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SECOND DIVISION

[G.R. No. 211839. March 18, 2019]

PRIVATIZATION AND MANAGEMENT OFFICE, *petitioner, vs.* **COURT OF TAX APPEALS and CITY GOVERNMENT OF TACLOBAN,** *respondents.*

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 1125, AS AMENDED (AN ACT CREATING THE COURT OF TAX APPEALS); COURT OF TAX APPEALS (CTA); APPEAL FROM THE DECISION OF THE CITY TREASURER OF A LOCAL GOVERNMENT UNIT TO THE CTA; CTA MAY ORDER SUSPENSION OF THE COLLECTION OF TAXES, WHEN IN ITS VIEW, THE COLLECTION MAY JEOPARDIZE THE INTEREST OF THE GOVERNMENT AND/OR TAXPAYER, PROVIDED THE TAXPAYER EITHER DEPOSITS THE AMOUNT CLAIMED OR FILES A SURETY BOND FOR NOT MORE THAN DOUBLE THE AMOUNT; CASE AT BAR.— With the expansion of the jurisdiction of the CTA, it has now the power to take cognizance of cases appealed to it involving real property taxation. The foregoing provision provides for the rule that an appeal to the CTA from the decision of the City Treasurer of a Local Government Unit (as in this case) will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability, as provided by existing law. However, when, in the view of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond. It is clear from the foregoing that the CTA may order the suspension of the collection of taxes, provided that the taxpayer either: (1) deposits the amount claimed; or (2) files a surety bond for not more than double the amount. These condition precedents were required by law in order to guarantee the payment of the deficiency taxes assessed against the taxpayer, if and when the case is finally decided against the said taxpayer.

2. ID.; ID.; ID.; ID.; ID.; FILING A SURETY BOND AS A CONDITION PRECEDENT TO THE SUSPENSION OF

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TAX COLLECTION IS NOT NECESSARY WHEN THE METHOD EMPLOYED BY THE TAXING AUTHORITY IN COLLECTING REALTY TAXES DUE IS NOT SANCTIONED BY LAW; CASE AT BAR.— [T]he requirement of the bond as a condition precedent to the issuance of the writ of injunction applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law for such cases provided and not when said processes are obviously in violation of the law to the extreme that they have to be suspended for jeopardizing the interests of taxpayer. This principle was echoed in the recent case of *Spouses Pacquiao v. Court of Tax Appeals*, when the Court held: From all the foregoing, it is clear that the authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond is not simply confined to cases where prescription has set in. As explained by the Court in those cases, ***whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law,*** the bond requirement under Section 11 of R.A. No. 1125 should be dispensed with. In the instant case, there was a clear showing that the method employed by the respondent City in the collection of the real property taxes contravened existing law and jurisprudence. It must be underscored that the petitioner filed the motion to suspend the collection of tax, not so much to stay the collection thereof, but actually to thwart the threat of the property being sold in public auction which may effectively divest the petitioner, the PTA and the Province of Leyte of the ownership over the property.

3. POLITICAL LAW; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE); REAL PROPERTY TAXATION; REAL PROPERTY OWNED BY THE GOVERNMENT IS EXEMPT FROM PAYMENT OF REAL PROPERTY TAXES EXCEPT WHEN THE BENEFICIAL USE THEREOF HAS BEEN GRANTED TO A TAXABLE PERSON; CASE AT BAR.— The petitioner recognized the fact – which was affirmed in the CTA *En Banc* Decision dated August 22, 2014, that as a government entity, it is exempt from payment of real property taxes pursuant to Section 234(a) of the 1991 Local Government Code or R.A. No. 7160. The said provision also provides that when the beneficial use of the real

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property owned by the Republic or any of its political subdivision, is vested to a taxable person, the real property is subject to tax. Petitioner, together with the PTA and the Province of Leyte, had already admitted that they are co-owners of the subject property and they were leasing the same to UCI, a private entity pursuant to a Contract of Lease dated September 15, 1994. Thus, pursuant to the aforementioned Local Government Code provision and also in the case of *National Power Corporation v. Province of Quezon*, where this Court ruled: The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property. **In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has *actual and beneficial use and possession* of the property regardless of whether or not that person is the owner.** But, without, however, prejudging the appealed case on the merits, UCI, the actual and beneficial user of subject property can be said to be directly liable for the real property taxes on the property owned by the government. It is a settled rule that property of public dominion, being outside the commerce of man, cannot be the subject of an auction sale, 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. Under Article 420 of the Civil Code, the subject property (the LPHI) is a property of the public dominion owned by the State, through its agents and instrumentalities.

4. CIVIL LAW; PROPERTY; PROPERTY OF PUBLIC DOMINION; OUTSIDE THE COMMERCE OF MAN, THUS CANNOT BE PRIVATE SALE; CASE AT BAR.— Thus, being a property of public dominion, the subject property cannot be subject of public auction sale, notwithstanding its realty tax delinquency. This means that the respondent City has to satisfy its realty tax claims by serving the accrued realty tax assessment upon UCI, as the taxable beneficial user of the subject property and in case of UCI's non-payment, through any means other than the sale at public auction of the leased property.

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APPEARANCES OF COUNSEL

City Legal Office for City Government of Tacloban.

D E C I S I O N

REYES, J. JR., *J.*:

This Petition for *Certiorari* under Rule 65 of the 1997 Rules of Court assails the Resolutions of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB Case No. 901, as follows:

a) Resolution dated February 7, 2013[1] which, although it granted petitioner Privatization and Management Office's (PMO's) Motion for Suspension of Collection of Real Property Tax and Cancellation of Warrants of Levy, it however required the posting/filing of a surety bond equivalent to one and one-half of the amount sought to be collected;

b) Resolution dated March 1, 2013[2] which declared as moot the Motion for Exemption from Posting of Surety Bond filed by PMO and the Philippine Tourism Authority (PTA, now Tourism Infrastructure and Enterprise Zone Authority [TIEZA]), as the latter had already posted the required surety bond; and

c) Resolution dated January 29, 2014,[3] which denied PMO's Motion for Reconsideration.

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[1] Concurred in by Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia Cotangco-Manalastas; *rollo*, pp. 35-42.

[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justices Lovell R. Baustista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, concurring; *id.* at 45-46.

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito

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The PMO (petitioner), the Province of Leyte and the PTA are the owners of the Leyte Park Hotel, Inc. (LPHI), a real property with improvement situated within the territorial and taxing jurisdiction of private respondent City Government of Tacloban (respondent City).[4]

The facilities of LPHI were leased out to Unimaster Conglomeration, Inc. (UCI) for a monthly rental of ₱300,000.00 for a period of 12 years.[5] Meanwhile, respondent City sent several demand letters to UCI for it to pay the real property taxes of LPHI in the amount of ₱23,377,353.08.[6]

However, despite repeated demands by respondent City, the real property taxes remained unpaid. Hence, on December 15, 2004, respondent City filed a complaint for Collection of Sum of Money before the CTA Special First Division, against the LPHI and UCI. Thereafter, respondent City amended its complaint and impleaded additional defendants, namely: The Province of Leyte, the PTA and the petitioner. Petitioner filed its Answer and argued, among others, that the liability to pay real property taxes devolves on UCI pursuant to Section 234 of the Local Government Code.

After trial, the CTA Special First Division rendered a Decision[7] dated November 15, 2011 in CTA OC No. 012 holding UCI liable for the payment of the unpaid real property taxes. UCI moved to reconsider but the same was denied. Aggrieved, UCI filed a Petition for Review with the CTA *En Banc*. During the pendency of the aforesaid petition, respondent City filed a Motion for Execution Pending Appeal before the CTA Special First Division but the motion was denied. Despite the CTA denial,

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N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban, concurring; *id*. at 49-56.

[4] *Id*. at 287.

[5] *Id*. at 12.

[6] *Id*.

[7] Penned by Associate Justice Lovell R. Bautista, with Associate Justices Ernesto D. Acosta and Caesar A. Casanova, concurring; *id*. at 362-405.

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respondent City still issued warrants of levy against the properties of petitioner, allegedly to place the subject properties for auction.

On December 6, 2012, petitioner filed a Motion for Suspension of Collection of Real Property Tax and Cancellation of Warrants of Levy before the CTA *En Banc*.

On February 7, 2013, the CTA *En Banc* issued the now assailed Resolution granting petitioner's Motion for Suspension of Collection of Real Property Tax and Cancellation of Warrants of Levy conditioned on its filing of a surety bond equivalent to one and one-half of the amount sought to be collected by respondent City.

On February 14, 2013, petitioner filed a Motion for Exemption from Posting of Surety Bond on the ground that national government agencies and instrumentalities, such as petitioner, are not, and should not be required to file any bond as there should be no doubt as to the solvency of the Republic of the Philippines. However, as a precautionary measure, petitioner filed on February 15, 2013 its Compliance *Ad Cautelam* and filed a Government Service Insurance System (GSIS) Surety Bond in order to ensure suspension of the collection of the real property tax being sought by the respondent City and prevent execution of the warrants of levy.

On March 1, 2013, the CTA *En Banc* issued the assailed Resolution which considered petitioner's Motion for Exemption from Posting of Surety Bond as moot by virtue of the latter's filing of the aforementioned surety bond. On April 3, 2013, petitioner filed a Motion for Reconsideration but the same was denied in another assailed Resolution dated January 29, 2014.

Dissatisfied, petitioner filed the instant petition for *certiorari* on the ground that respondent CTA committed grave abuse of discretion amounting to lack or in excess of jurisdiction in:

A. DIRECTING PETITIONER, THROUGH ITS RESOLUTION DATED FEBRUARY 7, 2013, TO POST A SURETY BOND IN ORDER TO STAY THE COLLECTION OF REAL PROPERTY TAX SOUGHT BY RESPONDENT CITY

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GOVERNMENT OF TACLOBAN AND PREVENT EXECUTION ON THE WARRANTS OF LEVY[;]

B. HOLDING, IN ITS RESOLUTION DATED MARCH 1, 2013, THAT PETITIONER'S MOTION FOR EXEMPTION FROM POSTING OF SURETY BOND HAS BEEN RENDERED MOOT[; and]

C. DENYING, IN ITS RESOLUTION DATED JANUARY 29, 2014, PETITIONER'S MOTION FOR RECONSIDERATION.[8]

Central to the instant petition is the issue of whether or not petitioner, as an agency of the government, is exempt from posting a surety bond as a condition to the suspension of collection of real property tax.

Section 9 of Republic Act (R.A.) No. 9282[9] amending Section 11 of R.A. No. 1125,[10] provides as follows:

SEC. 9. Section 11 of the same Act is hereby amended to read as follows:

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal*. x x x

x x x x x x x x x

No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: *Provided, however*, That when in

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[8] *Id*. at 16-17.

[9] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, March 30, 2004.

[10] AN ACT CREATING THE COURT OF TAX APPEALS, June 16, 1954.

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> the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer[,] the Court[, at] any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.
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> x x x x x x x x x

With the expansion of the jurisdiction of the CTA, it has now the power to take cognizance of cases appealed to it involving real property taxation. The foregoing provision provides for the rule that an appeal to the CTA from the decision of the City Treasurer of a Local Government Unit (as in this case) will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability, as provided by existing law. However, when, in the view of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.

It is clear from the foregoing that the CTA may order the suspension of the collection of taxes, provided that the taxpayer either: (1) deposits the amount claimed; or (2) files a surety bond for not more than double the amount.[11] These condition precedents were required by law in order to guarantee the payment of the deficiency taxes assessed against the taxpayer, if and when the case is finally decided against the said taxpayer.

Petitioner sought that it be exempted from the filing of the surety bond. Petitioner relied on the case of *The Collector of Internal Revenue v. Reyes*,[12] where the Court sustained the CTA's exercise of discretion when it did not require the taxpayer to post a surety bond despite suspending the collection of the tax.

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[11] *Tridharma Marketing Corp. v. Court of Tax Appeals*, 787 Phil. 638, 646 (2016).

[12] 100 Phil. 822 (1957).

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It also relied on numerous cases[13] where this Court held that the state is not required to put up a bond because it is presumed solvent. The petitioner opined that since it is an agency of the national government, then there is no doubt as to its solvency.[14] Petitioner finally argued that its compliance with the posting of the GSIS Surety Bond did not render the case moot. A final resolution of the issue of petitioner's exemption from posting a surety bond must be finally settled.

In the said *Reyes* case, as cited by petitioner, the CTA issued the injunction on the basis of the findings that the tax to be collected has already prescribed. The CTA, however, found that it was no longer necessary for the taxpayer to file a surety bond. The Court justified it in this wise:

> It certainly would be an absurdity on the part of the Court of Tax Appeals to declare that the collection by the summary methods of distraint and levy was violative of the law, and then, on the same breath require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction. Let us suppose, for the sake of argument, that the Court *a quo* would have required the petitioner to post the bond in question and that the taxpayer would refuse or fail to furnish said bond, would the Court *a quo* be obliged to authorize or allow the Collector of Internal Revenue to proceed with the collection from the petitioner of the taxes due by a means it previously declared to be contrary to law?[15]

From the foregoing, the Court concluded then that the requirement of the bond as a condition precedent to the issuance of the writ of injunction applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law for such cases provided and not when said processes are obviously in violation of the

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[13] *Republic v. Garcia,* 554 Phil. 371, 376 (2007); *Republic v. Court of Appeals,* 160-A Phil. 465, 473 (1975); *Araneta v. Gatmaitan,* 101 Phil. 328, 340 (1957); and *Spouses Badillo v. Tayag,* 448 Phil. 606, 617 (2003).

[14] *Rollo*, p. 27.

[15] *The Collector of Internal Revenue v. Reyes, supra* note 12, at 829.

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law to the extreme that they have to be suspended for jeopardizing the interests of taxpayer.[16]

This principle was echoed in the recent case of *Spouses Pacquiao v. Court of Tax Appeals*,[17] when the Court held:

> From all the foregoing, it is clear that the authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond is not simply confined to cases where prescription has set in. As explained by the Court in those cases, ***whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law,*** the bond requirement under Section 11 of R.A. No. 1125 should be dispensed with. (Emphasis and italics in the original)

In the instant case, there was a clear showing that the method employed by the respondent City in the collection of the real property taxes contravened existing law and jurisprudence. It must be underscored that the petitioner filed the motion to suspend the collection of tax, not so much to stay the collection thereof, but actually to thwart the threat of the property being sold in public auction which may effectively divest the petitioner, the PTA and the Province of Leyte of the ownership over the property.

The petitioner recognized the fact — which was affirmed in the CTA *En Banc* Decision dated August 22, 2014, that as a government entity, it is exempt from payment of real property taxes pursuant to Section 234(a) of the 1991 Local Government Code or R.A. No. 7160.[18] The said provision also provides that when the beneficial use of the real property owned by the

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[16] *Id.* at 828.

[17] 784 Phil. 220, 246 (2016).

[18] SEC. 234. *Exemptions from Real Properly 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[.] (Underscoring supplied)

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Republic or any of its political subdivision, is vested to a taxable person, the real property is subject to tax. Petitioner, together with the PTA and the Province of Leyte, had already admitted that they are co-owners of the subject property and they were leasing the same to UCI, a private entity pursuant to a Contract of Lease dated September 15, 1994. Thus, pursuant to the aforementioned Local Government Code provision and also in the case of *National Power Corporation v. Province of Quezon*,[19] where this Court ruled:

> The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property. **In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has *actual and beneficial use and possession* of the property regardless of whether or not that person is the owner.** (Emphasis and italics in the original)

But, without, however, prejudging the appealed case on the merits, UCI, the actual and beneficial user of subject property can be said to be directly liable for the real property taxes on the property owned by the government.

On the basis of the foregoing law and jurisprudence, while it is correct for the respondent City to assess UCI of the unpaid real property taxes, it is, however, a clear contravention of the law to proceed with the issuance of the warrant of levy against the subject property in order to place it for public auction. This method of collection of the deficiency of real property taxes prejudiced not UCI, the private entity who is directly charged with the payment of the tax, but the petitioner, the PTA and the Province of Leyte, the government entities who owned the land.

It is a settled rule that property of public dominion, being outside the commerce of man, cannot be the subject of an auction sale,

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[19] 610 Phil. 456, 467-468 (2009).

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levy, encumbrance or disposition through public or private sale.[20] Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy.[21]

Under Article 420 of the Civil Code, the subject property (the LPHI) is a property of the public dominion owned by the State, through its agents and instrumentalities. Thus, Article 420 of the Civil Code, provides:

Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which **belong to the State**, without being for public use, and are intended for some public service or **for the development of the national wealth**. (Emphases supplied)

Thus, being a property of public dominion, the subject property cannot be subject of public auction sale, notwithstanding its realty tax delinquency. This means that the respondent City has to satisfy its realty tax claims by serving the accrued realty tax assessment upon UCI, as the taxable beneficial user of the subject property and in case of UCI's non-payment, through any means other than the sale at public auction of the leased property. The case of *Philippine Fisheries Development Authority v. Court of Appeals*[22] instructs, thus:

In sum, the Court finds that the Authority is an instrumentality of the national government, hence, it is liable to pay real property taxes assessed by the City of Iloilo on the IFPC only with respect to those portions which are leased to private entities. Notwithstanding said tax delinquency on the leased portions of the IFPC, the latter or any part thereof, being a property of public domain, cannot be sold at

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[20] *Manila International Airport Authority v. Court of Appeals,* 528 Phil. 181, 219 (2006).

[21] *Id*.

[22] 555 Phil. 661, 674 (2007).

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public auction. This means that the City of Iloilo has to satisfy the tax delinquency through means other than the sale at public auction of the IFPC.

Verily, since the method employed by the respondent City in collecting the realty taxes due — through the warrant of levy and the eventual public auction of a property of public dominion — is not sanctioned by law, then it is no longer necessary for the petitioner to file a surety bond as a condition precedent to suspend the tax collection.

To repeat, the purpose of the surety bond is to ensure that the tax due will be paid if and when the case is finally decided against the taxpayer. Indeed, the Republic of the Philippines need not give this security as it is presumed to be always solvent and able to meet its obligations.[23] Thus, the petitioner, being an agent of the national government,[24] is not required to put up a bond because to do so would be to indirectly require the state to submit such bond. Since the petitioner had already filed the required surety bond with the CTA, it is just proper to order the CTA to release the same for reasons as discussed in this decision.

WHEREFORE, the Petition for *Certiorari* is **GRANTED**. The assailed Resolutions dated February 7, 2013, March 1, 2013 and January 29, 2014 of the Court of Tax Appeals *En Banc* in C.T.A. EB Case No. 901 are **SET ASIDE** insofar as it required the PMO to file a surety bond as a condition precedent in suspending the real property tax collection. Accordingly, the CTA is hereby **ORDERED** to release the GSIS Surety Bond earlier filed by the PMO.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, Caguioa, and *Lazaro-Javier, JJ.*, concur.

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[23] *Republic v. Garcia*, 554 Phil. 371, 377 (2007).

[24] Organized under the Department of Finance by virtue of E.O. No. 323 dated December 6, 2000.