EN BANC

[G.R. No. 261472. May 21, 2024]

NATIONAL FOOD AUTHORITY, represented by ATTY. MA. THERESA S. VILLAFUERTE, CPA, in her capacity as Department Manager of NFA Legal Affairs Department, *Petitioner*, *v.* **CITY GOVERNMENT OF TAGUM, CITY ASSESSOR and CITY TREASURER OF TAGUM, PROVINCE OF DAVAO DEL NORTE,** *Respondents*.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Taxes cannot be charged against the Republic of the Philippines from which the power to tax emanates in the first place. For the "power to destroy" ought not be used against the very entity that wields it.

The Case

This *Petition for Review on Certiorari*[1] seeks to reverse the twin dispositions of the Court of Tax Appeals *En Banc* in CTA EB No. 1930:

1) **Decision**[2] dated June 30, 2020, affirming the dismissal of the Petition for Prohibition filed by petitioner National Food Authority (NFA) to enjoin respondents City Government of Tagum, its City Assessor and City Treasurer and the Province of Davao del Norte from collecting real property taxes in the total amount of PHP 2,643,816.53; and

---

1 *Rollo*, pp. 10–65.

2 *Id.* at 67–83; penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro of the Court of Tax Appeals, Quezon City.

Supreme Court E-Library

2) **Resolution**[3] dated November 4, 2021 denying NFA's motion for reconsideration.

Background of the NFA

Under the auspices of National Development Company (NDC) or "*Compania de Fomento Nacional,*"[4] the National Rice and Corn Corporation (NARIC) was created as a subsidiary.[5] It started operation in 1936,[6] shortly after its designation as a relief organization by the President of the Philippines, tasked to import rice, free of duty, under Proclamation No. 58, Series of 1936.[7] This development was brought about by the serious shortage of rice and imminent danger of inflation of prices in the country as a result of market manipulations.[8]

In 1947, by Executive Order No. 93,[9] NARIC got converted into an independent corporation and ceased to be a subsidiary of

---

[3] *Id.* at 85–93; penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro of the Court of Tax Appeals, Quezon City.

[4] The National Development Company (NDC) is one of the oldest companies in the Philippines commencing on March 10, 1919, *via* Legislative Act 1248. NDC's first name was Compania de Fomento Nacional. On November 30, 1936, NDC was made a state-owned company via Commonwealth Act 182, which also gave its present name. It was mandated to function as the government's investment arm. NDC developed, financed, and implemented pioneering projects vital to the sustainability of the government's structural reforms and economic policies. <https://icrs.gcg.gov.ph/profiles/ndc/?sector=Government%20Financial%20Institutions%20Sector&keyword=> Last accessed on October 8, 2022 at 10:41 pm.

[5] *Rice and Corn Administration v. Isidoro G. Silao*, 187 Phil. 614 (1980) [Per J. Barredo, Second Division].

[6] https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidspn1809.pdf?fbclid=IwAR2IQrIC_CznnW29p819WeMnaGzNyPNoTJnixXTB6yrOvZj_Weexq89iIbk> Last accessed on October 8, 2022 at 10:41 p.m.

[7] Proclamation No. 58, (1936), Designating the National Rice and Corn Corporation as a Relief Organization to Import Rice, Free of Duty.

[8] *Id.*

[9] Executive Order No. 93 (1947), Abolishing the National Enterprises Control Board, Creating the Government Enterprises Council, Transferring

Supreme Court E-Library

NDC. It was granted all the rights, titles, and interests over NDC's properties, assets, or shares of capital stock which got transferred to NARIC at book value.[10] Three years later, by Executive Order No. 350,[11] NARIC got dissolved. Its properties, assets, or shares of capital stock, including rights and obligations got transferred to the Price Stabilization Corporation (PRISCO).[12]

But just a year after its dissolution, NARIC got resurrected in 1951 as a "government fully owned corporation" *via* Republic Act No. 663.[13] Its purpose was to develop and improve the rice and corn industries in all their phases, stabilize the prices of rice and corn, and promote the social and economic conditions of the people engaged in the production of these staple foods. Its properties, assets, and shares of capital stock, including rights and obligations, previously transferred to PRISCO were reverted to NARIC.[14]

11 years into its operations, NARIC was once again abolished, and in its place, the Rice and Corn Administration (RCA) was created in 1962 *via* Republic Act No. 3452.[15] Under the direction of the Office of the President, it shall engage in the purchase of basic foods directly from tenants, farmers, growers, producers,

---

the Metropolitan Transportation Service to the Manila Railroad Company, Dissolving and Merging Certain Corporations Owned or Controlled by the Government, and for Other Purposes.

[10] *Id.*

[11] Executive Order No. 350 (1950), Creating the Price Stabilization Corporation and Dissolving the Philippine Relief and Trade Rehabilitation Administration and the National Rice and Corn Corporation.

[12] *Id.*

[13] Republic Act No. 663 (1991) An Act to Develop and Improve the Rice And Corn Industries, to Stabilize the Price of Rice and to Promote the Social and Economic Conditions of the People Engaged in the Production of These Staple Foods.

[14] *Id.*

[15] Republic Act No. 3452 (1962), An Act to Adopt a Program to Stabilize the Price of Palay, Rice And Corn, to Provide Incentives for Production, and to Create a Rice and Corn Administration to Implement the Same, and to Provide Funds Therefor.

Supreme Court E-Library

and landowners who wish to dispose of their produce at a fair and just return for their labor and capital investment, and should so require, shall sell and dispose of these commodities to the consumers at areas of consumption at a price within their reach.[16]

Two years later, by Executive Order No. 62,[17] the Rice and Corn Authority or Rice and Corn Board (RICOB) was also created under the Office of the President. It was tasked to be an immediate unifying authority to administer and implement existing laws and rules and regulations for rice and corn.[18]

After eight years, on September 26, 1972, the National Grains Authority (NGA) was established, and the RICOB and the RCA were abolished through Presidential Decree No. 4.[19] The respective functions of these two agencies were transferred to NGA. Later, NGA's powers and functions were expanded *via* Presidential Decree No. 669[20] and Presidential Decree No. 1485[21] to cover not only rice and corn but other grains as well. It was endowed with body corporate powers including regulatory and supervisory powers;[22] and accorded the following exemptions:

Section 6 (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,

---

16 *Id.*

17 Executive Order No. 62 (1964), Creating the Rice and Corn Authority.

18 *Id.*

19 Presidential Decree No. 4 (1972), Providing for the Development of the Rice and Corn Industry and Creating for this Purpose the National Grains Authority.

20 Presidential Decree No. 699 (1975), Amending Presidential Decree Number Four, entitled Proclaiming the Creation of the National Grains Industry Development Administration and Providing Funds Therefor.

21 Presidential Decree No. 1485 (1978), Further Amending Certain Provisions of the National Grains Development Industry Act.

22 *Id.* at sections 4 and 6.

Supreme Court E-Library

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.[23]

Six years into NGA's operations, Presidential Decree No. 1770[24] took effect, transforming NGA into the NFA, a government corporation attached to the Office of the President[25] and broadening its powers and functions for the following purposes:[26]

---

[23] *Id.* at section 6.

[24] Presidential Decree No. 1770, Series of 1981, Reconstituting the National Grains Authority to the National Food Authority, Broadening its Functions and Powers and for Other Purposes, January 14, 1981, Issued by Pres. Ferdinand E. Marcos.

[25] *Id.* at section 3.

[26] Presidential Decree No. 4 (1972), Providing for the Development of the Rice and Corn Industry and Creating for this Purpose the National Grains Authority (1972), as amended. *See* Presidential Decree No. 1485 (1978), Further Amending Certain Provisions of the National Grains Development Industry Act.

Supreme Court E-Library

Section 2. *Declaration of Policy*. – It shall be the policy of the State to promote the integrated growth and development of the grains industry (rice, corn, wheat, and other grains and their substitutes such as but not limited to mongo, soybeans and cassava) (Sec. 3, P.D. 1485) so that it can adequately function as an institution conscious of its social responsibilities and capable of providing adequate and continuous food supply to the nation and of contributing to its proper share to national economy.

Section 3. *Policy Goals and Objectives*. – To carry out the foregoing policy, the government shall orient its programs towards the immediate attainment of the following goals and objectives:

a) Encourage increased and efficient productivity by assuring a fair return on investment of producers and their enjoyment of a decent rising level of income;

b) Provide comprehensive guidance for the development of the industry in all its aspects, delineating and coordinating the respective roles of both government and private sectors and their respective components and earmarking adequate financing from credit (Sec. 4 (b)) resources to support the program: Provided, however, That the credit and other (Sec. 4, (b)) resources contemplated in this Act for the development of grains industry shall be complementary and supplementary to those earmarked under existing laws;

c) Encourage the adoption, in the production, processing and marketing phases, of such proven systems as will reduce costs and improve the quality of these grains and thereby bring about ultimately reasonable prices within the reach of the great masses of the people;

d) Institute measures to fully establish the integrity and assure the negotiability of warehouse receipts evidencing grains in storage;

e) Limit its participation only to such extent and in such phases of the operations of the industry as the private sector has not shown the capability to adequately perform its function and discharge its responsibility, particularly in the stabilization of producers' and consumers' prices;

f) Adopt all other measures for the grains industry as may be necessary to achieve the foregoing policy (Sec. 1 (F), P.D. 1485).

Supreme Court E-Library

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

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

(b) To register, license and supervise persons, natural or juridical, who shall engage or are engaging in the wholesale, retail, processing, manufacturing, storage, transporting, packaging, importation, exportation of food products/commodities and such other related to food activities and to prescribe, impose and collect fees, charges and/or surcharges, with the approval of the President of the Philippines upon recommendation of the Council.

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

(d) To establish or cause the establishment of branches or agencies, domestic or foreign, whenever deemed necessary by the Council.

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

(f) To establish and/or re-structure its own internal organization and to fix the remunerations, emoluments, allowances and other fringe benefits of its officers and employees, subject to the provisions of pertinent compensation law and regulations.

(g) To create and establish, a "Provident Fund" which shall consist of contributions made both by the Authority and its officers and employees to a common fund for the payment of retirement

Supreme Court E-Library

and other benefits to such officers and employees or their heirs under such terms and conditions as the Council may fix.

(h) The subsidiaries of the Authority and those which may be subsequently acquired and/or hereinafter created by law and/or owned/controlled and/or organized by the Authority shall enjoy the tax exemptions and other privileges and rights of the Authority when specifically approved by the President of the Philippines.[27]

NFA was given the following capitalization, funding, and sovereign guarantee, as well:

Section 9. *Capitalization*. NFA 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 is 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.

---

[27] Presidential Decree No. 1770, Series of 1981, Reconstituting the National Grains Authority to the National Food Authority, Broadening its Functions and Powers and for Other Purposes, January 14, 1981, sections 9, 10, and 11.

Supreme Court E-Library

(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. This 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.[28]

Section 11. *National Government Guarantee*. The obligations of the Authority shall be guaranteed by the government of the Philippines upon approval of the President of the Philippines.

In 1985, under Executive Order No. 1028,[29] NFA's stabilization functions were limited to rice and corn and where necessary, wheat. This change came about in light of the then looming process of deregulation of production and trading of food grains and agricultural inputs.

---

[28] *Id.* at sections 9, 10 and 11.

[29] Executive Order No. 1028 (1985), Providing for Further Deregulation in the Production and Trading of Food Grains and Related Agricultural Inputs.

Supreme Court E-Library

Thereafter, NFA got tossed to the Ministry of Agriculture in the name of economy, efficiency, and effectiveness in the delivery of public service in 1987. Under Executive Order No. 116,[30] NFA was detached from the Office of the President and integrated into the Ministry of Agriculture (now Department of Agriculture). Then, several more Executive Orders[31] were issued transferring the supervision and control of NFA to different departments, the latest of which is Executive Order No. 62[32] returning the NFA to the Department of Agriculture.

The advent of Republic Act No. 11203[33] or the "Rice Tariffication Law" repealed several provisions of the charter of NFA.[34] Thus, as presently constructed, NFA's powers and functions are:

> Section 6. *Administration – Powers, Organizations and Management and Exemptions*. (Sec. 6, paragraph 1, P.D. 1485) The powers, organization and management of the Administration shall be as follows:

---

[30] Executive Order No. 116 (1987), Renaming the Ministry of Agriculture and Food as Ministry of Agriculture, Reorganizing Its Units, Integrating All Offices and Agencies Whose Functions Relate to Agriculture and Fishery into the Ministry and for Other Purposes.

[31] Executive Order No. 41 (2001), Transferring the National Food Authority and the Philippine Coconut Authority from the Department of Agriculture to the Office of the President, October 15, 2001; EO No. 81 (2002), Transferring the National Food Authority and the Philippine Coconut Authority from the Office of the President to the Department of Agriculture, March 11, 2002; EO No. 165 (2014), Transferring the National Food Authority, National Irrigation Administration, Philippine Coconut Authority, and Fertilizer and Pesticide Authority to the Office of the President; EO No. 1 (2016), Reengineering the Office of the President Towards Greater Responsiveness to the Attainment of Development Goals.

[32] Executive Order No. 62 (2018), Amending Executive Order No. 1 (2016), Reengineering the Office of the President Towards Greater Responsiveness to the Attainment of Development Goals and for Other Purposes, September 17, 2018.

[33] Republic Act No. 11203 (2019), An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and for Other Purposes.

[34] *Id.* at section 3. It provides that subparagraphs i, v, vi, vii, xi, xii, xiii, xiv, xv, xvi, xvii, xviii, xix, xxii, xxiii, and xxv of Section 6(a) of Presidential Decree No. 4, as amended, are repealed.

Supreme Court E-Library

a) Powers – In order to effectively carry out its functions and responsibilities provided in this Act, the Authority (Sec. 6, par. a, P.D. 1485) shall have the following powers:

i) (Repealed, Section 3, Republic Act No. 11203 (2019), An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and for Other Purposes).

ii) To maintain and manage a national buffer stock the quantity and locations of which shall be determined by the Authority (Sec. 6 A (11));

iii) To own, lease, operate or otherwise hold lands, buildings, equipment and such other immovable properties, as may be necessary to carry out its functions (Sec. 2, PD 699).

iv) To enter into, make, perform and carry out contracts of every class and description necessary or incidental to the realization of its functions with other person, firm or corporation, private or public, including loans or borrowings by the Authority from domestic (Sec. 6 A(iv), PD 1485) or foreign sources, or initiate contracts and/or agreement in behalf of the Philippine Government and any foreign government or institution.

v)-vii) (Repealed, Section 3, Republic Act No. 11203 (2019), An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and for Other Purposes).

viii) To establish and enforce standards in grading, sampling and inspection, tests and analysis, specification, nomenclature, units of measurement, code of practice and packaging, conservation, and transport for grains and their by-products/end-products (Sec. 6 A (viii)) and to effect a transition of standards in measurement of grains from volume to weight, and in metric system.

ix) To coordinate the activities of all government agencies engaged in the study, research and promotion of measures desired to enhance the integrated growth and development of the grains industry (Sec. 6 A (ix)); and to improve the processing and marketing the standards of rice, corn and other grains, such as methods of drying, handling, hauling, storage, milling, packaging, distributing and shipping these grains and their byproducts.

Supreme Court E-Library

> x) To call upon and/or deputize any official of such government agencies as may be necessary to assist the Authority in carrying out its functions.
>
> xi)-xix) (Repealed, Section 3, Republic Act No. 11203 (2019), An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and for Other Purposes).
>
> xx) To sell, lease, mortgage, pledge or otherwise dispose of the property, assets or undertaking of the Authority or any part thereof as the Authority may deem fit.
>
> xxi) To adopt, alter and use a corporate seal which shall be judicially noticed, to sue and be sued; and otherwise to do and perform any and all powers as may be necessary to carry into effect the provisions of this Act or as are essential to the proper conduct of its operations.
>
> xxii)-xxiii) (Repealed, Section 3, Republic Act No. 11203 (2019), An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and for Other Purposes).
>
> xxiv) To invest its fund or other assets in such undertaking as it may deem wise and necessary such as but not limited to investment in any and all kinds of securities, stocks, bonds and other secured collateral (Sec. 6A (xxiv)).
>
> xxv) (Repealed, Section 3, Republic Act No. 11203 (2019), An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and for Other Purposes).

Verily, *NFA got refocused on the acquisition, maintenance, and distribution of rice buffer stock*. It shall maintain an optimal level of national rice inventory to be sourced solely from local farmers and to distribute rice during emergency/calamity situations and sustain the disaster relief program of the government during natural or man-made calamities. It ceased performing its regulatory and licensing functions over the international and domestic trading of rice.

Supreme Court E-Library

The Present Case

NFA is the owner of several real properties, i.e., land, buildings, and machineries, located in Barangay Magdum, Tagum City, Province of Davao del Norte. These are covered by Transfer Certificate of Title (TCT) Nos. T-59639 and T-59640 and seven tax declaration Nos. 01-0010-03091, 01-0010-03092, 01-0010-03093, 01-0010-03094, 01-0010-03095, 01-0010-03096 and 01-0010-00732, respectively.[35]

When Republic Act No. 7160 or the Local Government Code of 1991 (Local Gov't. Code) was passed, several local government units (LGUs) imposed real property taxes on NFA's real properties found within their territorial jurisdictions.[36] NFA was initially constrained to pay real property taxes[37] due to the withdrawal of its tax exemptions under Section 234 of the Local Gov't. Code, *viz.*:

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

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

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, 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;

---

[35] *Rollo*, p. 71.

[36] *Id.* at 20.

[37] *Id.* at 147.

Supreme Court E-Library

(d) All real property owned by duly registered cooperatives as provided for under Republic Act 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)

Meantime, 15 years removed from the LGC of 1991, in *MIAA v. Court of Appeals*,[38] the Court ruled that Manila International Airport Authority (MIAA) is not a Government-Owned or -Controlled Corporations (GOCC) but a government instrumentality of the National Government. It is exempt from local taxation as its real properties are owned by the Republic of the Philippines, *viz.*:

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.* — [. . . .]

(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*. [. . . .] (Emphasis supplied)

When the law vests in a government instrumentality corporate power, the instrumentality does not become a corporation. Unless

[38] 528 Phil. 181 (2006) [Per J. Carpio, *En Banc*].

Supreme Court E-Library

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."

Likewise, **when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework.** The MIAA Charter expressly states that transforming MIAA into a "separate and autonomous body" will make its operation more "financially viable."

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

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

> SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> [. . . .]
>
> (o) *Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities and local government units*.

Section 133(o) recognizes the *basic principle that local governments cannot tax the national government, which historically merely delegated*

Supreme Court E-Library

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." (Emphasis supplied)

Following the *MIAA* ruling, Executive Order No. 596[39] was issued defining a "*government instrumentality vested with corporate powers*" or "*government corporate entity*":

Section 1. The Office of the Government Corporate Counsel (OGCC) shall be the principal law office of all GOCCs, except as may otherwise be provided by their respective charter or authorized by the President, their subsidiaries, corporate offsprings, and government acquired asset corporations. The OGCC shall likewise be the principal law office of "government instrumentality vested with corporate powers" or "government corporate entity," as defined by the Supreme Court in the case of "MIAA v. Court of Appeals, City of Parañaque, et al.," supra, notable examples of which are: Manila International Airport Authority (MIAA), Mactan International Airport Authority, the Philippine Ports Authority (PPA), Philippine Deposit Insurance Corporation (PDIC), Metropolitan Water and Sewerage Services (MWSS), Philippine Rice Research Institute (PRRI), Laguna Lake Development Authority (LLDA), Fisheries Development Authority (FDA), Bases Conversion Development Authority (BCDA), Cebu Port Authority (CPA), Cagayan de Oro Port Authority, and San Fernando Port Authority.

Section 2. As provided under PD 2029, series of 1986, the term GOCCs is defined as a stock or non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law, is owned or controlled by the government directly, or indirectly, through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock.

Under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987, a **government "instrumentality"** refers to **any agency of the National Government, not integrated within the department framework, vested with special functions or**

---

[39] Executive Order No. 596 (2006), Defining and Including "Government Instrumentality Vested with Corporate Powers" or "Government Corporate Entities, Under the Jurisdiction of the Office of the Government Corporate Counsel (OGCC) as Principal Law Office of Government-Owned or -Controlled Corporations.

jurisdiction by law; endowed with some, if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. (Emphases supplied)

On May 29, 2007, NFA requested the Office of the Government Corporate Counsel (OGCC) for a legal opinion on the applicability of the *MIAA* ruling to NFA. The OGCC twice responded in the affirmative, thus:[40]

OGCC Opinion No. 098, Series of 2007 dated May 29, 2007:

Applying the foregoing ruling laid down by the Supreme Court, the **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 of 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.[41] (Emphasis supplied)

OGCC Opinion No. 228, Series of 2007 dated October 24, 2007:

In our Opinion No. 098, Series of 2007, dated May 29, 2007, our Office opined that **NFA is similarly situated with the Manila International Airport Authority (MIAA)** whose lands and buildings have been exempted from real estate tax by the local government units pursuant to the Decision of the Honorable Supreme Court in the case of "Manila International Airport Authority v. Court of Appeals," G.R. No. 155650 dated July 20, 2006. We have arrived at the conclusion that **NFA is similarly situated with the MIAA by applying the twin test laid down by the Supreme Court in the MIAA case**.[42] (Emphasis supplied)

Relying on these OGCC opinions, then NFA Administrator Jessup P. Navarro issued a General Wire Message coded AO-2K7-F-014 dated June 8, 2007, instructing all Regional Directors, Provincial Managers, Regional and Provincial Accountants of

---

[40] *Rollo*, p. 21.

[41] *Id.* at 21–22.

[42] *Id.* at 22.

Supreme Court E-Library

NFA to cease paying real property taxes and other local taxes levied against NFA properties. This was followed by another General Wire Message coded AO-2K7-L-001 dated November 29, 2007, reiterating the instruction not to pay real property taxes based on the OGCC opinion issued in favor of the NFA.[43]

On May 13, 2008, NFA-Region XI Regional Director Antonio R. Dela Cruz sent a formal application for exemption from real property taxes to then Tagum City Mayor Rey T. Uy (Mayor Uy), Office of the City Assessor, and City Treasurer based on the twin OGCC opinions.[44] A follow-up letter on September 15, 2010 was also sent to Mayor Uy by NFA Provincial Manager Antonio C. Arañas.[45]

Meantime, Republic Act No. 10149[46] was passed into law defining *government instrumentalities with corporate powers*, in this wise:

> (n) *Government Instrumentalities with Corporate Powers (GICP)/ Government Corporate Entities (GCE) refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter* including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO).[47] (Emphasis supplied)

---

[43] *Id.*

[44] *Id.* at 24.

[45] *Id.*

[46] Republic Act No. 10149 (2011), GOCC Governance Act of 2011, Approved June 6, 2011.

[47] *Id.* at section 3(n).

Supreme Court E-Library

Almost a decade after NFA stopped paying real property taxes, on August 2, 2016, it received seven Notices of Delinquency, issued by respondent Tagum City Treasurer, demanding payment of real property taxes in the total amount of PHP 2,643,816.53:[48]

Property Index Number (PIN)	Tax Declaration/ Assessment of Real Property (ARP) Number	Type	Amount of Delinquency
1. 108-01-0010-014-46-1002	01-0010-03093	Building	PHP 11,953.12
2. 108-01-0010-014-46-1001	01-0010-03092	Building	956,645.06
3. 108-01-0010-014-46-1000	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			PHP 2,643,816.53[49]

In response, NFA filed a Petition for Prohibition (with application for Temporary Restraining Order and/or Issuance of Writ of Preliminary Injunction) with the Regional Trial Court for Tagum City, Davao del Norte, entitled *National Food Authority, represented by the Director of its Legal Affairs Department, Atty. Ma. Theresa S. Villafuerte v. City Government of Tagum, City Assessor and City Treasurer of Tagum, Province of Davao del Norte* docketed as Special Civil Case No. 527 and raffled to Branch 31.[50]

---

[48] *Rollo*, p. 22.

[49] *Id.* at 14.

[50] *Id.* at 71–72.

Supreme Court E-Library

NFA asserted that it was exempt from payment of real property taxes because it was a government instrumentality per *MIAA* and several opinions issued by the OGCC:[51]

City Gov't. of Tagum et al. insisted though on the City's alleged right to collect real property taxes from NFA, it being purportedly a GOCC. They relied on the Bureau of Local Government & Finance (BLGF) Ruling/Indorsement dated June 12, 2008, issued by Executive Director Ma. Presentacion R. Montesa, *viz.*:[52]

> Following the line of argument in said Decision, that [GOCC] 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 . . .
>
> [. . . .]
>
> 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 marketplace.[53]

Ruling of the Trial Court

By Resolution[54] dated November 15, 2016, the trial court dismissed the petition for alleged lack of merit. *For one*, Gov't

---

[51] *Id.* at 199.

[52] *Id.*

[53] *Id.* at 148–149.

[54] *Id.* at 198–202. Penned by Judge Arlene I. Lirag-Palabrica, Regional Trial Court for Tagum City, Davao del Norte.

Supreme Court E-Library

of Tagum et al. relied on the BLGF Ruling/Indorsement dated June 12, 2008, issued by Executive Director Ma. Presentacion R. Montesa when it imposed the real property taxes on NFA. *For another*, NFA is a taxable entity based on *Republic v. Philippine Reclamation Authority*.[55]

The trial court added that the nature of NFA as an entity is further recognized by the Commission on Audit (COA) as a GOCC, citing an article on GMA News Online published last August 10, 2010. Then it opined that there was more to the function of the NFA than meets the eye. It confessed to being uncertain about the role of NFA if it was truly an essential public service for common good. It opined that while it was true that the Government subsidized NFA, it was equally true that NFA was economically viable because it either competed or controlled the rice market, leading to the conclusion that it was a GOCC subject to real property taxes.

NFA's Motion for Reconsideration was denied under Order[56] dated December 8, 2016.

Consequently, NFA filed a Petition for Review[57] with the Court of Tax Appeals entitled *National Food Authority, Represented by the Director of its Legal Affairs Department Ma. Theresa S. Villafuerte v. City Government of Tagum, City Assessor and City*

---

[55] 691 Phil. 476, 478 (2012) [Per J. Mendoza, Third Division]. From the above definitions, it is clear that a GOCC must be "organized as a stock or non-stock corporation" while an instrumentality is vested by law with corporate powers. Likewise, when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework.

[. . . .]

The fundamental provision above authorizes Congress to create GOCCs through special charters on two conditions: 1) the GOCC must be established for the common good; and 2) the GOCC must meet the test of economic viability, *id.* at 483 and 486.

[56] *Rollo*, p. 197.

[57] *Id.* at 167–196.

Supreme Court E-Library

Treasurer of Tagum, Province of Davao del Norte, docketed as CTA AC No. 180.

Proceedings before the Court of Tax Appeals Second Division

In its Petition for Review with Motion for Suspension of Collection of Tax,[58] NFA argued that: (1) it was a government instrumentality since it was not economically viable and not required to meet the economic viability test which is required for all GOCCs. Its subsidy from the government was intended only to sustain its operation since its mandated function was to secure food security and stabilization of the price and supply of rice in the country; (2) it was not created to generate income as it was not a stock corporation. Nor did it have shareholders or members as its paid-in capital was wholly owned by the National Government and did not have the authority to declare or pay dividends; (3) it was a government instrumentality exempt from real property taxes based on *MIAA v. Court of Appeals*;[59] and (4) respondents acted with grave abuse of discretion when they imposed real property taxes on NFA, contrary to Section 234, Local Gov't Code, as amended.[60]

In its Comment, Gov't of Tagum et al. defended the dispositions of the trial court, maintaining that NFA was a GOCC. It was a public corporation without the power to regulate the price of rice

---

[58] Under Section 11 of Republic Act No. 1125, as amended, Rule 8, Section 4(a) of Administrative Matter No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals.
Section 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.

[59] 528 Phil. 181 (2006) [Per J. Carpio, *En Banc*].

[60] *Rollo*, p. 145.

and corn. Instead, it competed with the private sector in selling its goods to the same people.[61]

By Resolution dated March 15, 2017, the Court of Tax Appeals Second Division granted the motion for suspension of collection of tax, dispensing with the posting of bond, without objections from respondents. Thereafter, both parties submitted their respective memoranda.[62]

Rulings of the Court of Tax Appeals Second Division

Under Decision[63] dated May 29, 2018, the Court of Tax Appeals Second Division affirmed.

First, Gov't of Tagum et al., under Section 200 of the Local Gov't Code,[64] had the power to impose and administer real property taxes against NFA.

Second, when the Local Gov't Code took effect, NFA started paying real property taxes to various LGU's for properties located in their respective territorial jurisdiction. It therefore assented to the withdrawal of its exemption from real property taxes under Section 234 of the Local Gov't Code.

Third, contrary to the assertions of NFA, it was not a government instrumentality, but a GOCC based on the BLGF Ruling/ Indorsement dated June 12, 2008, taking into consideration the *MIAA* ruling.

Fourth, NFA was a GOCC based on the Introductory Provisions of Executive Order No. 292.[65]

---

[61] *Id.*

[62] *Id.* at pp. 143–144.

[63] *Id.* at 137–162. Penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justice Juanito C. Castañeda, Jr. Associate Justice Catherine T. Manahan wrote a dissenting opinion, *id.* at 159–162.

[64] Local Government Code of 1991, Section 200. Administration of the Real Property Tax. – The 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.

[65] Executive Order No. 292 (1987), Administrative Code of 1987.

Supreme Court E-Library

(Section 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.

Fifth, NFA was organized as a stock corporation. It had an authorized capital stock of Five Billion Pesos, divided into Fifty Million shares, with a par value of One Hundred Pesos each. While it is true that its paid-up capital was wholly owned by the National Government, it was governed by Republic Act No. 10149 or GOCC Governance Act of 2011. In Article II, Section 4 of the NFA Code of Corporate Governance, it was referred to as a GOCC:

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.

Sixth, it was vested with functions relating to public needs as it was mandated to ensure national food security and stabilize the supply and prices of staple cereals both in the farm and consumer levels. It was not material whether an agency's purpose in providing service to the public was governmental or proprietary in nature, for it to be a GOCC it was enough for NFA to be vested, as it was so vested, with functions relating to public needs.

Seventh, an instrumentality included regulatory agencies, chartered institutions and GOCCs. Thus, a GOCC can be an instrumentality, but an instrumentality may or may not necessarily be a GOCC, i.e., MIAA, Philippine Fisheries Development Authority, Government Service Insurance System, Philippine Reclamation Authority, Philippine Economic Zone Authority.

Supreme Court E-Library

NFA was not an instrumentality as while it administered special funds, it did not enjoy operational autonomy.

Eighth, NFA was a GOCC as it performed a proprietary function by buying rice, imposing a certain 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.

NFA's Motion for Reconsideration was denied under Resolution[66] dated August 23, 2018.

Consequently, on September 17, 2018, NFA filed a Petition for Review[67] with the Court of Tax Appeals *En Banc* docketed as CTA EB No. 1930.

Rulings of the Court of Tax Appeals *En Banc*

The Court of Tax Appeals *En Banc* dismissed the NFA's petition for *certiorari* by its Decision[68] dated June 30, 2020, on the ground that the Regional Trial Court for Tagum City, Branch 31 had no jurisdiction over the case. It ruled that the issue of tax exemption was a question of fact appealable to the Local Board of Assessment Appeals (LBAA) in accordance with the following provisions of the Local Gov't Code:

CHAPTER 3 - ASSESSMENT APPEALS

Section 226. Local Board of Assessment Appeals. - Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

[. . . .]

---

[66] *Rollo*, pp. 164–166; penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Catherine T. Manahan of the Second Division of the Court of Tax Appeals, Quezon City.

[67] *Id.* at 167–196.

[68] *Id.* at 67–83.

Supreme Court E-Library

Section 229. Action by the Local Board of Assessment Appeals. - (a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the power to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena duces tecum. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment appeals, as herein provided. The decision of the Central Board shall be final and executory.

[. . . .]

Section 231. Effect of Appeal on the Payment of Real Property Tax. - Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.

Only after payment of real property taxes under protest, likewise in accordance with the Local Gov't Code:

Section 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 Manila Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.

(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 credit against his existing or future tax liability.

(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 II, Book II of this Code.

The Court of Tax Appeals *En Banc* noted that Sections 226 and 252 of the Local Gov't Code, provide successive administrative remedies to the taxpayer on questions of correctness of a real property tax assessment before the LBAA and then to the Central Board of Assessment Appeals (CBAA). Should a taxpayer or owner or person having legal interest in the property instead questions the authority of the assessor to impose the assessment, or the authority of the treasurer to collect the tax, the matter becomes a legal question properly cognizable by the trial courts. In any event, the issue of tax exemption basically assails the correctness of the assessment made by the local assessor, hence, Sections 226 and 252 of the Local Gov't Code, as amended must be complied with. As NFA failed to first pay under protest, as it instead questioned right off the assessment before the LBAA, the petition should have been dismissed for lack of jurisdiction.

The Court of Tax Appeals *En Banc* denied NFA's motion for reconsideration through its Resolution[69] dated November 4, 2021.

The Present Petition

NFA now invokes the discretionary appellate jurisdiction of the Court under Rule 45 of the Rules of Court to review and reverse the foregoing dispositions of the Court of Tax Appeals.

---

[69] *Id.* at 85–89; penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro and Marian Ivy F. Reyes-Fajardo of the Court of Tax Appeals, Quezon City.

Supreme Court E-Library

It maintains anew that the Regional Trial Court for Tagum City, Branch 31 has jurisdiction over the issue of whether NFA is a government instrumentality. The petition was, thus, directed against the authority of respondent City of Tagum to assess, impose on, and collect real property taxes from NFA as a government instrumentality; as such it is neither a stock or non-stock corporation; it is an attached agency of the Department of Agriculture mandated to stabilize the supply and price of rice in the country. In fact, it has regulatory powers over the rice and corn industry under Section 6 of Presidential Decree No. 4, as amended. More, it is directed under Republic Act No. 11203 to maintain a buffer stock to be used only during times of emergency or calamity.

In its Comment dated October 11, 2023,[70] City Gov't of Tagum et al. riposte that: (a) the Regional Trial Court does not have jurisdiction to entertain original petitions for local tax exemption. Its findings should have been questioned before the LBAA, in accordance with Sections 226 and 252 of the LGC; (b) the NFA is a GOCC, not an instrumentality, subject to real property taxes under the LGC. It is a stock corporation created under special charter which is established for the common good and meet the test of economic viability, whose dividends are distributed to the National Government as sole shareholder; (c) government instrumentality is created for a special function or jurisdiction and not integrated within the department framework. NFA is not a regulatory agency. It has no power to regulate, administer or adjudicate matters affecting substantial rights and interests of the private sector but rather competes with them in the rice market; (d) the enactment of Republic Act No. 11203 or the Rice Tariffication Law did not strengthen its claim that it is a government instrumentality. The mere fact that it is now specially tasked with buffer stocking does not automatically make it a government instrumentality. In fact, it is a GOCC as it is a stock corporation vested with functions relating to public needs that is owned directly by the National Government; (e) the opinion of the OGCC is merely persuasive

---

[70] Temporary *rollo*, pp. 1–29.

and has no binding force; and (f) claims for tax exemptions must be based on language in law too plain to be mistaken. It cannot be out of inference or implication.

Issues

1) Does the Regional Trial Court for Tagum City, Branch 31 have jurisdiction over the Petition for Prohibition initiated by NFA?

2) Is "payment under protest" in Section 252, LGC of 1991, as amended, an absolute requirement for assailing real property taxes?

3) Is NFA a government instrumentality?

4) Is NFA exempt from payment of real property taxes?

Our Ruling

We reverse.

At the outset, We stress anew that the principle of local autonomy under the 1987 Constitution simply means decentralization. It does not make local governments sovereign within the state or an *imperium in imperio*.[71] They are bound by the following tax principles in the exercise of their constitutionally delegated power to tax:

a) Under Article X, Section 5 of the 1987 Constitution, "[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments."

b) The basic rationale for the current rule on local fiscal autonomy is the strengthening of LGUs and the safeguarding

---

[71] *Hon. Lina, Jr. v. Hon. Paño*, 416 Phil. 438, 448 (2001) [Per J. Quisumbing, Second Division], *citing Basco v. PAGCOR*, 274 Phil. 323 (1991) [Per J. Paras, En Banc].

Supreme Court E-Library

of their viability and self-sufficiency through a direct grant of general and broad tax powers. The fundamental law nevertheless did not intend the delegation to be absolute and unconditional. Its exercise in fact is subject to limitations, among them, (a) the taxpayer should not be over-burdened or saddled with multiple and unreasonable impositions; (b) the resources of the national government, too, should not be unduly disturbed; and (c) local taxation should be fair, uniform, and just.[72]

c) Although the power to tax is inherent in the State, the same is not true for LGUs. While the mandate to impose taxes granted to LGUs is categorical and long established in the 1987 Philippine Constitution, the same is not all encompassing as it is subject to limitations as explicitly stated in Article X, Section 5 of the 1987 Constitution. Being mere creatures of the State, LGUs cannot defeat national policies through enactments of contrary measures. They are governmental agencies, the establishment of which did not divest the State of any of its sovereignty.[73]

Verily, "[w]hen local governments invoke the power to tax on national government instrumentalities, such power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation. This rule applies with greater force when local governments seek to tax national government instrumentalities."[74]

This is not merely a tax policy but rooted in the very exercise of the inherent power of taxation of the national government—*exemptions of agencies of government are recognized,* i.e., the means or agencies selected by the government as necessary or convenient to the exercise of its functions cannot be subjected

---

[72] *FDCP v. CHRC*, 760 Phil. 519, 540–541 (2015) [Per J. Velasco, *En Banc*].

[73] *See Batangas CATV, Inc. v. Court of Appeals*, 482 Phil. 544 (2004) [Per J. Sandoval-Gutierrez, *En Banc*].

[74] *MIAA v. Court of Appeals*, 528 Phil. 181, 214 (2006) [Per J. Carpio, *En Banc*].

Supreme Court E-Library

to the taxing power.[75] More, taxes are financial burdens imposed for the purpose of raising revenues with which to defray the cost of the operation of the Government, and a tax on property of the Government, whether national or local, would merely have the effect of taking money from one pocket to put it in another pocket.[76]

In *MIAA*,[77] the Court was more emphatic, thus, "[t]he reason for the rule does not apply in the case of exemptions running to the benefit of the government itself or its agencies. In such a case the practical effect of an exemption is merely to reduce the amount of money that has to be handled by the government in the course of its operations. For these reasons, provisions granting exemptions to government agencies may be construed liberally, in favor of non-tax liability of such agencies. "There is, moreover, no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another."[78]

Even Section 133(o) of the Local Gov't Code,[79] as amended, 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,

---

[75] A Treatise on the Law of Taxation, Third Edition, by Thomas M. Cooley, LL.D. pp. 57–58. *See also Board of Assessment Appeals v. NAWASA*, 118 Phil. 227, 231–232 (1963) [Per J. Concepcion].

[76] *Id.* at 231–232.

[77] *MIAA v. Court of Appeals*, 528 Phil. 181 (2006) [Per J. Carpio, *En Banc*].

[78] *Id.* at 214.

[79] Section 133, Local Government Code of 1991 (LGC of 1991), as amended. 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 instrumentalities and local government units.

Supreme Court E-Library

local governments may only exercise such power "subject to such guidelines and limitations as the Congress may provide."[80]

More than being a mere transfer of funds from one pocket of the government to the other, as laid down in *Basco v. PAGCOR*,[81] the whole point why LGUs cannot tax the national government instrumentalities is they absolutely have no power by taxation or otherwise, to retard, impede, burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the power vested in the [national government]. This doctrine emanates from the "supremacy" of the National Government over LGUs.[82] Otherwise, mere creatures of the State can defeat national policies [through] extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as "a tool for regulation."[83]

In fine, the power to tax which according to Justice Marshall, is also called the "power to destroy" cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it.[84]

While the Court does recognize the constitutionally delegated power to tax of LGUs, as creatures of the National Government, it must be circumspect and exercise restraint in levying on government properties. The "power to destroy" ought not be used against the very entity that wields it.

In sum, the trial court, the Court of Tax Appeals Division, and the Court of Tax Appeals *En Banc* committed reversible error in sustaining the power of the City of Tagum to levy on and collect real property taxes from NFA.

---

[80] CONST., art. X, sec. 5.

[81] 274 Phil. 323 (1991) [Per J. Paras, *En Banc*].

[82] *Id.* at 340.

[83] *Id.*

[84] *MIAA v. Court of Appeals*, 528 Phil. 18, 215–216 (2006) [Per J. Carpio, *En Banc*].

Supreme Court E-Library

NFA properly availed of the extraordinary remedy of prohibition before the trial court

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. It must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[85]

The resolution of whether NFA is a government instrumentality rests solely on what the law provides. As a creation of law, does it conform to the definition of a government instrumentality? *This is a pure question of law*, the resolution of which does not require presentation of evidence.

In *MWSS v. CBAA*,[86] We held that based on the arguments and allegations of MWSS, it was not challenging the reasonableness or correctness of the assessment nor asserting an error in the computation of assessed tax. Rather, it was assailing the authority of the city assessor and treasurer to assess and collect real property taxes from it—a government instrumentality. *The issue of whether a local government entity is authorized to assess and collect real property taxes from a government entity is a pure question of law*.[87]

---

[85] *Republic of the Philippines v. Caraig*, 887 Phil. 827, 838 (2020) [Per J. Hernando, Second Division], *citing Leoncio v. De Vera*, 569 Phil. 512, 516 (2008) [Per J. Nachura, Third Division] *further citing Binay v. Odeña*, 551 Phil. 681, 689 (2007) [Per J. Nachura, *En Banc*].

[86] G.R. No. 215955, January 13, 2021, [Per J. Lopez, Second Division].

[87] *Id.*, *citing MWSS v. The Local Government of Quezon City*, 842 Phil. 864, 865 (2018) [Per J. Leonen, Third Division].

Supreme Court E-Library

In the oft-cited case of *Ty v. Hon. Trampe*,[88] the Court held that the rule on exhaustion of administrative remedies does not apply when the controversy does not involve questions of fact but only of law.[89] The protest contemplated under Section 252 of the LGC is required when there is question as to the reasonableness or correctness of the amount assessed, while an appeal to the LBAA under Section 226 of the LGC is fruitful only where questions of fact are involved.[90] Accordingly, *when the very authority and power of the assessor to impose the assessment, and of the treasurer to collect real property taxes are in question, the proper recourse is a judicial action*.[91]

The following provisions of the 2016 Consolidated and Revised Rules of Procedure governing the proceedings before the *LBAA and CBAA*[92] *clearly recognize that these administrative agencies have limited jurisdiction which do not have the required expertise or competence to rule on questions of law*, thus:

Rule III — Procedure before the Local Board of Assessment Appeals

Section 1. Organization, Powers, Duties, and Functions of the Local Boards.

(a) It shall be *composed of the Registrar of Deeds, as Chairman, the provincial or city prosecutor and the provincial or city engineer as members*, who shall serve as such in *ex officio* capacities without additional compensation.

(b) The Chairman shall have the power to designate any employee of the province or city to serve as secretary to the Local Board, also without additional compensation.

(c) In provinces or cities without a provincial or city engineer, the district engineer shall serve as member. In the absence of the Registrar of Deeds, or the provincial or city prosecutor, or the

---

88 *Id.*, *citing Ty v. Trampe*, 321 Phil. 81 (1995) [Per J. Panganiban, *En Banc*].

89 *Id.*

90 *Id. See NPC v. Province of Quezon*, 624 Phil. 738, 759 (2010) [Per J. Brion, Special Second Division].

91 *Id.*, *citing NPC v. Municipal Government of Navotas*, 747 Phil. 744, 756 (2014) [Per J. Peralta, Third Division].

92 (2016).

Supreme Court E-Library

provincial or city engineer, or the district engineer, the persons performing their duties, whether in acting capacities or as duly designated officers-in-charge, shall automatically become the chairman or member, respectively, as the case may be.

[. . . .]

Section 4. Jurisdiction of the Local Boards – It shall have the original jurisdiction to hear and decide appeals of owners/administrators of real property from the actions of the provincial, city or municipal assessors in the assessments of their real properties, and from the actions of the provincial, city or municipal treasurers in the collection of real property taxes, special levies, or other real property taxes under Title Two, Book II of Republic Act No. 7160.

Rule IV – Appeals to the Local Board of Assessment Appeals

Section 1. Who May Appeal to the Local Boards – **Any owner or person having legal interest in the subject property (a) who is not satisfied with the action of the assessor in the assessment of his property, or (b) who is not satisfied with the action or inaction of the treasurer on his claim for refund or credit of taxes paid under protest, or (c) who is not satisfied with the action or inaction of the treasurer on his claim for refund or credit of taxes paid but found to be illegal or erroneous by competent authority, may appeal to the Local Board** of the province or city, or municipality within the Metropolitan Manila Area, where the subject property is situated.

Section 2. When to Appeal to the Local Boards – Appeals shall be filed with the said Boards within the periods prescribed as follows:

a. If the **subject matter** of the appeal is the **perceived error or errors in the assessment of the property concerned**, the appeal to the Local Board – with the concerned assessor as respondent – shall be filed within sixty (60) days from the appellant's receipt of the written notice of assessment from the assessor; or

b. If the **subject matter** of the appeal is the **denial by the treasurer of a claim for refund or credit** of realty taxes paid under protest under Section 252 of R.A. 7160, without questioning the validity or correctness of the assessment made by the assessor.

Supreme Court E-Library

(i) the appeal shall be filed with the Local Board – with the treasurer as the respondent – within sixty (60) days after appellant's receipt of the written notice from the treasurer denying the claim, if such denial is made by the treasurer within sixty (60) days after the treasurer's receipt of the claim for refund or credit; or

(ii) if the treasurer fails to act on the claim within sixty (60) days from his receipt thereof, the appeal shall be filed with the Local Board within sixty (60) days after the lapse of sixty (60) days from the date the claim was filed with the treasurer; or

c. If the **appeal refers to the denial by the treasurer of a claim** under Section 253 of R.A. 7160 for refund or credit of realty taxes, or any other tax levied under Title Two, Book II of R.A. 7160, paid but later found to be illegal or erroneous by competent authority.

(i) the appeal shall be filed with the Local Board with the treasurer as the respondent within sixty (60) days after appellant's receipt of the written notice from the treasurer denying the claim, if such denial is made by the treasurer within sixty (60) days after the treasurer's receipt of the claim for refund or credit; or

(ii) if the treasurer fails to act on the claim within sixty (60) days from his receipt thereof, the appeal shall be filed with the Local Board within sixty (60) days after the lapse of the sixty (60) days from the date the claim was filed with the treasurer.

[. . . .]

Rule VI – Jurisdiction, Composition, Functions of the Central Board of Assessment Appeals

Section 1. Jurisdiction of the Central Board. – It shall have **exclusive jurisdiction** to hear and decide **all appeals from the decisions, resolutions and final orders of the Local Boards**.

Section 2. **Composition** of the Central Board. – It shall be composed of a chairperson and two (2) commissioners-members to be appointed by the President, who shall serve for a term of seven (7) years,

Supreme Court E-Library

> without reappointment. Of those first appointed, the chairman shall hold office for seven (7) years, one member for five (5) years and the other member for three (3) years. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any member be appointed or designated in a temporary or acting capacity. The chairman and members of the Central Board shall be Filipino citizens, at least forty (40) years old at the time of their appointment, and members of the Bar or Certified Public Accountants for at least ten (10) years immediately preceding their appointment. The chairman of the Central Board shall have a salary grade equivalent to the rank of Director III under the Salary Standardization Law exclusive of allowances and other emoluments. The members of the Central Board shall have the salary grade equivalent to the rank of Director II under the Salary Standardization Law exclusive of allowances and other emoluments. (Emphasis supplied)

As further ordained in *MWSS*,[93] administrative remedies are inapplicable when the issue presented is a pure question of law. As one can see from the jurisdiction and composition of the LBAA, it is not an administrative agency necessarily equipped and envisioned by law to determine whether NFA is a government instrumentality.

Thus, contrary to the ruling of the Court of Tax Appeals *En Banc*, NFA did properly avail itself of the extraordinary remedy of *prohibition* before the trial court. The remedies of *certiorari* and prohibition may issue to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo, and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[94]

So must it be.

---

[93] *MWSS v. The Local Government of Quezon City*, 842 Phil. 864 (2018) [Per J. Leonen, Third Division].

[94] *Ifurung v. Hon. Carpio Morales*, 831 Phil. 135, 152 (2018) [Per J. Martires, *En Banc*].

Supreme Court E-Library

Payment under Protest in Section 252 of the LGC of 1991, as amended, is not an absolute rule for availment of judicial remedy

To repeat, the proper recourse is a judicial action when the taxpayer questions the very authority and power to impose and collect real property taxes, it follows therefore that Sections 226 and 252 of the Local Gov't Code, pertaining to the "payment under protest" rule as a condition *sine qua non* to the availment of administrative remedies do not apply to the present case.

In any event, the requirement of "payment under protest" is *per se* unjust when the taxpayer is claiming tax exemption. In *The Treasurer-Assessor v. University of the Philippines*,[95] the Court explained why the condition of "payment under protest" is unjust:

> The provision of Section 54 of C.A. 470, invoked by the petitioners, refers to judicial proceedings before the regular court questioning the validity or reasonableness of a tax assessed under the Assessment Law. Before the passage of R.A. 1125[,] the validity or reasonableness of the assessment of any tax may be brought before the regular courts in ordinary judicial proceedings. This was the procedure contemplated in the provisions of Section 54 of C.A. 470. But after the enactment of R.A. 1125[,] the validity or reasonableness of the assessment and taxation of real property may be assailed only before the Court of Tax Appeals. Of course, before the question regarding the assessment and taxation of real property is brought to the Court of Tax Appeals the matter must first be acted upon by the provincial or city assessor, as the case may be, and that an appeal from the action of the provincial or city assessor had been brought to the proper board of assessment appeals; and the taxpayer who is not satisfied with the decision of the board of assessment appeals elevates the case to the Court of Tax Appeals. As We have adverted to R.A. 1125[,] does not impose the condition of payment under protest of real estate taxes due[,] before the Court of Tax Appeals[,] could entertain the appeal from the decision of the provincial or city board of assessment appeals. Before the passage of R.A. 1125[,] the impeachment of a realty tax before the court is conditioned upon prior payment under protest of the taxes. However, after the passage of R.A. 1125[,] the taxpayer does

---

[95] 148 Phil. 526 (1971) [Per J. Zaldivar, *En Banc*].

not go to the regular courts to assail the validity of the assessment and taxation of real property but to the Court of Tax Appeals.

In the recent case of the Board of Assessment Appeals of Zamboanga del Sur, et al. v. Samar Mining Co., Inc. and Court of Tax Appeals, G.R. No. L-28034, February 27, 1971, this Court affirmed the decision of the Court of Tax Appeals which ruled that said court can entertain and give due course to an appeal assailing the legality validity of a real property tax assessment without paying first the disputed real property tax as required by Section 54 of the Assessment Law (C.A. 470). **Indeed, the question that may be brought before the city or provincial board of assessment appeals is one that relates to the reasonableness or legality of the realty tax that is assessed against a taxpayer. It would be unjust to require the realty owner to first pay the tax, which he precisely questions, before he can lodge an appeal to the Court of Tax Appeals.** We believe that it was not the intendment of R.A. 1125 that in questioning before the Court of Tax Appeals the validity or reasonableness of the assessment approved by the city or provincial board of assessment appeals the taxpayer should first pay the tax arising from the questioned assessment.

We reiterate what We said in the case of the Board of Assessment Appeals of Zamboanga del Sur, et al. v. Samar Mining Co., Inc., et al., supra, that in so far as an appeal from the decision or resolution of the provincial or city board of assessment appeals Section 54 of C.A. 470 does not apply, and that said section is impliedly repealed by Sections 7, 11 and 21 of R.A. 1125.[96] (Emphases supplied)

While the *case* was decided before the passage of Republic Act No. 7160, its doctrinal value remains in place. *It would be unjust to require the realty owner to first pay the tax, which he or she precisely questions*. In *NPC v. Navotas*,[97] the Court categorically ordained "*it would be unjust to require the realty owner to first pay the tax, the validity of which he precisely questions, before he can lodge a complaint to the court,*"[98] with a parting word that the "*ends of substantial justice and fair play may be served.*"[99]

---

[96] *Id.* at 533–534.

[97] 747 Phil. 744 (2014) [Per J. Peralta, Third Division].

[98] *Id.* at 760.

[99] *Id.* at 761.

Supreme Court E-Library

NFA is a government instrumentality

To recall, Republic Act No. 10149[100] was passed into law, incorporating the classification of and definition of government instrumentalities, as follows:

> Section 3(n). *Definition of Term*. – **Government Instrumentalities with Corporate Powers (GICP)/Government Corporate Entities (GCE)** refer to **instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter** including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO).[101] (Emphasis supplied)

In *Philippine Heart Center v. The Local Government of Quezon City, et al.*,[102] for an agency to be classified as a government instrumentality vested with corporate powers, the following elements must concur: (a) it performs governmental functions; and (b) it enjoys operational autonomy. NFA passes these twin criteria.

(1) *NFA performs special governmental functions*. When NFA was transformed into a government corporation attached to the Office of the President under Presidential Decree No. 1770, its powers and functions were broadened for the purpose of promoting the integrated growth and development of the grains industry so that it can adequately function as an institution conscious of its

---

[100] GOCC Governance Act of 2011.

[101] *Id.*

[102] G.R. No. 225409, March 11, 2020 [Per J. Lazaro-Javier, First Division].

Supreme Court E-Library

social responsibilities and capable of providing adequate and continuous food supply to the nation and of contributing to its proper share to national economy.

The passage of Republic Act No. 11203[103] or the "Rice Tariffication Law" repealed several provisions of the charter of NFA. Under Section 8[104] thereof, it was mandated to 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.

Thus, *NFA was refocused on the acquisition, maintenance, and distribution of rice buffer stock*. It shall maintain an optimal level of national rice inventory to be sourced solely from local farmers and to distribute rice during emergency/calamity situations and sustain the disaster relief program of the government during natural or man-made calamities. It thus performs essential public service.

(2) *NFA is vested with corporate powers under Presidential Decree No. 4, as amended*. Its powers and functions for this purpose—the acquisition, maintenance, and distribution of rice buffer stock—remain, including its capitalization, funding, and sovereign guarantee. *It is still a government corporation as designated under Presidential Decree No. 1770 under the supervision and control of the Department of Agriculture*.

NFA therefore bears the essential characteristics of a government instrumentality vested with corporate powers and exempt from real property taxes. NFA's corporate status does not divest itself of its character as a government instrumentality. For despite its corporate status, it is really the resources and reputation of the

---

[103] An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and for Other Purposes (2019).

[104] *Id.*, sec. 8. *Maintenance of Rice Buffer Stock*. — The NFA shall, in accordance with the rules, regulations and procedures to be promulgated, maintain sufficient rice buffer stock to be sourced solely from local farmers.

Supreme Court E-Library

Republic that are at stake in the capitalization and operations of the government entity.

(3) *NFA is not a GOCC*. It was not organized as a stock or non-stock corporation.

Under Section 3 of the Revised Corporation Code,[105] corporations formed or organized under this Code may be stock or non-stock corporations. Stock corporations are those which have capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits on the basis of the shares held. All other corporations are non-stock corporations.

While it has capitalization divided into shares of stock wholly owned by the National Government, it has no stockholders or voting shares. It is not even authorized to declare, much less, distribute dividends. Its surpluses (or income) are controlled by the President of the Philippines in accordance with fund requirements of the NFA and funds available in the Treasury. Thus, it is not a stock corporation. Nor is it a non-stock corporation because it has no members. Even if we were to assume that the National Government is its sole member, it is still not a non-stock corporation as a non-stock corporation cannot distribute any part of their income to their members.

(4) *NFA is operationally autonomous*. NFA is not integrated within the department framework, only under the supervision and control of the Department of Agriculture. Under Executive Order No. 62,[106] the NFA Council, the governing NFA body corporate was reorganized designating the following officials:

---

[105] Republic Act No. 11232 (2019), An Act Providing for the Revised Corporation Code of the Philippines.

[106] Executive Order No. 62 (2018), Amending Executive Order No. 1 (2016) Entitled Reengineering the Office of the President Towards Greater Responsiveness to the Attainment of Development Goals and for Other Purposes.

Supreme Court E-Library

Chairman:	The Secretary of the Department of Agriculture, or his duly authorized permanent representative with the rank of Undersecretary
Vice Chairman:	The Administrator of the NFA, or his duly authorized permanent representative
Members:	A Representative from the Office of the President
	The Secretary of the Department of Finance, or his duly authorized permanent representative
	The Secretary of the Department of Trade and Industry, or his duly authorized permanent representative
	The Director General of the National Economic and Development Authority, or his duly authorized permanent representative
	The Secretary of the Department of Social Welfare and Development, or his duly authorized permanent representative
	The Governor of the Bangko Sentral ng Pilipinas, or his duly authorized permanent representative
	The President of the Land Bank of the Philippines, or his duly authorized permanent representative
	A Farmers' Sector Representative to be appointed by the President [of the Philippines]

In sum, **NFA is a government instrumentality**. While it is not integrated within the department framework, it is vested with special functions or jurisdiction and endowed with some corporate powers. It administers special funds and enjoys operational autonomy under a charter.

Supreme Court E-Library

The Court keenly notes that in the recent ruling of the Court of Tax Appeals (First Division) in *NFA v. City Assessor and City Treasurer, Malolos, Bulacan*[107] docketed as CTA AC No. 241, it already recognized the status of NFA as a government instrumentality, following the rulings of the Court in *MIAA*,[108] thus:

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, 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.

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.

Second, petitioner was originally attached to the Office of the President (OP). 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**

---

[107] Decision of the Court of Tax Appeals First Division in *NFA, represented by Elvira Obaña, Regional Director of NFA-Region III v. City Assessor and City Treasurer*, CTA AC No. 241, March 16, 2022, penned by Presiding Justice Roman G. Del Rosario, concurred in by Associate Justice Marian Ivy F. Reyes-Fajardo, with Dissenting Opinion by Associate Justice Catherine T. Manahan. Downloaded CTA_1D_AC_00241_D_2022MAR16_OTH.pdf from <https://cta.judiciary.gov.ph/decres_caseno#> Accessed last October 12, 2022 on 12:30 p.m.

[108] *MIAA v. Court of Appeals*, 528 Phil. 181 (2006) [Per J. Carpio, *En Banc*].

transferred back to the DA by virtue of EO No. 62 dated September 17, 2018.

Third, petitioner is vested with special functions as it administers special funds, while enjoying operational autonomy under its charter.

Finally, while there is **no doubt that the reason for the creation of petitioner is for the common good, still, economic viability is not at all considered in its creation thereby precluding it from becoming a GOCC**.

[. . . .]

Section 8 of RA No. 11203 provides that petitioner 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.

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.

Interestingly, 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. Sec. 5(b)(i) of PD No. 4, as amended by PD No. 1485, further provides that the 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.[109] (Emphases supplied)

---

[109] *Elvira Obaña, Regional Director of NFA-Region III v. City Assessor and City Treasurer*, CTA AC No. 241, March 16, 2022, penned by Presiding Justice Roman G. Del Rosario, concurred in by Associate Justice Marian Ivy F. Reyes-Fajardo, with Dissenting Opinion by Associate Justice Catherine T. Manahan.

Supreme Court E-Library

NFA is exempt from payment of real property taxes

A government instrumentality falls under Section 133(o) of the Local Gov't Code states:

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

It 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."

More, given the mandate and purpose of NFA, its status as a government instrumentality, its properties are thus properties of public dominion intended for public use or service. As such, they are exempt from real property tax under Section 133 (o) but under Section 234(a) of the Local Gov't Code.

> 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;

In *Philippine Heart Center v. The Local Government of Quezon City, et al.*,[110] the Court categorically ruled that properties of public dominion are outside the commerce of man. These properties are exempt from levy, encumbrance, or disposition through public or private sale. Properties of public dominion, being for public use,

---

[110] 872 Phil. 930, 958 (2020) [Per J. Lazaro-Javier, First Division].

Supreme Court E-Library

are not subject to levy, encumbrance, or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures, and auction sale.

Nevertheless, the exemption from real property under Section 234(a) of the LGC is not available when the beneficial use has been granted to, for and in consideration or otherwise, to a taxable person. Thus, the Court has invariably held that a government instrumentality, though vested with corporate powers, are exempt from real property tax but the exemption shall not extend to taxable private entities to whom the beneficial use of the government instrumentality's properties has been vested.[111]

In *Lung Center of the Philippines v. Quezon City*,[112] the Court ordained that the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from real property taxes. On the other hand, the portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt.

Too, in *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila*,[113] the Court nullified the real property tax assessments issued by the City of Manila to the Government Service Insurance System, except the assessment pertaining to the leased Katigbak property served on the Manila Hotel Corporation as lessee which has actual and beneficial use thereof.

Further, in *PFDA v. Central Board of Assessment Appeals*,[114] the Court declared void all the real property tax assessments issued by the City of Lucena on the Lucena Fishing Port Complex

---

[111] *Id.* at 960.

[112] 477 Phil. 141, 160 (2004) [Per J. Callejo, Sr., *En Banc*].

[113] 623 Phil. 964–985 (2009) [Per J. Velasco, Jr., Third Division].

[114] 653 Phil. 328, 338 (2010) [Per J. Carpio, Second Division].

Supreme Court E-Library

except for the portions that the Philippine Fisheries Development Authority has leased to private parties.

Finally, in *MWSS v. Local Government of Quezon*,[115] the Court declared the real properties of the MWSS exempt from the real property taxes imposed by the Quezon City Government. It also nullified all the real estate tax assessments, including the final notices of real estate tax delinquencies, issued on the real properties of the MWSS in Quezon City except for the portions that were alleged and proven to have been leased to private parties.

As there are no allegations here that the beneficial use of the real properties of NFA belongs to a taxable person, its land, buildings, and machineries, located in Barangay Magdum, Tagum City, Province of Davao del Norte are exempt from real property tax under Section 133(o) and Section 234(a) of the LGC of 1991, as amended.

As in *MIAA*, We see no compelling reason or sound policy to allow the Tagum City Government to tax the NFA, a government instrumentality which oversees the acquisition, maintenance, and distribution of rice buffer stock, maintaining an optimal level of national rice inventory to be sourced solely from local farmers and to distribute rice during emergency/calamity situations and sustain the disaster relief program of the government during natural or man-made calamities, an essential public service. Besides, there is simply no point in forcing the transfer of public funds from one government pocket to another.

ACCORDINGLY, the Petition is **GRANTED**. The **Decision dated June 30, 2020** and **Resolution dated November 4, 2021** of the Court of Tax Appeals *En Banc* in CTA EB No. 1930 are **REVERSED**.

The National Food Authority is a government instrumentality exempt from real property taxes in accordance with Sections 133(o) and 234(a) of the Local Government Code of 1991.

---

[115] *MWSS v. CBAA*, G.R. No. 215955, January 13, 2021, [Per J. Lopez, Second Division].

Supreme Court E-Library

The Notices of Delinquency issued by respondent City Treasurer of the City of Tagum, Province of Davao del Norte, demanding payment of real property taxes in the total amount of PHP 2,643,816.53 against the National Food Authority relative to the several real properties located at Barangay Magdum, Tagum City, Province of Davao del Norte covered by Transfer Certificates of Title Nos. T-59639 and T-59640 and Tax Declaration Nos. 01-0010-03091, 01-0010-03092, 01-0010-03093, 01-0010-03094, 01-0010-03095, 01-0010-03096, and 01-0010-00732 are declared **VOID**.

SO ORDERED.

Gesmundo, C.J., Leonen, S.A.J., Caguioa, Hernando, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, Kho, Jr., and *Singh, JJ.*, concur.

APPEARANCES OF COUNSEL

NFA Legal Affairs Department for petitioner.
Office of the City Legal Officer for respondents.