REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

****

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

- versus -

CITY GOVERNMENT OF TAGUM, CITY ASSESSOR AND CITY TREASURER OF TAGUM, PROVINCE OF DAVAO DEL NORTE,
Respondents.

CTA AC NO. 180
(RTC SP Case No. 527)

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

MAY 29 2018

4:30 p.m.

x- -x

DECISION

CASANOVA, *J.*:

This is an appeal, *via* the instant Petition for Review[1], filed on January 26, 2017 pursuant to Section 4(a)[2] Rule 8 of the Revised Rules of the Court of Tax Appeals. The Petition seeks to reverse and set aside the Resolution[3] dated November 15, 2016 and Order[4] dated December 8, 2016 both rendered by the Regional Trial Court (RTC)-Branch 31 of

---

[1] Docket, pp. 8-36.
[2] **SEC. 4. *Where to appeal; mode of appeal.* –**

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
[3] RTC Records, pp. 190-194.
[4] *Ibid.*, p. 214.

Tagum City, Davao del Norte which dismissed for lack of merit the Petition for Prohibition filed by the National Food Authority.

Petitioner National Food Authority (NFA) is created under Presidential Decree (PD) No. 4[5], as amended. It its being represented by its Legal Affairs Director Atty. Ma. Theresa S. Villafuerte by virtue of NFA Council Resolution No. 177-2K dated March 21, 2003. Petitioner may be served with summons and other court processes at NFA Legal Affairs Department (LAD), SRA Annex 2 Building, North Avenue, Diliman, Quezon City.

On the other hand, respondent City Government of Tagum is a political subdivision created pursuant to law, while, respondents City Assessor and City Treasurer of Tagum are both public officers, respectively, of the City of Tagum. Respondents may be served with summons and other court processes at their office address at City Hall of Tagum, Davao del Norte.

By virtue of PD No. 4, the National Grains Authority (NGA) was created to aide the development of the country's rice and corn industry. Later on, through PD No. 1770[6], the NGA was reconstituted to the National Food Authority (NFA) with the intention of expanding the functions and powers of the NGA to not only cover the grains industry but other basic food commodities as well.

Under Section 6 (d) of PD No. 4, as amended by PD No. 1485[7], petitioner was given certain exemptions which includes payment of realty taxes. The relevant portion of the said section provides as follows, *viz.*:

> "*Sec. 6.* Administration Powers, Organization, Management and Exemptions. The Powers, organization, management and exemptions of the Authority shall be as follows:

x x x

[5] "PROVIDING FOR THE DEVELOPMENT OF THE RICE AND CORN INDUSTRY AND CREATING FOR THIS PURPOSE THE NATIONAL GRAINS AUTHORITY", September 26, 1972.
[6] "RECONSTITUTING THE NATIONAL GRAINS AUTHORITY TO THE NATIONAL FOOD AUTHORITY, BROADENING ITS FUNCTIONS AND POWERS AND FOR OTHER PURPOSES", January 14, 1981.
[7] "FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL GRAINS INDUSTRY DEVELOPMENT ACT", June 11, 1978.

(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." *(Emphasis Ours)*

However, on October 10, 1991, Republic Act (RA) No. 7160 entitled *"An Act Providing for a Local Government Code of 1991"* was enacted[8]. The said Act meant to decentralize government powers, authority, responsibilities and resources from the national government to the local government units. As such, the Local Government Code (LGC) of 1991, as amended, withdrew and limited the exemption from payment of real property tax, among others, to only few selected entities. Thus, Section 234 of the LGC of 1991, as amended provides that, *viz.*:

"**Section 234.** *Exemptions from Real Property Tax.* – The following are exempted from payment of the real property tax:

---

[8] Which took effect on January 1, 1992.

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

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

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

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

(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code." *(Emphasis Ours)*

In the present case, petitioner NFA is the owner of several real properties constituting of land, buildings and machinery located at Barangay Magdum, Tagum City which are covered by two (2) Transfer Certificate of Title (TCT) Nos. T-59639 and T-59640 and seven (7) Tax Declaration Nos. 01001003091, 01001003092, 01001003093, 01001003094, 01001003095, 01001003096 and 01001000732.

On August 2, 2016, petitioner received seven (7) Notices of Delinquency issued by respondent City Treasurer demanding payment for real property taxes in the total amount of ₱2,643,816.53, broken down as follows:

	Property Index Number (PIN)	Tax Dec./ARP Number	Type	Amount of Delinquency
1	108-01-0010-014-46-1002	01-0010-03093	Building	₱ 11,953.12
2	108-01-0010-014-46-1001	01-0010-03092	Building	956,645.06
3	108-01-0010-014-46-0000	01-0010-03091	Land (Lot 7227-B)	651,984.84
4	108-01-0010-014-47-2001	01-0010-03096	Machinery	321,077.62
5	108-01-0010-014-47-1002	01-0010-00732	Building	775.20
6	108-01-0010-014-47-0000	01-0010-03094	Land (Lot 7227-A)	651,984.84
7	108-01-0010-014-47-1001	01-0010-03095	Building	49,395.85
TOTAL				**₱2,643,816.53**

Thus, on September 23, 2016, petitioner filed a Petition for Prohibition (with application for Temporary Restraining Order and/or Issuance of Writ of Preliminary Injunction)[9] with the RTC of Tagum City, Davao del Norte. The case was docketed as Special Civil Case No. 527 and was raffled to RTC-Branch 31 of Tagum City.

Thereafter, trial ensued.

On November 15, 2016, the RTC-Branch 31 of Tagum City rendered the assailed Resolution[10] in favor of respondent, finding that petitioner is a Government Owned or Controlled Corporation (GOCC) –a taxable entity, the *fallo* of said Decision reads:

> "**WHEREFORE**, premises considered, the present Petition for Prohibition is **DISMISSED** for lack of merit.
>
> **SO ORDERED.**"

On December 14, 2016, petitioner filed a Motion for Reconsideration (Of the Resolution dated 15 November 2016)[11] praying, among others, that the above Resolution be reversed and set aside.

However, finding no new matter of substance which would warrant the modification or reversal of the foregoing Resolution, the

[9] RTC Records, pp. 1-35.
[10] *Supra* No. 3.
[11] RTC Records, pp. 195-213.

RTC-Branch 31 of Tagum City issued an Order[12] on December 8, 2016 denying petitioners' Motion for Reconsideration.

Aggrieved, petitioners elevated the matter on January 26, 2017, to the Court of Tax Appeals (CTA), *via* the instant Petition for Review with Motion for Suspension of Collection of Tax[13].

On February 1, 2017, this Court promulgated a Resolution[14] directing respondents to file a comment within ten (10) days from receipt thereof.

Meanwhile, in the February 15, 2017 hearing, petitioner presented its Assistant Department Manager of NFA-Central Office, **Mr. Gerry J. Ambrosio**, as its witness in support of its Motion for Suspension of Collection of Tax. Petitioner's counsel further moved for the waiver of the posting of bond requirement for the reason that petitioner has no budget allocation for such expense.

On February 17, 2017, respondents, through the City of Tagum filed, via registered mail, a Manifestation with Motion[15], stating that they have no opposition to the suspension of collection of tax pending resolution of the instant case by this Court. Respondents also moved for an additional ten (10) days or until March 2, 2017 within which to submit a Comment on the Petition for Review.

Thereafter, on February 28, 2017, respondents filed, via registered mail, their Comment To The Petition[16].

In a Resolution[17] dated March 15, 2017, this Court granted petitioner's motion for the suspension of collection of tax and, also, the waiver of the posting of bond requirement.

On March 22, 2017, this Court issued a Resolution[18] which noted respondents' Comment to the Petition, and further gave the parties a period of thirty (30) days within which to file their respective

---

[12] *Supra* No. 4.
[13] *Supra* No. 1.
[14] Docket, p. 118.
[15] *Ibid.*, pp. 211-212.
[16] *Id.*, pp. 214-235.
[17] *Id.*, pp. 238-243.
[18] *Id.*, p. 244.

memorandum. More so, this Court ordered the Branch Clerk of Court or the Officer-In-Charge of RTC-Branch 31 of Tagum City to elevate the entire original records of the case.

In a letter dated May 17, 2017, the Officer-In-Charge of RTC-Branch 31 of Tagum City, Mr. Gil V. Rebosura, transmitted the entire original records of the case.

On April 26, 2017, petitioner submitted its Memorandum (For Petitioner)[19] while respondents, on the other hand, submitted, via registered mail, their Memorandum (for Respondent*[s]*)[20] on May 17, 2017.

Accordingly, in a Resolution[21] dated May 30, 2017, this Court noted the transmittal of the entire records of the case and, further, deemed the instant case submitted for decision.

In its Petition, the following Ground/s for the Petition and Assignment of Errors[22] were raised by petitioner for this Court's resolution, *viz:*

I. THE LOWER COURT ERRED IN HOLDING THAT NFA IS ECONOMICALLY VIABLE AS IT COMPETES WITH THE PRIVATE SECTOR AND IT CONTROLS THE RICE MARKET;

II. THE LOWER COURT ERRED IN HOLDING THAT NFA IS A GOCC, A TAXABLE ENTITY;

III. THE LOWER COURT ERRED IN HOLDING THAT RESPONDENT-APPELLEES COMMITTED NO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ASSESSING AND IMPOSING REAL PROPERTY TAXES AGAINST NFA;

IV. THE LOWER COURT ERRED IN HOLDING THAT NFA'S REAL PROPERTIES ARE SUBJECT TO REAL PROPERTY TAXES;

---

[19] *Id.*, pp. 246-275.
[20] *Id.*, pp. 276-292.
[21] *Id.*, p. 294.
[22] Petition for Review, Docket, p. 20.

V. THE LOWER COURT ERRED IN CONSIDERING THE CLAIMS OF RESPONDENT-APPELLEES AS CONTAINED IN ITS MEMORANDUM WHEN THE LATTER ACTUALLY FAILED TO PRESENT ANY EVIDENCE TO COUNTER PETITIONER-APPELLANT'S ALLEGATIONS.

In its arguments, petitioner primarily insists that it is a government instrumentality since it is not economically viable and is not required to meet the economic viability test which is required for all GOCCs. In fact, the amount of subsidy it receives from the government is intended to sustain its operation since its mandated function is to secure food security and stabilization of the price and supply of rice in the country, unlike that of a GOCC which is intended to generate income. Petitioner further claims that it cannot be considered a GOCC since it is not a stock corporation. It has no shareholder or member considering that its paid-in capital is wholly owned by the national government, and, therefore, also has no authority to declare or pay dividends. Therefore, being owned by the government as its instrumentality, respondents acted with grave abuse of discretion when it imposed real property tax on NFA contrary to Section 234 of the LGC of 1991, as amended. Petitioner cites the case of *MANILA INTERNATIONAL AIRPORT AUTHORITY vs. COURT OF APPEALS, et. al.*,[23] (*"MIAA case"* for brevity) to bolster its claim.

On the other hand, respondents claim that petitioner is a GOCC. They assert that, although petitioner has some governmental functions, it does not negate the fact that the said governmental functions relate to public need. It is a public corporation because it does not have the power to regulate the price of rice and corn but rather competes with the private sector in selling the same to the people. Respondents relied on the 2nd Indorsement dated June 12, 2008 issued by the Bureau of Local Government Finance (BLGF) of the Department of Finance (DOF) which declared that NFA is a GOCC and not a government instrumentality.

After due consideration of the arguments presented by the parties, this Court finds no merit in the instant petition.

Incidentally, the aforementioned issues may be simplified into, *WHETHER PETITIONER IS LIABLE FOR REAL PROPERTY TAX.* All other

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

remaining issues are contingent on the resolution of the simplified issue.

As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who are to pay it.[24] But since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting the exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of exemption from tax payment must be clearly shown and based on language in the law too plain to be mistaken.[25]

Respondents did not commit grave abuse of discretion in assessing and imposing real property taxes against petitioner.

Under Section 200 of the LGC of 1991, as amended, provinces and cities, including the municipalities within the Metropolitan Manila Area, shall be primarily responsible for the proper, efficient and effective administration of the real property tax.

The law is clear on the matter. Respondents have the power to impose and administer real property tax against petitioner. In the instant case, the question now is, was the imposition tainted with grave abuse of discretion?

This Court answers in the negative.

Verily, grave abuse of discretion is defined as a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction, a blatant abuse of authority so grave and so severe as to deprive the court of its very power to dispense justice, or an exercise of power in an arbitrary and despotic manner, due to passion, prejudice or personal hostility, so patent and gross as to amount to an evasion or to a

---

[24] Mactan Cebu International Airport Authority vs. Hon. Ferdinand J. Marcos, in his capacity as the Presiding Judge of the Regional Trial Court, Branch 20, Cebu City, The City of Cebu, represented by its Mayor, Hon. Tomas R. Osmeña, and Eustaquio B. Cesa, G.R. No. 120082, September 11, 1996.

[25] *Ibid.*

unilateral refusal to perform the duty enjoined or to act in contemplation of the law.[26]

In order to be qualified as "grave", the abuse of discretion must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[27]

Such is not the instance here.

The records of the case reveal that, when the LGC of 1991 took effect, petitioner had started paying real property taxes to various local government units for those properties located within their respective territorial jurisdiction. Petitioner assents to the withdrawal of its exemption from real property tax under Section 234 of the LGC of 1991, as amended, the relevant portion of which provides, *viz.*:

> "**Section 234.** *Exemptions from Real Property Tax.* - The following are exempted from payment of the real property tax:
>
> *x x x*
>
> 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.**" *(Emphases Ours)*

In 2007, fifteen (15) years after the LGC of 1991 took effect, petitioner's Regional Directors, Provincial Managers, Regional and Provincial Accountants were suddenly instructed to cease paying real property tax and other local tax being assessed and levied against NFA properties. The instruction was issued by virtue of the General Wire Messages coded AO-2K7-F-014 dated June 8, 2007 and AO-2K7-L-001 dated November 29, 2007 by then NFA Administrator Jessup P. Navarro,

---

[26] Bureau of Internal Revenue, as represented by the Commissioner of Internal Revenue vs. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly, G.R. No. 197590, November 24, 2014.
[27] Secretary of the Department of Finance vs. Court of Tax Appeals (Second Division) and Kutangbato Conventional Trading Multi-Purpose Cooperative, G.R. No. 168137, August 7, 2013.

based on the legal opinions[28] made by the Office of the Government Corporate Counsel (OGCC) that, applying the *MIAA case*, NFA is a government instrumentality exempt from real property tax.

> "Applying the twin test laid down by the Supreme Court in the MIAA Case, it is our legal opinion that NFA is similarly situated with the MIAA and, therefore, exempt from paying real property taxes.
>
> *x x x*
>
> Applying the foregoing ruling laid down by the Supreme Court, NFA should also be deemed a *government instrumentality* exercising corporate powers to perform efficiently its government functions. In attaining its objectives of promoting the growth and development of the food industry, NFA has acquired properties from the funds provided by the national government. These properties are actually properties if the Republic of the Philippines despite the fact that they are registered under the name of the NFA. Hence, these properties are exempted from real property taxes."

While, contrary thereto, respondents believed that they have the authority to impose and collect real property taxes against petitioner since it is not a government instrumentality but, rather, a GOCC. Their belief was based on the 2nd Indorsement[29] dated June 12, 2008 issued by the BLGF, through its then Executive Director, Ma. Presentacion R. Montesa, also taking into account the *MIAA case* in their arguments. The relevant portions of the BLGF's 2nd Indorsement is quoted hereafter as follows, *viz.*:

> "Following the line of argument in said Decision, that GOCC's organized under special charter as stock corporation fall under the definition of 'government-owned or controlled corporation' in the Administrative Code, *this Bureau believes and so holds that similarly to LBP and DBP, the National Food Authority* (NFA) is subject to real property tax. *x x x*
>
> *x x x*

[28] Opinion Nos. 098 and 228, Series of 2007, respectively dated May 29, 2007 and October 24, 2007.
[29] Annexes "1" to "1-E", Answer to the Petition, RTC Records, pp. 135-140.

> In view of the foregoing, this Bureau believes that the exemption from real property tax enjoyed by MIAA based on the subject SC Decision cannot, and will not apply to NFA real properties on the following grounds:
>
> 1. NFA is a GOCC organized under special charter as stock corporation with an authorized capital stock divided into shares; and
>
> 2. NFA performs economic or commercial activities, and thus, meets the test of economic viability because, as its charter provides, it competes with the private sector in the market place."

In a nutshell, both parties relied on the legal opinions of different government agencies. Petitioner exercised its discretion to cease paying real property taxes based on the OGCC opinions. While, respondents, on their part, exercised their discretion in imposing and assessing real property tax on petitioner's properties based on the BLGF opinion.

Evidently, both petitioner and respondents relied on the advices, though opposing, of the OGCC and BLGF as bases for their actions. Considering that said views were rendered by the OGCC and BLGF in their official capacities and the respective arguments therein were duly supported by law and expertise, mere reliance thereon, therefore, cannot be considered as an abuse of discretion since it was not in any way arbitrary and in despotic manner, due to passion, prejudice or personal hostility.

All told, having again the primary responsibility of efficient and effective administration of the real property tax, respondents' imposition of real property tax against petitioner's properties cannot be considered tainted with grave abuse of discretion.

Petitioner is a government-owned or controlled corporation.

On July 25, 1987, Executive Order (EO) No. 292, otherwise known as the "Administrative Code of 1987", was signed by then President Corazon C. Aquino, which incorporates in a unified document the major structural, functional and procedural principles and rules of governance. Under the Introductory Provisions of EO No. 292, as amended, a GOCC is defined as follows, *viz.*:

> "(13) *Government-owned or controlled corporation* refers to any agency **organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government** directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations."[30] *(Emphasis Ours)*

Plainly, to be considered a GOCC, an agency must be organized either as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and must be owned by the national government.

- **Organized as a stock corporation**

In the instant case, petitioner insists that it is not a stock corporation since it has no shareholder or member considering that its paid-up capital is wholly owned by the national government. It also has no authority to declare or pay dividends.

This Court is not convinced.

Petitioner's charter 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. Section 9 of PD No. 1770[31] states 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

[30] Section 2 (13), EO No. 292, as amended.
[31] *Supra* No. 6

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."

While it is true that petitioner's paid-up capital is wholly owned by the national government, nonetheless, its allegations herein are contrary to its NFA Code of Corporate Governance[32]. Section 4, Article II of its Code of Corporate Governance (CGC) provides that, viz.:

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

Furthermore, petitioner also admits that it is likewise governed by RA No. 10149[33] otherwise known as "GOCC Governance Act of 2011." Undoubtedly, petitioner is a GOCC.

- **Vested with functions relating to public needs**

In its corporate profile[34], petitioner has the mandate to ensure national food security and stabilize the supply and prices of staple cereals both in the farm and consumer levels. In doing so, petitioner has the power, among others, to engage in the buying and selling of both

---

[32] http://nfa.gov.ph/images/files/Transparency/T_corporate_governance.pdf
[33] "AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE IN GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST AND FOR OTHER PURPOSES", approved on June 6, 2011.
[34] "NFA Corporate Profile" prepared by Corporate Planning and Management Services Department, as of June 30, 2015.

local and imported rice;[35] give financial assistance *via* loans to farmers and producers of grains;[36] and, invest in any and all kinds of securities, stocks, bonds and other secured collaterals.[37]

To reiterate, it is not material whether an agency's purpose in providing service to the public is governmental or proprietary in nature, what the law requires for it to be a GOCC is that it is vested with functions relating to public needs. Undeniably, such is the mandate of petitioner.

- **Owned by the national government**

Having been created, fully subscribed and funded by the government, there is no question that petitioner is owned by the national government. There is no private capital invested in petitioner, its capital assets and operating funds all come from the government, either through transfer of assets, loans, subsidies or the income from such assets or funds. Clearly, from the foregoing, there is no question that petitioner is a GOCC.

The question, now, is whether petitioner is an instrumentality of the government in the sense that, even though a GOCC, it is performing essential public services. The said question is of extreme importance because it was held in the controversial *MIAA case* that a government instrumentality is exempt from payment of real property tax except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

Petitioner is not a government instrumentality.

Further reading of the Introductory Provisions of EO No. 292 shows the definition for a government instrumentality, *viz.*:

> "(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

[35] http://www.nfa.gov.ph/buying-selling-price
[36] *See* Section 6 of PD No. 1485.
[37] *Ibid.*

> funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations."[38]

At the onset, it is worth noting that the term instrumentality includes regulatory agencies, chartered institutions and GOCCs. It simply means that a GOCC can be an instrumentality, but an instrumentality may or may not necessarily be a GOCC. Some examples of government instrumentalities are the Manila International Airport Authority[39], the Philippine Fisheries Development Authority[40], the Government Service Insurance System[41], the Philippine Reclamation Authority[42], and the Philippine Economic Zone Authority[43]. These entities are not integrated within the department framework but are nevertheless vested with special functions to carry out a declared policy of the national government.

Nevertheless, as defined above, an instrumentality is an agency of the national government that are "not integrated within the department framework", "vested with special functions or jurisdiction by law", and "administering special funds and enjoying operational autonomy".

- **Integrated within the department framework**

As mentioned earlier, there is no question that petitioner is owned by the national government. It was previously under the Department of Agriculture (DA) but by virtue of Executive Order (EO) No. 165, s. 2014,[44] petitioner, along with other attached agencies of the DA, were transferred to the Office of the President in order to achieve its primary mission of ensuring the stabilization of the prices and supply of rice and corn, while increasing the income of Filipino farmers. Thus, even though

---

[38] Section 2 (10), EO No. 292, as amended.
[39] *Supra* No. 23.
[40] Philippine Fisheries Development Authority vs. Court of Appeals, G.R. No. 169836, July 31, 2007.
[41] Government Service Insurance System vs. City Treasurer and City Assessor of the City of Manila, G.R. No. 186242, December 23, 2009.
[42] Republic of the Philippines v. City of Parañaque, G.R. No. 191109, July 18, 2012.
[43] City of Lapu-lapu vs. Philippine Economic Zone Authority, G.R. No. 184203, November 26, 2014.
[44] "TRANSFERRING THE NATIONAL FOOD AUTHORITY, NATIONAL IRRIGATION ADMINISTRATION, PHILIPPINE COCONUT AUTHORITY, AND FERTILIZER AND PESTICIDE AUTHORITY TO THE OFFICE OF THE PRESIDENT", dated May 5, 2014.

management of the NFA is vested in an Administrator, such is still, nonetheless, appointed by the President of the Philippines.[45]

- **Vested with special functions or jurisdiction by law**

Primarily, petitioner was created in order to strengthen the national strategy for the integrated growth and development of the food industry to insure adequate and continuous supply at reasonable prices.

As such, listed hereafter are some of petitioners' special functions or jurisdiction as endowed by law, *viz.*:

> Section 5.a (iii), PD No. 4, as amended.
> "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."
>
> Section 6.a. (xii), PD No. 4, as amended.
> "To establish rules and regulations governing the importation of rice, corn and other grains and their substitutes and/or by-products and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported grains and their substitutes and/or their by-products/end-products with the normal prevailing domestic prices."
>
> Section 27, RA No. 7607
> "The National Food Authority or any other appropriate agency of the Department of Agriculture which implements the government price support for agricultural produce, especially rice and corn, shall only procure and purchase palay, corn or other agricultural produce directly from small farmers or farmers' organizations."
>
> "Licensing and Registration of Grains Businessmen – Any person, natural or juridical, before engaging in the rice and/or corn business must first apply for a license and/or registration in the prescribed application form, in triplicate copies to be signed by the applicant

---

[45] Sec. 15, RA No. 10149 otherwise known as "AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE IN GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST AND FOR OTHER PURPOSES", approved on June 6, 2011.

himself or by his authorized representative. This form can be secured from the NFA Regional or Provincial Office, where the grains business is located."[46]

Thus, to this Court, there is no question that petitioner is vested with special function or jurisdiction by law.

- **Administer special funds but DOES NOT enjoy operational autonomy**

In the assailed Resolution dated November 15, 2016 rendered by the RTC-Branch 31 of Tagum City, Davao del Norte, it was held that *"[p]etitioner NFA is 'among the many underperforming and loan-ridden government owned and controlled corporations (GOCCs), and if not speedily addressed, their debts and deficits could place the country in an extremely negative financial position'"*.[47] Stated differently, petitioner is engaged in an activity that inherently entails losses. As a matter of fact, for the year ended December 31, 2016, petitioner has a capital deficiency of ₱141,240,584,186.00[48].

For this reason, petitioner receives annual subsidy from the national government by providing it with budgetary support in terms of both equity infusions and operational subsidies. For the previous year, petitioner was granted a national government subsidy in the amount of ₱5,100,000,000.00 for calendar year 2017.[49]

From this standpoint, one might ask why is still there the need to continue the existence of petitioner if it mostly entails losses? Petitioner answers this by defending how essential its mandate is for "food security and stabilization of the price and supply of rice in the country."

However, the simple truth is that while it is true that the mandate of its operation may be imbued with public interest, it is by no means indispensable or obligatory on the national government. Indeed, petitioner is a GOCC. Regardless of how one explains it, petitioner still performs a proprietary function by buying rice, imposing a certain

---

[46] *Supra* No. 32
[47] At page 4, *Supra* No. 3.
[48] COA's Annual Audit Report on the National Food Authority (NFA) For Year End 2016
[49] NFA Corporate Operating Budget for Calendar Year 2017, as per DBM Board Resolution No. 850-2017-B dated February 8, 2017.

amount as mark up, and then selling rice at a price lower than that of the market price to cater to the majority of the Filipino buyers.

Furthermore, to be considered as operationally autonomous, a government agency should have powers, both necessary and incidental, to act independently in its dealings without requiring approval from a higher office. Among the necessary powers is the power to contract domestic as well as foreign indebtedness. In its charter, Section 6 of PD No. 4, as amended, provides as follows, viz.:

> "**Sec. 6.** Administration Powers, Organization, Management and Exemptions. The Powers, organization, management and exemptions of the Authority shall be as follows:
>
> (a) Powers in order to effectively carry out its functions and responsibilities provided in this Act, the Authority shall have the following powers:
>
> *x x x*
>
> *xviii.* Whenever the Authority determines that to accomplish its production, processing marketing and other incidental functions, **it is necessary to contract indebtedness, it shall be a resolution**, stating the purpose for which the indebtedness is to be incurred and citing the project study designed for the purpose, so declare and authorize the Authority's execution, or issuance of, and establish the terms and conditions to be contained in such bonds, loan agreements, other evidences of indebtedness necessary thereof, **such resolution shall become valid and effective upon approval by the President of the Philippines** and prior recommendation of the Secretary of Finance." (Emphases Ours)

Palpably, before being able to finalize a contract of indebtedness, petitioner still needs the approval of the President of the Philippines for it to be valid and effective. Petitioner does not have the autonomy to enter and enforce loan agreements on its own without first securing approval thereof. In fact, the national government guarantees all NFA debt.[50]

---

[50] Sec. 6 (a)(xviii)(4), PD No. 4, as amended.

While this Court is ever-mindful that the local government unit's power to tax is the most effective instrument to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people; still, adherence to the Local Government Code is needed being the enabling law for the local legislative body. As the maxim goes, *intentio inservire debet legibus, non leges intentioni*[51]

Accordingly, finding no reversible error, this Court finds no cogent reason or justification to disturb the conclusions reached in the assailed Resolution dated November 15, 2016 and Order dated December 8, 2016 rendered by the RTC-Branch 31 of Tagum City, Davao del Norte.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

[51] "Intentions ought to be subservient to the laws, not the laws to the intention".

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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

-*versus*-

CITY GOVERNMENT OF TAGUM, CITY ASSESSOR AND CITY TREASURER OF TAGUM, PROVINCE OF DAVAO DEL NORTE

Respondents.

CTA AC No. 180
(RTC SP Case No. 527)

Members :

CASTAÑEDA, JR., CASANOVA, *and* **MANAHAN,** *JJ.*

Promulgated:

MAY 29 2018

4:30 p.m.

x- x

DISSENTING OPINION

MANAHAN, J.:

Upon a review of the records of this case, I am inclined to offer a different, *nay*, a contrary view on how this case should have been decided.

The majority gives considerable weight to the argumentation offered by both parties and the way by which the Regional Trial Court (RTC) resolved the issues raised, i.e., whether petitioner NFA is exempt from the payment of real property taxes (RPT) based on the following allegations:

1) That it is a government instrumentality covered by the exemptions granted under Section 234 of the Local Government Code of 1991 (LGC of 1991);

2) That it was considered exempt from the payment of RPT as opined by the Office of the Government Corporate Counsel (OGCC).

My esteemed colleagues affirmed the resolution of the RTC that as a government owned and controlled corporation (GOCC), NFA is not exempt from the payment of RPT.

I believe that the issue that should have been tackled first and foremost, is the right of the City Government of Tagum, Davao del Norte to assess and collect from NFA the RPT for the years covered by the assessment. The records show that the City Treasurer of Tagum City issued seven (7) notices of RPT assessment against NFA for the years 2007 to 2016 in the total amount of Php2,643,816.53. These notices were all dated August 2, 2016 and received by the NFA on August 6, 2016.[1]

Section 270 of the LGC of 1991 expressly provides that RPT may be collected within five (5) years from the date they become due. It further provides that no action for the collection of the tax, *whether administrative or judicial,* shall be instituted after said period and I quote, thus:

> Section 270. *Periods within which to collect real property taxes.* – **The basic real property tax and other tax levied under this Title shall be collected within five (5) years from the date they become due**. No action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period. In case of fraud or intent to evade payment of the tax, such action may be instituted for the collection of the same within ten (10) years from the discovery of such fraud or intent to evade payment." (emphasis supplied)

xxx xxx xxx

[1] Annex "J" to "J-6", Petition for Review, Docket, pp. 81-100.

The RPT assessments issued in 2016 against NFA cover the periods 2007 to 2016, so it is quite clear that several years already fall outside the prescriptive period, hence may no longer be collected by the local government of Tagum City. Neither does this case fall under the exceptional period of ten (10) years as NFA cannot be accused of fraud considering that they relied on the opinion of the OGCC as to their exempt status.

Granting that NFA is not exempt from the payment of RPT, only the periods covered by the five (5) year statute of limitations may be the subject of a collection case.

The other point of my dissent points to the flaw in the remedy availed of by NFA, which in my opinion, should have been discussed by the RTC as well as by the majority opinion.

The main argument of NFA is its exempt status from the payment of RPT on the lands, buildings and machineries it owns which are all located in Tagum City, Davao del Norte.

Conformably with the decision of this Court in the case of *National Grid Corporation of the Philippines vs. CBAA,et.al.,* [2] , the issue of whether an entity is exempt from the payment of RPT is a question of fact and not of law that is appealable, first, to the Local Board of Assessment Appeals (LBAA) and not to the RTC. I believe that the RTC should have dismissed the case for lack of jurisdiction as NFA should have elevated the appeal to the LBAA and that it should have first paid the RPT under protest as a requirement. The question of whether the claim for exemption (from RPT) partakes the nature of a question of fact has been resolved by the Supreme Court in the case of *Napocor vs. Province of Quezon* [3] and elaborated by the undersigned in the aforementioned *National Grid* Corporation case, in this manner, thus:

> "It is important to understand how a claim for exemption from RPT partakes of the nature of a question of fact instead of a question of law to further clarify the aforequoted Supreme Court and CTA En Banc decisions.

---

[2] CTA EB No, 1459, February 27, 2018.
[3] G.R. No. 171580, January 25, 2010.

Section 206 of the LGC of 1991 provides for a process upon which a taxpayer may claim exemption of certain real property from RPT and we quote:

> "Section 206. Proof of Exemption of Real Property from Taxation. - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, article of incorporation, bylaws, contracts, affidavits, certifications ad mortgage deeds and similar documents.
>
> If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be proven to be tax exempt, the same shall be dropped from the assessment roll."

It is clear from the foregoing provision, that exemption of certain real property from RPT is not automatic even by virtue of a legislative franchise but involves a process by which the provincial, city or municipal assessor evaluates various documents submitted by the taxpayer to prove entitlement to said exemption. The process of evaluation entails an examination/investigation of facts as may be determined by the documents submitted such that the claim for exemption from RPT then devolves into a question of fact, i.e., whether or not the documents submitted by the taxpayer is sufficient to prove exemption from RPT. It is incumbent on the part of herein petitioner to follow this process as explicitly required by the cited provision of the LGC of 1991. The LBAA, on the other hand, should resolve the question of exemption guided by the same provisions. "

Accordingly, I vote that the decision in the above-entitled case be resolved taking into consideration the foregoing legal precepts and limitations.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice