REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CITY GOVERNMENT OF DAVAO, Represented by the Hon. City Mayor Atty. Sara Z. Duterte-Carpio; City Assessor of Davao Represented by Engr. Jaime G. Adalin in his capacity as City Assessor, and City Treasurer of Davao Represented by Bella Linda N. Tanjili in her capacity as the City Treasurer of Davao,	**CTA *EB* NO. 2691** (CTA AC No. 262)
Petitioner,	Present: **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
-versus-	
NATIONAL FOOD AUTHORITY, Represented by: Ma. Theresa S. Villafuerte, Director of NFA-Legal Affairs Department, *Respondent.*	Promulgated: MAR 15 2024 5:45

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed on September 19, 2022, pursuant to *Section 3(b), Rule 8 of the Revised Rules of Court of Tax Appeals ("RRCTA")*,[2] seeking to annul, reverse and set aside the Decision, dated March 18, 2022 ("Assailed Decision"),[3] and Resolution, dated August 10, 2022 ("Assailed Resolution"),[4] both issued by the First Division of this Court ("Court in Division").

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1 See Petition for Review, *Rollo,* pp. 15-86, with Annexes.
2 A.M. No. 05-11-07-CTA, 22 November 2005.
3 See Decision, dated March 18, 2022, *Rollo,* pp. 37-73, with Concurring and Dissenting Opinion of Honorable Associate Justice Catherine T. Manahan.
4 See Resolution dated August 10, 2022, *id.*, pp. 76-80.

The Parties

Petitioner City of Davao ("petitioner" or "Davao City"), represented by the City Mayor, is a local government unit established and operating under the existing law of the Republic of the Philippines, with official address at City Hall, City Hall Drive, Davao City. Its co-petitioners, City Assessors Office represented by Engr. Jaime G. Adalin and City Treasurer's Office represented by Atty. Lawrence D. Bantiding, as City Treasurer in place of Ms. Bella Tanjili after her retirement, also hold office in the same address.[5]

On the other hand, respondent National Food Authority ("respondent" or "NFA") is an agency of the Philippine government, created by virtue of *Presidential Decree ("PD") No. 1770*,[6] under the Department of Agriculture, represented herein by Ma. Theresa S. Villafuerte, Director of NFA Legal Affairs, with local business address at Sta. Ana Avenue, Davao City.[7]

The Facts

The present Petition involves a real property located at Sta. Ana Avenue, Davao City ("Sta. Ana property") occupied and possessed by respondent, registered under the name of the Republic of the Philippines.[8]

On June 28, 2018, respondent received a Notice, dated June 27, 2018, reflecting an alleged unpaid real property tax ("RPT") in the amount of Php4,181,124.28, for the Sta. Ana property registered under Account No. 00-176399.[9] The Statement of Account attached to the Notice indicate that the unpaid RPT cover the years 2008 to 2018.[10]

Through a Letter dated August 3, 2018, respondent protested the assessment stressing that the NFA is a government instrumentality and is thus exempt from payment of RPT.[11]

However, despite the said Letter, petitioner issued a Notice of Delinquency dated August 3, 2018, received by the respondent NFA, reiterating the alleged unpaid RPT for the increased amount of Php4,233,189.24.[12]

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[5] See Parties, Petition for Review, *Rollo*, pp. 16-17; See also The Parties, Assailed Decision, *Rollo*, p. 38.
[6] National Food Authority Act, 14 January 1981.
[7] *Supra* note 5.
[8] See The Facts, Assailed Decision, *Rollo*, p. 39; See Declaration of Real Property Value – Land, Docket (CTA AC No. 262), p. 58.
[9] See The Facts, Assailed Decision, *id.;* See also Notice dated June 27, 2018, Docket (CTA AC No. 262), p. 77.
[10] See The Facts, Assailed Decision, *id.;* See also Statement of Account date June 25, 2018, Docket (CTA AC No. 262), p. 78.
[11] See The Facts, Assailed Decision, *id.;* See also Letter dated August 3, 2018, Docket (CTA AC No. 262), pp. 79-81.
[12] See The Facts, Assailed Decision, *id.;* See also Notice of Delinquency dated August 3, 2018, Docket (CTA AC No. 262), p. 82.

On October 8, 2018, respondent filed a "Petition for Prohibition (with Application for Temporary Restraining Order and/or Issuance of Writ of Preliminary Injunction)" with the Regional Trial Court of Davao City (Court a quo) docketed as Special Civil Case No. R-DVO-18-04262-SC.[13]

On February 7, 2019, the Court a quo rendered a Decision denying the Petition praying for the issuance of a Writ of Preliminary Injunction and dismissing the case.[14]

Aggrieved, respondent elevated the case to the Court of Tax Appeals on September 6, 2019. The Petition for Review with Motion for Suspension of Collection of Taxes was raffled to the Court's First Division, initially docketed as CTA Case No. 10104.[15]

On December 11, 2020, respondent filed a "Very Urgent Manifestation (with Motion for Leave to Withdraw Motion for Suspension of Collection of Taxes)" informing the Court in Division that petitioner has already paid the amount of RPT subject of the August 3, 2018 Notice of Delinquency, on November 27, 2020.[16]

In this regard, the Court in Division, in the hearing on January 21, 2021, deemed moot and academic respondent's Motion for Suspension of Collection of Tax and granted respondent's Motion for Leave to Withdraw Motion for Suspension of Collection of Taxes.[17]

On March 18, 2022, the Court in Division issued the Assailed Decision,[18] disposing of the case as follows:

> "**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 by the National Food Authority is hereby **PARTIALLY GRANTED**. The Notice dated June 27, 2018 and Notice of Delinquency dated August 3, 2018 are hereby declared **NULL** and **VOID** and of **NO EFFECT**.
>
> This Decision is without prejudice to a refund claim filed in accordance with Section 253 of the LGC within two (2) years from the finality of this Decision."

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[13] See The Facts, Assailed Decision, *id.*
[14] See The Facts, Assailed Decision, *id.*, at 40.
[15] See Petition for Review, Docket (CTA AC No. 262), pp. 8-83, with annexes.
[16] See The Facts, Assailed Decision, *Rollo*, p. 42; See also Very Urgent Manifestation (with Motion for Leave to Withdraw Motion for Suspension of Collection of Taxes) dated December 7, 2020, Docket (CTA AC No. 262), pp. 213-215.
[17] See The Facts, Assailed Decision, *id.*; See also Minutes of Hearing held on January 21, 2021, Docket (CTA AC No. 262), pp. 224-225.
[18] *Supra* note 3.

The Assailed Decision was then reaffirmed by the Court in Division in its Resolution,[19] dated August 10, 2022, on a Motion for Reconsideration filed by petitioner on April 19, 2022.

The original Petition[20] was posted by petitioner on September 19, 2022, and was received by the Court *En Banc* on October 12, 2022. However, after noting a mistake in the interchanged party designation, petitioner filed an Urgent Ex-Parte Motion to Admit Amended Petition for Review with Manifestation, with attached Petition for Review, on September 28, 2022.[21]

Respondent, on the other hand, filed its Comment (to Petitioner's amended Petition for Review dated September 6, 2022) on December 5, 2022.[22]

On January 27, 2023, respondent filed a Manifestation submitting to the Court *En Banc* a copy of the Notice dated August 31, 2022 issued by the Supreme Court in the case of *City Government of Pagadian, City Treasurer and City Assessor of Pagadian City vs. NFA ("Pagadian case")*.[23] According to respondent, the Supreme Court's decision support's the NFA's claim that it is a government instrumentality exempt from payment of RPT; thus, the instant Petition must be denied.

On March 2, 2023, the present Petition was submitted for Decision.[24]

The Issues[25]

I. WHETHER THE COURT IN DIVISION ERRED IN DECLARING RESPONDENT AS A GOVERNMENT INSTRUMENTALITY AND NOT AS A GOVERNMENT-OWNED AND CONTROLLED CORPORATION; AND

II. WHETHER THE COURT IN DIVISION ERRED IN RULING THAT PETITIONER CITY TREASURER'S ACT IN DEMANDING PAYMENT OF REAL PROPERTY TAX IS AN ULTRA VIRES ACT.

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19 *Supra* note 4.
20 See Petition for Review, *Rollo*, pp. 89-161, with annexes.
21 See Urgent Ex-Parte Motion to Admit Amended Petition for Review with Manifestation, with attached Petition for Review and annexes, *Rollo*, pp. 9-86.
22 See Comment (to Petitioner's amended Petition for Review dated 6 September 2022), *id.*, at 166-193.
23 G.R. No. 261464, August 31, 2022.
24 See Resolution dated March 2, 2023, *id.*, at 207-208.
25 See Petition for Review, *Rollo*, p. 20-21.

The Arguments

In its Petition for Review, petitioner argues that respondent is a government-owned and controlled corporation (GOCC) based on (1) *PD 1770*, which declared respondent a stock corporation; (2) respondent's own declaration in its Code of Corporate Governance; and (3) the passage of the *Local Government Code (LGC)* of 1991 affecting the withdrawal of all tax exemptions among all GOCCs.[26] Thus, according to petitioner, respondent should not be held exempt from payment of RPT.

In line with such view, petitioner posits that the City Treasurer's issuance of the Notice of Delinquency dated June 27, 2018 is merely within its ministerial power, and certainly not an *ultra vires act*.[27]

On the other hand, respondent counters that the NFA is not a GOCC but a government instrumentality exempt from RPT. Specifically, it argues that (1) NFA was created by law, *PD 4*, as amended, with a mandate of stabilizing the supply and price of rice in the country; (2) the mandate of NFA under *Republic Act (RA) No. 11203* is to maintain rice buffer stock to be used in times of emergency and calamity, which is an essential public service; (3) NFA is neither a stock nor a non-stock corporation; (4) NFA is an office attached to the Department of Agriculture (DA); (5) the NFA's operation has been continuously subsidized by the National Government; (6) NFA does not compete in the market nor with the private sector; and (7) NFA is not required to meet the test of economic viability.[28]

The Ruling of the Court

The instant Petition for Review was timely filed before the Court En Banc

Sections 3 (b), Rule 8 of the RRCTA states that a party adversely affected by a decision or resolution of a Division of the CTA on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing a petition for review within 15 days from receipt of the assailed decision or resolution.

Here, the Assailed Resolution was received by the petitioner on August 22, 2022. Counting 15 days therefrom, petitioner had until September 6, 2022 within which to file an appeal.

[26] See Petition for Review, *Rollo*, pp. 21.
[27] *Id.*, at 12-14.
[28] *Supra* note 22.

However, on date of the initial deadline, petitioner posted a Motion for Extension of Time to File Petition for Review.[29] Due to the Court *En Banc's* granting of the same,[30] the original Petition for Review was timely filed on September 19, 2022.[31]

RPT exemption of GOCCs was withdrawn upon the enactment of the LGC

Respondent NFA was first created in 1981 through *PD 1770*[32] *("NFA Charter")* which transferred the functions of the previously constituted National Grains Authority (NGA). NGA was originally established in 1972 under *PD 4 ("Original Charter")*,[33] which was later on amended by *PD 699*[34] and *PD 1485*.[35]

Under *Section 6 of the Original Charter*, as amended by *PD 1485*, the NGA shall enjoy exemptions from all income taxes, franchise taxes, and realty taxes, thus:

> "Section 6. Administration Powers, Organization, Management and Exemptions. — The Powers, organization, management and exemptions of the Authority shall be as follows:
>
> x x x
>
> (d) ***Exemptions***. — In furtherance to the effective implementation of the policy enunciated in this decree, ***the Authority is hereby declared exempt:***
>
> x x x
>
> 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 x x x"
> (Emphasis and italics supplied)

Based on the above-cited provisions, the law is clear that the NGA shall be exempt from payment of RPT. However, the controversy now arises due to the promulgation of the *LGC* in 1991.

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[29] See Motion for Extension of Time to File Petition for Review, *Rollo*, pp. 1-3.
[30] See Resolution dated September 23, 2022, *Rollo*, pp. 8-9.
[31] *Supra* note 20.
[32] *Supra* note 6.
[33] Providing for the Development of the Rice and Corn Industry and Creating for this Purpose the National Grains Authority, 26 September 1972.
[34] Amending Presidential Decree Number Four, Entitled "Proclaiming the Creation of the National Grains Industry Development Administration and Providing Funds Therefor," May 12, 1975.
[35] Further Amending Certain Provisions of the National Grains Industry Development Act, June 11, 1978.

Section 232 of the LGC provides for the power of the local government units (LGUs) to levy taxes on real property not specifically exempted under the law. Such power, however, is limited by *Section 234* of the same law, which provides for the exemptions from real property tax, *viz.*:

> "SECTION 234. Exemptions from Real Property Tax.— The following are exempted from payment of the real property tax:
>
> (a) ***Real property owned by the Republic of the Philippines or any of its political subdivisions*** except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;
>
> (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;
>
> (c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;
>
> (d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and
>
> (e) Machinery and equipment used for pollution control and environmental protection.
>
> Except as provided herein, *any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all* ***government-owned or -controlled corporations are*** *hereby* ***withdrawn*** *upon the effectivity of this Code.*"
> (Emphasis and italics supplied)

Further limitations on the taxing power of the LGUs were provided in *Section 133 of the LGC*, as follows:

> "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:
>
> x x x
>
> (o) Taxes, fees or charges of any kind on the ***National Government***, its ***agencies*** and ***instrumentalities*** and local government units."
> (Emphasis and italics supplied.)

Gathering from the foregoing provisions, the general rule is that real property owned by the government, its agencies and *instrumentalities* shall be exempt from tax. *As for GOCCs, on the other hand, any exemption from payment of RPT* *previously granted to, or presently enjoyed by them was withdrawn upon the LGC's effectivity.*

The discontinuation of RPT exemption enjoyment pursuant to the aforecited provision of the LGC was discussed by the Supreme Court in the case of *Philippine Ports Authority vs. City of Iloilo,*[36] which states:

> "First. Section 1, P.D. No. 1931 which took effect on June 11, 1984, effectively withdrew the exemption granted to the petitioner, a government-owned or controlled corporation —
>
> x x x
>
> Second. *Under the last paragraph of Section 234 of Republic Act No. 7160, otherwise known as the Local Government Code (LGC), the petitioner's exemptions from the real property tax were withdrawn upon the effectivity of the law.* Thus:
>
> x x x
>
> Patently then, *it was the intention of Congress to withdraw the tax exemptions granted to or presently enjoyed by all persons, including government-owned or controlled corporations, upon the effectivity of the LGC as shown by Section 193 thereof:*
>
>> Section 193. Withdrawal of Tax Exemption Privileges. — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, *including government-owned or controlled corporations*, except local water districts, cooperatives duly registered under R.A. 6938, non-stock and non-profit hospitals and educational institutions, are hereby *withdrawn upon the effectivity of this Code.*
>
> Furthermore, under the repealing clause, Section 534(f) of the LGC, all general and special laws, acts, decrees, or part or parts thereof which are inconsistent with any of the provisions of the law were repealed:
>
>> Section 534(f). Repealing Clause. — *All general and special laws*, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are *inconsistent with any of the provisions of this code* are hereby *repealed or modified accordingly.*
>
> The clause partakes of the nature of a general repealing clause because it fails to designate the specific act or acts identified by number or title that are submitted to be repealed.
>
> Thus, Section 25 of P.D. No. 857 and Section 40 of P.D. No. 464 were repealed by Rep. Act No. 7160."
> (Italics supplied)

[36] G.R. No. 143214, November 11, 2004.

Hence, considering that the Original Charter was approved on September 26, 1972 and that the LGC took effect on January 1, 1992, the provisions of the former, including any grant of tax exemptions, which are determined to be inconsistent with the latter shall be deemed repealed.

In this regard, the pivotal issue that must be settled is the determination of whether respondent is classified as a GOCC whose RPT tax exemption was withdrawn by the LGC or as a government instrumentality which remains exempt from tax.

NFA is a GOCC; thus, it is not entitled to RPT exemption

In the landmark case of *Manila International Airport Authority vs. Court of Appeals, et al. ("MIAA case")*,[37] the Supreme Court was faced with the same issue on the taxability of an entity depending on whether it should be deemed as a government instrumentality or a GOCC.

Citing *Section 2 of Executive Order (EO) No. 292,* otherwise known as the *Administrative Code of 1987*, the High Court defined a government instrumentality as "any agency of the National Government, not integrated within the department framework vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter."

On the other hand, a GOCC is defined, pursuant to the same section of *EO No. 292*, as follows:

> "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:
>
> 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) per cent of its capital stock:* Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations."
> (Italics supplied)

[37] G.R. No. 155650, July 20, 2006.

After the promulgation of the *MIAA case*, *RA 10149* or the *GOCC Governance Act of 2011*,[38] was signed into law. The above provision of the *Administrative Code* must now be read in conjunction with *Section 3(o) of RA10149* which substantially reproduced the definition of GOCC as follows:

> "Section 3. Definition of Terms. –
>
> x x x
>
> (o) Government-Owned or -Controlled Corporation (GOCC) refers to any agency *organized as a stock or nonstock corporation*, vested with *functions relating to public needs whether governmental or proprietary in nature*, and *owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock*: *Provided*, however, That for purposes of this Act, the term "GOCC"- shall include GICP/GCE and GFI as defined herein."
> (Italics supplied)

Furthermore, as held by the Supreme Court in the case of *Light Rail Transit Authority vs. City of Pasay ("LRT case")*,[39] to qualify as a GOCC, an agency must satisfy the tests of common good and economic viability prescribed in *Article XII, Section 16 of the Constitution*, which states:

> "SECTION 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."

Thus, as can be gleaned from the above, a GOCC is one that possesses the following characteristics:

1. It is organized as a stock or non-stock corporation;
2. It is vested with functions relating to public needs whether governmental or proprietary in nature;
3. It is owned by the government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporation, to the extent of at least a majority of its of its outstanding capital stock; and
4. It must be created or established in the interest of the common good and subject to the test of economic viability.

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[38] 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, June 6, 2011.

[39] G.R. No. 211299, June 28, 2022.

First, NFA is organized as a stock corporation

In the *MIAA case*, the primary test used by the Supreme Court in determining whether an entity is a GOCC is how it was organized, *i.e.*, whether it is stock or non-stock corporation. For this purpose, the High Court referred to *Section 3 of the Revised Corporation Code*[40] which defines a stock corporation as follows:

> "Section 3. Classes of Corporations. – Corporations formed or organized under this Code may be stock or nonstock corporations. Stock corporations are those which have *capital stock divided into shares* and are *authorized to distribute to the holders of such shares, dividends*, or allotments of the surplus profits on the basis of the shares held. All other corporations are nonstock corporations." (Italics supplied)

From the foregoing, there are two (2) requisites that must concur in order to be considered a stock corporation: (1) the entity's capital stock is divided into shares and (2) it is authorized to distribute to the holders of such shares, dividends.[41]

In relation to the *first requisite*, the Supreme Court discussed in the *MIAA case* that MIAA cannot be considered a stock corporation as its capital is not divided into shares of stock, and has no stockholders or voting shares, as reflected in *Section 10 of the MIAA Charter*, which states:

> "Section 10. Capital. — The capital of the Authority to be contributed by the National Government shall be increased from Two and One-half Billion (P2,500,000,000.00) Pesos to Ten Billion (P10,000,000,000.00) Pesos to consist of: x x x"

The same was observed in the *LRT case* involving *EO No. 603* or the *LRTA Charter*. *Section 15, Article 6* thereof provides:

> "Section 15. Capitalization. — The Authority shall have an authorized capital of FIVE HUNDRED MILLION PESOS (P500,000,000.00) which shall be fully subscribed by the Republic of the Philippines and other government institutions, corporations, instrumentalities, and agencies, whether national or local, within the framework of their respective charters. The authorized capital shall be used for the purpose of financing the Authority's business transactions and shall be paid as follows:
>
> (1) The sum of TWO HUNDRED MILLION PESOS (P200,000,000.00) to be taken from the general fund in the National Treasury out of appropriations available for the purpose.

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[40] An Act Providing for the Revised Corporation Code of the Philippines, July 23, 2018.
[41] Philippine Reclamation Authority (PRA) vs. City of Parañaque, G.R. No. 191109, July 18, 2012.

(2) The balance of the authorized capital amounting to THREE HUNDRED MILLION PESOS (P300,000,000.00) shall be released from the National Treasury out of appropriations available for the purpose, or subscribed and paid by government institutions as may be authorized pursuant to this Section, with the approval of the President."

Similarly, in the case of *Bangko Sentral ng Pilipinas vs. Commission on Audit*,[42] the Supreme Court also found that BSP does not qualify as a stock corporation since the entity does not have capital stock or capital share, and the required capitalization is not divided into shares of stocks, pursuant to *Section 2 of RA 7653* or the *BSP Charter* which states:

> "Section. 2. Creation of the Bangko Sentral. — There is hereby established an independent central monetary authority, which shall be a body corporate known as the Bangko Sentral ng Pilipinas, hereafter referred to as the Bangko Sentral.
>
> The capital of the Bangko Sentral shall be Two hundred billion pesos (P200,000,000,000), to be fully subscribed by the Government of the Republic of the Philippines, hereafter referred to as the Government: Provided, That the increase in capitalization shall be funded solely from the declared dividends of the Bangko Sentral in favor of the National Government. For this purpose, any and all declared dividends of the Bangko Sentral in favor of the National Government shall be deposited in a special account in the General Fund, and earmarked for the payment of Bangko Sentral's increase in capitalization. Such payment shall be released and disbursed immediately and shall continue until the increase in capitalization has been fully paid."

For respondent, the capitalization requirement is provided under *Section 9 of the NFA Charter*:

> "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."
> (Italics supplied)

Clearly, NFA's authorized capital of Php5,000,000,000 is divided into 50,000,000 shares of par value of Php100 each. Unlike the previously cited jurisprudence, NFA's capitalization undeniably consists of shares of stocks, thus satisfying the *first* requisite in order to be considered a stock corporation.

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[42] G.R. No. 210314, October 12, 2021.

As regards the *second* requisite, We must now determine whether NFA is authorized to distribute dividends to its shareholders.

In the Assailed Decision, the Court in Division noted that there is nothing in the NFA Charter and its subsequent amendments that authorize petitioner to declare and distribute dividends or surplus profits to its shareholders. While the Court *En Banc* agrees with such observation, We also note that the authority to distribute dividends arises other issuances.

In 1993, *RA No. 7656* was signed into law, requiring GOCCs to declare dividends to the National Government. Pursuant to *Section 5* thereof, the President of the Philippines, upon recommendation by the Secretary of Finance, is authorized to make adjustments on the dividend rate, in the interest of national economy and general welfare. *EO No. 48* was thus issued in 2017, where the percentage of net earnings to be declared and remitted by *certain GOCCs, including NFA*, was adjusted from at least fifty percent (50%) of annual net earnings to zero percent (0%) for the specific year indicated therein. Relevant provisions of *EO No. 48* are reproduced below:

> "WHEREAS, to support the viability and mandate of certain GOCCs, their liquidity, retained earnings position, and medium-term plans and programs were considered in the determination of the reasonable dividend rates on selected year' net earnings; and
>
> x x x
>
> Section 1. The *percentage of net earnings to be declared and remitted by the following GOCCs as dividends to the National Government*, as required under Section 5 of RA 7656, is adjusted from at least fifty percent (50%) of their annual net earnings to zero percent (0%) for the years indicated below:

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

> Section 2. The adjusted dividend rates set forth in Section 1 are only applicable to the ***concerned GOCCs*** and the years stated above."

Indubitably, while the authority to declare dividends is not expressly indicated in the *NFA Charter*, the same can be inferred from the *EO No. 48*. Hence, the second requirement to be considered a stock corporation is deemed satisfied.

It does not escape the Court *En Banc's* attention that *EO No. 48* has already explicitly categorized the NFA as a GOCC. Nevertheless, before drawing up a conclusion for purposes of the issue in this case, We will proceed with the determination of the presence of the other GOCC characteristics, as enumerated above, in the NFA.

Second, the NFA is vested with functions relating to public needs

EO No. 165[43] declares that the NFA was created "in order to strengthen the national strategy for the integrated growth and development of the food industry to *insure adequate and continuous supply at reasonable prices*." The foregoing is consistent with the *Declaration of Policy* under *Section 2 of the NFA Charter* which states:

> "Section 2. Declaration of Policy. It shall be the declared policy of the State to promote the integrated growth and development of the food industry so it can adequately function as an institution conscious of its social responsibilities, capable of *maintaining an adequate and continuous food supply and contributing its proper share to the economy*."
> (Italics supplied)

In this light, the NFA's primary responsibility pursuant to the *Original Charter* includes, among others, the performing following:

(a) Procure and control or cause the procurement or control of such stock of grains in quantities and in locations, as may foreseeably be needed, to maintain the floor price or manage as buffer stocks to stabilize consumer prices; [44]
(b) Devise a system by which it can insure the adequacy of supply and stability of consumer prices at levels within the reach of the low-income families, while maintaining the announced floor price for the producers;[45]
(c) Maintain and manage a national buffer stock the quantity and locations of which shall be determined by the Authority;[46]
(d) Establish rules and regulations governing the importation of rice, corn and other grains and their substitutes and/or by-products/end-products and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported grains and their substitutes and/or their by-products/end-products with the normal prevailing domestic prices;[47] and
(e) To order the seizure, whenever there is concerning or hoarding, as may be defined by the Authority of rice and/or corn and/or other grains and substitutes

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[43] Transferring the National Food Authority, National Irrigation Administration, Philippine Coconut Authority, and Fertilizer and Pesticide Authority to the Office of the President, May 5, 2014.
[44] Section 5(b)(III), Presidential Decree No. 4 ("Original Charter"), 21 September 1972.
[45] Section 5(b)(v), Original Charter.
[46] Section 6(a)(ii), Original Charter.
[47] Section 6(a)(xii), Original Charter.

and/or their byproducts/end-products thereof, including facilities and equipment, used in said concerning hoarding, or whenever there is a 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 prices to normal levels.[48]

With the enumeration above, it is undeniable that the NFA is vested with functions relating to public needs.

Third, the NFA is wholly owned by the National Government

As quoted earlier, *Section 9 of the NFA Charter* states that its "shares shall be wholly subscribed and paid by the national government, local government units, or other government owned or controlled corporations."

Thus, it is unequivocable that the third characteristic of GOCC was met by the NFA.

Fourth, the NFA was established in the interest of the common good and subject to the test of economic viability

Based on previous discussions, the NFA is vested with functions relating to the public needs. As a corollary to this, it cannot be denied that the requirement of being established for common good, pursuant to *Article XII, Section 16 of the Constitution* was complied with.

As for the test of economic viability, guidance may be inferred from the ruling of the Supreme Court in the case of *Republic vs. City of Parañaque*[49] where it was held that:

> "The fundamental provision above authorizes Congress to create GOCCs through special charters on two conditions: 1) the GOCC must be established for the common good; and 2) the GOCC must meet the test of economic viability. 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. x x x"
> (Emphasis and italics supplied.)

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[48] Section 6(a)(vii), Original Charter.
[49] G.R. No. 191109, July 18, 2012.

We must thus review whether the NFA is engaged in economic or commercial activities. As further explained by the Supreme Court in the *MIAA case*, the intent of the Constitution in requiring economic viability is "to prevent the creation of government-owned or controlled corporations that cannot survive on their own in the market place and thus merely drain the public coffers."

Upon perusal of the *NFA Charter* and the *Original Charter*, the Court *En Banc* observes that respondent is authorized to engage in economic or commercial activities, as stated below:

Section 7 of the NFA Charter:

"Section 7. Additional Powers, Functions and Exemptions. In addition to the powers, functions and exemptions of the Authority under P.D. No. 4, as amended, the Authority shall have the following powers, functions and exemptions:

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

x x x

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

x x x

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

x x x"

(Italics supplied.)

Section 6(a)(xiii) of the Original Charter:

"(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.

In the exercise of this power *the Authority shall directly undertake the exportation of rice, corn and other grains and/or their substitutes and/or by-products/end-products whenever there is an excess in production and/or supply*, or it may allocate export quotas among certified and licensed exporters; Provided, however that the Council shall first certify after to such excess production and/or supply after proper consultation with the Office of the President."
(Italics supplied.)

The Court *En Banc* also notes the establishment of the Development and Stabilization Fund ("Fund") which is meant to finance the growth and development of the industry and the stabilization of the domestic market to be administered by the NFA. This is provided under *Section 7 of the Original Charter, as amended by PD 1485,* which states:

> "Section 7 - The Development and Stabilization Fund - There is hereby established the National Grains Authority Development and Stabilization Fund, herein referred to as the "*Fund*" for the *purpose of financing the growth and development of the industry and the stabilization of the domestic market in grains to be administered in trust by the Authority*, and derived in manner herein below cited from the following sources:
>
> a) An additional tax on rice and corn mills as provided in Section 10 of this Act.
>
> b) Stabilization fees which shall be collected from the warehousemen by the Authority on all grains covered by negotiable warehouse receipts or quedans at the rate of ten centavos (P0.10) per cavan of fifty kilograms of grains per month but not to exceed fifty centavos (P0.50) per year.
>
> c) A surtax on corporation as provided in Section eight on this Act;
>
> d) Such borrowings as may be obtained from PD 480, international institutions and other outside foreign agencies;
>
> e) Such funds, profits, cash and stocks of Rice and Corn Administration (RCA) as will be turned over to the Authority;
>
> f) Fees for licensing bonded warehouse at rate which shall be determined by the Council and collected by the Authority per cubic meter bonded capacity;
>
> g) Fees, charges and/or surcharges hereby imposed in the issuance of license for importation of rice and corn and other grains and their substitutes to be collected by the Authority at rates which shall be determined by the Council; Provided, that the rate of any surcharge to equalize the wholesale price of imported grain and/or their substitutes with the prevailing selling price of the equivalent commercial grain in the domestic market shall be determined by the Council under subparagraph (xx) of Section six of this Act.
>
> The taxes, fees, charges, surcharges and penalties, if any, shall be turned over to the Authority to from part of the Fund. x x x
>
> In order to enhance the usefulness of the Fund, *The Authority is hereby authorized to invest the resources thereof and the proceeds or increments arising out of such investments shall take part of the fund.*
>
> *The Fund shall be utilized by the Authority for funding the requirements of the development of the grains industry with the productions of grains, development of post-harvest technology and the stabilization of supply and prices*, including the following;
>
> a) Procurement of palay, rice, corn and other grains and/or their substitutes in such quantities and places as may be necessary to stabilize the supply and price thereof;

> b) Implementation of price support program for palay, corn and other grains and/or their substitutes;
>
> The disposition, allocation and utilization of this portion of the Fund for the purpose envisioned in this Act shall be exclusive prerogative of the Council." (Italics supplied)

With the establishment of the Fund, it appears that the functions of the NFA were meant to be sustained not entirely from the coffers of the national government but also from the means sourced by the Fund. As expressly stated in the above provision, the NFA shall utilize the Fund for financing the requirement of the development of the industry, and the stabilization of supply and prices.

Gleaning from all of the foregoing, the Court *En Banc* hereby holds that the twin condition of establishment for common good and economic viability were satisfied by the NFA.

In sum, it is clear that respondent NFA qualifies as a GOCC.

This conclusion is further bolstered by the fact that respondent, in its own Code of Corporate Governance, referred to itself as a GOCC. The relevant portions of the code are quoted as follows:

> "NFA CODE OF CORPORATE GOVERNANCE
>
> WHEREAS, pursuant to the State declared policy of treating Government-Owned or -Controlled Corporations (GOCCs) as significant tools for economic development, and the statutorily-mandated obligation of the State to ensure that the governance of the National Food Authority (NFA) is carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness, under the NFA Council which is competent to carry out thefunctions, fully accountable to the State as its fiduciaries and always acting for the best interests of the State, the National Food Authority, in the exercise of its mandate under Presidential Decree No. 4 to promote the integrated growth and development of the grains industry so that it can adequately function as an institution conscious of its social responsibilities and capable of providing adequate and continuous food supply to the nation and of contributing to its proper share to national economy;
>
> WHEREAS, the GCG, pursuant to Section 42 of the Code of Corporate Governance for GOCCs (GCG MC No. 2012-07) required ***GOCCs including the NFA*** to prepare and adopt its own Code of Corporate Governance;
>
> x x x
>
> I. Definition of Terms
>
> Section 1. Definition of Terms. — For purposes of this Code, the following terms shall have the following meanings:
>
> x x x

'Chartered GOCC' refers to a GOCC, in this case, NFA, created and vested with functions by a special law. x x x

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

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

Further, the Court *En Banc* is disinclined to adopt respondent's position that the Supreme Court has declared the NFA a government instrumentality exempt from RPT. In the *Pagadian case* being invoked by respondent, the issue resolved by the Supreme Court is whether the City Government of Pagadian wrongly filed an appeal before the Court of Appeals. The petition was then denied after determination that the appeal should have been filed with the CTA and not the CA. Clearly, there was no categorical pronouncement in the *Pagadian case* that the NFA is indeed a government instrumentality. The decision of the Court a quo declaring NFA a government instrumentality became executory simply because the appeal was wrongly filed.

To erase any doubt on the matter, in June 2022, the Governance Commission for Government Owned or Controlled Corporation (GCG), under the Office of the President, released a list entitled *Classificaiton of GOCCs by Sectors*,[50] which categorized NFA under Trade, Area Development and Tourism Sector, thus:

"CLASSIFICATION OF GOCCS BY SECTORS

I. GOVERNMENT FINANCIAL INSTITUTIONS SECTOR

x x x

II. TRADE, AREA DEVELOPMENT AND TOURISM SECTOR

x x x

32. National Food Authority

x x x"

(Emphasis and italics supplied)

The list clearly classifies NFA as a GOCC and shows that it is one of the entities subject to the governance of the GCG which is the central policy-making and regulatory body mandated to ensure tha the operations of GOCCs are transparent and responsive to the needs ot the public.

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[50] Classification of GOCCs by Sectors dated June 28, 2022, *https://icrs.gcg.gov.ph/files/5WR9T5r1kwvDzbhcOeYm.pdf*, last accessed Feburary 15, 2024.

All told, upon determination that the NFA is a GOCC, the Court *En Banc* finds no cogent reason to invalidate the RPT assessment issued by petitioner to respondent.

ACCORDINGLY, premises considered, the instant Petition for Review is hereby **GRANTED**. The Decision dated March 18, 2022 and the Resolution dated August 10, 2022 of the Court's First Division are hereby **REVERSED AND SET ASIDE**. The original Petition for Review with Motion for Suspension of Collection of Taxes filed before the Court in Division on June 28, 2019 is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

(With due respect, I join the Dissenting Opinion of PJ.)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I join PJ's Dissenting Opinion.)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(I join PJ's Dissenting Opinion.)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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

EN BANC

CITY GOVERNMENT OF DAVAO, Represented by the Hon. City Mayor Atty. Sara Z. Duterte-Carpio; City Assessor of Davao Represented by Engr. Jaime G. Adalin in his capacity as City Assessor, and City Treasurer of Davao Represented by Bella Linda N. Tanjili in her capacity as the City Treasurer of Davao, Petitioner,	**CTA EB No. 2691** (CTA AC No. 262)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES, *JJ.***
NATIONAL FOOD AUTHORITY Represented by: Ma. Theresa S. Villafuerte, Director of NFA-Legal Affairs Department, Respondent.	Promulgated: MAR 15 2024 3:40

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I wish to point out that in *National Food Authority, represented by Atty. Ma. Theresa S. Villafuerte, CPA, in her capacity as Department Manager of NFA Legal Affairs Department vs. City Government of Tagum and City Assessor of Tagum, Province of Davao del Norte,*[1] the Supreme Court was categorical in saying that **NFA being a government instrumentality with corporate powers**, is exempt from the payment of docket and other legal fees and costs, *viz.*:

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

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

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

In the Decision, the *ponente* highlights the fact that the Governance Commission for Government Owned or Controlled Corporation (GCG) under the Office of the President, released a **list entitled *Classification of GOCCs by Sector*** which categorized the NFA under the Trade, Area Development and Tourism Sector. It states that the list clearly classifies NFA as a GOCC and shows that it is one of the entities subject to the governance of the GCG, which is the central policy-making and regulatory body mandated to ensure that the operations of GOCCs are transparent and responsive to the needs of the public.

A perusal, however, of the aforementioned list shows that it includes entities with corporate powers, specifically the **Manila International Airport Authority (MIAA),[2] the Philippine Ports Authority (PPA),[3] the Philippine Fisheries Development Authority (PFDA),[4] and the Bases Conversion and Development Authority (BCDA).[5] Yet, these entities have been declared "government instrumentalities" no less by the Supreme Court. The interpretation made by the Supreme Court deserves respect and cannot be disregarded by a mere list issued by the GCG. In other words, the inclusion of an entity in the list is not conclusive on whether it is an instrumentality of government or strictly a GOCC.**

It must be noted that while the GCG is the central policy-making and regulatory body mandated to ensure that the operations of GOCCs to ensure that the operations of GOCCs are transparent and responsive to the needs of the public, the term GOCC, under Republic Act (RA) No. 10149 or the GOCC Governance Act of 2011, includes Government Instrumentalities with Corporate Powers (GICP). This is

[2] *Manila International Airport Authority vs. Court of Appeals*, G.R. No. 155650, July 20, 2006.
[3] *City of Iloilo vs. Philippine Ports Authority,* G.R. No. 233861, January 12, 2021.
[4] *Philippine Fisheries Development Authority vs. Court of Appeals*, G.R. No. 169836, July 31, 2007.
[5] *Bases Conversion and Development Authority vs. Commissioner of Internal Revenue,* G.R. No. 205925, June 20, 2018.

provided for under Section 3 (n) of RA No. 10149, which reads as follows:

> "SEC. 3. Definition of Terms. –
>
> xxx xxx xxx
>
> (n) **Government Instrumentalities with Corporate Powers (GICP)**/Government Corporate Entities (GCE) **refer to instrumentalities** or agencies of the government, **which are neither corporations** nor agencies integrated within the departmental framework, **but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter** including, but not limited to, the following: the **Manila International Airport Authority (MIAA)**, the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Orb Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO)." *(Boldfacing supplied.)*

Indeed, the fact that the NFA is subject to the governance of the GCG does not mean that it is deprived of its status as a government instrumentality.

Requisites of a government instrumentality

NFA is a government instrumentality. It is neither a stock or non-stock corporation. While respondent's creation is for the common good, economic viability is not at all considered in its creation thereby precluding it from becoming a GOCC.

Manila International Airport Authority vs. Court of Appeals, et al.[6] *("MIAA")* has long settled the issue of what makes a government entity a government instrumentality, *viz*:

> "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. xxx

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[6] 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.

xxx xxx xxx

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**. 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. xxx This prevents MIAA from qualifying as a non-stock corporation.

xxx xxx xxx

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. xxx

xxx xxx xxx

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

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

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

> (o) **Taxes, fees or charges of any kind on** the National Government, its agencies and **instrumentalities** and local government units. (Emphasis and underscoring supplied)
>
> 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. xxx
>
> xxx xxx xxx
>
> By express mandate of the Local Government Code, local governments cannot impose any kind of tax on national government instrumentalities like the MIAA. Local governments are devoid of power to tax the national government, its agencies and instrumentalities. xxx
>
> xxx xxx xxx
>
> xxx MIAA is not a government-owned or controlled corporation under Section 2(13) of the Introductory Provisions of the Administrative Code because it is not organized as a stock or non-stock corporation. Neither is MIAA a government-owned or controlled corporation under Section 16, Article XII of the 1987 Constitution **because MIAA is not required to meet the test of economic viability. MIAA is a government instrumentality vested with corporate powers and performing essential public services** pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. As a government instrumentality, MIAA is not subject to any kind of tax by local governments under Section 133(o) of the Local Government Code. The exception to the exemption in Section 234(a) does not apply to MIAA because MIAA is not a taxable entity under the Local Government Code. Such exception applies only if the beneficial use of real property owned by the Republic is given to a taxable entity.
>
> xxx Under Section 133(o) of the Local Government Code, MIAA as a government instrumentality is not a taxable person because it is not subject to "[t]axes, fees or charges of any kind" by local governments. The only exception is when MIAA leases its real property to a "taxable person" as provided in Section 234(a) of the Local Government Code, in which case the specific real property leased becomes subject to real estate tax. xxx" *(Boldfacing supplied; citations omitted)*

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.[7] A non-stock corporation is "one where no part of its income is distributable as dividends to its members, trustees, or officers"[8] 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."[9]

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.

Respondent 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 *MIAA*, leads to a conclusion that respondent (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, respondent is neither a stock or non-stock corporation. While Section 9 of PD No. 4, as amended by PD No. 1770,[10] provides that respondent 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 respondent to declare and distribute dividends or surplus profits to its shareholders.

Respondent 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.[11]

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[7] Section 3, Batas Pambansa (BP) Blg. 68 (now Section 3, Revised Corporation Code of the Philippines [RCCP]).
[8] Section 87, BP Blg. 68 (now Section 86, RCCP).
[9] Section 88, BP Blg. 68 (now Section 87, RCCP).
[10] 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.
[11] Now Section 87, RCCP; Refer to Section 5, PD No. 1485; Section 2, PD No. 1770; and, Section 8, RA No. 11203.

Second, respondent was originally attached to the Office of the President (OP).[12] 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, respondent was transferred to the OP. On June 30, 2016, respondent was reassigned to the Office of the Cabinet Secretary in accordance with EO No. 1. In 2018, respondent was transferred back to the DA by virtue of EO No. 62 dated September 17, 2018.

Third, respondent is vested with special functions[13] as it administers special funds,[14] while enjoying operational autonomy[15] under its charter.

Finally, while there is no doubt that the reason for the creation of respondent 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 respondent to undertake and assume primary responsibility for all government activities relating to the processing, storage, transport and marketing of grains.

Section 8 of RA No. 11203 provides that respondent shall **maintain sufficient rice buffer stock to be sourced solely from local farmers <u>to be used for emergency situations and to sustain the disaster relief programs of the government during natural or man-made calamities</u>**.[16]

Viewed in the light of respondent's powers and responsibilities, it performs essential public service. Respondent is vested generally with governmental or public functions.[17]

Interestingly, the law does not require respondent to be economically viable which would have classified it into a GOCC. **Section 9 of PD No. 1770** provides that the **national government shall make additional equity investments** into it out of the funds appropriated in the General Appropriations Act and other appropriations laws as may be approved by the President **in accordance with the fund requirements of respondent** and funds

[12] Section 3, PD No. 1770.
[13] Section 5(b), PD No. 4, as amended, Section 7, PD No. 1770; Section 8, RA No. 11203.
[14] Section 11, PD No. 4; Section 10, PD No. 1770.
[15] Section 6, PD No. 1770.
[16] Section 3(a), RA No. 8178, as amended by RA No. 11203.
[17] Section 6, PD No. 1485.

availability in the Treasury. **Sec. 5(b)(i) of PD No. 4, as amended by PD No. 1485,** further provides that the respondent 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.

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

Considering the pronouncement of the Supreme Court in **G.R. No. 261472** and the clear and categorical provisions of Sections 133 (o) and 234 of the Local Government Code of 1991, the act of petitioners in demanding payment of RPT from respondent is ultra vires. Petitioners were bereft of any power or authority to assess and collect RPT from respondent, more so, there being nothing on record to show that beneficial use of the subject property has been granted to a taxable person. Consequently, the Notice dated June 27, 2018 with SOA No. 0168-0049-000135 and Notice of Delinquency dated August 3, 2018 with SOA No. 0818-0049-000018 issued against petitioner are void ab initio and collection of the amount therein thereof may not be justified.

In sum, it is my humble position that NFA is a government instrumentality exempt from payment of RPT. **The Petition for Review posted on September 19, 2022 should therefore be denied for lack of merit, and the assailed Decision dated March 18, 2022 and Resolution dated August 10, 2022 in CTA AC No. 262 be affirmed.**

All told, I VOTE to DENY the Petition for Review and AFFIRM the Court in Division's assailed Decision dated March 18, 2022 and assailed Resolution dated August 10, 2022 in CTA AC No. 262.

ROMAN G. DEL ROSARIO
Presiding Justice