

SECOND DIVISION

[G.R. No. 178030, December 15, 2010]

**PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY (PFDA),
PETITIONER, VS. CENTRAL BOARD OF ASSESSMENT APPEALS,
LOCAL BOARD OF ASSESSMENT APPEALS OF LUCENA CITY,
CITY OF LUCENA, LUCENA CITY ASSESSOR AND LUCENA CITY
TREASURER, RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

This petition for review^[1] assails the 9 May 2007 Decision^[2] of the Court of Tax Appeals in C.T.A. EB No. 193, affirming the 5 October 2005 Decision of the Central Board of Assessment Appeals (CBAA) in CBAA Case No. L-33. The CBAA dismissed the appeal of petitioner Philippine Fisheries Development Authority (PFDA) from the Decision of the Local Board of Assessment Appeals (LBAA) of Lucena City, ordering PFDA to pay the real property taxes imposed by the City Government of Lucena on the Lucena Fishing Port Complex.

The Facts

The facts as found by the CBAA are as follows:

The records show that the Lucena Fishing Port Complex (LFPC) is one of the fishery infrastructure projects undertaken by the National Government under the Nationwide Fish Port-Package. Located at Barangay Dalahican, Lucena City, the fish port was constructed on a reclaimed land with an area of 8.7 hectares more or less, at a total cost of PHP 296,764,618.77 financed through a loan (L/A PH-25 and 51) from the Overseas Economic Cooperation Fund (OECF) of Japan, dated November 9, 1978 and May 31, 1978, respectively.

The Philippine Fisheries Development Authority (PFDA) was created by virtue of P.D. 977 as amended by E.O. 772, with functions and powers to (m)anage, operate, and develop the Navotas Fishing Port Complex and such other fishing

port complexes that may be established by the Authority. Pursuant thereto, Petitioner-Appellant PFDA took over the management and operation of LFPC in February 1992.

On October 26, 1999, in a letter addressed to PFDA, the City Government of Lucena demanded payment of realty taxes on the LFPC property for the period from 1993 to 1999 in the total amount of P39,397,880.00. This was received by PFDA on November 24, 1999.

On October 17, 2000 another demand letter was sent by the Government of Lucena City on the same LFPC property, this time in the amount of P45,660,080.00 covering the period from 1993 to 2000.

On December 18, 2000 Petitioner-Appellant filed its Appeal before the Local Board of Assessment Appeals of Lucena City, which was dismissed for lack of merit. On November 6, 2001 Petitioner-Appellant filed its motion for reconsideration; this was denied by the Appellee Local Board on December 10, 2001. [3]

PFDA appealed to the CBAA. In its Decision dated 5 October 2005, the CBAA dismissed the appeal for lack of merit. The CBAA ruled:

Ownership of LFPC however has, before hand, been handed over to the PFDA, as provided for under Sec. 11 of P.D. No. 977, as amended, and declared under the MCIAA case [*Mactan Cebu International Airport Authority v. Marcos*, G.R. No. 120082, 11 September 1996, 261 SCRA 667]. The allegations therefore that PFDA is not the beneficial user of LFPC and not a taxable person are rendered moot and academic by such ownership of PFDA over LFPC.

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PFDA's Charter, P.D. 977, provided for exemption from income tax under Par. 2, Sec. 10 thereof: "(t)he Authority shall be exempted from the payment of income tax". Nothing was said however about PFDA's exemption from payment of real property tax: PFDA therefore was not to lay claim for realty tax exemption on its Fishing Port Complexes. Reading Sec. 40 of P.D. 464 and Sec. 234 of R.A. 7160 however, provided such ground: LFPC is owned by the Republic of the Philippines, PFDA is only tasked to manage, operate, and develop the same. Hence, LFPC is exempted from payment of realty tax.

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The ownership of LFPC as passed on by the Republic of the Philippines to PFDA is borne by Direct evidence: P.D. 977, as amended (supra). Therefore, Petitioner-Appellant's claim for realty tax exemption on LFPC is untenable.

WHEREFORE, for all of the foregoing, the herein Appeal is hereby dismissed for lack of merit.

SO ORDERED.^[4]

PFDA moved for reconsideration, which the CBAA denied in its Resolution dated 7 June 2006.^[5] On appeal, the Court of Tax Appeals denied PFDA's petition for review and affirmed the 5 October 2005 Decision of the CBAA.

Hence, this petition for review.

The Ruling of the Court of Tax Appeals

The Court of Tax Appeals held that PFDA is a government-owned or controlled corporation, and is therefore subject to the real property tax imposed by local government units pursuant to Section 232 in relation to Sections 193 and 234 of the Local Government Code. Furthermore, the Court of Tax Appeals ruled that PFDA failed to prove that it is exempt from real property tax pursuant to Section 234 of the Local Government Code or any of its provisions.

The Issue

The sole issue raised in this petition is whether PFDA is liable for the real property tax assessed on the Lucena Fishing Port Complex.

The Ruling of the Court

The petition is meritorious.

In ruling that PFDA is not exempt from paying real property tax, the Court of Tax Appeals cited Sections 193, 232, and 234 of the Local Government Code which read:

Section 193. *Withdrawal of Tax Exemption Privileges.* ' Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

Section 232. *Power to Levy Real Property Tax.* ‘ A province or city or a municipality within the Metropolitan Manila Area may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.

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 subdivision except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

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

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

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

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

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

The Court of Tax Appeals held that as a government-owned or controlled corporation, PFDA is subject to real property tax imposed by local government units having jurisdiction over its real properties pursuant to Section 232 of the Local Government Code. According to the Court of Tax Appeals, Section 193 of the Local Government Code withdrew all tax exemptions granted to government-owned or controlled corporations. Furthermore, Section 234 of the Local Government Code explicitly provides that any exemption from payment of real property tax granted to government-owned or controlled corporations have already been withdrawn upon the effectivity of the Local Government Code.

The ruling of the Court of Tax Appeals is anchored on the wrong premise that the PFDA is a government-owned or controlled corporation. On the contrary, this Court has already

ruled that the PFDA is a government instrumentality and not a government-owned or controlled corporation.

In the 2007 case of *Philippine Fisheries Development Authority v. Court of Appeals*,⁶ the Court resolved the issue of whether the PFDA is a government-owned or controlled corporation or an instrumentality of the national government. In that case, the City of Iloilo assessed real property taxes on the Iloilo Fishing Port Complex (IFPC), which was managed and operated by PFDA. The Court held that PFDA is an instrumentality of the government and is thus exempt from the payment of real property tax, thus:

The Court rules that the Authority [PFDA] is not a GOCC but an instrumentality of the national government which is generally exempt from payment of real property tax. However, said exemption does not apply to the portions of the IFPC which the Authority leased to private entities. With respect to these properties, the Authority is liable to pay property tax. Nonetheless, the IFPC, being a property of public dominion cannot be sold at public auction to satisfy the tax delinquency.

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Indeed, the Authority is not a GOCC but an instrumentality of the government. The Authority has a capital stock but it is not divided into shares of stocks. Also, it has no stockholders or voting shares. Hence it is not a stock corporation. Neither is it a non-stock corporation because it has no members.

The Authority is actually a national government instrumentality which is defined as an 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. When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.^[7] (Emphasis supplied)

This ruling was affirmed by the Court in a subsequent PFDA case involving the Navotas Fishing Port Complex, which is also managed and operated by the PFDA. In consonance with the previous ruling, the Court held in the subsequent PFDA case that the PFDA is a government instrumentality not subject to real property tax except those portions of the Navotas Fishing Port Complex that were leased to taxable or private persons and entities for their beneficial use.^[8]

Similarly, we hold that as a government instrumentality, the PFDA is exempt from real property tax imposed on the Lucena Fishing Port Complex, except those portions which are leased to private persons or entities.

The exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code.^[9] Under Section 133(o)^[10] of the Local Government Code, local government units have no power to tax instrumentalities of the national government like the PFDA. Thus, PFDA is not liable to pay real property tax assessed by the Office of the City Treasurer of Lucena City on the Lucena Fishing Port Complex, except those portions which are leased to private persons or entities.

Besides, the Lucena Fishing Port Complex is a property of public dominion intended for public use, and is therefore exempt from real property tax under Section 234(a)^[11] of the Local Government Code. Properties of public dominion are owned by the State or the Republic of the Philippines.^[12] 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**. (Emphasis supplied)

The Lucena Fishing Port Complex, which is one of the major infrastructure projects undertaken by the National Government under the Nationwide Fishing Ports Package, is devoted for public use and falls within the term "ports." The Lucena Fishing Port Complex "serves as PFDA's commitment to continuously provide post-harvest infrastructure support to the fishing industry, especially in areas where productivity among the various players in the fishing industry need to be enhanced."^[13] As property of public dominion, the Lucena Fishing Port Complex is owned by the Republic of the Philippines and thus exempt from real estate tax.

WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the Decision dated 9 May 2007 of the Court of Tax Appeals in C.T.A. EB No. 193. We **DECLARE** the Lucena Fishing Port Complex **EXEMPT** from real property tax imposed by the City of Lucena. We declare **VOID** all the real property tax assessments issued by the City of Lucena on the Lucena Fishing Port Complex managed by Philippine Fisheries Development Authority, **EXCEPT** for the portions that the Philippine Fisheries Development Authority has leased to private parties.

SO ORDERED.

Nachura, Peralta, Abad, and Mendoza, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 65-90. Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring.

[3] *Id.* at 215-216.

[4] CTA *rollo*, pp. 60-62.

[5] *Id.* at 68-71.

[6] G.R. No. 169836, 31 July 2007, 528 SCRA 706.

[7] *Id.* at 710, 712-714.

[8] *Philippine Fisheries Development Authority v. Court of Appeals*, G.R. No. 150301, 2 October 2007, 534 SCRA 490.

[9] *Manila International Airport Authority v. City of Pasay*, G.R. No. 163072, 2 April 2009, 583 SCRA 234.

[10] Section 133(o) of the Local Government Code reads:

SECTION 133. *Common Limitations on the Taxing Powers of the Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:

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

[11] 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 subdivision except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

[12] *Manila International Airport Authority v. Court of Appeals*, G.R. No. 155650, 20 July 2006, 495 SCRA 591, 644.

[13] Lucena Fish Port Complex, (visited 13 December 2010).