REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NATIONAL FOOD AUTHORITY, Represented by Ma. Theresa S. Villafuerte, Director of NFA-Legal Affairs Department,
Petitioner,

- versus -

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 City Treasurer of Davao,
Respondents.

CTA AC NO. 262
(formerly CTA Case No. 10104)

Members:

DEL ROSARIO, *P.J.*, Chairperson,
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

AUG 10 2022 2:28pm

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RESOLUTION

DEL ROSARIO, P.J.:

Before the Court is respondents' "**MOTION FOR RECONSIDERATION (On the DECISION of the Honorable Court dated March 18, 2022)**" filed on April 19, 2022, with petitioner's "**COMMENT/OPPOSITION (To Respondents' Motion for Reconsideration of the Decision dated 18 March 2022)**" filed on May 30, 2022.[1]

Respondents seek to set aside this Court's Decision dated March 18, 2022, the dispositive portion of which reads:

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[1] The Motion for Reconsideration was submitted for resolution on June 15, 2022. Docket [CTA AC No. 262 (formerly CTA Case No. 10104)], p. 502.

"**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.

SO ORDERED."

In their Motion for Reconsideration, respondents argue that this Court erred in ruling that petitioner is an instrumentality of the government and that it is exempt from real property tax (RPT). Allegedly:

1. Section 9, Presidential Decree (PD) No. 1170, which amends PD No. 4, expressly declares petitioner as a stock corporation. Though the law does not authorize petitioner to declare and distribute dividends to its stockholders, the law itself states that the National Government shall make additional equity investments coming from the funds appropriated in the General Appropriations Act (GAA);

2. Petitioner's Code of Corporate Governance refers to petitioner as a government-owned or -controlled corporation (GOCC);

3. Petitioner is governed by the Governance Commission for GOCCs (GCG) created under Republic Act (RA) No. 10149;

4. Petitioner was never mentioned in Section 3(o), RA No. 10149 as among the Government Instrumentalities with Corporate Powers (GICPs) or Government Corporate Entities (GCEs);

5. Section 3, PD No. 1770 provides that petitioner is a government corporation; and,

6. Petitioner is no longer exempt from payment of RPT as the exemption was withdrawn upon the effectivity of the Local Government Code.

Petitioner, on the other hand, contends that the grounds relied upon in respondents' Motion for Reconsideration are mere reiteration of arguments raised in their Memorandum which were already exhaustively passed upon and considered by the Court, thus, the denial thereof is warranted. Petitioner maintains that it is a government instrumentality, not a GOCC, exempt from payment of RPT.

The Court finds respondents' Motion for Reconsideration bereft of merit.

While PD No. 4, as amended, provides that the National Government shall make additional equity investments in petitioner, coming from the funds appropriated in the GAA, this does not *per se* constitute petitioner as a stock corporation. The fact still remains that petitioner is without power and authority to declare and distribute dividends - - an attribute characteristic of stock corporations. Consequently, petitioner may not be considered a stock corporation which may qualify as a GOCC consistent with *Republic of the Philippines, represented by the Philippine Reclamation Authority (PRA) vs. City of Parañaque.*[2]

Equally untenable is respondent's proposition that petitioner is not a government instrumentality because it is not mentioned in the listing of GICPs and GCEs in Section 3(n), RA No. 10149*, viz.:*

> 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)*

The listing provided in the aforequoted Section 3(n), RA No. 10149 is **not** an exhaustive list of GICPs or GCEs. Glaringly, the list of GICPs/GCEs is preceded by the phrase **"including, but not limited to, the following",** prior to the naming of several entities; if at all, this phrase conveys the very idea of non-exclusivity of the list. The principle

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

of *expressio unius est exclusio alterius* does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only,[3] as in the case of Section 3(n), RA No. 10149.

There is also nothing incongruent with petitioner being under the GCG although it is an instrumentality of the government. It must be noted that Section 3(o), RA No. 10149 specifically states that "for the purposes of this Act", GICP or GCEs, like petitioner, are included in the term GOCC, *viz.*:

> (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**. *(Boldfacing supplied)*

Otherwise stated, the fact that petitioner is under the GCG, despite being a government instrumentality, merely complements the declared policy of RA No. 10149 for the National Government "to actively exercise its ownership rights in GOCCs (which includes GCPs/GCEs, like petitioner) and to promote growth by ensuring that operations are consistent with national development policies and programs".

The other arguments raised by respondents have been sufficiently addressed in the assailed Decision, thus, further discussion thereon would be superfluous.

In fine, no cogent reason exists for the Court to modify, much more reverse, the assailed Decision.

WHEREFORE, premises considered, respondents' "MOTION FOR RECONSIDERATION (On the DECISION of the Honorable Court dated March 18, 2022)" is **DENIED** for lack of merit.

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[3] *The Honorable Monetary Board et al., vs. Philippine Veterans Bank*, G.R. No. 189571, January 21, 2015.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

With due respect, I maintain my Concurring and Dissenting Opinion dated March 18, 2022.

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice