

A TALE OF TWO AIRPORTS

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The legal and the business communities usually look to the Supreme Court's decisions for guidance or judicial precedence.

Thus in this particular case when the Manila International Airport Authority (MIAA), having been assessed by the City Government of Parañaque for the payment of Real Estate Taxes, sought refuge with the Honorable Court maintaining that it was exempt from payment of real estate taxes, the City Government of Parañaque invoked an earlier case promulgated by the Supreme Court (on September 11, 1996), "Mactan Cebu International Airport (MCIA) vs. Hon. Ferdinand Marcos", GR 10082, wherein IT found the MCIA to be liable for real estate taxes.

Supreme Court then ruled that with respect to the real properties owned by Republic, it is Section 234 of the Local Government Code (LGC) that is applicable and not Section 133. It explained

"As to tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons, including government-owned and controlled corporations, Section 193 of the LGC prescribes the general rule, viz., they are withdrawn upon the effectivity of the LGC, except those granted to local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, and unless otherwise provided in the LGC. The latter proviso could refer to Section 234 which enumerates the properties exempt from real property tax. But the last paragraph of Section 234 further qualifies the retention of the exemption insofar as real property taxes are concerned by limiting the retention only to those enumerated therein; all others not included in the enumeration lost the privilege upon the effectivity of the LGC. Moreover, even as to real property owned by the Republic of the Philippines or any of its political subdivisions covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to a taxable person for consideration or otherwise.

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section and the **petitioner is, undoubtedly, a government-owned corporation** it necessarily follows that its exemption from such tax granted it in Section 14 of its Charter, R.A. No. 6958, has been withdrawn. Any claim to the contrary can only be justified if the petitioner can seek refuge under any of the exceptions provided in Section 234, but not under Section 133, as it now asserts, since, as shown above, the said section is qualified by Sections 232 and 234.

In short, the petitioner can no longer invoke the general rule in Section 133 that the taxing powers of the local government units cannot extend to the levy of: (o) taxes, fees or charges of any kind on the National Government, its agencies or instrumentalities, and local government units."

The Supreme Court categorically found MIAA to be inevitably a government-owned or controlled corporation (GOCC).

In its petition, the MIAA represented itself as a GOCC but premised its claimed exemption on the ground that it was performing a governmental function.

In resolving the petition the Supreme Court ruled that the MIAA was exempt from the real estate taxes because it was not a GOCC as it represented itself to be but was a mere instrumentality vested with corporate powers. Essentially the Court rationalized thus:

- (a) MIAA is not a GOCC under Section 2(10) of the Introductory Provisions of the Revised Administrative Code of 1987 because it was not organized either as a stock or non-stock corporation.
- (b) Neither is MIAA required to meet the test of economic viability.
- (c) MIAA is a government instrumentality vested with corporate powers and performing essential public services.
- (d) As such government instrumentality, MIAA is not subject to any kind of tax by local governments under Section 133(o) of the Local Government Code.
- (e) The exception to the exemption in Section 234 (a), LGC does not apply to MIAA because MIAA is not a taxable entity under the LGC. Such exception applies only if the beneficial use of real property owned by the Republic is given to a taxable entity. Thus, only the portions of the Airport Lands and Buildings which are leased to taxable persons like private parties are subject to real estate tax by the City of Parañaque.

What is surprising is that the Supreme Court did not explicitly declare that the Mactan Cebu International Airport case was deemed repealed. Also of interest was the dissenting opinion of Justice Dante Tinga to the effect that the majority opinion failed to quote in full the definition of "government instrumentality":

The Majority gives the impression that a government instrumentality is a distinct concept from a government corporation. Most tellingly, the majority **selectively** cites a portion of Section 2(10) of the Administrative Code of 1987, as follows:

"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. xxx (emphasis omitted)"

However, Section 2(10) of the Administrative Code, when read in full, makes an important clarification which the majority does not show. The portions omitted by the majority are highlighted below:

"(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. **This term includes regulatory agencies, chartered institutions and government – owned or controlled corporations."**

So the majority opinion effectively begged the question in finding that the MIAA was not a GOCC but a mere government instrumentality, which is other than a GOCC.

Inevitably, the refusal of the Supreme Court to clarify whether its Decision in the Mactan Cebu International Airport case is deemed repealed would leave us with an ambiguous situation where two (2) of our major international airports are treated differently tax wise: one in Cebu which is deemed to be a GOCC subject to real estate taxes and the other in Manila which is not a GOCC and exempt from real estate taxes.

Where lies the substantial difference between the two (2) airports? Your guess is as good as mine.

(Manila International Airport Authority vs. Court of Appeals, et. al. G. R. No. 155650, July 20, 2006).

*****Correction:**

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