



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**NATIONAL CORPORATION,**

Petitioner,

**POWER**

**G.R. No. 207140**

Present:

*-versus-*

LEONEN, S.A.J., *Chairperson,*  
 LAZARO-JAVIER,  
 M. LOPEZ,  
 J. LOPEZ, and  
 KHO, JR., *JJ.*

**PROVINCIAL GOVERNMENT  
 OF BULACAN, GLORIA P. STA.  
 MARIA, MUNICIPAL  
 ASSESSOR OF NORZAGARAY,  
 and THE MUNICIPAL  
 GOVERNMENT OF  
 NORZAGARAY, BULACAN,**

Respondents.

Promulgated:

**JAN 30 2023**

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**D E C I S I O N**

**M. LOPEZ, J.:**

A claim for exemption from real property tax (RPT), whether full or partial, does not deal with the authority and power of the local assessor to impose the assessment or the local treasurer to collect the tax.<sup>1</sup> The issue of exemption that pertains to the reasonableness or correctness of the assessment is a question of fact that administrative agencies should resolve. Therefore, compliance with the “payment under protest” requirement in Section 252 (a)<sup>2</sup>

<sup>1</sup> *Camp John Hay Development Corporation v. Central Board of Assessment Appeals*, 718 Phil. 543, 566 (2013) [Per J. Perez, Second Division].

<sup>2</sup> SECTION 252 **Payment Under Protest** -- (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words “paid under protest”. The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

of the Local Government Code (LGC)<sup>3</sup> is mandatory. Otherwise, the local treasurer will not act on the protest, and the Local Board of Assessment Appeals (LBAA) will have no authority to take cognizance of the appeal.

We apply this *dictum* in the Petition for Review<sup>4</sup> under Rule 45 of the Rules of Court assailing the Court of Tax Appeals (CTA) *En Banc*'s Decision<sup>5</sup> dated November 29, 2012 and Resolution<sup>6</sup> dated April 22, 2013 in CTA EB No. 850, which affirmed the Central Board of Assessment Appeals' (CBAA) Decision<sup>7</sup> in CBAA Case No. L-93. The CBAA upheld the LBAA's August 14, 2008 Judgment<sup>8</sup> that declared National Power Corporation (NPC) liable to pay the Municipality of Norzagaray, Bulacan real property taxes in the amount of PHP 18,475,003.20 for the properties listed in the Land Assessment covering the period from January 1, 1997 to December 31, 2006, and PHP 113,960,000.00 for the properties listed in the Machineries Assessment for the period from January 1, 1996 to December 31, 2005.

### ANTECEDENTS

NPC, a government-owned and controlled corporation (GOCC), is the owner and operator of Angat Hydro-Electric Power Plant located at Hilltop, San Lorenzo, Norzagaray, Bulacan.

On December 12, 2006, NPC received from the Municipal Assessor of the Municipality of Norzagaray a Notice of Assessment<sup>9</sup> for RPT for January 1, 1996 to December 31, 2005, for the following properties (referred to herein as Machineries Assessment):

ARP No.	Classification	Description	Basic Tax	SEF Tax	Tax Due
00180	Special	Main Dam – Rockfill dam w/ inclined earthcore	2,200,000.00	2,200,000.00	4,400,000.00
00181	Special	Spillway with three (3) Taintor Steel Gates	1,000,000.00	1,000,000.00	2,000,000.00

<sup>3</sup> Republic Act No. 7160, "Local Government Code of 1991," effective January 1, 1992.

<sup>4</sup> *Rollo*, pp. 9--39.

<sup>5</sup> *Id.* at 43–59. Penned by Presiding Justice Ernesto D. Acosta, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas. Associate Justice Olga Palanca-Enriquez, on leave.

<sup>6</sup> *Id.* at 62–68. Penned by Associate Justice Esperanza R. Fabon-Victorino, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas. Presiding Justice Roman G. Del Rosario took no part.

<sup>7</sup> CBAA records, Folder 1, pp. 145–164. Signed by Chairman Cesar S. Gutierrez; Angel P. Palomares and Rafael O. Cortes, Members.

<sup>8</sup> LBAA records, Folder 3, pp. 84–87. Signed by Chairman Atty. Ramon C. Sampana; Pros. Sinforsoso T. Roque, Jr. and Engr. Romeo S. Castro, Members.

<sup>9</sup> Court of Tax Appeals *En Banc* No. 850, Exhibits, Folder 4, p. 64.

00182	Special	Two (2)Units Diversion Tunnel – concrete – lined	340,000.00	340,000.00	680,000.00
00183	Special	Tailrace Tunnel – concrete- lined section tunnel	700,000.00	700,000.00	1,400,000.00
00184	Special	Penstock – Steel-lined Tunnels 7m diameter	550,000.00	550,000.00	1,100,000.00
00185	Special	Auxiliary Draft Tube Gates w/ frames & guiderails	450,000.00	450,000.00	900,000.00
00186	Special	Draft Tube Gates and Hoists	200,000.00	200,000.00	400,000.00
00187	Special	Power Tunnel – partly concrete & steel lined	110,000.00	110,000.00	220,000.00
00188	Special	Power Intake Structure – inlet channel structure	80,000.00	80,000.00	160,000.00
00189	Special	Surge Tunnel – concrete- lined rock tunnel	50,000.00	50,000.00	100,000.00
00190	Special	Power Intake Service & Bulkhead Gates – 4 units	18,000.00	18,000.00	36,000.00
Total			5,698,000.00	5,698,000.00	11,396,000.00
Period covered: January 1, 1996 to December 31, 2005					10 years
Total tax due for the period covering January 1, 1996 to December 31, 2005					13,960,000.00

On December 14, 2006, NPC received another Notice of Assessment<sup>10</sup> for RPT covering January 1, 1997 to December 31, 2006, as follows (referred to herein as Land Assessment):

ARP No.	Classification	Description	Tax (Basic and SEF)
00191	Industrial	Camp site	38,607,242.00
00192	Industrial	Spill way	12,618,328.40
00193	Industrial	Powerhouse	31,619,618.20
Total tax due			82,845,188.60

<sup>10</sup> *Id.* at 65–66.

As the parties failed to settle amicably, NPC questioned the assessment before the LBAA of Bulacan, assigning two errors.<sup>11</sup> *First*, the properties listed in the Machineries Assessment are exempt from RPT under Section 234 (c)<sup>12</sup> of the LGC because these are actually, directly, and exclusively used in generating and transmitting electricity. *Second*, the assessor erroneously assigned a higher assessment level to the land, *i.e.*, 40%, and not 10%, which is the rate prescribed for GOCCs under Section 218 (d)<sup>13</sup> of the LGC.

In its Answer,<sup>14</sup> the Municipal Assessor admitted a mistake in assigning 40% for the land and sent a new Notice of Assessment<sup>15</sup> to NPC on February 8, 2007, using the 10% assessment level on special classes of properties under Section 2.D.17, paragraph (d) of the Provincial Revenue Code of Bulacan. The revised RPT due for the Land Assessment covering the period of January 1, 1996 to December 31, 2005 shall be PHP 18,475,003.20<sup>16</sup> and PHP 2,733,248.00<sup>17</sup> for January 1, 2006 to December 31, 2006. Further, the assessor posited that the hearing on the Machineries Assessment should be deferred until NPC had paid the assessment under protest.

<sup>11</sup> LBAA records, Folder 3, pp. 1-10.

<sup>12</sup> **SEC. 234. Exemptions from Real Property Tax.** — The following are exempted from payment of the real property tax:

x x x x

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power[.]

<sup>13</sup> **SEC. 218. Assessment Levels.** — The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the Sangguniang Panlalawigan, Sangguniang [P]anlungsod or Sangguniang [B]ayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

x x x x

(d) On Special Classes: The assessment levels for all lands, buildings, machineries and other improvements:

ACTUAL USE	ASSESSMENT LEVEL
Cultural	15%
x x x x	
Government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power	10%

<sup>14</sup> LBAA records, Folder 3, pp. 28-31.

<sup>15</sup> *Id.* at 32-36.

<sup>16</sup> *Id.* at 38.

ARP No.	Classification	Description	Tax (Basic and SEF)
00191	Industrial	Camp site	8,609,660.20
00192	Industrial	Spill way	2,813,967.40
00193	Industrial	Powerhouse	7,051,375.60
Total tax due			18,475,003.20

<sup>17</sup> *Id.* at 37.

ARP No.	Classification	Description	Tax (Basic and SEF)
00191	Industrial	Camp site	1,273,739.20
00192	Industrial	Spill way	416,306.80
00193	Industrial	Powerhouse	1,043,202.00
Total tax due			2,733,248.00

Meanwhile, the Provincial Government of Bulacan invoked Section 216<sup>18</sup> of the LGC as the basis of NPC's liability for RPT on the machineries.<sup>19</sup> The properties are structures wherein RPT could be properly imposed. Also, the petition should be dismissed for lack of certification against non-forum shopping.

In its Reply/Comment,<sup>20</sup> NPC countered that it was not required to pay the tax under protest following the Court's ruling in *Ty v. Hon. Trampe*.<sup>21</sup> In that case, the Court ruled that the requirement of payment under protest in the LGC does not apply when the petitioner is questioning the authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. Here, NPC was questioning the very authority and power of the Municipal Assessor to impose RPT on the properties of NPC, which are exempt from the tax. NPC added that the Land Assessment was still erroneous. The *Sanggunian* concerned did not pass an ordinance on the fair market value of the "special classes of properties" as mandated by Sections 212<sup>22</sup> and 215<sup>23</sup> of the LGC.<sup>24</sup>

### THE RULING OF THE LBAA AND CBAA

On August 14, 2008, the LBAA rendered a Judgment<sup>25</sup> upholding the RPT assessment against NPC. The LBAA ruled that payment under protest is a condition *sine qua non* before filing an appeal to the Board. *Ty v. Hon. Trampe*<sup>26</sup> does not apply to NPC as the issue involved was the harmonization of Presidential Decree (PD) No. 921<sup>27</sup> and the LGC. Further, NPC failed to prove that the machineries were actually, directly, and exclusively used in the generation or transmission of electric power, and, therefore, exempt from

<sup>18</sup> **SECTION 216. Special Classes of Real Property.** — All lands, buildings, and other improvements actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and government-owned or -controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special.

<sup>19</sup> LBAA records, Folder 3, pp. 45–49.

<sup>20</sup> *Id.* at 52–57.

<sup>21</sup> 321 Phil. 81 (1995) [Per *J. Panganiban, En Banc*].

<sup>22</sup> **SECTION 212. Preparation of Schedule of Fair Market Values.** — Before any general revision of property assessment is made pursuant to the provisions of this Title, there shall be prepared a schedule of fair market values by the provincial, city and the municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the *sanggunian* concerned. The schedule of fair market values shall be published in a newspaper of general circulation in the province, city or municipality concerned, or in the absence thereof, shall be posted in the provincial capitol, city or municipal hall and in two (2) other conspicuous public places therein.

<sup>23</sup> **SECTION 215. Classes of Real Property for Assessment Purposes.** — For purposes of assessment, real property shall be classified as residential, agricultural, commercial, industrial, mineral, or special. The city or municipality within the Metropolitan Manila Area, through their respective *Sanggunian*, have the power to classify lands as residential, agricultural, commercial, industrial, mineral, timberland, or special in accordance with their zoning ordinances.

<sup>24</sup> LBAA records, Folder 3, pp. 54–55.

<sup>25</sup> *Id.* at 84–87.

<sup>26</sup> *Supra* note 21, see pp. 101–102.

<sup>27</sup> PROVIDING FOR THE ADMINISTRATION OF LOCAL FINANCIAL SERVICES IN METROPOLITAN MANILA, CREATING LOCAL TREASURY AND ASSESSMENT DISTRICTS THEREIN, AND FOR OTHER PURPOSES, April 12, 1976.

RPT. The LBAA added that Sections 212 and 215 of the LGC do not apply since the Municipality of Norzagaray is outside Metro Manila. It disposed:

**WHEREFORE**, the present PETITION is DENIED. The petitioner National Power Corporation is directed to pay respondent Municipality of Norzagaray, Bulacan, its tax liabilities amounting to [P]**18,475,003.20** over the "Land Assessments", covering January 01, 1997 to December 31, 2006.

Also, for the period beginning January 01, 1996 to December 31, 2005, the amount of [PHP]**113,960,000.00** should also be paid by petitioner to Municipality of Norzagaray, Bulacan, over the "Machineries Assessment".

**SO ORDERED.**<sup>28</sup>

NPC appealed to the CBAA,<sup>29</sup> insisting that it is not liable to pay RPT. The machineries are actually, directly, and exclusively used in the generation or transmission of electric power. Regarding Land Assessment, NPC posited that the local assessor issued a Notice of Assessment<sup>30</sup> dated June 1, 2007, limiting NPC's liability to PHP 6,485,422.60. It was, therefore, erroneous for the LBAA to still order NPC to pay the original amount of PHP 18,475,003.20.

The CBAA dismissed NPC's appeal on August 26, 2010.<sup>31</sup> In upholding the assessment, the CBAA ruled that NPC failed to prove that the machineries were actually, directly, and exclusively used for generating and transmitting electric power. At any rate, the dam and its auxiliaries are **multi-purpose**, and the other properties are **either water conveyance structures, or utilized for preventive maintenance, periodic check-ups and repairs, and as safety measures**, thus, negating the requirements of actuality and exclusivity in use. The CBAA further found the structures **are used for retention, conservation, diversion, utilization, as well as management and control of water in different aspects, and used for irrigation, flood control and water supply system for the Greater Manila Area.**<sup>32</sup> In all, the properties perform functions other than power generation and transmission. Thus:

**WHEREFORE**, this Board holds and concludes that the petition for tax exemption has no factual and legal basis, hence DENIED. The appeal therefore is DISMISSED, the assessments of the eleven (11) subject properties upheld, and the [D]ecision of the LBAA is AFFIRMED.

**SO ORDERED.**<sup>33</sup>

<sup>28</sup> LBAA records, Folder 3, p. 86.

<sup>29</sup> CBAA records, Folder 1, pp. 1-16.

<sup>30</sup> *Id.* at 35.

<sup>31</sup> *Id.* at 145-164.

<sup>32</sup> *Id.* at 158-162.

<sup>33</sup> *Id.* at 164.

Unsuccessful at reconsideration,<sup>34</sup> NPC filed a Petition before the CTA *En Banc*, docketed as CTA Case No. 850 (CBAA Case No. L-93).<sup>35</sup>

NPC averred that the CBAA erred in ordering it to pay the amount of PHP 18,475,003.20 for the Land Assessment and not PHP 6,485,422.60 only based on the amended assessment issued by the Municipality of Norzagaray. Further, the properties listed in the Machineries Assessment were actually, directly, and exclusively used for electricity generation, pollution control, and environmental protection; hence, they are exempt from RPT.<sup>36</sup>

### THE RULING OF THE CTA

On November 29, 2012, the CTA *En Banc* issued the assailed Decision denying NPC's Petition. The CTA noted that the Municipality of Norzagaray amended the statement of account for the Land Assessment due to NPC to PHP 6,485,422.60. However, NPC's failure to first pay the tax rendered its protest without any effect. Thus, NPC's appeal to the LBAA was prematurely filed. The CTA cited *National Power Corporation v. Province of Quezon*,<sup>37</sup> where the Court ruled that protest questioning the reasonableness or correctness of the amount of assessment must be preceded by paying the tax under protest. Without a valid protest, the assessor cannot validly act on the protest. Consequently, the appellate authority of the LBAA cannot be invoked.<sup>38</sup>

The CTA added that the premature filing of a Petition with the LBAA violates the doctrine of exhaustion of administrative remedies. NPC's cause of action is not yet ripe for judicial determination and must be denied for lack of cause of action.<sup>39</sup> The CTA *En Banc* disposed:

**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit and for lack of cause of action. The assailed decision and order of the CBAA dated August 26, 2010 and October 14, 2011, respectively, in CBAA Case No. L-93 entitled "National Power Corporation [v.] The Local Board of Assessment Appeals of the Province of Bulacan and the Province of Bulacan, the Municipality of Norzagaray, Bulacan, and Gloria P. Sta. Maria, Municipal Assessor of Norzagaray, Bulacan", are hereby **AFFIRMED**.

Accordingly, petitioner National Power Corporation is directed to pay respondent Municipality of Norgazaray, Bulacan, its tax liabilities amounting to **[PHP]18,475,003.20** over the "Land Assessments", covering January 01, 1997 to December 31, 2006.

<sup>34</sup> CTA records, pp. 67-75. Signed by Chairman Ofelia A. Marquez, and Rafael O. Cortes and Roberto D. Geotina as Members. The dispositive portion of the Order dated October 14, 2011 reads:

**WHEREFORE**, in view of the above considerations, petitioner-appellant's [NPC] Motion for Reconsideration, for lack of merit, is hereby **DENIED**.

**SO ORDERED**. *Id.* at 75.

<sup>35</sup> *Id.* at 1-43.

<sup>36</sup> *Id.* at 7-8.

<sup>37</sup> 624 Phil. 738 (2010) [Per J. Brion, Special Second Division].

<sup>38</sup> *Id.* at 757-761.

<sup>39</sup> *Rollo*, pp. 56-57.

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Also, for the period beginning January 01, 1996 to December 31, 2005, the amount of [PHP]113,960,000.00 should also be paid by petitioner to Municipality of Norzagaray, Bulacan, over the "Machineries Assessment".

**SO ORDERED.**<sup>40</sup>

The CTA *En Banc* denied NPC's motion for reconsideration on April 22, 2013. It ruled that the compliance by NPC with a condition precedent and the exhaustion of administrative remedies are issues which are relevant and interrelated with the issues raised in the Petition. The CTA has the authority to rule on them even though they are not presented as issues by the parties. The CTA reiterated that a protest of an assessment based on tax exemption is a question of the reasonableness or correctness of the assessment and must comply with the requirement of payment under protest under Section 252 of the LGC,<sup>41</sup> viz:

**WHEREFORE**, the Motion For Reconsideration dated December 18, 2012 filed by petitioner [NPC], is hereby **DENIED**, for lack of merit.

**SO ORDERED.**<sup>42</sup>

Hence, this recourse.

NPC avers that the CTA erroneously denied the Petition on the ground that NPC failed to comply with the requirement of payment under protest — an issue that was never raised by the parties in their Petition and Comment. NPC insists that it is not required to first pay the tax under protest since it is not questioning the reasonableness or correctness of the assessments against it but the very authority of the assessor in assessing properties that are exempt from RPT.

NPC claims that the properties enumerated in Machineries Assessment are exempt from RPT since these are actually, directly, and exclusively used for electricity generation, pollution control, and environmental protection. NPC invokes the definition of machineries in Section 199, Item (o)<sup>43</sup> of the LGC, stating that the assessed properties are not structures. And, even if the properties are **structures**, they are still **machineries** as defined in Section 199. As regards Land Assessment, NPC is a **government instrumentality** that

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<sup>40</sup> *Id.* at 58.

<sup>41</sup> *Id.* at 66-67.

<sup>42</sup> *Id.* at 68.

<sup>43</sup> **SECTION 199. Definitions.** — When used in this Title: x x x

x x x x

(o) "Machinery" embraces machines, equipment, mechanical contrivances, instruments, or apparatus which may or may not be attached, permanently or temporarily, to the real property. It includes the physical facilities for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property which are actually, directly, and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes[.]



should not be subjected to local taxes by local government units. Even assuming that NPC is liable for RPT, it should have been ordered to pay only the amount of PHP 6,485,422.60 based on the amended assessment issued by the Municipality of Norzagaray.

On November 20, 2013, the Office of the Solicitor General (OSG), as counsel for NPC, filed an Urgent Application for the Issuance of Temporary Restraining Order (TRO)<sup>44</sup> to enjoin the respondents from enforcing a Warrant of Levy dated November 4, 2013,<sup>45</sup> issued by the Provincial Treasurer of Bulacan against the properties of NPC listed in the Machineries Assessment; and to prevent the respondents from proceeding to publicly advertise for sale or auction the subject properties, considering that the issuance of a Warrant of Levy during the pendency of the Petition will render moot and academic whatever decision this Court may render.

On November 25, 2013, the Court issued a TRO<sup>46</sup> enjoining the CTA, the Provincial Treasurer of Bulacan, and respondents, their representatives, agents, or other persons acting on their behalf from enforcing the assailed Warrant of Levy dated November 4, 2013, and from proceeding to publicly advertise for sale or auction the subject properties of NPC.<sup>47</sup>

Respondents filed their Comment<sup>48</sup> on the Petition on December 23, 2013, essentially reiterating the CTA *En Banc*'s discussion. NPC submitted a Reply<sup>49</sup> insisting that payment under protest is not required.

Subsequently, in compliance with this Court's Resolution<sup>50</sup> dated August 27, 2014, the parties submitted their respective Memoranda.<sup>51</sup>

On June 10, 2020, this Court required the parties "to **MOVE IN THE PREMISES** by informing the Court, within ten (10) days from notice, of any supervening events or subsequent developments pertinent to the case which may be of help to the Court in its immediate disposition of the case or may have rendered the case moot and academic."<sup>52</sup>

The OSG filed a Manifestation and Compliance<sup>53</sup> on December 10, 2020, informing this Court that there were no supervening events or subsequent developments to the case after the issuance of the TRO on November 25, 2013. The OSG also informed the Court that certain properties<sup>54</sup> enumerated in the Machineries Assessment were already sold to Korean Water Resources Corporation, now Angat Hydro Corporation.

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<sup>44</sup> *Rollo*, pp. 79–86.

<sup>45</sup> *Id.* at 88–93.

<sup>46</sup> *Id.* at 186–187; 190–191; & 194–195.

<sup>47</sup> *Id.* at 184–185; 188–189; & 192–193.

<sup>48</sup> *Id.* at 202–209.

<sup>49</sup> *Id.* at 214–220.

<sup>50</sup> *Id.* at 234–235.

<sup>51</sup> *Id.* at 236–268; & 272–290.

<sup>52</sup> *Id.* at 311–312.

<sup>53</sup> *Id.* at 314–317.

<sup>54</sup> The excluded properties are the main dam, spillway, and diversion tunnels. *See id.* at 318–319.

Whereas, to date, the respondents did not submit their compliance with the Court's Resolution dated June 10, 2020, directing the parties to move in the premises within ten 10 days from notice.

We now resolve.

### ISSUES

Parsed from the submission of the parties, the issues before this Court are the following:

1. Whether compliance with the payment under protest requirement in Section 252 of the LGC is a condition *sine qua non* to question the assessment of the local assessor before the LBAA?
2. Whether the properties listed in the Machineries Assessment are exempt from RPT?
3. Whether the properties listed in the Land Assessment are exempt from RPT?<sup>55</sup>

### RULING

We deny the Petition.

***The CTA may rule upon related issues not specifically raised by the parties but necessary to achieve an orderly disposition of the case.***

At the onset, We hold that the issue of whether NPC is required to first pay the tax under protest is properly cognizable by the CTA, although it was not expressly raised by the parties in their pleadings filed before the court. The CTA is not bound by the issues specifically stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.<sup>56</sup> Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals<sup>57</sup> provides that “[i]n deciding the case, the [CTA] may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.”

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<sup>55</sup> *Id.* at 15–17.

<sup>56</sup> *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021 [Per C.J. Gesmundo, First Division]; and *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, 813 Phil. 622, 639 (2017) [Per J. Martires, Second Division].

<sup>57</sup> A.M. No. 05-11-07-CTA, November 22, 2005.

Indeed, the requirement of payment under protest in Section 252<sup>58</sup> of the LGC is ancillary to the issue of premature filing with the LBAA. If NPC was required to pay the tax but failed, the administrative protest with the assessor was without effect, and the Petition filed with the LBAA was premature. Consequently, the CTA is precluded from entertaining the Petition. Further, the CTA observed that the Municipal Assessor of Norzagaray raised during the proceedings in the LBAA that NPC did not pay the questioned tax under protest. Accordingly, NPC is deemed to have impliedly consented to try the issue.<sup>59</sup>

***Payment under protest is required before the NPC can appeal to the LBAA.***

NPC insists that it is not questioning the reasonableness or correctness of the assessment issued by the Municipality of Norzagaray but the very authority and power of the assessor in assessing properties that are exempt from RPT. Since the subject properties are tax exempt, the local assessor had no authority to issue the assessment. As such, payment under protest is not required.

The issue is not novel. This is not the first occasion where this Court ruled that NPC, in claiming tax exemption, questions the reasonableness or correctness of the assessment and not the legality of the assessment or the authority or power of the assessor to impose the assessment or the treasurer to collect the tax. As early as in *National Power Corporation v. Province of Quezon*,<sup>60</sup> this Court ruled that a claim for exemption is a question of fact that pertains to the correctness of an assessment. Hence, payment under protest is mandatory. Otherwise, there is no valid protest, and the appellate authority of the LBAA cannot be invoked. The LBAA could not assume jurisdiction over the Petition. On the other hand, an issue that concerns the very authority and power of the local assessor to impose the assessment and the local treasurer to collect the tax is a legal question that is properly cognizable by the trial court. In such a case, Section 252 of the LGC will not apply. This Court elucidated:

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<sup>58</sup> *Supra* note 2.

<sup>59</sup> *See* Rules of Court, Rule 10, Section 5, which applies suppletory to the Revised Rules of the Court of Tax Appeals.

SECTION 5. Amendment to conform to or authorize presentation of evidence. — When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

<sup>60</sup> 624 Phil. 738 (2010) [Per *J. Brion*, Special Second Division].

The LBAA dismissed Napocor's petition for exemption for its failure to comply with Section 252 of the LGC requiring payment of the assailed tax before any protest can be made. Although the CBAA ultimately dismissed Napocor's appeal for failure to meet the requirements for tax exemption, it agreed with Napocor's position that "the protest contemplated in Section 252 (a) is applicable only when the taxpayer is questioning the reasonableness or excessiveness of an assessment. It presupposes that the taxpayer is subject to the tax but is disputing the correctness of the amount assessed. It does not apply where, as in this case, the legality of the assessment is put in issue on account of the taxpayer's claim that it is exempt from tax." The CTA *en banc* agreed with the CBAA's discussion, relying mainly on the cases of *Ty v. Trampe* and *Olivarez v. Marquez*.

We disagree. The cases of *Ty* and *Olivarez* must be placed in their proper perspective.

The petitioner in *Ty v. Trampe* questioned before the trial court the increased real estate taxes imposed by and being collected in Pasig City effective from the year 1994, premised on the legal question of whether or not Presidential Decree No. 921 (*PD 921*) was repealed by the LGC. PD 921 required that the schedule of values of real properties in the Metropolitan Manila area shall be prepared jointly by the city assessors in the districts created therein; while Section 212 of the LGC stated that the schedule shall be prepared by the provincial, city or municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the *Sanggunian* concerned. The private respondents assailed Ty's act of filing a prohibition petition before the trial court contending that Ty should have availed first the administrative remedies provided in the LGC, particularly Sections 252 (on payment under protest before the local treasurer) and 226 (on appeals to the LBAA).

The Court, through former Chief Justice Artemio Panganiban, declared that Ty correctly filed a petition for prohibition before the trial court against the assailed act of the city assessor and treasurer. The administrative protest proceedings provided in Section[s] 252 and 226 will not apply. **The protest contemplated under Section 252 is required where there is a question as to the reasonableness or correctness of the amount assessed.** Hence, if a taxpayer disputes the reasonableness of an increase in a real property tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. Ty however was questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These were not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase. Moreover, Ty was raising a legal question that is properly cognizable by the trial court; no issues of fact were involved. In enumerating the power of the LBAA, Section 229 declares that "the proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts x x x." Appeals to the LBAA (under Section 226) are therefore fruitful only where questions of fact are involved.

*Olivarez v. Marquez*, on the other hand, involved a petition for *certiorari*, *mandamus*, and prohibition questioning the assessment and levy made by the City of Parañaque. Olivarez was seeking the annulment of his realty tax delinquency assessment. Marquez assailed Olivarez' failure to

first exhaust administrative remedies, particularly the requirement of payment under protest. Olivarez replied that his petition was filed to question the assessor's authority to assess and collect realty taxes and therefore, as held in *Ty v. Trampe*, the exhaustion of administrative remedies was not required. The Court however did not agree with Olivarez' argument. It found that there was nothing in his petition that supported his claim regarding the assessor's alleged lack of authority. What Olivarez raised were the following grounds: "(1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; (4) **some properties are exempt from taxation** as they are being used exclusively for educational purposes; and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making the improper, excessive and unlawful the collection of taxes against the petitioner." **The Olivarez petition filed before the trial court primarily involved the correctness of the assessments**, which is a question of fact that is not allowed in a petition for *certiorari*, prohibition, and *mandamus*. Hence, we declared that the petition should have been brought, at the very first instance, to the LBAA, not the trial court.

Like Olivarez, Napocor, by claiming exemption from realty taxation, is simply raising a question of the correctness of the assessment. A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax. This may be inferred from Section 206 which states that:

x x x x

By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Since Napocor was simply questioning the correctness of the assessment, it should have first complied with Section 252, particularly the requirement of payment under protest. Napocor's failure to prove that this requirement has been complied with thus renders its administrative protest under Section 226 of the LGC without any effect. No protest shall be entertained unless the taxpayer first pays the tax.

It was an ill-advised move for Napocor to directly file an appeal with the LBAA under Section 226 without first paying the tax as required under Section 252. Sections 252 and 226 provide *successive* administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226, in declaring that "any owner or person having legal interest in the property who is not satisfied with the *action of the provincial, city, or municipal assessor in the assessment of his property* may x x x appeal to the Board of Assessment Appeals x x x," should be read in conjunction with Section 252 (d), which states that "in the event that the protest is denied x x x, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. The "action" referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252. Without the action of the local assessor, the appellate authority of the LBAA cannot

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be invoked. Napocor's action before the LBAA was thus prematurely filed.<sup>61</sup> (Underscoring supplied, citations omitted)

We reiterated this in *National Power Corporation v. The Provincial Treasurer of Benguet*.<sup>62</sup> The principles were also applied in *Camp John Hay Development Corporation v. Central Board of Assessment Appeals*.<sup>63</sup> In that case, Camp John Hay Development Corporation (CJHDC) was challenging the legality and validity of the RPT assessment on the ground that it was exempted from paying taxes, national and local, including RPT, pursuant to Republic Act (RA) No. 7227<sup>64</sup> or the Bases Conversion and Development Act of 1992. CJHDC did not pay the questioned assessment under protest. The Court explained that the claim of exemption from RPT is a question of fact that should be resolved at the first instance by the proper administrative bodies and by paying under protest the tax. Thus:

**[A] claim for exemption from payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA.** This may be inferred from Section 206 of RA No. 7160 or the LGC of 1991 which states that:

x x x x

In other words, by providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim.

**Therefore, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon.**

x x x x

Notably, in its feeble attempt to justify non-compliance with the provision of Section 252, petitioner contends that the requirement of paying the tax under protest is not applicable when the person being assessed is a tax-exempt entity, and thus could not be deemed a "taxpayer" within the meaning of the law. In support thereto, **petitioner alleges that it is exempted from paying taxes, including real property taxes**, since it is entitled to the tax incentives and exemptions under the provisions of RA No. 7227 and Presidential Proclamation No. 420, Series of 1994, 22 as stated in and confirmed by the lease agreement it entered into with the BCDA.

<sup>61</sup> *Id.* at 757–761.

<sup>62</sup> 799 Phil. 558 (2016) [Per *J. Peralta*, First Division].

<sup>63</sup> 718 Phil. 543 (2013) [Per *J. Perez*, Second Division].

<sup>64</sup> AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSE. Approved: March 13, 1992.

This Court is not persuaded.

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**The issue on whether or not it is entitled to exemption from paying taxes, national and local, including real property taxes, is a matter which would be better resolved, at the very instance, before the LBAA.** for the following grounds: (a) petitioner's reliance on its entitlement for exemption under the provisions of RA No. 7227 and Presidential Proclamation No. 420, was allegedly confirmed by Section 18, Article XVI of the Lease Agreement dated 19 October 1996 it entered with the BCDA. However, it appears from the records that said Lease Agreement has yet to be presented nor formally offered before any administrative or judicial body for scrutiny; (b) the subject provision of the Lease Agreement declared a condition that in order to be allegedly exempted from the payment of taxes, petitioner should have first paid and remitted 5% of the gross income earned by it within ninety (90) days from the close of the calendar year through the JPDC. Unfortunately, petitioner has neither established nor presented any evidence to show that it has indeed paid and remitted 5% of said gross income tax; (c) the right to appeal is a privilege of statutory origin, meaning a right granted only by the law, and not a constitutional right, natural or inherent. Therefore, it follows that petitioner may avail of such opportunity only upon strict compliance with the procedures and rules prescribed by the law itself, *i.e.*, RA No. 7160 or the LGC of 1991; and (d) at any rate, petitioner's position of exemption is weakened by its own admission and recognition of this Court's previous ruling that the tax incentives granted in RA No. 7227 are exclusive only to the Subic Special Economic [and Free Port] Zone; and thus, the extension of the same to the JHSEZ (as provided in the second sentence of Section 3 of Presidential Proclamation No. 420) finds no support therein and therefore declared null and void and of no legal force and effect. Hence, **petitioner needs more than mere arguments and/or allegations contained in its pleadings to establish and prove its exemption, making prior proceedings before the LBAA a necessity.**

With the above-enumerated reasons, **it is obvious that in order for a complete determination of petitioner's alleged exemption from payment of real property tax under RA No. 7160 or the LGC of 1991, there are factual issues needed to be confirmed. Hence, being a question of fact, petitioner cannot do without first resorting to the proper administrative remedies, or as previously discussed, by paying under protest the tax assessed in compliance with Section 252 thereof.**

Accordingly, the CBAA and the CTA *En Banc* correctly ruled that real property taxes should first be paid before any protest thereon may be considered. It is without a doubt that such **requirement of "payment under protest" is a condition *sine qua non* before an appeal may be entertained.** Thus, remanding the case to the LBAA for further proceedings subject to a full and up-to-date payment, either in cash or surety, of realty tax on the subject properties was proper.

X X X X

All told, We go back to what was at the outset stated, that is, that a **claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax, but merely raises a question of the reasonableness or correctness of such assessment, which requires compliance with Section 252 of the LGC of 1991. Such**

**argument which may involve a question of fact should be resolved at the first instance by the LBAA.**<sup>65</sup> (Emphasis supplied, citations omitted)

The foregoing should not be confused with this Court's pronouncement in *National Power Corporation v. Municipal Government of Navotas*,<sup>66</sup> where the **only issue** is the legality or validity of the assessment – a question of law that is properly cognizable by the RTC, to wit:

In the case at bar, the claim of petitioner essentially questions the very authority and power of the Municipal Assessor to impose the assessment and of the Municipal Treasurer to collect the real property tax with respect to the machineries and equipment located in the Navotas I and II power plants. Certainly, it does not pertain to the correctness of the amounts assessed but attacks the validity of the assessment of the taxes itself.

The well-established rule is that the allegations in the complaint and the character of the relief sought determine the nature of an action. Here, it is not disputed that the machineries and equipment are being used for power generation. **The primordial issue, however, is whether these machineries and equipment are actually, directly and exclusively used by petitioner within the purview of Section 234** of the LGC, which exempts it from payment of real property taxes, to wit:

x x x x

As can be gleaned from the foregoing, **the issue is clearly legal given that it involves an interpretation of the contract between the parties vis-à-vis the applicable laws, i.e., which entity actually, directly and exclusively uses the subject machineries and equipment. The answer to such question would then determine whether petitioner is indeed exempt from payment of real property taxes. Since the issue is a question of law, the jurisdiction was correctly lodged with the RTC.**<sup>67</sup> (Emphasis supplied, citations omitted)

Thus, in *Capitol Wireless, Inc. v. Provincial Treasurer of Batangas*,<sup>68</sup> the Court clarified that when the **real issue** involves questions of fact instead of pure questions of law, the case is cognizable by local administrative bodies like the LBAA and CBAA, which are the proper venues for trying these factual issues.<sup>69</sup>

In this case, the authority or power of the municipal assessor to impose RPT on the NPC's properties is not being questioned. Nothing in the Petition filed with the LBAA supported NPC's claim regarding the assessor's alleged lack of authority. Instead, the **Petition primarily involved factual questions** on the correctness of the assessment based on two grounds: *first*, the properties listed in the Machineries Assessment are exempt from RPT because they are

<sup>65</sup> *Camp John Hay Development Corporation v. Central Board of Assessment Appeals*, *supra* note 63 at 560-566.

<sup>66</sup> 747 Phil. 744 (2014) [Per J. Peralta, Third Division].

<sup>67</sup> *Id.* at 757-758.

<sup>68</sup> 785 Phil. 712 (2016) [Per J. Peralta, Third Division].

<sup>69</sup> *Id.* at 724.



actually, directly, and exclusively used for the generation of electricity; *second*, the computation of RPT in the Land Assessment is erroneous. The assessment level for the land should be 10%, the rate prescribed for GOCCs under Section 218 (d) of the LGC.<sup>70</sup> The actual, direct, and exclusive use of the properties for the exempting purpose requires presenting evidence to the board of assessment appeals, whose primary duty is to ascertain the facts.<sup>71</sup> Therefore, the administrative procedures for contesting an assessment under the LGC must be complied with. Sections 252 and 226 of the LGC state:

**SECTION. 252. *Payment Under Protest.* – (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words “paid under protest”. The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.**

(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) **In the event that the protest is denied or upon the lapse of the sixty[-]day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.**

**SECTION 226. *Local Board of Assessment Appeals.* – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment [A]ppeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.**

NPC did not pay the tax negating the perfection of its protest to the local assessor. We stress that “[n]o protest shall be entertained unless the taxpayer first pays the tax.”<sup>72</sup> Without a valid protest, therefore, the LBAA could not have had the authority to act on NPC’s appeal. The CTA *En Banc* was correct in ruling that NPC’s Petition was prematurely filed. NPC failed to exhaust the administrative remedies provided under the LGC.

Even if we accept NPC’s argument that it is questioning the legality and validity of the assessment, not the reasonableness or correctness, NPC filed an action before the wrong court. When the only issue is the legality or validity of the assessment such as when the local assessor had no authority to impose

<sup>70</sup> LBAA records, Folder 3, pp. 3-8.

<sup>71</sup> LOCAL GOVERNMENT CODE, Section 229.

<sup>72</sup> *National Power Corporation v. Province of Quezon*, *supra* note 37 at 761.

the assessment, the trial court shall have jurisdiction.<sup>73</sup> In *City of Lapu-Lapu v. Philippines Economic Zone Authority*,<sup>74</sup> the Court laid down guidelines in enforcing a taxpayer's remedies against erroneous or illegal assessment of RPT:

The proper remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to collect real property taxes. For the guidance of the members of the bench and the bar, we reiterate the taxpayer's remedies against the erroneous or illegal assessment of real property taxes.

**Exhaustion of administrative remedies under the Local Government Code is necessary in cases of erroneous assessments where the correctness of the amount assessed is assailed.** The taxpayer must first pay the tax then file a protest with the Local Treasurer within 30 days from date of payment of tax. If protest is denied or upon the lapse of the 60-day period to decide the protest, the taxpayer may appeal to the Local Board of Assessment Appeals within 60 days from the denial of the protest or the lapse of the 60-day period to decide the protest. The Local Board of Assessment Appeals has 120 days to decide the appeal.

If the taxpayer is unsatisfied with the Local Board's decision, the taxpayer may appeal before the Central Board of Assessment Appeals within 30 days from receipt of the Local Board's decision.

The decision of the Central Board of Assessment Appeals is appealable before the Court of Tax Appeals *En Banc*. The appeal before the Court of Tax Appeals shall be filed following the procedure under Rule 43 of the Rules of Court.

The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on *certiorari* under Rule 45 of the Rules of Court raising pure questions of law.

**In case of an illegal assessment where the assessment was issued without authority, exhaustion of administrative remedies is not necessary and the taxpayer may directly resort to judicial action. The taxpayer shall file a complaint for injunction before the Regional Trial Court to enjoin the local government unit from collecting real property taxes.**

The party unsatisfied with the decision of the Regional Trial Court shall file an appeal, not a petition for *certiorari*, before the Court of Tax Appeals, the complaint being a local tax case decided by the Regional Trial Court. The appeal shall be filed within fifteen (15) days from notice of the trial court's decision.

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<sup>73</sup> See *City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 524–533 (2014) [Per J. Leonen, Second Division]; *National Power Corporation v. Municipal Government of Navotas*, *supra* note 66 at 754–756; *Dr. Olivares v. Mayor Marquez*, 482 Phil. 183, 188–192 (2004) [Per J. Austria-Martinez, Second Division]; and *Ty v. Hon. Trampe*, *supra* note 21 at 100–102.

<sup>74</sup> *Supra*.

The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on *certiorari* under Rule 45 of the Rules of Court raising pure questions of law.<sup>75</sup> (Emphasis supplied, citations omitted)

NPC should have filed an injunction with the RTC and not an appeal under Section 226 of the LGC to the LBAA.

Despite this, We find it obscure that while the CTA *En Banc* recognized NPC's failure to comply with the payment under protest requirement, and ruled that prior payment under protest is condition precedent to file an appeal with the LBAA, it still affirmed the RPT assessment imposed by the Municipality of Norzagaray against NPC. The tax court did not explain why the assessment should be upheld. For this reason, We reverse the ruling of the CTA *En Banc*. While the non-exhaustion of administrative remedies is not jurisdictional, it renders the action premature. The claimed cause of action is not ripe for judicial determination; the plaintiff has no cause of action to ventilate in court.<sup>76</sup> Accordingly, the CTA *En Banc* should have desisted from ruling on NPC's liability for real property taxes.

The doctrine of exhaustion of administrative remedies, however, is a relative one and is flexible depending on the peculiarity and uniqueness of the factual and circumstantial settings of a case.<sup>77</sup> It may be disregarded: (1) when to require exhaustion would be unreasonable;<sup>78</sup> or (2) when the issue of non-exhaustion has been rendered moot,<sup>79</sup> as in this case.

We note that the LBAA did not dismiss NPC's petition despite the lack of prior payment of tax under protest. Instead, it discussed the factual basis and merits of NPC's claim for exemption.<sup>80</sup> On appeal to the CBAA, the CBAA conducted hearings and ocular inspections and received documentary evidence and testimonies of witnesses to determine the factual basis of NPC's claim. It declared NPC liable for RPT on the Machineries Assessment after finding that the properties are not actually, directly, and exclusively used for generating and transmitting electric power. Regarding Land Assessment, the CBAA found the issue "moot and academic" since "the x x x Municipal Assessor readily admitted that she committed an honest mistake in assigning a higher assessment level to the lands in question. She immediately rectified the error and revised the land tax declarations to conform with the prescribed level for GOCC[s] under Section 218 of the LGC which is 10% to the satisfaction and conformity of the [NPC]."<sup>81</sup> The LBAA and CBAA took it

<sup>75</sup> *City of Lapu-Lapu v. Philippine Economic Zone Authority*, *supra* note 73 at 533–535.

<sup>76</sup> *Hon. Carale v. Hon. Abarintos*, 336 Phil. 126, 135 (1997) [Per J. Davide, Jr., Third Division].

<sup>77</sup> *Province of Zamboanga Del Norte v. Court of Appeals*, 396 Phil. 709, 718 (2000) [Per J. Pardo, First Division]; and *Paat v. Court of Appeals*, 334 Phil. 146, 153 (1997) [Per J. Torres, Jr., Second Division].

<sup>78</sup> *Province of Zamboanga Del Norte v. Court of Appeals*, *supra* at 718–719; and *Paat v. Court of Appeals*, *supra* at 153.

<sup>79</sup> *Province of Zamboanga Del Norte v. Court of Appeals*, *supra* at 719.

<sup>80</sup> LBAA records, Folder 3, pp. 84–87.

<sup>81</sup> CBAA records, Folder 1, p. 147.

upon themselves to resolve the merits of the case despite the non-payment of the assessed tax. Thus, to remand the case to the Boards would be futile.

It may not be amiss to point out also that the Provincial Treasurer of Bulacan already issued a Warrant of Levy<sup>82</sup> against the properties listed in the Machineries Assessment upon which this Court issued a TRO<sup>83</sup> on November 25, 2013. Further, this case has been dragging for almost ten years since it was filed in 2013, without a resolution regarding the taxability of the properties used by NPC in its operations. In the circumstances, we find it proper to give due course to the instant Petition and resolve the substantive issue of whether the properties listed in the Machineries Assessment and Land Assessment are exempt from RPT.

***The properties listed in the Machineries Assessment are not exempt from real property tax.***

NPC claims exemption from RPT under Section 234 (c) of the LGC, viz.:

**SECTION 234. Exemptions from Real Property Tax.** — The following are exempted from payment of the real property tax:

x x x x

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or - controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power[.]

To successfully claim exemption, the claimant must prove that: “(a) the machineries and equipment are **actually, directly, and exclusively used by** local water districts and [GOCCs]; and (b) the local water districts and [GOCCs] claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power.”<sup>84</sup>

It is undisputed that NPC is a GOCC engaged in power generation and transmission.<sup>85</sup> The debate lies on whether the eleven properties listed in the Machineries Assessment are actually, directly, and exclusively used in the generation and transmission of electric power.

We rule against the exemption.

Preliminarily, the “machineries and equipment” referred to in Section 234 (c) of the LGC should not be construed as being confined only within the

<sup>82</sup> *Rollo*, pp. 88–93.

<sup>83</sup> *Id.* at 186–187; 190–191; & 194–195.

<sup>84</sup> *National Power Corporation v. Province of Quezon*, 610 Phil. 456, 474 (2009).

<sup>85</sup> CBAA records, Folder 1, p. 149.

narrow definition of “machinery” in Article 415 (5)<sup>86</sup> of the New Civil Code. In determining whether a “machinery” is subject to RPT, the definition provided in Section 199 (o) of the LGC, in relation to Article 290 (o) of the Rules and Regulations Implementing the LGC,<sup>87</sup> shall prevail,<sup>88</sup> to wit:

SECTION 199. *Definition of Terms.* – When used in this Title, the term:

x x x x

(o) “Machinery” embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus which may or may not be attached, permanently or temporarily, to the real property. It includes the **physical facilities** for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property **which are actually, directly, and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary** to its manufacturing, mining, logging, commercial, industrial or agricultural purposes[.] (Emphasis supplied)

ARTICLE 290. *Definition of Terms.* —

x x x x

(o) Machinery embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus, which may or may not be attached, permanently or temporarily to the real property.

Physical facilities for production, installations and appurtenant service facilities, those which are mobile, self-powered, or self-propelled and those not permanently attached to the real property shall be classified as real property provided that:

(1) They are **actually, directly, and exclusively used to meet the needs of the particular industry, business, or activity; and**

(2) **By their very nature and purpose are designed for, or necessary to manufacturing, mining, logging, commercial, industrial, or agricultural purposes.**

Machinery which are of **general purpose use** including but not limited to office equipment, typewriters, telephone equipment, breakable or easily damaged containers (glass or cartons), microcomputers, facsimile machines, telex machines, cash dispensers, furniture and fixtures, freezers, refrigerators, display cases or racks, fruit juice or beverage automatic dispensing machines which are not directly and exclusively used to meet

<sup>86</sup> Article 415. The following are immovable property:

x x x x

5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works[.]

<sup>87</sup> Administrative Order No. 270, entitled “PRESCRIBING THE IMPLEMENTING RULES AND REGULATIONS OF THE LOCAL GOVERNMENT CODE OF 1991,” February 21, 1992.

<sup>88</sup> *Manila Electric Company v. The City Assessor of Lucena City*, 765 Phi. 605 (2015) [Per J. Leonardo-De Castro, First Division, cited in *Provincial Assessor of Agusan del Sur v. Filipinas Palm Oil Plantation, Inc.*, 796 Phil. 547, 568 (2016) [Per J. Leonen, Second Division].

the needs of a particular industry, business or activity **shall not be considered within the definition of machinery under this Rule.** (Emphasis supplied)

x x x x

Therefore, the property may be considered a “machinery” for purposes of determining exemption from RPT under Section 234 of the LGC, if: (1) it is actually, directly, and exclusively used for the exempting purpose; and (2) by its nature and purpose, the property is necessary or indispensable for the exempting purpose. In *Manila Electric Compony v. The City Assessor of Luncena City*,<sup>89</sup> the Court considered MERALCO’s transformers, electric posts, transmission lines, insulators, and electric meters as “physical facilities through which MERALCO delivers electricity to its consumers.”<sup>90</sup> We held that the properties might qualify as “machinery” subject to RPT if actually and exclusively used by MERALCO. In *Provincial Assessor of Agusan del Sur v. Filipinas Palm Oil Plantation, Inc.*,<sup>91</sup> the respondent was engaged in palm oil plantation; it harvests fruits from palm trees for oil conversion through its milling plant. The Court ruled that by the nature of respondent’s business, transportation is indispensable for its operations. Thus, the road equipment and mini haulers are “machinery” subject to RPT:

Petitioner is correct in claiming that the phrase pertaining to physical facilities for production is comprehensive enough to include the road equipment and mini haulers as actually, directly, and exclusively used by respondent to meet the needs of its operations in palm oil production. Moreover, “mini-haulers are farm tractors pulling attached trailers used in the hauling of seedlings during planting season and in transferring fresh palm fruits from the farm [or] field to the processing plant within the plantation area.” The **indispensability of the road equipment and mini haulers in transportation makes it actually, directly, and exclusively used in the operation of respondent’s business.**<sup>92</sup> (Emphasis supplied, citations omitted)

In *Lung Center of the Philippines v. Quezon City*,<sup>93</sup> this Court declared:

“Exclusive” is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and “exclusively” is defined, “in a manner to exclude; as enjoying a privilege exclusively.” **If real property is used for one or more commercial purposes, it is not exclusively used for the exempted purposes but is subject to taxation.** The words “dominant use” or “principal use” cannot be substituted for the words “used exclusively” without doing violence to the Constitutions and the law. **Solely is synonymous with exclusively.**<sup>94</sup> (Emphasis supplied, citations omitted)

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<sup>89</sup> *Supra*.

<sup>90</sup> *Supra* at 635.

<sup>91</sup> *Supra* note 88.

<sup>92</sup> *Supra* at 572–573.

<sup>93</sup> 477 Phil. 141 (2004) [Per *J. Callejo, Sr., En Banc*].

<sup>94</sup> *Supra* at 159.

Here, the Municipality of Norzagaray assessed NPC for RPT on the: (1) main dam, (2) spillway with three taintor steel gates, (3) diversion canals, (4) tailrace tunnel, (5) penstock, (6) auxiliary draft tube gates with frames and guiderails, (7) draft tube gates and hoists, (8) power tunnel, (9) power intake structure, (10) surge tunnel, and (11) power intake service and bulkhead gates. The CBAA described the use and function of these properties, as follows:<sup>95</sup>

A. The Main Dam (ARP/Tax Declaration No. 00180)

It is an immovable massive wall of earth and rockfill with an inclined earthcore with a height of 131 meters and length of 568 meters. Its structural design and operational use is not in any way connected to power generation and transmission. Its **main purpose is to receive, hold and impound water** coming from the Angat and Umiray rivers besides water from run-offs and rain water in a gigantic reservoir. In turn this big **body of water is used primarily to irrigate the agricultural lands** of Central Luzon, provide domestic water supply system for Metro Manila and neighboring towns thru the MWSS, **and to generate hydroelectric power.**

B. The Spillway (TD No. 00181)

This is a massive structure made of reinforced concrete **designed to let go or release water from the reservoir** once the volume of water exceeds to capacity or overshoots its maximum level. It has inclined chute with retaining walls and concrete flip buckets as well as a drainage gallery. It has no equipment or mechanical contrivances.

C. Three (3) Taintor Gates (TD No. 00181)

These massive steel structures, firmly and permanently attached to the spillway are what their name implies. Their **main function is to allow water to flow/spill** when opened to the spillways once the volumes of water in the reservoir reach its maximum level. These gates are then closed once the volume of water is down to normal and allowable levels. Together with the spillway, they **act as outlets to gradually let out water to prevent flooding and probable loss if [sic] lives and property** in the event that the dam is breached due to tremendous pressure from the abnormal high volume of water.

D. The two (2) Diversion Canals (TD No. 00182)

These concrete lined canals, one functioning and the other plugged were **used to divert water coming from the rivers** during the construction of the dam and reservoir. These **diversion canals were already in existence long before the water turbines and power generators can produce any amount of electricity.**

**The spillway with the taintor gates and the diversion canals are auxiliary components of the main dam. Together, they are utilized for varied purposes, mainly for irrigation of the agricultural lands in the neighboring provinces, provide the domestic water needs of Metro Manila, and as a hydropower facility. The volume of water used for irrigation and water supply system is greater than what is being used for power generation.**

<sup>95</sup> CBAA records. Folder 1, pp. 154-162.

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**The rest of the subject properties are either water conveyance structures, or utilized for preventive maintenance, periodic check ups and repairs, and as safety measures.**

The power tunnel (TD 00187) conveys water from the reservoir to the penstocks (TD No. 00184) down to the main and auxiliary power units where the water turbines and generators are located. After energizing the turbines, the “used” water is let out thru the tail race (TD No. 00182) and surge tunnel (TD NO. 00189). The “used” water is then channeled downstream to the Angat River, the Bustos Dam of the NIA for irrigation purposes, and the Ipo Dam of the MWSS for the water supply of the greater Manila area.

On the other hand, the power intake structures (TD No. 00188), the draft tube gates and hoists (TD No. 00190) are primarily used as safety and preventive mechanisms during repairs and maintenance, periodic and emergency check-ups, by controlling the amount of water in the units, taking water in or letting water out (dewatering) in order that the aforementioned civil works can be done.

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[NPC] presented the well-experienced and knowledgeable Plant Manager of the Angat Hydroelectric Power Plant himself in the person of Eng. Rodolfo German. Unfortunately for [NPC], the testimony of Eng. German tends to favor more for the cause of the appellee. In several instances in the course of his testimony, [NPC]’s witness stated that the questioned properties are “structures.” The witness testified that **these structures are used for retention, conservation, diversion, utilization, as well as management and control of water in different aspects.**

**The testimony failed to show the actual and direct use of the properties to the exempting purpose.** Equally damning is the admission that these facilities are **also used for irrigation, flood control and water supply system for the Greater Manila Area.** This negates the “exclusively used” requisite to fall under the prescribed exempting manner. Nowhere in the whole testimony of Eng. German was it mentioned, much more given emphasis that those properties are machineries actually, directly, and exclusively used for generation and transmission of electric power.

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[The LBAA of the Province of Bulacan’s] witness likewise testified convincingly that the **dam complex, being a multi-purpose facility, can and is performing other functions like providing water for irrigation, flood control and mitigation, and more importantly, the source of potable water, aside from, and at a lesser extent, power generation.** This means that the dam and its components and appurtenances are not being used solely and exclusively for power generation. The witness likewise quoted and cited authorities and references to bolster his conclusion.



**While both elucidated that the subject properties are indeed vital, essential, and necessary for power generation, still they are not being used actually, directly and exclusively for the exempting purpose that is generation and transmission of electric power. x x x.**

x x x x

Simply put, this Board finds that the Angat hydroelectric facility, owned and operated by [NPC] consists of two groups or components. One group is the conservation and hydraulic structures subject of this appeal being assessed and taxed by appellee. The other consists of the machines and equipment that are the ones actually, directly, and exclusively used for power generation and transmission. The latter group is made up of the water turbines, water pumps, generators, transformers, transmitters, etc., were exempted and excluded from the assessments by the [LBAA of the Province of Bulacan].

The roles played by these two groups/components elucidate the kind of property they are and their actual usage in the general scheme of the multi-purpose facility, to wit:

The main dam holds and retains the water from the Angat and Umiray rivers storing the water in a big reservoir. Water is released through a series of tunnel like pipelines of varying sizes and diameters. All these underground concrete and/or steel pipelines are firmly and permanently attached/embedded in the soil. This water conveyance system starts with the reservoir releasing water to a big power tunnel.

The power tunnel splits into penstocks. One penstock delivers water to the main units of the power station and the other to the auxiliary units. The volume of water running down from the penstocks turns the water turbines in the main and auxiliary units. The water turbines then convert mechanical energy to electric energy by the use of the power generators. The transformers stabilize the electric current, and thru the transmitter deliver the electricity produced to the power lines.

The water used at the power station main and auxiliary units to turn the water turbines is released thru the tailrace tunnels downstream, connected to surge tunnels. These open surge tunnels are used to drain and divert surface run-off water, likewise and more importantly, to ventilate the tailrace, thus preventing pressure to build up. The used water coming from the main power units passing thru the tailrace and surge tunnels is channeled to the Bustos Dam for irrigation purposes by the National Irrigation Administration (NIA). The used water from the auxiliary units is conveyed to the MWSS facilities at Ipo Dam for Greater Manila Area's domestic supply.

It can be gleaned that **this series of interconnected concretized and/or steel lined tunnels and canals, all rendered permanent and immobilized being buried underground or imbedded in the soil are all water conveyance structures. All of them have nothing to do with direct and actual power generation and transmission.**

**The power intake structures together with the draft tube gates are used more for taking water in or letting water out mostly during periodic and/or emergency inspections and check-up, likewise repair and maintenance.** All these are of reinforced concrete or steel plate welded gates. These facilities instead of generating power actually cut down power production by closing the supply of water to the main and auxiliary units where the turbines and generators are located. The process called “dewatering” empties the chambers of water in order that inspection, check-ups, maintenance and repairs can be done during these standard procedures. There is a cessation of operation or what they call a “shut down” during these activities. **These auxiliary components therefore play a role other than power generation, just like the spillways, taintor gates, and diversion canals are used for flood mitigation and/or prevention, and as safeguards and preventive measures to protect the integrity of the dam, and not for power generation and transmission.**<sup>96</sup> (Emphasis supplied)

This Court accords great respect to the factual findings of administrative bodies charged with their specific field of expertise, absent any erroneous appreciation of the evidence presented. The LBAA and the CBAA, by reason of their mandate of ascertaining the facts relative to the appeal from the action of the local assessor,<sup>97</sup> have acquired expertise on specific matters within their jurisdiction. Their findings of fact will not be altered, modified, or reversed without justifiable reason. This Court finds no compelling reason to disturb their factual findings. The eleven properties assessed for RPT under the Machineries Assessment are not actually, directly, and exclusively used by NPC for the exempting purpose of power generation and transmission of electricity. They may have some usage in the Angat Hydro-Electric Power Plant operation but not exclusively. Accordingly, the Municipality of Norzagaray properly imposed RPT upon them. On the other hand, the properties actually, directly, and exclusively used in the transmission and generation of power, such as water turbines, water pumps, generators, transformers, and transmitters, were already excluded from the assessment.

Neither can the properties be exempt from RPT under Section 234 (e) of the LGC. In *Provincial Assessor of Marinduque v. Hon. Court of Appeals*,<sup>98</sup> We ruled that:

[T]he exemption granted under Sec. 234(e) of R.A. No. 7160 to “[m]achinery and equipment used for pollution control and environmental protection” is based on usage. The term usage means direct, immediate and **actual** application of the property itself to the exempting purpose. Section 199 of R.A. No. 7160 defines actual use as “the purpose for which the property is principally or predominantly utilized by the person in possession thereof”. It contemplates concrete, as distinguished from mere potential, use. Thus, a claim for exemption under Sec. 234(e) of R.A. No. 7160 should be supported by evidence that the property sought to be exempt is actually,

<sup>96</sup> *Id.* at 154–161.

<sup>97</sup> See LOCAL GOVERNMENT CODE, Section 229.

<sup>98</sup> 605 Phil. 357 (2009) [Per J. Austria-Martinez, Third Division], cited in *National Power Corporation v. Province of Pangasinan*, G.R. No. 210191, March 4, 2019, 894 SCRA 508, 525–526 [Per J. J. Reyes Jr., Second Division].

directly and exclusively used for pollution control and environmental protection.<sup>99</sup> (Underscoring supplied, citations omitted)

NPC never alleged in its Petition<sup>100</sup> before the LBAA, and Appeal<sup>101</sup> with the CBAA, that the properties were actually, directly, and exclusively used for pollution control and environmental protection. It did not introduce evidence on the direct, immediate, and actual use of the properties as would control pollution and protect the environment. We repeat that the burden to prove exemption rests upon the party claiming exemption.<sup>102</sup> Rather, NPC raised it as a defense in its Motion for Reconsideration of the CBAA Decision after the CBAA found that the properties were used “for irrigation of agricultural lands of Central Luzon; to let go or release water from the reservoir once the volume of water exceeds its capacity or overshoots its maximum level; and to prevent flooding and probable loss of lives and properties.”<sup>103</sup> In its Petition before this Court NPC claimed that the properties have “some usage”<sup>104</sup> which contributes to pollution control and environmental protection. NPC’s own admission against the exclusive use of the properties militates against its claim for exemption under Section 234 (e).

Accordingly, NPC is liable for real property tax on the properties listed in the Machineries Assessment from January 1, 1996 to December 31, 2005 in the amount of PHP 113,960,000.00.

***The properties listed in the Land Assessment are not exempt from real property tax.***

NPC’s claim for exemption from RPT on the Land Assessment because it is a “government instrumentality” is misplaced. For one, NPC admitted that it is a GOCC duly organized under and by virtue of RA No. 6395.<sup>105</sup> The parties never disputed NPC’s status as a GOCC.

Next, a GOCC is defined as “any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one percent of its capital stock.”<sup>106</sup> NPC is a wholly-owned stock corporation<sup>107</sup> organized to “undertake the development of hydroelectric generation of power and the

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<sup>99</sup> *Id.* at 371.

<sup>100</sup> LBAA records, Folder 3, pp. 1–11.

<sup>101</sup> CBAA records, Folder 1, pp. 1–16.

<sup>102</sup> *Cyanamid Philippines, Inc. v. Court of Appeals*, 379 Phil. 689, 703 (2000) [Per *J. Quisumbing*, Second Division].

<sup>103</sup> CBAA records, Folder 2, pp. 198–199.

<sup>104</sup> *Rollo*, p. 33.

<sup>105</sup> *Rollo*, p. 11. See also <https://www.napocor.gov.ph/index.php/about-us/who-we-are/revised-npc-charter-ra-6395> (last accessed: August 8, 2022).

<sup>106</sup> ADMINISTRATIVE CODE OF 1987, Section 2 (13) of the Introductory Provisions.

<sup>107</sup> Republic Act No. 6395, National Power Corporation Charter, Section 5.

production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis.”<sup>108</sup> In *National Power Corporation v. City of Cabanatuan*,<sup>109</sup> this Court categorically ruled that the exemption from local taxes of NPC, as a GOCC, had been repealed by Section 193 of the LGC.<sup>110</sup> Therefore, it is incumbent upon the NPC to point to some provisions of the LGC that expressly exempt it from local taxes.

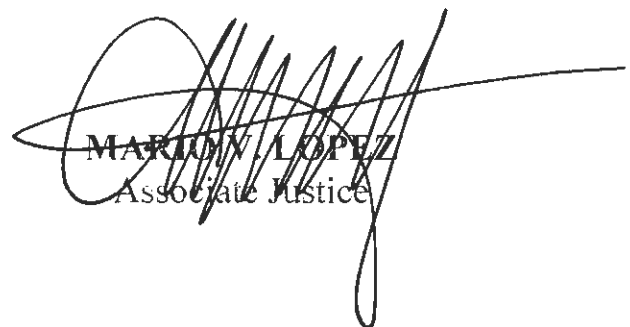
Under Sections 216 and 218 of the LGC, all lands, buildings, and other improvements owned and used by GOCCs rendering essential public services in the generation and transmission of electric power are classified as special classes of real property subject to a 10% assessment level.

The CTA *En Banc* observed that on June 1, 2007, the Municipality of Norzagaray issued an amended statement of account for the Land Assessment, such that the RPT due on the lands shall be PHP 6,485,422.60.<sup>111</sup> The revised RPT due on the lands was confirmed in another letter dated July 12, 2007.<sup>112</sup> Thus, We uphold the assessment for real property tax on the lands listed in the Land Assessment covering January 1, 1996 to December 31, 2006 in the reduced amount of PHP 6,485,422.60.

**ACCORDINGLY**, the Petition for Review is **DENIED**. The Court of Tax Appeals *En Banc*'s Decision dated November 29, 2012 and Resolution dated April 22, 2013 in CTA EB No. 850 are **SET ASIDE**. National Power Corporation is liable to **PAY** the Municipality of Norzagaray, Bulacan real property tax over the Machineries Assessment for the period from January 1, 1996 to December 31, 2005 in the amount of PHP 113,960,000.00 and over the Land Assessment covering the period of January 1, 1996 to December 31, 2006 in the amount of PHP 6,485,422.60.

The Temporary Restraining Order issued by this Court on November 25, 2013 is **LIFTED**.

**SO ORDERED.**



MARTON LOPEZ  
Associate Justice

<sup>108</sup> See National Power Corporation Charter, Section 2.

<sup>109</sup> 449 Phil. 233 (2003) [Per. J. Puno, Third Division]

<sup>110</sup> *Id.* at 240–241.

<sup>111</sup> CBAA records, Folder 1, p. 35.

<sup>112</sup> CBAA records, Folder 2, p. 231

**WE CONCUR:**



**MARVIC M.V.F. LEONEN**  
*Senior Associate Justice*  
*Chairperson*



**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**JHOSEP V. LOPEZ**  
*Associate Justice*



**ANTONIO T. KHO, JR.**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M.V.F. LEONEN**  
*Senior Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*