

## EN BANC

[ G.R. No. 198146, August 08, 2017 ]

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT  
CORPORATION, PETITIONER, V. COMMISSIONER OF INTERNAL  
RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This petition for review<sup>[1]</sup> assails the 27 September 2010 Decision<sup>[2]</sup> and the 3 August 2011 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP No. 108156. The Court of Appeals nullified the Decisions dated 13 March 2008 and 14 January 2009 of the Secretary of Justice in OSJ Case No. 2007-3 for lack of jurisdiction.

#### The Facts

Petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) is a government-owned and controlled corporation created under Republic Act No. 9136 (RA 9136), also known as the Electric Power Industry Reform Act of 2001 (EPIRA).<sup>[4]</sup> Section 50 of RA 9136 states that the principal purpose of PSALM is to manage the orderly sale, disposition, and privatization of the National Power Corporation (NPC) generation assets, real estate and other disposable assets, and Independent Power Producer (IPP) contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

PSALM conducted public biddings for the privatization of the Pantabangan-Masiway Hydroelectric Power Plant (Pantabangan-Masiway Plant) and Magat Hydroelectric Power Plant (Magat Plant) on 8 September 2006 and 14 December 2006, respectively. First Gen Hydropower Corporation with its \$129 Million bid and SN Aboitiz Power Corporation with its \$530 Million bid were the winning bidders for the Pantabangan-Masiway Plant and Magat Plant, respectively.

On 28 August 2007, the NPC received a letter<sup>[5]</sup> dated 14 August 2007 from the Bureau of Internal Revenue (BIR) demanding immediate payment of P3,813,080,472<sup>[6]</sup> deficiency value-added tax (VAT) for the sale of the Pantabangan-Masiway Plant and Magat Plant. The NPC indorsed BIR's demand letter to PSALM.

On 30 August 2007, the BIR, NPC, and PSALM executed a Memorandum of Agreement (MOA),<sup>[7]</sup> wherein they agreed that:

- A) NPC/PSALM shall remit under protest to the BIR the amount of Php 3,813,080,472.00, representing basic VAT as shown in the BIR letter

dated August 14, 2007, upon execution of this Memorandum of Agreement (MOA).

B) This remittance shall be without prejudice to the outcome of the resolution of the Issues before the appropriate courts or body.

C) NPC/PSALM and BIR mutually undertake to seek final resolution of the Issues by the appropriate courts or body.

D) BIR shall waive any and all interests and surcharges on the aforesaid BIR letter, except when the case is elevated by the BIR before an appellate court.

E) Nothing contained in this MOA shall be claimed or construed to be an admission against interest as to any party or evidence of any liability or wrongdoing whatsoever nor an abandonment of any position taken by NPC/PSALM in connection with the Issues.

F) Each Party to this MOA hereto expressly represents that the authorized signatory hereto has the legal authority to bind [the] party to all the terms of this MOA.

G) Any resolution by the appropriate courts or body in favor of the BIR, other than a decision by the Supreme Court, shall not constitute as precedent and sufficient legal basis as to the taxability of NPC/PSALM's transactions pursuant to the privatization of NPC's assets as mandated by the EPIRA Law.

H) Any resolution in favor of NPC/PSALM by any appropriate court or body shall be immediately executory without necessity of notice or demand from NPC/PSALM. A ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM. BIR undertakes to immediately process and approve the application, and release the tax refund/TCC within fifteen (15) working days from issuance of the DOJ ruling that is favorable to NPC/PSALM.

I) Either party has the right to appeal any adverse decision against it before any appropriate court or body.

J) In the event of failure by the BIR to fulfill the undertaking referred to in (H) above, NPC/PSALM shall assign to DOF its right to the refund of the subject remittance, and the DOF shall offset such amount against any liability of NPC/PSALM to the National Government pursuant to the objectives of the EPIRA on the application of the privatization proceeds.

[8] In compliance with the MOA, PSALM remitted under protest to the BIR the amount of P3,813,080,472, representing the total basic VAT due.

On 21 September 2007, PSALM filed with the Department of Justice (DOJ) a petition for the adjudication of the dispute with the BIR to resolve the issue of whether the sale of the power plants should be subject to VAT. The case was docketed as OSJ Case No. 2007-3.

On 13 March 2008, the DOJ ruled in favor of PSALM, thus:

In cases involving purely question[s] of law, such as in the instant case, between and among the government-owned and controlled corporation and government bureau, the issue is best settled in this Department. In the final analysis, there is but one party in interest, the Government itself in this litigation.

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The instant petition is an original petition involving only [a] question of law on whether or not the sale of the Pantabangan-Masiway and Magat Power Plants to private entities under the mandate of the EPIRA is subject to VAT. It is to be stressed that this is not an appeal from the decision of the Commissioner of Internal Revenue involving disputed assessments, refunds of internal revenue taxes, fees or other charges, or other matters arising under the National Internal Revenue Code or other law.

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Moreover, it must be noted that respondent already invoked this Office's jurisdiction over it by praying in respondent's Motion for Extension of Time to File Comment (On Petitioner's Petition dated 21 September 2007) and later, Omnibus Motion To Lift Order dated 22 October 2007 and To Admit Attached Comment. The Court has held that the filing of motions seeking affirmative relief, such as, to admit answer, for additional time to answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court. Having sought this Office to grant extension of time to file answer or comment to the instant petition, thereby submitting to the jurisdiction of this Court [sic], respondent cannot now repudiate the very same authority it sought.

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When petitioner was created under Section 49 of R.A. No. 9136, for the principal purpose to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner, there was, by operation of law, the transfer of ownership of NPC assets. Such transfer of ownership was not carried out in the ordinary course of transfer which must be accorded with the required elements present for a valid transfer, but in this case, in accordance with the mandate of the law, *that is*, EPIRA. Thus, respondent cannot assert that it was NPC who was the actual seller of the Pantabangan-Masiway and Magat Power Plants, because at the time of selling the aforesaid power plants, the owner then was already the petitioner and not the NPC. Consequently, petitioner cannot also be considered a successor-in-interest of NPC.

Since it was petitioner who sold the Pantabangan-Masiway and Magat Power Plants and not the NPC, through a competitive and public bidding to the private entities, Section 24(A) of R.A. No. 9337 cannot be applied to the instant case. Neither the grant of exemption and revocation of the tax exemption accorded to the NPC, be also affected to petitioner.

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Clearly, the disposition of Pantabangan-Masiway and Magat Power Plants was not in the regular conduct or pursuit of a commercial or an economic activity, but was effected by the mandate of the EPIRA upon petitioner to direct the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts, and afterward, to liquidate the outstanding obligations of the NPC.

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Verily, to subject the sale of generation assets in accordance with a privatization plan submitted to and approved by the President, which is a one time sale, to VAT would run counter to the purpose of obtaining optimal proceeds since potential bidders would necessarily have to take into account such extra cost of VAT.

WHEREFORE, premises considered, the imposition by respondent Bureau of Internal Revenue of deficiency Value-Added Tax in the amount of P3,813,080,472.00 on the privatization sale of the Pantabangan-Masiway and Magat Power Plants, done in accordance with the mandate of the Electric Power Industry Reform Act of 2001, is hereby declared NULL and VOID. Respondent is directed to refund the amount of P3,813,080,472.00 remitted under protest by petitioner to respondent.<sup>[9]</sup>

The BIR moved for reconsideration, alleging that the DOJ had no jurisdiction since the dispute involved tax laws administered by the BIR and therefore within the jurisdiction of the Court of Tax Appeals (CTA). Furthermore, the BIR stated that the sale of the subject power plants by PSALM to private entities is in the course of trade or business, as contemplated under Section 105 of the National Internal Revenue Code (NIRC) of 1997, which covers incidental transactions. Thus, the sale is subject to VAT. On 14 January 2009, the DOJ denied BIR's Motion for Reconsideration.<sup>[10]</sup>

On 7 April 2009,<sup>[11]</sup> the BIR Commissioner (Commissioner of Internal Revenue) filed with the Court of Appeals a petition for certiorari, seeking to set aside the DOJ's decision for lack of jurisdiction. In a Resolution dated 23 April 2009, the Court of Appeals dismissed the petition for failure to attach the relevant pleadings and documents.<sup>[12]</sup> Upon motion for reconsideration, the Court of Appeals reinstated the petition in its Resolution dated 10 July 2009.<sup>[13]</sup>

### **The Ruling of the Court of Appeals**

The Court of Appeals held that the petition filed by PSALM with the DOJ was really a protest against the assessment of deficiency VAT, which under Section 204<sup>[14]</sup> of the NIRC of 1997 is within the authority of the Commissioner of Internal Revenue (CIR) to resolve. In fact, PSALM's objective in filing the petition was to recover the P3,813,080,472 VAT which was allegedly assessed erroneously and which PSALM paid under protest to the BIR.

Quoting paragraph H<sup>[15]</sup> of the MOA among the BIR, NPC, and PSALM, the Court of Appeals stated that the parties in effect agreed to consider a DOJ ruling favorable to PSALM as the latter's application for refund.

Citing Section 4<sup>[16]</sup> of the NIRC of 1997, as amended by Section 3 of Republic Act No. 8424 (RA 8424)<sup>[17]</sup> and Section 7<sup>[18]</sup> of Republic Act No. 9282 (RA 9282),<sup>[19]</sup> the Court of Appeals ruled that the CIR is the proper body to resolve cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR. The Court of Appeals stressed that jurisdiction is conferred by law or by the Constitution; the parties, such as in this case, cannot agree or stipulate on it by conferring jurisdiction in a body that has none. Jurisdiction over the person can be waived but not the jurisdiction over the subject matter which is neither subject to agreement nor conferred by consent of the parties. The Court of Appeals held that the DOJ Secretary erred in ruling that the CIR is estopped from assailing the jurisdiction of the DOJ after having agreed to submit to its jurisdiction. As a general rule, estoppel does not confer jurisdiction over a cause of action to a tribunal where none, by law, exists.

In conclusion, the Court of Appeals found that the DOJ Secretary gravely abused his discretion amounting to lack of jurisdiction when he assumed jurisdiction over OSJ Case No. 2007-3. The dispositive portion of the Court of Appeals' 27 September 2010 Decision reads:

WHEREFORE, premises considered, we hereby GRANT the petition. Accordingly: (1) the [D]ecision dated March 13, 2008, and the Decision dated January 14, 2009 both issued by the public respondent Secretary of Justice in [OSJ Case No.] 2007-3 are declared NULL and VOID for having been issued without jurisdiction.

No costs.

SO ORDERED.<sup>[20]</sup>

PSALM moved for reconsideration, which the Court of Appeals denied in its 3 August 2011 Resolution. Hence, this petition.

### **The Issues**

Petitioner PSALM raises the following issues:

I. DID THE COURT OF APPEALS MISAPPLY THE LAW IN GIVING DUE COURSE TO THE PETITION FOR CERTIORARI IN CA-G.R. SP NO. 108156?

II. DID THE SECRETARY OF JUSTICE ACT IN ACCORDANCE WITH THE LAW IN ASSUMING JURISDICTION AND SETTLING THE DISPUTE BY AND BETWEEN THE BIR AND PSALM?

III. DID THE SECRETARY OF JUSTICE ACT IN ACCORDANCE WITH THE LAW AND JURISPRUDENCE IN RENDERING JUDGMENT THAT THERE SHOULD BE NO VAT ON THE PRIVATIZATION, SALE OR DISPOSAL OF GENERATION ASSETS?

IV. DOES PUBLIC RESPONDENT DESERVE THE RELIEF OF CERTIORARI?  
<sup>[21]</sup>

### **The Ruling of the Court**

We find the petition meritorious.