

KAPATIRAN NG MGA NAGLILINGKOD SA PAMAHALAAN NG PILIPINAS, INC., HERMINIGILDO C. DUMLAO, GERONIMO Q. QUADRA, AND MARIO C. VILLANUEVA, PETITIONERS, VS. HON. BIENVENIDO TAN, AS COM...

G.R. NO. 81311. June 30, 1988

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-81311/>

PADILLA, J.:

These four (4) petitions, which have been consolidated because of the similarity of the main issues involved therein, seek to nullify Executive Order No. 273 (EO 273, for short), issued by the President of the Philippines on 25 July 1987, to take effect on 1 January 1988, and which amended certain sections of the National Internal Revenue Code and adopted the value-added tax (VAT, for short), for being unconstitutional in that its enactment is not allegedly within the powers of the President; that the VAT is oppressive, discriminatory, regressive, and violates the due process and equal protection clauses and other provisions of the 1987 Constitution.

The Solicitor General prays for the dismissal of the petitions on the ground that the petitioners have failed to show justification for the exercise of its judicial powers, viz. (1) the existence of an appropriate case; (2) an interest, personal and substantial, of the party raising the constitutional questions; (3) the constitutional question should be raised at the earliest opportunity; and (4) the question of constitutionality is directly and necessarily involved in a justiciable controversy and its resolution is essential to the protection of the rights of the parties. According to the Solicitor General, only the third requisite — that the constitutional question should be raised at the earliest opportunity — has been complied with. He also questions the legal standing of the petitioners who, he contends, are merely asking for an advisory opinion from the Court, there being no justiciable controversy for resolution.

Objections to taxpayer's suit for lack of sufficient personality standing, or interest are, however, in the main procedural matters. Considering the importance to the public of the cases at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, the Court has brushed aside technicalities of procedure and has taken cognizance of these petitions.

But, before resolving the issues raised, a brief look into the tax law in question is in order.

The VAT is a tax levied on a wide range of goods and services. It is a tax on the value, added by every seller, with aggregate gross annual sales of articles and/or services, exceeding P200,000.00, to his purchase of goods and services, unless exempt. VAT is computed at the rate of 0% or 10% of the gross selling price of goods or gross receipts realized from the sale of services.

The VAT is said to have eliminated privilege taxes, multiple rated sales tax on manufacturers and producers, advance sales tax, and compensating tax on importations. The framers of EO 273 claim that it is principally aimed to rationalize the system of taxing goods and services; simplify tax administration; and make the tax system more

equitable, to enable the country to attain economic recovery.

The VAT is not entirely new. It was already in force, in a modified form, before EO 273 was issued. As pointed out by the Solicitor General, the Philippine sales tax system, prior to the issuance of EO 273, was essentially a single stage value added tax system computed under the "cost subtraction method" or "cost deduction method" and was imposed only on original sale, barter or exchange of articles by manufacturers, producers, or importers. Subsequent sales of such articles were not subject to sales tax. However, with the issuance of PD 1991 on 31 October 1985, a 3% tax was imposed on a second sale, which was reduced to 1.5% upon the issuance of PD 2006 on 31 December 1985, to take effect 1 January 1986. Reduced sales taxes were imposed not only on the second sale, but on every subsequent sale, as well. EO 273 merely increased the VAT on every sale to 10%, unless zero-rated or exempt.

Petitioners first contend that EO 273 is unconstitutional on the ground that the President had no authority to issue EO 273 on 25 July 1987.

The contention is without merit.

It should be recalled that under Proclamation No. 3, which decreed a Provisional Constitution, sole legislative authority was vested upon the President. Art. II, Sec. 1 of the Provisional Constitution states:

"Sec. 1. Until a legislature is elected and convened under a new Constitution, the President shall continue to exercise legislative powers."

On 15 October 1986, the Constitutional Commission of 1986 adopted a new Constitution for the Republic of the Philippines which was ratified in a plebiscite conducted on 2 February 1987. Article XVIII, Sec. 6 of said Constitution, hereafter referred to as the 1987 Constitution, provides:

"Sec. 6. The incumbent President shall continue to exercise legislative powers until the first Congress is convened."

It should be noted that, under both the Provisional and the 1987 Constitutions, the President is vested with legislative powers until a legislature under a new Constitution is convened. The first Congress, created and elected under the 1987 Constitution, was convened on 27 July 1987. Hence, the enactment of EO 273 on 25 July 1987, two (2) days before Congress convened on 27 July 1987, was within the President's constitutional power and authority to legislate.

Petitioner Valmonte claims, additionally, that Congress was really convened on 30 June 1987 (not 27 July 1987). He contends that the word "convene" is synonymous with "the date when the elected members of Congress assumed office."

The contention is without merit. The word "convene" which has been interpreted to mean "to call together, cause to assemble, or convoke,"[1] is clearly different from assumption of office by the individual members of Congress or their taking the oath of office. As an example, we call to mind the interim National Assembly created under the 1973 Constitution, which had not been "convened" but some members of the body, more particularly the delegates to the 1971 Constitutional Convention who had opted to serve therein by voting affirmatively for the approval of said Constitution, had taken their oath of office.

To uphold the submission of petitioner Valmonte would stretch the definition of the word "convene" a bit too far. It would also defeat the purpose of the framers of the 1987 Constitution and render meaningless some other provisions of said Constitution. For example, the provisions of Art. VI, Sec. 15, requiring Congress to convene once every year on the fourth Monday of July for its regular session would be a contrariety, since Congress would

already be deemed to be in session after the individual members have taken their oath of office. A portion of the provisions of Art. VII, Sec. 10, requiring Congress to convene for the purpose of enacting a law calling for a special election to elect a President and Vice-President in case a vacancy occurs in said offices, would also be a surplusage. The portion of Art. VII, Sec. 11, third paragraph, requiring Congress to convene, if not in session, to decide a conflict between the President and the Cabinet as to whether or not the President can re-assume the powers and duties of his office, would also be redundant. The same is true with that portion of Art. VII, Sec. 18, which requires Congress to convene within twenty-four (24) hours following the declaration of martial law or the suspension of the privilege of the writ of habeas corpus.

The 1987 Constitution mentions a specific date when the President loses her power to legislate. If the framers of said Constitution had intended to terminate the exercise of legislative powers by the President at the beginning of the term of office of the members of Congress, they should have so stated (but, did not) in clear and unequivocal terms. The Court has no power to re-write the Constitution and give it a meaning different from that intended.

The Court also finds no merit in the petitioners' claim that EO 273 was issued by the President in grave abuse of discretion amounting to lack or excess of jurisdiction. "Grave abuse of discretion" has been defined, as follows:

"'Grave abuse of discretion' implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos vs. Province of Tarlac*, 38 Off. Gaz. 834), or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.' (*Tavera-Luna, Inc. vs. Nable*, 38 Off. Gaz. 62)."[2]

Petitioners have failed to show that EO 273 was issued capriciously and whimsically or in an arbitrary or despotic manner by reason of passion or personal hostility. It appears that a comprehensive study of the VAT was made before EO 273 was issued. In fact, the merits of the VAT had been extensively discussed by its framers and other government agencies involved in its implementation, even under the past administration. As the Solicitor General correctly stated. "The signing of E.O. 273 was merely the last stage in the exercise of her legislative powers. The legislative process started long before the signing when the data were gathered, proposals were weighed and the final wordings of the measure were drafted, revised and finalized. Certainly, it cannot be said that the President made a jump, so to speak, on the Congress, two days before it convened."[3]

Next, the petitioners claim that EO 273 is oppressive, discriminatory, unjust and regressive, in violation of the provisions of Art. VI, Sec. 28(1) of the 1987 Constitution, which states:

"Sec. 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation."

The petitioners' assertions in this regard are not supported by facts and circumstances to warrant their conclusions. They have failed to adequately show that the VAT is oppressive, discriminatory or unjust. Petitioners merely rely upon newspaper articles which are actually hearsay and have no evidentiary value. To justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative implication.[4]

As the Court sees it, EO 273 satisfies all the requirements of a valid tax. It is uniform. The Court, in *City of Baguio vs. De Leon*,[5] said:

"x x x In *Philippine Trust Company v. Yatco* (69 Phil. 420), Justice Laurel, speaking for the Court, stated: 'A tax is considered uniform when it operates with the same force and effect in every place where the subject may be found.'"

"There was no occasion in that case to consider the possible effect on such a constitutional requirement where there is a classification. The opportunity came in *Eastern Theatrical Co. v. Alfonso* (83 Phil. 852, 862). Thus: 'Equality and uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. The taxing power has the authority to make reasonable and natural classifications for purposes of taxation; x x x.' About two years later, Justice Tuason, speaking for this Court in *Manila Race Horses Trainers Assn. v. de la Fuente* (88 Phil. 60, 65) incorporated the above excerpt in his opinion and continued; 'Taking everything into account, the differentiation against which the plaintiffs complain conforms to the practical dictates of justice and equity and is not discriminatory within the meaning of the Constitution.'

"To satisfy this requirement then, all that is needed as held in another case decided two years later, (*Uy Matias v. City of Cebu*, 93 Phil. 300) is that the statute or ordinance in question 'applies equally to all persons, firms and corporations placed in similar situation.' This Court is on record as accepting the view in a leading American case (*Carmichael v. Southern Coal and Coke Co.*, 301 US 495) that 'inequalities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation.' (*Lutz v. Araneta*, 98 Phil. 148, 153)."

The sales tax adopted in EO 273 is applied similarly on all goods and services sold to the public, which are not exempt, at the constant rate of 0% or 10%.

The disputed sales tax is also equitable. It is imposed only on sales of goods or services by persons engaged in business with an aggregate gross annual sales exceeding P200,000.00. Small corner sari-sari stores are consequently exempt from its application. Likewise exempt from the tax are sales of farm and marine products, so that the costs of basic food and other necessities, spared as they are from the incidence of the VAT, are expected to be relatively lower and within the reach of the general public.[6]

The Court likewise finds no merit in the contention of the petitioner Integrated Customs Brokers Association of the Philippines that EO 273, more particularly the new Sec. 103(r) of the National Internal Revenue Code, unduly discriminates against customs brokers. The contested provision states:

"Sec. 103. Exempt transactions. — The following shall be exempt from the value-added tax:

**** *

"(r) Service performed in the exercise of profession or calling (except customs brokers) subject to the occupation tax under the Local Tax Code, and professional services performed by registered general professional partnerships";

The phrase "except customs brokers" is not meant to discriminate against customs brokers. It was inserted in Sec. 103(r) to complement the provisions of Sec. 102 of the Code which makes the services of customs brokers subject to the payment of the VAT and to distinguish customs brokers from other professionals who are subject to the payment of an occupation tax under the Local Tax Code. Pertinent provisions of Sec. 102 read:

"Sec. 102. Value-added tax on sale of services. — There shall be levied, assessed and collected, a value-added tax equivalent to 10% percent of gross receipts derived by any person engaged in the sale of services. The phrase 'sale of services' means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties: x x x."

With the insertion of the clarificatory phrase "except customs brokers" in Sec. 103(r), a potential conflict between

the two sections, (Sees. 102 and 103), insofar as customs brokers are concerned, is averted.

At any rate, the distinction of the customs brokers from the other professionals who are subject to occupation tax under the Local Tax Code is based upon material differences, in that the activities of customs brokers (like those of stock, real estate and immigration brokers) partake more of a business, rather than a profession and were thus subjected to the percentage tax under Sec. 174 of the National Internal Revenue Code prior to its amendment by EO 273. EO 273 abolished the percentage tax and replaced it with the VAT. If the petitioner Association did not protest the classification of customs brokers then, the Court sees no reason why it should protest now.

The Court takes note that EO 273 has been in effect for more than five (5) months now, so that the fears expressed by the petitioners that the adoption of the VAT will trigger skyrocketing of prices of basic commodities and services, as well as mass actions and demonstrations against the VAT should by now be evident. The fact that nothing of the sort has happened shows that the fears and apprehensions of the petitioners appear to be more imagined than real. It would seem that the VAT is not as bad as we are made to believe.

In any event, if petitioners seriously believe that the adoption and continued application of the VAT are prejudicial to the general welfare or the interests of the majority of the people, they should seek recourse and relief from the political branches of the government. The Court, following the time-honored doctrine of separation of powers, cannot substitute its judgment for that of the President as to the wisdom, justice and advisability of the adoption of the VAT. The Court can only look into and determine whether or not EO 273 was enacted and made effective as law, in the manner required by, and consistent with, the Constitution, and to make sure that it was not issued in grave abuse of discretion amounting to lack or excess of jurisdiction; and, in this regard, the Court finds no reason to impede its application or continued implementation.

WHEREFORE, the petitions are DISMISSED. Without pronouncement as to costs.

SO ORDERED.

Yap, C. J., Fernan, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

Gutierrez, Jr. and Medialdea, JJ., on leave.

[1] Application of Lamb, 169 A2d 822, 830, 67 N.J. Super. 29, affd. 170 A2d 34, 34 N.J. 448, citing 18 C.J.S. Convene p. 37.

[2] Alafritz vs. Nable, 72 Phil. 278, 280.

[3] Comment on petition, G.R. No. 82152, p. 18.

[4] Peralta vs. Comelec, L-47771 and others, March 11, 1978, 82 SCRA 30, 55.

[5] 134 Phil. 912, 919-920.

[6] EO 273 enumerates in its Sec. 102 zero-rated sales and in its Sec. 103 transactions exempt from the VAT.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.