to clothe it with the personality to question the assessment and claim for exemptions and privileges.

Records clearly show that NPC is yet to be the owner of the subject facilities. Provisions of the ECA unequivocally support this conclusion, *viz.*:

2.10 Ownership of Power Station. From the date hereof until the Transfer Date, [Mirant] shall directly or indirectly, own the Power Station and all the fixtures, fittings, machinery and equipment on the Site and the Ash Disposal Sites or used in connection with the Power Station which have been supplied by it or at its cost. [Mirant] shall operate and maintain the Power Station for the purpose of converting Fuel of NPC into electricity.

2.11 Transfer. On the Transfer Date, the Power Station shall be transferred by [Mirant] to NPC without the payment of any compensation and otherwise in accordance with the provisions of Article 8.^[32]

Further, as correctly observed by the LBAA, there is nothing in the ECA which expressly grants the NPC the right or authority to use directly or indirectly the power plant and the facilities therein during the cooperation period. Article 5 of the