

Republic of the Philippines  
**CENTRAL BOARD OF ASSESSMENT APPEALS**  
M a n i l a

PHILIPPINE PORTS AUTHORITY,  
Petitioner-Appellant,

CBAA CASE NO. M-21

-versus-

LOCAL BOARD OF ASSESSMENT  
APPEALS OF GENERAL SANTOS CITY,  
Appellee,

-and-

CITY TREASURER and CITY ASSESSOR  
OF GENERAL SANTOS CITY,  
Respondents-Appellees.

x- - - - - x

## **R E S O L U T I O N**

Before us is the motion for reconsideration dated September 14, 2007 filed by petitioner-appellant Philippine Ports Authority (PPA), seeking a review of our Decision dated July 16, 2007, the dispositive portion is hereinbelow reproduced, which copy allegedly received by PPA's head office legal services department on September 4, 2007, **THUS:**

“WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** for lack of merit. Accordingly, the Resolution of the Local Board of Assessment Appeals of General Santos City becomes final and executory.”

On the other hand, respondent-appellee, City Treasurer of General Santos City filed an opposition to the motion for reconsideration on October 2, 2007. All other facts are stated in our Decision.

Petitioner-Appellant's grounds for reconsideration are:

1. The Honorable Board erred in holding that the real properties under the administration of petitioner-appellant are not part of public dominion and are therefore subject to real property taxes.
2. The Honorable Board erred in ruling that the Republic of the Philippines is not an indispensable (sic) party to the suit as the properties under consideration are owned by the petitioner-appellant being a government-owned and controlled corporation and therefore not exempt from real property tax.

3. The Honorable Board erred in holding that petitioner-appellant, being the actual user of the land, shall be liable for real property tax.

The grounds relied upon are meritorious.

It is truly timely to reexamine the finding of this Board in the light of the Court of Tax Appeals' Decision in the case of Philippine Ports Authority, Davao vs. Central Board of Assessment Appeals, et.al., CTA EB Case No. 183 (CBAA Case No. M-20), July 30, 2007, the Court of Appeals' Resolution in this case of Philippine Fisheries Development Authority, Zamboanga City, vs. Central Board of Assessment Appeals et.al., CA-G.R. SP No. 73522 (CBAA Case No. M-15), October 11, 2007, granting petitioner's Motion for Reconsideration and setting aside its Decision dated May 31, 2007, denying the petition of PFDA for lack of merit and the Supreme Court's Decision in the Manila International Airport Authority (MIAA) v. Court of Appeals, City of Parañaque, City Mayor of Parañaque, Sangguniang Panglungsod of Parañaque, City Assessor of Parañaque, and City Treasurer of Parañaque, G.R. No. 155650, July 20, 2006, notwithstanding, a dissent of Justice Dante O Tinga.

*PPA: An Instrumentality of the National Government*

In the first case, the Court of Tax Appeals *en banc* ruled that "PPA, akin to MIAA, is not a government-owned or controlled corporation, but an instrumentality of the National Government.

"Pursuant to the aforesaid Supreme Court decision, MIAA's Airport Lands and Buildings are exempt from real estate tax imposed by local governments since it is not a government-owned or controlled corporation, but an instrumentality of the National Government. A government-owned or controlled corporation is an agency organized as a stock or a non-stock corporation. While an instrumentality refers to any agency of the National Government that is not integrated within the department framework, but vested with special functions or jurisdiction by law, endowed with some, if not all

corporate powers, administering special funds, and enjoying operation autonomy, usually through a charter.

“In the same manner, PPA is not a government-owned or controlled corporation, but an instrumentality of the National Government, as categorically pronounced by the Supreme Court in the MIAA case. PPA is not organized as a stock or a non-stock corporation. It is not organized as a stock corporation since it has no capital stock divided into shares. PPA has no stockholders or voting shares. Section 10 of P.D. No. 857, otherwise known as the Revised Charter of the Philippine Ports Authority, provides:

“SECTION 10. Capital. a) The authorized capital of the Authority shall be three billion pesos. b) The initial paid in capital shall consist of:

- (i) The value of assets (including port facilities, quays, wharves, and equipment) and such other properties, movable or immovable as may be contributed by the Government or transferred by the Government or any of its agencies as valued at the date of such contribution or transfer and after deducting or taking into account the loans and other liabilities of the Authority at the time of the takeover of the assets and other properties.
- (ii) The initial cash appropriation of P2 million out of the funds of the National Treasury and such
- (iii) Further sums, including working capital, as may be contributed by the Government.

“Clearly, under its Charter, PPA does not have capital stock that is divided into shares.

“PPA is also not a non-stock corporation. Section 87 and 88 of the Corporation define a non-stock corporation as one organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers, no part of its income is distributable as dividends to its members, trustees or officers. PPA, is a public utility, organized to implement an integrated program for the planning, development, financing, and operation of Ports or Port Districts for the entire country (*Section 2 of P.D. No. 857*). It has no members and no trustees, only board of directors (*Section 7 of P.D. No. 857*), officials and employees who are to be selected and appointed

on the basis of merit and fitness consistent with the Civil Service rules and regulations (*Section 8 of P.D. No. 857*). Thus, it is clear that PPA is not a non-stock corporation.”

*PPA Properties are of Public Dominion*

The Makar Wharf, Lands and its Buildings, like MIAA’s Airport Lands and Buildings, are Properties of Public Dominion.

“Pursuant further to the MIAA case, the Republic owns the airport lands and buildings of MIAA since they are properties of public dominion under *Article 420 of the Civil Code*. The collection of terminal fees and other charges from the public does not remove the character of said properties from being properties for public use, as those fees partake of the nature of user’s tax.

Similarly, the Makar Wharf, Lands and its Buildings are properties of public dominion pursuant to *Article 420 of the Civil Code*, notwithstanding that PPA also collects fees from the public who actually used said properties. Being properties of public dominion, the Makar Wharf, Lands, and its Buildings indisputably belong to the State of the Republic of the Philippines.

“The Transfer of Assets And/Or Liabilities to PPA, Like in the Case of MIAA, is not a transfer of Beneficial Ownership.

“Accordingly, pursuant to the MIAA case, the Supreme Court declared that the transfer of the airport lands and buildings from the Bureau of Air Transportation (“BAT”) to MIAA was not meant to transfer the beneficial ownership, but merely for the purpose of reorganizing a division in the BAT into a separate autonomous body.

“In the same vein, the transfer of the assets and liabilities of the Bureau of Customs, Bureau of Public Works and other agencies of the government to PPA was not a transfer of the beneficial ownership of those assets and liabilities, but for the purpose of promoting the growth of regional port bodies that are responsive to the needs of their individual localities (*Last phrase of the 1<sup>st</sup> Whereas Clause, P.D. 857*) in order to attain the port’s fuller utilization and

development as a spur of regional growth (*3<sup>rd</sup> Whereas Clause, P.D. No. 857*). The Republic remains the beneficial owner of PPA's properties. The PPA itself is owned solely by the Republic and no party claims any ownership right over PPA's properties adverse to the Republic.

*Except Leased to Taxable Person Real Property Owned by the Republic is Not Taxable*

In the second case, the Supreme Court *en banc* in the case of Manila International Airport Authority held, **THUS**:

“Section 234(a) of the Local Government Code exempts from real estate tax any “real property owned by the Republic of the Philippines.” Section 234(a) provides:

SEC. 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;**

x x x. (Emphasis originally supplied)

“This exemption should be read in relation with Section 133(o) of the same Code, which prohibits local governments from imposing “[t]axes, fees or charges of any kind on the National Government, its agencies and instrumentalities x x x.” The real properties owned by the Republic are titled either in the name of the Republic itself or in the name of agencies or instrumentalities of the National Government. The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remained owned by the Republic and continue to be exempt from real estate tax.

It further said: “the Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax real property owned by the Republic loses its tax exemption only if the “beneficial use thereof has been

granted, for consideration or otherwise, to a taxable person.” PPA, as a government instrumentality, is not a taxable person under Section 133(o) of the Local Government Code. Thus, even if we assume that the Republic has granted to PPA the beneficial use of the Port Lands and Buildings, such fact does not make these real properties subject to real estate tax.”

However, portions of the Port Lands and Buildings that PPA leases to private entities are not exempt from real estate tax. For example, the land area and the building occupied by warehouses that PPA leases to private corporation is subject to real estate tax. In such a case, PPA has granted the beneficial use of such land area for a consideration to a taxable person and therefore such land area is subject to real estate tax. In *Lung Center of the Philippines v. Quezon City*, the High Court ruled:

“Accordingly, we hold 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 such 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 from real property taxes.”<sup>1</sup>

This Board believes, as succinctly explained both by the Supreme Court *en banc* in the case of the Manila International Airport Authority, and the Court of Tax Appeals *en banc* in the case of PPA vs. Central Board of Assessment Appeals, et.al., the rulings effectively cleared various issues haunting local governments viz airport and seaport authorities.

The Highest Court has clearly defined WHAT THE LAW IS. It is doubly the province and the duty of judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two or more laws are seemingly in conflict with each other, the courts must decide on the operation of each.

As it is now applying the principle of *stare decisis*, there would be no substantial distinction between the properties held by the PPA and the MIAA. These entities are in the business of operating facilities that promote public transportation.

---

<sup>1</sup> G.R. No. 144104, 29 June 2004, 433 SCRA 119, 138.

*Stare decisis* emanates from Article 8 of the Civil Code which we quote:

“Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.”

The doctrine of *stare decisis* embodies the legal maxim that a principle or rule of law which has been established by the decision of a court of controlling jurisdiction will be followed in other case involving a similar situation. **It is founded on the necessity for securing certainty and stability in the law.**

Such decisions “assume the same authority as the statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria which must control the actuations not only those called upon to abide thereby but also of those in duty bound to enforce obedience thereto.” (Justice Davide’s dissent in the case of *Kilosbayan vs. Morato*, G.R. No. 118910, July 17, 1995 as cited in 1996 Supplement: Constitutional Structure and Powers of Government Cases, Joaquin G. Bernas, S.J. p. 312)

This Board, therefore, enjoins adherence to judicial precedents. It requires us to follow the rule just established. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided. It should be deemed settled and closed to further argument. (Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. I, 1990, pp. 37,38) (Emphasis Ours)

WHEREFORE, premises considered, the instant appeal is PARTLY GRANTED. Our Decision dated July 16, 2007 and the Resolution of the LBAA General Santos City dated July 9, 2005 is hereby MODIFIED and PARTLY SET ASIDE. We, therefore, hold the real property of petitioner-appellant Philippine Ports Authority located at Makar Wharf, General Santos City EXEMPT from the real estate tax except those leased to a ‘taxable person’. Accordingly, the city assessor is DIRECTED to issue new sets of tax declarations exempting these real properties from real estate tax, imposing real property tax only to those leased to taxable persons.

SO ORDERED.

Manila, Philippines, December 10, 2007.

*(Signed)*  
CESAR S. GUTIERREZ  
Chairman

*(Signed)*  
ANGEL P. PALOMARES  
Member

*(Signed)*  
RAFAEL O. CORTES  
Member