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SECOND DIVISION

[G.R. No. 152675. April 28, 2004]

BATANGAS POWER CORPORATION, *petitioner, vs.* **BATANGAS CITY and NATIONAL POWER CORPORATION,** *respondents.*

[G.R. No. 152771. April 28, 2004]

NATIONAL POWER CORPORATION, *petitioner, vs.* **HON. RICARDO R. ROSARIO, in his capacity as Presiding Judge, RTC, Br. 66, Makati City; BATANGAS CITY GOVERNMENT; ATTY. TEODULFO DEGUITO, in his capacity as Chief Legal Officer, Batangas City; and BENJAMIN PARGAS, in his capacity as City Treasurer, Batangas City,** *respondents.*

SYNOPSIS

Batangas Power Corporation (BPC) and National Power Corporation (NPC) assailed in the instant petition for review on *certiorari* the Decision of the Makati Regional Trial Court, which dismissed the petition for injunction. According to BPC, the RTC erred: (1) in holding it liable to Batangas City for the payment of business taxes even if the NPC has already assumed responsibility for its payment under their Build Operate and Transfer (BOT) Agreement; and, (2) in holding its 6-year holiday commenced on the date of its registration with the Board of Investments (BOI) as a pioneer enterprise and not on the date of its actual business operations. On the other hand, petitioner NPC, while admitting assumption of BPC's tax obligation under their BOT Agreement, refused to pay BPC's business tax, as it was a tax-exempt corporation under its Charter. According to NPC, the trial court erred when it held that its tax exemption privileges under its Charter were withdrawn by the passage of The Local Government Code (LGC).

The Supreme Court found no merit in the petition; hence, dismissed the same. According to the Court, Sec. 133 (g) of

Supreme Court E-Library

the Local Government Code, which proscribes local government units from levying taxes on BOI-certified pioneer enterprises for a period of six years from the date of registration, applies specifically to taxes imposed by the local government, like the business tax imposed by Batangas City on BPC. BPC's reliance on the provision of Executive Order No. 226, specifically Section 1, Article 39, Title III, was misplaced as the six-year tax holiday provided therein which commences form the date of commercial operation refers to income taxes imposed by the national government on BOI-registered pioneer firms. Clearly, it is the provision of the Local Government Code that should apply to the tax claim of Batangas City against the BPC. The 6-year tax exemption of BPC should thus commence from the date of BPC's registration with the BOI on July 16, 1993 and end on July 15, 1999. Anent NPC's exemption from all taxes under its Charter, the Court stressed that Section 193 of the Local Government Code, an express and general repeal of all statutes granting exemptions from local taxes withdrew the sweeping tax privileges previously enjoyed by the NPC under its Charter. Consequently, when NPC assumed the tax liabilities of the BPC under their 1992 BOT Agreement, the LGC, which removed PNC's tax exemption privileges, had already been in effect for six months. Thus, while BPC remains to be the entity doing business in said city, it is the NPC that is ultimately liable to pay said taxes under the provisions of both the 1992 BOT Agreement and the 1991 Local Government Code.

SYLLABUS

1. **POLITICAL LAW; LOCAL GOVERNMENT CODE; SECTION 133 (G) THEREOF; SIX-YEAR TAX EXEMPTION OF BOI-CERTIFIED PIONEER ENTERPRISES COMMENCES FROM THE DATE OF REGISTRATION WITH THE BOARD OF INVESTMENTS.**— Sec. 133(g) of the LGC, which proscribes local government units (LGUs) from levying taxes on BOI-certified pioneer enterprises for a period of *six years from the date of registration, applies specifically to taxes imposed by the local government, like the business tax imposed by Batangas City on BPC in the case at bar*. Reliance of BPC on the provision of *Executive Order No. 226*, specifically Section 1, Article 39, Title III, is clearly misplaced as the *six-year tax*

Supreme Court E-Library

holiday provided therein which commences from the date of commercial operation refers to income taxes imposed by the national government on BOI-registered pioneer firms. Clearly, it is the provision of the Local Government Code that should apply to the tax claim of Batangas City against the BPC. The 6-year tax exemption of BPC should thus commence from the date of BPC's registration with the BOI on July 16, 1993 and end on July 15, 1999.

2. **ID.; ID.; SECTION 193 THEREOF; WITHDREW THE SWEEPING TAX PRIVILEGES PREVIOUSLY ENJOYED BY THE NATIONAL POWER CORPORATION UNDER ITS CHARTER; RATIONALE.**— The effect of the LGC on the tax exemption privileges of the NPC has already been extensively discussed and settled in the recent case of *National Power Corporation v. City of Cabanatuan*. In said case, this Court recognized the *removal of the blanket exclusion of government instrumentalities from local taxation as one of the most significant provisions of the 1991 LGC*. Specifically, we stressed that *Section 193 of the LGC*, an express and general repeal of all statutes granting exemptions from local taxes, *withdrew the sweeping tax privileges previously enjoyed by the NPC under its Charter*. We explained the rationale for this provision, thus: In recent years, the increasing social challenges of the times expanded the scope of state activity, and taxation has become a tool to realize social justice and the equitable distribution of wealth, economic progress and the protection of local industries as well as public welfare and similar objectives. Taxation assumes even greater significance with the ratification of the 1987 Constitution. Thenceforth, the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges pursuant to Article X, Section 5 of the 1987 Constitution, *viz*: Section 5. Each Local Government unit shall have the power to create its own sources of revenue, to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the Local Governments. This paradigm shift results from the realization that genuine development can be achieved only by strengthening local autonomy and promoting decentralization of governance. For a long time, the country's highly centralized

Supreme Court E-Library

government structure has bred a culture of dependence among local government leaders upon the national leadership. It has also "dampened the spirit of initiative, innovation and imaginative resilience in matters of local development on the part of local government leaders. The only way to shatter this culture of dependence is to give the LGUs a wider role in the delivery of basic services, and confer them sufficient powers to generate their own sources for the purpose. To achieve this goal, x x x the 1987 Constitution mandates Congress to enact a local government code that will, consistent with the basic policy of local autonomy, set the guidelines and limitations to this grant of taxing powers x x x." To recall, prior to the enactment of the . . . Local Government Code x x x, various measures have been enacted to promote local autonomy. x x x Despite these initiatives, however, the shackles of dependence on the national government remained. Local government units were faced with the same problems that hamper their capabilities to participate effectively in the national development efforts, among which are: (a) inadequate tax base, (b) lack of fiscal control over external sources of income, (c) limited authority to prioritize and approve development projects, (d) heavy dependence on external sources of income, and (e) limited supervisory control over personnel of national line agencies. Considered as the most revolutionary piece of legislation on local autonomy, the LGC effectively deals with the fiscal constraints faced by LGUs. It widens the tax base of LGUs to include taxes which were prohibited by previous laws x x x. Neither can the NPC successfully rely on the *Basco case* as this was decided prior to the effectivity of the LGC, when there was still no law empowering local government units to tax instrumentalities of the national government.

3. **ID.; ID.; ID.; ID.; CASE AT BAR.**— Consequently, when NPC assumed the tax liabilities of the BPC under their 1992 BOT Agreement, the LGC which removed NPC's tax exemption privileges had already been in effect for six (6) months. Thus, while BPC remains to be the entity doing business in said city, it is the NPC that is ultimately liable to pay said taxes under the provisions of both the 1992 BOT Agreement and the 1991 Local Government Code.

4. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; A PARTY CANNOT BE ALLOWED TO PARTICIPATE IN A**

Supreme Court E-Library

JUDICIAL PROCEEDING, SUBMIT THE CASE FOR DECISION, ACCEPT THE JUDGMENT ONLY IF IT IS FAVORABLE TO HIM BUT ATTACK THE JURISDICTION OF THE COURT WHEN IT IS ADVERSE.— The records disclose that petitioner NPC did not oppose BPC's conversion of the petition for declaratory relief to a petition for injunction or raise the issue of the alleged lack of jurisdiction of the Makati RTC over the petition for injunction before said court. Hence, NPC is estopped from raising said issue before us. The fundamental rule is that a party cannot be allowed to participate in a judicial proceeding, submit the case for decision, accept the judgment only if it is favorable to him but attack the jurisdiction of the court when it is adverse.

APPEARANCES OF COUNSEL

Quisumbing Torres for Batangas Power Corp.
The Solicitor General for National Power Corp.

D E C I S I O N

PUNO, *J.*:

Before us are two (2) consolidated petitions for review under Rule 45 of the Rules of Civil Procedure, seeking to set aside the rulings of the Regional Trial Court of Makati in its February 27, 2002 Decision in Civil Case No. 00-205.

The facts show that in the early 1990's, the country suffered from a crippling power crisis. Power outages lasted 8-12 hours daily and power generation was badly needed. Addressing the problem, the government, through the National Power Corporation (NPC), sought to attract investors in power plant operations by providing them with incentives, one of which was through the NPC's assumption of payment of their taxes in the Build Operate and Transfer (BOT) Agreement.

On June 29, 1992, Enron Power Development Corporation (Enron) and petitioner NPC entered into a Fast Track BOT Project. Enron agreed to supply a power station to NPC and

Supreme Court E-Library

transfer its plant to the latter after ten (10) years of operation. Section 11.02 of the BOT Agreement provided that NPC shall be responsible for the payment of all taxes that may be imposed on the power station, except income taxes and permit fees. Subsequently, Enron assigned its obligation under the BOT Agreement to petitioner Batangas Power Corporation (BPC).

On September 13, 1992, BPC registered itself with the Board of Investments (BOI) as a pioneer enterprise. On September 23, 1992, the BOI issued a certificate of registration[1] to BPC as a pioneer enterprise entitled to a tax holiday for a period of six (6) years. The construction of the power station in respondent Batangas City was then completed. BPC operated the station.

On October 12, 1998, Batangas City (the city, for brevity), thru its legal officer Teodulfo A. Deguito, sent a letter to BPC demanding payment of business taxes and penalties, commencing from the year 1994 as provided under Ordinance XI or the 1992 Batangas City Tax Code.[2] BPC refused to pay, citing its tax-exempt status as a pioneer enterprise for six (6) years under Section 133 (g) of the Local Government Code (LGC).[3]

On April 15, 1999, city treasurer Benjamin S. Pargas modified the city's tax claim[4] and demanded payment of business taxes from BPC only for the years 1998-1999. He acknowledged that BPC enjoyed a 6-year tax holiday as a pioneer industry but its tax exemption period expired on September 22, 1998, six (6) years after its registration with the BOI on September 23, 1992. The city treasurer held that thereafter BPC became liable to pay its business taxes.

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[1] G.R. No. 152771, *Rollo*, p. 66.

[2] In the amount of ₱34,551,543.96; G.R. No. 152675, *Rollo*, p. 60.

[3] Republic Act No. 7160 which took effect on January 1, 1992; See letter of BPC President Miguel T. Gaffud, Jr.; G.R. No. 152675, *Rollo*, p. 61.

[4] Amount of business tax assessed was lowered to ₱28,689,732.41 as of July 1999, based on the gross receipt of every preceding year; G.R. No. 152675, *Rollo*, p. 62.

Supreme Court E-Library

BPC still refused to pay the tax. It insisted that its 6-year tax holiday commenced from the date of its commercial operation on July 16, 1993, not from the date of its BOI registration in September 1992.[5] It furnished the city with a BOI letter[6] wherein BOI designated July 16, 1993 as the start of BPC's income tax holiday as BPC was not able to immediately operate due to *force majeure*. BPC claimed that the local tax holiday is concurrent with the income tax holiday. In the alternative, BPC asserted that the city should collect the tax from the NPC as the latter assumed responsibility for its payment under their BOT Agreement.

The matter was not put to rest. The city legal officer insisted[7] that BPC's tax holiday has already expired, while the city argued that it directed its tax claim to BPC as it is the entity doing business in the city and hence liable to pay the taxes. The city alleged that it was not privy to NPC's assumption of BPC's tax payment under their BOT Agreement as the only parties thereto were NPC and BPC.

BPC adamantly refused to pay the tax claims and reiterated its position.[8] The city was likewise unyielding on its stand.[9] On August 26, 1999, the NPC intervened.[10] While admitting assumption of BPC's tax obligations under their BOT Agreement, NPC refused to pay BPC's business tax as it allegedly constituted an indirect tax on NPC which is a tax-exempt corporation under its Charter.[11]

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[5] See BPC Letter, G.R. No. 152675, *Rollo*, p. 63.

[6] G.R. No. 152771, *Rollo*, p. 67; BOI cited Article 7 (14) of Executive Order 226 to support its decision to designate a later date.

[7] G.R. No. 152675, *Rollo*, p. 64.

[8] BPC Letter, dated July 21, 1999; G.R. No. 152675, *Rollo*, pp. 65–66.

[9] See Letter of City Legal Officer; G.R. No. 152675, *Rollo*, p. 67.

[10] See Letter of NPC OIC Comie P. Doromal, G.R. No. 152675, *Rollo*, pp. 68-70.

[11] Under Section 13, Republic Act No. 6395, as amended.

Supreme Court E-Library

In view of the deadlock, BPC filed a petition for declaratory relief[12] with the Makati Regional Trial Court (RTC) against Batangas City and NPC, praying for a ruling that it was not bound to pay the business taxes imposed on it by the city. It alleged that under the BOT Agreement, NPC is responsible for the payment of such taxes but as NPC is exempt from taxes, both the BPC and NPC are not liable for its payment. NPC and Batangas City filed their respective answers.

On February 23, 2000, while the case was still pending, the city refused to issue a permit to BPC for the operation of its business unless it paid the assessed business taxes amounting to close to ₱29M.

In view of this supervening event, BPC, whose principal office is in Makati City, filed a supplemental petition[13] with the Makati RTC to convert its original petition into an action for injunction to enjoin the city from withholding the issuance of its business permit and closing its power plant. The city opposed on the grounds of lack of jurisdiction and lack of cause of action.[14] The Supplemental Petition was nonetheless admitted by the Makati RTC.

On February 27, 2002, the Makati RTC dismissed the petition for injunction. It held that: (1) BPC is liable to pay business taxes to the city; (2) NPC's tax exemption was withdrawn with the passage of R.A. No. 7160 (The Local Government Code); and, (3) the 6-year tax holiday granted to pioneer business enterprises starts on the date of registration with the BOI as provided in Section 133 (g) of R.A. No. 7160, and not on the date of its actual business operations.[15]

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[12] Docketed as Civil Case No. 00-205 and raffled to RTC Branch 66, Makati City, presided by public respondent Judge Ricardo R. Rosario; G.R. No. 152771, *Rollo*, pp. 58-65.

[13] G.R. No. 152771, *Rollo*, pp. 89-94.

[14] G.R. No. 152771, *Rollo*, pp. 97-99.

[15] Decision, *id.*, pp. 49-57.

Supreme Court E-Library

BPC and NPC filed with this Court a petition for review on *certiorari*[16] assailing the Makati RTC decision. The petitions were consolidated as they impugn the same decision, involve the same parties and raise related issues.[17]

In G.R. No. 152771, the NPC contends:

I

RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ARBITRARILY AND CAPRICIOUSLY RULED THAT PETITIONER NPC HAS LOST ITS TAX EXEMPTION PRIVILEGE BECAUSE SECTION 193 OF R.A. 7160 (LOCAL GOVERNMENT CODE) HAS WITHDRAWN SUCH PRIVILEGE DESPITE THE SETTLED JURISPRUDENCE THAT THE ENACTMENT OF A LEGISLATION, WHICH IS A GENERAL LAW, CANNOT REPEAL A SPECIAL LAW AND THAT SECTION 13 OF R.A. 6395 (NPC LAW) WAS NOT SPECIFICALLY MENTIONED IN THE REPEALING CLAUSE IN SECTION 534 OF R.A. 7160, AMONG OTHERS.

II

RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ARBITRARILY AND CAPRICIOUSLY OMITTED THE CLEAR PROVISION OF SECTION 133, PARAGRAPH (O) OF R.A. 7160 WHICH EXEMPTS "NATIONAL GOVERNMENT, ITS AGENCIES AND INSTRUMENTALITIES" FROM THE IMPOSITION OF "TAXES, FEES OR CHARGES OF ANY KIND."

III

RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ERRONEOUSLY AND CAPRICIOUSLY ADMITTED BPC's SUPPLEMENTAL PETITION FOR INJUNCTION NOTWITHSTANDING THAT IT HAD NO JURISDICTION OVER THE PARTY (CITY GOVERNMENT OF BATANGAS) SOUGHT TO BE ENJOINED.

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[16] Docketed as G.R. No. 152675.

[17] October 2, 2002 Resolution, G.R. No. 152771, *Rollo*, p. 130.

Supreme Court E-Library

In G.R. No. 152675, BPC also contends that the trial court erred: 1) in holding it liable for payment of business taxes even if it is undisputed that NPC has already assumed payment thereof; and, 2) in ruling that BPC's 6-year tax holiday commenced on the date of its registration with the BOI as a pioneer enterprise.

The issues for resolution are:

1. whether BPC's 6-year tax holiday commenced on the date of its BOI registration as a pioneer enterprise or on the date of its actual commercial operation as certified by the BOI;
2. whether the trial court had jurisdiction over the petition for injunction against Batangas City; and,
3. whether NPC's tax exemption privileges under its Charter were withdrawn by Section 193 of the Local Government Code (LGC).

We find no merit in the petition.

On the *first issue*, petitioners BPC and NPC contend that contrary to the impugned decision, BPC's 6-year tax holiday should commence on the date of its actual commercial operations as certified to by the BOI, not on the date of its BOI registration.

We disagree. Sec. 133(g) of the LGC, which proscribes local government units (LGUs) from levying taxes on BOI-certified pioneer enterprises for a period of *six years from the date of registration, applies specifically to taxes imposed by the local government, like the business tax imposed by Batangas City on BPC in the case at bar.* Reliance of BPC on the provision of *Executive Order No. 226*,[18] specifically Section 1, Article 39, Title III, is clearly misplaced as the *six-year tax holiday provided therein which commences from the date of commercial operation refers to income taxes imposed by the national government* on BOI-registered pioneer firms. Clearly, it is the provision of the Local Government Code that should apply to the tax claim of

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[18] Otherwise known as the 1987 Omnibus Investment Code, as amended in 1995 by Republic Act No. 7918.

Supreme Court E-Library

Batangas City against the BPC. The 6-year tax exemption of BPC should thus commence from the date of BPC's registration with the BOI on July 16, 1993 and end on July 15, 1999.

Anent the *second issue*, the records disclose that petitioner NPC did not oppose BPC's conversion of the petition for declaratory relief to a petition for injunction or raise the issue of the alleged lack of jurisdiction of the Makati RTC over the petition for injunction before said court. Hence, NPC is estopped from raising said issue before us. The fundamental rule is that a party cannot be allowed to participate in a judicial proceeding, submit the case for decision, accept the judgment only if it is favorable to him but attack the jurisdiction of the court when it is adverse.[19]

Finally, on the *third issue*, petitioners insist that NPC's exemption from all taxes under its Charter had not been repealed by the LGC. They argue that NPC's Charter is a special law which cannot be impliedly repealed by a general and later legislation like the LGC. They likewise anchor their claim of tax-exemption on Section 133 (o) of the LGC which exempts government instrumentalities, such as the NPC, from taxes imposed by local government units (LGUs), citing in support thereof the case of *Basco v. PAGCOR*.[20]

We find no merit in these contentions. The effect of the LGC on the tax exemption privileges of the NPC has already been extensively discussed and settled in the recent case of *National Power Corporation v. City of Cabanatuan*.[21] In said case, this Court recognized the *removal of the blanket exclusion of government instrumentalities from local taxation as one of the most significant provisions of the 1991 LGC*. Specifically, we stressed that *Section 193 of the LGC*,[22] an express and

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[19] *Roxas vs. Court of Appeals*, 391 SCRA 351 (2002).

[20] 197 SCRA 51 (1991).

[21] Promulgated April 9, 2003, G.R. No. 149110.

[22] "Sec. 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

Supreme Court E-Library

general repeal of all statutes granting exemptions from local taxes, *withdrew the sweeping tax privileges previously enjoyed by the NPC under its Charter*. We explained the rationale for this provision, thus:

> In recent years, the increasing social challenges of the times expanded the scope of state activity, and taxation has become a tool to realize social justice and the equitable distribution of wealth, economic progress and the protection of local industries as well as public welfare. and similar objectives. Taxation assumes even greater significance with the ratification of the 1987 Constitution. Thenceforth, the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges pursuant to Article X, Section 5 of the 1987 Constitution, *viz*:
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> > Section 5.– Each Local Government unit shall have the power to create its own sources of revenue, to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the Local Governments.
>
> This paradigm shift results from the realization that genuine development can be achieved only by strengthening local autonomy and promoting decentralization of governance. For a long time, the country's highly centralized government structure has bred a culture of dependence among local government leaders upon the national leadership. It has also "dampened the spirit of initiative, innovation and imaginative resilience in matters of local development on the part of local government leaders. The only way to shatter this culture of dependence is to give the LGUs a wider role in the delivery of basic services, and confer them sufficient powers to generate their own sources for the purpose. To achieve this goal, x x x the 1987 Constitution mandates Congress to enact a local government code

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hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."

Section 534, the repealing clause of the LGC, also states that all general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations or parts thereof inconsistent with the provisions of this Code are repealed or modified accordingly.

Supreme Court E-Library

that will, consistent with the basic policy of local autonomy, set the guidelines and limitations to this grant of taxing powers x x x."

To recall, prior to the enactment of the x x x Local Government Code x x x, various measures have been enacted to promote local autonomy x x x. Despite these initiatives, however, the shackles of dependence on the national government remained. Local government units were faced with the same problems that hamper their capabilities to participate effectively in the national development efforts, among which are: (a) inadequate tax base, (b) lack of fiscal control over external sources of income, (c) limited authority to prioritize and approve development projects, (d) heavy dependence on external sources of income, and (e) limited supervisory control over personnel of national line agencies.

Considered as the most revolutionary piece of legislation on local autonomy, the LGC effectively deals with the fiscal constraints faced by LGUs. It widens the tax base of LGUs to include taxes which were prohibited by previous laws x x x.

Neither can the NPC successfully rely on the *Basco* case[23] as this was decided prior to the effectivity of the LGC, when there was still no law empowering local government units to tax instrumentalities of the national government.

Consequently, when NPC assumed the tax liabilities of the BPC under their 1992 BOT Agreement, the LGC which removed NPC's tax exemption privileges had already been in effect for six (6) months. Thus, while BPC remains to be the entity doing business in said city, it is the NPC that is ultimately liable to pay said taxes under the provisions of both the 1992 BOT Agreement and the 1991 Local Government Code.

IN VIEW WHEREOF, the petitions are *DISMISSED*. No costs.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and *Tinga, JJ.*, concur.

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[23] *Supra.*