REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL FOOD AUTHORITY, represented by the Director of its Legal Affairs Department, Atty. Ma. Theresa S. Villafuerte,	**CTA EB NO. 1930** (CTA AC No. 180)
Petitioner,	
	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY,**
- versus -	**RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.*
CITY GOVERNMENT OF TAGUM, CITY ASSESSOR AND CITY TREASURER OF TAGUM, PROVINCE OF DAVAO DEL NORTE,	
Respondents.	Promulgated: NOV 04 2021 9:15 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J*.:

This resolves Petitioner's "Motion for Reconsideration (of the Decision dated 30 June 30, 2020)"[1] ("Motion for Reconsideration") filed on August 27, 2020 via registered mail and received by this Court on September 04, 2020, with Respondents' "Comment (Petitioner's Motion for Reconsideration dated August 26, 2020 received by the Respondent on October 27, 2020)"[2] ("Comment"), filed on December 02, 2020, as well as Petitioner's "Reply (to Respondent's *[sic]* Comment dated 26 November 2020)"[3] ("Reply), filed on February 15, 2021.

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[1] Rollo, pp. 319-341.
[2] *Id.*, 351-362.
[3] *Id.*, 368-379.

Petitioner's Motion for Reconsideration prays for the reversal of the Decision[4] promulgated on June 30, 2020 ("Assailed Decision"), and a new one be issued:

1) Recognizing Petitioner as a government instrumentality, thus, exempt from payment of real property taxes ("RPT"); and

2) Declaring as null and void the Notices of Delinquency issued by the Respondents and permanently enjoining them from assessing, imposing and collecting real property taxes against the properties of Petitioner.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the Decision dated May 29, 2018 and Resolution dated August 23, 2018 of the Court of Tax Appeals Second Division is **REVERSED** and **SET ASIDE**. The Petition for Prohibition filed with the court *a quo* should not have been dismissed for lack of merit, but dismissed for lack of jurisdiction, since the Regional Trial Court - Branch 31 of Tagum City, Davao del Norte is bereft of jurisdiction to entertain the instant case.
>
> **SO ORDERED.**"[5]

Petitioner contends that the instant petition is directed not against the reasonableness of the amount of tax assessed by Respondents but against the very authority of Respondents to assess, impose and collect RPT upon Petitioner which is a government instrumentality.

Petitioner also asserts that the court should have resolved and addressed the main and legal issues raised by Petitioner, namely whether or not NFA is a government instrumentality exempt from payment of RPT and whether or not NFA is not a stock, non-stock or government owned and controlled corporation ("GOCC").

Lastly, Petitioner submits that Respondent cannot collect those taxes which have already passed the five (5) year statute of limitations for collection of taxes.

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4 *Id.*, pp. 280-296.
5 *Id.*, p. 316.

On the other hand, Respondents, in their Comment, avers that Petitioner's arguments essentially rests on whether or not it is a government instrumentality and thus exempt from RPT, said issue already been passed upon by the court in Division in CTA AC No. 180 in its Decision promulgated on May 29, 2018.

Petitioner's arguments must fail.

First, We have already painstakingly discussed in the Assailed Decision that a claim for tax exemption, whether full or partial, does not deal with the authority of local assessor to assess RPT. Such claim questions the correctness of the assessment, and compliance with the applicable provisions of the Local Government Code ("LGC") of 1991, in particular the requirement of payment under protest and appeal to the Local Board of Assessment Appeals (LBAA), is mandatory. In other words, the Regional Trial Court ("RTC"), to which Petitioner lodged its complaint, has no jurisdiction.

Moreover, assuming without conceding that the RTC has jurisdiction and that the instant case be resolved based on merits, We are in conformity with the Court of Tax Appeals Second Division's ruling that Petitioner is liable for RPT.

Indeed, Section 133(o)[6] of the LGC of 1991 provides that local government units cannot levy tax on government instrumentalities. However, Petitioner is not a government instrumentality, but a GOCC, as defined in the Introductory Provisions of Executive Order No. 292[7] for the following reasons. *First*, Section 9[8] of Presidential Decree No. 1770[9] provides that it shall have an authorized capital stock of Five Billion pesos, divided into Fifty Million shares of par value of One Hundred pesos each, which confirms that Petitioner is a stock corporation. *Second*, the mandate of Petitioner is vested with functions

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6 **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:

xxx xxx xxx

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

7 Administrative Code of 1987, July 25, 1987.

8 **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.

9 Reconstituting The National Grains Authority To The National Food Authority, Broadening Its Functions And Powers And For Other Purposes, January 14, 1981.

relating to public needs. *And third*, it is owned by the national government, fully subscribed and funded by the government.

In sum, the Court *En Banc* finds no cogent reason to warrant a reconsideration of the Assailed Decision.

WHEREFORE, premises considered, Petitioner's "Motion for Reconsideration (of the Decision dated 30 June 2020)" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

NATIONAL FOOD AUTHORITY, REPRESENTED BY THE DIRECTOR OF ITS LEGAL AFFAIRS DEPARTMENT, ATTY. MA. THERESA S. VILLAFUERTE, *Petitioner,*	**CTA EB NO. 1930** *(CTA AC NO. 180)*
	Present:
-versus-	DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, and REYES-FAJARDO, *JJ.*
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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* that failure to observe the proper remedy to question a real property tax (RPT) assessment in accordance with Republic Act No. 7190, otherwise known as the Local Government Code of 1991 (LGC), would render an RPT assessment final and executory.

Since National Food Authority (NFA) is questioning the Notice of Delinquency (demanding payment of RPT), issued against it by the City Treasurer of Tagum, on the ground that it is exempt from payment of RPT, NFA should have followed the procedures under Sections 252, 226, 229 and 231 of LGC. Its failure to comply therewith would have been fatal to its cause had it not been an instrumentality of the government that is exempt from RPT under Sections 133(o) and 234 of the LGC.

In *Manila International Airport Authority vs. Court of Appeals et al.*[1] *("MIAA" case)*, the Supreme Court distinguished an instrumentality of the government from a government owned or controlled corporation, *viz.:*

> "Clearly, under its Charter, MIAA **does not have capital stock** that is divided into shares.
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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 <u>required to meet the twin conditions of common good and economic viability</u>**. 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. **<u>The test of economic viability applies only to government-owned or controlled corporations that perform economic or commercial activities and need to compete in the market place.</u> Being essentially economic vehicles of the State for the common good — meaning for economic development purposes — these government-owned or controlled corporations with special charters <u>are usually organized as stock corporations</u> just like ordinary private corporations.**
>
> In contrast, **government instrumentalities vested with corporate powers and performing governmental or public functions need not meet the test of economic viability. These <u>instrumentalities perform essential public services</u> for the common good, services that every modern State must provide its citizens. These instrumentalities <u>need not be economically viable since the government may even subsidize their entire operations</u>**. These instrumentalities are not the "government-owned or controlled corporations" referred to in Section 16, Article XII of the 1987 Constitution.
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> Thus, the **Constitution imposes no limitation when the legislature creates government instrumentalities vested with corporate powers but performing essential governmental or public functions**. Congress has plenary authority to create government instrumentalities vested with corporate powers provided these instrumentalities perform essential government functions or public services. However, **when the legislature creates through special charters corporations that perform economic or commercial activities, such entities — known as "government-owned or controlled corporations" — must meet the test of economic viability because they compete in the market place.**
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> **This is the situation of the Land Bank of the Philippines and the Development Bank of the Philippines and similar government-owned or controlled corporations, <u>which derive</u>**

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

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> **their income to meet operating expenses solely from commercial transactions** in competition with the private sector. **The intent of the Constitution is to prevent the creation of government-owned or controlled corporations that cannot survive on their own in the market place and thus merely drain the public coffers.**
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> x x x
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> Clearly, **the test of economic viability does not apply to government entities vested with corporate powers and performing essential public services. The State is obligated to render essential public services regardless of the economic viability of providing such service.** The non-economic viability of rendering such essential public service does not excuse the State from withholding such essential services from the public.
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> x x x
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> **The MIAA need not meet the test of economic viability because the legislature did not create MIAA to compete in the market place.** MIAA does not compete in the market place because there is no competing international airport operated by the private sector. **MIAA performs an essential public service as the primary domestic and international airport of the Philippines.** *(Boldfacing and underscoring supplied)*

Scrutiny of Presidential Decree (PD) No. 4,[2] as amended by PD 1485[3] and PD 1770[4] and Republic Act (RA) No. 11203,[5] *vis-à-vis* the pronouncements in the *MIAA* case, would lead to a conclusion that NFA 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."

PD 1770 states that NFA is a **government corporation** attached to the Office of the President (Sec. 3, PD 1770). NFA has **authorized capital stock** divided into fifty million shares of par value of one hundred pesos each, which 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 (now NFA) shall be

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[2] Known as the National Grains Authority Act.

[3] Further Amending Certain Provisions of the National Grains Industry Development Act.

[4] Reconstituting the National Grains Authority to the National Food Authority, Broadening its Functions and Powers and for Other Purposes.

[5] An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and For Other Purposes

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 (Sec. 9, PD 1770).

While NFA is considered a government corporation and has an authorized capital stock, the same cannot be considered as a stock corporation since there is no indication in PD 1770 that it is authorized to distribute dividends to stockholders. The teaching in *Republic of the Philippines represented by Philippine Reclamation Authority (PRA) vs. City of Parañaque*[6] is enlightening:

> "Two requisites must concur before one may be classified as a stock corporation, namely: (1) that it has **capital stock** divided into shares; and (2) that it is **authorized to distribute** dividends and allotments of surplus and profits to its stockholders. If only one requisite is present, it cannot be properly classified as a stock corporation. As for non-stock corporations, they must have members and must not distribute any part of their income to said members.
>
> 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, E.O. No. 654 and EO No. 798 that authorizes PRA to distribute dividends, surplus allotments or profits to its stockholders." *(Boldfacing and underscoring supplied)*

NFA was created and organized to undertake and assume primary responsibility for all government activities relating to the processing, storage, transport and marketing of grains *(Sec. 5(b) of PD 4, as amended by PD 1485)*. It shall have 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,

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

said floor price shall be announced not later than May and October every year;

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

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 <u>insure the adequacy of supply and stability of consumer prices at levels within the reach of the low-income families, while maintaining the announced floor price for the producers</u>**;

x x x

vi. 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)*

In order to effectively carry out its functions and responsibilities, NFA is vested with the following powers, among others:[7]

i. **<u>To institute</u> the negotiable warehouse receipt or quedan system in palay, corn and other grains** not later than two (2) years after the approval of this Act. 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 <u>shall start to purchase grains</u> 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**

[7] Section 6, PD 1485.

grains; Provided, Further, That the Authority shall take measures to expedite the establishment of bonded warehouses in areas where they are needed but do not exist; Provided, Finally, That such stocks shall be fully insured against loss due to fire.

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vi. **<u>To inspect</u> palay, rice, corn, corngrits 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

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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.

xiii. **<u>To establish rules and regulations</u>** <u>governing the export</u> 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;

xiv. **<u>To register, license and supervise</u>** 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. **<u>To register, license and supervise</u>** 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. **<u>To register, license and supervise</u>** 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;

x x x. *(Boldfacing & underscoring supplied)*

Section 8 of Republic Act No. 11203 provides that NFA shall **maintain sufficient rice buffer stock to be sourced solely from local farmers**. *"**Buffer Stock**"* refers to the **optimal level of rice inventory that shall be maintained at any given time <u>to be used for emergency situations and to sustain the disaster relief programs of the government during natural or man-made calamities</u>** *(Sec. 3(a), RA 8178, as amended by RA 11203).*

While it appears that NFA is authorized to purchase grains and sell its property and assets (Sec. 6 (i) and (xx), PD 1485**), I submit that it performs essential public service, viewed in the light of its powers and responsibilities**. As quoted above, it is required to determine the floor price for the grain crop which shall assure the farmer or producer a fair return on his investment; to procure and control or cause the procurement or control of 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** (Sec. 5, PD 1485). Under Section 8 of Republic Act No. 11203, it is required to **maintain sufficient rice buffer stock to be sourced solely from local farmers and this *buffer stock*** will **be used for emergency situations and to sustain the disaster relief programs of the government during natural or man-made calamities.**

Moreover, the law does not expect NFA to be economically viable. **Sec. 9 of PD 1770** provides that 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. **Sec. 5(i) of PD 1485** further provides that the Authority 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.

Considering that NFA is considered an instrumentality of the government, petitioner is exempt from RPT pursuant to Sections 133 (o) and 234 of the LGC which provide:

> "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.**
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> xxx xxx xxx
>
> 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;**" *(Boldfacing supplied)*

Considering the clear and categorical provisions of Sections 133 (o) and 234 of the LGC, the act of the City Treasurer of Tagum in demanding payment of RPT from NFA is *ultra vires*. Stated differently, the City Treasurer of Tagum was bereft of any power or authority to assess and collect RPT from NFA, more so, there being nothing on record to show that beneficial use of the subject properties has been granted to a taxable person. As a consequence thereof, the Notices of Delinquency issued against NFA are void *ab initio* and collection of RPT against NFA 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.[8]

The disquisition in *Imperial vs. Cruz*[9] anent the effect of a void judgment is enlightening:

> "A void judgment is no judgment at all in legal contemplation. In *Canero v. University of the Philippines*, we held that-
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>> 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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> x x x
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> Xxx, our ruling in *Banco Español-Filipino* v. *Palanca*[1] 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." *(Boldfacing and underscoring supplied)*

Analogously construed, an RPT assessment generally becomes final and executory if the procedures under Sections 252, 226, 229 and

[8] Imperial vs. Cruz, G.R. No. 178842, January 30, 2017.
[9] *Id.*

231 of LGC were not observed. Yet, this principle is premised on the assumption that the judgment is not fraught with fatal infirmity. If the RPT assessment is patently void, as in this case, the doctrine in *Imperial* applies, and its collection may not be made.

In view of the foregoing, I vote to: **GRANT** petitioner National Food Authority's Motion for Reconsideration (of the Decision dated 30 June 2020); and, **DECLARE** as null and void the seven (7) Notices of Delinquency issued by the City Treasurer of Tagum against petitioner National Food Authority demanding payment of real property taxes in the total amount of Php2,643,816.53.

ROMAN G. DEL ROSARIO
Presiding Justice