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THIRD DIVISION

[G.R. No. 170532. April 30, 2009]

THE PROVINCIAL ASSESSOR OF MARINDUQUE, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS and MARCOPPER MINING CORPORATION,** *respondents.*

SYLLABUS

1. TAXATION; REAL PROPERTY TAX CODE (P.D. NO. 464); PROPER MODE OF APPEAL FROM ASSESSMENTS; CASE AT BAR.— Previously, under Section 36 of Presidential Decree (P.D.) No. 464 or the Real Property Tax Code, the proper mode of appeal from a decision rendered by the Central Board of Assessment Appeals (CBAA) was by special civil action for *certiorari* filed directly with the Court. However, with the passage of R.A. No. 7902, granting the CA exclusive appellate jurisdiction over decisions of boards and commissions, the Court issued Revised Administrative Circular No. 1-95 which provides under paragraphs 1 and 5 that appeal from a decision of the CBAA shall be by Petition for Review with the CA. Thus, from the final judgment of the CA, appeal to the Court on questions of law is by Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. The availability of such remedy bars recourse to a special civil action for *certiorari* even if one of the grounds invoked is grave abuse of discretion. Indeed, petitioner erred in its mode of appeal by Petition for *Certiorari* under Rule 65. Nonetheless, in its Resolution of July 5, 2006, the Court gave due course to the petition for it involves not only the power of taxation of a local government unit but also its stewardship of the environment. The higher interest of public welfare dictates that the court suspend its rules *pro hac vice* in order to resolve the merits of the petition.

2. ID.; ID.; CLAIM FOR EXEMPTION FROM REAL PROPERTY TAX GRANTED TO MACHINERY AND EQUIPMENT USED FOR POLLUTION CONTROL AND UNDER SECTION 234 (C) THEREOF; MUST BE SUPPORTED BY

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EVIDENCE THAT THE PROPERTY SOUGHT TO BE EXEMPTED IS ACTUALLY, DIRECTLY AND EXCLUSIVELY USED FOR POLLUTION CONTROL AND ENVIRONMENTAL PROTECTION DURING THE PERIOD UNDER ASSESSMENT.— As held in *Mactan,* the exemption granted under Sec. 234(c) of R.A. No. 7160 to "[m]achinery and equipment used for pollution control and environmental protection" is based on usage. The term usage means direct, immediate and ***actual*** application of the property itself to the exempting purpose. Section 199 of R.A. No. 7160 defines actual use as "the purpose for which the property is principally or predominantly utilized by the person in possession thereof." It contemplates concrete, as distinguished from mere potential, use. Thus, a claim for exemption under Sec. 234(c) of R.A. No. 7160 should be supported by evidence that the property sought to be exempt is actually, directly and exclusively used for pollution control and environmental protection.

3. ID.; ID.; ID.; ID.; EVIDENTIARY REQUIREMENTS FOR EXEMPTION FROM REAL PROPERTY TAX; NOT COMPLIED WITH IN CASE AT BAR.— [Moreover,] Sec. 206 prescribes the evidentiary requirements for exemption from real property taxation, *viz.*: Sec. 206. ***Proof of Exemption*** of Real Property from Taxation***. — Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial , city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.*** If the ***required*** evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll. The burden is upon the taxpayer to prove, by clear and convincing evidence, that his claim for exemption has legal and factual basis. As aptly pointed out by petitioner, there is no allegation nor evidence in respondent's pleadings that it had complied with the procedural requirement under Sec. 206. There is nothing

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in the records which would indicate that, within 30 days from its filing of Tax Declaration No. 05-35697 on November 17, 1993, respondent filed with the provincial assessor an application for exemption or any documentary evidence of the exempt status of the subject property. What respondent submitted along with its appeal before the LBAA are Affidavit of Esquires, the project design of the subject property, as well as a Certification dated May 24, 1994 issued by Carlos J. Magno, Regional Technical Director of DENR Regional Office No. 1V. But far from proving that the subject property is tax exempt, the documents classify the subject property as anything but machinery or equipment.

4. ID.; ID.; ID.; ID.; FEATURES OF A PIECE OF MACHINERY ARE DESCRIBED IN SECTION 199 (O).—The following features of a piece of machinery are described in Section 199(o) of R.A. No. 7160: (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.

APPEARANCES OF COUSNEL

Edgardo P. Balquiedra for petitioner.

Quasha Ancheta Peña & Nolasco for private respondent.

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D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

The Provincial Assessor of the Province of Marinduque (petitioner) assails by Petition for *Certiorari* under Rule 65 of the Rules of Court the May 30, 2005 Decision[1] of the Court of Appeals (CA) which declared the Siltation Dam and Decant System of Marcopper Mining Corporation (respondent) exempt from real property tax; and the September 29, 2005 CA Resolution[2] which denied petitioner's motion for reconsideration.

Petitioner issued against respondent an Assessment Notice,[3] dated March 28, 1994, for real property taxes due on the latter's real properties, including its Siltation Dam and Decant System (subject property) at *Barangay* Lamese, Sta. Cruz, Marinduque. The subject property is covered by Tax Declaration No. 05-35697 dated November 17, 1993, and has a market value of Php36,360,996.19.[4]

Respondent paid the tax demanded,[5] but appealed the assessment before the Local Board of Assessment Appeals (LBAA) on the ground that the subject property is exempt from real property taxation under Section 234(e) of Republic Act (R.A.) No. 7160[6] or the Local Government Code of 1991, which provides:

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

xxx xxx xxx

(e) ***Machinery and equipment used for pollution control and environmental protection.***

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[1] Penned by Associate Justice Danilo B. Pine and concurred in by Associate Justices Rodrigo V. Cosico and Arcangelita Romilla-Lontok; *rollo*, p. 44.

[2] *Id.* at 61.

[3] CA *rollo*, p. 53.

[4] Exhibit "C-2", *id.* at 54.

[5] *Id.* at 56.

[6] *Id.* at 83.

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xxx xxx xxx (Emphasis supplied)

Attached to its appeal is an Affidavit issued by its Chief Mining Engineer Ricardo Esquieres, Jr. (Esquieres), stating that the subject property was constructed to comply with the condition imposed by the Department of Environment and Natural Resources (DENR) that respondent prevent run-offs and silt materials from contaminating the Mogpog and Boac Rivers; and describing the subject property as a specialized combination of essential impervious earth materials with a special provision for a spillway and a diversion canal. Esquieres explains that the subject property is intended for the purpose of pollution control, sediment control, domestic and agricultural water supply and flood control.[7]

Respondent also submitted a May 24, 1994 Certification issued by DENR Regional Technical Director Carlos J. Magno that the subject property is a "Siltation Dam ***structure*** intended primarily for pollution control of silted materials x x x."[8]

In a Decision[9] dated November 10, 1995, the LBAA dismissed respondent's appeal for having been filed out of time. It further held that the subject property is taxable as an improvement on the principal real property, citing the ruling of the Court in *Benguet Corporation v. Central Board of Assessment Appeals*[10] that a tailings dam is a permanent improvement not exempt from real property taxation.

Respondent appealed[11] to the Central Board of Assessment Appeals (CBAA) which, in a Decision[12] dated December 21, 1998, held that respondent's appeal with the LBAA was timely, but the same lacked legal basis because the subject property is

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[7] *Id.* at 45-46.

[8] CA *rollo*, p. 81.

[9] *Rollo*, p. 63.

[10] G.R. No. 106041, January 29, 1993, 218 SCRA 271.

[11] CA *rollo*, p. 118.

[12] *Rollo*, p. 73.

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neither a machinery nor an equipment but a permanent improvement, and therefore not tax exempt under Sec. 234(e) of R.A. No. 7160. Citing the definition of machinery under Sec. 199 of R.A. No. 7160, *viz.*:

> Sec. 199. Definition of Terms. – When used in this Title, the term:
>
> xxx xxx xxx
>
> (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."

the CBAA held that to be considered a "machinery," the subject property must either be a physical facility for production, or a service facility, or one that is actually, directly and exclusively used to meet the needs of the particular industry, business, or activity, and which by its very nature and purpose is designed for, or necessary to a manufacturing, mining, logging, commercial, industrial or agricultural purpose. The subject property does not produce anything nor operate as auxiliary to a production process; thus, it is neither a physical facility for production nor a service facility. It is not even necessary to the mining activity of respondent, because its purpose is merely to contain silt and sediments.[13]

Moreover, the CBAA noted that based on an ocular inspection it conducted, the subject property had not been actually used for pollution control, for it had been out of operation since 1993.[14]

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[13] *Rollo*, pp. 81-82.

[14] *Id.* at 81.

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Respondent filed a Petition/Motion for Partial Reconsideration,[15] but the CBAA denied the same in its July 27, 2000 Resolution.[16]

Respondent appealed[17] to the CA on the sole issue of whether the subject property was tax exempt under Sec. 234(e) of R.A. No. 7160.[18]

The CA reversed the LBAA and CBAA in its Decision dated May 30, 2005 herein assailed, the dispositive portion of which reads:

> THE FOREGOING DISQUISITIONS CONSIDERED, the instant petition for review is hereby GRANTED, the assailed Decision and Resolution of the Central Board of Assessment Appeals, dated December 21, 1998 and July 27, 2000, respectively are REVERSED and SET ASIDE. The petitioner's siltation dam and decant system being exempt from real property tax as it is hereby determined, the Municipal Treasurer of Sta. Cruz, Marinduque, is hereby directed to refund the tax payments made by petitioner under protest, or in lieu thereof, to credit said payments in favor of petitioner for any taxes it will be required to pay in the future.
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> SO ORDERED.[19]

The CA held that the concept of machinery under Section 199 of R.A. No. 7160 is broad enough to include a "machinery, instrument, apparatus or device consisting of parts which, functioning together, allows a person to perform a task more efficiently," such as the subject property. Not only does it function as a machinery, but it is also actually and directly used for the mining business of petitioner. The CA noted that it was constructed in compliance with a DENR requirement; thus, it "is part and parcel of [respondent's] mining operations to protect

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[15] CA *rollo*, p. 46.

[16] *Rollo*, p. 84.

[17] CA *rollo*, p. 9.

[18] *Id.* at 7.

[19] *Rollo*, p. 59.

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the environment within which it operates xxx [i]t is a device used for cleaning up after production, in order to clean the water which must necessarily flow into the Mogpog and Boac Rivers."[20]

Thus, the CA held that the subject property is exempt from real property taxation under Section 91 of R.A. No. 7942 or the Philippine Mining Act of 1995,[21] *viz.*:

> Sec. 91. *Incentives for Pollution Control Devices*. — ***Pollution control devices acquired, constructed or installed by contractors shall not be considered as improvements on the land or building where they are placed, and shall not be subject to real property and other taxes or assessments***: Provided, however, That payment of mine wastes and tailings fees is not exempted. (Emphasis supplied)

It qualifies as a pollution control device defined under DENR Administrative Order No. 95-23 as an "***infrastructure***, machinery, equipment, and/or improvement used for impounding, treating or neutralizing, precipitating, filtering, conveying and cleansing mine industrial waste and tailing, as well as eliminating and reducing hazardous effects of solid particles, chemicals, liquids or other harmful by-products and gases emitted from any facility utilized in mining operations for their disposal."[22] The definition "extends to all kinds of pollution control devices acquired, constructed, or installed on the land or buildings of the mining corporation."[23]

Finally, the CA ruled that, contrary to the view of the CBAA, the non-operational state of the subject property "does not remove it from the purview of the clear provisions of R.A. No. 7160 x x x and R.A. No. 7942 x x x [i]n the absence of clear and

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[20] *Rollo*, pp. 55-56.

[21] *Id.* at 57.

[22] *Id.* at 57-58.

[23] *Id.* at 58.

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convincing evidence that the siltation dam and decant system was inutile to achieve its purpose prior to being damaged, and continued to be so x x x."[24]

Petitioner filed a Motion for Reconsideration[25] but the CA denied it in a Resolution[26] dated September 29, 2005.

Hence, the present petition, raising two main issues:

I. The propriety of the present action for *certiorari* under Rule 65 of the Rules of Court:

i. Whether or not there is available to Petitioner, the remedy of appeal or other plain, speedy and adequate remedy in the ordinary course of law;

ii. Whether or not a petition for review on *certiorari* under Rule 45 of the Rules of Court is the appropriate remedy;

iii. Whether or not, if available to the Petitioner, the remedy of appeal or other plain, speedy and adequate remedy in the ordinary course of law were lost through the fault of the Petitioner.

II. Whether or not the Respondent court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered the Decision and its subsequent Resolution, exempting the siltation dam and decant system of Respondent Marcopper from the real property tax imposed by the Provincial Government of Marinduque.

i. Respondent Court of Appeals committed grave abuse of discretion amounting to lack or excess of *jurisdiction when it whimsically, arbitrarily and capriciously disregarded by treating as though non-existent, the established and undisputed fact that the Siltation Dam Decant System of Respondent Marcopper was damaged and has not been in operation since 1993 up to, at the very least, the ocular inspection conducted by the CBAA in November 1996, if not*

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[24] *Id.*

[25] CA *rollo*, p. 318.

[26] *Rollo*, p. 61.

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up to the present, given the failure of Respondent Marcopper to claim otherwise;

ii. Respondent Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it whimsically, arbitrarily and capriciously disregarded, by treating as though non-existent, the established and undisputed fact that Respondent Marcopper does not have a certificate of tax exemption from the DENR under the provisions of the Philippine Mining Act of 1995 so as to entitle it to exemption from the realty tax imposed by the local government of Marinduque.

iii. Respondent Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when, inspite of the non-operation during the relevant years of the Siltation Dam and Decant System, the lack of certificate of tax exemption therefor and the clear and unambiguous provisions of the Local Government Code and the Philippine Mining Act of 1995, it declared the aforesaid real property as a machinery and equipment or a pollution control device that is exempt from realty tax.[27] (Emphasis supplied)

Petitioner posits that the CA committed not only a reversible error in holding that the subject property is tax exempt under Sec. 234(e) of R.A. No. 7160, but also a grave abuse of discretion in discarding key factual findings of both the LBAA and the CBAA regarding the nature of the subject property — which factual findings respondent did not even controvert. Petitioner points out that the CBAA found that the subject property had not been used for pollution control because it had been out of operation since 1993;[28] and respondent admitted this in its Petition for Review before the CA where it categorically stated that "[w]hat is not denied, however, which even the *barangay* resolutions state was that the siltation dam was damaged in 1993 when a typhoon hit Marinduque. This naturally affected the environment in the area for which reason Marcopper

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[27] Petitioner's Memorandum, *rollo*, pp. 503-504.

[28] Petition, *id.* at 14.

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specifically wanted to repair the dam."[29] Yet, petitioner argues, the CA completely ignored such undisputed fact by holding that there is "absence of clear and convincing evidence that the siltation dam and decant system was inutile to achieve its purpose prior to being damaged, and continued to be so x x x."[30]

Petitioner further cites the finding of the CBAA that respondent did not obtain from the DENR a certification of the tax exempt classification of the subject properties. This CBAA finding was not controverted by respondent in its pleadings before the CA; yet, said court completely glossed over this matter and declared the subject properties tax exempt.[31]

On the other hand, respondent contends that petitioner's mode of appeal from the CA Decision should have been a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed within fifteen (15) days from October 13, 2005, the day petitioner received notice of the CA Resolution denying its motion for reconsideration. That petitioner filed instead a Petition for *Certiorari* on December 12, 2005 — the 60th day from receipt of the CA Resolution — indicates that it resorted to a special civil action for *certiorari* as a substitute for the appeal it had lost;[32] worse, petitioner raised factual issues which the Court cannot resolve for it is no trier of facts.[33]

The petition has merit.

On the proper mode of appeal

Previously, under Section 36 of Presidential Decree (P.D.) No. 464 or the Real Property Tax Code, the proper mode of appeal from a decision rendered by the CBAA was by special

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[29] Petition for Review in CA-G.R. No. 60672, CA *rollo*, p. 21.

[30] CA Decision, *rollo*, p. 58.

[31] Petition, *rollo*, pp. 16-17.

[32] Memorandum for Respondent, *id.* at 560-563.

[33] *Id.* at 564.

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civil action for *certiorari* filed directly with the Court.[34] However, with the passage of R.A. No. 7902,[35] granting the CA exclusive appellate jurisdiction over decisions of boards and commissions, the Court issued Revised Administrative Circular No. 1-95[36] which provides under paragraphs 1[37] and 5[38] that appeal from a decision of the CBAA shall be by Petition for Review with the CA. Thus, from the final judgment of the CA, appeal to the Court on questions of law is by Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.[39] The availability of such

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[34] *Caltex (Phil.) Inc. v. Central Board of Assessment Appeals*, G.R. No. 50466, May 3, 1982, 114 SCRA 296, 300. See also *Benguet Corporation v. Central Board of Assessment Appeals*, *supra*, note 10 at 279 and *Sesbreño v. Central Board of Assessment Appeals*, G.R. No. 106588, March 24, 1997, 270 SCRA 360, 369.

[35] An Act Expanding the Jurisdiction of the Court of Appeals; approved February 23, 1995.

[36] Rules Governing Appeals to the Court of Appeals from Judgments or Final Orders of the Court of Tax Appeals and Quasi-judicial Agencies; effective June 1, 1995.

[37] 1. *Scope.* — These rules shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Office of the President, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunication Commission, Department of Agrarian Reform under Republic Act 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, and Construction Industry Arbitration Commission.

[38] 5. *How appeal taken.* — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

[39] *Macasasa v. Sicad*, G.R. No. 146547, June 20, 2006, 491 SCRA 368, 375-376.

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remedy bars recourse to a special civil action for *certiorari* even if one of the grounds invoked is grave abuse of discretion.[40]

Indeed, petitioner erred in its mode of appeal by Petition for *Certiorari* under Rule 65.[41] Nonetheless, in its Resolution[42] of July 5, 2006, the Court gave due course to the petition for it involves not only the power of taxation of a local government unit but also its stewardship of the environment. The higher interest of public welfare dictates that the Court suspend its rules *pro hac vice* in order to resolve the merits of the petition.[43]

On whether the subject property is exempt from real property taxation

It should be borne in mind that the protest and appeals filed by respondents before the LBAA, CBAA, and CA refer to

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[40] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 137.

[41] See *Talento v. Escalada*, G.R. No. 180884, June 27, 2008, 556 SCRA 491, 498.

[42] *Rollo,* p. 492.

[43] *People v. Zulueta*, 89 Phil. 752, 756-757 (1951). See *Hydro Resources Contractors Corp. v. Court of Appeals*, G.R. No. 85714, November 29, 1991, 204 SCRA 309, 315. In *Sanchez v. Court of Appeals* (345 Phil. 155, 179 [1997]), the Court noted that in "Remedial Law Compendium," Volume One, p. 708, (1997), Justice Florenz D. Regalado enumerated the following exceptions.: "(1) where the appeal does not constitute a speedy and adequate remedy (*Salvadades v. Pajarillo*, 78 Phil. 77), as where 33 appeals were involved from orders issued in a single proceeding which will inevitably result in a proliferation of more appeals (*PCIB v. Escolin*, G.R. Nos. L-27860 and L-27896, Mar. 29, 1974); (2) where the orders were also issued either in excess of or without jurisdiction (*Aguilar v. Tan*, G.R. No. L-23600, June 30, 1970, *Cf. Bautista v. Sarmiento*, G.R. No. L-45137, September 23, 1985); (3) for certain special consideration, as public welfare or public policy (See *Jose v. Zulueta*, G.R. No. L-16598, May 31, 1961 and the cases cited therein); (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy (*People v. Abalos*, G.R. No. L-29039, Nov. 28, 1968); (5) where the order is a patent nullity (*Marcelo v. De Guzman*, G.R. No. L-29077, June 29, 1982); and (6) where the decision in the *certiorari* case will avoid future litigations (*St. Peter Memorial Park, Inc. v. Campos*, G.R. No. L-38280, Mar. 21, 1975)."

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the Assessment Notice dated March 28, 1994 and **effective January 1, 1995**.[44] No other assessment notice is under question.

The disputed assessment notice having taken effect on January 1, 1995, its validity is determined by the provisions of Title II (Real Property Taxation) of R.A. No. 7160, effective January 1, 1992. R.A. No. 7942 has no bearing on the matter, for this law came into effect only on April 14, 1995. Hence, reference to R.A. No. 7942 by the CA and the respondent are all out of place.

Title II of R.A. No. 7160 governs the administration, appraisal, assessment, levy and collection of real property tax. Section 234 thereof grants exemption from real property taxation based on ownership, character or usage. As the Court explained in *Mactan Cebu International Airport Authority v. Marcos*,[45] to wit:

> Section 234 of the LGC provides for the exemptions from payment of real property taxes and withdraws previous exemptions therefrom granted to natural and juridical persons, including government-owned and controlled corporations, except as provided therein.
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> xxx xxx xxx
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> These exemptions are based on the ownership, character, and use of the property. Thus:
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> (a) Ownership Exemptions. Exemptions from real property taxes on the basis of ownership are real properties owned by: (i) the

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[44] Sec. 221 of R.A. No. 7160, which provides;

Sec. 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 (Previously Section 24 of Presidential Decree No. 464 (PD 464) or the Real Property Tax Code.) See *Province of Nueva Ecija v. Imperial Mining Co., Inc.*, G.R. No. 59463, November 19, 1982, 118 SCRA 632.

[45] G.R. No. 120082, September 11, 1996, 261 SCRA 667.

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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) non-profit 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. (Emphasis supplied)

As held in *Mactan*, the exemption granted under Sec. 234(e) of R.A. No. 7160 to "[m]achinery and equipment used for pollution control and environmental protection" is based on usage. The term usage means direct, immediate and ***actual*** application of the property itself to the exempting purpose.[46] Section 199 of R.A. No. 7160 defines actual use as "the purpose for which the property is principally or predominantly utilized by the person in possession thereof." It contemplates concrete, as distinguished from mere potential, use. Thus, a claim for exemption under Sec. 234(e) of R.A. No. 7160 should be supported by evidence that the property sought to be exempt is actually, directly and exclusively used for pollution control and environmental protection.[47]

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[46] *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, June 29, 2004 , 433 SCRA 119, 137.

[47] See Senator Aquilino Pimentel, *The Local Government Code Revisited*, Manila (2007), p. 444. See also *Light Rail Transit Authority v. Central Board of Assessment Appeals*, G.R. No. 127316, October 12, 2000, 342 SCRA 692.

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The records yield no allegation or evidence by respondent that the subject property was actually, directly and exclusively used for pollution control and environmental protection ***during the period covered by the assessment notice under protest***. Rather, the finding of the CBAA that said property "apparently out of commission and not apt to its function as would control pollution and protect the environment"[48] stands undisputed; such finding is even admitted by respondent when, to repeat, in its Petition for Review before the CA, it categorically stated that "[w]hat is not denied, however, which even the *barangay* resolutions state was that the siltation dam was damaged ***in 1993*** when a typhoon hit Marinduque. This naturally affected the environment in the area for which reason Marcopper specifically wanted to repair the dam."[49]

Moreover, Sec. 206 prescribes the evidentiary requirements for exemption from real property taxation, *viz.*:

> Sec. 206. ***Proof of Exemption*** of Real Property from Taxation. — ***Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents***. If the ***required*** evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll. (Emphasis supplied)

The burden is upon the taxpayer to prove, by clear and convincing evidence, that his claim for exemption has legal and factual basis.[50]

As aptly pointed out by petitioner, there is no allegation nor evidence in respondent's pleadings that it had complied with the procedural requirement under Sec. 206. There is nothing in

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[48] *Rollo*, p. 81.

[49] Petition for Review in CA-G.R. No. 60672, CA *rollo*, p. 21.

[50] *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, February 16, 2007, 516 SCRA 93, 103.

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the records that would indicate that, within 30 days from its filing of Tax Declaration No. 05-35697 on November 17, 1993,[51] respondent filed with the provincial assessor an application for exemption or any documentary evidence of the exempt status of the subject property.

What respondent submitted along with its appeal before the LBAA are Affidavit of Esquieres,[52] the project design of the subject property,[53] as well as a Certification[54] dated May 24, 1994 issued by Carlos J. Magno, Regional Technical Director of DENR Regional Office No. IV.

But far from proving that the subject property is tax exempt, the documents classify the subject property as anything but machinery or equipment.

The DENR Certification classifies the subject property as a "***structure*** intended primarily for pollution control of silted materials in order to protect the environmental degredation of Maguila-guila, Mangamu-Mogpog River system from getting turbid."[55] That the subject property is a structure is further underscored by the project design which describes the subject property as a "zoned earth siltation dam"[56] composed of a clay core consisting of clayey materials or impervious fill, a random fill made up of heavily to intensely fractured metarock, and filters comprised of course tailings, river sand deposits and course filter gravels.[57]

It is described in greater detail by respondent's Chief Mining Engineer Ricardo Esquieres, Jr. in an October 11, 1994 Affidavit[58] attached to respondent's appeal[59] before the LBAA, thus:

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[51] CA *rollo*, p. 55.

[52] *Id.* at 63-68.

[53] *Id.* at 72-80.

[54] *Id.* at 81.

[55] *Id.*

[56] *Id.* at 72.

[57] *Id.* at 77-78.

[58] *Id.* at 63.

[59] *Id.* at 61.

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7. The siltation dam and decant system was constructed sometime in August 1992. It is not only a specialized combination of essential impervious earth materials which provide adequate strength and detention of turbid streamwater. It also has special provisions like spillway and diversion canal which also promote its integrity by providing a safe outlet of the impounded streamwater. Basically, the zoned-earth dam is composed of a clay core, random fill and filter drains.

1. Clay core – impervious central portion of the dam to be inclined with a width to heat ratio greater than 1.0 and designed to be thick – thick enough to reduce seepage.

2. Random fill – relatively more permeable than the clay core and of greater strength. Placed at the upstream face of the dam (to serve as armor or ballast against slope stablity).

3. Filters – designed to ensure that the dam structure is always in its full drained state, thus, relieving any pore pressure that may develop behind the dam.[60]

Therefore, by design, composition and function, the subject property is a structure adhered to the soil, and has neither a mechanical contrivance, instrument, tool, implement, appliances, apparatus, nor paraphernalia that produces a mechanical effect or performs a mechanical work of any kind.[61] It meets none of the following features of a machinery as described in Section 199(o) of R.A. No. 7160:

(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.

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[60] *Id.* at 65.

[61] See *Central Azucarera de La Carlota v. Coscolluela*, 44 Phil. 527 (1923).

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That a structure such as the subject property does not qualify as a machinery or equipment used for pollution control as contemplated under R.A. No. 7160 is evident from the adoption of an expanded definition of *pollution control device* in R.A. No. 7942. Under Section 3 (am) thereof, a pollution control device now also refers to "infrastructure" or "improvement," and not just to machinery or equipment. This new concept, however, cannot benefit respondent, for the assessment notice under review pertains to real property tax assessed prior to the amendment of Sec. 234 (e) of R.A. No. 7160 by Sec. 91 in relation to Sec. 3 (am) of R.A. No. 7942. It is settled that tax laws are prospective in application, unless expressly provided to apply retroactively.[62] R.A. No. 7942 does not provide for the retroactive application of its provisions.

In sum, the CA committed grave abuse of discretion in ignoring irrefutable evidence that the subject property is not a machinery used for pollution control, but a structure adhering to the soil and intended for pollution control, but has not been actually applied for that purpose during the period under assessment.

WHEREFORE, the petition is *GRANTED*. The Decision dated May 30, 2005 and Resolution dated September 29, 2005 are *REVERSED* and *SET ASIDE*. The Assessment Notice dated March 28, 1994 is declared *VALID* under the then applicable Republic Act No. 7160.

No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Peralta, JJ.,* concur.

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[62] *Pansacola v. Commissioner of Internal Revenue*, G.R. No. 159991, November 16, 2006, 507 SCRA 81, 92-93; *Abello v. Commissioner of Internal Revenue*, G.R. No. 120721, February 23, 2005, 452 SCRA 162, 173.