

CALTEX PHILIPPINES, INC., PETITIONER, VS. THE HONORABLE COMMISSION ON AUDIT, HONORABLE COMMISSIONER BARTOLOME C. FERNANDEZ AND HONORABLE COMMISSIONER ALBERTO P. CRUZ, RESPONDENTS.

G.R. No. 92585. May 08, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition erroneously brought under Rule 44 of the Rules of Court^[1] questioning the authority of the Commission on Audit (COA) in disallowing petitioner's claims for reimbursement from the Oil Price Stabilization Fund (OPSF) and seeking the reversal of said Commission's decision denying its claims for recovery of financing charges from the Fund and reimbursement of underrecovery arising from sales to the National Power Corporation, Atlas Consolidated Mining and Development Corporation (ATLAS) and Marcopper Mining Corporation (MARCOPPER), preventing it from exercising the right to offset its remittances against its reimbursement vis-a-vis the OPSF and disallowing its claims which are still pending resolution before the Office of Energy Affairs (OEA) and the Department of Finance (DOF).

Pursuant to the 1987 Constitution,^[2] any decision, order or ruling of the Constitutional Commissions^[3] may be brought to this Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof. The certiorari referred to is the special civil action for certiorari under Rule 65 of the Rules of Court.^[4]

Considering, however, that the allegations that the COA acted with: (a) total lack of jurisdiction in completely ignoring and showing absolutely no respect for the findings and rulings of the administrator of the fund itself and in disallowing a claim which is still pending resolution at the OEA level, and (b) “grave abuse of discretion and completely without jurisdiction”^[5] in declaring that petitioner cannot avail of the right to offset any amount that it may be required under the law to remit to the OPSF against any amount that it may receive by way of reimbursement therefrom are sufficient to bring this petition within Rule 65 of the Rules of Court, and, considering further the importance of the issues raised, the error in the designation of the remedy pursued will, in this instance, be excused.

The issues raised revolve around the OPSF created under Section 8 of Presidential Decree (P.D.) No. 1956, as amended by Executive Order (E.O.) No. 137. As amended, said Section 8 reads as follows:

“SECTION 8. There is hereby created a Trust Account in the books of accounts of the Ministry of Energy to be designated as Oil Price Stabilization Fund (OPSF) for the purpose of minimizing frequent price changes brought about by exchange rate adjustments and/or changes in world market prices of crude oil and imported petroleum products. The Oil Price Stabilization Fund may be sourced from any of the following:

a) Any increase in the tax collection from ad valorem tax or customs duty imposed on petroleum products subject to tax under this Decree arising from exchange rate adjustment, as may be determined by the Minister of Finance in consultation with the Board of Energy;

- b) Any increase in the tax collection as a result of the lifting of tax exemptions of government corporations, as may be determined by the Minister of Finance in consultation with the Board of Energy;
- c) Any additional amount to be imposed on petroleum products to augment the resources of the Fund through an appropriate Order that may be issued by the Board of Energy requiring payment by persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products;
- d) Any resulting peso cost differentials in case the actual peso costs paid by oil companies in the importation of crude oil and petroleum products is less than the peso costs computed using the reference foreign exchange rate as fixed by the Board of Energy.

The Fund herein created shall be used for the following:

- 1) To reimburse the oil companies for cost increases in crude oil and imported petroleum products resulting from exchange rate adjustment and/or increase in world market prices of crude oil;
- 2) To reimburse the oil companies for possible cost underrecovery incurred as a result of the reduction of domestic prices of petroleum products. The magnitude of the underrecovery, if any, shall be determined by the Ministry of Finance. 'Cost underrecovery' shall include the following:
 - i. Reduction in oil company take as directed by the Board of Energy without the corresponding reduction in the landed cost of oil inventories in the possession of the oil companies at the time of the price change;
 - ii. Reduction in internal ad valorem taxes as a result of foregoing government mandated price reductions;
 - iii. Other factors as may be determined by the Ministry of Finance to result in cost underrecovery.

The Oil Price Stabilization Fund (OPSF) shall be administered by the Ministry of Energy.”

The material operative facts of this case, as gathered from the pleadings of the parties, are not disputed.

On 2 February 1989, the COA sent a letter to Caltex Philippines, Inc. (CPI), hereinafter referred to as Petitioner, directing the latter to remit to the OPSF its collection, excluding that unremitted for the years 1986 and 1988, of the additional tax on petroleum products authorized under the aforesaid Section 8 of P.D. No. 1956 which, as of 31 December 1987, amounted to P335,037,649.00 and informing it that, pending such remittance, all of its claims for reimbursement from the OPSF shall be held in abeyance.[6]

On 9 March 1989, the COA sent another letter to petitioner informing it that partial verification with the OEA showed that the grand total of its unremitted collections of the above tax is P1,287,668,820.00, broken down as follows:

1986 - P233,190,916.00

1987 - 335,065,650.00

1988 - 719,412,254.00;

directing it to remit the same, with interest and surcharges thereon, within sixty (60) days from receipt of the letter; advising it that the COA will hold in abeyance the audit of all its claims for reimbursement from the OPSF; and directing it to desist from further offsetting the taxes collected against outstanding claims in 1989 and subsequent periods.[7]

In its letter of 3 May 1989, petitioner requested the COA for an early release of its reimbursement certificates from the OPSF covering claims with the Office of Energy Affairs since June 1987 up to March 1989, invoking in

support thereof COA Circular No. 89-299 on the lifting of pre-audit of government transactions of national government agencies and government-owned or controlled corporations.[8]

In its Answer dated 8 May 1989, the COA denied petitioner's request for the early release of the reimbursement certificates from the OPSF and repeated its earlier directive to petitioner to forward payment of the latter's unremitted collections to the OPSF to facilitate COA's audit action on the reimbursement claims.[9]

By way of a reply, petitioner, in a letter dated 31 May 1989, submitted to the COA a proposal for the payment of the collections and the recovery of claims, since the outright payment of the sum of P1.287 billion to the OEA as a prerequisite for the processing of said claims against the OPSF will cause a very serious impairment of its cash position.[10] The proposal reads:

“We, therefore, very respectfully propose the following:

- (1) Any procedural arrangement acceptable to COA to facilitate monitoring of payments and reimbursements will be administered by the ERB/Finance Dept./OEA, as agencies designated by law to administer/regulate OPSF.
- (2) For the retroactive period, Caltex will deliver to OEA, P1.287 billion as payment to OPSF, similarly OEA will deliver to Caltex the same amount in cash reimbursement from OPSF.
- (3) The COA audit will commence immediately and will be conducted expeditiously.
- (4) The review of current claims (1989) will be conducted expeditiously to preclude further accumulation of reimbursement from OPSF.”

On 7 June 1989, the COA, with the Chairman taking no part, handed down Decision No. 921 accepting the above-stated proposal but prohibiting petitioner from further offsetting remittances and reimbursements for the current and ensuing years.[11] Decision No. 921 reads:

“This pertains to the within separate requests of Mr. Manuel A. Estrella, President, Petron Corporation, and Mr. Francis Ablan, President and Managing Director, Caltex (Philippines) Inc., for reconsideration of this Commission's adverse action embodied in its letters dated February 2, 1989 and March 9, 1989, the former directing immediate remittance to the Oil Price Stabilization Fund of collections made by the firms pursuant to P.D. 1956, as amended by E.O. No. 137, S. 1987, and the latter reiterating the same directive but further advising the firms to desist from offsetting collections against their claims with the notice that `this Commission will hold in abeyance the audit of all x x x claims for reimbursement from the OPSF’.

It appears that under letters of authority issued by the Chairman, Energy Regulatory Board, the aforementioned oil companies were allowed to offset the amounts due to the Oil Price Stabilization Fund against their outstanding claims from the said Fund for the calendar years 1987 and 1988, pending with the then Ministry of Energy, the government entity charged with administering the OPSF. This Commission, however, expressing serious doubts as to the propriety of the offsetting of all types of reimbursements from the OPSF against all categories of remittances, advised these oil companies that such offsetting was bereft of legal basis. Aggrieved thereby, these companies now seek reconsideration and in support thereof clearly manifest their intent to make arrangements for the remittance to the Office of Energy Affairs of the amount of collections equivalent to what has been previously offset, provided that this Commission authorizes the Office of Energy Affairs to prepare the corresponding checks representing reimbursement from the OPSF. It is alleged that the implementation of such an arrangement, whereby the remittance of collections due to the OPSF and the reimbursement of claims from the Fund shall be made within a period of not more than one week from each other, will benefit the Fund and not unduly jeopardize the continuing daily cash requirements of these firms.

Upon a circumspect evaluation of the circumstances herein obtaining, this Commission perceives no further objectionable feature in the proposed arrangement, provided that 15% of whatever amount is due from the

Fund is retained by the Office of Energy Affairs, the same to be answerable for suspensions or disallowances, errors or discrepancies which may be noted in the course of audit and surcharges for late remittances without prejudice to similar future retentions to answer for any deficiency in such surcharges, and provided further that no offsetting of remittances and reimbursements for the current and ensuing years shall be allowed.”

Pursuant to this decision, the COA, on 18 August 1989, sent the following letter to Executive Director Wenceslao R. De la Paz of the Office of Energy Affairs:[12]

“Dear Atty. dela Paz:

Pursuant to the Commission on Audit Decision No. 921 dated June 7, 1989, and based on our initial verification of documents submitted to us by your Office in support of Caltex (Philippines), Inc. offsets (sic) for the year 1986 to May 31, 1989, as well as its outstanding claims against the Oil Price Stabilization Fund (OPSF) as of May 31, 1989, we are pleased to inform your Office that Caltex (Philippines), Inc. shall be required to remit to OPSF an amount of P1,505,668,906, representing remittances to the OPSF which were offset against its claims reimbursements (net of unsubmitted claims). In addition, the Commission hereby authorize (sic) the Office of Energy Affairs (OEA) to cause payment of P1,959,182,612 to Caltex, representing claims initially allowed in audit, the details of which are presented hereunder: x x x

As presented in the foregoing computation the disallowances totalled P387,683,535, which included P130,420,235 representing those claims disallowed by OEA, details of which is (sic) shown in Schedule 1 as summarized as follows:

Disallowance of COA Particulars

Amount

Recovery of financing charges

-

P162,728,475 /a

Product sales

-

48,402,398 /b

Inventory losses –

Borrow loan arrangement

-

14,034,786 /c

Sales to Atlas/Marcopper

-

32,097,083 /d

Sale to NPC

-

558

P257,263,300

Disallowances of OEA

-

130,420,235

Total

-

P387,683,535

The reasons for the disallowances are discussed hereunder:

a. Recovery of Financing Charges

Review of the provisions of P.D. 1596 as amended by E.O. 137 seems to indicate that recovery of financing charges by oil companies is not among the items for which the OPSF may be utilized. Therefore, it is our view that recovery of financing charges has no legal basis. The mechanism for such claims is provided in DOF Circular 1-87.

b. Product Sales - Sales to International Vessels/Airlines

BOE Resolution No. 87-01 dated February 7, 1987 as implemented by OEA Order No. 87-03-095 indicating that (sic) February 7, 1987 as the effectivity date that (sic) oil companies should pay OPSF impost on export sales of petroleum products. Effective February 7, 1987 sales to international vessels/airlines should not be included as part of its domestic sales. Changing the effectivity date of the resolution from February 7, 1987 to October 20, 1987 as covered by subsequent ERB Resolution No. 88-12 dated November 18, 1988 has allowed Caltex to include in their domestic sales volumes to international vessels/airlines and claim the corresponding reimbursements from OPSF during the period. It is our opinion that the effectivity of the said resolution should be February 7, 1987.

c. Inventory losses - Settlement of Ad Valorem

We reviewed the system of handling Borrow and Loan (BLA) transactions including the related BLA, agreement, as they affect the claims for reimbursements of ad valorem taxes. We observed that oil companies immediately settle ad valorem taxes for BLA transaction (sic). Loan balances therefore are not tax paid inventories of Caltex subject to reimbursements but those of the borrower. Hence, we recommend reduction of the claim for July, August, and November, 1987 amounting to P14,034,786.

d. Sales to Atlas/Marcopper

LOI No. 1416 dated July 17, 1984 provides that 'I hereby order and direct the suspension of payment of all taxes, duties, fees, imposts and other charges whether direct or indirect due and payable by the copper mining companies in distress to the national and local governments.' It is our opinion that LOI 1416 which implements the exemption from payment of OPSF imposts as effected by OEA has no legal basis.

Furthermore, we wish to emphasize that payment to Caltex (Phil.) Inc., of the amount as herein authorized shall be subject to availability of funds of OPSF as of May 31, 1989 and applicable auditing rules and regulations. With regard to the disallowances, it is further informed that the aggrieved party has 30 days within which to appeal the decision of the Commission in accordance with law."

On 8 September 1989, petitioner filed an Omnibus Request for the Reconsideration of the decision based on the

following grounds:[13]

“A) COA-DISALLOWED CLAIMS ARE AUTHORIZED UNDER EXISTING RULES, ORDERS, RESOLUTIONS, CIRCULARS ISSUED BY THE DEPARTMENT OF FINANCE AND THE ENERGY REGULATORY BOARD PURSUANT TO EXECUTIVE ORDER NO. 137.

x x x

B) ADMINISTRATIVE INTERPRETATIONS IN THE COURSE OF EXERCISE OF EXECUTIVE POWER BY DEPARTMENT OF FINANCE AND ENERGY REGULATORY BOARD ARE LEGAL AND SHOULD BE RESPECTED AND APPLIED UNLESS DECLARED NULL AND VOID BY COURTS OR REPEALED BY LEGISLATION.

x X X

C) LEGAL BASIS FOR RETENTION OF OFFSET ARRANGEMENT, AS AUTHORIZED BY THE EXECUTIVE BRANCH OF GOVERNMENT, REMAINS VALID.”

x x x

On 6 November 1989, petitioner filed with the COA a Supplemental Omnibus Request for Reconsideration. [14]

On 16 February 1990, the COA, with Chairman Domingo taking no part and with Commissioner Fernandez dissenting in part, handed down Decision No. 1171 affirming the disallowance for recovery of financing charges, inventory losses, and sales to MARCOPPER and ATLAS, while allowing the recovery of product sales or those arising from export sales.[15] Decision No. 1171 reads as follows:

“Anent the recovery of financing charges, you contend that Caltex Phil. Inc. has the authority to recover financing charges from the OPSF on the basis of Department of Finance (DOF) Circular 1-87, dated February 18, 1987, which allowed oil companies to ‘recover cost of financing working capital associated with crude oil shipments,’ and provided a schedule of reimbursement in terms of peso per barrel. It appears that on November 6, 1989, the DOF issued a memorandum to the President of the Philippines explaining the nature of these financing charges and justifying their reimbursement as follows:

‘As part of your program to promote economic recovery, ... oil companies (were authorized) to refinance their imports of crude oil and petroleum products from the normal trade credit of 30 days up to 360 days from date of loading Conformably ..., the oil companies deferred their foreign exchange remittances for purchases by refinancing their import bills from the normal 30-day payment term up to the desired 360 days. This refinancing of importations carried additional costs (financing charges) which then became, due to government mandate, an inherent part of the cost of the purchases of our country’s oil requirement.’

We beg to disagree with such contention. The justification that financing charges increased oil costs and the schedule of reimbursement rate in peso per barrel (Exhibit 1) used to support alleged increase (sic) were not validated in our independent inquiry. As manifested in Exhibit 2, using the same formula which the DOF used in arriving at the reimbursement rate but using comparable percentages instead of pesos, the ineluctable conclusion is that the oil companies are actually gaining rather than losing from the extension of credit because such extension enables them to invest the collections in marketable securities which have much higher rates than those they incur due to the extension. The Data we used were obtained from CPI (CALTEX) Management and can easily be verified from our records.

With respect to product sales or those arising from sales to international vessels or airlines, x x x, it is believed that export sales (product sales) are entitled to claim refund from the OPSF.

As regard your claim for underrecovery arising from inventory losses, x x x It is the considered view of this

Commission that the OPSF is not liable to refund such surtax on inventory losses because these are paid to BIR and not to OPSF, in view of which CPI (CALTEX) should seek refund from BIR. x x x.

Finally, as regards the sales to Atlas and Marcopper, it is represented that you are entitled to claim recovery from the OPSF pursuant to LOI 1416 issued on July 17, 1984, since these copper mining companies did not pay CPI (CALTEX) and OPSF imposts which were added to the selling price.

Upon a circumspect evaluation, this Commission believes and so holds that the CPI (CALTEX) has no authority to claim reimbursement for this uncollected OPSF impost because LOI 1416 dated July 17, 1984, which exempts distressed mining companies from 'all taxes, duties, import fees and other charges' was issued when OPSF was not yet in existence and could not have contemplated OPSF imposts at the time of its formulation. Moreover, it is evident that OPSF was not created to aid distressed mining companies but rather to help the domestic oil industry by stabilizing oil prices."

Unsatisfied with the decision, petitioner filed on 28 March 1990 the present petition wherein it imputes to the COA the commission of the following errors:[16]

"I

RESPONDENT COMMISSION ERRED IN DISALLOWING RECOVERY OF FINANCING CHARGES FROM THE OPSF.

II

RESPONDENT COMMISSION ERRED IN DISALLOWING CPI's[17] CLAIM FOR REIMBURSEMENT OF UNDERRECOVERY ARISING FROM SALES TO NPC.

III

RESPONDENT COMMISSION ERRED IN DENYING CPI's CLAIMS FOR REIMBURSEMENT ON SALES TO ATLAS AND MARCOPPER.

IV

RESPONDENT COMMISSION ERRED IN PREVENTING CPI FROM EXERCISING ITS LEGAL RIGHT TO OFFSET ITS REMITTANCES AGAINST ITS REIMBURSEMENT VIS-A-VIS THE OPSF.

V

RESPONDENT COMMISSION ERRED IN DISALLOWING CPI's CLAIMS WHICH ARE STILL PENDING RESOLUTION BY (SIC) THE OEA AND THE DOF."

In the Resolution of 5 April 1990, this Court required the respondents to comment on the petition within ten (10) days from notice.[18]

On 6 September 1990, respondents COA and Commissioners Fernandez and Cruz, assisted by the Office of the Solicitor General, filed their Comment.[19]

This Court resolved to give due course to this petition on 30 May 1991 and required the parties to file their respective Memoranda within twenty (20) days from notice.[20]

In a Manifestation dated 18 July 1991, the Office of the Solicitor General prays that the Comment filed on 6 September 1990 be considered as the Memorandum for respondents.[21]

Upon the other hand, petitioner filed its Memorandum on 14 August 1991.

I. Petitioner dwells lengthily on its first assigned error contending, in support thereof, that:

(1) In view of the expanded role of the OPSF pursuant to Executive Order No. 137, which added a second purpose, to wit:

“2) To reimburse the oil companies for possible cost underrecovery incurred as a result of the reduction of domestic prices of petroleum products. The magnitude of the underrecovery, if any, shall be determined by the Ministry of Finance. ‘Cost underrecovery shall include the following:

- i. Reduction in oil company take as directed by the Board of Energy without the corresponding reduction in the landed cost of oil inventories in the possession of the oil companies at the time of the price change;
- ii. Reduction in internal ad valorem taxes as a result of foregoing government mandated price reductions;
- iii. Other factors as may be determined by the Ministry of Finance to result in cost underrecovery.”

the “other factors” mentioned therein that may be determined by the Ministry (now Department) of Finance may include financing charges for “in essence, financing charges constitute unrecovered cost of acquisition of crude oil incurred by the oil companies,” as explained in the 6 November 1989 Memorandum to the President of the Department of Finance; they “directly translate to cost underrecovery in cases where the money market placement rates decline and at the same time the tax on interest income increases. The relationship is such that the presence of underrecovery or overrecovery is directly dependent on the amount and extent of financing charges.”

(2) The claim for recovery of financing charges has clear legal and factual basis; it was filed on the basis of Department of Finance Circular No. 1-87, dated 18 February 1987, which provides:

“To allow oil companies to recover the costs of financing working capital associated with crude oil shipments, the following guidelines on the utilization of the Oil Price Stabilization Fund pertaining to the payment of the foregoing (sic) exchange risk premium and recovery of financing charges will be implemented:

1. The OPSF foreign exchange premium shall be reduced to a flat rate of one (1) percent for the first (6) months and 1/32 of one percent per month thereafter up to a maximum period of one year, to be applied on crude oil’ shipments from January 1, 1987. Shipments with outstanding financing as of January 1, 1987 shall be charged on the basis of the fee applicable to the remaining period of financing.
2. In addition, for shipments loaded after January 1987, oil companies shall be allowed to recover financing charges directly from the OPSF per barrel of crude oil based on the following schedule:

Financing Period Reimbursement

Rate

Pesos per Barrel

Less than 180 days None

180 days to 239 days 1.90

241 (sic) days to 299 4.02

300 days to 369 (sic) days 6.16

360 days or more 8.28

The above rates shall be subject to review every sixty days.”[22]

Pursuant to this circular, the Department of Finance, in its letter of 18 February 1987, advised the Office of Energy Affairs as follows:

“HON. VICENTE T. PATERNO

Deputy Executive Secretary

For Energy Affairs

Office of the President

Makati, Metro Manila

Dear Sir:

This refers to the letters of the Oil Industry dated December 4, 1986 and February 5, 1987 and subsequent discussions held by the Price Review committee on February 6, 1987.

On the basis of the representations made, the Department of Finance recognizes the necessity to reduce the foreign exchange risk premium accruing to the Oil Price Stabilization Fund (OPSF). Such a reduction would allow the industry to recover partly associated financing charges on crude oil imports. Accordingly, the OPSF foreign exchange risk fee shall be reduced to a flat charge of 1% for the first six (6) months plus 1/32% of 1% per month thereafter up to a maximum period of one year, effective January 1, 1987. In addition, since the prevailing company take would still leave unrecovered financing charges, reimbursement may be secured from the OPSF in accordance with the provisions of the attached Department of Finance circular.”[23]

Acting on this letter, the OEA issued on 4 May 1987 Order No. 87-05-096 which contains the guidelines for the computation of the foreign exchange risk fee and the recovery of financing charges from the OPSF, to wit:

“B. FINANCE CHARGES

1. Oil companies shall be allowed to recover financing charges directly from the OPSF for both crude and product shipments loaded after January 1, 1987 based on the following rates:

Financing Period Reimbursement

Rate

(PBbl.)

Less than 180 days None

180 days to 239 days 1.90

240 days to 229 (sic) days 4.02

300 days to 359 days 6.16

360 days to more 8.28

2. The above rates shall be subject to review every sixty days.”[24]

Then on 22 November 1988, the Department of Finance issued Circular No. 4-88 imposing further guidelines on

the recoverability of financing charges, to wit:

“Following are the supplemental rules to Department of Finance Circular No. 1-87 dated February 18, 1987 which allowed the recovery of financing charges directly from the Oil Price Stabilization Fund. (OPSF):

1. The claim for reimbursement shall be on a per shipment basis.
2. The claim shall be filed with the Office of Energy Affairs together with the claim on peso cost differential for a particular shipment and duly certified supporting documents provided for under Ministry of Finance No. 11-85.
3. The reimbursement shall be on the form of reimbursement certificate (Annex A) to be issued by the Office of Energy Affairs. The said certificate may be used to offset against amounts payable to the OPSF. The oil companies may also redeem said certificates in cash if not utilized, subject to availability of funds.”[25]

The OEA disseminated this Circular to all oil companies in its Memorandum Circular No. 88-12-017.[26]

The COA can neither ignore these issuances nor formulate its own interpretation of the laws in the light of the determination of executive agencies. The determination by the Department of Finance and the OEA that financing charges are recoverable from the OPSF is entitled to great weight and consideration.[27] The function of the COA, particularly in the matter of allowing or disallowing certain expenditures, is limited to the promulgation of accounting and auditing rules for, among others, the disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.[28]

(3) Denial of petitioner's claim for reimbursement would be inequitable. Additionally, COA's claim that petitioner is gaining, instead of losing, from the extension of credit, is belatedly raised and not supported by expert analysis.

In impeaching the validity of petitioner's assertions, the respondents argue that:

1. The Constitution gives the COA discretionary power to disapprove irregular or unnecessary government expenditures and as the monetary claims of petitioner are not allowed by law, the COA acted within its jurisdiction in denying them;
2. P.D. No. 1956 and E.O. No. 137 do not allow reimbursement of financing charges from the OPSF;
3. Under the principle of ejusdem generis, the “other factors” mentioned in the second purpose of the OPSF pursuant to E.O. No. 137 can only include “factors which are of the same nature or analogous to those enumerated;”
4. In allowing reimbursement of financing charges from OPSF, Circular No. 1-87 of the Department of Finance violates P.D. No. 1956 and E.O. No. 137; and
5. Department of Finance rules and regulations implementing P.D. No. 1956 do not likewise allow reimbursement of financing charges.[29]

We find no merit in the first assigned error.

As to the power of the COA, which must first be resolved in view of its primacy, We find the theory of petitioner -- that such does not extend to the disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or use of government funds and properties, but only to the promulgation of accounting and auditing rules for, among others, such disallowance -- to be untenable in the light of the provisions of the 1987 Constitution and related laws.

Section 2, Subdivision D, Article IX of the 1987 Constitution expressly provides:

“SECTION 2(1). The Commission on Audit shall have the power, authority, and duty to examine, audit, and

settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.”

These present powers, consistent with the declared independence of the Commission,[30] are broader and more extensive than that conferred by the 1973 Constitution. Under the latter, the Commission was empowered to:

“Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues, and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities including government-owned or controlled corporations; keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers pertaining thereto; and promulgate accounting and auditing rules and regulations including those for the prevention of irregular, unnecessary, excessive, or extravagant expenditures or uses of funds and property.”[31]

Upon the other hand, under the 1935 Constitution, the power and authority of the COA's precursor, the General Auditing Office, were, unfortunately, limited; its very role was markedly passive. Section 2 of Article XI thereof provided:

“SECTION 2. The Auditor General shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source, including trust funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the Government or the provinces or municipalities thereof. He shall keep the general accounts of the Government and preserve the vouchers pertaining thereto. It shall be the duty of the Auditor General to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant. He shall also perform such other functions as may be prescribed by law.”

As clearly shown above, in respect to irregular, unnecessary, excessive or extravagant expenditures or uses of funds, the 1935 Constitution did not grant the Auditor General the power to issue rules and regulations to prevent the same. His was merely to bring that matter to the attention of the proper administrative officer.

The ruling on this particular point, quoted by petitioner from the cases of *Guevarra vs. Gimenez*[32] and *Ramos vs. Aquino*,[33] are no longer controlling as the two (2) were decided in the light of the 1935 Constitution.

There can be no doubt, however, that the audit power of the Auditor General under the 1935 Constitution and the Commission on Audit under the 1973 Constitution authorized them to disallow illegal expenditures of funds or

uses of funds and property. Our present Constitution retains that same power and authority, further strengthened by the definition of the COA's general jurisdiction in Section 26 of the Government Auditing Code of the Philippines[34] and Administrative Code of 1987.[35] Pursuant to its power to promulgate accounting and auditing rules and regulations for the prevention of irregular, unnecessary, excessive or extravagant expenditures or uses of funds,[36] the COA promulgated on 29 March 1977 COA Circular No. 77-55. Since the COA is responsible for the enforcement of the rules and regulations, it goes without saying that failure to comply with them is a ground for disapproving the payment of the proposed expenditure. As observed by one of the Commissioners of the 1986 Constitutional Commission, Fr. Joaquin G. Bernas:[37]

“It should be noted, however, that whereas under Article XI, Section 2, of the 1935 Constitution the Auditor General could not correct ‘irregular, unnecessary, excessive or extravagant’ expenditures of public funds but could only ‘bring [the matter] to the attention of the proper administrative officer.’ under the 1987 Constitution, as also under the 1973 Constitution, the Commission on Audit can ‘promulgate accounting and auditing rules and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive; extravagant, or unconscionable expenditures or uses of government funds and properties.’ Hence, since the Commission on Audit must ultimately be responsible for the enforcement of these rules and regulations, the failure to comply with these regulations can be a ground for disapproving the payment of a proposed expenditure.”

Indeed, when the framers of the last two (2) Constitutions conferred upon the COA a more active role and invested it with broader and more extensive powers, they did not intend merely to make the COA a toothless tiger, but rather envisioned a dynamic, effective, efficient and independent watchdog of the Government.

The issue of the financing charges boils down to the validity of Department of Finance Circular No. 1-87, Department of Finance Circular No. 4-88 and the implementing circulars of the OEA, issued pursuant to Section 8, P.D. No. 1956, as amended by E.O. No. 137, authorizing it to determine “other factors” which may result in cost underrecovery and a consequent reimbursement from the OPSF.

The Solicitor General maintains that, following the doctrine of ejusdem generis, financing charges are not included in “cost underrecovery” and, therefore, cannot be considered as one of the “other factors.” Section 8 of P.D. No. 1956, as amended by E.O. No. 137, does not explicitly define what “cost underrecovery” is. It merely states what it includes. Thus:

“x x x ‘Cost underrecovery’ shall include the following:

- i. Reduction in oil company take as directed by the Board of Energy without the corresponding reduction in the landed cost of oil inventories in the possession of the oil companies at the time of the price change;
- ii. Reduction in internal ad valorem taxes as a result of foregoing government mandated price reductions;
- iii. Other factors as may be determined by the Ministry of Finance to result in cost underrecovery.”

These “other factors” can include only those which are of the same class or nature as the two specifically enumerated in subparagraphs (i) and (ii). A common characteristic of both is that they are in the nature of government mandated price reductions. Hence, any other factor which seeks to be a part of the enumeration, or which could qualify as a cost underrecovery, must be of the same class or nature as those specifically enumerated.

Petitioner, however, suggests that E.O. No. 137 intended to grant the Department of Finance broad and unrestricted authority to determine or define “other factors.”

Both views are unacceptable to this Court.

The rule of ejusdem generis states that “[w]here general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are held to be as applying only to persons or things of the same kind or class as those specifically mentioned.”[38] A reading of subparagraphs (i) and (ii) easily discloses that they do not have a common characteristic. The first relates to price reduction as directed by the Board of Energy while the second refers to reduction in internal ad valorem taxes. Therefore, subparagraph (iii) cannot be limited by the enumeration in these subparagraphs. What should be considered for purposes of determining the “other factors” in subparagraph (iii) is the first sentence of paragraph (2) of the Section which explicitly allows cost underrecovery only if such were incurred as a result of the reduction of domestic prices of petroleum products.

Although petitioner's financing losses, if indeed incurred, may constitute cost under recovery in the sense that such were incurred as a result of the inability to fully offset financing expenses from yields in money market placements, they do not, however, fall under the foregoing provision of P.D. No. 1956, as amended, because the same did not result from the reduction of the domestic price of petroleum products. Until paragraph (2), Section 8 of the decree, as amended, is further amended by Congress, this Court can do nothing. The duty of this Court is not to legislate, but to apply or interpret the law. Be that as it may, this Court wishes to emphasize that as the facts in this case have shown, it was at the behest of the Government that petitioner refinanced its oil import payments from the normal 30-day trade credit to a maximum of 360 days. Petitioner could be correct in its assertion that owing to the extended period for payment, the financial institution which refinanced said payments charged a higher interest, thereby resulting in higher financing expenses for the petitioner. It would appear then that equity considerations dictate that petitioner should somehow be allowed to recover its financing losses, if any, which may have been sustained because it accommodated the request of the Government. Although under Section 29 of the National Internal Revenue Code such losses may be deducted from gross income, the effect of that loss would be merely to reduce its taxable income, but not to actually wipe out such losses. The Government then may consider some positive measures to help petitioner and others similarly situated to obtain substantial relief. An amendment, as aforesaid, may then be in order.

Upon the other hand, to accept petitioner's theory of “unrestricted authority” on the part of the Department of Finance to determine or define “other factors” is to uphold an undue delegation of legislative power, it clearly appearing that the subject provision does not provide any standard for the exercise of the authority. It is a fundamental rule that delegation of legislative power may be sustained only upon the ground that some standard for its exercise is provided and that the legislature, in making the delegation, has prescribed the manner of the exercise of the delegated authority.[39]

Finally, whether petitioner gained or lost by reason of the extensive credit is rendered irrelevant by reason of the foregoing disquisitions. It may nevertheless be stated that petitioner failed to disprove COA's claim that it had in fact gained in the process. Otherwise stated, petitioner failed to sufficiently show that it incurred a loss. Such being the case, how can petitioner claim for reimbursement? It cannot have its cake and eat it too.

II. Anent the claims arising from sales to the National Power Corporation, We find for the petitioner. The respondents themselves admit in their Comment that underrecovery arising from sales to NPC are reimbursable because NPC was granted full exemption from the payment of taxes; to prove this, respondents trace the laws providing for such exemption.[40] The last law cited is the Fiscal Incentives Regulatory Board's Resolution No. 17-87 of 24 June 1987 which provides, in part, “that the tax and duty exemption privileges of the National Power Corporation, including those pertaining to its domestic purchases of petroleum and petroleum products ... are restored effective March 10, 1987.” In a Memorandum issued on 5 October 1987 by the Office of the President, NPC's tax exemption was confirmed and approved.

Furthermore, as pointed out by respondents, the intention to exempt sales of petroleum products to the NPC is evident in the recently passed Republic Act No. 6952 establishing the Petroleum Price Standby Fund to support the OPSF.[41] The pertinent part of Section 2, Republic Act No. 6952 provides:

“SECTION 2. Application of the Fund shall be subject to the following conditions:

(1) That the Fund shall be used to reimburse the oil companies for (a) cost increases of imported crude oil and finished petroleum products resulting from foreign exchange rate adjustments and/or increases in world market prices of crude oil; (b) cost underrecovery incurred as a result of fuel oil sales to the National Power Corporation (NPC); and (c) other cost underrecoveries incurred as may be finally decided by the Supreme Court; x x x”

Hence, petitioner can recover its claim arising from sales of petroleum products to the National Power Corporation.

III. With respect to its claim for reimbursement on sales to ATLAS and MARCOPPER, petitioner relies on Letter of Instruction (LOI) 1416, dated 17 July 1984, which ordered the suspension of payments of all taxes, duties, fees and other charges, whether direct or indirect, due and payable by the copper mining companies in distress to the national government. Pursuant to this LOI, then Minister of Energy, Hon. Geronimo Velasco, issued Memorandum Circular No. 84-11-22 advising the oil companies that Atlas Consolidated Mining Corporation and Marcopper Mining Corporation are among those declared to be in distress.

In denying the claims arising from sales to ATLAS and MARCOPPER, the COA, in its 18 August 1989 letter to Executive Director Wenceslao R. de la Paz, states that “it is our opinion that LOI 1416 which implements the exemption from payment of OPSF imposts as effected by OEA has no legal basis;” [42] in its Decision No. 1171, it ruled that “the CPI (CALTEX) (Caltex) has no authority to claim reimbursement for this uncollected impost because LOI 1416 dated July 17, 1984, ... was issued when OPSF was not yet in existence and could not have contemplated OPSF imposts at the time of its formulation.”[43] It is further stated that: “Moreover, it is evident that OPSF was not created to aid distressed mining companies but rather to help the domestic oil industry by stabilizing oil prices.”

In sustaining COA's stand, respondents vigorously maintain that LOI 1416 could not have intended to exempt said distressed mining companies from the payment of OPSF dues for the following reasons:

“a. LOI 1416 granting the alleged exemption was issued on July 17, 1984. P.D. 1956 creating the OPSF was promulgated on October 10, 1984, while E.O. 137, amending P.D. 1956, was issued on February 25, 1987.

b. LOI 1416 was issued in 1984 to assist distressed copper mining companies in line with the government's effort to prevent the collapse of the copper industry. P.D. 1956, as amended, was issued for the purpose of ‘minimizing frequent price changes brought about by exchange rate adjustments and/or changes in world market prices of crude oil and imported petroleum products’; and

c. LOI 1416 caused the ‘suspension of all taxes, duties, fees, imposts and other charges, whether direct or indirect, due and payable by the copper mining companies in distress to the National and Local Governments ...’ On the other hand, OPSF dues are not payable by (sic) distressed copper companies but by oil companies. It is to be noted that the copper mining companies do not pay OPSF dues. Rather, such imposts are built in or already incorporated in the prices of oil products.”[44]

Lastly, respondents allege that while LOI 1416 suspends the payment of taxes by distressed mining companies, it does not accord petitioner the same privilege with respect to its obligation to pay OPSF dues.

We concur with the disquisitions of the respondents. Aside from such reasons, however, it is apparent that LOI 1416 was never published in the Official Gazette[45] as required by Article 2 of the Civil Code, which reads:

“Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. x x x”

In applying said provision, this Court ruled in the case of Tañada vs. Tuvera: [46]

“WHEREFORE, the Court hereby orders respondents to publish in the Official Gazette all unpublished presidential issuances which are of general application, and unless so published they shall have no binding force and effect.”

Resolving the motion for reconsideration of said decision, this Court, in its Resolution promulgated on 29 December 1986,[47] ruled:

“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.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing laws pursuant also to a valid delegation.

x x x

WHEREFORE, it is hereby declared that all laws as above defined shall immediately upon their approval, or as soon thereafter as possible, be published in full in the Official Gazette, to become effective only after fifteen days from their publication, or on another date specified by the legislature, in accordance with Article 2 of the Civil Code.”

LOI 1416 has, therefore, no binding force or effect as it was never published in the Official Gazette after its issuance or at any time after the decision in the abovementioned cases.

Article 2 of the Civil Code was, however, later amended by Executive Order No. 200, issued on 18 June 1987. As amended, the said provision now reads:

“Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided.”

We are not aware of the publication of LOI 1416 in any newspaper of general circulation pursuant to Executive Order No. 200.

Furthermore, even granting arguendo that LOI 1416 has force and effect, petitioner's claim must still fail. Tax exemptions as a general rule are construed strictly against the grantee and liberally in favor of the taxing authority.[48] The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. The party claiming exemption must therefore be expressly mentioned in the exempting law or at least be within its purview by clear legislative intent.

In the case at bar, petitioner failed to prove that it is entitled, as a consequence of its sales to ATLAS and MARCOPPER, to claim reimbursement from the OPSF under LOI 1416. Though LOI 1416 may suspend the payment of taxes by copper Mining companies, it does not give petitioner the same privilege with respect to the payment of OPSF dues.

IV. As to COA's disallowance of the amount of P130,420,235.00, petitioner maintains that the Department of Finance has still to issue a final and definitive ruling thereon; accordingly, it was premature for COA to disallow it. By doing so, the latter acted beyond its jurisdiction.[49] Respondents, on the other hand, contend that said

amount was already disallowed by the OEA for failure to substantiate it.[50] In fact, when OEA submitted the claims of petitioner for pre-audit, the abovementioned amount was already excluded.

An examination of the records of this case shows that petitioner failed to prove or substantiate its contention that the amount of P130,420,235.00 is still pending before the OEA and the DOF. Additionally, We find no reason to doubt the submission of respondents that said amount has already been passed upon by the OEA. Hence, the ruling of respondent COA disapproving said claim must be upheld.

V. The last issue to be resolved in this case is whether or not the amounts due to the OPSF from petitioner may be offset against petitioner's outstanding claims from said fund. Petitioner contends that it should be allowed to offset its claims from the OPSF against its contributions to the fund as this has been allowed in the past, particularly in the years 1987 and 1988.[51]

Furthermore, petitioner cites, as bases for offsetting, the provisions of the New Civil Code on compensation and Section 21, Book V, Title I-B of the Revised Administrative Code which provides for "Retention of Money for Satisfaction of Indebtedness to Government." [52] Petitioner also mentions communications from the Board of Energy and the Department of Finance that supposedly authorize compensation.

Respondents, on the other hand, citing *Francia vs. IAC and Fernandez*, [53] contend that there can be no offsetting of taxes against the claims that a taxpayer may have against the government, as taxes do not arise from contracts or depend upon the will of the taxpayer, but are imposed by law. Respondents also allege that petitioner's reliance on Section 21, Book V, Title I-B of the Revised Administrative Code is misplaced because "while this provision empowers the COA to withhold payment of a government indebtedness to a person who is also indebted to the government and apply the government indebtedness to the satisfaction of the obligation of the person to the government, like authority or right to make compensation is not given to the private person." [54] The reason for this, as stated in *Commissioner of Internal Revenue vs. Algue, Inc.*, [55] is that money due the government, either in the form of taxes or other dues, is its lifeblood and should be collected without hindrance. Thus, instead of giving petitioner a reason for compensation or set-off, the Revised Administrative Code makes it the respondents' duty to collect petitioner's indebtedness to the OPSF.

Refuting respondents' contention, petitioner claims that the amounts due from it do not arise as a result of taxation because "P.D. 1956, as amended, did not create a source of taxation; it instead established a special fund..., "[56] and that the OPSF contributions do not go to the general fund of the state and are not used for public purpose, i.e., not for the support of the government, the administration of law, or the payment of public expenses. This alleged lack of a public purpose behind OPSF exactions distinguishes such from a tax. Hence, the ruling in the *Francia* case is inapplicable.

Lastly, petitioner cites R.A. No. 6952 creating the Petroleum Price Standby Fund to support the OPSF; the said law provides in part that:

"SECTION 2. Application of the fund shall be subject to the following conditions:

x x x

(3) That no amount of the Petroleum Price Standby Fund shall be used to pay any oil company which has an outstanding obligation to the Government without said obligation being offset first, subject to the requirements of compensation or offset under the Civil Code."

We find no merit in petitioner's contention that the OPSF contributions are not for a public purpose because they go to a special fund of the government. Taxation is no longer envisioned as a measure merely to raise revenue to support the existence of the government; taxes may be levied with a regulatory purpose to provide means for the

rehabilitation and stabilization of a threatened industry which is affected with public interest as to be within the police power of the state.[57] There can be no doubt that the oil industry is greatly imbued with public interest as it vitally affects the general welfare. Any unregulated increase in oil prices could hurt the lives of a majority of the people and cause economic crisis of untold proportions. It would have a chain reaction in terms of, among others, demands for wage increases and upward spiralling of the cost of basic commodities. The stabilization then of oil prices is one of prime concern which the state, via its police power, may properly address.

Also, P.D. No. 1956, as amended by E.O. No. 137, explicitly provides that the source of OPSF is taxation. No amount of semantical juggleries could dim this fact.

It is settled that a taxpayer may not offset taxes due from the claims that he may have against the government.[58] Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off.[59]

We may even further state that technically, in respect to the taxes for the OPSF, the oil companies merely act as agents for the Government in the latter's collection since the taxes are, in reality, passed unto the end-users -- the consuming public. In that capacity, the petitioner, as one of such companies, has the primary obligation to account for and remit the taxes collected to the administrator of the OPSF. This duty stems from the fiduciary relationship between the two; petitioner certainly cannot be considered merely as a debtor. In respect, therefore, to its collection for the OPSF vis-a-vis its claims for reimbursement, no compensation is likewise legally feasible. Firstly, the Government and the petitioner cannot be said to be mutually debtors and creditors of each other. Secondly, there is no proof that petitioner's claim is already due and liquidated. Under Article 1279 of the Civil Code, in order that compensation may be proper, it is necessary that:

- (1) each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
- (2) both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
- (3) the two (2) debts be due;
- (4) they be liquidated and demandable;
- (5) over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

That compensation had been the practice in the past can set no valid precedent. Such a practice has no legal basis. Lastly, R.A. No. 6952 does not authorize oil companies to offset their claims against their OPSF contributions. Instead, it prohibits the government from paying any amount from the Petroleum Price Standby Fund to oil companies which have outstanding obligations with the government, without said obligation being offset first subject to the rules on compensation in the Civil Code.

WHEREFORE, in view of the foregoing, judgment is hereby rendered AFFIRMING the challenged decision of the Commission on Audit, except that portion thereof disallowing petitioner's claim for reimbursement of underrecovery arising from sales to the National Power Corporation, which is hereby allowed.

With costs against petitioner.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Romero, and Nocon, JJ., concur.

Cruz and Bellosillo, JJ., no part.

[1] Petitioner explicitly states in the opening paragraph of the petition that its petition is for review under Section 1, Rule 44 of the Rules of Court.

[2] Section 7 Subdivision A, Article IX; see also Section 35, Chapter 5, Subtitle B, Title I, Book V, Administrative Code of 1987.

[3] The Civil Service Commission, the Commission on Elections and the Commission on Audit.

[4] Land Bank of the Philippines vs. COA, 190 SCRA 154 [1990].

[5] Rollo, 6-7.

[6] Rollo, 65.

[7] Id., 66.

[8] Rollo, 67-68.

[9] Id., 76.

[10] Id., 77.

[11] Rollo, 58-59.

[12] Rollo, 60-62.

[13] Rollo, 78-89.

[14] Id., 89-90.

[15] Rollo, 53-56. Commissioner Fernandez is of the opinion that petitioner should be allowed to recover financing charges stating;

"I find merit in claimants (sic) reliance on and invocation of Department of Finance Circular No. 1-87, dated February 18, 1987, in support of such claims. To my mind, the authority embodied in such circular coupled with the justification therefor as set forth by the Secretary of Finance in his letter of even date to the then Deputy Secretary for Energy Affairs as well as the Memorandum for the President dated November 6, 1989 from the Acting Secretary of Finance, alluded to and subjoined herein, cannot but deserve full faith and credit. I perceive no compelling reason for this Commission to overturn or disturb these pronouncements which treat of a policy matter the resolution which (sic) appropriately pertains to the executive agency concerned, the Department of Finance in this case."

[16] Rollo, 8-9.

[17] Caltex Philippines, Inc. petitioner herein.

[18] Op. cit., 124.

[19] Rollo, 143-185.

[20] Id., 188.

[21] Id., 191.

[22] Rollo, 23.

[23] Rollo, 24-25.

[24] Id., 25.

[25] Rollo, 25-26.

[26] Id., 26.

[27] Citing *Ramos vs. CIR*, 21 SCRA 1282 [1967]; *Sagun vs. PHHC*, 162 SCRA 411 [1988]; *Hijo Plantation, Inc. vs. Central Bank*, 164 SCRA 192 [1988]; *Beautifont, Inc. vs. Court of Appeals*, 157 SCRA 481 [1988].

[28] Citing Section 11, Book V. Administrative Code of 1987; *Guevara vs. Gimenez*, 6 SCRA 807 [1962].

[29] Rollo, 155-164.

[30] Section 1, Subdivision A, Article IX.

[31] Paragraph 1, Section 2, Subdivision D, Article XII.

[32] *Supra*.

[33] 39 SCRA 641 [1971].

[34] P.D. No. 1445.

[35] Section 11, Chapter 4, Subtitle B, Book V.

[36] The 1987 Constitution adds one (1) more category of such expenditure or use -- unconscionable.

[37] *Bernas, J., The Constitution of the Republic of the Philippines; A Commentary*, vol. II, 1988 ed., 372.

[38] *Smith Bell and Co., Ltd. vs. Register of Deeds of Davao*, 96 Phil. 53 [1954], citing *BLACK on Interpretation of Law*. 2nd ed., 203; see also *Republic vs. Migrino*, 189 SCRA 289 [1990].

[39] *Philippine Communications Satellite Corp. vs. Alcuaz, et al.*, 180 SCRA 218 [1989].

[40] Rollo, 176-177.

[41] Id., 184.

[42] Rollo, 62; Annex "C", 3.

[43] Id., 56; Annex "A".

[44] Rollo, 174-176.

[45] As verified from the National Printing Office. A certification to this effect, dated 19 November 1991, signed by Heriberto Bacalla, Chief, Official Gazette Publication, of the National Printing Office, is attached to the rollo.

[46] 136 SCRA 27 [1985].

[47] 146SCRA 446 [1986].

[48] CIR vs. Mitsuibishi Metal Corp., 181 SCRA 214 [1990]; CIR vs. P.J. Kiener Co. Ltd., 65 SCRA 142 [1975].

[49] Rollo, 49.

[50] Id., 173.

[51] Rollo, 42-47.

[52] Id., 48-49.

[53] 162 SCRA 753 [1988].

[54] Op. cit., 171.

[55] 158 SCRA 9 [1988].

[56] Petitioner's Memorandum, 8.

[57] Lutz vs. Araneta, 98 Phil. 148 [1955]; Gaston vs. Republic Planters Bank, 158 SCRA 626 [1988].

[58] Francia vs. IAC, supra.; Republic vs. Mambulao Lumber Co., 4 SCRA 622 [1962].

[59] Cordero vs. Gonda, 18 SCRA 331 [1966].

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