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*,	**CTA AC NO. 262** (formerly CTA Case No. 10104)
- versus -	Members:
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, *Respondents*.	**DEL ROSARIO,** *P.J.*, Chairperson, **MANAHAN**, and **REYES-FAJARDO**, *JJ.* Promulgated: MAR 18 2022 2:15 pm

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DECISION

DEL ROSARIO, P.J.:

Before the Court is 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**"[1] (Petition for Review) filed by the National Food Authority on July 4, 2019 seeking *(i)* the reversal of the Decision dated February 7, 2019 and Order dated May 10, 2019 rendered by the Regional Trial Court of Davao City, Branch 16 in Special Civil Case No. R-DVO-18-04262-SC, entitled *National Food Authority, represented by its Regional Director, Lester Romeo E. Malana, Petitioner, vs. City Government of Davao, et al., Respondents*; *(ii)* the invalidation of the Notice of Delinquency issued to it; and, *(iii)*

[1] Docket [CTA AC No. 262 (formerly CTA Case No. 10104)], pp. 8-85.

the suspension of the collection of taxes while awaiting resolution of its petition.[2]

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

<u>Decision dated February 7, 2019</u>

> "**Foregoing considered**, the prayer for the issuance of Writ of Preliminary Injunction of the Petitioner is hereby **DENIED** and the instant case is hereby **DISMISSED**.
>
> **SO ORDERED**."[3]

<u>Order dated May 10, 2019</u>

> "Despite the arguments raised in the **"Motion for Reconsideration"**, the Court finds no cogent reason to alter, modify or set aside the assailed Decision dated February 7, 2019.
>
> As such, the instant **"Motion for Reconsideration"** is hereby **DENIED**.
>
> **SO ORDERED**."[4]

THE PARTIES

Petitioner National Food Authority (NFA) is created by virtue of Presidential Decree (PD) No. 1770,[5] which reconstituted the National Grains Authority (NGA) created under PD No. 4.[6] It is represented by the Director of its Department of Legal Affairs, Atty. Ma. Theresa S. Villafuerte, by virtue of NFA Resolution No. 16-2K2.[7]

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

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[2] *Id.* at 41.
[3] Docket (Special Civil Case No. R-DVO-18-04262-SC), p. 207.
[4] *Id.* at 231.
[5] National Food Authority Act.
[6] National Grains Industry Development Act.
[7] Docket [CTA AC No. 262 (formerly CTA Case No. 10104)], pp. 56-57.
[8] *Id.* at 14.

THE FACTS

Petitioner is the possessor and occupant of a property located at Sta. Ana Avenue, Davao City. The land, however, is registered under the name of the Republic of the Philippines. [9]

On June 28, 2018, NFA-Davao City received a Notice dated June 27, 2018,[10] with Statement of Account (SOA) No. 0168-0049-000135,[11] stating that there remained unpaid real property tax (RPT) in the amount of ₱4,181,124.28 for its real property registered under Account No. 00-176399; and, its failure to take action on the Notice and Statement of Account will be considered as petitioner's conformity to their correctness and, consequently, the issuance of a Notice of Delinquency to follow up the payment of the account. The unpaid RPT pertained to the years 2008 to 2018.

In a Letter dated August 3, 2018[12] signed by Lester Romeo E. Malana, Regional Manager II, NFA-Region XI and received by the Office of the City Treasurer of the City of Davao on August 8, 2018, petitioner informed the Davao City Treasurer that it is a government instrumentality that is exempt from payment of all taxes.

On August 7, 2018, petitioner received a Notice of Delinquency[13] dated August 3, 2018, with Statement of Account No. 0818-0049-000018,[14] stating that there remained unpaid RPT in the amount of ₱4,223,189.24 for its real property registered under Account No. 00-176399 and that its failure to take action on the Notice of Delinquency and Statement of Account will be considered as conformity to their correctness; and, issuance of a Final Demand to follow up its payment.

The Davao City Treasurer did not act on petitioner's Letter dated August 3, 2018. Thus, on October 8, 2018, petitioner filed a "Petition for Prohibition (with Application for Temporary Restraining Order and/or Issuance of a Writ of Preliminary Injunction)"[15] [Petition for Prohibition] with the Regional Trial Court of Davao City (RTC-Davao City) docketed as Special Civil Case No. R-DVO-18-04262-SC.

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[9] *Id.* at 58; Transcript of Stenographic Notes of the August 22, 2019 Hearing, pp. 5-9.
[10] Docket [CTA AC No. 262 (formerly CTA Case No. 10104)], p. 77.
[11] *Id.* at 78.
[12] *Id.* at 79-81.
[13] *Id.* at 82.
[14] *Id.* at 83.
[15] Docket (Special Civil Case No. R-DVO-18-04262-SC), pp. 3-80.

In the Order dated October 8, 2018,[16] the Executive Judge of the RTC-Davao City ordered the immediate raffle of the case but stated that there was no extreme urgency for the issuance of a seventy-two (72) hour Temporary Restraining Order.

The Court directed respondents to comment on the Petition within ten (10) days from notice and set for hearing petitioner's prayer for the issuance of a temporary restraining order[17] and/or writ of preliminary injunction on October 22, 2018.[18]

At the October 22, 2018 Hearing on the application for injunctive relief, the parties' counsels agreed that the following issues in the Petition for Prohibition are purely legal in nature and can be resolved without testimonial evidence:

> "1. Whether or not NFA is exempt from payment of real property taxes as provided in its original charter, P.D. 4, as amended; which is a special law;
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> 2. Whether or not NFA is a government instrumentality, thus, exempt from payment of real property taxes; and
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> 3. Whether or not the act of respondents in assessing, imposing and collecting real property taxes upon petitioner is valid."[19]

The Court also gave the parties a period of fifteen (15) days to file their respective memoranda.[20]

On November 6, 2018, respondents filed their "Memorandum in Opposition to Petitioner['s] Application for Issuance of a Writ of Preliminary Injunction."[21] On November 13, 2018, the "Memorandum (for Petitioner)" was filed.[22]

On February 7, 2019, the RTC-Davao City rendered the assailed Decision denying petitioner's prayer for the issuance of Writ of Preliminary Injunction and dismissing the case. Petitioner moved for reconsideration thereof but the RTC-Davao City denied the same in the assailed Resolution.

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[16] *Id.* at 81.
[17] *Id.* at 82.
[18] *Id.* at 83.
[19] *Id.* at 134.
[20] *Id.*
[21] *Id.* at 174-181.
[22] *Id.* at 182-198.

Undeterred, petitioner filed the present Petition for Review docketed as CTA Case No. 10104.

In the July 17, 2019 Resolution,[23] the Court granted respondents fifteen (15) days to file their comment/opposition to the Petition for Review and set the Motion for Suspension of Collection of Tax incorporated therein for hearing on August 22, 2019.

On August 14, 2019, petitioner filed a "Very Urgent Manifestation with Motion to Hold in Abeyance the Hearing on Petitioner's Motion to Suspend Collection of Tax".[24]

In the August 22, 2019 Hearing,[25] only the counsels for petitioner appeared despite due notice to all the parties. The Court granted respondents fifteen (15) days or until September 6, 2019 to file their comment on the "Very Urgent Manifestation with Motion to Hold in Abeyance the Hearing on Petitioner's Motion to Suspend Collection of Tax".

On September 6, 2019, respondents filed their "Comments/Opposition to the Petition for Review".[26]

In the January 30, 2020 Resolution,[27] the Court granted petitioner's Motion to Suspend Collection of Tax, suspended the proceedings of the case for thirty (30) days from notice, and directed petitioner to inform the Court of the status of the negotiation between the parties within the same period.

On March 6, 2020, petitioner filed a "Manifestation /Compliance"[28] informing the Court that it is still negotiating with respondents and prayed for the proceedings in the case to be held in abeyance until their negotiation has been concluded.

In the June 3, 2020 Resolution,[29] the Court granted the parties another thirty (30) days from notice to conclude their negotiation, otherwise the proceedings in the case shall resume thereafter.

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[23] Docket [CTA AC No. 262 (formerly CTA Case No. 10104), pp. 88-89.
[24] *Id.* at 95-100.
[25] *Id.* at 104-105.
[26] *Id.* at 107-113.
[27] *Id.* at 117-120.
[28] *Id.* at 121-123.
[29] *Id.* at 126-127.

On August 14, 2020, petitioner filed a "Manifestation (in Compliance to the Notice of Resolution dated June 18, 2020)"[30] informing the Court of the status of their negotiation and moved for the further suspension of the proceedings in the case.

In the September 9, 2020 Resolution,[31] the Court noted petitioner's "Manifestation (in Compliance to the Notice of Resolution dated June 18, 2020)" and directed it to submit the negotiated agreement with respondents and the status of the request for funds in the payment of the said delinquent RPT, within five (5) days from notice thereof.

On October 15, 2020, petitioner filed a "Compliance (with the Resolution dated 9 September 2020)"[32] apprising the Court of the progress of its negotiation with respondents and submitting the documents annexed to the Compliance. Petitioner again requested for additional time to complete its negotiation with respondents.

In the November 4, 2020 Resolution,[33] the Court denied petitioner's request for additional time to complete its negotiation and set the hearing on petitioner's Motion for Suspension of Collection of Tax on December 3, 2020, which was, however, moved to January 21, 2021.[34]

On December 11, 2020, petitioner filed a "Very Urgent Manifestation (with Motion for Leave to Withdraw Motion for Suspension of Collection of Taxes)"[35] informing the Court that on November 27, 2020, petitioner has already paid the amount of RPT subject of the June 27, 2018 Notice and August 3, 2018 Notice of Delinquency.

In the January 21, 2021 Hearing,[36] the Court deemed moot and academic the hearing on petitioner's Motion for Suspension of Collection of Tax; granted petitioner's Motion for Leave to Withdraw Motion for Suspension of Collection of Taxes; and, granted petitioner twenty (20) days or until February 10, 2021 to file its memorandum and respondents a similar period of twenty (20) days from notice to file their memorandum.

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[30] *Id.* at 129-132.
[31] *Id.* at 136-137.
[32] *Id.* at 138-145.
[33] *Id.* at 149-150.
[34] *Id.* at 211.
[35] *Id.* at 213-221.
[36] *Id.* at 226.

On February 24, 2021, the Court received respondents' "Comments/Opposition on Petitioner's Very Urgent Manifestation (with Motion for Leave to Withdraw Motion for Suspension of Collection of Taxes)"[37] filed *via* registered mail on February 8, 2021 and "Manifestation with Motion to Dispense with In-Court Hearing" filed via registered mail on January 21, 2021.[38]

In the Order dated March 8, 2021,[39] the Court deemed moot respondents' "Comments/Opposition on Petitioner's Very Urgent Manifestation (with Motion for Leave to Withdraw Motion for Suspension of Collection of Taxes)"[40] and "Manifestation with Motion to Dispense with In-Court Hearing" in view of the Order dated January 21, 2021.

The "Memorandum (for Petitioner-Appellant)"[41] was filed on February 9, 2021 while the "Memorandum for the Respondents-Appellees"[42] was filed on April 15, 2021.

On June 2, 2021, petitioner filed its "Comment/Opposition (To Respondents' Memorandum dated 15 April 2021)".[43]

On June 24, 2021, the case was submitted for decision.[44]

THE ISSUES

The issue for resolution of the Court is **whether the court *a quo* erred in denying petitioner's prayer for the issuance of a writ of preliminary injunction and in dismissing its Petition for Prohibition**, specifically, in ruling that:

1. Petitioner failed to file a protest, hence, the court *a quo* has no jurisdiction over the case;

2. Petitioner's real property is subject to RPT; and,

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[37] *Id.* at 262-265.
[38] *Id.* at 268-271.
[39] *Id.* at 274-274b.
[40] *Id.* at 262-265.
[41] *Id.* at 227-261.
[42] *Id.* at 275-285.
[43] *Id.* at 275-293.
[44] *Id.* at 296. To conform to the docketing system of the Court, the Court returned the case records of this case to the Judicial Records Division for the correction of the docket number from CTA Case No. 10104 to CTA AC No. 262 and changing of the case folders from cream to green, pursuant to Section 9, Rule IX of the Internal Rules of the Court of Tax Appeals. (Resolution dated February 28, 2022, Docket [CTA AC No. 262 (formerly CTA Case No. 10104).

3. There is no urgent and paramount necessity for the issuance of the writ of preliminary injunction.[45]

THE PARTIES' ARGUMENTS

Petitioner's arguments[46]

Petitioner mainly argues that it is a government instrumentality, hence, not subject to RPT. Allegedly:

(i) It is a government instrumentality by virtue of its mandate to ensure food security in the country, to stabilize the supply and price of rice and to implement the government's policy to promote the integrated growth and development of the grains industry, as provided under PD No. 4, as amended;

(ii) Prior to the enactment of Republic Act (RA) No. 11203,[47] Section 6 (a) (v) to (xvi) of PD No. 4 granted it regulatory powers. Moreover, petitioner has the sole regulatory power over the rice and corn industry as provided under Section 1, Rule II of Revised Rules and Regulations on Grains Business;

(iii) While RA No. 11203 may have removed its various regulatory powers, Section 8 thereof affirms its mandate to ensure food security. Considering that petitioner's main function is to maintain and manage buffer stock, which is obviously a governmental function, and the funds to perform such function come from the funds of the National Government, petitioner is clearly a government instrumentality;

(iv) Petitioner fits the definition of "instrumentality" because it is neither a stock nor non-stock corporation, citing *Republic of the Philippines, represented by the Philippine Reclamation Authority (PRA) vs. City of Parañaque ("PRA").*[48] It is not a stock corporation because while it has capital stock divided into shares, it has no shareholders and its paid-in capital is wholly-owned by the National Government. It has no authority to declare or pay dividends in its charter nor in any amendatory law. Its paid-in capital is also not open for subscription by any person and any additional equity shall come from the National Government in accordance with its fund

[45] *Id.* at 20 and 279.
[46] *Id.* at 234-260.
[47] An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and For Other Purposes.
[48] G.R. No. 191109, July 18, 2012.

requirements. Neither is it a non-stock corporation because it has no members and it was not organized for any of the purposes mentioned in Section 88[49] of the Corporation Code;

(v) It is also an agency attached to the Department of Agriculture. Its operations have been continuously subsidized by the National Government. It does not compete with the private sector and it is not required to meet the test of economic viability which is required for government-owned and controlled corporations (GOCCs); and,

(vi) Section 6(d) of PD No. 4, as amended, expressly provides that it shall be exempt from payment of all taxes, fees and charges. Such tax exemption remains effective notwithstanding the enactment of the LGC.

Petitioner concludes that since it is a government instrumentality, respondents' assessment, imposition and collection of RPT against it should be permanently prohibited, restrained and enjoined for being clearly erroneous, invalid and contrary to laws and jurisprudence. Its mere dispossession or displacement from its real property, particularly those real properties which are subject of the case and which are actually being used as its office building and warehouse facilities, will significantly constitute serious damage that would cause the impairment of its operations and paralysis of the security and stability of the supply of rice in Davao City. Such situation would require additional funds from the National Government, being the sole source of its funds, to subsidize and support the relocation and reorganization of its office buildings and warehouse.

Respondents' counter-arguments[50]

Respondents submit that the court *a quo* did not err in dismissing the Petition for Prohibition as its findings and conclusions are duly supported with evidence and are in accordance with law and prevailing jurisprudence.

Respondents argue that:

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[49] Now Section 87 of the Revised Corporation Code of the Philippines.
SEC. 87. Purposes. – Nonstock corporations may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of nonstock corporations.
[50] Docket [CTA AC No. 262 (formerly CTA Case No. 10104)], pp. 279-283.

(i) The court *a quo* has no jurisdiction to hear the Petition for Prohibition for petitioner's failure to pay the RPT under protest as required by Section 252 of the LGC;

(ii) While the case before the court *a quo* is captioned Petition for Prohibition, petitioner's ultimate prayer is for exemption from payment of RPT. Thus, petitioner should have filed a case before the Local Board of Assessment Appeals (LBAA) in the event that the City Treasurer denied or failed to act on its protest within sixty (60) days in accordance with Section 252 of the LGC; and,

(iii) Petitioner is not legally entitled to the issuance of a writ of preliminary injunction and prohibition by the court *a quo* as the facts obtaining in the case do not support the issuance thereof. There is no urgent and paramount necessity to justify the issuance of an injunctive writ as they have yet to commence any of the remedies available for the collection of petitioner's RPT either by administrative action or through levy on real property or judicial action, as provided under Sections 257 and 258 of the LGC.

THE COURT'S RULING

The Court finds the present Petition for Review partly meritorious.

Timeliness of the instant Petition for Review

Petitioner received the assailed Order dated May 10, 2019 of the court *a quo* on June 7, 2019. Pursuant to Section 11 of RA No. 1125, as amended,[51] in relation to Section 3 (a)(3), Rule 4[52] and Section 3 (a), Rule 8[53] of the Revised Rules of the Court of Tax Appeals

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[51] Section 11, RA 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"
[52] 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"
[53] Section 3 (a), Rule 8 of the RRCTA, as amended.

(RRCTA), as amended, petitioner has thirty (30) days from its receipt of the Order or until July 7, 2019 within which to file its Petition for Review. Accordingly, the filing of the present Petition for Review on July 4, 2019 is timely.

Jurisdiction of the court *a quo*

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.[54]

In the Petition for Prohibition filed before the court *a quo,* petitioner alleged that respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction when they

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"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

[54] *Dr. Pablo Olivares, et al. vs. Mayor Joey Marquez, et al.*, G.R. No. 155591, September 22, 2004.

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assessed and imposed RPT on its real property in Sta. Ana Avenue, Davao City and sent the Notice of Delinquency since it is exempt from paying RPT being a government instrumentality.[55] Petitioner sought to be recognized as a government instrumentality, thus, exempt from payment of RPT, and prayed that respondents be enjoined from pursuing the collection of the RPT imposed upon its property as contained in the Notice of Delinquency.[56] Essentially, petitioner challenges the assessment based on its purported exemption as a government instrumentality.

In a number of cases,[57] 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.**

National Power Corporation vs. The Provincial Treasurer of Benguet,[58] details the procedure to assail an RPT assessment based on a claim of exemption therefrom, *viz.*:

> "At the outset, settled is the rule that should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 of the LGC of 1991 directs that the taxpayer should first pay the tax due before his protest can be entertained, thus:
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> > 'SEC. 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 Area, who shall decide the protest within sixty (60) days from receipt.
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> > (b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.
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> > (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 credits against his existing or future tax liability.

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[55] Docket (Civil Case No. R-DVO-18-04262-SC), pp. 4-5.
[56] *Id.* at 40.
[57] *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.
[58] G.R. No. 209303, November 14, 2016.

> (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 Two, Book II of this Code.
>
> There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within 30 days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.'
>
> Relevant thereto, Chapter 3, Title Two, Book II of the LGC of 1991, Sections 226 to 231, provides for the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected, particularly, the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes."

The foregoing notwithstanding, exhaustion of an available administrative remedy is not an iron-clad rule before judicial recourse 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**.[59]

Thus, the Court opts to 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**.

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

Irreparable injury and urgency of judicial intervention

Petitioner claims that its dispossession or displacement from its real properties, particularly those subject of the present case which are actually used by petitioner as office building and warehouse facilities, will seriously impair, jeopardize and paralyze its operations and prevent it from fulfilling its mandate of ensuring security and stability of the supply of rice in Davao City and nearby communities. If petitioner will be deprived of its office and warehouse in Davao City, its mandate of providing immediate supply of rice to calamity-stricken areas and to ensure that rice prices are restored to pre-emergency levels will be compromised. Should respondents proceed in the collection of the RPT assessment, additional funds will be required by petitioner from the National Government to pay for the RPT. The National Government, which subsidizes the operations of petitioner, will be forced to produce funds for the payment thereof since such amount is not included in petitioner's approved budget.

Evidently, the foregoing injuries that petitioner may suffer in the event that the RPT assessment is collected, pending the resolution of the legal issue on whether petitioner is an instrumentality of the 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*,[60] 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 LBAA and Central Board of Assessment Appeals are "fruitful only where questions of fact are involved."

In the present case, the parties were in agreement that they do not need to present evidence before the court *a quo* as the only remaining issues to be resolved are *(i)* whether petitioner is a government instrumentality exempt from RPT; and *(ii)* whether PD No. 4, as amended, exempts petitioner from RPT.

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[60] G.R. No. 184203, November 26, 2014.

On the other hand, the patent illegality of respondents' 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.[61]

Section 232 of the 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."

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 instrumentalities, and local government units.**
>
> xxx xxx xxx

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[61] *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.

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; xxx" *(Boldfacing supplied)*

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

Requisites of a government instrumentality

Manila International Airport Authority vs. Court of Appeals, et al.[62] *("MIAA"),* has long settled the issue of what makes a government entity a government instrumentality or a GOCC. Said the Supreme Court:

"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.

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

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Section 3 of the Corporation Code defines a stock corporation as one whose "**capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends**

[62] 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 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.

x x x." MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

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 from qualifying as a non-stock corporation.

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Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

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

> SEC. 2. *General Terms Defined.* — 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

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

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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>**.

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

Under RA No. 10149,[63] the definition of a government instrumentality and GOCC remained the same except that the term 'government corporate entities' mentioned in *MIAA* was adopted, recognizing the existence of government instrumentalities exercising corporate powers, to wit:

> "Section 3. Definition of Terms. – xxx
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> xxx xxx xxx
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> (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 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".

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[63] GOCC Governance Act of 2011.

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.[64] A non-stock corporation is "one where no part of its income is distributable as dividends to its members, trustees or officers"[65] and "organized 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".[66]

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 *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,[67] 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.

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[64] Section 3, Batas Pambansa (BP) Blg. 68 (now Section 3, Revised Corporation Code of the Philippines [RCCP]).
[65] Section 87, BP Blg. 68 (now Section 86, RCCP).
[66] Section 88, BP Blg. 68 (now Section 87, RCCP).
[67] 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.

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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.[68]

Second, petitioner was originally attached to the Office of the President (OP).[69] 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[70] and endowed with corporate powers,[71] administers special funds,[72] and enjoys operational autonomy[73] under its charter.

Finally, as regards the twin conditions of common good and economic viability for an entity to be considered as a GOCC, there is no doubt that the reason for the creation of petitioner is for the common good. It is not difficult to see how the general public benefits from a developed grains, rice or food industry or from maintaining rice buffer stock in times of calamities albeit its economic viability is not at all considered in its creation.

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

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

ii. Announce, in accordance with the above mentioned guidelines, the floor price of palay, corn or other grains, by region when required, for the guideline of the producer before the start of the crop season and of the market in anticipation of the crop harvest; Provided, That subject to change in the crop pattern, said floor price shall be announced not later than May and October every year;

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[68] Now Section 87, RCCP; Refer to Section 5, PD No. 1485; Section 2, PD No. 1770; and, Section 8, RA No. 11203.
[69] Section 3, PD No. 1770.
[70] Section 5(b), PD No. 4, as amended, Section 7, PD No. 1770; Section 8, RA No. 11203.
[71] Section 6, PD No. 4; Section 7, PD No. 1770.
[72] Section 11, PD No.4; Section 10, PD No. 1770.
[73] Section 6, PD No. 1770.

iii. **Procure and control or cause the procurement or control of such stock of grains in quantities and in locations, as may foreseeably be needed, to maintain the floor price or manage as buffer stocks to stabilize consumer prices**;

iv. **Promote the organized interrelationship among the components of the industry**; particularly, storage agreements between producers and warehousemen, milling agreements between producers and processors, lease agreements between millers and warehousemen-lessees financing agreement among producers, processors or warehousemen and the financial institutions, marketing agreements between farmers, organization and grouped processors and arrangements embracing elements of the marketing system to the end that the entire industry shall attain institutionalized efficiency as to be able to meet its assigned role;

v. **Devise a system by which it can insure the adequacy of supply and stability of consumer prices at levels within the reach of the low-income families, while maintaining the announced floor price for the producers**;

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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:[74]

"i. **To institute the negotiable warehouse receipt or *quedan* system in palay, corn and other grains** not later than two (2) years after the approval of this Act. Pending the institution of said *quedan* system however, the Authority shall implement the price support by procuring grains at the announced floor price in such quantities and in such places as may be necessary: Provided, That no such grains shall be procured unless they are stored in a bonded warehouse under a bond of not less than thirty-three and one-third (33 1/3) per centum of the value of the stocks of said grains; Provided, However, That **in areas where there are no bonded warehouses or adequate space in bonded warehouses, the Authority shall start to purchase grains at the beginning of every harvest and for this purpose shall send its men and facilities to the places of harvest where the farmers can directly sell their harvested grains**; Provided, Further, That the Authority shall take measures to expedite the establishment of bonded warehouses in areas where they are

[74] Section 6, PD No.1485.

needed but do not exist; Provided, Finally, That such stocks shall be fully insured against loss due to fire.

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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 selling price and such imported grains and their substitutes and/or their by-products/end products with the normal prevailing domestic prices. xxx

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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 NFA 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**.[75]

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.

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

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

Sec. 5(b)(i) of PD No. 4, as amended by PD No. 1485, further provides that 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.

Notably, in *PRA, supra,* the Supreme Court declared that the Philippine Reclamation Authority is a government instrumentality on the same grounds, to wit:

> "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
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> 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 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)*

Considering the clear and categorical provisions of Sections 133 (o) and 234 of the LGC, the act of the Davao City Treasurer in demanding payment of RPT from petitioner is *ultra vires*. The Davao City Treasurer was bereft of any power or authority to assess and

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collect RPT from petitioner, more so, there being nothing on record to show that beneficial use of the subject property has been granted 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.

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.[76]

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"),*[77] 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
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> xxx
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> 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."
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> xxx
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> ***Effects of a void judgment***
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> Xxx xxx xxx.

[76] G.R. Nos. 178842 and 195509, January 30, 2017.
[77] *Id.*

> 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 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.

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 Court's declaration that petitioner is a government instrumentality, it remains exempt from paying RPT in accordance with Sections 133 (o) and 234 of the LGC *vis-à-vis* PD No. 1485, *supra*.

Compliance with procedure on refund is indispensable

As mentioned, on November 27, 2020, petitioner allegedly paid the amount of RPT subject of the Notice and Notice of Delinquency in the amount of ₱3,305,104.00, representing RPT for 2008-2018, broken down as follows:

Official Receipt No.	Date	Tax Year	Tax Kind	Amount
RCT0112767	November 27, 2020	2008	BSC	₱180,278.40
			SEF	₱120,185.60
		2009	BSC	₱180,278.40
			SEF	₱120,185.60
		2010	BSC	₱180,278.40
			SEF	₱120,185.60
		2011	BSC	₱180,278.40
			SEF	₱120,185.60
		2012	BSC	₱180,278.40
			SEF	₱120,185.60
		2013	BSC	₱180,278.40
			SEF	₱120,185.60
			Subtotal	**₱1,802,784.00**
RCT0112768	November 27, 2020	2014	BSC	₱180,278.40
			SEF	₱120,185.60
		2015	BSC	₱180,278.40
			SEF	₱120,185.60

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		2016	BSC	₱180,278.40
			SEF	₱120,185.60
		2017	BSC	₱180,278.40
			SEF	₱120,185.60
		2018	BSC	₱180,278.40
			SEF	₱120,185.60
			Subtotal	**₱1,502,320.00**
			TOTAL	**₱3,305,104.00**

Manila Waterworks and Sewerage Systems vs. Central Board of Assessment Appeals, et al.[78] *("MWSS")* stresses, however, that entitlement to a tax refund does not necessarily call for the automatic payment of the sum claimed, *viz.*:

"As the real property tax assessments issued in the name of MWSS are declared void, MWSS's claim for refund of the real property taxes erroneously paid based on void assessments cannot be ignored. **This entitlement to a tax refund, however, is not automatic. The amount is a factual matter that must be threshed out with certainty in the normal course and in accordance with the administrative procedure provided under the LGC.**

Section 253 of the LGC provides for the procedure in claiming for real property tax refund:

'SEC. 253. Repayment of Excessive Collections. – When an assessment of basic real property tax, or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.

The provincial or city treasurer shall decide the claim for tax refund or credit within sixty (60) days from receipt thereof. In case the claim for tax refund or credit is denied, the taxpayer may avail of the remedies provided in Chapter 3, Title Two, Book II of this Code."

MWSS's claim for tax refund should, therefore, be filed with the city treasurer <u>within two years from the finality of this Decision</u>, as it is only then that the invalidity of the Pasay City assessment is finally settled.'" *(Boldfacing and underscoring supplied)*

In fine, the amount refundable to petitioner must still be proven in the normal course and in accordance with the administrative procedure for obtaining a refund of RPT, as provided under the LGC.

[78] G.R. No. 215955, January 13, 2021.

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.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

With Concurring and 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 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 ASSESSOIR 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,
Respondents.

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

Members:

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

Promulgated:

MAR 1 8 2022 2:15 pm

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

With due respect to my esteemed colleague, Presiding Justice Roman G. Del Rosario, I concur with the ponencia partially granting the Petition for Review of petitioner but dissent to the portion which declares that petitioner is an instrumentality of the government and not a government-owned or controlled corporation (GOCC) which is exempt from the payment of Real Property Tax (RPT) under Section 6 of Presidential Decree (PD) No. 4, as amended by PD 1485.

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] It is the position of the undersigned that petitioner NFA is a GOCC and not 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

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

> wholly, or, where applicable **as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock**: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations." (*Emphasis supplied*)

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

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

> MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA 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

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

> where a literal interpretation would be either impossible or absurb (sic) or would lead to an injustice."

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."

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

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 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]

WHEREFORE, I vote to **DENY** the invalidation of the Notice of Delinquency and the suspension of the collection of real property tax from petitioner.

CATHERINE T. MANAHAN
Associate Justice

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