

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**NATIONAL FOOD
AUTHORITY**, Represented by
Acting Regional Manager
Felimon T. Cangrejo of NFA-
ARMM,

Petitioner,

- versus -

**MUNICIPALITY OF
SHARIFF AGUAK,
TREASURER OF SHARIFF
AGUAK MAGUINDANAO
AND MUNICIPAL
ASSESSOR OF SHARIFF
AGUAK MAGUINDANAO,**
Respondents.

CTA EB NO. 2465
(CTA AC No. 202)

Present:

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

Promulgated:

OCT 31 2023

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DECISION

FERRER-FLORES, J.:

Before this Court is a *Petition for Review with Motion for Suspension of Collection of Tax* filed on May 26, 2021 by the National Food Authority (**NFA/petitioner**) against Municipality of Shariff Aguak, Treasurer of Shariff Aguak Maguindanao and Municipal Assessor of Shariff Aguak Maguindanao (**Respondents**), appealing the *Decision dated July 22, 2020 (assailed Decision)*¹ and the *Resolution dated March 4, 2021 (assailed Resolution)*² rendered by the Second Division of this Court, whereby the Court in Division dismissed the case for failure of petitioner to pay the real property tax (RPT)

¹ Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justice Jean Marie A. Bacorro-Villena; *Rollo*, pp. 42 to 56.

² *Rollo*, pp. 58 to 61.

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assessment under protest and exhaust all available administrative remedies before resorting to Courts.

THE PARTIES

Petitioner is a government entity created by virtue of Presidential Decree (PD) No. 4 s. 1972,³ as amended by PD No. 1485 s. 1978,⁴ under the name of “National Grains Authority” (NGA), now the NFA, as reconstituted under PD No. 1770 s. 1981.⁵

Respondent Municipality of Shariff Aguak is a political subdivision created pursuant to law while respondents municipal treasurer and assessor are impleaded in their respective capacities.

THE ANTECEDENT FACTS

As found by the Court in Division, the facts are as follows:⁶

“On February 2, 2017, petitioner received from respondent municipal treasurer, Ms. Nadine G. Bayhon, a Notice of Real Property Tax (RPT) Delinquency in the amount of ₱1,815,313.82.

On April 3, 2017, petitioner filed a Petition for Prohibition/ Injunction with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction before the lower court.

In the said Petition before the lower court, petitioner argues that it is a government instrumentality exempt from paying RPT under Presidential Decree No. 4, as amended.

On January 31, 2018 and March 21, 2018, the lower court issued the assailed orders dismissing the case for failure of petitioner to file its memorandum.” (*Citations omitted*)



³ Providing for the Development of the Rice and Corn Industry and Creating for this Purpose the National Grains Authority, *National Grains Industry Development Act*, PD No. 4, September 26, 1972.

⁴ Further Amending Certain Provisions of the National Grains Industry Development Act, *National Grains Authority Act*, PD No. 1485, June 11, 1978.

⁵ Reconstituting the National Grains Authority to the National Food Authority, Broadening Its Functions and Powers and For Other Purposes, *National Food Authority Act*, PD No. 1770, January 14, 1981.

⁶ Docket, p. 290.

THE PROCEEDINGS BEFORE THE COURT IN DIVISION

On May 15, 2018, petitioner filed the *Petition for Review with Motion for Suspension of Collection of Tax*.⁷ The case was then raffled to this Court's Second Division and docketed as CTA AC No. 202.

The Court in Division granted petitioner's *Motion for Suspension of Collection of Tax* in the Resolution dated April 11, 2019. The Court also ordered the parties to file their respective memoranda, among others.⁸

Petitioner filed its *Memorandum (For Petitioner)* on May 17, 2019,⁹ while respondent failed to file the same as per *Records Verification* issued by this Court's Judicial Records Division on July 22, 2019.¹⁰

On July 29, 2019, the case was submitted for decision.¹¹

The Court in Division rendered the assailed Decision on July 22, 2020, denying the petition for lack of merit.¹²

In the assailed Decision, the Court in Division held that the failure of the petitioner to file its memorandum is not a ground for the dismissal of the petition under Rule 65 of the Rules of Court (ROC).¹³ Nevertheless, the Court in Division ruled that the petitioner availed of the wrong remedy of prohibition as it had plain, speedy, and adequate remedies that it failed to avail.¹⁴ The Court in Division further explained that, since petitioner's claim for exemption from payment of RPT is in the nature of questioning the reasonableness or correctness of the assessment, it should have first exhausted the administrative remedies under Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code (LGC) of 1991. Particularly, there must first be payment under protest before the provincial, city treasurer or municipal treasurer, before the same is elevated to the Local Board of Assessment Appeals (LBAA) and thereafter, to the Central Board of Assessment Appeals (CBAA), in case of an unfavorable decision. For the foregoing lapses of the petitioner, the assessment already became final and the collection of the deficiency RPT should naturally take its course.

⁷ Docket, pp. 8 to 34.

⁸ *Id.*, pp. 234 to 243.

⁹ *Id.*, pp. 244 to 270.

¹⁰ *Id.*, p. 273.

¹¹ *Id.*, p. 287.

¹² *Id.*, pp. 289 to 303.

¹³ *Id.*, pp. 291 to 292.

¹⁴ *Id.*, pp. 292 to 294.

Considering the foregoing, the Court in Division found that the dismissal of the instant case was in order.

Aggrieved, petitioner filed a *Motion for Reconsideration (of the Decision dated 22 July 2020)* on September 4, 2020.¹⁵

On March 4, 2021, the Court in Division promulgated the assailed Resolution denying the petitioner's motion for reconsideration for lack of merit.¹⁶

Hence, the instant Petition for Review.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

In the instant petition filed on May 26, 2021, petitioner prays for the (1) reversal of the assailed Decision and assailed Resolution, (2) recognition of NFA as a government instrumentality exempt from payment of RPT, (3) declaration as invalid of the Notice of Delinquency issued to the petitioner, and (4) grant of petitioner's *Motion for Suspension of Collection of Taxes* pending the resolution of the case.¹⁷

On June 24, 2021, the Court *En Banc* ordered the petitioner to submit the requisite *Affidavit of Service*, as proof of service through registered mail;¹⁸ thus, petitioner filed its *Compliance with Manifestation* dated July 19, 2021.¹⁹ Thereafter, the Court *En Banc* directed the respondents to comment on petitioner's *Petition for Review* and *Motion for Suspension of Collection of Tax*.²⁰

The respondents failed to comment on the instant petition per *Records Verification* dated June 30, 2022.²¹

On July 19, 2022, the case was submitted for decision.²²

¹⁵ Docket, pp. 304 to 316.

¹⁶ *Id.*, pp. 322 to 325.

¹⁷ *Rollo*, p. 33.

¹⁸ *Id.*, pp. 72 to 74.

¹⁹ *Id.*, pp. 75 to 78.

²⁰ *Id.*, pp. 84 to 85.

²¹ *Id.*, p. 94.

²² *Id.*, pp. 96 to 97.

THE ISSUES

Whether the Honorable Court in Division erred in holding that:

1. Petitioner failed to avail of other plain, speedy and adequate remedies laid down under Sections 252, 226, and 229 of the LGC of 1991, as amended; and
2. Petitioner is not exempt from the payment of RPT.

THE ARGUMENTS

Petitioner argues that the administrative remedies under Sections 252, 226, and 229 of the LGC of 1991 are available only when the taxpayer is questioning the reasonableness of the amount of assessment involved, which is not the case of the petitioner. Petitioner posits that it is questioning the “very authority” of respondents to assess, impose, and collect RPT against the petitioner on the ground that it is a government instrumentality exempt from payment of RPT. Thus, it has no other plain, speedy and adequate remedy but to file the said case for prohibition.

Petitioner also argues that it is a government instrumentality exempt from payment of RPT primarily because its main function is obviously a governmental function and that it is neither a stock, non-stock, nor a government-owned or controlled corporation (GOCC) which, generally, is subject to RPT.

THE RULING OF THE COURT *EN BANC*

The instant Petition for Review was timely filed.

Section 3 (b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

“Sec. 3. Who may appeal; period to file petition. — xxx xxx xxx

- (b) **A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit

for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.” (*Emphasis supplied*)

Based on the foregoing, petitioner had fifteen (15) days from receipt of the assailed Resolution within which to file its Petition for Review.

Records show that the assailed Resolution of the Court in Division, dated March 4, 2021, was served through registered mail on even date. Upon examination of the Registry Return Receipt (RRR), the mail matter was received by a certain “Edrose Lobos”; however, the date of receipt was not evident on the face of the RRR.²³ In relation thereto, in its petition, petitioner alleged that it received the assailed Resolution dated March 4, 2021 on **March 24, 2021**.²⁴ Petitioner, thus, had fifteen (15) days from such receipt, or until **April 8, 2021**, to file its Petition for Review.

Note, however, that, in view of the implementation of the Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ) in affected areas, the Supreme Court issued various administrative circulars²⁵ ordering the physical closure of courts in certain areas, including the National Capital Region. As such, the filing and service of motions, pleadings, and other court submissions were suspended beginning **March 29, 2021**. The circulars provided that the resumption thereof shall be seven (7) calendar days counted from the first day of the physical reopening of the relevant court.

Pursuant to Supreme Court Administrative Circular (AC) No. 33-2021 dated May 14, 2021, the CTA physically reopened on **May 17, 2021**. Counting seven (7) calendar days from the reopening of the CTA on May 17, 2021, the period for filing and service of motions, pleadings, and other court submissions resumed on **May 24, 2021**.

Considering that petitioner had until April 8, 2021 within which to file its Petition for Review before the Court *En Banc* and that the period for filing and service of motions, pleadings, and other court submissions was suspended beginning **March 29, 2021** and resumed on **May 24, 2021**, petitioner had ten (10) days left from May 24, 2021 or until **June 3, 2021** within which to file its petition. As such, the instant petition was timely filed on **May 27, 2021**.

²³ Docket, p. 321.

²⁴ *Timeliness of the Petition*, Petition for Review, *Rollo*, pp. 4 to 7.

²⁵ Administrative Circular (AC) No. 14-2021 dated March 28, 2021, AC No. 15-2021 dated April 3, 2021, AC No. 21-2021 dated April 10, 2021, AC No. 22-2021 dated April 14, 2021, and AC No. 29-2021 dated April 30, 2021

We now proceed to the merits of the case.

Exhaustion of administrative remedies does not apply when the issue involves a pure question of law; thus, petitioner properly availed the remedy of Petition for Prohibition before the Regional Trial Court (RTC).

To recall, petitioner filed before the RTC a Petition for Prohibition under Rule 65 of the ROC without first availing the administrative remedies available under the LGC of 1991. Petitioner questioned the respondents' RPT assessment arguing that it is a government instrumentality exempt from RPT based on Sections 133(o) and 234(a) of the LGC of 1991.²⁶ On the contrary, respondents claimed that the petitioner is a GOCC and, thus, subject to RPT.

This Court finds for the petitioner.

In *Alejandro B. Ty, et al. vs. The Hon. Aurelio C. Trampe, et al.*,²⁷ the Supreme Court held that the rule on exhaustion of administrative remedies does not apply in cases involving questions of law, to wit:

"xxx Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law. In the present case, the parties, even during the proceedings in the lower court on 11 April 1994, already agreed "that the issues in the petition are legal", and thus, no evidence was presented in said court.

In laying down the powers of the Local Board of Assessment Appeals, R.A. 7160 provides in Sec. 229 (b) that "(t)he proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts . . .". It follows that appeals to this Board may be fruitful only where questions of fact are involved. Again, the protest contemplated under Sec. 252 of R.A. 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. **In the case at bench however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in**

²⁶ Par. 38, Petition for Review, *Rollo*, p. 18.

²⁷ G.R. No. 117577, December 1, 1995.

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the tax but attacks on the very validity of any increase.” (*Emphasis supplied; citations omitted*)

The above rule was reiterated by the Supreme Court in the recent case of *Light Rail Transit Authority (LRTA) vs. City of Pasay*²⁸ (*LRT case*). The Supreme Court discussed that, in general, where administrative remedies are available, petitions for the issuance of the extraordinary writs should not be granted by the courts in order to give the administrative body the opportunity to decide the matter by itself correctly, and to prevent unnecessary and premature resort to courts. However, this principle of exhaustion of administrative remedies is not without exception. We quote:

“Jurisprudence would reveal that the Court has set aside such rule: (1) when there is a violation of due process, (2) **when the issue involved is purely a legal question**, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction, (4) when there is estoppel on the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim, (9) when the subject matter is a private land in land case proceedings, (10) **when the rule does not provide a plain, speedy and adequate remedy**, and (11) when there are circumstances indicating the urgency of judicial intervention.” (*Emphasis and underscoring not ours*)

In the *LRT case*, LRTA filed a Petition for *Certiorari*, Prohibition and *Mandamus* under Rule 65 of the ROC (Rule 65 petition) before the RTC questioning the RPT assessments made against it by the City on the basis that LRTA is a government instrumentality, instead of a GOCC, exempt from RPT. The Court found that the Rule 65 petition was a proper remedy as the issues involved were purely legal issues, to wit:

“The issues involved in the instant petition are purely legal issues

The issues involved in this petition are purely legal issues. It is evident that from the outset, LRTA primarily intended to question the authority of the tax assessor to impose tax assessments on its property, and the authority of the treasurer to collect said tax, as LRTA claims to be a non-taxable entity. This can be seen when the LRTA deliberately chose to file the remedies of *certiorari*, prohibition and *mandamus*, instead of just filing a protest to contest the amounts in the assessment. Rule 65 of the Rules of Court provides:

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It must be emphasized that the very nature of a petition under Rule 65 involves questions of jurisdiction. Questions regarding jurisdiction are necessarily legal as the existence or extent of an entity's jurisdiction over a

²⁸ G.R. No. 211299, June 28, 2022.

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certain subject matter is determined by what is conferred by law. Being a legal question, there was no need for the LRTA to exhaust administrative remedies, even assuming that such remedies exist.

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The administrative protest under Section 226 of Republic Act No. (RA) 7160, or the Local Government Code (LGC) is not a plain, speedy and adequate remedy

Moreover, there are no competent administrative tribunals that may grant the relief that LRTA is seeking. The questions of law interposed in this instant petition may only be appropriately addressed by the courts, and are the proper subjects of a petition for prohibition under Rule 65.

The CA erred in applying the case of *Napocor v. Province of Quezon (Napocor)*, as the circumstances in that case drastically differ from the instant case. As correctly pointed out by LRTA in its Motion for Reconsideration before the CA, it has not raised any issue concerning the amount being assessed, but it specifically questioned the authority of the city assessor from the very start.

To put Our pronouncements in *Napocor* in its proper perspective, it must be noted that the petitioners therein were claiming a tax exemption under Section 206 of the LGC, which provides:

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

In the contrast with *Napocor*, the LRTA, in filing a Petition for Certiorari, Prohibition and Mandamus with the RTC at the earliest instance, clearly intended to question the local assessor's authority to assess real property taxes on its property and the local treasurer's authority to collect such taxes. The LRTA never invoked Section 206 of the LGC, or even bother to file a protest under Section 252, as the LRTA is not merely claiming tax-exemption on some or all of its properties (which admits the local assessor's authority to assess), but it has been arguing since the beginning that both the city assessor and treasurer do not have the authority to assess and collect local real property tax on its properties, which is similar to what was being claimed in Ty." (*Underscoring supplied; Citations omitted*)

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In the instant case, the petitioner, in filing with the RTC a Petition for Prohibition under Rule 65, clearly intended to question the municipal assessor's authority to assess RPT against it. In fact, a perusal of the petition reveals that the petitioner is questioning the "very authority" of the respondents to assess, impose, and collect RPT against it, arguing that it is a government instrumentality exempt from payment of RPT. Clearly, the issues involved are questions of law which would justify the petitioner's non-exhaustion of administrative remedies under the LGC of 1991.

Based on the foregoing, petitioner availed of the proper remedy when it filed the Petition for Prohibition under Rule 65 before the RTC. As such, the Court in Division erred in dismissing the case for petitioner's failure to exhaust available administrative remedies.

Considering that the remedy availed of was proper, we now proceed to determine whether or not the petitioner is a taxable government entity.

***Taxability of government
instrumentalities and GOCCs for
RPT purposes***

Section 232 of the LGC of 1991 provides for the power of the LGUs to levy taxes on real property not specifically exempted under the law, to wit:

"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 133(o) of the LGC of 1991 limits said power of the LGUs providing, among others, that the same shall not extend to the levy of taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

On the other hand, Section 234 of the LGC of 1991 specifically exempts certain real properties from RPT as follows:

"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, non-profit 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.” (Emphasis supplied)

Based on the aforecited provisions, in general, government instrumentalities are exempt from RPT. On the other hand, with the enactment of the LGC of 1991, any exemption from payment of RPT previously granted to, or presently enjoyed by GOCCs, among others, was withdrawn upon the effectivity of said Code. As such, GOCCs are now subject to RPT.

Since petitioner claims that it is not a GOCC but a government instrumentality exempt from RPT pursuant to the Sections 133(o) and 234(a) of the LGC of 1991,²⁹ it now becomes imperative to determine whether petitioner is a government instrumentality or a GOCC.

Petitioner is a GOCC; thus, it is not exempt from RPT.

Section 2 of Executive Order (EO) No. 292, otherwise known as the Administrative Code of 1987, defines a GOCC as follows:

²⁹ Par. 38, Petition for Review, *Rollo*, p. 18.

“SECTION 2. General Terms Defined. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

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- (13) **Government-owned or controlled corporation** refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.” (*Emphasis supplied*)

Based on the above definition, it can be gleaned that a GOCC is one that possesses the following characteristics:

- (1) It is organized as a stock or non-stock corporation;
- (2) It is vested with functions relating to public needs whether governmental or proprietary in nature; and
- (3) It is owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock.

First, petitioner is organized as a stock corporation.

In a number of cases, the Supreme Court has been guided by the definition of a GOCC under the Administrative Code of 1987 in determining whether or not an entity is a GOCC subject to RPT.

In *Manila International Airport Authority vs. Court of Appeals, et al. (MIAA case)*, the Supreme Court, citing the Administrative Code of 1987, laid down the parameters to determine whether a government agency is an instrumentality or a GOCC:

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“Respondents argue that MIAA, being a government-owned or controlled corporation, is not exempt from real estate tax. Respondents claim that the deletion of the phrase “any government-owned or controlled so exempt by its charter” in Section 234(e) of the Local Government Code withdrew the real estate tax exemption of government-owned or controlled corporations. The deleted phrase appeared in Section 40(a) of the 1974 Real Property Tax Code enumerating the entities exempt from real estate tax.

There is no dispute that a government-owned or controlled corporation is not exempt from real estate tax. However, MIAA is not a government-owned or controlled corporation. Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a government-owned or controlled corporation as follows:

SEC. 2. *General Terms Defined.*— ...

(13) *Government-owned or controlled corporation* refers to any agency **organized as a stock or non-stock corporation**, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock:(Emphasis supplied)

A government-owned or controlled corporation must be “**organized as a stock or non-stock corporation**.” MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has **no capital stock divided into shares**. MIAA has no stockholders or voting shares. Section 10 of the MIAA Charter provides:

SECTION 10. Capital.— The capital of the Authority to be contributed by the National Government shall be increased from Two and One-half Billion (₱2,500,000,000.00) Pesos to Ten Billion (₱10,000,000,000.00) Pesos to consist of: xxx

Clearly, under its Charter, MIAA does not have capital stock that is divided into shares.

Section 3 of the Corporation Code 10 defines a stock corporation as one whose “capital stock is divided into shares and ...authorized to distribute to the holders of such shares dividends” MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.” (*Emphasis not ours*)

Based on the foregoing, the primary test in determining whether an entity is a GOCC is how it was organized, particularly, if it was organized as a stock or non-stock corporation. In relation thereto, the Supreme Court referred to the definition under the Corporation Code³⁰ of a *stock corporation* as one whose capital stock is divided into shares and is authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held.³¹

In the succeeding cases, the Supreme Court consistently applied the parameters laid down in the *MIAA* case:

In *Philippine Fisheries Development Authority (PFDA) v. Court of Appeals*, the Supreme Court found that PFDA is not a GOCC since PFDA's capital stock is not divided into shares of stocks and it has no stockholders or voting shares.³²

In *Bangko Sentral ng Pilipinas (BSP) vs Commission on Audit (COA)*³³ (**BSP case**), the Supreme Court declared that the BSP is not a GOCC since BSP's capital is not divided into shares of stocks, to wit:

"After applying the same parameters, we find that the BSP does not qualify as a GOCC as defined under the Administrative Code and RA 7656.

First, the BSP is not organized as a stock corporation. The capitalization of the BSP is provided under Section 2 of RA 7653, as amended by RA 11211:

SEC. 2. Creation of the Bangko Sentral. — There is hereby established an independent central monetary authority, which shall be a body corporate known as the *Bangko Sentral ng Pilipinas*, hereafter referred to as the *Bangko Sentral*.

"The capital of the *Bangko Sentral* shall be **Two hundred billion pesos (P200,000,000,000)**, to be fully subscribed by the Government of the Republic of the Philippines, hereafter referred to as the Government: *Provided*, That the increase in capitalization shall be funded solely from the declared dividends of the *Bangko Sentral* in favor of the National Government. For this purpose, any and all declared dividends of the *Bangko Sentral* in favor of the National

³⁰ Corporation Code of the Philippines, *Batas Pambansa Blg. 68*, May 1, 1980.

³¹ Section 3 of the Corporation Code of the Philippines.

³² G.R. No. 169836, July 31, 2007.

³³ G.R. No. 210314, October 12, 2021.

Government shall be deposited in a special account in the General Fund, and earmarked for the payment of *Bangko Sentral's* increase in capitalization. Such payment shall be released and disbursed immediately and shall continue until the increase in capitalization has been fully paid."

Thus, while the BSP has capital under Section 2 of the BSP Charter, it does not have capital stock or share capital. Further, its capital is not divided into shares of stocks. There are no stockholders or voting shares. Hence, the BSP cannot be classified as a stock corporation." (*Emphasis supplied*)

Finally, in the *LRT* case,³⁴ the Supreme Court, citing the *MIAA* case, also applied the parameters laid down therein and held that LRTA is not a GOCC since, based on its charter, it was not organized as a stock corporation because, although it has capital stock, the same was not divided into shares. In fact, the LRTA has no stockholders or voting shares.³⁵

In the present case, pursuant to Section 9 of the NFA Charter, petitioner's capitalization is as follows:

"Section 9. Capitalization. The Authority shall have an authorized capital stock of five billion pesos, divided into fifty million shares of par value of one hundred pesos each. These shares shall be wholly subscribed and paid by the national government, local government units, or other government owned or controlled corporations." (*Emphasis supplied*)

Based on the above, petitioner has a capital stock of five billion pesos (₱5,000,000,000) divided into five million (5,000,000) shares with par value of one hundred pesos (₱100) per share, wholly subscribed and paid by the national government, local government units, or other government owned or controlled corporations. Hence, petitioner is organized as a stock corporation, as expressly provided under the NFA Charter.



³⁴ *Supra*, Note 28.

³⁵ Section 15 of Article 6 of EO No. 603 or the LRTA Charter, which created the LRTA, provides: "Sec. 15. Capitalization. — The Authority shall have an authorized capital of FIVE HUNDRED MILLION PESOS (₱500,000,000.00) which shall be fully subscribed by the Republic of the Philippines and other government institutions, corporations, instrumentalities, and agencies, whether national or local, within the framework of their respective charters. The authorized capital shall be used for the purpose of financing the Authority's business transactions and shall be paid as follows: xxx"

Second, petitioner is vested with functions relating to public needs.

Pursuant to petitioner's corporate profile, its Mandate, Mission, and Vision are as follows:³⁶

“MANDATE

The NFA shall maintain sufficient rice buffer stocks to be sourced solely from local farmers.

VISION

The NFA envisions itself to be a cost-efficient corporate entity, capable of managing the country's buffer stock within the next ten years.

MISSION

The NFA shall procure palay locally and maintain the optimal level of buffer stock at all times strategically located across the country. It shall manage efficiently and effectively the acquisition, quality maintenance, and disposition of the buffer stock during emergencies and calamities.”

Furthermore, Section 3 of PD No. 4, as amended by PD No. 1485, provides that the petitioner shall encourage increased and efficient productivity by assuring a fair return on investment to producers and their enjoyment of a decent rising level of income and provide comprehensive guidance for the development of the industry in all its aspects, delineating and coordinating the respective roles of both government and private sectors and their respective components and earmarking adequate financing from credit and other resources to support the program, among others.

Clearly, petitioner is vested with functions relating to public needs.

Third, petitioner is wholly owned by the national government.

As cited earlier, Section 9 of the NFA Charter provides that its shares shall be wholly subscribed and paid by the national government, local government units, or other government owned or controlled corporations; thus, it is evident that the petitioner is wholly owned by the Government directly or through its instrumentalities.

³⁶ <https://nfa.gov.ph/transparency/mandate-functions-name-of-officials> (last accessed September 18, 2023)

Based on the foregoing discussions, it is clear that the petitioner is organized as a stock corporation vested with functions relating to public needs and wholly owned by the Government directly or through its instrumentalities, thereby, qualifying as a GOCC.

This conclusion is further bolstered by the fact that petitioner, in its own Code of Corporate Governance, referred to itself as a GOCC, the pertinent portions thereof quoted as follows:³⁷

“NFA CODE OF CORPORATE GOVERNANCE

WHEREAS, pursuant to the State declared policy of treating Government-Owned or -Controlled Corporations (GOCCs) as significant tools for economic development, and the statutorily-mandated obligation of the State to ensure that the governance of the National Food Authority (NFA) is carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness, under the NFA Council which is competent to carry out the functions, fully accountable to the State as its fiduciaries and always acting for the best interests of the State, the National Food Authority, in the exercise of its mandate under Presidential Decree No. 4 to promote the integrated growth and development of the grains industry so that it can adequately function as an institution conscious of its social responsibilities and capable of providing adequate and continuous food supply to the nation and of contributing to its proper share to national economy;

WHEREAS, the GCG, pursuant to Section 42 of the Code of Corporate Governance for GOCCs (GCG MC No. 2012-07) required GOCCs including the NFA to prepare and adopt its own Code of Corporate Governance;

WHEREAS, the National Food Authority Council in its meeting on April 1, 2014 passed Resolution No. 727-2014 to formally promulgate and implement the NFA Code of Corporate Governance

xxx

I. Definition of Terms

Section 1. Definition of Terms. - For purposes of this Code, the following terms shall have the following meanings:

xxx

‘Chartered GOCC’ refers to a GOCC, in this case, NFA, created and vested with functions by a special law. xxx

³⁷ *NFA Code of Corporate Governance*, https://nfa.gov.ph/images/files/Transparency/T_corporate_governance.pdf (last accessed September 18, 2023)

II.
Role of NFA In National Development and
Its Commitment to Principles of Good Corporate Governance

Section 4. NFA as an Active Partner of the Government Towards Development.— The State recognizes the potential of a GOCC, i.e. the National Food Authority, as a significant tool to pursue economic development, and as a means to promote growth by ensuring that the operations of the Agency are consistent with national development policies and programs.” (Emphasis supplied)

Moreover, in 1993, R.A. No. 7656³⁸ was enacted requiring all GOCCs to declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government.³⁹ As observed by the Supreme Court in the *BSP* case,⁴⁰ the definition of a GOCC in Section 2(b)⁴¹ of R.A. No. 7656 is a substantial reproduction of the definition found in the Administrative Code of 1987. In 2017, EO No. 48 was issued to adjust the dividend rate from 50% to 0% for selected GOCCs which included the “National Food Authority”, to wit:

“WHEREAS, Republic Act (RA) No. 7656 requires all government-owned or -controlled corporations (GOCCs) to declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government;

WHEREAS, in the interest of national economy and general welfare, RA No. 7656 permits the President of the Philippines, upon the recommendation of the Secretary of Finance, to adjust the percentage of annual net earnings to be declared and remitted by a GOCC;

SECTION 1. The percentage of net earnings to be declared and remitted by the **following GOCCs** as dividends to the National Government, as required under Section 5 of RA 7656, is adjusted from at least fifty percent (50%) of their annual net earnings to zero percent (0%) for the years indicated below:

d/

³⁸ An Act Requiring Government-Owned or -Controlled Corporations to Declare Dividends under Certain Conditions to the National Government, and for Other Purposes

³⁹ SECTION 3. *Dividends.* — All government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof: Provided, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund.

⁴⁰ *Supra*, Note 33.

⁴¹ SECTION 2. *Definition of Terms.* — As used in this Act, the term: xxx

(b) ‘Government-owned or controlled corporations’ refers to corporations organized as a stock or non-stock corporation vested with functions relating to public needs, whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least fifty one percent (51%) of its capital stock. This term shall also include financial institutions, owned or controlled by the National Government, but shall exclude acquired asset corporations, as defined in the next paragraphs, state universities, and colleges.”

GOCC	Year
1. Clark International Airport Corporation	2014-2015
2. Poro Point Management Corporation	2014-2015
3. John Hay Management Corporation	2012-2015
4. Northern Foods Corporation	2010
5. LANDBANK Countryside Development Foundation, Inc.	2015
6. Philippine Export-Import Credit Agency	2014-2015
7. Philippine Postal Savings Bank, Inc.	2000-2015
8. National Food Authority	2014

SECTION 2. The adjusted dividend rates set forth in Section 1 are only applicable to the **concerned GOCCs** and the years stated above.”
(Emphasis and underscoring supplied)

In fact, in the Annual Audit Report (AAR)⁴² of the Commission on Audit (COA) for calendar years (CYs) 2018 and 2017, particularly, *Part III - Status of Implementation of Prior Years’ Audit Recommendations*, it was noted that the petitioner has not remitted the required dividends under R.A. No. 7656 for CY 2014:

“CY 2015 AAR

62. Dividend due to the NG from the NFA’s net earnings of **₱1.875 billion for CY 2014 has not been declared and remitted to the BTr, contrary to Section 3 of Republic Act (RA) No. 7656**, resulting in the understatement of the liability and overstatement of Retained Earnings accounts and depriving the NG of funds for carrying out the programs, projects and other priority development goals of the government. Although the Agency could have been exempted from paying Dividends due to negative Retained Earnings pursuant to Section 5-f of the Revised Implementing Rules and Regulations (RIRR) of same RA, its request for exemption was submitted late to the DOF.” *(Emphasis supplied)*

Based on all the foregoing, the petitioner falls within the definition of GOCC and has long been treated as such; thus, petitioner shall be taxable as a GOCC for RPT purposes.

Petitioner, being a GOCC, is not exempt from RPT.

Aside from arguing that it is a government instrumentality exempt from RPT, petitioner likewise asserts that it is exempt from “taxes” as expressly

⁴² https://nfa.gov.ph/images/files/Transparency/2018AnnualReportAnnexes/Annex1_AAfS.pdf (last accessed September 18, 2023)

provided under Section 6 of PD No. 4,⁴³ as amended PD No. 1485,⁴⁴ which states that:

“Section 6. Administration. — Powers, Organization, Management and Exemptions. — The Powers, organization, management and exemptions of the Authority shall be as follows:

(d) Exemptions. — In furtherance to the effective implementation of the policy enunciated in this decree, the Authority is hereby declared exempt:

xxx

- ii. From all income taxes, franchise taxes and **realty taxes** to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities; and xxx” (*Emphasis supplied*)

Furthermore, petitioner claims that PD No. 4, being a special law, cannot be impliedly repealed by the LGC of 1991, a general law.

The Court *En Banc* is not convinced.

The issue on the withdrawal of exemptions from RPT of GOCCs is not novel and has been ruled upon by the Supreme Court in *Philippine Ports Authority (PPA) v. City of Iloilo*.⁴⁵ In the said case, the Supreme Court held that the LGC of 1991 repealed Section 25 of P.D. No. 857⁴⁶ and Section 40 of P.D. No. 464,⁴⁷ which are prior laws granting RPT exemptions, to wit:

“First. Section 1, P.D. No. 1931 which took effect on June 11, 1984, effectively withdrew the exemption granted to the petitioner, a government-owned or controlled corporation —

Section 1. The provisions of special or general law to the contrary notwithstanding, all exemptions from the payment of duties, taxes, fees, imports and other charges heretofore granted in favor of government-owned or

⁴³ Proclaiming the Creation of the National Grains Authority and Providing Funds Therefor.

⁴⁴ Further Amending Certain Provisions of the National Grains Industry Development Act, *National Grains Authority Act*, PD No. 1485, June 11, 1978.

⁴⁵ G.R. No. 143214, November 11, 2004.

⁴⁶ Section 25 of the *Revised Charter of the Philippine Ports Authority*, PD No. 857, December 23, 1975:

“SECTION 25. Exemption from Realty Taxes. — The Authority shall be exempt from the payment of real property taxes imposed by the Republic of the Philippines, its agencies, instrumentalities or political subdivisions; Provided, That no tax exemptions shall be extended to any subsidiaries of the Authority that may be organized; Provided, finally, That investments in fixed assets shall be deductible for income tax purposes.”

⁴⁷ Section 40 of the *Real Property Tax Code*, PD No. 464, May 20, 1974:

SECTION 40. Exemptions from Real Property Tax. — The exemption shall be as follows:

xxx

(g) Real property exempt under other laws.

DECISION

CTA EB No. 2465 (CTA AC No. 202)

Page 21 of 23

controlled corporations including their subsidiaries, are hereby withdrawn.

Second. Under the last paragraph of Section 234 of Republic Act No. 7160, otherwise known as the Local Government Code (LGC), the petitioner's exemptions from the real property tax were withdrawn upon the effectivity of the law. Thus:

xxx

Patently then, it was the intention of Congress to withdraw the tax exemptions granted to or presently enjoyed by all persons, including government-owned or controlled corporations, upon the effectivity of the LGC as shown by Section 193 thereof:

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. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

Furthermore, under the repealing clause, Section 534(f) of the LGC, all general and special laws, acts, decrees, or part or parts thereof which are inconsistent with any of the provisions of the law were repealed:

Section 534(f) – Repealing Clause – 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.

The clause partakes of the nature of a *general repealing clause* because it fails to designate the specific act or acts identified by number or title that are submitted to be repealed.

Thus, Section 25 of P.D. No. 857 and Section 40 of P.D. No. 464 were repealed by Rep. Act No. 7160." (*Emphasis supplied*)

Thus, with the enactment and effectivity the LGC of 1991, the exemption from payment of RPT previously granted to, or presently enjoyed by GOCCs, among others, was withdrawn.

Considering that the Original Charter of the NFA (previously, the NGA) was approved on September 26, 1972 while the LGC of 1991 took effect on January 1, 1992, the withdrawal of exemptions from RPT previously granted to, or presently enjoyed by, all persons, including GOCCs and the repeal of general and special laws inconsistent with the LGC of 1991 applies



to the petitioner; thereby, the petitioner may no longer invoke the RPT exemption granted to it by its Original Charter.

In light of the foregoing discussions, while the Court in Division erred in dismissing the case for petitioner's failure to exhaust available administrative remedies, the Court *En Banc*, nonetheless, finds no cogent reason to invalidate the RPT assessment sustained by the Court in Division.

WHEREFORE, premised considered, the *Petition for Review with Motion for Suspension of Collection of Tax* is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated July 22, 2020 and assailed *Resolution* dated March 4, 2021 in CTA AC No. 202 are **AFFIRMED** as to the result.

SO ORDERED.

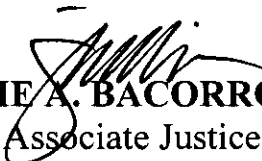

CORAZON G. FERRER-FLORES
Associate Justice

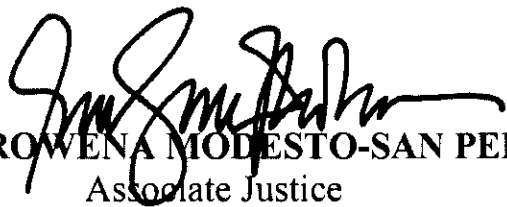
WE CONCUR:


See Concurring and Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice


I join the Concurring and Dissenting Opinion of P.J. Del Rosario
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes - Fajardo
With due respect, with Concurring and Dissenting Opinion
MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice


HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

NATIONAL FOOD AUTHORITY,
Represented by Acting Regional
Manager Felimon T. Cangrejo of
NFA-ARMM,

Petitioner,

CTA EB NO. 2465
(CTA AC No. 202)

Present:

-versus-

MUNICIPALITY OF SHARIFF
AGUAK, TREASURER OF
SHARIFF AGUAK
MAGUINDANAO AND
MUNICIPAL ASSESSOR OF
SHARIFF AGUAK
MAGUINDANAO,

Respondents.

DEL ROSARIO, PJ,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

Promulgated:

OCT 31 2023

X-----

[Signature] X

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* that petitioner is not required to exhaust administrative remedies provided in Republic Act (RA) No. 7160 or the Local Government Code of 1991 (LGC) in challenging the real property tax (RPT) assessment issued against it. As the issue on whether or not petitioner is a government owned and controlled corporation (GOCC) or a government instrumentality is a pure question of law, direct resort to the Regional Trial Court by way of Petition for Prohibition is a proper remedy to challenge the RPT assessment.

Anent the denial of the Petition for Review and the finding that petitioner, a GOCC, is not exempt from RPT, with utmost respect, I am constrained to withhold my assent.

[Signature]

At the outset, I wish to point out that in *National Food Authority, represented by Atty. Ma. Theresa S. Villafuerte, CPA, in her capacity as Department Manager of NFA Legal Affairs Department vs. City Government of Tagum and City Assessor of Tagum, Province of Davao del Norte*,¹ **the Supreme Court granted NFA's prayer to be exempt from the payment of docket and other legal fees and costs as it is a government instrumentality with corporate powers, viz.:**

"Please take notice that the Court, Second Division, issued a Resolution dated July 4, 2022 which reads as follows:

'G.R. No. 261472 [Formerly UDK-17224] (National Food Authority, represented by Atty. Ma. Theresa S. Villafuerte, CPA, in her capacity as Department Manager of NFA Legal Affairs Department vs. City Government of Tagum and City Assessor of Tagum, Province of Davao del Norte). – The Court resolves to GRANT counsel for petitioner's motion for exemption from payment of docket and other legal fees and costs dated December 16, 2021, praying that petitioner be exempt from payment of docket and other legal fees since it is a government instrumentality with corporate powers, and to RE-DOCKET this case as a regular case.

xxx

xxx

xxx"

Requisites of a government instrumentality

In *Manila International Airport Authority vs. Court of Appeals, et al.*² ("MIAA"), the Supreme Court has long settled the issue of what makes a government entity a government instrumentality, viz:

"MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government 'instrumentality' as follows:

SEC. 2. General Terms Defined. — ...

(10) Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational

¹ Resolution, G.R. No. 261472, July 4, 2022.

² G.R. No. 155650, July 20, 2006; See also *Philippine Fisheries Development Authority vs. Court of Appeals, et al.*, G.R. No. 169836, July 31, 2007; *Mactan-Cebu International Airport Authority (MCIAA) vs. City of Lapu-Lapu, et al.*, G.R. No. 181756, June 15, 2015; *Metropolitan Waterworks Sewerage System vs. The Local Government of Quezon City, et al.*, G.R. No. 194388, November 7, 2018.



autonomy, usually through a charter. x x x (Emphasis supplied)

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises 'all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order.

xxx

xxx

xxx

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and *Bangko Sentral ng Pilipinas*. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called **government corporate entities**. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.

A government instrumentality like MIAA falls under Section 133(o) of the Local Government Code, which states:

SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units.* - **Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:**

xxx

xxx

xxx

(o) **Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities** and local government units.

Section 133(o) recognizes the basic principle that local governments cannot tax the national government, which historically merely delegated to local governments the power to tax. While the 1987 Constitution now includes taxation as one of the powers of local governments, local governments may only exercise such power 'subject to such guidelines and limitations as the Congress may provide.'

xxx

xxx

xxx



Third, the government-owned or controlled corporations created through special charters are those that meet the two conditions prescribed in Section 16, Article XII of the Constitution. The first condition is that the government-owned or controlled corporation must be established for the common good. **The second condition is that the government-owned or controlled corporation must meet the test of economic viability.** Section 16, Article XII of the 1987 Constitution provides:

SEC. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. **Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.**

The Constitution expressly authorizes the legislature to create 'government-owned or controlled corporations' through special charters **only** if these entities are required to meet the twin conditions of common good and economic viability. **In other words, Congress has no power to create government-owned or controlled corporations with special charters unless they are made to comply with the two conditions of common good and economic viability.** xxx" (*Boldfacing supplied; citations omitted*)

Under RA No. 10149,³ the definition of a government instrumentality and GOCC remained the same except that the term 'government corporate entities' mentioned in *MIAA* was adopted, recognizing the existence of government instrumentalities exercising corporate powers, to wit:

"Section 3. Definition of Terms. – xxx

xxx xxx xxx

(n) **Government Instrumentalities with Corporate Powers (GICP)/Government Corporate Entities (GCE)** refer to instrumentalities or agencies of the government, which are **neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter** including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (DCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO). (*Boldfacing and underscoring supplied*)

³ GOCC Governance Act of 2011.

Thus, pursuant to *MIAA* and Section 3(n) of RA No. 10149, to be classified as a government instrumentality, the government entity must: not be a stock or non-stock corporation; not integrated within the department framework; be vested with special functions or jurisdiction by law; be endowed with some if not all corporate powers; administer special funds; enjoy operational autonomy, usually through a charter; and perform “essential public services for the common good, services that every modern State must provide its citizens”.

Meanwhile, a stock corporation is a corporation which has a capital stock divided into shares and is authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits on the basis of the shares held.⁴ A non-stock corporation is “one where no part of its income is distributable as dividends to its members, trustees, or officers”⁵ and “formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof.”⁶

On the other hand, to be considered a GOCC, the government entity must be a stock or non-stock corporation and must pass the twin tests of common good and economic viability.

Petitioner is an instrumentality of the government

Scrutiny of Presidential Decree (PD) No. 4, as amended by PD No. 1485 and PD No. 1770 and RA No. 11203, *vis-à-vis* the pronouncements in *MIAA*, leads to a conclusion that petitioner (just like *MIAA*) is an instrumentality of the government performing as it does “essential public services for the common good, services that every modern State must provide its citizens”.

First, petitioner is neither a stock or non-stock corporation. While Section 9 of PD No. 4, as amended by PD No. 1770,⁷ provides that

⁴ Section 3, Batas Pambansa (BP) Blg. 68 (now Section 3, Revised Corporation Code of the Philippines [RCCP]).

⁵ Section 87, BP Blg. 68 (now Section 86, RCCP).

⁶ Section 88, BP Blg. 68 (now Section 87, RCCP).

⁷ Section 9. *Capitalization*. The Authority shall have an authorized capital stock of five billion pesos, divided into fifty million shares of par value of one hundred pesos each. These shares shall be wholly subscribed and paid by the national government, local government units, or other government owned or controlled corporations.

The accumulated capital stock and surpluses of the National Grains Authority shall be evaluated and shall be the initial paid in capital of the Authority. The national government shall



CONCURRING AND DISSENTING OPINION

CTA EB No. 2465 (CTA AC No. 202)

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petitioner shall have an authorized capital stock of ₱5,000,000,000.00 divided into 50,000,000 shares of par value of ₱100.00 each, there is nothing in its charter and its subsequent amendments that authorizes petitioner to declare and distribute dividends or surplus profits to its shareholders.

Petitioner cannot be considered a non-stock corporation either because it does not have members and it was not organized for any of the purposes mentioned in Section 88 of the Corporation Code.⁸

Second, petitioner was originally attached to the Office of the President (OP).⁹ It was realigned to the Department of Agriculture (DA) pursuant to Executive Order (EO) No. 116 dated January 30, 1987. On May 5, 2014, pursuant to EO No. 165, petitioner was transferred to the OP. On June 30, 2016, petitioner was reassigned to the Office of the Cabinet Secretary in accordance with EO No. 1. In 2018, petitioner was transferred back to the DA by virtue of EO No. 62 dated September 17, 2018.

Third, petitioner is vested with special functions¹⁰ as it administers special funds,¹¹ while enjoying operational autonomy¹² under its charter.

Finally, while there is no doubt that the reason for the creation of petitioner is for the common good, still, economic viability is not at all considered in its creation thereby precluding it from becoming a GOCC.

Sec. 5(b) of PD No. 4, as amended by PD No. 1485, created and organized petitioner to undertake and assume primary responsibility for all government activities relating to the processing, storage, transport and marketing of grains, with the following responsibilities:

- “i. Determine the floor price for the grain crop which shall assure the farmer or producer a fair return on his investment; xxx**
- ii. xxx;**

make additional equity investments into the Authority out of funds appropriated in the General Appropriations Act and other appropriations laws as may be approved by the President in accordance with the fund requirements of the Authority and funds availability in the Treasury.

⁸ Now Section 87, RCCP; Refer to Section 5, PD No. 1485; Section 2, PD No. 1770; and, Section 8, RA No. 11203.

⁹ Section 3, PD No. 1770.

¹⁰ Section 5(b), PD No. 4, as amended, Section 7, PD No. 1770; Section 8, RA No. 11203.

¹¹ Section 11, PD No. 4; Section 10, PD No. 1770.

¹² Section 6, PD No. 1770.



- iii. **Procure and control or cause the procurement or control of such stock of grains in quantities and in locations, as may foreseeably be needed, to maintain the floor price or manage as buffer stocks to stabilize consumer prices;**
- iv. **Promote the organized interrelationship among the components of the industry; xxx to the end that the entire industry shall attain institutionalized efficiency as to be able to meet its assigned role;**
- v. **Devise a system by which it can insure the adequacy of supply and stability of consumer prices at levels within the reach of the low-income families, while maintaining the announced floor price for the producers;**

xxx xxx xxx
- xi. **Perform such other functions as may be necessary to carry into effect the provisions of this Act including **but not limited to, the development, culture or production of grains, and the establishment, acquisition and/or operations of grains processing, handling, storage and transport facilities.****
(Boldfacing & underscoring supplied)

To effectively carry out its functions and responsibilities, petitioner is vested with the following powers, among others:¹³

- “i. **To institute the negotiable warehouse receipt or *quedan* system in palay, corn and other grains** not later than two (2) years after the approval of this Act. Xxx; Provided, However, That in areas where there are no bonded warehouses or adequate space in bonded warehouses, the Authority **shall start to purchase grains** at the beginning of every harvest and for this purpose shall send its men and facilities to the places of harvest where the farmers can directly sell their harvested grains; Provided, Further, That the Authority shall take measures to expedite the establishment of bonded warehouses in areas where they are needed but do not exist; Provided, Finally, That such stocks shall be fully insured against loss due to fire.
- xxx xxx xxx
- vi. **To inspect** palay, rice, corn, corn grits and other grains and their substitutes and/or the by-products/end-products stored by any person, partnerships, corporation or association, for purposes of taking inventory and record of such commodities, and to enter the premises thereof by the use of reasonable means;
- vii. **To order the seizure**, whenever there is cornering, or boarding, as may be defined by the Authority of rice and/or other grains and their substitutes and/or the by-products thereof, including facilities and equipments used in said cornering of

¹³ Section 6, PD No. 1485.



CONCURRING AND DISSENTING OPINION

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hoarding, or whenever there is scarcity of supply of such commodity in the consumer market and/or an unwarranted increase in the price thereof, of the hoarded commodity and its public sale in such quantity as may be needed to stabilize the supply in the area of scarcity and restore prices to normal levels;

- viii. **To establish and enforce standards** in grading, sampling and inspection, test and analysis, specification, nomenclature, units of measurement, code of practice and packaging, conservation and transport for grains and their substitutes and/or their by-products/end-products and to effect a transition of standards in measurement of grains from volume to weight, and in metric system;
- ix. **To coordinate the activities of all government agencies** engaged in the study, research and promotion of measures designated to enhance the integrated growth and development of the grains industry; and to improve the processing and marketing standards of rice, corn and other grains, such as methods of drying, handling, hauling, storage, milling, packaging, distributing and shipping these grains and their by-products;
- x. To call upon and/or **deputize any official of such government agencies** as may be necessary to assist the Authority in carrying out its functions;
- xi. **To register, license and supervise warehouses, whether bonded or not, and mills; and to prescribe, impose and collect fees, charges, and/or surcharges in licensing and regulating warehouses and mills;**
- xii. **To establish rules and regulations** governing the importation of rice, corn and other grains and their substitutes and/or by-products/end products and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price and such imported grains and their substitutes and/or their by-products/end products with the normal prevailing domestic prices. xxx
- xiii. **To establish rules and regulations governing the export** of rice, corn and other grains and/or their substitutes and their by-products/end products, and to collect fees and charges for such exportation at rates to be determined by the Council; xxx
- xiv. **To register, license and supervise** persons, natural or judicial, who shall engage or are engaging in the business of providing goods and services in support of the different activities involved in the production, processing, transporting, marketing and trading of grains and/or their substitutes and to prescribe, impose and collect fees, charges and/or surcharges in licensing and regulating the operations of such persons;
- xv. **To register, license and supervise** persons, natural or judicial, engaged in the wholesale and/or retail business of rice, corn, other grains and their substitutes and/or their by-products/end-products and to impose and collect fees to be determined by the Council;



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- xvi. **To register, license and supervise** persons, natural or judicial, engaged in the processing or manufacture of goods where rice or corn or other grains and/or their substitutes are used as ingredients in the manufacture of starch, oil and animal feeds and/or other similar commodities and/or their by-products/end-products in which case it shall impose the nominal fees to be determined by the Council; xxx.” (*Boldfacing & underscoring supplied*)

Section 8 of RA No. 11203 provides that petitioner shall **maintain sufficient rice buffer stock to be sourced solely from local farmers to be used for emergency situations and to sustain the disaster relief programs of the government during natural or man-made calamities.**¹⁴

Viewed in the light of petitioner’s powers and responsibilities, it performs essential public service. As quoted above, petitioner is vested generally with governmental or public functions including, among others, the power to issue seizure orders, deputize government agencies, promulgate rules and regulations, and register, license and supervise such persons, activities and matters defined as falling within its jurisdiction.

Interestingly, the law does not require petitioner to be economically viable which would have classified it into a GOCC. **Section 9 of PD No. 1770** provides that the **national government shall make additional equity investments** into it out of the funds appropriated in the General Appropriations Act and other appropriations laws as may be approved by the President **in accordance with the fund requirements of petitioner** and funds availability in the Treasury. **Sec. 5(b)(i) of PD No. 4, as amended by PD No. 1485,** further provides that the petitioner may, upon authorization by the Office of the President, **incur subsidies to be borne by the National Government in the implementation of the floor and ceiling prices** for rice and corn and other grains and their substitutes and/or their by-products/end-products.

Just like petitioner, the Supreme Court, in *Republic of the Philippines, represented by the Philippine Reclamation Authority (PRA) vs. City of Parañaque*,¹⁵ declared that the Philippine Reclamation Authority is a government instrumentality on the same grounds, viz:

“In the case at bench, PRA is not a GOCC because it is neither a stock nor a non-stock corporation. **It cannot be considered as a stock corporation because although it has a capital stock divided**

¹⁴ Section 3(a), RA No. 8178, as amended by RA No. 11203.

¹⁵ G.R. No. 191109, July 18, 2012.



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as amended by Presidential Decree No. 34, dated October 27, 1972, and Presidential Decree No. 69, dated November 24, 1972, and all filing, docket, and service fees, bonds and other charges or costs in any court or administrative proceedings in which the Authority may be a party.

- ii. From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities; and
- iii. From all duties, arrastre fees in so far as the government's share is concerned, including all charges and fees imposed under Presidential Decree No. 857 compensating taxes and advance sales taxes, wharfage fees and tonnage dues on import/export of goods required for its operations and projects.

All documents or contracts executed by or in favor of the Authority shall also be exempt from the payment of documentary and science stamp taxes and registration fees: Provided, however, that this exemption shall not apply to taxes and assessments payable by persons or entities transacting business with the Authority.

The Authority shall likewise be exempt from the coverage of Presidential Decree No. 711." (*Boldfacing supplied*)

Considering the clear and categorical provisions of Sections 133 (o) and 234 of the LGC, the act of respondents in demanding payment of RPT from petitioner is *ultra vires*. Respondents were bereft of any power or authority to assess and collect RPT from petitioner, more so, there being nothing on record to show that beneficial use of the subject property has been granted to a taxable person. Consequently, the Notice of Realty Tax Delinquency issued against petitioner are void *ab initio* and collection of the amount therein thereof may not be justified.

All told, I VOTE to: (i) GRANT the "Petition for Review (Under Rule 8 of A.M. No. 05-11-07-CTA) with Motion for Suspension of Collection of Tax"; (ii) REVERSE and SET ASIDE the Decision dated July 22, 2020 and Resolution dated March 4, 2021 of the CTA Second Division; and, (iii) DECLARE the Notice of Delinquency dated January 30, 2017 issued by respondents as NULL and VOID.


ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL FOOD
AUTHORITY, Represented
by Acting Regional Manager
Felimon T. Cangrejo of NFA -
ARMM,

Petitioner,

-versus-

MUNICIPALITY OF
SHARIFF AGUAK,
TREASURER OF SHARIFF
AGUAK,
MAGUINDANAO, AND
MUNICIPAL ASSESSOR
OF SHARIFF AGUAK,
MAGUINDANAO,

Respondents.

CTA EB No. 2465
(CTA AC No. 202)

Present:

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, II.

Promulgated:

OCT 31 2023

[Signature] 11:05a.m.

X-----X

CONCURRING AND DISSENTING OPINION

REYES-FAJARDO, J.:

I concur with the *ponencia* that petitioner correctly availed of the proper remedy when it resorted to direct judicial action before the Regional Trial Court as exhaustion of administrative remedies is inapplicable in this case where the issue presented — i.e., whether petitioner is a government instrumentality exempt from payment of real property tax (“RPT”), is a pure question of law.

[Handwritten mark]

Nonetheless, I am constrained to withhold my assent from the majority opinion that petitioner is a government-owned and controlled corporation ("GOCC") liable for RPT. The reasons are essayed below.

Real properties owned by the Republic, whether titled in the name of the Republic itself or in the name of agencies or instrumentalities of the national government, are exempt from RPT.

Section 232 of Republic Act ("RA") No. 7160 or the Local Government Code ("LGC") of 1991, as amended, recognizes the power of the local government units to tax real property not otherwise exempt. One of the limitations to this power is embodied in Section 133 (o) of the LGC of 1991, as amended, *viz*:

SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. — **Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:**

...

(o) **Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities and local government units.**¹

Above provision recognizes the basic principle that local governments cannot tax the national government, which historically merely delegated to local governments the power to tax. While the 1987 Constitution now includes taxation as one of the powers of local governments, local governments may only exercise such power **subject to such guidelines and limitations as the Congress may provide.**² Hence, *unless otherwise provided* in the Code, local governments cannot tax national government instrumentalities.

¹ Emphasis supplied.

² *Manila International Airport Authority v. Court of Appeals*, G.R. No. 155650, July 20, 2006.

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Section 234 (a) of the LGC of 1991, as amended, further exempts real property owned by the Republic from real property taxes, *viz*:

SEC. 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.³

Indeed, real properties owned by the Republic, whether titled in the name of the Republic itself or in the name of agencies or instrumentalities of the national government, are exempt from real property tax.⁴

Petitioner is a government instrumentality.

Central to the resolution of this case is the determination of whether petitioner is a government instrumentality exempt from local taxes.

In this regard, Section 2 (10) of Executive Order (“EO”) No. 292 or the Administrative Code of 1987 defines a government instrumentality as *"any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter."* Whereas Section 2 (13) of the same Code defines a GOCC as *"any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock."*

³ Emphasis supplied.

⁴ *Philippine Heart Center v. Local Government of Quezon City*, G.R. No. 225409, March 11, 2020.

Manila International Airport Authority v. Court of Appeals ("MIAA")⁵ pronounced that unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Likewise, when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework.⁶

Philippine Heart Center v. Local Government of Quezon City ("PHC")⁷ set the twin criteria for an agency to be classified as a government instrumentality vested with corporate powers, i.e.: a) it performs governmental functions, and b) it enjoys operational autonomy.

A scrutiny of Presidential Decree ("PD") No. 4, as amended by PD No. 1485 and PD No. 1770 and RA No. 11203, *vis-à-vis* the pronouncements in *MIAA*⁸ and *PHC*,⁹ leads to a conclusion that petitioner is government instrumentality that is neither a stock nor a non-stock corporation, performing essential public services or governmental functions while enjoying operational autonomy.

Petitioner is neither a stock, non-stock, nor a GOCC.

Section 3 of Batas Pambansa Bilang 68, or then Corporation Code of the Philippines,¹⁰ defines stock corporations as corporations which have capital stock divided into shares and are **authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held**. This definition is retained in Section 3 of RA No. 11232 or the Revised Corporation Code of the Philippines.¹¹

⁵ G.R. No. 155650, July 20, 2006.

⁶ *Manila International Airport Authority v. Court of Appeals*, G.R. No. 155650, July 20, 2006.

⁷ G.R. No. 225409, March 11, 2020.

⁸ G.R. No. 155650, July 20, 2006.

⁹ G.R. No. 225409, March 11, 2020.

¹⁰ Enacted on May 1, 1980.

¹¹ Enacted on February 20, 2019.

While Section 9 of PD No. 4, as amended by PD No. 1770,¹² provides that petitioner shall have an authorized capital stock of ₱5,000,000,000.00 divided into 50,000,000 shares, with par value of ₱100.00 for each share, there is nothing in its charter and subsequent amendments thereto that authorizes petitioner to declare and distribute dividends or surplus profits to its shareholders.

Neither can petitioner be considered a non-stock corporation because it does not have members¹³ and it was not organized for any of the purposes¹⁴ for the formation or organization of a non-stock corporation under then Corporation Code of the Philippines.

Petitioner performs essential public services or governmental functions.

Historically, petitioner, formerly known as “National Grains Authority,” was created through its charter, PD No. 4, as amended, to ensure food security and to make the country's agricultural sector viable, efficient and globally competitive.¹⁵ It was originally attached to the Office of the President (“OP”),¹⁶ but was realigned to the Department of Agriculture (“DA”) pursuant to Executive Order (“EO”) No. 116 dated January 30, 1987. On May 5, 2014, pursuant to

¹² Section 9. Capitalization. The Authority shall have an authorized capital stock of five billion pesos, divided into fifty million shares of par value of one hundred pesos each. These shares shall be wholly subscribed and paid by the national government, local government units, or other government owned or controlled corporations.

The accumulated capital stock and surpluses of the National Grains Authority shall be evaluated and shall be the initial paid in capital of the Authority. The national government shall make additional equity investments into the Authority out of funds appropriated in the General Appropriations Act and other appropriations laws as may be approved by the President in accordance with the fund requirements of the Authority and funds availability in the Treasury.

¹³ Section 86. Definition. — For purposes of this Code and subject to its provisions on dissolution, a nonstock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers: Provided, that any profit which a nonstock corporation may obtain incidental to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized, subject to the provisions of this Title.

¹⁴ Section 87. Purposes.— Nonstock corporations may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of nonstock corporations.

¹⁵ Republic Act No. 11203, February 14, 2019.

¹⁶ Section 3, PD No. 1770.

EO No. 165, petitioner was transferred to the OP. On June 30, 2016, petitioner was reassigned to the Office of the Cabinet Secretary in accordance with EO No. 1. In 2018, petitioner was transferred back to the DA by virtue of EO No. 62 dated September 17, 2018.

Under PD No. 4, as amended, petitioner assumes primary responsibility for all government activities relating to the processing, storage, transport and marketing of grains,¹⁷ which includes the: 1) determination of the floor price for the grain crop to assure the farmer or producer a fair return on investment;¹⁸ 2) procurement and control of stock of grains in quantities and in locations, as may foreseeably be needed, to maintain the floor price or manage as buffer stocks to stabilize consumer prices;¹⁹ 3) promotion of organized inter-relationship among the components of the industry to attain institutionalized efficiency;²⁰ 4) development of a system to insure the adequacy of supply and stability of consumer prices within the reach of the low-income families, while maintaining the announced floor price for the producers;²¹ and 5) performance of such other functions as may be necessary to carry into effect the provisions of PD No. 4, as amended, including but not limited to, the development, culture or production of grains, and the establishment, acquisition and/or operations of grains processing, handling, storage and transport facilities,²² among others.

Later, PD No. 1770 vested petitioner additional powers, functions and exemptions, to wit:²³

SECTION 7. Additional Powers, Functions and Exemptions.

— In addition to the powers, functions and exemptions of the Authority under P.D. No. 4, as amended, the Authority shall have the following powers, functions and exemptions:

- a. To acquire ownership of, by purchase or otherwise, and/or to invest in, hold, sell or otherwise dispose of, stocks or bonds or any interest in either, or any obligation or evidence or indebtedness of any corporation, public or private, domestic or foreign, or the bonds or other

¹⁷ Section 5 (b), PD No. 4.

¹⁸ Section 5 (b)(i), PD No. 4.

¹⁹ Section 5 (b)(iii), PD No. 4.

²⁰ Section 5 (b)(iv), PD No. 4.

²¹ Section 5 (b)(v), PD No. 4.

²² Section 5 (b)(xi), PD No. 4.

²³ PD No. 1770, National Food Authority Act, January 14, 1981.

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obligations or evidence of indebtedness of any person, firm or corporation.

b. To register, license and supervise persons, natural or juridical, who shall engage or are engaging in the wholesale, retail, processing, manufacturing, storage, transporting, packaging, importation, exportation of food products/commodities and such other related to food activities and to prescribe, impose and collect fees, charges and/or surcharges, with the approval of the President of the Philippines upon recommendation of the Council.

c. To import/export or cause the importation/exportation of food products/commodities and/or raw materials, equipment and facilities needed in the manufacture/processing of food commodities as may be determined by the Council, and as approved by the President of the Philippines.

d. To establish or cause the establishment of branches or agencies, domestic or foreign, whenever deemed necessary by the Council.

e. To engage in the production, manufacturing, processing and/or packaging of food products/commodities as may be necessary to effectively carry out its functions and as approved by the President of the Philippines.

f. To establish and or re-structure its own internal organization and to fix the remunerations, emoluments, allowances and other fringe benefits of its officers and employees, subject to the provisions of pertinent compensation law and regulations.

g. To create and establish, a "Provident Fund" which shall consist of contributions made both by the Authority and its officers and employees to a common fund for the payment of retirement and other benefits to such officers and employees or their heirs under such terms and conditions as the Council may fix.

h. The subsidiaries of the Authority and those which may be subsequently acquired and/or hereinafter created by law and/or owned/controlled and/or organized by the Authority shall enjoy the tax exemptions and other privileges and rights of the Authority when specifically approved by the President of the Philippines.



On February 14, 2019, RA No. 11203 was enacted giving petitioner a new mandate to maintain sufficient rice buffer stock to be sourced solely from local farmers, to wit:²⁴

SECTION 8. Maintenance of Rice Buffer Stock. – The NFA shall, in accordance with the rules, regulations and procedures to be promulgated, maintain sufficient rice buffer stock to be sourced solely from local farmers.

In light of petitioner's powers and responsibilities enumerated above, it is evident that petitioner is vested generally with governmental or public functions and performs essential public service.

Petitioner enjoys operational autonomy.

PD No. 4 vested to the National Food Authority Council ("Council"), the composition thereof is provided under PD No. 1770,²⁵ and to the Administrator, appointed by the President upon recommendation of the Council, the organization and management of petitioner.²⁶ The Administrator shall appoint, remove, suspend or otherwise discipline, with the consent of the Council, other officers and employees of the Administration, and shall perform such other functions as may be assigned and delegated to him by the Council.²⁷ PD No. 4 provides:

SECTION 6. Administration – Powers, Organization and Management. – The powers, organization and management of the Administration shall be as follows:

...

b) Organization. – **The Administration shall be governed by the Council which shall create and administer, through an Administrator as hereinafter provided, the necessary staff and line units of the Administration, whose personnel**

²⁴ Section 8, Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, Republic Act No. 11203, February 14, 2019.

²⁵ Section 6, PD No. 1770.

²⁶ Section 6 (b) & (c), PD No. 4.

²⁷ Section 6 (b), PD No. 4.

shall be exempt from the rules and regulations of the Wage and Position Classification Office.

c) Management. — **The management of the Administration shall be vested in an Administrator** who shall, upon recommendation of the Council, be appointed by the President of the Philippines within sixty (60) days from the approval of this Act, and who shall direct and manage the affairs of the Administration, subject to the supervision of the Council. The Administrator shall hold office for a term of four (4) years, except when earlier removed for cause, or until his successor shall have been appointed and qualified.

There shall be two deputy administrators, one for rice operations and the other for corn and other grains, appointed by the Council, who shall assist the Administrator in the performance of his functions. The deputy Administrator for Rice Operations shall be a person of recognized competence and experience in the production, processing and marketing aspects of rice, and the Deputy for Corn & other Grains Operations shall be one of recognized competence and experience in the production, processing, marketing and trading aspects of corn and other grains. Either one of the Deputy Administrators, upon designation by the Council, shall perform the duties and exercise the powers and functions of the Administrator in the absence of the latter.

The Administrator shall appoint, remove, suspend or otherwise discipline, with the consent of the Council, other officers and employees of the Administration, and shall perform such other functions as may be assigned and delegated to him by the Council.²⁸

As a final note, local government units must exercise restraint in levying on government properties. The "*power to destroy*" ought not be used against the very entity that wields it.²⁹ Besides, there is simply no point in forcing the transfer of public funds from one government pocket to another.³⁰

²⁸ Emphasis supplied.

²⁹ *Philippine Heart Center v. Local Government of Quezon City*, G.R. No. 225409, March 11, 2020, citing *National Power Corporation v. City of Cabanatuan*, G.R. No. 149110, April 9, 2003, and *Basco v. Philippine Amusement and Gaming Corporation*, G.R. No. 91649, May 14, 1991.

³⁰ *Philippine Heart Center v. Local Government of Quezon City*, G.R. No. 225409, March 11, 2020.

All told, I **SUBMIT** that: 1) the Petition for Review (Under Rule 8 of A.M. No. 05-11-07-CTA) With Motion for Suspension of Collection of Tax should be **GRANTED**; 2) the Decision dated July 22, 2020 and Resolution dated March 4, 2021 rendered by the Second Division of this Court in CTA AC No. 202 should be **REVERSED** and **SET ASIDE**; and 3) the Notice of Delinquency dated January 30, 2017 issued by respondents to petitioner should be declared **NULL** and **VOID**.


MARIAN IVY F. REYES-FAJARDO
Associate Justice