REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

NATIONAL FOOD AUTHORITY, Represented by its Regional Director Engr. Henry H. Tristeza, Petitioner,	**CTA AC No. 226**
- versus -	Members:
	CASTAÑEDA, JR., *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
CITY GOVERNMENT OF LIGAO Represented by its City Legal Officer and City Treasurer of Ligao, Respondent.	
	Promulgated: SEP 22 2021 1:10 p.m.

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DECISION

BACORRO-VILLENA, J.

At bar is a Petition for Review[1] filed by petitioner National Food Authority (**petitioner/NFA**) pursuant to Section 3(a)(3)[2], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the

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[1] Filed on 13 August 2019, Division Docket, Volume I, pp. 8-36.

[2] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

...

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;

reversal of the Decision dated 24 April 2019[3] (**assailed Decision**) and the Order dated 03 July 2019[4] (**assailed Order**), both rendered by the Regional Trial Court (**RTC**), Branch 14 of the City of Ligao in Special Civil Action No. 2990, entitled *National Food Authority Represented by its Regional Director, Engr. Henry H. Tristeza v. City Government of Ligao represented by its City Legal Officer and City Treasurer of Ligao*.

PARTIES OF THE CASE

Petitioner is a government entity originally created by virtue of Presidential Decree (**PD**) No. 4[5] under the name of "National Grains Authority" (**NGA**) and later reconstituted as NFA under PD 1770.[6]

Respondent City Government of Ligao (**respondent**) is a chartered local government unit (**LGU**) located in the province of Albay, created by virtue of Republic Act (**RA**) No. 9008.[7]

FACTS OF THE CASE

Petitioner is the owner of a plot of land designated as Lot 2372 (**the subject property**) located at Brgy. Calzada, Ligao City with an office building thereon that the NFA used as a local site for its operations.

On 13 September 2018, petitioner, through its Legal Affairs Department, received a Notice of Realty Tax Delinquency[8] informing it of the real property tax (**RPT**) deficiencies on the subject property in the total amount of ₱642,891.06. In the said notice, petitioner was given fifteen (15) days from receipt thereof to pay the RPT deficiencies.

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3 Penned by Presiding Judge Edwin C. Ma-Alat, Division Docket, Volume I, pp. 38-50.
4 Id., p. 37.
5 PROVIDING FOR THE DEVELOPMENT OF THE RICE AND CORN INDUSTRY AND CREATING FOR THIS PURPOSE THE NATIONAL GRAINS AUTHORITY.
6 RECONSTITUTING THE NATIONAL GRAINS AUTHORITY TO THE NATIONAL FOOD AUTHORITY, BROADENING ITS FUNCTIONS AND POWERS AND FOR OTHER PURPOSES.
7 AN ACT CONVERTING THE MUNICIPALITY OF LIGAO, PROVINCE OF ALBAY INTO A COMPONENT CITY TO BE KNOWN AS THE CITY OF LIGAO.
8 Exhibit "P-5", Division Docket, Volume I, p. 72.

Later, petitioner filed a Petition for Prohibition with a Prayer for Temporary Restraining Order (**TRO**) and/or Issuance of Writ of Preliminary Injunction (**WPI**) with the RTC of Ligao City. Therein, petitioner questioned the local government's authority to impose and collect RPT. It argued that it is a government instrumentality and thus, exempt from the payment of such taxes.

With the parties agreeing that the petition only involved legal questions, they waived the trial and proceeded to file their respective memoranda.

In the assailed Decision[9], the RTC dismissed petitioner's petition. It found that petitioner is not a government instrumentality but a government-owned and controlled corporation (**GOCC**) subject to local taxes. The pertinent portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, under the foregoing reasons, this Court hereby resolves to DISMISS the Petition for Prohibition filed by NFA, for lack of grave abuse of discretion committed by respondent City Treasurer of Ligao in representation of the City Government of Ligao in issuing the Notice of Realty Tax Delinquency pertaining to petitioner's Lot 2372 situated in Calzada, Ligao City.
>
> No finding on costs.
>
> **SO ORDERED.**
>
> ...

With the adverse decision against it, petitioner filed its Motion for Reconsideration (**MR**) but the same was denied in the similarly assailed Order.[10]

Hence, the present petition before the Court which was raffled to the Second Division.

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9 Supra at note 3.
10 Supra at note 4.

PROCEEDINGS BEFORE THE COURT

In a Resolution dated 27 August 2019[11], the Court ordered respondent to file its comment within ten (10) days from receipt thereof; while, petitioner's Motion for Suspension of Collection of Tax (**Motion for Suspension**) was set for hearing on 12 September 2019.

During the hearing of petitioner's Motion for Suspension, it presented the testimony of Erlinda E. Balderas (**Balderas**), Manager of NFA's Central Office Budget Treasury and Management Department who testified by way of her judicial affidavit.[12]

On the witness stand, Balderas testified that petitioner's functions were regulatory and not proprietary in nature making the same exempt from the payment of RPT. She also testified about petitioner's functions and financial operations, and attested to the veracity of the documents that petitioner offered as evidence.

With respondent's absence despite notice, petitioner was allowed to orally offer its exhibits. Petitioner then offered Exhibits "P-1" to "P-6"[13], all of which were admitted by the Court without opposition in an Order dated 12 September 2019.[14] In the same Order, petitioner was given ten (10) days within which to file its Reply to respondent's Opposition to the Motion for Suspension.[15] Another hearing was likewise set for the reception of respondent's evidence. On 06 September 2019, respondent filed its Comment with Opposition.[16]

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11 Division Docket, Volume I, p. 81.
12 Exhibit "P-7", id., pp. 82-93.
13

	Title
"P-1"	Order dated 03 July 2019 issued by RTC, Branch 14 of the City of Ligao.
"P-2"	Decision dated 24 August 2019 issued by Presiding Judge Edwin C. Ma-alat.
"P-3"	NFA Council Resolution No. 383-2K8-B (Excerpts from the Minutes of the Special Meeting of the NFA Council held on 22 February 2008).
"P-4"	Tax Declaration of Real Property No. 2008-02-003-0095 M0
"P-5"	Letter of Government Corporate Counsel Opinion No. 098, Series of 2007 (Re: Request for Legal Opinion on NFA's Exemption from Local Taxes).
"P-6"	General Wire Message dated 08 June 2007 and Fax Message for Transmission dated 29 November 2007 issued by NFA Administrator Jessup P. Navarro (Re: NFA's Claim for Exemption from Local Taxes and How to Protest the Assessment of LGUs).

14 Division Docket, Volume I, pp. 218-219.
15 Id.
16 Id., pp. 221-246.

Petitioner filed its Reply[17] on 20 September 2019.

On 16 October 2019, respondent presented its witnesses, Eddie V. Gumba (**Gumba**) and Gina R. David (**David**).

As the City Assessor of the City of Ligao, Gumba testified through his judicial affidavit[18] that petitioner is no longer using the subject property for its operations. He further stated that petitioner is no longer exempt from the payment of RPT and, assuming that it was, it failed to file a request for tax exemption.

David, as the City Treasurer of the City of Ligao, assumed the witness stand next and corroborated Gumba's testimony through a judicial affidavit.[19] She also confirmed that there was an Invitation to Bid for the Sale of Unserviceable/Junked Properties from petitioner's own website and this sale was to cover the warehouse erected on the subject property. She further stated that petitioner is a GOCC subject to RPT.

There being no other witnesses to present, the Court ordered[20] respondent to file its Formal Offer of Evidence (**FOE**) within three (3) days.

Thereafter or on 21 October 2019, respondent filed its FOE.[21] Petitioner filed its Comment/Opposition[22] thereto on 07 November 2019. In a Resolution dated 11 December 2019[23], the Court admitted all of respondent's exhibits. Subsequently, in a Resolution dated 11 February 2020[24], the Court also granted petitioner's Motion for Suspension filed on 13 August 2019.

Given that only questions of law are involved in the present case, the Court ordered[25] both parties to submit their respective memoranda with thirty (30) days from receipt of such order. Petitioner then filed

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17 Id., pp. 309-326.
18 Exhibit "R-9", id., pp. 345-351.
19 Exhibit "R-10", id., pp. 332-338.
20 See Order dated 16 October 2019, id., pp. 425-426.
21 Id., Volume II, pp. 437-442.
22 Id., pp. 445-451.
23 Id., pp. 464-465.
24 Id., pp. 470-472.
25 See Resolution dated 17 June 2020, id., p. 474.

its Memorandum[26] on 13 August 2020 while respondent filed its Memorandum[27] on 28 August 2020.

On 22 September 2020, the Court submitted the case for decision.[28]

ISSUE

The issues raised by petitioner can be summed up in this wise:

> WHETHER PETITIONER NATIONAL FOOD AUTHORITY IS A GOVERNMENT INSTRUMENTALITY AND IS EXEMPT FROM PAYING REAL PROPERTY TAXES ON ITS PROPERTIES.

ARGUMENTS

Petitioner mainly argues that it is a government instrumentality and thus, exempt from the payment of RPT in accordance with the Supreme Court's pronouncements in *Republic of the Philippines v. City of Paranaque*[29] (**Republic**) and *Manila International Airport Authority v. Court of Appeals, et al.*[30] (**MIAA**).

Petitioner maintains that it is similarly situated with the government entities involved in the abovementioned cases. It contends that just like the Philippine Reclamation Authority (**PRA**) in *Republic*, it does not have the authority to distribute dividends. Petitioner further argues that like the PRA and the Manila International Airport Authority (**MIAA**), its remaining functions of maintaining a buffer stock of grain and sustaining disaster relief programs are purely governmental and not proprietary. With this, it maintains that it is a government instrumentality as provided under Section 2(10) of the Administrative Code of 1987 which reads:

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26 Id., pp. 476-508.
27 Id., pp. 512-539.
28 See Resolution dated 22 September 2020, id., p. 601.
29 691 Phil. 476 (2012).
30 528 Phil. 181 (2006).

> ...
> **Sec. 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:
>
> ...
>
> (10) Instrumentality refers to any agency of the National Government, not integrated within the department framework vested within 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. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.
>
> ...

Alleging its status as a government instrumentality, petitioner concludes that it should be exempt from payment of local taxes.

On the other hand, respondent contends that petitioner is not a government instrumentality but a GOCC which is not within the ambit of the tax exemption provided under the Local Government Code (**LGC**) of 1991.[31] It argues that it is unlike the MIAA that does not have "operational autonomy" as required by the Administrative Code of 1987.[32]

Moreover, respondent points out that under PD 1770[33], petitioner has an authorized capital stock which can be subscribed to by not only the national government but also by LGUs and other GOCCs.

<u>RULING OF THE COURT</u>

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

> ...
> **Sec. 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,

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31 Republic Act No. 7160.
32 Executive Order No. 292.
33 Supra at note 6.

machinery, and other improvement not hereinafter specifically exempted.

...

The LGC of 1991 provides two (2) specific limitations on an LGU's power of taxation. The first limitation is provided under Section 133(o), which reads:

...

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.[34]

...

The first limitation pertains to the general rule that LGUs cannot levy any taxes, fees, or charges of any kind on the national government or its agencies and instrumentalities. The above-quoted provision also states the exception expressed in the phrase: "[u]nless otherwise provided herein." The implication, therefore, is that while a government agency or instrumentality is generally tax-exempt, the LGC of 1991 may provide for instances when it could be taxable.

On the other hand, the second limitation is set forth in Section 234 of the LGC of 1991 which enumerates the properties that are specifically exempt from the imposition of RPT:

...

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**[.]

...

[34] Emphasis supplied.

> 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 <u>withdrawn</u>** upon the effectivity of this Code.[35]
>
> ...

The second limitation likewise provides for its own exceptions. Under Section 234(a)[36] of the LGC of 1991, any real property owned by the Republic or its political subdivisions is exempt from the payment of RPT "except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person". This means that real property, even if owned by the Republic or any of its political subdivisions, may still be subject to RPT if the beneficial use thereof was granted to a taxable person.

To reiterate, petitioner relies on the premise that it is an instrumentality of the Republic; thus, its exemption from the payment of RPT. On the contrary, respondent's claim that petitioner is a GOCC whose tax exemptions have since been withdrawn with the effectivity of the LGC of 1991.

The issue at hand is not novel and has already been passed upon by the Supreme Court in a plethora of cases, including those cited by petitioner itself.

In the landmark case of *MIAA*, the Supreme Court was confronted with the issue of whether Parañaque City could levy RPT on airport lands and buildings. In resolving this issue, the Supreme Court had to first determine whether MIAA, a government entity with its own charter, was considered an "instrumentality" or a "GOCC".

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35 Emphasis and underscoring supplied.

36 **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[.]

Citing Section 2(10)[37] of the Administrative Code of 1987, the Supreme Court defined a government "instrumentality" as an "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". The exemption of government instrumentalities from the coverage of local taxation was further justified by the Supreme Court in this wise:

> ...
>
> There is, moreover, no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another.
>
> There is also no reason for local governments to tax national government instrumentalities for rendering essential public services to inhabitants of local governments. **The only exception is when the legislature clearly intended to tax government instrumentalities for the delivery of essential public services for sound and compelling policy considerations.** There must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments.[38]
>
> ...

A "GOCC", on the other hand, is defined under Section 2(13) of the Administrative Code of 1987, as follows:

> ...
>
> (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...**[39]
>
> ...

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[37] Supra at pp. 6-7.

[38] *Manila International Airport Authority v. Court of Appeals, et al.*, Supra at note 29; Emphasis in the original text.

[39] Emphasis supplied.

The entity must also meet the two (2) conditions prescribed under Article XII, Section 16 of the Constitution:

> ...
>
> ARTICLE XII
>
> National Economy and Patrimony
>
> ...
>
> 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**.[40]
>
> ...

Relevantly, the Supreme Court ruled that MIAA is not a GOCC since it was **not** organized as a stock or non-stock corporation. It was likewise unnecessary to subject it to the test of economic viability since it was not created to compete in the marketplace.

Although MIAA is vested with corporate powers, the Supreme Court found that it remains a government instrumentality that exercises the governmental powers of eminent domain, police authority and levying of charges and fees.[41] As a government instrumentality, MIAA was thus exempt from paying local taxes under Section 133(o) of the LGC of 1991.

It was further held in *MIAA* that airport lands and buildings are properties of public dominion owned by the Republic. These properties have been determined to be intended for public use as they are used by the public for domestic and international air travel. Even if the titles to the properties were in MIAA's name, it only held them in trust. The Supreme Court, however, clarified that portions of the Republic's properties that are leased to taxable persons may be subjected to RPT:

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[40] Emphasis supplied.

[41] *Manila International Airport Authority v. Court of Appeals, et al.*, supra at note 29.

> ...
>
> The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption. Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the "beneficial use thereof has been granted, for consideration or otherwise, to a **taxable person**." MIAA, as a government instrumentality, is not a taxable person under Section 133(o) of the Local Government Code. Thus, even if we assume that the Republic has granted to MIAA the beneficial use of the Airport Lands and Buildings, such fact does not make these real properties subject to real estate tax.
>
> However, portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax. For example, the land area occupied by hangars that MIAA leases to private corporations is subject to real estate tax. In such a case, MIAA has granted the beneficial use of such land area for a consideration to a **taxable person** and therefore such land area is subject to real estate tax. In ***Lung Center of the Philippines v. Quezon City***, the Court ruled:
>
>> Accordingly, we hold that the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from such taxes. On the other hand, the portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.[42]
>
> ...

The same issue was brought before the Supreme Court in *Philippine Fisheries Development Authority v. Court of Appeals*[43] (**Philippine Fisheries Development Authority**) when the City of Iloilo levied RPT on the Iloilo Fishing Port Complex, which the Philippine Fisheries Development Authority (**PFDA**) operated.

The Supreme Court applied the parameters set in *MIAA* and determined that the PFDA was a government instrumentality exercising corporate powers, not a GOCC. Thus, it was exempt from

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[42] Supra at note 29; Citations omitted and emphasis in the original text.
[43] 555 Phil. 661 (2007).

the payment of RPT on the Iloilo Fishing Port Complex, except for those portions that were leased to private entities.

In *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila*[44], the Supreme Court likewise applied *MIAA* and held that the Government Service Insurance System (**GSIS**) was a government instrumentality whose properties, being owned by the Republic, cannot be assessed for RPT:

> ...
>
> While perhaps not of governing sway in all fours inasmuch as what were involved in *Manila International Airport Authority*, e.g., airfields and runways, are properties of the public dominion and, hence, outside the commerce of man, the rationale underpinning the disposition in that case is squarely applicable to GSIS, both MIAA and GSIS being similarly situated. *First*, while created under CA 186 as a **non-stock corporation**, a status that has remained unchanged even when it operated under PD 1146 and RA 8291, GSIS is not, in the context of the afore quoted Sec. 193 of the LGC, a GOCC following the teaching of *Manila International Airport Authority*, for, like MIAA, GSIS' capital is **not divided into unit shares**. Also, GSIS has no members to speak of. And by members, the reference is to those who, under Sec. 87 of the Corporation Code, make up the non-stock corporation, and not to the compulsory members of the system who are government employees. Its management is entrusted to a Board of Trustees whose members are appointed by the President.
>
> *Second*, the subject properties under GSIS's name are likewise owned by the Republic. The GSIS is but a mere trustee of the subject properties which have either been ceded to it by the Government or acquired for the enhancement of the system. This particular property arrangement is clearly shown by the fact that **the disposal or conveyance of said subject properties are either done by or through the authority of the President of the Philippines**. Specifically, in the case of the Concepcion-Arroceros property, it was transferred, conveyed, and ceded to this Court on April 27, 2005 through a presidential proclamation, Proclamation No. 835. Pertinently, the text of the proclamation announces that the Concepcion-Arroceros property was earlier ceded to the GSIS on October 13, 1954 pursuant to Proclamation No. 78 for office purposes and had since been titled to GSIS which constructed an office building thereon. Thus, the transfer on April 27, 2005 of the Concepcion-Arroceros property to this Court by the President through Proclamation No. 835. This illustrates the nature of the

[44] 623 Phil. 964 (2009).

government ownership of the subject GSIS properties, as indubitably shown in the last clause of Presidential Proclamation No. 835:

> WHEREAS, by virtue of the Public Land Act (Commonwealth Act No. 141, as amended), Presidential Decree No. 1455, and the Administrative Code of 1987, the **President is authorized to transfer any government property that is no longer needed by the agency to which it belongs to other branches or agencies of the government.**[45]
>
> ...

In *Mactan-Cebu International Airport Authority v. City of Lapu-Lapu, et al.*[46], the Supreme Court concluded that the Mactan-Cebu International Airport Authority (**MCIAA**), being a government instrumentality, cannot be levied RPT except on portions of its properties leased to taxable persons, to wit:

> ...
>
> ... MCIAA, with its many similarities to the MIAA, should be classified as a government instrumentality, as its properties are being used for public purposes, and should be exempt from real estate taxes. This is not to derogate in any way the delegated authority of local government units to collect realty taxes, but to uphold the fundamental doctrines of uniformity in taxation and equal protection of the laws, by applying all the jurisprudence that have exempted from said taxes similar authorities, agencies, and instrumentalities, whether covered by the 2006 MIAA ruling or not.
>
> ...

Adopting the principles laid down in the foregoing cases, the concept of a government instrumentality vested with corporate powers was eventually adopted in Executive Order (**EO**) No. 596[47], which was enacted into law on 29 December 2006. It acknowledged the third classification of a government agency in addition to GOCCs and instrumentalities, *viz*: *government instrumentalities vested with corporate powers and named as "government corporate entities"* (**GCE**).

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[45] Emphasis, italics and underscoring in the original text and supplied.
[46] 759 Phil. 296 (2015).
[47] Defining and Including "Government Instrumentality Vested with Corporate Powers" or "Government Corporate Entities" under the jurisdiction of the Office of the Government Corporate Counsel (OGCC) as principal law office of Government-Owned or Controlled Corporations (GOCCs) and for other purposes.

EO 596 includes GCEs within the jurisdiction of the Office of the Government Corporate Counsel (**OGCC**). Section 1 of EO 596 states:

> ...
>
> Sec. 1. The Office of the Government Corporate Counsel (OGCC) shall be the principal law office of all GOCCs, except as may otherwise be provided by their respective charter or authorized by the President, their subsidiaries, corporate offsprings, and government acquired asset corporations. The OGCC shall likewise be the principal law office of *"**government instrumentality vested with corporate powers" or "government corporate entity,**"* as defined by the Supreme Court in the case of "**MIAA vs. Court of Appeals, City of Parañaque, et al.,**" *supra*, notable examples of which are: Manila International Airport Authority (MIAA), Mactan International Airport Authority, the Philippine Ports Authority (PPA), Philippine Deposit Insurance Corporation (PDIC), Metropolitan Water and Sewerage Services (MWSS), Philippine Rice Research Institute (PRRI), Laguna Lake Development Authority (LLDA), Fisheries Development Authority (FDA), Bases Conversion Development Authority (BCDA), Cebu Port Authority (CPA), Cagayan de Oro Port Authority, and San Fernando Port Authority.[48]
>
> ...

Furthermore, in 2011, RA 10149[49], or the GOCC Governance Act of 2011, was passed into law adopting such new category under EO 596:

> ...
>
> (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

48 Emphasis and italics in the original text.

49 AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE IN GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST AND FOR OTHER PURPOSES.

> Conversion and Development Authority (BCDA), 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).
>
> ...

It is clear from the above disquisitions that a government instrumentality **must not have been organized as a stock or non-stock corporation**, even though it exercises corporate powers, administers special funds, and enjoys operational autonomy, usually through its charter. Likewise, its properties are exempt from RPT because **they are properties of the public dominion held in trust for the Republic**, intended for public use, and cannot be the subject of levy, encumbrance, or disposition.

On the contrary, GOCCs are subject to RPT due to the passage of the LGC of 1991, which now provides:

> ...
>
> **Section 234**. *Exemptions from Real Property Tax*. – ...
>
> ...
>
> 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.[50]
>
> ...

With the above in mind, We deny the petition for the reasons below.

PETITIONER IS A GOVERNMENT-OWNED AND CONTROLLED CORPORATION (GOCC).

Petitioner was created in 1981 by PD 1770[51], which transferred the functions of the previously constituted NGA to petitioner. Originally,

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[50] Emphasis supplied.
[51] Supra at note 6.

the NGA had no capital stock as provided under PD 4[52] ("**original charter**"), as amended by PD 699[53] and PD 1485.[54] Moreover, in the original charter, as amended by PD 1485, NGA (now petitioner) was explicitly exempt from the payment of RPT, to wit:

> ...
>
> 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:
>
> i. From payment **of all taxes**, duties, fees, imposts, charges, costs and restrictions to the Republic of the Philippines, its provinces, cities, municipalities including the taxes, duties, fees, imposts and other charges provided for under the Tariff and Customs Code of the Philippines, R.A. No. 1937, 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[55]
>
> ...

However, with the enactment of PD 1770[56], petitioner was specifically identified as a stock corporation:

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52 Supra at note 5.

53 AMENDING PRESIDENTIAL DECREE NUMBER FOUR, ENTITLED "PROCLAIMING THE CREATION OF THE NATIONAL GRAINS INDUSTRY DEVELOPMENT ADMINISTRATION AND PROVIDING FUNDS THEREFOR".

54 FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL GRAINS INDUSTRY DEVELOPMENT ACT.

55 Emphasis supplied.

56 Supra at note 6.

> ...
>
> SECTION 9. *Capitalization.* — **The Authority shall have an authorized capital stock of five billion pesos, divided into fifty million shares or 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.[57]
>
> ...

As held by the Supreme Court in *Philippine Fisheries Development Authority*, to be considered as a GOCC, an entity must either be organized as a stock or non-stock corporation. Three (3) requisites must concur for one to be classified as a stock corporation, to wit: (1) it has capital stock; (2) the capital stock is divided into shares; and, (3) it is authorized to distribute dividends and allotments of surplus and profits to its stockholders.[58]

Held against the above requisites, this Court cannot but conclude that petitioner is a GOCC. As expressly provided in petitioner's own Charter, it is a stock corporation and its capital stock is divided into shares, notwithstanding the fact that its entire capital stock is subscribed to by the national government.[59]

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57 Emphasis supplied.

58 *Light Rail Transit Authority v. Quezon City, represented by the City Treasurer and the City Assessor*, G.R. No. 221626, 09 October 2019.

59 Section 2(13) of the Administrative Code defines 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.

Furthermore, it is worth noting that petitioner's Code of Corporate Governance[60] clearly and specifically identifies itself as a GOCC, to wit:

> ...
>
> *Section 1.* **Definition of Terms.** - For purposes of this Code, the following terms shall have the following meanings:
>
> ...
>
> "Chartered GOCC" refers **to a GOCC, in this case, NFA,** created and vested with functions by a special law.
>
> ...
>
> *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[61]
>
> ...

Hence, petitioner is a GOCC.

PETITIONER IS NOT A GOVERNMENT INSTRUMENTALITY WITH CORPORATE POWERS.

In RA 10149[62], an agency will be classified as a government instrumentality vested with corporate powers when the following elements concur: (**a**) it performs governmental functions; and, (**b**) it enjoys operational autonomy.[63]

The Supreme Court in *National Power Corporation v. City of Cabanatuan*[64], defined governmental functions as follows:

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60 NFA Code of Corporate Governance, available at https://nfa.gov.ph/images/files/Transparency/T_corporate_governance.pdf (last accessed on 27 September 2021).

61 Emphasis supplied.

62 Supra note at 48.

63 *Philippine Heart Center v. The Local Government of Quezon City, et al.*, G.R. No. 225409, 11 March 2020.

64 449 Phil. 233 (2003); Emphasis supplied.

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63 *Philippine Heart Center v. The Local Government of Quezon City, et al.*, G.R. No. 225409, 11 March 2020.

64 449 Phil. 233 (2003); Emphasis supplied.

> ...
>
> **Governmental functions** are those pertaining to the administration of government, and as such, are treated as **absolute obligation on the part of the state to perform** while **proprietary functions** are those that are undertaken **only by way of advancing the general interest of society, and are merely optional on the government.** Included in the class of GOCCs performing proprietary functions are "business-like" entities such as the National Steel Corporation (NSC), the National Development Corporation (NDC), the Social Security System (SSS), the Government Service Insurance System (GSIS), and the National Water Sewerage Authority (NAWASA), among others.
>
> ...

Based on petitioner's corporate profile[65], petitioner's mission is to procure rice locally and maintain the optimal level of buffer stock at all times strategically located across the country and to manage efficiently and effectively the acquisition, quality maintenance, and disposition of the buffer stock during emergencies and calamities. Prior to the amendments introduced by RA 11203[66], petitioner has the power, among others, to engage in the **buying and selling of rice**[67] **at a mark-up**[68]; **invest** in any and all kinds of securities, stocks, bonds and other secured collaterals[69]; create and establish subsidiary corporations to undertake the related and **integrated business operations of the Authority**[70]; and, **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

[65] Mandate, Mission, Vision and Core Functions with List of Officials, available at https://nfa.gov.ph/transparency/mandate-functions-name-of-officials (last accessed on 27 September 2021).

[66] AN ACT LIBERALIZING THE IMPORTATION, EXPORTATION AND TRADING OF RICE, LIFTING FOR THE PURPOSE THE QUANTITATIVE IMPORT RESTRICTION ON RICE, AND FOR OTHER PURPOSES was passed into law on **14 February 2019**, however, the subject Notice for Realty Tax Delinquency covers the years **2009 to 2018**.

[67] Buying/Selling Price available at https://nfa.gov.ph/buying-selling-price (last accessed on 27 September 2021).

[68] *Current buying price is ₱19.00 and the selling price ranges from ₱23.00 to ₱25.00.*

[69] Section 6(a)(xxiv) of PD 4, as amended by PD 699 and 1485 provides:

> ...
>
> (xxiv). To invest its funds or other assets in such undertaking as it may deem wise necessary such as but not limited to investment in any and all kinds of securities, stocks, bonds and other secured collaterals;
>
> ...

[70] Section 6(a)(xxv) of PD 4, as amended by PD 699 and 1485 provides:

> ...
>
> (xxv). To create and establish subsidiary corporations to undertake the related and integrated business operations of the Authority;
>
> ...

any obligation or evidence or indebtedness of any corporation, public or private, domestic or foreign, or the bonds or other obligations or evidence of indebtedness of any person, firm or corporation.[71] Certainly, these activities do not partake of the sovereign functions of the government. They are private and commercial undertakings, albeit imbued with public interest. The public interest involved in its activities, however, does not distract from the commercial nature of petitioner, in the same league with similar public utilities like telephone and telegraph companies, railroad companies, water supply and irrigation companies, gas, coal or light companies, power plants, ice plant among others; all of which are declared by the Supreme Court as ministrant or proprietary functions of the government aimed at advancing the general interest of society.[72]

Even a closer look of petitioner's charter would reveal that its enterprise is treated as a "business", as follows:

> ...
> Section 6. *Administration. — Powers, Organization, Management and Exemptions.* — The Powers, organization, management and exemptions of the *Authority* shall be as follows:
>
> > a) Powers – In order to effectively carry out its functions and responsibilities provided in this Act, the Authority shall have the following powers:
> > ...
> >
> > (xxv). To create and establish subsidiary corporations to undertake the related and integrated ***business operations of the Authority***;
> > ...
> >
> > (d) Exemptions. - In furtherance to the effective implementation of the policy enunciated in this decree, the Authority is hereby declared exempt:
>
> ...

---

[71] Section 7(a) of PD 1770 provides:
...
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 obligations or evidence of indebtedness of any person, firm or corporation.
...

[72] *National Power Corporation v. City of Cabanatuan*, Supra at note 63, citing *National Waterworks and Sewerage Authority v. NWSA Consolidated Unions*, 120 Phil. 736 (1964).

> 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.[73]
>
> ...

Anent the second requisite, petitioner does not enjoy operational autonomy.

In ruling so, the RTC noted that under petitioner's charter, it still needs the approval of the President of the Philippines and the prior recommendation of the Secretary of Finance to render valid and effective any issuance of bonds, loan agreements, and other evidence of indebtedness, to wit:[74]

> ...
>
> Notably, the underlying distinction between the two is the **enjoyment of operational autonomy by an instrumentality, which is not the case with a government-owned and controlled corporation**. Applied to this case, this court agrees with the respondent city that under P.D. No. 4, as amended by P.D. No. 1485, the issuance of bonds, loan agreements, and other evidences of indebtedness by NFA, to be valid and effective, require approval of the President of the Philippines and prior recommendation of the Secretary of Finance. **This operational restriction exemplifies the <u>corporate</u> nature of NFA.**[75]
>
> ...

The afore-quoted portion of the RTC's assailed Decision echoed this Court's Second Division in a similar case[76], wherein it ruled that petitioner does not enjoy operational autonomy, *viz*:

> ...
>
> **Administer special funds but DOES NOT enjoy operational autonomy**

[73] Emphasis supplied.
[74] Division Docket, Volume I, p. 47.
[75] Emphasis and underscoring supplied.
[76] CTA AC No. 180, 29 May 2018.

In the assailed Resolution dated November 15, 2016 rendered by the RTC-Branch 31 of Tagum City, Davao del Norte, it was held that *"[p]etitioner NFA is 'among the many underperforming and loan-ridden government owned and controlled corporations (GOCCs), and if not speedily addressed, their debts and deficits could place the country in an extremely negative financial position.'"* Stated differently, petitioner is engaged in an activity that inherently entails losses. As a matter of fact, for the year ended December 31, 2016, petitioner has a capital deficiency of ₱141,240,584,186.00.

For this reason, petitioner receives annual subsidy from the national government by providing it with budgetary support in terms of both equity infusions and operational subsidies. For the previous year, petitioner was granted a national government subsidy in the amount of ₱5,100,000,000.00 for calendar year 2017.

...

Furthermore, to be considered as operationally autonomous, a government agency should have powers, both necessary and incidental, to act independently in its dealings without requiring approval from a higher office. Among the necessary powers is the power to contract domestic as well as foreign indebtedness. In its charter, Section 6 of PD No. 4, as amended, provides as follows, *viz.*:

> "**Sec. 6.** Administration Powers, Organization, Management and Exemptions. The Powers, organization, management and exemptions of the Authority shall be as follows:
>
> (a) Powers in order to effectively carry out its functions and responsibilities provided in this Act, the Authority shall have the following powers:
>
> x x x
>
> *xviii.* Whenever the Authority determines that to accomplish its production, processing marketing and other incidental functions, **it is necessary to contract indebtedness, it shall be a resolution**, stating the purpose for which the indebtedness is to be incurred and citing the project study designed for the purpose, so declare and authorize the Authority's execution, or issuance of, and establish the terms and conditions to be contained in such bonds, loan agreements, other evidences of indebtedness necessary thereof, **such resolution shall become valid and effective upon approval by the President of the Philippines** and prior recommendation of the Secretary of Finance."

Palpably, before being able to finalize a contract of indebtedness, petitioner still needs the approval of the President of

> the Philippines for it to be valid and effective. Petitioner does not have the autonomy to enter and enforce loan agreements on its own without first securing approval thereof. In fact, the national government guarantees all NFA debt.[77]
>
> ...

As can be gleaned from the foregoing, petitioner does not enjoy operational autonomy.

PROPERTIES HELD BY PETITIONER CANNOT BE CONSIDERED PROPERTIES OF PUBLIC DOMINION.

In *City of Lapu-Lapu v. Philippines Economic Zone Authority*[78], citing *MIAA*, the Supreme Court ruled that:

> ...
>
> Properties of public dominion **are outside the commerce of man. These properties are exempt from "levy, encumbrance or disposition through public or private sale.** As this court explained in *Manila International Airport Authority*:
>
> > Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale.
>
> ...

However, under its charter, petitioner is given the power to "purchase, lease or otherwise acquire lands, whether public or private, for the cultivation and production of rice, corn and other grains"[79] and to "sell, lease, mortgage, pledge or otherwise dispose of the property, assets or undertaking of the authority or any part thereof **as the Authority may deem fit**".[80] Hence, properties held by petitioner

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[77] Citations omitted, emphasis and italics in the original text and underscoring supplied.
[78] 748 Phil. 473 (2014); Citations omitted and emphasis supplied.
[79] PD 4, as amended by PD 699 and 1485, section 6(a)(xix).
[80] Id., Section 6(a)(xx).

under the exercise of these powers, therefore, cannot be considered properties of the public dominion.

It bears stressing that the LGU's power to tax is the most effective instrument to raise needed revenues to finance and support myriad activities for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people.[81] Thus, it is imperative for government entities to share in the requirements of development, fiscal or otherwise, by paying taxes or other charges due from them.

Accordingly, finding no reversible error, this Court finds no cogent reason or justification to disturb the conclusions reached by the RTC.

WHEREFORE, the foregoing considered, the Petition for Review filed by petitioner National Food Authority on 13 August 2019 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated 24 April 2019 and Order dated 03 July 2019, respectively, of the Regional Trial Court, Branch 14 of the City of Ligao in Special Civil Action No. 2990, entitled *National Food Authority Represented by its Regional Director, Engr. Henry H. Tristeza v. City Government of Ligao represented by its City Legal Officer and City Treasurer of Ligao*, are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

[81] *Mactan Cebu International Airport Authority v. Marcos, et al.*, 330 Phil. 392 (1996).

ATTESTATION

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

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice