

PILIPINAS KAO, INC., PETITIONER, VS. HONORABLE COURT OF APPEALS AND BOARD OF INVESTMENTS, RESPONDENTS.

G.R. No. 105014. December 18, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court to set aside the decision of the respondent court in CA-G.R. SP NO. 24979, titled "Pilipinas Kao, Inc. vs. Board of Investments."

In that decision, respondent Court of Appeals sustained the reduction of tax credits on net value earned and net local content applied for by petitioners in 1988 and 1989, an act of respondent Board of Investments (BOI), which petitioner assailed as invalid for a number of reasons.

The essential facts as found by the respondent court and which are not disputed are quoted hereunder:

Petitioner, Pilipinas Kao, Inc. is a corporation organized and existing under the laws of the Philippines with principal office at 108-A E. Rodriguez, Jr. Avenue, Libis, Quezon City. It is a corporation engaged in multiple areas of registered activity, which is to say it has a number of projects registered with respondent Board of Investments (BOI, for brevity). For each registered project, petitioner was issued Certificates of Registration as follows:

Project Certificate of Registration No. Date Issued Law of Registration

1. 76-611 Aug. 24, 1976 R.A. No. 6135
2. 78-725 Mar. 20, 1978 R.A. No. 6135
3. 87-1247 Jan. 08, 1987 P.D. No. 1789, as amended by B.P. Blg. 391
4. 87-1476 July 29, 1987

P.D. No. 1789 as amended by B.P. Blg. 391

5. 88-0240 Feb. 29, 1988 E.O. No. 226
6. EP 88-496 July 26, 1988 E.O. No. 226
7. EP 89-965 Jan. 31, 1990 E.O. No. 226
8. EP 90-082 Mar. 16, 1990 E.O. No. 226

(pp. 1-2, Comment: pp. 103-104, Rollo)

Each project is entitled to a certain set of incentives depending upon, among others, the law of registration and

the status and type of registration. The present controversy refers only to the tax incentives provided for under Article 48 of P.D. No. 1789, as amended by B.P. Blg. 391, which states:

"ART. 48. Incentives for Registration New or Expanding Export Producers. - All registered export producers, whether pioneer or non-pioneer, shall be granted the following incentives to the extent engaged in new capacity or expansion of capacity in a preferred area of investment.

"xxx xxx xxx

" `(c) Tax Credit on Net Value Earned. - For the same period and at the same rates provided for in subparagraph (c), Article 45, a tax credit on net value earned shall be granted to registered export producers.

" `(d) Tax Credit on Net Local Content of Exports. - For the first five (5) years of commercial operation or registration, all registered new or expanding export producers shall be entitled to a tax credit equivalent to ten percent (10%) of net local content without prejudice to the further enjoyment of the incentive for another period of five (5) years immediately following, the tax credit to be computed on the basis of the increment in real terms over the average net local content for the immediate preceding three years of enjoyment of this incentive. For purposes of calculation of the tax credit, 'net local content' shall mean value of export sales less depreciation of capital equipment and the value of imported raw materials and supplies and indigenous commodities which the Board may exclude if they are not anyway available under clearly more favorable terms in the international market.'" (Underscoring supplied)

Article 45 (c), in relation to Article 48 (c), in turn provides:

(c) Tax Credit on net value earned. - For the first five (5) years of commercial operation, all registered domestic producers shall be entitled to a tax credit equivalent to five percent (5%) of net value earned. Those engaged in pioneer projects shall be entitled to this incentive to the extent ten percent (10%) of net value earned over the same period or coterminous with the remaining period of availment of the registrant who first starts commercial operation in case there are several registered pioneer enterprises in the same activity, regardless of their respective dates of registration. For purposes of calculation of the tax credit, 'net value earned' shall mean value of sales less cost of raw materials and components, supplies and utilities and depreciation of capital equipment. For raw materials and components which are produced by the registered enterprise; allocated costs may be determined by the Board.' (Underscoring supplied) (pp. 4-5, Petition; pp. 11-12, Rollo).

These tax incentives apply only to project Nos. 3 and 4 of petitioner. Certificate of Registration No. 87-1476 (Project NO. 4) is that of new export producer, whereas Certificate of Registration No. 87-1247 (Project No. 3) is that of an expanding export producer (which is an expansion of petitioner's existing projects registered under R.A. No. 6135).

On March 31, 1989, petitioner filed applications for its 1988 tax credits on the Net Value Earned (NVE, for short) for P8,583,328.00 and on the Net Local Content (NLC, for brevity) for P25,928,673.00 for a grand total of P34,512,000.00 (Annexes "J" & "K", respectively). The computations are laid down as follows:

"NET VALUE EARNED COMPUTATION

Total Sales for the Taxable Year of Availment

P280,562,286

Less: Raw Materials and Components

P155,565,701

Supplies

P15,868,160

Utilities

P20,132,446

Depreciation of Capital Equipment

P 3,162,698

194,729,005

Net Value Earned (NVE)

P85,833.281

Tax Credit Computation

1. For Pioneer

Tax Credit on Net Value Earned

(10% of NVE)

P8,583,328

NET LOCAL CONTENT COMPUTATION

Export Sales for the Taxable Year of Availment

P278,369,748

Less: Imported Raw Materials and Components

P4,598,624

Imported Content of locally Purchased Raw Materials and Components

P_____

Imported Supplies

P11,321,699

Imported Content of locally Purchased Supplies

P_____

Depreciation of Capital Equipment

P3,162,698

Indigenous Commodities Excluded By the Board (If Applicable)

P_____

P19,083,021

Net Local Content (NLC)

P259,286,727

Tax Credit Computation

1. For Pioneer

Tax Credit on Net Local Content

(10%) Of NLC)

P25,928,673"

(pp. 7-8, Petition, pp. 14-15, Rollo)

On May 10, 1990, respondent issued Board Resolution no. 188 S' 90 granting petitioner's application for tax credit but only in the following reduced amounts:

NVE-----

P1,542,758.00

NLC-----

P2,681,018.00

Total-----

P4,223,776.00

(Annes "9", Comment)

Notified of respondent's decision, petitioner requested for a reconsideration, but before respondent could act thereon, petitioner again filed on July 3, 1990 its applications for 1989 tax credits on the NVE in the amount of P9,649,459.00 and on the NLC, P25,648,401.00, for a grand total of P35,297,860.00. The computation are as follows:

"NET VALUE EARNED COMPUTATION

Total Sale for the Taxable Year of Availment

P282,054,852

Less: Raw Materials

and Components

P149,817,799

Supplies

P16,051,486

Utilities

P17,652,136

Depreciation of Capital Equipment

P2,038,846

185,560,267

Net Value Earned (NVE)

P96,494,585

Tax Credit Computation

1. For Pioneer

Tax credit on Net Value Earned

(10% of NVE)

P9,649,459

NET LOCAL CONTENT COMPUTATION

Export Sales for the Taxable Year of Availment

P280,227,963

Less: Imported Raw

Materials and

Components

P11,242,443

Imported Content of locally Purchased Raw Materials And Components

P_____

Imported

Supplies

P10,462,669

Imported Content of locally Purchased Supplies

P_____

Depreciation of Capital Equipment

P2,038,846

Indigenous Commodities Excluded by the Board (if Applicable)

P_____

P23,743,958

Net Local Content (NLC)

P256,484,005

Tax Credit Computation

1. For Pioneer

Tax Credit on Net Local Content (10% of NLC)

P25,648,401"

(pp. 10-12, Petition; pp. 17-19, Rollo).

On July 27, 1990, respondent denied petitioner's request for reconsideration anent its 1988 tax credit, the denial being communicated to petitioner in a letter dated August 1, 1990 (annex "11", Comment) and received by the latter on August 15, 1990.

On December 17, 1990, petitioner again moved for reconsideration of respondent's letter dated August 1, 1990 (Annex "12", Comment), but the same was denied by respondent in a letter dated March 11, 1991 (copy of which was received by petitioner on March 15, 1991). (Annex "13", Comment)

On March 11, 1991, respondent also advised petitioner of the approval of its application for the year 1989 tax credit but only in the following reduced amounts.

NVE-----

P3,441,473.00

NLC-----

P 649,471.00

Total-----

P4,090,944.00

(Annex "13" Comment)

Petitioner then filed with the Honorable Supreme Court, by registered mail on April 15, 1991, a motion for extension of time to file petition pursuant to Article 82 of Omnibus Investments Code; it likewise filed a second

motion for extension of time to file petition on May 15, 1991, both of which were not acted upon by the Honorable Supreme Court. However, on May 6, 1991, the Honorable Supreme Court issued a resolution referring the instant petition to this Court. (p. 5, Rollo).[1] Respondent Court dismissed the petition for review "on technical and substantive grounds."

On technical ground, respondent court ruled that the petition for review was filed beyond the thirty-day period of appeal set in Article 78 of P.D. 1789, as amended by B.P. Blg. 391.

In ruling against the timeliness of the petition for review, respondent court made the following findings:

In the instant case, petitioner received a copy of respondent's letter dated August 1, 1990 (letter denying petitioner's first request for reconsideration of respondent's decision relative to petitioner's 1988 tax credit on NVE and NLC) on August 15, 1990 (p. 13, Petition). Yet, it filed its second request for reconsideration only on December 17, 1990, or more than four (4) months from receipt of the challenged letter-decision. This clear failure and negligence of petitioner to interpose a timely appeal within the thirty (30) days reglementary period is fatal to its cause.

The woes of petitioner were compounded when it received a copy of respondent's letter-decision dated March 11, 1991 (letter denying petitioner's second request for reconsideration, and granting its 1989 tax credits at reduced amounts) on March 15, 1991, and yet it utterly failed to interpose an appeal in due time as provided for in P.D. No. 1789, as amended it only filed this petition only on May 30, 1991.[2]

Two letters of respondent BOI were involved in CA-G.R. SP No. 24979. The first concerns petitioner's application for tax credits for 1988 and the second its application for tax credits for 1989.

On the second matter concerning the 1989 tax credit, respondent court noted that its letter of March 11, 1991 reducing the tax credit applied for was received by petitioner on March 15, 1991 and as it found:

Petitioner then filed with the Honorable Supreme Court, by registered mail on April 15, 1991, a motion for extension of time to file petition pursuant to Article 82 of the Omnibus Investments Code; it likewise filed a second motion for extension of time to file petition on May 15, 1991, both of which were not acted upon by the Honorable Supreme Court. However on May 6, 1991, the Honorable Supreme Court issued a resolution referring the instant petition to this Court. xxx.[3]

The first motion for extension of thirty (30) days filed with this Court on April 15, 1991 was on time because April 14, 1991, the last day for appeal was a Sunday.

The second motion for extension of fifteen (15) days was filed with this Court on May 15, 1991, was also on time because petitioner received a copy of the Resolution of May 6, 1991 referring this case to the Court of Appeals only on May 29, 1991. It was in the latter court that the petition for review was filed on May 30, 1991.

Petitioner's judicial recourse from BOI's letter of March 11, 1991 in so far as it dealt with the 1989 tax credit application was filed within the periods of extension prayed for in two motions seasonably filed with this Court. The failure of this Court and respondent Court of Appeals to act upon these motions was an oversight not of petitioner's making and it should not result in any prejudice to it. For this reason, and considering that the motions for extension were not denied we consider the petition filed on time insofar as it concerns the 1989 tax credit application summarily resolved in the March 11 letter.

For added measure, this Court cannot ignore the fact, so obvious upon the record, that respondent BOI did not render a decision in the manner prescribed by its own rules and the law. We take cognizance of the flaw because it has a bearing on the timeliness of the petition, a key issue involved in this case, which has to be resolved in order to arrive at a just decision on the merits of the case.[4] Moreover, the perceived shortcoming also offers the

opportunity to remind BOI and other quasi-judicial agencies exercising quasi-judicial functions of the prescription of the law and in the case of BOI, also its own rules, that their decision in contested cases shall be in writing and shall state clearly and distinctly the facts and the law on which these are based.[5] Indeed, a judicious and well-reasoned resolution of the questions peculiar in their fields of expertise, carries a strong persuasive effect and will go a long way in easing the court's burden.

The questioned acts of respondent BOI need not be examined in the light of this Mandatory requirement of the law and its own rules.

In respect to the incentive availment for 1988, respondent BOI substantially reduced the tax credit on net local content and net value earned applied for by the petition for that year, without explaining the basis or reason for the reduction. An explanation was in order if only because, according to petitioner and this was not denied. BOI granted the full incentives for 1987. Yet, for the following year 1988. BOI simply passed a Resolution on May 10, 1990 which is contained in the certification of it's Board Secretary to wit:

CERTIFICATION

Quoted hereunder is an excerpt from the Minutes of the Board Meeting held on May 10, 1990:

"RESOLVED, that PILIPINAS KAO, INC., be, as it is hereby GRANTED tax credits on Net Local Content and Net Value Earned in the amount of P2,681,018.165 and P1,542,758.61, respectively (net of E.O. 1045 amortizations for 2 years) in consideration of the foregoing resolutions (Bd. Res. No. 188 S' 90)."

Makati, Metro Manila, 23 July 1991.

CERTIFIED CORRECT:

(Sgd.) JOSEFINA Q. GARCIA
Acting Board Secretary[6]

The board resolution cited in the certification, bare as it is, is offered by respondent BOI as its decision on the matter of the 1988 tax incentives availment.

It is not clear from the record how the resolution was communicated to petitioner and when the latter received it. What is on record is petitioner's Letter dated June 4, 1990 asking for reconsideration and for the full allowance of the tax credit as applied for.[7]

In that letter, petitioner contested the reduction which BOI accomplished with the application for the first time, of a deductible "base figure" equivalent to the highest production volume for a three-year period before the expansion capacity was registered. Petitioner argued that the use of the "base figure" was not sanctioned by the law and contravened the long standing practice of respondent BOI, as well as the policy and intent of the State in granting the incentives.

Respondent BOI denied the request for reconsideration in its Letter dated August 1, 1990.[8]

It is to be noted that in refusing to reconsider, respondent BOI did not address any of the issues presented by the petitioner, simply saying in its August 1 letter "that the Board in its meeting on July 27, 1990 denied your request for reconsideration of 1988 net local content and new value earned of tax credit application."

Because of the failure of respondent BOI to resolved the issues, petitioner again asked for reconsideration by a Letter dated December 17, 1990,[9] reiterating that the use of the base figure defeated the very purpose of the law which was to encourage private domestic and foreign investment and reward performance contributing to economic development. Further, that the use of the highest attained production in the three (3) years preceding the

expansion as base figure in effect penalized petitioner for its efficiency.

Denying petitioner's last request in the same cavalier fashion, respondent BOI simply informed it "that the Board in its meeting of March 5, 1991 denied your request for reconsideration of your NLC/NVE tax credit application for 1988." [10]

In the same Letter of March 11, 1991, respondent BOI informed petitioner that its application for 1989 NLC/NVE tax credit had been approved in reduced amount stated therein, again without any explanation for the reduction. This letter is supposed to be the decision of the BOI on the matter.

This brings into focus the question of whether BOI rendered a decision within the meaning of its own rules which requires that the decision in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based. It reads.-

Sec. 4. Contents of Decision. - The order, resolutions and decision determining the merits of the case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based. [11]

It is readily evident that the issues raised and arguments proffered by petitioner in asking for reconsideration were weighty enough to deserve a full length decision as prescribed by the rules.

The manner by which BOI brushed off petitioner's reiterative protests did not amount to a decision within the mandate of its own rules, nor that contained in the Administrative Code of 1987 which similarly provides as follows:

SEC. 14 Decision. - Every decision rendered by the agency in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based. [12]

We have occasion to rule that the constitutional and statutory mandate that "no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based" [13] applies as well to dispositions by quasi-judicial and administrative bodies.

In *Malinao vs. Reyes*, [14] we held that the voting in the Sanggunian in which the majority found the respondent official guilty of the administrative charge was not a decision contemplated in the law, and had no legal effects as such.

In the context of what the law and its own rules prescribe, as well as our applicable pronouncements, the BOI Resolution of May 10, 1990, as well as its Letters of August 1, 1990 and March 11, 1991 did not qualify as "decision," absent a clear and distinct statement of the facts and the law to support the action.

Lacking the essential attribute of a decision, the acts in question were at best interlocutory orders that did not attain finality nor acquire the effects of a final judgment despite the lapse of the statutory period of appeal.

Thus, the element of time relied upon by respondents does not bar our inquiry into the substantive merits of the petition, and that respondent court erred in considering the petition for review filed out of time.

While BOI should first resolve the merits of the case in the proper exercise of its primary jurisdiction, we shall nevertheless proceed with this review for procedural expediency and consideration of public interest involved in the questions before us which bear on the certainty and stability of economic policies and proper implementation thereof. For it cannot be denied that inappropriate and irresolute implementation of our investment incentive laws detracts from the very purpose of these laws.

The essential fact which gave rise to the substantive issue resolved by respondent court and which is now before this Court are not disputed.

Petitioner is engaged in the manufacture for export of methyl esters, refined glycerine and fatty alcohols. It initially registered with respondent BOI on August 24, 1976 and March 20, 1978 as an Export Producer pursuant to Republic Act No. 6135, as amended, otherwise known as the Export Incentive Act. Under this registration approved by BOI, petitioner's registered production capacity were as follows:

Product

Production Capacity

Methyl Esters

22,000 MTPY

Refined Glycerine

2,700 MTPY

Fatty Alcohols

Hydrogenated 18,000 MTPY

Fractionated 17,000 MTPY[15]

Batas Pambansa Blg. 391, otherwise known as the Investment Policy Act of 1983 was enacted in 1983, to amend P.D. 1789. The new law provided, among others, for tax incentives for new and expanding export producer.

To avail itself of these tax incentives, petitioner applied with BOI for registration of its expanded production capacity, which together with then existing registered capacity are detailed below:

Product

Original Registered Capacity

Expanded of Additional Capacity

Methyl Esters

22,000 MTPY

13,000 MTPY

Refined Glycerine

2,700 MTPY

1,800 MTPY

Fatty Alcohols

Hydrogenated

18,000 MTPY

9,000 MTPY

Fractionated

17,000 MTPY

8,000 MTPY

Refined Methyl

Esters and or

Fractionated

Refined Fatty

Alcohols

None

2,000 MTPY[16]

BOI approved petitioner's application and consequently issued in its favor on January 8, 1987 a certificate of registration as an expanding export producer on a pioneer status to the extent of the expanded or additional capacity.[17]

As an expanding export producer on a pioneer status, petitioner was entitled to certain incentives granted under that law. Among such incentives were the "tax credit on net value earned" provided in Article 48 (c) in relation to Article 45 (c) of the law and the "tax credit on net local content of exports" as provided in Article 48 (d), thereof. These provisions are cited in the decision of respondent court in CA-G.R. SP No. 24979 quoted earlier in this decision.

The initial application by petitioner for tax credit incentives for the year 1987 was approved by BOI substantially as applied for.

But those applied for in 1988 and onwards were drastically reduced by BOI with the adoption and application of a deductible "base figure" provided in its Tax Credit on NLC and NVE Manual of Operations, which reads as follows:

xxx

VII. COMPUTATION OF APPROPRIATE BASE FIGURE FOR TAX CREDIT ON NLC AND NVE.

- New producer-

No base figure used.

- Expanding Domestic Export Producer

With Registered Existing Capacity -

- Base figure for NVE shall be existing registered capacity or highest attained production volume, whichever is higher. If product is heterogeneous, base figure shall be highest projected value of sales or highest attained sales value, whichever is higher.

- Base figure for NLC shall be highest projected value of export sales or highest attained export sales value, whichever is higher.

xxx.[18]

The use of the "base figure" precipitated the present controversy because of the considerable diminution of what petitioner considered to be the fiscal incentives it deserved under the law.

At the core of the present dispute is the validity of BOI's Manual of Operations, which petitioner has assailed as void for lack of publication and because it effected an impermissible amendment of the law and subverted its purpose and intent.

Respondent court's discussion and resolution of some of the issues are succinctly stated in its decision in CA-G.R. SP. No. 24979, thus:

On Substantive Ground

Petitioner maintains that respondent arbitrarily deducted from its (petitioner) total sales a "base figure" equivalent to its "highest attained production volume" the three-year period preceding registration of its expanded production capacity under P., D. No. 1789, as amended. According to petitioner, the term "base figure" in computing tax credits has no basis in the statute, and therefore, its use is null and void.

Petitioner's posture is more apparent than real, and is not convincing.

As correctly argued by the Solicitor General, the term "base figure" is simply used to conveniently separate existing production capacity on one hand from the registered new and/or expanding production capacity on the other as concepts provided for in P.D. No. 1789, as amended by B.P. Blg. 391. The segregation is material for the purpose of determining which capacity project is entitled to tax credit on NLC and/or NVE.

As can be clearly gathered under paragraphs (c) and (d) of Article 48 of P.D. 1789 as amended by B.P. Blg. 391 in relation to paragraph (c) of Article 45 thereof (earlier quoted in this decision) only those new or expansion production capacity are entitled to NVE and NLC, existing production capacity are not. To determine therefore the production capacity/project which is entitled to NVE and NLC incentives under aforesaid law, it is imperative to set apart existing from either new or expanding capacity. It was in this context that respondent adopted the term "base figure" to call existing capacity or highest attained capacity from which to reckon the registered expansion capacity. Thus, on respondent's Tax Credit on NLC and NVE Manual of

Operations (Annex "14", Comment) it states:

"VII. COMPUTATION ON APPROPRIATE BASE FIGURE FOR TAX CREDIT ON NLC AND NVE.

- New producer -

No base figure used.

- Expanding Domestic/Export Producer

With Registered Existing Capacity -

- Base figure for NVE shall be existing registered capacity or highest attained production volume, whichever is higher. If product is heterogeneous, base figure shall be highest projected value of sales or highest attained sale value which ever is higher.

- Base figure for NLC shall be highest projected value of export sales or highest attained export sales value, whichever is higher. (Annex "14", Comment. Underscored supplied).

The definition of base figure as aforequoted includes "highest attained production volume" (meaning higher than its registered capacity) simply because if an existing registered enterprise has attained a capacity higher than its registered capacity, then it follows that said attained capacity is the capacity existing prior to expansion. And that capacity in excess of the registered capacity is not entitled to NLC and NVE obviously because it is not registered.

Indeed, the term "base figure" is nowhere to be found in the law, but the use thereof in the manner already discussed does not render its adoption without basis. "Base figure" is used to refer to "existing capacity" which is not entitled to tax credit on NLC and NVE under the law. Contrary therefore to petitioner's contention, the term "base figure" has basis in law, i.e., the term "existing capacity", and said "base figure" does not subvert the purpose of the law which is to grant tax credit on NVE and NLC to new and expanding production capacity only."^[19]

As admitted by respondent court, the term "base figure" is nowhere to be found in the law. By way of jurisdiction for its application, respondent court ruled in essence that the "base figure" was simply the capacity existing prior to expansion which was not entitled to the fiscal incentives reserved for new or additional capacity. It then concluded that the formulated "base figure" had basis in the law itself.

It is to be conceded that the original registered capacity is not "new capacity" or "expansion of capacity" that the law intended to encourage and reward. In this regard, respondent court is correct. Indeed, when petitioner applied for, and BOI registered its expanded or additional capacity, it means that only this and not the original registered capacity is entitled to the incentive under B.P. Blg. 391.

But respondent court when further ruled that "if an existing registered enterprise has attained a capacity higher than its registered capacity, then it follows that said attained capacity is the capacity existing prior to expansion."^[20]

This simplistic views failed to take into account the policy and intent of the law and overlooked the absurd and unjust consequence that results from such construction and application of the law.

Thus, in the case of petitioner whose performance exceeded its original registered capacity, the base figure used was the highest attained production volume before the registration of its new expanded capacity. This meant a bigger base figure deductible from the net value earned (NVE) a net local content (NLC) entitled to the fiscal incentive, than another enterprise whose production never reached its registered capacity. In the case of the latter, the base figure is the registered capacity, nothing more.

The tax credit incentive being percentage of the net value earned and the net local content the larger the deductible base figure the smaller the tax credit incentive.

As petitioner correctly lamented, it would have been better off if it did not perform well enough to exceed its original registered capacity, because the use of the highest attained production volume as a base figure, and not simply the registered capacity, resulted in penalizing it for producing and exporting more than its official commitment and placing it in a position inferior in terms of incentives, to a similar enterprise which failed to produce more than its registered capacity.

There is a sense of irony in penalizing petitioner as BOI did, for the excess production when it meant correspondingly, more foreign exchange earnings from its export, more job opportunities and a host of direct and indirect benefits to the economy. These are precisely the reasons for the incentives granted by the law.

It is true that the excess in production came about before petitioner registered its expanded capacity in 1987, but it only means that petitioner began to serve the purpose of the law since its enactment in 1983. While the excess occurring in the interim was not entitled to fiscal incentive as an expanded capacity, there is no sense in penalizing petitioner for such excess.

For another cogent reason, the highest attained production capacity is inappropriate as a base figure. It is reasonable to assume that actual production is affected in large measure by the vagaries of market forces, the law of supply and demand, and a host of unforeseen and unforeseeable factors that contribute to its lack of constancy. Given these variants, a circumstantial and temporary peak in production capacity should not be interpreted as the 'existing capacity,' in a way disadvantageous to petitioner.

It is thus difficult to accede to respondents' urging that the application of the highest attained production capacity as a base figure is implicit or has basis in the law itself, or otherwise justiciable.

This is not a correct view. For one, it leads to an unreasonable situation already discussed and rejects the presumption that absurd or undesirable consequences are never intended by a legislative measure.[21] But here, consequences of the kind were unwittingly read into the law.

To be sure, as respondent court admits, the concept of "base figure" is "nowhere to be found in the law." Nor can it be considered as being in accord with the purpose and intent of the law, when it is not.

The policy of the law as spelled out in the Investment Policy Act of 1983 is to stimulate private domestic and foreign investments in industry and other sectors of the economy to achieve among others "increased volume and value of exports for the economy."

We find in the law the expressed declaration of investment policy, thus:

SECTION 1. This Act shall be known and referred to as the Investment Incentive Policy Act of 1983.

SEC. 2. Declaration of Investment Policy. - It is the policy of the state to encourage private domestic and foreign investments in industry, agriculture, mining and other sectors of the economy which shall: provide significant employment opportunities relative to the amount of the capital being invested; increase productivity of the land, minerals, forestry, aquatic and other resources of the country, an improve utilization of the products thereof; improve technical skills of the people employed in the enterprise; provide a foundation for the future development of the economy; meet the tests of international competitiveness; accelerate development of less developed regions of the country, and result in increased volume and value of exports for the economy.

It is the policy of the State to extend projects which will significantly contribute to the attainment of these

objectives, fiscal incentives without which said projects may be established in the locales, number and/or pace required for optimum national economic development. Fiscal incentives systems shall be devised to compensate for market imperfections, reward performance of making contributions to economic development cost-efficient and be simple to administer.

The fiscal incentives shall be extended to stimulate establishment and assist initial operations of the enterprise, and shall terminate after a period of not more than 10 years from registration or start-up of operation unless a specific period is otherwise stated.[22]

In essence, the law intends to encourage and promote an export-led economy through incentives which are performance-oriented. The same policy and intent can be discerned in P.D. 1789, prior to its amendment by B.P. Blg. 391, evident from its declared purpose to "attain a rising level of production and employment, increase foreign exchange earning, hasten the economic development for the nation, and assure that the benefits for development accrue to the Filipino people. xxx"

In furtherance of the declared statutory policy, the law mandates that all doubts shall be resolved in favor of the grant of benefits therein provided. This is an emphatic provision of article 63, P.D. 1789, as amended by B.P. Blg. 391, which reads:

All doubts concerning the benefits and incentives granted enterprises and investors by this Code shall be resolved in favor of investors and registered enterprises.

This provision was reproduced in Art. 79 of the Omnibus Investments Code of 1987 (E.O. 226), a clear manifestation of the continuing policy of the State to liberalize the grant of incentives, as a way to attain the purpose of the law, which is to encourage investments that tend to "result in increased volume and value of exports for the economy.[23]

Viewed from the unmistakable statutory purpose, the reduction of the tax incentives petitioner deserved under the law for producing more than its registered capacity, is against the purpose of investment incentive laws.

As we have consistently ruled, if the statutory purpose is clear, the provisions of the law should be construed so as not to defeat but to carry out such end and purpose. For a statute derives its vitality from the purpose for which it is enacted and to construe it in a manner that disregards or defeats such purpose is to nullify or destroy the law.[24]

An administrative agency may not enlarge, alter or restrict the provisions of the statute being administered. It may not engraft additional non-contradictory requirements on the statute which were not contemplated by the legislature.[25]

There is yet a significant issue raised by petitioner but left unresolved by respondent court, one that bears on the validity or invalidity of the Manual of Operations for lack of publication.

There is no dispute that the Manual of Operations was not published. Without prior notice of it, the "base figure" therein formulated was sprung upon petitioner in 1989 and applied to whittle down its tax incentives for 1988. That was the first time BOI used a "base figure" since the passage of B.P. 391 in 1983.

Section 17 of P.D. 1789, as amended by B.P. Blg. 391, explicitly provides that the rules and regulations implementing the Investments Code take effect only after due publication:

SEC. 17. The Board [of Investments] shall promulgate rules and regulations to implement the intent and provisions of this act.... Such rules and regulations shall take effect fifteen days following its publication in a newspaper of general circulation in the Philippines.

Respondent BOI, having acknowledged that the Manual of Operations in which the "base figure" was formulated was issued to implement the provisions of the investment Code, its adoption being "in execution of supplementary to the law itself"[26] cannot ignore the need for publication made imperative in the cited provision.

The absence of publication is a fatal omission that renders the Manual of Operations void and of no effect as held in *Tañada vs. Tuvera*. [27]

We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

xxx

Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation. [28]

To save the day, respondent BOI argues that the Manual of Operations is merely internal in nature, designed for use by its staff in the proper computation of the tax credits, and therefore, need not be published, citing for support our ruling in *Tañada*, on the exceptions to the requirement of publications, thus -

Interpretative regulations and those merely internal in nature, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules and guidelines to be followed by their subordinates in the performance of their duties.

This Court is not persuaded. The Manual of Operations is not just an internal rule affecting only the personnel of BOI. As implemented by BOI, its effects reach out to petitioner and enterprises similarly situated to diminish considerably what the law intends to grant by way of incentives.

For the exception to apply, the Manual of Operations must not affect the rights of the public. But it did in very substantial way.

Furthermore as respondent admit the Manual of Operations was meant to enforce or implement B.P. Blg. 391, a law of general application.

As we said in *Tañada*:

Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation. [29]

Clearly then, publication of the Manual of Operations was a mandatory requirement for its effectivity and BOI's failure to comply with the expressed provision of the law and the teachings in *Tañada* is a fatal omission. As we held:

xxx At the very least, before the said circular under attack may be permitted to substantially reduce their income, the government officials and employees concerned should be apprised and alerted by the publication of subject circular in the Official Gazette or in a newspaper of general circulation in the Philippines - to the end that they be given amplest opportunity to voice out whatever opposition they may have, and to ventilate their stance on the matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency. (*De Jesus v. COA*, 294 SCRA 152, 158)

xxx When upon the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially adds to or increases the burden of those governed., it behooves the agency to accord at least to those directly informed, before that new

issuance is given the force and effect of law. (Commissioner of Internal Revenue v. CA, 261 SCRA 236, 247).

We, therefore, rule that the "Tax Credit on NLC and NVE Manual of Operations" (Manual of Operations) of respondent Board of Investment (BOI) has no legal effect insofar as it adopts as "base figure" for net value earned (NVE) the "highest attained production volume" in the period preceding the registration of petitioner's additional or expanded capacity.

We rule only the expanded or additional capacity of petitioner registered under B.P. Blg. 1789, as amended by B.P. Blg. 391, is entitled to the tax credit provided therein, and not the pre-existing registered capacity.

WHEREFORE, the petition is GRANTED. Accordingly, the Decision dated November 26, 1991 of respondent court in CA-G.R. SP NO. 24979 and its Resolution dated April 8, 1992, denying petitioner's motion for reconsideration, the Board Resolution of respondent Board of Investments (BOI) dated May 10, 1990, and its Letters dated August 1, 1990 and March 11, 1991, are hereby SET ASIDE.

Respondent BOI is ordered to grant the tax credits due to petitioner for its registered expanded capacity in the year 1988 and onwards, computed strictly in accordance with Articles 48 (c) in relation to 48 (c) of P.D. 1789, as amended by P.D. 391, subject only to deductions provided in the cited provisions of the law, and without applying the base figure under the Manual Of Operations of respondent BOI.

SO ORDERED.

Davide, Jr., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] CA Decision, pp. 1-8; Rollo, pp. 200-207.

[2] Id., at 208.

[3] Id., at 207.

[4] Korean Airlines, Co. Ltd. vs. CA, 234 SCRA 717 (1994).

[5] Sec. 14, Book VIII, ADMINISTRATIVE CODE OF 1987; Sec. 4, Rule IV of BOI Rules of Procedure of March 4, 1981.

[6] Id., at 153.

[7] Id., at 154.

[8] Id., at 160.

[9] Id., at 161.

[10] Id., at 166.

[11] Rule IV, BOI RULES OF PROCEDURE of March 4, 1981.

[12] Book VII, ADMINISTRATIVE PROCEDURE.

[13] Sec. 12, ART. VIII, CONSTITUTION, Sec. 1, Rule 36, RULES OF COURT; Naguiat vs. NLRC, 269 SCRA 564, 577 (1997).

[14] 255 SCRA 616 (1996).

[15] *Id.*, at 35.

[16] *Id.*, at 36.

[17] Annex "D" of annex "A," petition.

[18] Rollo, p. 178.

[19] *Id.*, at 209-211.

[20] *Id.*, at 211.

[21] *Dargani vs. Republic*, 106 Phil. 735; (1960); *People vs. Purisima*, 86 SCRA 542 (1978).

[22] P.D. No. 1789, as amended by B.P. Blg. 391, (underscoring supplied).

[23] Sec. 2, B.P. Blg. 391.

[24] *Sarcos vs. Castillo*, 26 SCRA 853 (1969); *Tinio vs. Francisco*, 98 Phil. 32 (1965); *Del Mar vs. PVA*, 51 SCRA 340-348 (1973); *People vs. Esconde*, 101 Phil. 1125 (1957); *Guekeko vs. Araneta*, 102 Phil. 706 (1958).

[25] 2 AM JUR 2d., pp. 244-246.

[26] *Id.*, at 136.

[27] 146 SCRA 446 (1986).

[28] *Id.*, at 453-454.

[29] *Ibid.*

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