REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

NATIONAL FOOD AUTHORITY, Represented by ELVIRA C. OBAÑA, Regional Director of NFA-Region III, *Petitioner,*	**CTA AC No. 241** *Members*: **DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
- versus -	
CITY ASSESSOR AND CITY TREASURER, MALOLOS, BULACAN, *Respondents.*	**Promulgated:** MAR 16 2022 :20 am

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DECISION

DEL ROSARIO, P.J.:

This is a **Petition for Review under Section 11 of R.A. No. 1125/Rule 8 Section 3a of A.M. No. 05-11-07-CTA (With Motion for Suspension of Collection of Tax)**[1] filed on September 29, 2020 by petitioner National Food Authority against respondents City Assessor and City Treasurer of Malolos, Bulacan, seeking *(i)* the reversal of the Decision dated February 7, 2020 and Order dated July 2, 2020 of the Regional Trial Court of Malolos City, Bulacan, Branch 14 in Civil Case No. 347-M-2019 entitled *"National Food Authority, Represented by Regional Director Pioloto C. Santos vs. City Assessor & City Treasurer of Malolos Bulacan"*; *(ii)* the invalidation of the Notices of Delinquency issued to it; and, *(iii)* the suspension of the collection of taxes while awaiting resolution of its petition.

In the assailed Decision, the court *a quo* dismissed the "Petition for Prohibition (with application for Temporary Restraining Order and/or Issuance of Writ of Preliminary Injunction)" filed by petitioner, ruling that it failed to prove its right to be exempt from real property taxes (RPT) since it is a government-owned and controlled

[1] CTA Docket, pp. 5-44.

corporation. The dispositive portions of the assailed Decision and Order, respectively state, as follows:

<u>Decision dated February 7, 2020</u>

"**Wherefore**, all foregoing considered, the instant case for Prohibition with application for temporary restraining order and/or issuance of writ of preliminary injunction is hereby **DISMISSED**.

SO ORDERED."[2]

<u>Order dated July 2, 2020</u>

"In view of the foregoing, the Motion for Reconsideration filed by petitioner, through counsel, is hereby ***DENIED***.

SO ORDERED."[3]

THE PARTIES

Petitioner National Food Authority (NFA) is created by virtue of Presidential Decree (PD) No. 1770,[4] which reconstituted the National Grains Authority (NGA) created under PD No. 4.[5] It is represented by the Regional Manager for NFA-Region III, Director Elvira C. Obaña, by virtue of NFA Resolution No. 383-2K8-B.[6]

Respondent City Government of Malolos is a political subdivision created pursuant to law,[7] while respondents City Assessor and City Treasurer of Malolos, Bulacan are public officers of the City of Malolos, Bulacan.[8]

THE FACTS

Petitioner is the registered owner of real properties constituting of land and buildings located at Brgy. Tikay, City of Malolos.[9]

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[2] RTC Docket, p. 239.
[3] RTC Docket, p. 257.
[4] National Food Authority Act.
[5] National Grains Industry Development Act.
[6] Par. 13, The Parties, Petition for Review, CTA Docket, p. 9; Annex "C", Petition for Review, CTA Docket, p. 55.
[7] The City Government of Malolos is not included as a party in the title of the Petition for Review, but was named as one of the respondents of the case in Par. 14, The Parties, Petition for Review, CTA Docket, p. 10.
[8] Par. 15, The Parties, Petition for Review, CTA Docket, p. 9.
[9] Annex "C", Petition for Prohibition, RTC Docket, p. 40.

On June 14, 2019,[10] the NFA Legal Affairs Department received two (2) Notices of Realty Tax Delinquency issued by respondents demanding payment for tax due amounting to ₱431,541.90 and ₱55,958.10, or a total amount of ₱487.500.00, involving petitioner's real property in Brgy. Tikay, City of Malolos.[11] The unpaid RPT pertained to the years 2008 to 2019.

On August 14, 2019, petitioner filed a "Petition for Prohibition (with Application for Temporary Restraining Order and/or Issuance of Writ of Preliminary Injunction)"[12] (Petition for Prohibition) with the Regional Trial Court of Malolos, Bulacan (RTC – Malolos City) docketed as Special Civil Case No. 347-M-2019.

In the Order dated August 19, 2019,[13] Branch 14 of RTC – Malolos City, where the case was raffled, set a hearing on petitioner's application for temporary restraining order (TRO) and/or issuance of writ of preliminary injunction on August 23, 2019.

On August 23, 2019, the RTC resolved not to issue a TRO as the City of Malolos, Bulacan did not issue a notice of levy yet and there is no imminent danger that would cause the petitioner.[14]

On September 19, 2019, respondents filed their "Answer (Opposition)".[15] Petitioner then filed a "Reply" on October 14, 2019.[16]

On October 23, 2019, the RTC gave the parties a period of fifteen (15) days to file their respective memoranda.[17]

On December 4, 2019 and December 13, 2019, the "Memorandum (For Petitioner)"[18] and the "Memorandum (For Respondents)"[19] were filed, respectively.

On December 27, 2019, the RTC submitted for decision the Petition for Prohibition.[20]

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[10] In par. 26 of the Petition for Prohibition, the date is June 04, 2019, RTC Docket, p. 11; Per par. 19 of the Petition for Review, the date of receipt is June 14, 2019, CTA Docket, p. 10.
[11] Annexes "A" and "A-1", Petition for Prohibition, RTC Docket, pp. 37-38.
[12] RTC Docket, pp. 4-34.
[13] RTC Docket, p. 67.
[14] RTC Docket, p. 76.
[15] RTC Docket, pp. 117-128.
[16] RTC Docket, pp. 144-152.
[17] RTC Docket, p. 154.
[18] RTC Docket, pp. 156-186.
[19] RTC Docket, pp. 222-231.
[20] RTC Docket, p. 232.

On February 7, 2020, the RTC rendered the assailed Decision dismissing petitioner's Petition for Prohibition (with application for Temporary Restraining Order and/or Issuance of Writ of Preliminary Injunction).

On June 18, 2020, petitioner filed a "Motion for Reconsideration (of the Decision dated 7 February 2020)".[21] This was denied by the RTC in the assailed Order dated July 2, 2020.[22]

Undeterred, petitioner filed the present "Petition for Review under Section 11 of R.A. No. 1125/Rule 8 Section 3a of A.M. No. 05-11-07-CTA (With Motion for Suspension of Collection of Tax)" (Petition for Review) on September 29, 2020.[23]

In the Resolution dated October 8, 2020,[24] the Court directed petitioner to submit a compliant Verification and Certification Against Non-Forum Shopping and the original or certified true copy of Board Resolution No. 383-2K8-B within ten (10) days from notice.

On November 16, 2020, petitioner filed a "Compliance (to the Honorable Court's Notice of Resolution dated 20 October 2020)".[25] This was noted and deemed sufficient compliance with the Resolution dated October 8, 2020 by the Court in the Resolution dated November 25, 2020.[26] In the same Resolution, the Court also directed respondents to file their comment on the Petition for Review within ten (10) days from notice, and ordered the Branch Clerk of Court of the RTC to elevate the entire records of Civil Case No. 347-M-2019.

On January 26, 2021, the Court received the RTC records posted on January 15, 2021.[27]

Respondents failed to file their comment on the Petition for Review as per Records Verification dated February 3, 2021.[28]

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[21] RTC Docket, pp. 240-256.
[22] RTC Docket, p. 257.
[23] CTA Docket, pp. 5-44.
[24] CTA Docket, pp. 92-93.
[25] CTA Docket, pp. 94-97; Notice of Resolution dated October 20, 2020 refers to Resolution dated October 8, 2020.
[26] CTA Docket, pp. 145-146.
[27] CTA Docket, p. 147.
[28] CTA Docket, p. 148.

On February 22, 2021, the Court noted the transmission of the RTC Records and submitted the case for decision.[29]

ISSUES

As culled from the Petition, the issue for resolution of the Court is **whether the court *a quo* erred in dismissing petitioner's Petition for Prohibition with application for Temporary Restraining Order and/or Issuance of Writ of Preliminary Injunction**, specifically, in holding that:

1. Petitioner is a GOCC, not a government instrumentality; and,

2. Petitioner failed to prove its right to be exempt from RPT.[30]

PETITIONER'S ARGUMENTS

Petitioner argues that: (i) NFA is a government instrumentality, not a GOCC; (ii) NFA was created by law, PD No. 4, as amended, with a mandate of stabilizing the supply and price of rice in the country; (iii) NFA is a government instrumentality with a mandate of ensuring food security, as affirmed in Republic Act (RA) No. 11203 and its related Implementing Rules and Regulations (IRR); (iv) NFA cannot be a GOCC because it is neither a stock or non-stock corporation; (v) NFA's operations has been continuously subsidized by the national government; (vi) NFA does not compete with the private sector and it is not required to meet the test of economic viability which is required for GOCCs; and, (vii) NFA has sufficiently proven its claim that it is a government instrumentality, exempt from RPT, as supported by laws and jurisprudence.[31]

THE COURT'S RULING

This Court finds the Petition for Review meritorious.

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[29] CTA Docket, p. 150; Per Memorandum dated February 23, 2022, Associate Justice Catherine T. Manahan requested for: (i) re-raffle as her *ponencia* became the minority opinion; and, (ii) extension of period to promulgate the decision.
[30] Ground/s for the Petition and Assignment of Errors, Petition for Review, CTA Docket, p. 16.
[31] Discussions/Arguments, Petition for Review, CTA Docket, pp. 16-36.

The Petition for Review was timely filed

Petitioner received the assailed Order dated July 2, 2020 of the RTC on September 1, 2020.[32] Pursuant to Section 11 of RA No. 1125, as amended,[33] in relation to Section 3 (a)(3), Rule 4[34] and Section 3 (a), Rule 8[35] of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, petitioner had thirty (30) days from its receipt of the Order or until October 1, 2020 within which to file its Petition for Review. Accordingly, the present Petition for Review was timely filed on September 29, 2020.

The Court has jurisdiction over the Petition for Review

In the Petition for Prohibition filed before the RTC, petitioner alleged that respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction when they assessed and imposed RPT on its real property in Brgy. Tikay, City of Malolos, Bulacan and sent two (2) Notices of Realty Tax Delinquency.[36]

Petitioner sought to be recognized as a government instrumentality, thus, exempt from payment of RPT, and prayed that

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[32] Annex "B", Petition for Review, CTA Docket, p. 54.
[33] Section 11, RA No. 1125, as amended.
"SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the **Regional Trial Courts** may file an appeal with the CTA within **thirty (30) days** after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. Xxx"

[34] Section 3 (a) (3), Rule 4 of the RRCTA, as amended.
"SECTION 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:
xxx
(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; xxx"

[35] Section 3 (a), Rule 8 of the RRCTA, as amended.
"SECTION 3. Who May Appeal; Period to File Petition. — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a **Regional Trial Court** in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within **thirty days** after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. xxx"
[36] RTC Docket, p. 5.

respondents be enjoined from pursuing the collection of the RPT imposed upon its property as contained in the two (2) Notices of Realty Tax Delinquency. Essentially, petitioner challenges the assessments based on its purported exemption as a government instrumentality.

Section 2, Rule 65 of the Rules of Court, as amended, reads:

> "Section 2. *Petition for prohibition.* — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.
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> The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46."

The extraordinary remedy of prohibition may be resorted to when there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Where administrative remedies are available, petitions for the issuance of the peremptory writ of prohibition does not lie 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.[37]

In a number of cases,[38] the Supreme Court has settled that a claim for exemption from real property taxation simply questions the correctness of the assessment. A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess RPT.

The foregoing notwithstanding, exhaustion of an available administrative remedy is not an iron-clad rule before judicial recourse

[37] *Dr. Pablo R. Olivares, et al. vs. Mayor Joey Marquez, et al.*, G.R. No. 155591, September 22, 2004.
[38] *Dr. Pablo R. Olivares et al. vs. Mayor Joey Marquez, et al.*, G.R. No. 155591, September 22, 2004; *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao, G.R. No. 171586, January 25, 2010*; *Camp John Hay Development Corporation vs. Central Board of Assessment Appeals, et al.*, G.R. No. 169234, October 2, 2013; *National Power Corporation vs. The Provincial Treasurer of Benguet, et al.*, G.R. No. 209303, November 14, 2016.

may be taken. In truth, jurisprudence allows certain exceptions to the rule, as: (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.**[39]

The Court may assume jurisdiction on the present case as it qualifies under the exceptions to the doctrine of exhaustion of administrative remedies, specifically, as the issue involved is **purely a legal question**, the **administrative action is patently illegal** amounting to lack or excess of jurisdiction, there is **irreparable injury** to petitioner *vis-à-vis* the presence of circumstances indicating the **urgency of judicial intervention**.

Irreparable injury and urgency of judicial intervention

Petitioner claims that it will sustain grave and irreparable injury if the acts complained of are not restrained or enjoined considering that the real properties which are the subject of the two (2) Notices of Realty Tax Delinquency are actually properties of the National Government, the subject land and building being registered in the name of the National Government, and that said real properties are actually being used as office buildings and warehouse of petitioner in Bulacan. Petitioner avers that if said real properties are sold, the National Government will suffer serious and irreparable damage, being the sole owner of petitioner's paid-in capital. Moreover, petitioner submits that the sale of said real properties, which are used in its operations, will be injurious to petitioner's mandate of ensuring security and stability of the supply and price of rice in the City of Malolos.

Evidently, the foregoing injuries that petitioner may suffer in the event that the RPT assessments are collected, pending the resolution of the legal issue on whether petitioner is an instrumentality of the

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[39] *Banco De Oro et al. vs. Republic of the Philippines, et al.*, G.R. No. 198756, January 13, 2015.

government that is exempt from RPT, will certainly cause prejudice and irreparable injury to petitioner. Thus, immediate judicial intervention was justified to resolve the aforesaid legal issue.

Purely legal question and patently illegal administrative action

In *City of Lapu-Lapu vs. Philippine Economic Zone Authority* and *Province of Bataan, et al. vs. Philippine Economic Zone Authority,*[40] the Supreme Court recognized that the question of whether an entity is a government instrumentality exempt from payment of RPT is a question of law and noted that appeals before the Local Board of Assessment Appeals (LBAA) and Central Board of Assessment Appeals (CBAA) are "fruitful only where questions of fact are involved."

In the present case, the patent illegality of pivotal actions in seeking to collect RPT from petitioner is evidenced from the cursory review of pertinent laws and judicial pronouncements.

The power of taxation, being an essential and inherent attribute of sovereignty, belongs, as a matter of right, to every independent government, and needs no express conferment by the people before it can be exercised. It is purely legislative and, thus, cannot be delegated to the executive and judicial branches of government without running afoul to the theory of separation of powers. It, however, can be delegated to municipal corporations, consistent with the principle that legislative powers may be delegated to local governments in respect of matters of local concern. The authority of provinces, cities, and municipalities to create their own sources of revenue and to levy taxes, therefore, is not inherent and may be exercised only to the extent that such power might be delegated to them either by the basic law or by statute.[41]

Section 232 of the Local Government Code (LGC) grants LGUs the power to levy RPT, 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."

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[40] G.R. Nos. 184203 and 187583, November 26, 2014.
[41] *Film Development Council of the Philippines vs. Colon Heritage Realty Corporation, operator of Oriente Group Theaters, represented by Isidoro A. Canizares* and *Film Development Council of the Philippines vs. City of Cebu and SM Prime Holdings, Inc.*, G.R. Nos. 203754 and 204418, June 16, 2015.

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The power to levy RPT is restricted by Sections 133 and 234 of the LGC by exempting the National Government and its instrumentalities from payment thereof, among others, *viz.*:

> "Section 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:
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> xxx xxx xxx
>
> **(o) Taxes, fees or charges of any kind on the National Government, its agencies and <u>instrumentalities</u>, and local government units.**
>
> xxx xxx xxx
>
> Section 234. *Exemptions from Real Property Tax.* - The following are exempted from payment of the real property tax:
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> **(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; xxx**"*(Boldfacing and underscoring supplied)*

Thus, the resolution of the legal issue anent the classification of petitioner as a government instrumentality is pivotal in determining its taxability, including the legality or illegality of respondents' action in assessing petitioner of RPT.

Requisites of a government instrumentality

In *Manila International Airport Authority vs. Court of Appeals, et al.*[42] *("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:

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[42] 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.

SEC. 2. *General Terms Defined.* — x x x x
(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 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.

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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:**

x x x x

(o) **Taxes, fees or charges of any kind on the National Government, its agencies and <u>instrumentalities</u>** 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.'

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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 <u>interest of the common good and subject to the test of economic viability</u>**.

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 <u>and</u> economic viability**. xxx" *(Boldfacing supplied; citations omitted)*

Under RA No. 10149,[43] the definition of a government instrumentality and government owned and controlled corporation (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)/<u>Government Corporate Entities (GCE)</u>** 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**

[43] GOCC Governance Act of 2011.

> **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)*

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.[44] A non-stock corporation is "one where no part of its income is distributable as dividends to its members, trustees, or officers"[45] 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."[46]

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 PD No. 4, as amended by PD No. 1485 and PD No. 1770 and RA No. 11203, *vis-à-vis* the pronouncements in

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[44] Section 3, Batas Pambansa (BP) Blg. 68 (now Section 3, Revised Corporation Code of the Philippines [RCCP]).
[45] Section 87, BP Blg. 68 (now Section 86, RCCP).
[46] Section 88, BP Blg. 68 (now Section 87, RCCP).

***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,[47] provides that 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.[48]

Second, petitioner was originally attached to the Office of the President (OP).[49] 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 functions[50] as it administers special funds,[51] while enjoying operational autonomy[52] under its charter.

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[47] 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.

[48] Now Section 87, RCCP; Refer to Section 5, PD No. 1485; Section 2, PD No. 1770; and, Section 8, RA No. 11203.
[49] Section 3, PD No. 1770.
[50] Section 5(b), PD No. 4, as amended, Section 7, PD No. 1770; Section 8, RA No. 11203.
[51] Section 11, PD No. 4; Section 10, PD No. 1770.
[52] Section 6, PD No. 1770.

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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
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> ii. xxx;
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> 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 <u>buffer stocks to stabilize consumer prices</u>**;
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> 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 <u>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</u>**;
>
> 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:[53]

> "i. **<u>To institute</u> 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 <u>shall start to purchase grains</u> at the beginning of every harvest and for**

[53] Section 6, PD No. 1485.

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. **<u>To inspect</u> 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. **<u>To order the seizure</u>, 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 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. **<u>To establish and enforce standards</u>** 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. **<u>To coordinate the activities of all government agencies</u>** 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 **<u>deputize any official of such government agencies</u>** as may be necessary to assist the Authority in carrying out its functions;

xi. **<u>To register, license and supervise</u> 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. **<u>To establish rules and regulations</u>** 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

ol

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;

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**.[54]

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.

[54] Section 3(a), RA No. 8178, as amended by RA No. 11203.

om

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,*[55] 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 into no par value shares as provided in Section 7 of P.D. No. 1084, it is not authorized to distribute dividends, surplus allotments or profits to stockholders**. There is no provision whatsoever in P.D. No. 1084 or in any of the subsequent executive issuances pertaining to PRA, particularly, E.O. No. 525,5 E.O. No. 6546 and EO No. 7987 that authorizes PRA to distribute dividends, surplus allotments or profits to its stockholders.
>
> PRA cannot be considered a non-stock corporation either because it does not have members. A non-stock corporation must have members. Moreover, it was not organized for any of the purposes mentioned in Section 88 of the Corporation Code. Specifically, it was created to manage all government reclamation projects.
>
> Furthermore, there is another reason why the PRA cannot be classified as a GOCC. Section 16, Article XII of the 1987 Constitution provides as follows: xxx
>
> xxx xxx xxx
>
> xxx In this case, **PRA may have passed the first condition of common good but failed the second one - economic viability. Undoubtedly, the purpose behind the creation of PRA was not for economic or commercial activities**. Neither was it created to compete in the market place considering that there were no other competing reclamation companies being operated by the private sector. **As mentioned earlier, PRA was created essentially to**

[55] G.R. No. 191109, July 18, 2012.

> **perform a public service** considering that it was primarily responsible for a coordinated, economical and efficient reclamation, administration and operation of lands belonging to the government with the object of maximizing their utilization and hastening their development consistent with the public interest." (*Boldfacing supplied*)

Petitioner is exempt from RPT under Section 6 of PD No. 4, as amended

Section 6, PD No. 4, as amended by PD No. 1485, exempts petitioner from payment of all taxes. Section 6 thereof reads:

> "Sec. 6. Administration — Powers, Organization, Management and Exemptions. — The Powers, organization, management and exemptions of the Authority shall be as follows:
>
> xxx xxx xxx
>
> (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
>
> 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 two (2) Notices of Realty Tax Delinquency issued against petitioner are void *ab initio* and collection of the amount therein thereof may not be justified.

Like a void judgment, a void assessment produces no legal effect; it never attains finality and - akin to an outlaw - it may be slain whenever or wherever it exhibits its head.[56]

The disquisition in *Rene H. Imperial, et al. vs. Hon. Edgar L. Armes, Presiding Judge of Branch 4, Regional Trial Court, 5th Judicial Region, Legazpi City, et al. ("Imperial")*,[57] on the effect of a void judgment is enlightening:

> "**A void judgment is no judgment at all in legal contemplation**. In *Cañero v. University of the Philippines*, we held that-
>
> > x x x A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. **It has no legal or binding effect or efficacy <u>for any purpose or at any place</u>.** It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment. x x x
>
> xxx
>
> xxx, our ruling in *Banco Español-Filipino* v. *Palanca* on the effects of a void judgment has reappeared consistently in jurisprudence touching upon the matter. In this case, we said that a **void judgment is 'a lawless thing, which can be treated as an outlaw and slain at sight, or ignored <u>wherever and whenever it exhibits its head</u>**.' In concrete terms, this means that a void judgment creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect.
>
> xxx

[56] *Rene H. Imperial, et al. vs. Hon. Edgar L. Armes, Presiding Judge of Branch 4, Regional Trial Court, 5th Judicial Region, Legazpi City, et al.*, G.R. Nos. 178842 and 195509, January 30, 2017.
[57] G.R. Nos. 178842 and 195509, January 30, 2017.

> ***Effects of a void judgment***
>
> xxx xxx xxx.
>
> Our ruling in *Gonzales* v. *Solid Cement Corporation* is more unequivocal. In this case, we found that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction, therefore acting outside the contemplation of law. Hence, even when the period to assail the CA decision had already lapsed, we ruled that it did not become final and immutable. **A void judgment never becomes final**. xxx." *(Boldfacing and underscoring supplied; citations omitted)*

Analogously construed, while an RPT assessment generally becomes final and executory if the procedures under Sections 252, 226, 229 and 231 of the LGC were not observed, yet, this principle is premised on the assumption that the judgment is not fatally infirm. Just like in *Imperial*, **a seemingly "final" judgment that is intrinsically void can neither be given the status of finality nor any binding effect, which scenario is no different from an RPT assessment that is patently void**.

As oft-repeated, a void assessment cannot legally be a valid basis for collection of any amount stated therein.

WHEREFORE, premises considered, the **Petition for Review under Section 11 of R.A. No. 1125/Rule 8 Section 3a of A.M. No. 05-11-07-CTA (With Motion for Suspension of Collection of Tax)** filed on September 29, 2020 by petitioner National Food Authority is hereby **GRANTED**. Accordingly, the Decision dated February 7, 2020 and Order dated July 2, 2020 of the Regional Trial Court of Malolos City, Bulacan, Branch 14 in Civil Case No. 347-M-2019 are **REVERSED** and **SET ASIDE**. The two (2) Notices of Realty Tax Delinquency dated May 28, 2019 are hereby declared **NULL** and **VOID** and of **NO EFFECT.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

With Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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

First Division

NATIONAL FOOD AUTHORITY, Represented by ELVIRA C. OBAÑA, Regional Director of NFA Region III, *Petitioner,*	**CTA AC No. 241**
	Members:
-versus-	**DEL ROSARIO, *P.J.*,** *Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
CITY ASSESSOR AND CITY TREASURER, MALOLOS, BULACAN, *Respondents.*	Promulgated: 10:20a

x- x

DISSENTING OPINION

MANAHAN, *J.:*

With due respect to the ponente, Presiding Justice Roman G. Del Rosario, I am dissenting to the opinion that petitioner is an instrumentality of the government and not a government-owned or controlled corporation (GOCC) which is exempt from Real Property Tax (RPT) under Section 6 of Presidential Decree (PD) No. 4, as amended by PD No. 1485.

The bone of contention in the instant case is whether petitioner NFA is subject to RPT. Petitioner NFA posits that it is not subject to RPT because being a government instrumentality, it is exempt from tax.

Section 234 of Republic Act (RA) No. 7160, otherwise known as the 1991 Local Government Code (LGC), enumerates the following entities/assets that are exempt from the payment of RPT:

> "SECTION 234. Exemptions from Real Property Tax. - The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or-controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R. A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection. **Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by**, all persons, whether natural or juridical, including **all government-owned or-controlled corporations are hereby withdrawn upon the effectivity of this Code**." (*Emphasis supplied*)

The last item of the aforequoted provision of RA No. 7160 or the LGC removes any exemption from RPT payment of all GOCCs upon the effectivity of this law.[1]

So the relevant question now is whether petitioner NFA is a GOCC or a government instrumentality.

Section 2(13), Introductory Provision of Executive Order (EO) No. 292, otherwise known as the Administrative Code of 1987, provides the definition of a GOCC, to wit:

"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:

xxx xxx xxx

(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**

[1] The LGC took effect on January 1, 1992.

> **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*)

In *Manila International Airport Authority v. Court of Appeals, et al.*,[2] the Supreme Court declared that a GOCC is not exempt from RPT and highlighted the preceding provision which classifies an entity as a GOCC, to wit:

> "**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. - x x x x
> >
> > (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: x x x. (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**....xxx
>
> xxx xxx xxx
>
> MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines **a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers.**" A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. **Non-stock corporations cannot distribute any part of their income to their members.** Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA

[2] G.R. NO. 155650, July 20, 2006. *cgm*

> from qualifying as a non-stock corporation." (*Emphases supplied*)

Thus, in order for an entity to be classified as a GOCC, it must be organized either as a stock or non-stock corporation. If it is a stock corporation it must have capital stock divided into shares and such shares are held by stockholders as voting shares.

Sections 9 and 10 of PD No. 1770 or the NFA Charter provide that:

> "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.
>
> Section 10. *Funding.*
>
> (a) Official development assistance to the Philippine government are channeled through the Authority, including food aid, shall be recorded on the books of the Authority as paid in capital when received in the form of loans, except where otherwise approved by the President of the Philippines, in which case they may be recorded as subsidies to the Authority.
>
> (b) Payments made by the national government on loans drawn by or for the Authority and the National Grains Authority shall be recorded as payments of equity, except where otherwise approved by the President in which case may be recorded as subsidies to the Authority.
>
> (c) The national government may subsidize the operations of the Authority out of funds appropriated in the annual appropriations Acts, in such amount and at such times as approved by the President of the Philippines.
>
> (d) The funding and organizational provisions in B.P. No. 80 intended for the national food programs, including those provided as special financing program seed fund, cooperatives loans, livelihood projects, in the Ministry of Agriculture, the

> Ministry of Natural Resources, the Office of the President, the Ministry of Human Settlements shall be reviewed by the Council, which shall recommend to the President the appropriations transfers and realignment of responsibilities in order to be consistent with the purposes of this Decree. Appropriations transferred shall form part of the equity investment into the Authority. These review shall be conducted with the participation of the Chairman, Presidential Commission on Reorganization and the Minister of the Budget.
>
> (e) The Authority is hereby empowered to negotiate with the government and domestic private lending institutions for credit facilities at preferential rates.
>
> (f) The Central Bank of the Philippines shall rediscount local procurement and importation of papers of the National Food Authority under such terms and conditions as may be determined by the Monetary Board, which shall give preferential treatment as to interest rate, maturity and loan value."

The abovementioned provisions unequivocably show that petitioner NFA has shares of stock wholly subscribed and paid by the national government, local government units, or other GOCCs.[3] Hence, petitioner NFA is a stock corporation.

Petitioner is not exempt from RPT

Notwithstanding petitioner's alleged exemption from "taxes" under Section 6 of PD 4, as amended, it is still liable for payment of RPT as such exemption was withdrawn under Section 234(3) of the 1991 LGC.

In the interpretation of statutes, the intent of the legislators is instructive and it can be established in the wordings of the statutes itself as held in *Socorro D. Ramirez v. Honorable Court of Appeals, et al.*,[4] to wit:

> "First, legislative intent is determined principally from the language of a statute. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurb (sic) or would lead to an injustice."

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[3] Section 9, PD No. 1770 or the NFA Charter.
[4] G.R. No. 93833 September 28, 1995.

Section 234(e) of the 1991 LGC is very clear that the legislators had withdrawn any exemption of GOCCs from payment of RPT. If the intent of the law and its creator is for the GOCC to retain such exemption, such categorical withdrawal of exemption would not be there in the first place and, on the contrary, it should have stated otherwise with certainty.

Moreover, in *Alex L. David, in his own behalf as Barangay Chairman of Barangay 77, Zone 7, Kalookan City and as President of the LIGA NG MGA BARANGAY SA PILIPINAS, v. Commission on Elections, et al.*,[5] the Supreme Court ruled that a later law should prevail over the older law, to wit:

> "...It is basic that in case of an irreconcilable conflict between two laws of different vintages, the later enactment prevails. *Legis posteriores priores contrarias abrogant.* The rationale is simple: **a later law repeals an earlier one because it is the later legislative will. It is to be presumed that the lawmakers knew the older law and intended to change it**. In enacting the older law, the legislators could not have known the newer one and hence could not have intended to change what they did not know. Under the Civil Code, laws are repealed only by subsequent ones — and not the other way around." (*Emphasis supplied*)

The Charter of the NFA was passed on January 14, 1981 while the LGC took effect on January 1, 1992. Thus, being the later law, its repealing clause under Section 534(f) applies, to wit:

> "**SECTION 534. Repealing Clause**. - (a) xxx xxx xxx.
>
> (b) xxx xxx xxx.
>
> (c) xxx xxx xxx.
>
> (d) xxx xxx xxx.
>
> (e) xxx xxx xxx.
>
> (f) 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."

There is no denying that petitioner performs an essential public service but such mandate relating to servicing public needs (*i.e.*, ensuring rice sufficiency, etc.) can also be vested in

[5] G.R. Nos. 127116 & 128039, April 8, 1997.

GOCCs as provided under Section 2(13) of the Administrative Code of 1987, as earlier quoted.

Moreover, the NFA is governed by the Governance Commission for Government-Owned or Controlled Corporation (GCG) under the Implementing Rules and Regulations of RA No. 11203 or the GOCC Government Act of 2011.[6]

Petitioner NFA failed to exhaust its administrative remedies.

Section 252 of the LGC provides:

> "SECTION 252. *Payment Under Protest.* - (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
>
> (b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.
>
> (c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.
>
> (d) In the event that the protest is denied or upon the lapse of the sixty day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code."

As shown in the abovementioned provision, a taxpayer assailing the RPT assessment made by a particular LGU shall pay it first but will be marked as "paid under protest" and the protest shall be in writing filed within 30 days from payment thereof. The concerned Treasurer of said LGU has 60-day period to decide whether to grant or deny such protest. In the event that a denial was made by or inaction on the part of said local treasurer, Chapter 3, Title II, Book II of LGC provides for an

[6] Executive Summary, COA Annual Audit Report on NFA for the years ended December 31, 2020 and 2019. am

appeal before the Local Board of Assessment Appeals (LBAA) and then to the Central Board of Assessment Appeals (CBAA).

Instead of following the abovementioned procedure, respondent NFA filed a petition for prohibition with application for temporary restraining order (TRO) and/or issuance of writ of preliminary injunction which was the subject matter of the RTC-Branch 14's *Decision* dated February 7, 2020 and the Assailed Order, on which the petitioner anchored its petition.

In *Marichu G. Ejera v. Beau Henry L. Merto and Erwin Vergara*,[7] the Supreme Court ruled that a complaint or petition could be dismissed or denied for failure of the complainant or petitioner to observe the exhaustion of administrative remedies, to wit:

> "Thirdly, the rule requiring the exhaustion of administrative remedies rests on the principle that the administrative agency, if afforded a complete chance to pass upon the matter again, will decide the same correctly. There are both legal and practical reasons for the rule. The administrative process is intended to provide less expensive and speedier solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, therefore, the courts – for reasons of law, comity and convenience – will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.
>
> The importance and value of the exhaustion of administrative remedies as a condition before resorting to judicial action cannot be brushed aside. As the Court points out in *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority*:
>
>> The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.

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[7] G.R. No. 163109, January 22, 2014.

> xxx xxx xxx
>
> The rule is that judicial intervention should only be availed of after all administrative remedies had been exhausted. The Judiciary must not intervene because Office Order No. 008 and Office Order No. 005 both concerned the implementation of a provincial executive policy. According to *Dimson (Manila), Inc. v. Local Water Utilities Administration*:
>
>> x x x. The doctrine of exhaustion of administrative remedies is a judicial recognition of certain matters that are peculiarly within the competence of the administrative agency to address. It operates as a shield that prevents the overarching use of judicial power and thus **hinders courts from intervening in matters of policy infused with administrative character**. The Court has always adhered to this precept, and it has no reason to depart from it now. (Bold emphasis supplied)
>
> Moreover, the non-observance of the doctrine of exhaustion of administrative remedies resulted in the complaint having no cause of action. Hence, the RTC and the CA correctly dismissed the case. Fourthly, the non-exhaustion by the petitioner had jurisdictional implications. (*Underscoring ours*)

Fiscal adequacy is without doubt vital to a sustainably efficient and effective government. Tax exemption is more of the exception than the general rule.

WHEREFORE, I vote to **DENY** petitioner's *Petition for Review* for lack of merit.

CATHERINE T. MANAHAN
Associate Justice