Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MANILA ELECTRIC COMPANY,
Petitioner,

- *versus* -

THE CITY ASSESSOR and CITY TREASURER OF LUCENA CITY,
Respondents.

G.R. No. 166102

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

AUG 0 5 2015

x- -x

DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Manila Electric Company (MERALCO), seeking the reversal of the Decision[1] dated May 13, 2004 and Resolution[2] dated November 18, 2004 of the Court of Appeals in CA-G.R. SP No. 67027. The appellate court affirmed the Decision[3] dated May 3, 2001 of the Central Board of Assessment Appeals (CBAA) in CBAA Case No. L-20-98, which, in turn, affirmed with modification the Decision[4] dated June 17, 1998[5] of the Local Board of Assessment Appeals (LBAA) of Lucena City, Quezon Province, as regards Tax Declaration Nos. 019-6500 and 019-7394, ruling that MERALCO is liable for real property tax on its transformers, electric posts (or poles), transmission lines, insulators, and electric meters, beginning 1992.

---

[1] *Rollo*, pp. 27-34; penned by Associate Justice B. A. Adefuin-De La Cruz with Associate Justices Perlita J. Tria Tirona and Arturo D. Brion (now a member of this Court), concurring.

[2] Id. at 36-37; penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Arturo D. Brion and Fernanda Lampas Peralta, concurring.

[3] Id. at 59-69; signed by Chairman Cesar S. Gutierrez and Members Angel P. Palomares and Benjamin M. Kasala.

[4] Id. at 52-56; signed by Chairman Alberto P. Marquez and Members Romeo Dato and Alfonso A. Custodio.

[5] Erroneously dated June 17, 1997.

MERALCO is a private corporation organized and existing under Philippine laws to operate as a public utility engaged in electric distribution. MERALCO has been successively granted franchises to operate in Lucena City beginning 1922 until present time, particularly, by: (1) Resolution No. 36[6] dated May 15, 1922 of the Municipal Council of Lucena; (2) Resolution No. 108[7] dated July 1, 1957 of the Municipal Council of Lucena; (3) Resolution No. 2679[8] dated June 13, 1972 of the Municipal Board of Lucena City;[9] (4) Certificate of Franchise[10] dated October 28, 1993 issued by the National Electrification Commission; and (5) Republic Act No. 9209[11] approved on June 9, 2003 by Congress.[12]

On February 20, 1989, MERALCO received from the City Assessor of Lucena a copy of Tax Declaration No. 019-6500[13] covering the following electric facilities, classified as capital investment, of the company: (a) transformer and electric post; (b) transmission line; (c) insulator; and (d) electric meter, located in Quezon Ave. Ext., Brgy. Gulang-Gulang, Lucena City. Under Tax Declaration No. 019-6500, these electric facilities had a market value of ₱81,811,000.00 and an assessed value of ₱65,448,800.00, and were subjected to real property tax as of 1985.

MERALCO appealed Tax Declaration No. 019-6500 before the LBAA of Lucena City, which was docketed as **LBAA-89-2**. MERALCO claimed that its capital investment consisted only of its substation facilities, the true and correct value of which was only ₱9,454,400.00; and that MERALCO was exempted from payment of real property tax on said substation facilities.

The LBAA rendered a Decision[14] in LBAA-89-2 on July 5, 1989, finding that under its franchise, MERALCO was required to pay the City Government of Lucena a tax equal to 5% of its gross earnings, and "[s]aid tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature, or description levied, established, or collected x x x, on its poles, wires, insulators, transformers and structures, installations, conductors, and accessories, x x x, from which taxes the grantee

---

6 CA *rollo*, p. 69. As stated in Resolution No. 108 dated July 1, 1957 of the Municipal Council of Lucena, Quezon.

7 Id. at 69-73.

8 CA *rollo*, pp. 74-77.

9 Lucena became a city by virtue of Republic Act No. 3271, enacted on June 17, 1961.

10 CA *rollo*, p. 80.

11 An Act Granting the Manila Electric Company a Franchise to Construct, Operate and Maintain a Distribution System for the Conveyance of Electric Power to the End-Users in the Cities/Municipalities of Metro Manila, Bulacan, Cavite and Rizal, and Certain Cities/Municipalities/Barangays in Batangas, Laguna, Quezon and Pampanga.

12 In compliance with Sections 22 and 27 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, which state, respectively, that "[t]he distribution of electricity to end-users shall be a regulated common carrier business requiring a national franchise" and "[t]he power to grant franchises to persons engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress of the Philippines."

13 *Rollo*, p. 50.

14 CA *rollo*, pp. 52-57. Signed by Chairman Elpidio G. Jorvina and Members Patricio C. Haway and Jose E. Lao.

(MERALCO) is hereby expressly exempted."[15] As regards the issue of whether or not the poles, wires, insulators, transformers, and electric meters of MERALCO were real properties, the LBAA cited the 1964 case of *Board of Assessment Appeals v. Manila Electric Company*[16] (*1964 MERALCO case*) in which the Court held that: (1) the steel towers fell within the term "poles" expressly exempted from taxes under the franchise of MERALCO; and (2) the steel towers were personal properties under the provisions of the Civil Code and, hence, not subject to real property tax. The LBAA lastly ordered that Tax Declaration No. 019-6500 would remain and the poles, wires, insulators, transformers, and electric meters of MERALCO would be continuously assessed, but the City Assessor would stamp on the said Tax Declaration the word "exempt." The LBAA decreed in the end:

> WHEREFORE, from the evidence adduced by the parties, the Board overrules the claim of the [City Assessor of Lucena] and sustain the claim of [MERALCO].
>
> Further, the Appellant (Meralco) is hereby ordered to render an accounting to the City Treasurer of Lucena and to pay the City Government of Lucena the amount corresponding to the Five (5%) per centum of the gross earnings in compliance with paragraph 13 both Resolutions 108 and 2679, respectively, retroactive from November 9, 1957 to date, if said tax has not yet been paid.[17]

The City Assessor of Lucena filed an appeal with the CBAA, which was docketed as **CBAA Case No. 248**. In its Decision[18] dated April 10, 1991, the CBAA affirmed the assailed LBAA judgment. Apparently, the City Assessor of Lucena no longer appealed said CBAA Decision and it became final and executory.

Six years later, on October 16, 1997, MERALCO received a letter[19] dated October 16, 1997 from the City Treasurer of Lucena, which stated that the company was being assessed real property tax delinquency on its machineries beginning 1990, in the total amount of ₱17,925,117.34, computed as follows:

TAX DEC. #	ASSESSED VALUE	COVERED PERIOD	TAX DUE	PENALTY	TOTAL
019-6500	₱65,448,800.00	1990-94	₱3,272,440.00	₱2,356,156.80	₱ 5,628,596.80
019-7394	78,538,560.00	1995	785,385.60	534,062.21	1,319,447.81
		1996	785,385.60	345,569.66	1,130,955.26
		1st-3rd/1997	589,039.20	117,807.84	706,847.04
		4th 1997	196,346.40	(19,634.64)	176,711.76
				BASIC-----	₱ 8,962,558.67

---

15 Id. at 55.
16 119 Phil. 328 (1964).
17 CA *rollo*, p. 57.
18 Id. at 59-68. Signed by Chairman Jesus F. Estanislao (Secretary of Finance) and Members Franklin M. Drilon (Secretary of Justice) and Luis T. Santos (Secretary of Interior and Local Government).
19 *Rollo*, p. 47.

SEF----- 8,962,558.67
TOTAL TAX DELINQUENCY----- ₱17,925,117.34

The City Treasurer of Lucena requested that MERALCO settle the payable amount soon to avoid accumulation of penalties. Attached to the letter were the following documents: (a) Notice of Assessment[20] dated October 20, 1997 issued by the City Assessor of Lucena, pertaining to Tax Declaration No. 019-7394, which increased the market value and assessed value of the machinery; (b) Property Record Form;[21] and (c) Tax Declaration No. 019-6500.[22]

MERALCO appealed Tax Declaration Nos. 019-6500 and 019-7394 before the LBAA of Lucena City on December 23, 1997 and posted a surety bond[23] dated December 10, 1997 to guarantee payment of its real property tax delinquency. MERALCO asked the LBAA to cancel and nullify the Notice of Assessment dated October 20, 1997 and declare the properties covered by Tax Declaration Nos. 019-6500 and 019-7394 exempt from real property tax.

In its Decision dated June 17, 1998 regarding Tax Declaration Nos. 019-6500 and 019-7394, the LBAA declared that Sections 234 and 534(f) of the Local Government Code repealed the provisions in the franchise of MERALCO and Presidential Decree No. 551[24] pertaining to the exemption of MERALCO from payment of real property tax on its poles, wires, insulators, transformers, and meters. The LBAA refused to apply as *res judicata* its earlier judgment in LBAA-89-2, as affirmed by the CBAA, because it involved collection of taxes from 1985 to 1989, while the present case concerned the collection of taxes from 1989 to 1997; and LBAA is only an administrative body, not a court or quasi-judicial body. The LBAA though instructed that the computation of the real property tax for the machineries should be based on the prevailing 1991 Schedule of Market Values, less the depreciation cost allowed by law. The LBAA ultimately disposed:

> WHEREFORE, in view of the foregoing, it is hereby ordered that:
>
> 1) MERALCO's appeal be dismissed for lack of merit;
>
> 2) MERALCO be required to pay the realty tax on the questioned properties, because they are not exempt by law, same to be based on the 1991 level of assessment, less depreciation cost allowed by law.[25]

---

20 Id. at 48.
21 Id. at 49.
22 Id. at 50.
23 CA *rollo*, pp. 43-47. Issued by The Mercantile Insurance Co., Inc. in the amount of ₱17,925,117.34.
24 Lowering the Cost to Consumers of Electricity by Reducing the Franchise Tax Payable by Electric Franchise Holders and the Tariff on Fuel Oils for the Generation of Electric Power by Public Utilities.
25 *Rollo*, p. 56.

MERALCO went before the CBAA on appeal, which was docketed as **CBAA Case No. L-20-98**. The CBAA, in its Decision dated May 3, 2001, agreed with the LBAA that MERALCO could no longer claim exemption from real property tax on its machineries with the enactment of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, thus:

> Indeed, the Central Board of Assessment Appeals has had the opportunity of ruling in [MERALCO's] favor in connection with this very same issue. The matter was settled on April 10, 1991 where this Authority ruled that "wires, insulators, transformers and electric meters which are mounted on poles and can be separated from the poles and moved from place to place without breaking the material or causing [the] deterioration of the object, are deemed movable or personal property". The same position of MERALCO would have been tenable and that decision may have stood firm prior to the enactment of R.A. 7160 but not anymore in this jurisdiction. The Code provides and now sets a more stringent yet broadened concept of machinery, x x x:
>
> x x x x
>
> The pivotal point where the difference lie between the former and the current case is that by the very wordings of [Section 199(O)], the ground being anchored upon by MERALCO concerning the properties in question being personal in nature does not hold anymore for the sole reason that these come now within the purview and new concept of Machineries. The new law has treated these in an unequivocal manner as machineries in the sense that they are instruments, mechanical contrivances or apparatus though not attached permanently to the real properties of [MERALCO] are actually, directly and exclusively used to meet their business of distributing electricity.
>
> x x x x
>
> Clearly, [Section 234 of the Local Government Code] lists down the instances of exemption in real property taxation and very apparent is the fact that the enumeration is exclusive in character in view of the wordings in the last paragraph. Applying the maxim "Expressio Unius est Exclusio Alterius", we can say that "Where the statute enumerates those who can avail of the exemption, it is construed as excluding all others not mentioned therein". Therefore, the above-named company [had] lost its previous exemptions under its franchise because of non-inclusion in the enumeration in Section 234. Furthermore, all tax exemptions being enjoyed by all persons, whether natural or juridical, including all government-owned or controlled corporations are expressly withdrawn, upon effectivity of R.A. 7160.
>
> In the given facts, it has been manifested that the Municipal Board of Lucena passed Resolution No. 108 on July 1, 1957 extending the franchise of MERALCO to operate in Lucena city an electric light system for thirty-five years, which should have expired on November 9, 1992 and under Resolution No. 2679 passed on June 13, 1972 by the City Council of Lucena City awarding [MERALCO] a franchise to operate for twenty years an electric light, heat and power system in Lucena City, also to

> expire in the year 1992. Under those franchises, they were only bound to pay franchise taxes and nothing more.
>
> Now, granting arguendo that there is no express revocation of the exemption under the franchise of [MERALCO] since, unquestionably [MERALCO] is a recipient of another franchise granted this time by the National Electrification Commission as evidenced by a certificate issued on October 28, 1993, such conferment does not automatically include and/or award exemption from taxes, nor does it impliedly give the franchisee the right to continue the privileges like exemption granted under its previous franchise. It is just a plain and simple franchise. In countless times, the Supreme Court has ruled that exemption must be clear in the language of the law granting such exemption for it is strictly construed and favored against the person invoking it. In addition, a franchise though in the form of a contract is also a privilege that must yield to the sublime yet inherent powers of the state, one of these is the power of taxation.
>
> Looking into the law creating the National Electrification Administration (Commission), P.D. 269 as amended by P.D. 1645, nowhere in those laws can we find such authority to bestow upon the grantee any tax exemption of whatever nature except those of cooperatives. This we believe is basically in consonance with the provisions of the Local Government Code more particularly Section 234.
>
> Furthermore, Section 534(f) of R.A. 7160 which is taken in relation to Section 234 thereof states that "All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly". Anent this unambiguous mandate, P.D. 551 is mandatorily repealed due to its contradictory and irreconcilable provisions with R.A. 7160.[26]

Yet, the CBAA modified the ruling of the LBAA by excluding from the real property tax deficiency assessment the years 1990 to 1991, considering that:

> In the years 1990 and 1991, the exemption granted to MERALCO under its franchise which incidentally expired upon the effectivity of the Local Government Code of 1991 was very much in effect and the decision rendered by the Central Board of Assessment Appeals (CBAA) classifying its poles, wires, insulators, transformers and electric meters as personal property was still controlling as the law of the case. So, from 1990 to 1991, it would be inappropriate and illegal to make the necessary assessment on those properties, much more to impose any penalty for non-payment of such.
>
> But, assessments made beginning 1992 until 1997 by the City Government of Lucena is legal, both procedurally and substantially. When R.A. 7160, which incorporated amended provisions of the Real Property Tax Code, took effect on January 1, 1992, as already discussed, the nature of the aforecited questioned properties considered formerly as

---

[26] Id. at 62-65.

> personal metamorphosed to machineries and the exemption being invoked by [MERALCO] was automatically withdrawn pursuant to the letter and spirit of the law. x x x.[27]

Resultantly, the decretal portion of said CBAA Decision reads:

> WHEREFORE, in view of the foregoing, the Decision appealed from is hereby modified. The City Assessor of Lucena City is hereby directed to make a new assessment on the subject properties to retroact from the year 1992 and the City Treasurer to collect the tax liabilities in accordance with the provisions of the cited Section 222 of the Local Government Code.[28]

The CBAA denied the Motion for Reconsideration of MERALCO in a Resolution[29] dated August 16, 2001.

Disgruntled, MERALCO sought recourse from the Court of Appeals by filing a Petition for Review under Rule 43 of the Rules of Court, which was docketed as CA-G.R. SP No. 67027.

The Court of Appeals rendered a Decision on May 13, 2004 rejecting all arguments proffered by MERALCO. The appellate court found no deficiency in the Notice of Assessment issued by the City Assessor of Lucena:

> It was not disputed that [MERALCO] failed to provide the [City Assessor and City Treasurer of Lucena] with a sworn statement declaring the true value of each of the subject transformer and electric post, transmission line, insulator and electric meter which should have been made the basis of the fair and current market value of the aforesaid property and which would enable the assessor to identify the same for assessment purposes. [MERALCO] merely claims that the assessment made by the [City Assessor and City Treasurer of Lucena] was incorrect but did not even mention in their pleading the true and correct assessment of the said properties. Absent any sworn statement given by [MERALCO], [the City Assessor and City Treasurer of Lucena] were constrained to make an assessment based on the materials within [their reach].[30]

The Court of Appeals further ruled that there was no more basis for the real property tax exemption of MERALCO under the Local Government Code and that the withdrawal of said exemption did not violate the non-impairment clause of the Constitution, thus:

> Although it could not be denied that [MERALCO] was previously granted a Certificate of Franchise by the National Electrification Commission on October 28, 1993 x x x, such conferment does not automatically include an exemption from the payment of realty tax, nor

---

27 Id. at 65-66.
28 Id. at 69.
29 Id. at 57. Signed by Chairman Cesar S. Gutierrez and Members Angel P. Palomares and Benjamin M. Kasala.
30 Id. at 29-30.

> does it impliedly give the franchisee the right to continue the privileges granted under its previous franchise considering that Sec. 534(f) of the Local Government Code of 1991 expressly repealed those provisions which are inconsistent with the Code.
>
> At the outset, the Supreme Court has held that "Section 193 of the LGC prescribes the general rule, viz., tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons are withdrawn upon the effectivity of the LGC except with respect to those entities expressly enumerated. In the same vein, We must hold that the express withdrawal upon effectivity of the LGC of all exemptions except only as provided therein, can no longer be invoked by MERALCO to disclaim liability for the local tax." (City Government of San Pablo, Laguna vs. Reyes, 305 SCRA 353, 362-363)
>
> In fine, [MERALCO's] invocation of the non-impairment clause of the Constitution is accordingly unavailing. The LGC was enacted in pursuance of the constitutional policy to ensure autonomy to local governments and to enable them to attain fullest development as self-reliant communities. The power to tax is primarily vested in Congress. However, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to [a] direct authority conferred by Section 5, Article X of the Constitution. The important legal effect of Section 5 is that henceforth, in interpreting statutory provisions on municipal fiscal powers, doubts will be resolved in favor of the municipal corporations. (Ibid. pp. 363-365) [31]

MERALCO similarly failed to persuade the Court of Appeals that the transformers, transmission lines, insulators, and electric meters mounted on the electric posts of MERALCO were not real properties. The appellate court invoked the definition of "machinery" under Section 199(o) of the Local Government Code and then wrote that:

> We firmly believe and so hold that the wires, insulators, transformers and electric meters mounted on the poles of [MERALCO] may nevertheless be considered as improvements on the land, enhancing its utility and rendering it useful in distributing electricity. The said properties are actually, directly and exclusively used to meet the needs of [MERALCO] in the distribution of electricity.
>
> In addition, "improvements on land are commonly taxed as realty even though for some purposes they might be considered personalty. It is a familiar personalty phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property." (Caltex (Phil) Inc. vs. Central Board of Assessment Appeals, 114 SCRA 296, 301-302)[32]

Lastly, the Court of Appeals agreed with the CBAA that the new assessment of the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO shall retroact to 1992.

---

31 Id. at 31.

32 Id. at 32.

Hence, the Court of Appeals adjudged:

> WHEREFORE, premises considered, the ***assailed Decision [dated] May 3, 2001 and Resolution dated August 16, 2001 are hereby AFFIRMED in toto and the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit***.[33]

In a Resolution dated November 18, 2004, the Court of Appeals denied the Motion for Reconsideration of MERALCO.

MERALCO is presently before the Court via the instant Petition for Review on *Certiorari* grounded on the following lone assignment of error:

> THE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN AFFIRMING IN TOTO THE DECISION OF THE CENTRAL BOARD OF ASSESSMENT APPEALS WHICH HELD THAT THE SUBJECT PROPERTIES ARE REAL PROPERTIES SUBJECT TO REAL PROPERTY TAX; AND THAT ASSESSMENT ON THE SUBJECT PROPERTIES SHOULD BE MADE TO TAKE EFFECT RETROACTIVELY FROM 1992 UNTIL 1997, WITH PENALTIES; THE SAME BEING UNJUST, WHIMSICAL AND NOT IN ACCORD WITH THE LOCAL GOVERNMENT CODE.[34]

MERALCO argues that its transformers, electric posts, transmission lines, insulators, and electric meters are not subject to real property tax, given that: (1) the definition of "machinery" under Section 199(o) of the Local Government Code, on which real property tax is imposed, must still be within the contemplation of real or immovable property under Article 415 of the Civil Code because it is axiomatic that a statute should be construed to harmonize with other laws on the same subject matter as to form a complete, coherent, and intelligible system; (2) the Decision dated April 10, 1991 of the CBAA in CBAA Case No. 248, which affirmed the Decision dated July 5, 1989 of the LBAA in LBAA-89-2, ruling that the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO are movable or personal properties, is conclusive and binding; and (3) the electric poles are not exclusively used to meet the needs of MERALCO alone since these are also being utilized by other entities such as cable and telephone companies.

MERALCO further asserts that even if it is assumed for the sake of argument that the transformers, electric posts, transmission lines, insulators, and electric meters are real properties, the assessment of said properties by the City Assessor in 1997 is a patent nullity. The collection letter dated October 16, 1997 of the City Treasurer of Lucena, Notice of Assessment dated October 20, 1997 of the City Assessor of Lucena, the Property Record Form dated October 20, 1997, and Tax Declaration No. 019-6500 simply state a lump sum market value for all the transformers, electric posts, transmission lines, insulators, and electric meters covered and did not

---

33 Id. at 34.

34 Id. at 12.

provide an inventory/list showing the actual number of said properties, or a schedule of values presenting the fair market value of each property or type of property, which would have enabled MERALCO to verify the correctness and reasonableness of the valuation of its properties. MERALCO was not furnished at all with a copy of Tax Declaration No. 019-7394, and while it received a copy of Tax Declaration No. 019-6500, said tax declaration did not contain the requisite information regarding the date of operation of MERALCO and the original cost, depreciation, and market value for each property covered. For the foregoing reasons, the assessment of the properties of MERALCO in 1997 was arbitrary, whimsical, and without factual basis – in patent violation of the right to due process of MERALCO. MERALCO additionally explains that it cannot be expected to make a declaration of its transformers, electric posts, transmission lines, insulators, and electric meters, because all the while, it was of the impression that the said properties were personal properties by virtue of the Decision dated July 5, 1989 of the LBAA in LBAA-89-2 and the Decision dated April 10, 1991 of the CBAA in CBAA Case No. 248.

Granting that the assessment of its transformers, electric posts, transmission lines, insulators, and electric meters by the City Assessor of Lucena in 1997 is valid, MERALCO alternatively contends that: (1) under Sections 221[35] and 222[36] of the Local Government Code, the assessment should take effect only on January 1, 1998 and not retroact to 1992; (2) MERALCO should not be held liable for penalties and interests since its nonpayment of real property tax on its properties was in good faith; and (3) if interest may be legally imposed on MERALCO, it should only begin to run on the date it received the Notice of Assessment on October 29, 1997 and not all the way back to 1992.

At the end of its Petition, MERALCO prays:

> WHEREFORE, it is respectfully prayed of this Honorable Court that the appealed Decision dated May 13, 2004 of the Court of Appeals, together with its Resolution dated November 18, 2004 be reversed and set aside, and judgment be rendered x x x nullifying and cancel[l]ing the

---

35 Section 221. *Date of Effectivity of Assessment or Reassessment.* – All assessments or reassessments made after the first (1st) day of January of any year shall take effect on the first (1st) day of January of the succeeding year: *Provided, however,* That the reassessment of real property due to its partial or total destruction, or to a major change in its actual use, or to any great and sudden inflation or deflation of real property values, or to the gross illegality of the assessment when made or to any other abnormal cause, shall be made within ninety (90) days from the date any such cause or causes occurred, and shall take effect at the beginning of the quarter next following the reassessment.

36 Section 222. *Assessment of Property Subject to Back Taxes.* – Real property declared for the first time shall be assessed for taxes for the period during which it would have been liable but in no case for more than ten (10) years prior to the date of initial assessment: *Provided, however,* That such taxes shall be computed on the basis of the applicable schedule of values in force during the corresponding period.

If such taxes are paid on or before the end of the quarter following the date the notice of assessment was received by the owner or his representative, no interest for delinquency shall be imposed thereon; otherwise such taxes shall be subject to an interest at the rate of two percent (2%) per month or a fraction thereof from the date of the receipt of the assessment until such taxes are fully paid.

> Notice of Assessment, dated October 20, 1997, issued by respondent City Assessor, and the collection letter dated October 16, 1997 of respondent City Treasurer.
>
> Petitioner also prays for such other relief as may be deemed just and equitable in the premises.[37]

The City Assessor and City Treasurer of Lucena counter that: (1) MERALCO was obliged to pay the real property tax due, instead of posting a surety bond, while its appeal was pending, because Section 231 of the Local Government Code provides that the appeal of an assessment shall not suspend the collection of the real property taxes; (2) the cases cited by MERALCO can no longer be applied to the case at bar since they had been decided when Presidential Decree No. 464, otherwise known as the Real Property Tax Code, was still in effect; (3) under the now prevailing Local Government Code, which expressly repealed the Real Property Tax Code, the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO fall within the new definition of "machineries," deemed as real properties subject to real property tax; and (4) the Notice of Assessment dated October 20, 1997 covering the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO only retroacts to 1992, which is less than 10 years prior to the date of initial assessment, so it is in compliance with Section 222 of the Local Government Code, and since MERALCO has yet to pay the real property taxes due on said assessment, then it is just right and appropriate that it also be held liable to pay for penalties and interests from 1992 to present time. Ultimately, the City Assessor and City Treasurer of Lucena seek judgment denying the instant Petition and ordering MERALCO to pay the real property taxes due.

The Petition is partly meritorious.

The Court finds that the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO are no longer exempted from real property tax and may qualify as "machinery" subject to real property tax under the Local Government Code. Nevertheless, the Court declares null and void the appraisal and assessment of said properties of MERALCO by the City Assessor in 1997 for failure to comply with the requirements of the Local Government Code and, thus, violating the right of MERALCO to due process.

By posting a surety bond before filing its appeal of the assessment with the LBAA, MERALCO substantially complied with the requirement of payment under protest in Section 252 of the Local Government Code.

---

37 *Rollo*, p. 22.

Section 252 of the Local Government Code mandates that "[n]o protest shall be entertained unless the taxpayer first pays the tax." It is settled that the requirement of "payment under protest" is a condition *sine qua non* before an appeal may be entertained.[38] Section 231 of the same Code also dictates that "[a]ppeal on assessments of real property x x x shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal." Clearly, under the Local Government Code, even when the assessment of the real property is appealed, the real property tax due on the basis thereof should be paid to and/or collected by the local government unit concerned.

In the case at bar, the City Treasurer of Lucena, in his letter dated October 16, 1997, sought to collect from MERALCO the amount of ₱17,925,117.34 as real property taxes on its machineries, plus penalties, for the period of 1990 to 1997, based on Tax Declaration Nos. 019-6500 and 019-7394 issued by the City Assessor of Lucena. MERALCO appealed Tax Declaration Nos. 019-6500 and 019-7394 with the LBAA, but instead of paying the real property taxes and penalties due, it posted a surety bond in the amount of ₱17,925,117.34.

By posting the surety bond, MERALCO may be considered to have substantially complied with Section 252 of the Local Government Code for the said bond already guarantees the payment to the Office of the City Treasurer of Lucena of the total amount of real property taxes and penalties due on Tax Declaration Nos. 019-6500 and 019-7394. This is not the first time that the Court allowed a surety bond as an alternative to cash payment of the real property tax before protest/appeal as required by Section 252 of the Local Government Code. In *Camp John Hay Development Corporation v. Central Board of Assessment Appeals,*[39] the Court affirmed the ruling of the CBAA and the Court of Tax Appeals *en banc* applying the "payment under protest" requirement in Section 252 of the Local Government Code and 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 x x x."

Accordingly, the LBAA herein correctly took cognizance of and gave due course to the appeal of Tax Declaration Nos. 019-6500 and 019-7394 filed by MERALCO.

---

38 *Camp John Hay Development Corporation v. Central Board of Assessment Appeals*, G.R. No. 169234, October 2, 2013, 706 SCRA 547, 563.

39 Id. at 570.

Beginning January 1, 1992, MERALCO can no longer claim exemption from real property tax of its transformers, electric posts, transmission lines, insulators, and electric meters based on its franchise.

MERALCO relies heavily on the Decision dated April 10, 1991 of the CBAA in CBAA Case No. 248, which affirmed the Decision dated July 5, 1989 of the LBAA in LBAA-89-2. Said decisions of the CBAA and the LBAA, in turn, cited *Board of Assessment Appeals v. Manila Electric Co.*,[40] which was decided by the Court way back in 1964 (*1964 MERALCO case*). The decisions in CBAA Case No. 248 and the *1964 MERALCO case* recognizing the exemption from real property tax of the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO are no longer applicable because of subsequent developments that changed the factual and legal milieu for MERALCO in the present case.

In the *1964 MERALCO case*, the City Assessor of Quezon City considered the steel towers of MERALCO as real property and required MERALCO to pay real property taxes for the said steel towers for the years 1952 to 1956. MERALCO was operating pursuant to the franchise granted under Ordinance No. 44 dated March 24, 1903 of the Municipal Board of Manila, which it acquired from the original grantee, Charles M. Swift. Under its franchise, MERALCO was expressly granted the following tax exemption privilege:

> Par 9. The grantee shall be liable to pay the same taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery and personal property as other persons are or may be hereafter required by law to pay. x x x Said percentage shall be due and payable at the times stated in paragraph nineteen of Part One hereof, x x x *and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles*, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee *is hereby expressly exempted*. x x x.[41]

Given the express exemption from taxes and assessments of the "**poles**, wires, transformers, and insulators" of MERALCO in the aforequoted paragraph, the sole issue in the *1964 MERALCO case* was whether or not the steel towers of MERALCO qualified as "poles" which were exempted from real property tax. The Court ruled in the affirmative, ratiocinating that:

---

40 Supra note 16.

41 Id. at 331.

> Along the streets, in the City of Manila, may be seen cylindrical metal poles, cubical concrete poles, and poles of the PLDT Co. which are made of two steel bars joined together by an interlacing metal rod. They are called "poles" notwithstanding the fact that they are not made of wood. It must be noted from paragraph 9, above quoted, that the concept of the "poles" for which exemption is granted, is not determined by their place or location, nor by the character of the electric current it carries, nor the material or form of which it is made, but the use to which they are dedicated. In accordance with the definitions, a pole is not restricted to a long cylindrical piece of wood or metal, but includes "upright standards to the top of which something is affixed or by which something is supported." As heretofore described, respondent's steel supports consist of a framework of four steel bars or strips which are bound by steel cross-arms atop of which are cross-arms supporting five high voltage transmission wires (See Annex A) and their sole function is to support or carry such wires.
>
> The conclusion of the CTA that the steel supports in question are embraced in the term "poles" is not a novelty. Several courts of last resort in the United States have called these steel supports "steel towers", and they have denominated these supports or towers, as electric poles. In their decisions the words "towers" and "poles" were used interchangeably, and it is well understood in that jurisdiction that a transmission tower or pole means the same thing.
>
> x x x x
>
> It is evident, therefore, that the word "poles", as used in Act No. 484 and incorporated in the petitioner's franchise, should not be given a restrictive and narrow interpretation, as to defeat the very object for which the franchise was granted. The *poles* as contemplated thereon, should be understood and taken as a part of the electric power system of the respondent Meralco, for the conveyance of electric current from the source thereof to its consumers. x x x.[42]

Similarly, it was clear that under the 20-year franchise granted to MERALCO by the Municipal Board of Lucena City through Resolution No. 2679 dated June 13, 1972, the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO were exempt from real property tax. Paragraph 13 of Resolution No. 2679 is quoted in full below:

> 13. The grantee shall be liable to pay the same taxes upon its real estate, building, machinery, and personal property (**not including poles, wires, transformers, and insulators**) as other persons are now or may hereafter be required by law to pay. In consideration of the franchise and rights hereby granted, the grantee shall pay into the City Treasury of Lucena a **tax equal to FIVE (5%) PER CENTUM of the gross earnings** received from electric current sold or supplied under this franchise. Said tax shall be due and payable quarterly and shall be **in lieu of any and all taxes of any kind, nature or description levied, established, or collected** by any authority whatsoever, municipal, provincial, or national, now or in the future, **on its poles, wires, insulators, switches, transformers and structures, installations, conductors, and**

---

[42] Id. at 331-333.

> **accessories**, placed in and over and under all the private and/or public property, including public streets and highways, provincial roads, bridges, and public squares, and on its franchise rights, privileges, receipts, revenues and profits, **from which taxes the grantee is hereby expressly exempted**. (Emphases supplied.)

In CBAA Case No. 248 (and LBAA-89-2), the City Assessor assessed the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO located in Lucena City beginning 1985 under Tax Declaration No. 019-6500. The CBAA in its Decision dated April 10, 1991 in CBAA Case No. 248 sustained the exemption of the said properties of MERALCO from real property tax on the basis of paragraph 13 of Resolution No. 2679 and the *1964 MERALCO case*.

Just when the franchise of MERALCO in Lucena City was about to expire, the Local Government Code took effect on January 1, 1992, Sections 193 and 234 of which provide:

> Section 193. *Withdrawal of Tax Exemption Privileges.* – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.
>
> Section 234. *Exemptions from Real Property Tax.* - The following are exempted from payment of the real property tax:
>
> (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;
>
> (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;
>
> (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;
>
> (d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and
>
> (e) Machinery and equipment used for pollution control and environmental protection.
>
> Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.

The Local Government Code, in addition, contains a general repealing clause under Section 534(f) which states that "[a]ll general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly."

Taking into account the above-mentioned provisions, the evident intent of the Local Government Code is to withdraw/repeal all exemptions from local taxes, unless otherwise provided by the Code. The limited and restrictive nature of the tax exemption privileges under the Local Government Code is consistent with the State policy to ensure autonomy of local governments and the objective of the Local Government Code to grant genuine and meaningful autonomy to enable local government units to attain their fullest development as self-reliant communities and make them effective partners in the attainment of national goals. The obvious intention of the law is to broaden the tax base of local government units to assure them of substantial sources of revenue.[43]

Section 234 of the Local Government Code particularly identifies the exemptions from payment of real property tax, based on the ownership, character, and use of the property, *viz.*:

> (a) *Ownership Exemptions*. Exemptions from real property taxes on the basis of *ownership* are real properties owned by: (i) the Republic, (ii) a province, (iii) a city, (iv) a municipality, (v) a barangay, and (vi) registered cooperatives.
>
> (b) *Character Exemptions*. Exempted from real property taxes on the basis of their character are: (i) charitable institutions, (ii) houses and temples of prayer like churches, parsonages or convents appurtenant thereto, mosques, and (iii) nonprofit or religious cemeteries.
>
> (c) *Usage exemptions*. Exempted from real property taxes on the basis of the actual, direct and exclusive use to which they are devoted are: (i) all lands, buildings and improvements which are actually directly and exclusively used for religious, charitable or educational purposes; (ii) all machineries and equipment actually, directly and exclusively used by local water districts or by government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power; and (iii) all machinery and equipment used for pollution control and environmental protection.
>
> To help provide a healthy environment in the midst of the modernization of the country, all machinery and equipment for pollution control and environmental protection may not be taxed by local governments.

---

[43] *Philippine Rural Electric Cooperatives Association, Inc. v. The Secretary, Department of Interior and Local Government*, 451 Phil. 683, 698 (2003), citing *Mactan Cebu International Airport Authority v. Marcos*, 330 Phil. 392, 417 (1996).

> 2. *Other Exemptions Withdrawn*. All other exemptions previously granted to natural or juridical persons including government-owned or controlled corporations are withdrawn upon the effectivity of the Code.[44]

The last paragraph of Section 234 had unequivocally withdrawn, upon the effectivity of the Local Government Code, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the same section.

MERALCO, a private corporation engaged in electric distribution, and its transformers, electric posts, transmission lines, insulators, and electric meters used commercially do not qualify under any of the ownership, character, and usage exemptions enumerated in Section 234 of the Local Government Code. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*.[45] Not being among the recognized exemptions from real property tax in Section 234 of the Local Government Code, then the exemption of the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO from real property tax granted under its franchise was among the exemptions withdrawn upon the effectivity of the Local Government Code on January 1, 1998.

It is worthy to note that the subsequent franchises for operation granted to MERALCO, *i.e.*, under the Certificate of Franchise dated October 28, 1993 issued by the National Electrification Commission and Republic Act No. 9209 enacted on June 9, 2003 by Congress, are completely silent on the matter of exemption from real property tax of MERALCO or any of its properties.

It is settled that tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[46] MERALCO has failed to present herein any express grant of exemption from real property tax of its transformers, electric posts, transmission lines, insulators, and electric meters that is valid and binding even under the Local Government Code.

---

44 *Mactan Cebu International Airport Authority v. Marcos*, id. at 410-411, citing Pimentel, Aquilino Jr., THE LOCAL GOVERNMENT CODE OF 1991 — The Key to National Development [1933], 329.

45 *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 259 (2003).

46 *Digital Telecommunications Philippines, Inc. v. City Government of Batangas*, 594 Phil. 269, 299 (2008).

The transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO may qualify as "machinery" under the Local Government Code subject to real property tax.

Through the years, the relevant laws have consistently considered "machinery" as real property subject to real property tax. It is the definition of "machinery" that has been changing and expanding, as the following table will show:

Real Property Tax Law	**Incidence of Real Property Tax**	**Definition of Machinery**[47]
The Assessment Law (Commonwealth Act No. 470) Effectivity: January 1, 1940	Section 2. *Incidence of real property tax*. – Except in chartered cities, there shall be levied, assessed, and collected, an annual *ad valorem* tax on real property, including land, buildings, **machinery**, and other improvements not hereinafter specifically exempted.	Section 3. *Property exempt from tax*. – The exemptions shall be as follows: x x x x (f) *Machinery*, which term shall embrace machines, mechanical contrivances, instruments, appliances, and apparatus attached to the real estate, used for industrial agricultural or manufacturing purposes, during the first five years of the operation of the machinery.
Real Property Tax Code Effectivity: June 1, 1974	Section 38. *Incidence of Real Property Tax*. – There shall be levied, assessed and collected in all provinces, cities and municipalities an annual *ad valorem* tax on real property, such as land, buildings, **machinery** and other improvements affixed or attached to real property not hereinafter specifically exempted.	Section 3. *Definition of Terms*. – When used in this Code – x x x x (m) *Machinery* – shall embrace machines, mechanical contrivances, instruments, appliances and apparatus attached to the real estate. **It includes the physical facilities available for production, as well as the installations and appurtenant service facilities, together with all other equipment designed for or essential to its manufacturing, industrial or agricultural purposes.**
Real Property Tax Code,	Section 38. *Incidence of Real Property Tax*. – There shall be	Section 3. *Definition of Terms.* – When used in this Code –

[47] Emphases on the substantial changes introduced by the succeeding law.

as amended by Presidential Decree No. 1383 Effectivity: May 25, 1978	levied, assessed and collected in all provinces, cities and municipalities an annual *ad valorem* tax on real property, such as land, buildings, **machinery** and other improvements affixed or attached to real property not hereinafter specifically exempted.	x x x x (m) *Machinery* – shall embrace machines, **equipment**, mechanical contrivances, instruments, appliances and apparatus attached to the real estate. It shall include the physical facilities available for production, as well as the installations and appurtenant service facilities, **together with all those not permanently attached to the real estate but are actually, directly and essentially used to meet the needs of the particular industry, business, or works, which by their very nature and purpose** are designed for, or essential to manufacturing, **commercial, mining,** industrial or agricultural purposes.
Local Government Code Effectivity: January 1, 1992	Section 232. *Power to Levy Real Property Tax.* – A province or city or a municipality within the Metropolitan Manila Area may levy an annual *ad valorem* tax on real property such as land, building, **machinery**, and other improvement not hereinafter specifically exempted.	Section 199. *Definitions.* – When used in this Title: 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[.]

MERALCO is a public utility engaged in electric distribution, and its transformers, electric posts, transmission lines, insulators, and electric meters constitute the physical facilities through which MERALCO delivers

electricity to its consumers. Each may be considered as one or more of the following: a "machine,"[48] "equipment,"[49] "contrivance,"[50] "instrument,"[51] "appliance,"[52] "apparatus,"[53] or "installation."[54]

The Court highlights that under Section 199(o) of the Local Government Code, machinery, to be deemed real property subject to real property tax, need no longer be annexed to the land or building as these "may or may not be attached, permanently or temporarily to the real property," and in fact, such machinery may even be "mobile."[55] The same provision though requires that to be machinery subject to real property tax, the physical facilities for production, installations, and appurtenant service facilities, those which are mobile, self-powered or self-propelled, or not permanently attached to the real property (a) must be 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 for manufacturing, mining, logging, commercial, industrial, or agricultural purposes. Thus, Article 290(o) of the Rules and Regulations Implementing the Local Government Code of 1991 recognizes the following exemption:

> 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, furnitures and fixtures, freezers, refrigerators, display cases or racks, fruit juice or beverage automatic dispensing machines which are not directly and exclusively used to meet the needs of a particular industry, business or activity shall

---

48 "Machine" is a piece of equipment with moving parts that does work when it is given power from electricity, gasoline, *etc*.; an assemblage of parts that transmit forces, motion, and energy one to another in a predetermined manner; an instrument (as a lever) designed to transmit or modify the application of power, force, or motion; or a mechanically, electrically, or electronically operated device for performing a task. (http://www.merriam-webster.com/dictionary/machine, last visited on July 15, 2015)

49 "Equipment" is the set of articles or physical resources serving to equip a person or thing; apparatus; the implements used in an operation or activity; or all the fixed assets other than land and buildings of a business enterprise; or a piece of such equipment. (http://www.merriam-webster.com/dictionary/equipment, last visited on July 15, 2015)

50 "Contrivance" is a machine or piece of equipment made with skill and cleverness; or a thing contrived, especially, a mechanical device. (http://www.merriam-webster.com/ dictionary/ contrivance, last visited on July 15, 2015)

51 "Instrument" is a tool or device used for a particular purpose, especially, a tool or device designed to do careful and exact work; implement, especially, one designed for precision work; a relatively simple device for performing work. (http://www.merriam-webster.com/dictionary/instrument, last visited July 15, 2015)

52 "Appliance" is a piece of equipment for adapting a tool or machine to a special purpose; an instrument or device designed for a particular use or function (an orthodontic appliance); specifically, a household or office device (as a stove, fan, or refrigerator) operated by gas or electric current; or a tool or instrument utilizing a power source and suggests portability or temporary attachment (household appliances). (http://www.merriam-webster.com/dictionary/appliance, last visited on July 15, 2015)

53 "Apparatus" is a tool or piece of equipment used for specific activities; or an instrument or appliance designed for a specific operation. (http://www.merriam-webster.com/dictionary/ apparatus, last visited July 15, 2015)

54 "Installation" is something (such as a piece of equipment) that is put together and made ready for use. (http://www.merriam-webster.com/dictionary/installation, last visited on July 15, 2015)

55 "Mobile" means capable of moving or being moved; or movable (a mobile missile launcher). (http://www.merriam-webster.com/dictionary/mobile, last visited July 15, 2015)

> not be considered within the definition of machinery under this Rule. (Emphasis supplied.)

The *1964 MERALCO case* was decided when The Assessment Law was still in effect and Section 3(f) of said law still required that the machinery be attached to the real property. Moreover, as the Court pointed out earlier, the ruling in the *1964 MERALCO case* – that the electric poles (including the steel towers) of MERALCO are not subject to real property tax – was primarily based on the express exemption granted to MERALCO under its previous franchise. The reference in said case to the Civil Code definition of real property was only an alternative argument:

> **Granting for the purpose of argument that the steel supports or towers in question are not embraced within the term poles, the logical question posited is whether they constitute real properties, so that they can be subject to a real property tax.** The tax law does not provide for a definition of real property; but **Article 415 of the Civil Code** does, by stating the following are immovable property:
>
> > (1) Land, buildings, roads, and constructions of all kinds adhered to the soil;
> >
> > x x x x
> >
> > (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
> >
> > 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 in a building or on a piece of land, and which tends directly to meet the needs of the said industry or works;
> >
> > x x x x
>
> The steel towers or supports in question, do not come within the objects mentioned in paragraph 1, because they do not constitute buildings or constructions adhered to the soil. They are not constructions analogous to buildings nor adhering to the soil. As per description, given by the lower court, they are removable and merely attached to a square metal frame by means of bolts, which when unscrewed could easily be dismantled and moved from place to place. They can not be included under paragraph 3, as they are not attached to an immovable in a fixed manner, and they can be separated without breaking the material or causing deterioration upon the object to which they are attached. Each of these steel towers or supports consists of steel bars or metal strips, joined together by means of bolts, which can be disassembled by unscrewing the bolts and reassembled by screwing the same. These steel towers or supports do not also fall under paragraph 5, for they are not machineries or receptacles, instruments or implements, and even if they were, they are not intended for industry or works on the land. Petitioner is not engaged in an

> industry or works on the land in which the steel supports or towers are constructed.[56] (Emphases supplied.)

The aforequoted conclusions of the Court in the *1964 MERALCO case* do not hold true anymore under the Local Government Code.

While the Local Government Code still does not provide for a specific definition of "real property," Sections 199(o) and 232 of the said Code, respectively, gives an extensive definition of what constitutes "machinery" and unequivocally subjects such machinery to real property tax. The Court reiterates that the machinery subject to real property tax under the Local Government Code "may or may not be attached, permanently or temporarily to the real property;" and the physical facilities for production, installations, and appurtenant service facilities, those which are mobile, self-powered or self-propelled, or are not permanently attached must (a) be actually, directly, and exclusively used to meet the needs of the particular industry, business, or activity; and (2) by their very nature and purpose, be designed for, or necessary for manufacturing, mining, logging, commercial, industrial, or agricultural purposes.

Article 415, paragraph (1) of the Civil Code declares as immovables or real properties "[l]and, buildings, roads and constructions of all kinds adhered to the soil." The land, buildings, and roads are immovables by nature "which cannot be moved from place to place," whereas the constructions adhered to the soil are immovables by incorporation "which are essentially movables, but are attached to an immovable in such manner as to be an integral part thereof."[57] Article 415, paragraph (3) of the Civil Code, referring to "[e]verything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object," are likewise immovables by incorporation. In contrast, the Local Government Code considers as real property machinery which "may or may not be attached, permanently or temporarily to the real property," and even those which are "mobile."

Article 415, paragraph (5) of the Civil Code considers as immovables or real properties "[m]achinery, 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." The Civil Code, however, does not define "machinery."

The properties under Article 415, paragraph (5) of the Civil Code are immovables by destination, or "those which are essentially movables, but by the purpose for which they have been placed in an immovable, partake of the nature of the latter because of the added utility derived therefrom."[58] These

---

56 *Board of Assessment Appeals v. Manila Electric Company*, supra note 16 at 334-335.

57 Tolentino, CIVIL CODE OF THE PHILIPPINES, Vol. II (1992 ed.), p. 13.

58 Id.

properties, including machinery, become immobilized if the following requisites concur: (a) they are placed in the tenement by the owner of such tenement; (b) they are destined for use in the industry or work in the tenement; and (c) they tend to directly meet the needs of said industry or works.[59] The first two requisites are not found anywhere in the Local Government Code.

MERALCO insists on harmonizing the aforementioned provisions of the Civil Code and the Local Government Code. The Court disagrees, however, for this would necessarily mean imposing additional requirements for classifying machinery as real property for real property tax purposes not provided for, or even in direct conflict with, the provisions of the Local Government Code.

As between the Civil Code, a general law governing property and property relations, and the Local Government Code, a special law granting local government units the power to impose real property tax, then the latter shall prevail. As the Court pronounced in *Disomangcop v. The Secretary of the Department of Public Works and Highways Simeon A. Datumanong*[60]:

> It is a finely-imbedded principle in statutory construction that a special provision or law prevails over a general one. *Lex specialis derogant generali*. As this Court expressed in the case of *Leveriza v. Intermediate Appellate Court*, "another basic principle of statutory construction mandates that general legislation must give way to special legislation on the same subject, and generally be so interpreted as to embrace only cases in which the special provisions are not applicable, that specific statute prevails over a general statute and that where two statutes are of equal theoretical application to a particular case, the one designed therefor specially should prevail." (Citations omitted.)

The Court also very clearly explicated in *Vinzons-Chato v. Fortune Tobacco Corporation*[61] that:

> A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.
>
> The circumstance that the special law is passed before or after the general act does not change the principle. Where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act; and where the general act is later, the special statute will be construed

---

59 Id. at 18-20.
60 486 Phil. 398, 448 (2004).
61 552 Phil. 101, 111 (2007).

> as remaining an exception to its terms, unless repealed expressly or by necessary implication. (Citations omitted.)

Furthermore, in *Caltex (Philippines), Inc. v. Central Board of Assessment Appeals*,[62] the Court acknowledged that "[i]t is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property[.]"

Therefore, for determining whether machinery is real property subject to real property tax, the definition and requirements under the Local Government Code are controlling.

MERALCO maintains that its electric posts are not machinery subject to real property tax because said posts are not being exclusively used by MERALCO; these are also being utilized by cable and telephone companies. This, however, is a factual issue which the Court cannot take cognizance of in the Petition at bar as it is not a trier of facts. Whether or not the electric posts of MERALCO are actually being used by other companies or industries is best left to the determination of the City Assessor or his deputy, who has been granted the authority to take evidence under Article 304 of the Rules and Regulations Implementing the Local Government Code of 1991.

Nevertheless, the appraisal and assessment of the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO as machinery under Tax Declaration Nos. 019-6500 and 019-7394 were not in accordance with the Local Government Code and in violation of the right to due process of MERALCO and, therefore, null and void.

The Local Government Code defines "appraisal" as the "act or process of determining the value of property as of a specific date for a specific purpose." "Assessment" is "the act or process of determining the value of a property, or proportion thereof subject to tax, including the discovery, listing, classification, and appraisal of the properties[.]"[63] When it comes to machinery, its appraisal and assessment are particularly governed by Sections 224 and 225 of the Local Government Code, which read:

> Section 224. *Appraisal and Assessment of Machinery.* – (a) The fair market value of a brand-new machinery shall be the acquisition cost. In all other cases, the fair market value shall be determined by dividing the remaining economic life of the machinery by its estimated economic life and multiplied by the replacement or reproduction cost.

---

62 199 Phil. 487, 492 (1982).

63 Section 199(e-f).

> (b) If the machinery is imported, the acquisition cost includes freight, insurance, bank and other charges, brokerage, arrastre and handling, duties and taxes, plus cost of inland transportation, handling, and installation charges at the present site. The cost in foreign currency of imported machinery shall be converted to peso cost on the basis of foreign currency exchange rates as fixed by the Central Bank.
>
> Section 225. *Depreciation Allowance for Machinery*. – For purposes of assessment, a depreciation allowance shall be made for machinery at a rate not exceeding five percent (5%) of its original cost or its replacement or reproduction cost, as the case may be, for each year of use: *Provided, however,* That the remaining value for all kinds of machinery shall be fixed at not less than twenty percent (20%) of such original, replacement, or reproduction cost for so long as the machinery is useful and in operation.

It is apparent from these two provisions that every machinery must be individually appraised and assessed depending on its acquisition cost, remaining economic life, estimated economic life, replacement or reproduction cost, and depreciation.

Article 304 of the Rules and Regulations Implementing the Local Government Code of 1991 expressly authorizes the local assessor or his deputy to receive evidence for the proper appraisal and assessment of the real property:

> Article 304. *Authority of Local Assessors to Take Evidence.* – For the purpose of obtaining information on which to base the market value of any real property, the assessor of the province, city, or municipality or his deputy may summon the owners of the properties to be affected or persons having legal interest therein and witnesses, administer oaths, and take deposition concerning the property, its ownership, amount, nature, and value.

The Local Government Code further mandates that the taxpayer be given a notice of the assessment of real property in the following manner:

> Section 223. *Notification of New or Revised Assessment*. – When real property is assessed for the first time or when an existing assessment is increased or decreased, the provincial, city or municipal assessor shall within thirty (30) days give written notice of such new or revised assessment to the person in whose name the property is declared. The notice may be delivered personally or by registered mail or through the assistance of the punong barangay to the last known address of the person to served.

A notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax.[64] In *Manila*

---

64 *Yamane v. BA Lepanto Condominium Corporation*, 510 Phil. 750, 770 (2005).

Electric Company v. Barlis,[65] the Court described the contents of a valid notice of assessment of real property and differentiated the same from a notice of collection:

> A notice of assessment as provided for in the Real Property Tax Code should effectively inform the taxpayer of the value of a specific property, or proportion thereof subject to tax, including the discovery, listing, classification, and appraisal of properties. The September 3, 1986 and October 31, 1989 notices do not contain the essential information that a notice of assessment must specify, namely, the value of a specific property or proportion thereof which is being taxed, nor does it state the discovery, listing, classification and appraisal of the property subject to taxation. In fact, the tenor of the notices bespeaks an intention to collect unpaid taxes, thus the reminder to the taxpayer that the failure to pay the taxes shall authorize the government to auction off the properties subject to taxes x x x.

Although the ruling quoted above was rendered under the Real Property Tax Code, the requirement of a notice of assessment has not changed under the Local Government Code.

A perusal of the documents received by MERALCO on October 29, 1997 reveals that none of them constitutes a valid notice of assessment of the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO.

The letter dated October 16, 1997 of the City Treasurer of Lucena (which interestingly precedes the purported Notice of Assessment dated October 20, 1997 of the City Assessor of Lucena) is a notice of collection, ending with the request for MERALCO to settle the payable amount soon in order to avoid accumulation of penalties. It only presented in table form the tax declarations covering the machinery, assessed values in the tax declarations in lump sums for all the machinery, the periods covered, and the taxes and penalties due again in lump sums for all the machinery.

The Notice of Assessment dated October 20, 1997 issued by the City Assessor gave a summary of the new/revised assessment of the "machinery" located in "Quezon Avenue Ext., Brgy. Gulang-Gulang, Lucena City," covered by Tax Declaration No. 019-7394, with total market value of ₱98,173,200.00 and total assessed value of ₱78,538,560.00. The Property Record Form basically contained the same information. Without specific description or identification of the machinery covered by said tax declaration, said Notice of Assessment and Property Record Form give the false impression that there is only one piece of machinery covered.

In Tax Declaration No. 019-6500, the City Assessor reported its findings under "Building and Improvements" and not "Machinery." Said tax declaration covered "capital investment-commercial," specifically: (a)

---

65 426 Phil. 280, 284 (2002).

Transformer and Electric Post; (b) Transmission Line, (c) Insulator, and (d) Electric Meter, with a total market value of ₱81,811,000.00, assessment level of 80%, and assessed value of ₱65,448,800.00. Conspicuously, the table for "Machinery" – requiring the description, date of operation, replacement cost, depreciation, and market value of the machinery – is totally blank.

MERALCO avers, and the City Assessor and the City Treasurer of Lucena do not refute at all, that MERALCO has not been furnished the Owner's Copy of Tax Declaration No. 019-7394, in which the total market value of the machinery of MERALCO was increased by ₱16,632,200.00, compared to that in Tax Declaration No. 019-6500.

The Court cannot help but attribute the lack of a valid notice of assessment to the apparent lack of a valid appraisal and assessment conducted by the City Assessor of Lucena in the first place. It appears that the City Assessor of Lucena simply lumped together all the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO located in Lucena City under Tax Declaration Nos. 019-6500 and 019-7394, contrary to the specificity demanded under Sections 224 and 225 of the Local Government Code for appraisal and assessment of machinery. The City Assessor and the City Treasurer of Lucena did not even provide the most basic information such as the number of transformers, electric posts, insulators, and electric meters or the length of the transmission lines appraised and assessed under Tax Declaration Nos. 019-6500 and 019-7394. There is utter lack of factual basis for the assessment of the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO.

The Court of Appeals laid the blame on MERALCO for the lack of information regarding its transformers, electric posts, transmission lines, insulators, and electric meters for appraisal and assessment purposes because MERALCO failed to file a sworn declaration of said properties as required by Section 202 of the Local Government Code. As MERALCO explained, it cannot be expected to file such a declaration when all the while it believed that said properties were personal or movable properties not subject to real property tax. More importantly, Section 204 of the Local Government Code exactly covers such a situation, thus:

> Section 204. *Declaration of Real Property by the Assessor.* – When any person, natural or juridical, by whom real property is required to be declared under Section 202 hereof, refuses or fails for any reason to make such declaration within the time prescribed, the provincial, city or municipal assessor shall himself declare the property in the name of the defaulting owner, if known, or against an unknown owner, as the case may be, and shall assess the property for taxation in accordance with the provision of this Title. No oath shall be required of a declaration thus made by the provincial, city or municipal assessor.

Note that the only difference between the declarations of property made by the taxpayer, on one hand, and the provincial/city/municipal assessor, on the other, is that the former must be made under oath. After making the declaration of the property himself for the owner, the provincial/city/municipal assessor is still required to assess the property for taxation in accordance with the provisions of the Local Government Code.

It is true that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise.[66] In this case, MERALCO was able to overcome the presumption because it has clearly shown that the assessment of its properties by the City Assessor was baselessly and arbitrarily done, without regard for the requirements of the Local Government Code.

The exercise of the power of taxation constitutes a deprivation of property under the due process clause, and the taxpayer's right to due process is violated when arbitrary or oppressive methods are used in assessing and collecting taxes.[67] The Court applies by analogy its pronouncements in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*,[68] concerning an assessment that did not comply with the requirements of the National Internal Revenue Code:

> On the strength of the foregoing observations, we ought to reiterate our earlier teachings that "in balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution." Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. (Citations omitted.)

The appraisal and assessment of the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO under Tax Declaration Nos. 019-6500 and 019-7394, not being in compliance with the Local Government Code, are attempts at deprivation of property without due process of law and, therefore, null and void.

WHEREFORE, premises considered, the Court **PARTLY GRANTS** the instant Petition and **AFFIRMS with MODIFICATION** the Decision dated May 13, 2004 of the Court of Appeals in CA-G.R. SP No. 67027, affirming *in toto* the Decision dated May 3, 2001 of the Central Board of Assessment Appeals in CBAA Case No. L-20-98. The Court **DECLARES**

---

66 *Cagayan Robina Sugar Milling Company v. Court of Appeals*, 396 Phil. 830, 839 (2000).

67 *Yamane v. BA Lepanto Condominium Corporation*, supra note 64 at 776.

68 G.R. No. 197515, July 2, 2014, 729 SCRA 113, 136.

that the transformers, electric posts, transmission lines, insulators, and electric meters of Manila Electric Company are **NOT EXEMPTED** from real property tax under the Local Government Code. However, the Court also **DECLARES** the appraisal and assessment of the said properties under Tax Declaration Nos. 019-6500 and 019-7394 as **NULL and VOID** for not complying with the requirements of the Local Government Code and violating the right to due process of Manila Electric Company, and **ORDERS** the **CANCELLATION** of the collection letter dated October 16, 1997 of the City Treasurer of Lucena and the Notice of Assessment dated October 20, 1997 of the City Assessor of Lucena, but **WITHOUT PREJUDICE** to the conduct of a new appraisal and assessment of the same properties by the City Assessor of Lucena in accord with the provisions of the Local Government Code and guidelines issued by the Bureau of Local Government Financing.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

MARIA LOURDES P. A. SERENO
Chief Justice