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EN BANC

[G.R. No. 88291. June 8, 1993]

ERNESTO M. MACEDA, *petitioner, vs.* **HON. CATALINO MACARAIG, JR., in his capacity as Executive Secretary, Office of the President, HON. VICENTE JAYME,** ***ETC., ET AL.,*** *respondents.*

SYLLABUS

1. TAXATION; NATIONAL POWER CORPORATION (NPC); EXEMPT FROM ALL FORMS OF DIRECT AND INDIRECT TAXES. — A chronological review of the NPC laws will show that it has been the lawmaker's intention the NPC was to be completely tax exempt from all forms of taxes — direct and indirect. NPC's tax exemption at first applied to the bonds it was authorized to float to finance its operations upon its creation by virtue of C.A. No. 120. When the NPC was authorized to contract with the IBRD for foreign financing, any loans obtained were to be completely tax exempt. After the NPC was authorized to borrow from other sources of funds — aside from issuance of bonds — it was again specifically exempted from all types of taxes "to facilitate payment of its indebtedness." Even when the ceilings for domestic and foreign borrowings were periodically increased, the tax exemption privileges of the NPC were maintained. NPC's tax exemption from real estate taxes was, however, specifically withdrawn by Rep. Act No. 987, as above stated. The exemption was, however, restored by R.A. No. 6395. Section 13, R.A. No. 6395, was very comprehensive in its enumeration of the tax exemptions allowed NPC. Its Section 13(d) is the starting point of this bone of contention among the parties. For easy reference, it is reproduced as follows: "[T]he Corporation is hereby declared exempt: x x x "(d) From all taxes, duties, fees, imposts and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power." P.D. No. 380 added the phrase "directly or indirectly" to said Section 13(d). Then came P.D. No. 938 which

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amended Sec. 13(a), (b), (c) and (d) into one very simple paragraph. It should be noted that Section 13, R.A. No. 6395, provided for tax exemptions for the following items: 13(a) : court of administrative proceedings; 13(b) : income, franchise, realty taxes; 13(c) : import of foreign goods required for its operations and projects; 13(d) : petroleum products used in generation of electric power. P.D. No. 938 lumped up 13(b), 13(c) and 13(d) into the phrase "ALL FORMS OF TAXES, ETC.," included 13(a) under the "was well as" clause and added PNOC subsidiaries as qualified for tax exemptions. This is the only conclusion one can arrive at if he has read all the NPC laws in the order of enactment or issuance as narrated above in part I hereof. President Marcos must have considered all the NPC statues from C.A. No. 120 up to its latest amendments, P.D. No. 380, P.D. No. 395 and P.D. No. 759, AND came up with a very simple Section 13, R.A. No. 6395, as amended BY P.D. No. 938. P.D. No. 938 did not amend the same and so the tax exemption provision in Section 8 (b), R.A. No. 6395, as amended by P.D. NO. 380, still stands. Since the subject matter of this particular Section 8 (B) had to do only with loans and machinery imported, paid for from the proceeds of these foreign loans, *THERE WAS NO OTHER SUBJECT MATTER TO LUMP IT UP WITH*, and so, the tax exemption stood as is — with the express mention of "direct and indirect" tax exemptions. And this "direct and indirect" tax exemption privilege extended to "taxes, fees, imposts, other charges x x x to be imposed" in the further — surely, an indication that the lawmakers wanted the NPC to be exempt from ALL FORMS of taxes — direct and indirect.

2. REMEDIAL LAW; DOCTRINE LAID DOWN IN PULIDO *vs.* PABLO (117 SCRA 16 [1980]) APPLIED BY ANALOGY IN CASE AT BAR. — This Court notes that petitioner brought to the attention of this Court, the matter of the abolition of NPC's tax exemption privileges by P.D. No. 1177 only in his Common Reply/Comment to Private Respondents' "Opposition" and "Comment" to Motion for Reconsideration, four (4) months AFTER the Motion for Reconsideration had been filed. During oral arguments heard on July 9, 1992, he proceeded to discuss this tax exemption withdrawal as explained by then Secretary of Justice Vicente Abad Santos in Opinion No. 133 (S'77). A careful perusal of petitioner's Senate Blue Ribbon Committee Report No. 474, the basis of the petition at bar, fails to yield any mention of said P.D. No. 1177's effect on NPC's tax

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exemption privileges. Applying by analogy *Pulido vs. Pablo*, the Court declares that the matter of P.D. No. 1177 abolishing NPC's tax exemption privileges was not seasonably invoked by the petitioner.

3. TAXATION; NPC; WITHDRAWAL OF TAX EXEMPTION AND REPEAL OF SUBSIDY SCHEME FOR FORMER TAX EXCEPT GOCCs UNDER SECTION 23, PRESIDENTIAL DECREE NO. 1177; EFFECT THEREOF. — The express repeal of tax privileges of any government-owned or controlled corporation (GOCC), NPC included, was reiterated in the fourth whereas clause of P.D. No. 1931's preamble. The subsidy provided for in Section 23, P.D. No. 1177, being inconsistent with Section 2, P.D. No. 1931, was deemed repealed as the Fiscal Incentives Revenue Board was tasked with recommending the partial or total restoration of tax exemptions withdrawn by Section 1, P.D. No. 1931. The Court rules that when P.D. No. 1931 basically reenacted in its Section 1 the first half of Section 23, P.D. No. 1177, on withdrawal of tax exemption privileges of all GOCCs, said Section 1, P.D. No. 1931 was deemed to be a continuation of the first half of Section 23, P.D. No. 1177, although the second half of Section 23, P.D. No. 1177, on the subsidy scheme for former tax exempt GOCCs, had been expressly repealed by Section 2 with its institution of the FIRB recommendation of partial/total restoration of tax exemption privileges. The NPC tax exemption privileges withdrawn by Section 1, P.D. No. 1931, were, therefore, the same NPC tax exemption privileges withdrawn by Section 23, P.D. No. 1177. NPC could no longer obtain a subsidy for the taxes it had to pay. It could, however, under P.D. No. 1931, ask for a total restoration of its tax exemption privileges, which it did, and the same were granted under FIRB Resolutions Nos. 10-85 and 1-86 as approved by the Minister of Finance.

4. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ASSEMBLY; LAW GRANTING TAX EXEMPTION; CONCURRENCE OF MAJORITY OF ALL MEMBERS, REQUIRED; PROVISION DOES NOT APPLY TO LAWS ENACTED BY THE PRESIDENT. — The rule that under the 1973 Constitution "no law granting a tax exemption shall be passed without the concurrence of a majority of all the members of the Batasang Pambansa" does not apply as said P.D. No. 1931 was not passed by the Interim Batasang Pambansa

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but by then President Marcos under His Amendment No. 6 power. P.D. No. 1931 was validly issued by then President Marcos under his Amendment No. 6 authority.

5. TAXATION; PROCEDURAL DUE PROCESS; NOT VIOLATED BY THE RECOMMENDATION AND APPROVAL OF NPC'S TAX EXEMPTION PRIVILEGES DONE BY THE SAME PERSON ACTING IN HIS DUAL CAPACITIES. — The question arises as to whether one can talk about "due process" being violated when FIRB Resolutions Nos. 10-85 and 1-86 were approved by the Minister of Finance when the same were recommended by him in his capacity as Chairman of the Fiscal Incentives Review Board. In the case of the tax exemption restoration of NPC, there is no other comparable entity — not even a single public or private corporation — whose rights would be violated if NPC's tax exemption privileges were to be restored. It should be noted that NPC was not asking to be granted tax exemption privileges for the first time. It was just asking that its tax exemption privileges be restored. It is for these reasons that, at least in NPC's case, the recommendation and approval of NPC's tax exemption privileges under FIRB Resolution Nos. 10-85 and 1-86, done by the same person acting in his dual capacities as Chairman of the Fiscal Incentives Review Board and Minister of Finance, respectively, do not violate procedural due process.

6. ID.; SPECIFIC TAX ON PETROLEUM BOUGHT BY THE NPC; TAX PAYABLE BY OIL COMPANIES SUPPLYING THE SAME. — The Court rules and declares that the oil companies which supply bunker fuel oil to NPC have to pay the taxes impose upon said bunker fuel oil sold to NPC. By the very nature of indirect taxation, the economic burden of such taxation is expected to be passed on through the channels of commerce to the user or consumer of the goods sold. Because, however, the NPC has been exempted from both direct and indirect taxation, the NPC must be held exempted from absorbing the economic burden of indirect taxation. This means, on the one hand, that the oil companies which wish to sell to NPC must absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes. This means also, on the other hand, that the NPC may refuse to pay that part of the "normal" purchase price of bunker fuel oil which represents all or part

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of the taxes previously paid by the oil companies to BIR. If NPC nonetheless purchases such oil from the oil companies — because to do so may be more convenient and ultimately less costly for NPC than NPC itself importing and hauling and storing the oil from overseas — NPC is entitled to be reimbursed by the BIR for that part of the buying price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR.

7. ID.; AD VALOREM TAXES; ISSUE ON ENTITY OBLIGED TO PAY RENDERED MOOT BY ISSUANCE OF EXECUTIVE ORDER NO. 195. — It should be noted at this point in time that the whole issue of who WILL pay these indirect taxes HAS BEEN RENDERED *moot and academic* by E.O. No. 195 issued on June 16, 1987 by virtue of which the *ad valorem* tax rate on bunker fuel oil was reduced to ZERO (0%) PER CENTUM.

8. ID.; NATIONAL INTERNAL REVENUE CODE; RECOVERY OF TAX ERRONEOUSLY OR ILLEGALLY COLLECTED; CLAIM FOR REFUND OR CREDIT, INDISPENSABLE; SUIT MUST BE FILED BEFORE EXPIRATION OF TWO YEARS FROM DATE OF PAYMENT; CASE AT BAR. — The law governing recovery of erroneously or illegally collected taxes is Section 230 of the National Internal Revenue Code of 1977, as amended. A careful examination of petitioner's pleadings and annexes attached thereto does not reveal when the alleged claim for a ₱410,580,000.00. Actually, as the Court sees it, this is a clear case of a "Mexican standoff." We cannot restrain the BIR from refunding said amount because of Our ruling that NPC has both direct and indirect tax exemption privileges. Neither can We order the BIR to refund said amount to NPC as there is no pending petition for review on *certiorari* of a suit for its collection before Us. At any rate, at this point in time, NPC can no longer file any suit to collect said amount EVEN IF it has previously filed a claim with the BIR because it is time-barred under Section 230 of the Internal Revenue Code of 1977, as amended. The date of the Deed of Assignment is June 6, 1986. Even if We were to assume that payment by NPC for the amount of ₱410,580,000.00 had been made on said date, it is clear that more than two (2) years had already elapsed from said date. At the same time, We should note that there is no legal obstacle to the BIR granting, even without a suit by NPC, the tax credit or refund claimed by NPC, assuming

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that NPC's claim had been made seasonably, and assuming the amounts covered had actually been paid previously by the oil companies to the BIR.

APPEARANCES OF COUNSEL

Angara, Abello, Concepcion & Cruz for respondent Pilipinas Shell Petroleum Corporation.

Siguion Reyna, Montecillo & Ongsiako for Caltex.

R E S O L U T I O N

NOCON, *J.*:

Just like lightning which does strike the same place twice in some instances, this matter of indirect tax exemption of the private respondent National Power Corporation (NPC) is brought to this Court a second time. Unfazed by the Decision We promulgated on May 31, 1991[1] petitioner Ernesto Maceda asks this Court to reconsider said Decision. Lest We be criticized for denying due process to the petitioner, We have decided to take a second look at the issues. In the process, a hearing was held on July 9, 1992 where all parties presented their respective arguments. Etched in this Court's mind are the paradoxical claims by both petitioner and private respondents that their respective positions are for the benefit of the Filipino people.

I

A chronological review of the relevant NPC laws, specially with respect to its tax exemption provisions, at the risk of being repetitious is, therefore, in order.

On November 3, 1936, Commonwealth Act No. 120 was enacted creating the National Power Corporation, a public

[1] Penned by Justice Gancayco, concurred in by Justices Narvasa, Melencio-Herrera, Feliciano, Bidin, Medialdea, and Regalado; separate dissenting opinions by Justices Cruz, Paras, and Sarmiento, with Justices Griño-Aquino and Davide joining in the dissent of Justice Sarmiento while Justice Gutierrez joined in the dissents. Chief Justice Fernan and Justice Padilla took no part.

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corporation, mainly to develop hydraulic power from all water sources in the Philippines.[2] The sum of ₱250,000.00 was appropriated out of the funds in the Philippine treasury for the purpose of organizing the NPC and conducting its preliminary work.[3] The main source of funds for the NPC was the flotation of bonds in the capital markets[4] and these bonds

> "x x x issued under the authority of this Act shall be exempt from the payment of all taxes by the Commonwealth of the Philippines, or by any authority, branch, division or political subdivision thereof and subject to the provisions of the Act of Congress, approved March 24, 1934, otherwise known as the Tydings McDuffie Law, which facts shall be stated upon the face of said bonds. x x x."[5]

On June 24, 1938, C.A. No. 344 was enacted increasing to ₱550,000.00 the funds needed for the initial operations of the NPC and reiterating the provision on the flotation of bonds as soon as the first construction of any hydraulic power project was to be decided by the NPC Board.[6] The provision on tax exemption in relation to the issuance of the NPC bonds was neither amended nor deleted.

On September 30, 1939, C.A. No. 495 was enacted removing the provision on the payment of the bond's principal and interest in "gold coins" but adding that payment could be made in United States dollars.[7] The provision on tax exemption in relation to the issuance of the NPC bonds was neither amended nor deleted.

On June 4, 1949, Republic Act No. 357 was enacted authorizing the President of the Philippines to guarantee, absolutely and unconditionally, as primary obligor, the payment of any and all NPC loans.[8] He was also authorized to contract

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[2] Com. Act No. 120, Secs. 1, & 2(g).

[3] Com. Act No. 120, Sec. 11.

[4] Com. Act No. 120, Sec. 2(k).

[5] Com. Act No. 120, Sec. 4, par. 3.

[6] Com. Act No. 344, Sec. 1.

[7] Com. Act No. 495, Sec. 1

[8] Rep. Act No. 357, Sec. 3.

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on behalf of the NPC with the International Bank for Reconstruction and Development (IBRD) for NPC loans for the accomplishment of NPC's corporate objectives[9] and for the reconstruction and development of the economy of the country.[10] It was expressly stated that:

"Any such loan or loans shall be exempt from taxes, duties, fees, imposts, charges, contributions and restrictions of the Republic of the Philippines, its provinces, cities and municipalities."[11]

On the same date, R.A. No. 358 was enacted expressly authorizing the NPC, for the first time, to incur other types of indebtedness, aside from indebtedness incurred by flotation of bonds.[12] As to the pertinent tax exemption provision, the law stated as follows:

"To facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities."[13]

On July 10, 1952, R.A. No. 813 was enacted amending R.A. No. 357 in that, aside from the IBRD, the President of the Philippines was authorized to negotiate, contract and guarantee loans with the Export-Import Bank of Washington, D.C., U.S.A., or any other international financial institution.[14] The tax provision for repayment of these loans, as stated in R.A. No. 357, was not amended.

On June 2, 1954, R.A. No. 987 was enacted specifically to withdraw NPC's tax exemption for real estate taxes. As enacted, the law states as follows:

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[9] Rep. Act No. 357, Sec. 1.

[10] Rep. Act No. 357, Sec. 2.

[11] Rep. Act No. 357, Sec. 8.

[12] Rep. Act No. 358, Sec. 1.

[13] Rep. Act No. 358, Sec. 2.

[14] Rep. Act No. 813, Sec. 1.

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"To facilitate payment of its indebtedness, the National Power Corporation shall he exempt from all taxes, except real property tax, and from all duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities."[15]

On September 8, 1955, R.A. No. 1397 was enacted directing that the NPC projects to be funded by the increased indebtedness[16] should bear the National Economic Council's stamp of approval. The tax exemption provision related to the payment of this total indebtedness was not amended nor deleted.

On June 13, 1958, R.A. No. 2055 was enacted increasing the total amount of foreign loans NPC was authorized to incur to US$100,000,000.00 from the US$50,000,000.00 ceiling in R.A. No. 357.[17] The tax provision related to the repayment of these loans was not amended nor deleted.

On June 13, 1958, R.A. No. 2058 was enacted fixing the corporate life of NPC to December 31, 2000.[18] All laws or provisions of laws and executive orders contrary to said R.A. No. 2058 were expressly repealed.[19]

On June 18, 1960, R.A. No. 2641 was enacted converting the NPC from a public corporation into a stock corporation with an authorized capital stock of ₱100,000,000.00 divided into 1,000,000 shares having a par value of ₱100.00 each, with said capital stock wholly subscribed to by the Government.[20] No tax exemption provision was incorporated in said Act.

On June 17, 1961, R.A. No. 3043 was enacted increasing the above-mentioned authorized capital stock to ₱250,000,000.00

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[15] Rep. Act No. 987, Sec. 2.

[16] Increased to ₱500,000,000.00 from ₱170,500,000.00 in Rep. Act No. 358 (Rep. Act No. 1397, Sec. 1).

[17] Rep. Act. No. 2055, Secs. 1 and 2.

[18] Rep. Act No. 2058, Sec. 1.

[19] Rep. Act No. 2058, Sec. 2.

[20] Rep. Act No. 2641, Sec. 1.

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with the increase to be wholly subscribed by the Government.[21] No tax provision was incorporated in said Act.

On June 17, 1967, R.A No. 4897 was enacted. NPC's capital stock was increased again to ₱300,000,000.00, the increase to be wholly subscribed by the Government. No tax provision was incorporated in said Act.[22]

On September 10, 1971, R.A No. 6395 was enacted revising the charter of the NPC, C.A. No. 120, as amended. Declared as primary objectives of the nation were:

"Declaration of Policy. — Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of the government, including the financial institutions."[23]

Section 4 of C.A. No. 120, was renumbered as Section 8, and divided into Section 8(a) (Authority to incur Domestic Indebtedness) and Section 8 (b) (Authority to Incur Foreign Loans).

As to the issuance of bonds by the NPC, Paragraph No. 3 of Section 8(a), states as follows:

"The bonds issued under the authority of this subsection shall be exempt from the payment of all taxes by the Republic of the Philippines, or by any authority, branch, division or political subdivision thereof which facts shall be stated upon the face of said bonds. x x x."[24]

As to the foreign loans the NPC was authorized to contract, Paragraph No. 5, Section 8(b), states as follows:

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[21] Rep. Act No. 3043, Sec. 1.

[22] Rep. Act No. 4897, Sec. 1.

[23] Rep. Act No. 6395, Sec. 2.

[24] Rep. Act No. 6395, Sec. 8(a).

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"The loans, credits and indebtedness contracted under this subsection and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials and supplies by the Corporation, paid from the proceeds of any loan, credit or indebtedness incurred under this Act, shall also be exempt from all taxes, fees, imposts, other charges and restrictions, including import restrictions, by the Republic of the Philippines, or any of its agencies and political subdivisions."[25]

A new section was added to the charter, now known as Section 13, R.A. No. 6395, which declares the non-profit character and tax exemptions of NPC as follows:

"The Corporation shall be nonprofit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation is hereby declared exempt:

"(a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

"(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

"(c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

"(d) From all taxes, duties, fees, imposts and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power."[26]

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[25] Rep. Act No. 6395, Sec. 8(b).

[26] Rep. Act No. 6395, Sec. 13.

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On November 7, 1972, Presidential Decree No. 40 was issued declaring that the electrification of the entire country was one of the primary concerns of the country. And in connection with this, it was specifically stated that:

"The setting up of transmission line grids and the construction of associated generation facilities in Luzon, Mindanao and major islands of the country, including the Visayas, shall be the responsibility of the National Power Corporation (NPC) as the authorized implementing agency of the State."[27]

"x x x x x x x x x

It is the ultimate objective of the State for the NPC to own and operate as a single integrated system all generating facilities supplying electric power to the entire area embraced by any grid set up by the NPC."[28]

On January 22, 1974, P.D. No. 380 was issued giving extra powers to the NPC to enable it to fulfill its role under aforesaid P.D. No. 40. Its authorized capital stock was raised to ₱2,000,000,000.00,[29] its total domestic indebtedness was pegged at a maximum of ₱3,000,000,000.00 at any one time,[30] and the NPC was authorized to borrow a total of US$1,000,000,000.00[31] in foreign loans.

The relevant tax exemption provision for these foreign loans states as follows:

"The loans, credits and indebtedness contracted under this subsection and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials, supplies and services, by the Corporation, paid from the proceeds of any loan, credit or indebtedness incurred under this Act, shall also he *exempt from all direct and indirect taxes*, fees, imposts,

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[27] Pres. Dec. No. 40, par. 2.

[28] Pres. Dec. No. 40, par. 5.

[29] Pres. Dec. No. 380, Sec. 5.

[30] Pres. Dec. No. 380, Sec. 8.

[31] Pres. Dec. No. 380, Sec. 9, par. 1.

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other charges and restrictions, including import restrictions previously and presently imposed, and to be imposed by the Republic of the Philippines, or any of its agencies and political subdivisions."[32] (Italics supplied)

Sections 13(a) and 13(d) of R.A. No. 6395 were amended to read as follows:

"(a) From the payment of all taxes, duties, fees, imposts, charges and restrictions to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities including the taxes, duties, fees, imposts and other charges provided for under the Tariff and Customs Code of the Philippines, Republic Act Numbered Nineteen Hundred Thirty-Seven, as amended, and as further amended by Presidential Decree No. 34, dated October 27, 1972, and Presidential Decree No. 69, dated November 24, 1972, and costs and service fees in any court or administrative proceedings in which it may be a party;

"x x x x x x x x x

(d) From all taxes, duties, fees, imposts, and all other charges imposed *directly or indirectly* by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization and sale of electric power."[33] (Italics supplied)

On February 26, 1970, P.D. No. 395 was issued removing certain restrictions in the NPC's sale of electricity to its different customers.[34] No tax exemption provision was amended, deleted or added.

On July 31, 1975, P.D. No. 758 was issued directing that ₱200,000,000.00 would be appropriated annually to cover the unpaid subscription of the Government in the NPC authorized capital stock, which amount would be taken from taxes accruing

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[32] Pres. Dec. No. 380, Sec. 9, par. 4.

[33] Pres. Dec. No. 380, Sec. 10.

[34] Pres. Dec. 395, par. 1.

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to the General Fund of the Government, proceeds from loans, issuance of bonds, treasury bills or notes to be issued by the Secretary of Finance for this particular purpose.[35]

On May 27, 1970, P.D. No. 938 was issued

"(I)n view of the accelerated expansion programs for generation and transmission facilities which includes nuclear power generation, the present capitalization of National Power Corporation (NPC) and the ceilings for domestic and foreign borrowings are deemed insufficient;[36]

"x x x x x x x x x

"(I)n the application of the tax exemption provisions of the Revised Charter, the non-profit character of NPC has not been fully utilized because of restrictive interpretation of the taxing agencies of the government on said provisions;[37]

"x x x x x x x x x

"(I)n order to effect the accelerated expansion program and attain the declared objective of total electrification of the country, further amendments of certain sections of Republic Act No. 6395, as amended by Presidential Decrees Nos. 380, 395 and 758, have become imperative;"[38]

Thus NPC's capital stock was raised to ₱8,000,000,000.00,[39] the total domestic indebtedness ceiling was increased to ₱12,000,000,000.00,[40] the total foreign loan ceiling was raised to US$4,000,000,000.00[41] and Section 13 of R.A. No. 6395, was amended to read as follows:

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[35] Pres. Dec. 758, Sec. 1.

[36] Pres. Dec. 938, 1st whereas clause.

[37] Pres. Dec. 938, 4th whereas clause.

[38] Pres. Dec. 938, 6th whereas clause.

[39] Pres. Dec. No. 938, Sec. 5.

[40] Pres. Dec. No. 938, Sec. 6.

[41] Pres. Dec. No. 938, Sec. 8.

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"The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings."[42]

II

On the other hand, the pertinent tax laws involved in this controversy are P.D. Nos. 882, 1177,1931 and Executive Order No. 93 (S'86).

On January 30, 1976, P.D. No. 882 was issued withdrawing the tax exemption of NPC with regard to its imports as follows:

"WHEREAS, importations by certain government agencies, including government-owned or controlled corporation, are exempt from the payment of customs duties and compensating tax; and

"WHEREAS, in order to reduce foreign exchange spending and to protect domestic industries, it is necessary to restrict and regulate such tax-free importations.

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order the following:

"SECTION 1. All importations of any government agency, including government-owned or controlled corporations which are exempt from the payment of customs duties and internal revenue taxes, shall be subject to the prior approval of an Inter-Agency Committee which shall insure compliance with the following conditions:

'(a) That no such article of local manufacture are available in sufficient quantity and comparable quality at reasonable prices;

(b) That the articles to be imported are directly and actually needed and will be used exclusively by the grantee of the

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[42] Pres. Dec. No. 938, Sec. 10.

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exemption for its operations and projects or in the conduct of its functions; and

(c) The shipping documents covering the importation are in the name of the grantee to whom the goods shall he delivered directly by customs authorities.

"x x x x x x x x x

"SEC. 3. The Committee shall have the power to regulate and control the tax-free importation of government agencies in accordance with the conditions set forth in Section 1 hereof and the regulations to be promulgated to implement the provisions of this Decree. Provided, however, That any government agency or government-owned or controlled corporation, or any local manufacturer or business firm adversely affected by any decision or ruling of the Inter-Agency Committee may file an appeal with the Office of the President within ten days from the date of notice thereof. x x x.

"x x x x x x x x x

"SEC. 6. x x x Section 13 of Republic Act No. 6395; xxx. and all similar provisions of all general and special laws and decrees are hereby amended accordingly.

"x x x x x x x x x."

On July 30, 1977, P.D. No. 1177 was issued as it was

"x x x declared the policy of the State to formulate and implement a National Budget that is an instrument of national development, reflective of national objectives, strategies and plans. The budget shall be supportive of and consistent with the socio-economic development plan and shall be oriented towards the achievement of explicit objectives and expected results, to ensure that funds are utilized and operations are conducted effectively, economically and efficiently. The national budget shall be formulated within the context of a regionalized government structure and of the totality of revenues and other receipts, expenditures and borrowings of all levels of government-owned or controlled corporations. The budget shall likewise be prepared within the context of the national long-term plan and of a long-term budget program."[43]

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[43] Pres. Dec. No. 1177, Sec. 4.

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In line with such policy, the law decreed that

"All units of government, including government-owned or controlled corporations, shall pay income taxes, customs duties and other taxes and fees as are imposed under revenue laws: provided, that organizations otherwise exempted by law from the payment of such taxes/duties may ask for a subsidy from the General Fund in the exact amount of taxes/duties due: provided, further, that a procedure shall be established by the Secretary of Finance and the Commissioner of the Budget, whereby such subsidies shall automatically be considered as both revenue and expenditure of the General Fund."[44]

The law also declared that —

"[A]ll laws, decrees, executive orders, rules and regulations or parts thereof which are inconsistent with the provisions of the Decree are hereby repealed and/or modified accordingly."[45]

On June 11, 1984, most likely due to the economic morass the Government found itself in after the Aquino assassination, P.D. No. 1931 was issued to reiterate that:

"WHEREAS, Presidential Decree No. 1177 has already expressly repealed the grant of tax privileges to any government-owned or controlled corporation and all other units of government;"[46] and since there was a

"x x x need for government-owned or controlled corporations and all other units of government enjoying tax privileges to share in the requirements of development, fiscal or otherwise, by paying the duties, taxes and other charges due from them."[47]

it was decreed that:

"SECTION 1. The provisions of special or general law to the contrary notwithstanding, all exemptions from the payment of duties,

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[44] Pres. Dec. No. 1177, Sec. 23.

[45] Pres. Dec. No. 1177, Sec. 90.

[46] Pres. Dec. No. 1931, Fourth Whereas clause.

[47] Pres. Dec. No. 1931, Fifth whereas clause.

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taxes, fees, imposts and other charges heretofore granted in favor of government-owned or controlled corporations including their subsidiaries, are hereby withdrawn.

"SEC. 2. The President of the Philippines and/or the Minister of Finance, upon the recommendation of the Fiscal Incentives Review Board created under Presidential Decree No. 776, is hereby empowered to restore, partially or totally, the exemptions withdrawn by Section 1 above, or otherwise revise the scope and coverage of any applicable tax and duty, taking into account, among others, any or all of the following:

1) The effect on the relative price levels;

2) The relative contribution of the corporation to the revenue generation effort;

3) The nature of the activity in which the corporation is engaged in; or

4) In general the greater national interest to be served.

x x x x x x x x x

SEC. 5. The provisions of Presidential Decree No. 1177 as well as all other laws, decrees, executive orders, administrative orders, rules, regulations or parts thereof which are inconsistent with this Decree are hereby repealed, amended or modified accordingly.

On December 17, 1986, E.O. No. 93 (S'86) was issued with a view to correct presidential restoration or grant of tax exemption to other government and private entities without benefit of review by the Fiscal Incentives Review Board, to wit:

"WHEREAS, Presidential Decree Nos. 1931 and 1955 issued on June 11, 1984 and October 14, 1984, respectively, withdrew the tax and duty exemption privileges, including the preferential tax treatment of government and private entities with certain exceptions, in order that the requirements of national economic development, in terms of fiscal and other resources, may be met more adequately;

"x x x x x x x x x

"WHEREAS, in addition to those whose tax and duty exemption privileges were restored by the Fiscal Incentives Review Board (FIRB), a number of affected entities, government and private, had their

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tax and duty exemption privileges restored or granted by Presidential action without benefit of review by the Fiscal Incentives Review Board (FIRB);

"x x x x x x x x x.

"x x x x x x x x x.

Since it was decided that:

"[A]ssistance to government and private entities may be better provided where necessary by explicit subsidy and budgetary support rather than tax and duty exemption privileges if only to improve the fiscal monitoring aspects of government operations."

it was thus ordered that:

"SECTION 1. The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn, except:

a) those covered by the non-impairment clause of the Constitution;

b) those conferred by effective international agreement to which the Government of the Republic of the Philippines is a signatory;

c) those enjoyed by enterprises registered with:

   (i) the Board of Investment pursuant to Presidential Decree No. 1789, as amended;

   (ii) the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;

   (iii) the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended.

d) those enjoyed by the copper mining industry pursuant to the provisions of letter of Instructions No. 1416;

e) those conferred under the four basic codes namely:

   (i) the Tariff and Customs Code, as amended;

   (ii) the National Internal Revenue Code, as amended;

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(iii) the Local Tax Code, as amended;

(iv) the Real Property Tax Code, as amended;

f) those approved by the President upon the recommendation of the Fiscal Incentives Review Board.

"SECTION 2. The Fiscal Incentives Review Board created under Presidential Decree No. 776, as amended, is hereby authorized to:

a) restore tax and/or duty exemptions withdrawn hereunder in whole or in part;

b) revise the scope and coverage of tax and/or duty exemption that may be restored;

c) impose conditions for the restoration of tax and/or duty exemption;

d) prescribe the date or period of effectivity of the restoration of tax and/or duty exemption;

e) formulate and submit to the President for approval, a complete system for the grant of subsidies to deserving beneficiaries, in lieu of or in combination with the restoration of tax and duty exemptions or preferential treatment in taxation, indicating the source of funding therefor, eligible beneficiaries and the terms and conditions for the grant thereof taking into consideration the international commitment of the Philippines and the necessary precautions such that the grant of subsidies does not become the basis for countervailing action.

"SECTION 3. In the discharge of its authority hereunder, the Fiscal Incentives Review Board shall take into account any or all of the following considerations:

a) the effect on relative price levels;

b) relative contribution of the beneficiary to the revenue generation effort;

c) nature of the activity the beneficiary is engaged; and

d) in general, the greater national interest to be served.

"x x x x x x x x x

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"SECTION 5. All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly."

E.O. No. 93 (S'86) was decreed to be effective[48] upon the promulgation of the rules and regulations, to be issued by the Ministry of Finance.[49] Said rules and regulations were promulgated and published in the Official Gazette on February 23, 1987. These became effective on the 15th day after publication[50] in the Official Gazette,[51] which 15th day was March 10, 1987.

III

Now, to some definitions. We refer to the very simplistic approach that all would-be lawyers, learn in their TAXATION I course, which for convenient reference, is as follows:

Classifications or Kinds of Taxes:

According to Persons who pay or who bear the burden:

a. Direct Tax — that where the person supposed to pay the tax really pays it, *WITHOUT* transferring the burden to someone else.

   Examples: Individual income tax, corporate income tax, transfer taxes (estate tax, donor's tax), residence tax, immigration tax

b. Indirect Tax — that where the tax is imposed upon goods *BEFORE* reaching the consumer who ultimately pays for it, not as a tax, but as a part of the purchase price.

   Examples: The internal revenue indirect taxes (specific tax, percentage taxes, VAT) and the tariff and customs indirect taxes (import duties, special import tax and other dues)[52]

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[48] Exec. Order No. 93 (S'86), Sec. 6.

[49] Exec. Order No. 93, Sec. 4.

[50] Rule V, Rules and Regulation to Implement Exec. Order No. 93.

[51] 83 O.G. 8, pp. 722-725.

[52] PARAS, *TAXATION FUNDAMENTALS,* 24-25 (1966).

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IV

To simplify matters, the issues raised by petitioner in his motion for reconsideration can be reduced to the following:

(1) What kind of tax exemption privileges did NPC have?

(2) For what periods in time were these privileges being enjoyed?

(3) If there are taxes to be paid, who shall pay for these taxes?

V

Petitioner contends that P.D. No. 938 repealed the indirect tax exemption of NPC as the phrase "all forms of taxes, *etc*.," in its Section 10, amending Section 13, R.A. No. 6395, as amended by P.D. No. 380, does not expressly include "indirect taxes."

His point is not well-taken.

A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax exempt from all forms of taxes-direct and indirect.

NPC's tax exemption at first applied to the bonds it was authorized to float to finance its operations upon its creation by virtue of C.A. No. 120.

When the NPC was authorized to contract with the IBRD for foreign financing, any loans obtained were to be completely tax exempt.

After the NPC was authorized to borrow from other sources of funds — aside from issuance of bonds — it was again specifically exempted from all types of taxes "to facilitate payment of its indebtedness." Even when the ceilings for domestic and foreign borrowings were periodically increased, the tax exemption privileges of the NPC were maintained.

NPC's tax exemption from real estate taxes was, however, specifically withdrawn by Rep. Act No. 987, as above stated. The exemption was, however, restored by R.A. No. 6395.

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Section 13, R.A. No. 6395, was very comprehensive in its enumeration of the tax exemptions allowed NPC. Its Section 13(d) is the starting point of this bone of contention among the parties. For easy reference, it is reproduced as follows:

"[T]he Corporation is hereby declared exempt:

"x x x x x x x x x

"(d) From all taxes, duties, fees, imposts and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power."

P.D. No. 380 added the phrase "directly or indirectly" to said Section 13(d), which now reads as follows:

"x x x x x x x x x

"(d) From all taxes, duties, fees, imposts, and all other charges imposed *directly or indirectly* by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization and sale of electric power." (Italics supplied)

Then came P.D. No. 938 which amended Sec. 13 (a), (b), (c) and (d) into one very simple paragraph as follows:

"The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of *ALL FORMS OF* taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." (Italics supplied)

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Petitioner reminds Us that:

"It must be borne in mind that Presidential Decree Nos. 380 and 938 were issued by one man, acting as both the Executive and legislative.[53]

"x x x x x x x x x

"[S]ince both presidential decrees were made by the same person, it would have been very easy for him to retain the same or similar language used in P.D. No. 380 in P.D. No. 938 if his intention were to preserve the indirect tax exemption of NPC.[54]

Actually, P.D. No. 938 attests to the ingeniousness of then President Marcos no matter what his faults were. It should be noted that Section 13, R.A. No. 6395, provided for tax exemptions for the following terms:

13(a) : court or administrative proceedings;
13(b) : income, franchise, realty taxes;
13(c) : import of foreign goods required for its operations and projects;
13(d) : petroleum products used in generation of electric power.

P.D. No. 938 lumped up 13(b), 13(c) and 13(d) into the phrase "ALL FORMS OF TAXES, *ETC*.," included 13(a) under the "as well as" clause and added PNOC subsidiaries as qualified for tax exemptions.

This is the only conclusion one can arrive at if he has read all the NPC laws in the order of enactment or issuance as narrated above in part I hereof. President Marcos must have considered all the NPC statutes from C.A. No. 120 up to its latest amendments, P.D. No. 380, P.D. No. 395 and P.D. No. 759, AND came up[55] with a very simple Section 13, R.A. No. 6395, as amended by P.D. No. 938.

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[53] *Rollo*, p. 687; Motion for Reconsideration, p. 12.

[54] *Rollo*, p. 688; Motion for Reconsideration, p. 13.

[55] Statutes are considered to be in *pari materia* — to pertain to the same subject matter — when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object.

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One common theme in all these laws is that the NPC must be enabled to pay its indebtedness[56] which, as of P.D. No. 938, was ₱12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved.

They may be independent or amendatory in form; they may be complete enactments dealing with a single, limited subject matter or sections of a code or revision; or they may be combination of these. (2 Sutherland Statutory Construction, 2nd Ed., Sec. 5202, p. 535)

"x x x x x x x x x

"Statutes in *pari materia*, although some may be special and some general, in the event one of them is ambiguous or uncertain, are to be construed together, even if the various statutes have not been enacted simultaneously, and do not refer to each other expressly, and although some of them have been repealed or have expired, or held unconstitutional, or invalid. (Crawford, Statutory Construction, Sec. 231, p. 431.)

"x x x x x x x x x

The reasons which support this role are twofold. In the first place, all the enactments of the same legislature on the general subject-matter are to be regarded as parts of one uniform system. Later statutes are considered as supplementary or complementary to the earlier enactments. In the passage of each act, the legislative body must be supposed to have had in mind and in contemplation the existing legislation on the same subject, and to have shaped its new enactment with reference thereto. Secondly, the rule derives support from the principle which requires that the interpretation of a statute shall be such, if possible, as to avoid any repugnancy or inconsistency between different enactments of the same legislature. To achieve this result, it is necessary to consider all previous acts relating to the same matters, and to construe the act in hand so as to avoid, as far as it may be possible, any conflict between them. Hence for example, when the legislature has used a word in a statute in one sense and with one meaning, and subsequently uses the same word in legislating on the same subject matter, it will be understood as using the word in the same sense, unless there is something in the context or in the nature of things to indicate that it intended a different meaning thereby. (Black on Interpretation of Laws, 2nd Ed., pp. 232-234) FRANCISCO, *STATUTORY CONSTRUCTION*, 287-288 (1986).

[56] The NPC is the implementing arm of the State in its policy of electrification of the entire country. Its authorized capital stock and total local and foreign debt ceiling have, therefore, been regularly raised to provide NPC with massive fund flows to achieve said policy.

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By virtue of P.D. No. 938, NPC's capital stock was raised to ₱8 Billion. It must be remembered that to pay for the government share in its capital stock P.D. No. 758 was issued mandating that ₱200 Million would be appropriated annually to cover the said unpaid subscription of the Government in NPC's authorized capital stock. And significantly one of the sources of this annual appropriation of ₱200 million is TAX MONEY accruing to the General Fund of the Government. It does not stand to reason then that former President Marcos would order ₱200 Million to be taken partially or totally from tax money to be used to pay the Government subscription in the NPC, on one hand, and then order the NPC to pay all its indirect taxes, on the other.

The above conclusion that then President Marcos lumped up Sections 13 (b), 13 (c) and 13 (d) into the phrase "ALL FORMS OF" is supported by the fact that he did not do the same for the tax exemption provision for the foreign loans to be incurred.

The tax exemption on foreign loans found in Section 8(b), R.A. No. 6395, reads as follows:

"The loans, credits and indebtedness contracted under this subsection and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials and supplies by the Corporation, paid from the proceeds of any loan, credit or indebtedness incurred under this Act, shall also be exempt from all taxes, fees, imposts, other charges and restrictions, including import restrictions, by the Republic of the Philippines, or any of its agencies and political subdivisions."[57]

The same was amended by P.D. No. 380 as follows:

"The loans, credits and indebtedness contracted under this subsection and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials, supplies and services, by the Corporation, paid from the proceeds of any loan, credit or indebtedness incurred under this

[57] Rep. Act No. 6395, Sec. 8(b), par. 5.

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Act, shall also be exempt from all *direct and indirect* taxes, fees, imposts, other charges and restrictions, including import restrictions *previously and presently imposed, and to be imposed* by the Republic of the Philippines, or any of its agencies and political subdivisions."[58] (Italics supplied)

P.D. No. 938 did not amend the same[59] and so the tax exemption provision in Section 8 (b), R.A. No. 6395, as amended by P.D. No. 380, still stands. Since the subject matter of this particular Section 8 (b) had to do only with loans and machinery imported, paid for from the proceeds of these foreign loans, *THERE WAS NO OTHER SUBJECT MATTER TO LUMP IT UP WITH*, and so, the tax exemption stood as is — with the express mention of "direct and indirect" tax exemptions. And this "direct and indirect" tax exemption privilege extended to "taxes, fees, imposts, other charges x x x to be imposed" *in the future* — surely, an indication that the lawmakers wanted the NPC to be exempt from ALL FORMS of taxes — direct and indirect.

It is crystal clear, therefore, that NPC had been granted tax exemption privileges for both direct and indirect taxes under P.D. No. 938.

VI

Five (5) years on into the now discredited New Society, the Government decided to rationalize government receipts and expenditures by formulating and implementing a National Budget.[60] The NPC, being a government owned and controlled corporation had to shed off its tax exemption status privileges under P.D. No. 1177. It was, however, allowed to ask for a subsidy from the General Fund in the exact amount of taxes/ duties due.

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[58] Rep. Act No. 6395, Sec. 8(b), par. 5. was deleted and paragraph 5, Sec. 8(b) became paragraph 4, Section 8(b), as amended by Pres. Dec. No. 380.

[59] "SEC. 8. The first paragraph of Section 8(b) of the same Act is hereby further amended and a new paragraph shall be inserted between the third and fourth paragraph of said section which shall both read as follows; x x x.

[60] See Pres. Dec. No. 1177, Sec. 4.

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Actually, much earlier, P.D. No. 882 had already repealed NPC's tax-free importation privileges. It allowed, however, NPC to appeal said repeal with the Office of the President and to avail of tax-free importation privileges under its Section 1, subject to the prior approval of an Inter-Agency Committee created by virtue of said P.D. No. 882. It is presumed that the NPC, being the special creation of the State, was allowed to continue its tax-free importations.

This Court notes that petitioner brought to the attention of this Court, the matter of the abolition of NPC's tax exemption privileges by P.D. No. 1177[61] only in his Common Reply/ Comment to Private Respondents' "Opposition" and "Comment" to Motion for Reconsideration, four (4) months AFTER the Motion for Reconsideration had been filed. During oral arguments heard on July 9, 1992, he proceeded to discuss this tax exemption withdrawal as explained by then Secretary of Justice Vicente Abad Santos in Opinion No. 133 (S'77).[62] A careful perusal of petitioner's Senate Blue Ribbon Committee Report No. 474, the basis of the petition at bar, fails to yield any mention of said P.D. No. 1177's effect on NPC's tax exemption privileges.[63] Applying by analogy *Pulido vs. Pablo*,[64] the Court declares that the matter of P.D. No. 1177 abolishing NPC's tax exemption privileges was not seasonably invoked[65] by the petitioner.

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[61] *Rollo*, p. 783.

[62] T.S.N., July 9, 1992, pp 19-21.

[63] *Rollo*, pp. 53-1 19. In the Report submitted to the Senate Blue Ribbon Committee, the discussion centered on NPC's tax exemption privileges being abolished by Pres. Dec. No. 1931 in paragraphs 11, 37, 81, 83.1 and F.1. Pres. Dec. No. 1177 was mentioned in paragraph C(2) in the Recommendation portion but only by way of its state policy being made a model for a future bill to be filed by the Senators involved in the investigation.

[64] 117 SCRA 16 (1980).

[65] In this case, Judge Magno Pulido of the then CFI of Alaminos, Pangasinan, Branch XIII, promulgated a decision on May 17, 1974 in Criminal Case No. 266-A entitled "*People vs. Bantolino*." Bantolino filed a complaint against the judge charging him with ignorance of the law because his sentence was "with subsidiary imprisonment." The case was dismissed

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Be that as it may, the Court still has to discuss the effect of P.D. No. 1177 on the NPC tax exemption privileges as this statute has been reiterated twice in P.D. No. 1931. The express repeal of tax privileges of any government-owned or controlled corporation (GOCC), NPC included, was reiterated in the fourth whereas clause of P.D. No. 1931's preamble. The subsidy provided for in Section 23, P.D. No. 1177, being inconsistent with Section 2, P.D. No. 1931, was deemed repealed as the Fiscal Incentives Revenue Board was tasked with recommending the partial or total restoration of tax exemptions withdrawn by Section 1, P.D. No. 1931.

The records before Us do not indicate whether or not NPC asked for the subsidy contemplated in Section 23, P.D. No. 1177. Considering, however, that under Section 16 of P.D. No. 1177, NPC had to submit to the Office of the President its request for the ₱200 million mandated by P.D. No. 758 to be appropriated annually by the Government to cover its unpaid subscription to the NPC authorized capital stock and that under Section 22, of the same P.D. No. NPC had to likewise submit

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after respondent judge therein stated that he had corrected "with" to "without" but Bantolino's lawyer, Atty. Pulido, refused to return his (Atty. Pulido) copy for a corrected copy.

Later, Atty. Pulido filed another charge against Judge Pablo, this time, for falsifying a Court of Appeal's decision (re Bantolino's appeal with the Com. Act No.) and minutes of court hearings as well as insertions in the record of a false commitment order. Respondent judge pleaded, among others, *res adjudicata*.

The Court made a distinction between the two administrative complaints and concluded that there was no *res adjudicata*. *On the procedural aspect involved,* the Court stated:

"Furthermore, the defense of *res adjudicata* was not seasonably invoked.

"It may be noted that respondent Judge initially raised the defense of *res adjudicata* only in the motion for reconsideration dated November 8,1981. Atty. Pulido filed this complaint on April 6, 1978. Respondent failed to set up the defense of *res adjudicata* when he filed his comment dated June 19, 1974 in compliance with the first indorsement dated June 3, 1974 of the then Assistant to the Judicial Consultant, now Deputy Court Administrator Arturo B. Buena. Such failure to interpose the defense of *res adjudicata* at the earliest opportunity is fatal as it deemed waived."

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to the Office of the President its internal operating budget for review due to capital inputs of the government (P.D. No. 758) and to the national government's guarantee of the domestic and foreign indebtedness of the NPC, it is clear that NPC was covered by P.D. No. 1177.

There is reason to believe that NPC availed of the subsidy granted tax exempt GOCCs that suddenly found themselves having to pay taxes. It will be noted that Section 23, P.D. No. 1177, mandated that the Secretary of Finance and the Commissioner of the Budget had to establish the necessary procedures to accomplish the tax payment/tax subsidy scheme of the Government. In effect, NPC did not put out any cash to pay any tax as it got from the General Fund the amounts necessary to pay the different revenue collectors for the taxes it had to pay.

In his Memorandum filed July 16,1992, petitioner submits:

"[T]hat with the enactment of P.D. No. 1177 on July 30, 1977, the NPC lost all its duty and tax exemptions, whether direct or indirect. And so there was nothing to be withdrawn or to be restored under P.D. No. 1931, issued on June 11, 1984. This is evident from Sections 1 and 2 of said P.D. No. 1931 which reads:

> 'Section 1.The provisions of special or general law to the contrary notwithstanding, all exemptions from the payment of duties, taxes, fees, imports and other charges heretofore granted in favor of government-owned or controlled corporations including their subsidiaries are hereby withdrawn.
>
> 'Section 2.The President of the Philippines and/or the Minister of Finance, upon the recommendation of the Fiscal Incentives Review Board created under P.D. No. 776, is hereby empowered to restore partially or totally, the exemptions withdrawn by Section 1 above. x x x'

"Hence, P.D. No. 1931 did not have any effect nor did it change NPC's status. Since it had already lost all its tax exemptions privilege with the issuance of P.D. No. 1177 seven (7) years earlier or on July 30, 1977, there were no tax exemptions to be withdrawn by Section 1 which could later be restored by the Minister of Finance upon the recommendation of the FIRB under Section 2 of P.D. No. 1931. Consequently, FIRB resolutions No. 10-85, and 1-86, were all illegally

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and invalidly issued since FIRB acted beyond their statutory authority by creating and not merely restoring the tax exempt status of NPC. The same is true for FIRB Res. No. 17-87 which restored NPC's tax exemption under E.O. No. 93 which likewise abolished all duties and tax exemptions but allowed the President upon recommendation of the FIRB to restore those abolished."

The Court disagrees.

Applying by analogy the weight of authority that:

"When a revised and consolidated act reenacts in the same or substantially the same terms the provisions of the act or acts so revised and consolidated, the revision and consolidation shall be taken to be a continuation of the former act or acts, although the former act or acts may be expressly repealed by the revised and consolidated act; and all rights and liabilities under the former act or acts are preserved and may be enforced."[66]

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[66] 73 Am Jur 2d 518, Sec. 410, citing *United States v. Grainger*, 346 US 235, 97 L ed 1575, 735 Ct 1069; *State v. Bean*, 159 Me 455, 195 A2d 68; *State v. Holland*, 202 Or 656, 277 P2d 386.

For example, *State vs. Bean* was an action by the State to recover for goods and services rendered an inmate of a state hospital.

The defendant was committed to the Augusta State Hospital on September 21, 1949 by order of court after he had been found not guilty of the commission of a crime by reason of insanity.

The defendant was confined when the prevailing laws were R.S. Ch. 27, Sec. 121 which provided that 'the person so committed shall be there supported at his own expense, if he has sufficient means; otherwise at the expense of the State,' and R.S. Ch. 27, Sec. 139 which provided that the State may recover from the insane, if able, or from persons legally liable for his support, the reasonable expenses of his support in either insane hospital.' R.S. Ch. 27, Sec. 121, was expressly repealed by P.L. 1961, Ch. 304, Sec. 17 while R.S. Ch. 27, Sec. 139 was expressly repealed by P.L. 1961, Ch. 304, Sec. 26.

However, by P.L. 1961, Ch. 304, Secs. 4 and 5, the legislature simultaneously enacted amendments which in the case of Sec. 4 thereof charged the Department of Mental Health and Corrections with the duty of determining the ability of the patient to pay for his support and of established rates and fees therefor, and in the case of Sec. 5, it provided that 'such fees charged shall be a debt of the patient or any person legally liable for his support.

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the Court rules that when P.D. No. 1931 basically reenacted in its Section 1 the first half of Section 23, P.D. No. 1177, on withdrawal of tax exemption privileges of all GOCCs, said Section 1, P.D. No. 1931 was deemed to be a continuation of the first half of Section 23, P.D. No. 1177, although the second half of Section 23, P.D. No. 1177, on the subsidy scheme for former tax exempt GOCCs, had been expressly repealed by Section 2 with its institution of the FIRB recommendation of partial/total restoration of tax exemption privileges.

The NPC tax exemption privileges withdrawn by Section 1, P.D. No. 1931, were, therefore, the same NPC tax exemption privileges withdrawn by Section 23, P.D. No. 1177. NPC could

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It was only on January 20, 1960 that the hospital billed the defendant for his stay from September 21, 1949 in the amount of $6651.72. Plaintiff filed on October 26, 1962 a case to recover said amount. Defendant disclaimed liability by arguing that the enactment of P.L. 1961, Ch. 304 was to terminate his liability for board and care furnished prior to its enactment.

The State of Maine's Supreme Judicial Court rebuffed the defendant and held that:

"[I]n the instant case P.L. 1961, Ch. 304 was intended to be a revision and condensation of the statutes relating to the Department of Mental Health and Corrections by which the substance of the right of the State of Maine to reimbursement for care and support from the criminally insane in accordance with 'means' or 'ability' to pay remained undisturbed. We are satisfied that it was the intention of the legislature that there should be no moment when the right to such reimbursement did not exist. We think, the governing principle was well stated in 50 Am. Jur. 559, Sec. 555;

'It is a general rule of law that where a statute is repealed and all or some of its provisions are at the same time re-enacted, the re-enactment is considered a reaffirmance of the old law, and a neutralization of the repeal, so that the provisions of the repealed act which are thus re-enacted continue in force without interruption, and all rights and liabilities incurred thereunder are preserved and may be enforced. *Similarly, the rule of construction applicable to acts which revise and consolidate other acts is, that* when the revised and consolidated act reenacts in the same or substantially the same terms the provisions of the act or acts so revised and consolidated, the revision and consolidation shall be taken to be a continuation of the former act or acts, although the former act or acts may be expressly repealed by the revised and consolidated act; and all rights and liabilities under the former act or acts are preserved and may be enforced.' (*State vs. Bean*, 195 A2d 68, 71, 72; Italics supplied)

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no longer obtain a subsidy for the taxes it had to pay. It could, however, under P.D. No. 1931, ask for a total restoration of its tax exemption privileges, which it did, and the same were granted under FIRB Resolutions Nos. 10-85[67] and 1-86[68] as approved by the Minister of Finance.

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[67] "BE IT RESOLVED, AS IT IS HEREBY RESOLVED, That:

1. Effective June 11, 1984, the tax and duty exemption privileges enjoyed by the National Power Corporation under Com. Act No. 120 as amended are restored up to June 30, 1985.

2. Provided, That this restoration does not apply to the following:

a. importations of fuel oil (crude equivalent) and coal as per FIRB Resolution No. 1-84;

b. commercially-funded importations; and

c. interest income derived from any investment source.

3. Provided further, That in case of importations funded by international financing agreements, the NPC is hereby required to furnish the FIRB on a periodic basis the particulars of items received or to be received through such arrangements, of purposes of tax and duty exemption privileges.

(SGD.) ALFREDO PIO DE RODA, JR.
Acting Minister of Finance
Acting Chairman, FIRB

SUBJECT: *National Power Corporation (NPC)*"

[68] "BE IT RESOLVED, AS IT IS HEREBY RESOLVED: That

1. Effective July 1, 1985, the tax and duty exemption privileges enjoyed by the National Power Corporation (NPC) under Commonwealth Act No. 120, as amended, are restored; *Provided*, That importations of fuel oil (crude oil equivalent) and coal of the herein grantee shall be subject to the basic and additional import duties; *Provided, further*, That the following shall remain fully taxable:

a. Commercially funded importations; and

b. Interest income derived by said grantee from bank deposits and yield or any other monetary benefits from deposit substitutes, trust funds and other similar arrangements.

2. The NPC as a government corporation is exempt from the real property tax on land and improvements owned by it provided that the beneficial use of the property is not transferred to another pursuant to the provisions of Sec. 10(a) of the Real Property Tax Code, as amended.

(SGD.) CESAR E.A. VIRATA
Minister of Finance
Chairman, FIRB

SUBJECT: *National Power Corporation*."

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Consequently, contrary to petitioner's submission, FIRB Resolutions Nos. 10-85 and 1-86 were both legally and validly issued by the FIRB pursuant to P.D. No. 1931. FIRB did not create NPC's tax exemption status but merely restored it.[69]

Some quarters have expressed the view that P.D. No 1931 was illegally issued under the now rather infamous Amendment No. 6[70] as there was no showing that President Marcos' encroachment on legislative prerogatives was justified under the then prevailing condition that he could legislate "only if the Batasang Pambansa 'failed or was unable to act inadequately on any matter that in his judgment required immediate action' to meet the 'exigency'."[71]

Actually under said Amendment No. 6, then President Marcos could issue decrees not only when the Interim Batasang Pambansa failed or was unable to act adequately on any matter for any reason that in his (Marcos') judgment required immediate action, but also when there existed a grave emergency or a threat or thereof. It must be remembered that said Presidential Decree was issued only around nine (9) months after the Philippines unilaterally declared a moratorium on its foreign debt payments[72] as a result of the economic crisis triggered by a loss of confidence in the government brought about by the Aquino assassination.

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[69] Note should be taken that FIRB Resolution No. 10-85 covered the period from June 11, 1984 up to June 30, 1985 while FIRB Resolution No. 1-86 covered the period from July 1, 1985 up to March 10, 1987.

[70] "Whenever in the judgment of the President, there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instruction which shall form part of the law of the land."

[71] *Rollo*, p. 652.

[72] "The Philippines and the International Monetary Fund (IMF) have failed in talks here to finalize an agreement on an $630 million standby credit badly needed by the Philippines, informed sources close to the talks told Reuters yesterday.

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The Philippines was then trying to reschedule its debt payments.[73] One of the big borrowers was the NPC[74] which had a US$2.1 billion white elephant of a Bataan Nuclear Power Plant on its back.[75] From all indications, it must have been this grave emergency of a debt rescheduling which compelled Marcos to issue P.D. No. 1931, under his Amendment 6 power.[76]

The rule, therefore, that under the 1973 Constitution "no law granting a tax exemption shall be passed without the

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"Talks on the credit began in October when the Philippines declared a moratorium on repayments on its $26-billion foreign debt and asked creditor banks to reschedule some of the debt." (Times Journal, June 21, 1984)

[73] "The Philippines will not default in the payment of its $25-billion foreign debt because it could be branded as an outlaw in the international community, President Marcos said yesterday." (Times Journal, June 18, 1984)

[74] "WASHINGTON, D.C. — The Philippines and a consortium of international banks have signed in New York an agreement restructuring $2.9 billion in maturing short and medium term loans of the Central Bank and six other government corporations.

"The amount restructured represents 90 percent of the public sector loans to be restructured with international banks.

"Included in the restructuring were the loans of the Philippine National Bank (PNB), National Investment Development Corp. (NIDC), Development Bank of the Philippines (DBP), Philippine National Oil Corp. (PNOC), National Power Corporation (NAPOCOR) and Philippine Airlines (PAL)." (Express, January 12, 1986)

[75] "The $2.1 billion BNPP, nestled on a plateau hugging the South China Sea, is planned to generate 620 megawatts for the Luzon grid. The 'people power' revolt in 1986, however, toppled the plant's proponent, then President Marcos, from power.

"So many technical defects were said to have been discovered in the plant, and this 'most prodigious' project of the government-owned National Power Corp. was mothballed and has remained so up to the present. It is a "white elephant" and the country continues to pay a huge interest to its builder, Westinghouse, every month." (Manila Bulletin, July 15, 1992)

[76] "President Marcos issued four decrees yesterday, among them Decree No. 1934 (should be 1939) amending Rep. Act No. 4850 (should be Rep. Act No. 4860) to allow an increase in the ceiling on direct foreign borrowings of the government from $5 billion to $10 billion.

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concurrence of a majority of the Batasang Pambansa"[77] does not apply as said P.D. No. 1931 was not passed by the Interim Batasang Pambansa but by then President Marcos under his Amendment No. 6 power.

P.D. No. 1931 was, therefore, validly issued by then President Marcos under his Amendment No. 6 authority.

Under E.O. No. 93 (S'86) NPC's tax exemption privileges were again clipped by, this time, President Aquino. Its Section 2 allowed the NPC to apply for the restoration of its tax exemption privileges. The same was granted under FIRB Resolution No. 17-87[78] dated June 24, 1987 which restored NPC's tax

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"It would allow him to exclude specific categories of external debt from the debt service limitation whenever necessary in connection with the general rescheduling or refinancing of foreign credits.

"The decree also increases the ceiling on the government's guarantee from the present $2.5. billion to $7.5 billion.

"It authorizes the government's guarantee of external debts of government corporations.

"He also issued:

1. Decree No. 1932 (should be No. 1937) amending the Central Bank charter to allow it greater flexibility in administering the monetary, banking and credit system and to give a policy direction in the areas of money, banking and credit.

2. Decree No. 1933 (should be No. 1938) clothing the government with expanded authority to guarantee foreign loans of the Central Bank.

3. Decree No. 1936 (should be No. 1939) authorizing the Credit Information Bureau, to secure credit information on individuals and institutions in the possession of government and private entities.

(Manila Bulletin, June 29, 1984)

[77] "Section 17(4), Article VIII, 1973 Constitution.

[78] "BE IT RESOLVED AS IT IS HEREBY RESOLVED, That the tax and duty exemption privileges of the National Power Corporation, including those pertaining to its domestic purchases of petroleum and petroleum products, granted under the terms and conditions of Commonwealth Act No. 120 (Creating the National Power Corporation, defining its powers, objectives and functions, and for other purposes), as amended, are restored effective March 10, 1987, subject to the following conditions:

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exemption privileges effective, starting March 10, 1987, the date of effectivity of E.O. No. 93 (S'86).

FIRB Resolution No. 17-87 was approved by the President on October 5, 1987.[79] There is no indication, however, from the records of the case whether or not similar approvals were given by then President Marcos for FIRB Resolutions Nos. 10-85 and 1-86. This has led some quarters to believe that a "travesty of justice" might have occurred when the Minister of Finance approved his own recommendation as Chairman of the Fiscal Incentives Review Board as what happened in *Zambales Chromite vs. Court of Appeals*[80] when the Secretary of Agriculture and Natural Resources approved a decision earlier rendered by him when he was the Director of Mines,[81] and in

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1. The restoration of the tax and duty exemption privilege does not apply to the following:

1.1 Importations of fuel oil (crude equivalent) and coal;

1.2 Commercially-funded importations (*i.e*., importations which included but not limited to those financed by the NPC's own internal funds, domestic borrowings from any source whatsoever, borrowings from foreign-based private financial institutions, *etc*.); and

1.3 Interest income derived from any source.

2. The NPC shall submit to the FIRB a report of its expansion program, including details of disposition of relieved tax and duty payments for such expansion on an annual basis or as often as the FIRB may require it to do so. This report shall be in addition to the usual FIRB reporting requirements on incentive availment.

(SGD.) ALFREDO PIO DE RODA, JR.
Acting Secretary of Finance
Chairman, FIRB"

[79] *Rollo*, p. 233; Annex "M" of the Petition.

[80] 94 SCRA 261 (1974).

[81] "In order that the review of the decision of a subordinate officer might not turn out to be a farce, the reviewing officer must perforce be other than the officer whose decision is under review; otherwise, there could be no different view or there would be no real view of the case. The decision of the reviewing officer would be a biased view; inevitably, it would be the same view since being human, he would not admit that he was mistaken in his first view of the case." (*Ibid*., p. 267)

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Anzaldo vs. Clave[82] where Presidential Executive Assistant Clave affirmed, on appeal to Malacañang, his own decision as Chairman of the Civil Service Commission.[83]

Upon deeper analysis, the question arises as to whether one can talk about "due process" being violated when FIRB Resolutions Nos. 10-85 and 1-86 were approved by the Minister of Finance when the same were recommended by him in his capacity as Chairman of the Fiscal Incentives Review Board.[84]

In *Zambales Chromite and Anzaldo*, two (2) different parties were involved: mining groups and scientist-doctors, respectively. Thus, there was a need for procedural due process to be followed.

In the case of the tax exemption restoration of NPC, there is no other comparable entity — not even a single public or private corporation — whose rights would be violated if NPC's tax

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[82] 119 SCRA 353 (1982).

[83] "Due process of law means fundamental fairness. It is not fair to Doctor Anzaldo that Presidential Executive Assistant Clave should decide whether his own recommendation as Chairman of the Civil Service Commission, as to who between Doctor Anzaldo and Doctor Venzon should be appointed Science Research Supervisor II, should be adopted by the President of the Philippines." (*Ibid*., p. 357).

[84] "A Fiscal Incentives Review Board is hereby created for the purpose of determining what subsidies and tax exemptions should be modified, withdrawn, revoked or suspended, which shall be composed of the following officials:

Chairman – Secretary of Finance
Members – Secretary of Industry
– Director General of the National Economic and Development Authority
– Commissioner of Internal Revenue
– Commissioner of Customs

"The Board may recommend to the President of the Philippines and for reasons of compatibility with the declared economic policy, the withdrawal, modification, revocation or suspension of the enforceability of any of the above-cited statutory subsidies or tax exemption grants, except those granted by the Constitution. To attain its objectives, the Board may require the assistance of any appropriate government agency or entity. The Board shall meet once a month, or oftener at the call of the Secretary of Finance." (Sec. 2, Pres. Dec. No. 776)

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exemption privileges were to be restored. While there might have been a MERALCO before Martial Law, it is of public knowledge that the MERALCO generating plants were sold to the NPC in line with the State policy that NPC was to be the State implementing arm for the electrification of the entire country. Besides, MERALCO was limited to Manila and its environs. And as of 1984, there was no more MERALCO — as a producer of electricity — which could have objected to the restoration of NPC's tax exemption privileges.

It should be noted that NPC was not asking to be granted tax exemption privileges for the first time. It was just asking that its tax exemption privileges be restored. It is for these reasons that, at least in NPC's case, the recommendation and approval of NPC's tax exemption privileges under FIRB Resolution Nos. 10-85 and 1-86, done by the same person acting in his dual capacities as Chairman of the Fiscal Incentives Review Board and Minister of Finance, respectively, do not violate procedural due process.

While as above-mentioned, FIRB Resolution No. 17-87 was approved by President Aquino on October 5, 1987, the view has been expressed that President Aquino, at least with regard to E.O. 93 (S'86), had no authority to sub-delegate to the FIRB, which was allegedly not a delegate of the legislature, the power delegated to her thereunder.

A misconception must be cleared up.

When E.O. No. 93 (S'86) was issued, President Aquino was exercising both Executive and Legislative powers. Thus, there was no power delegated to her, rather it was she who was delegating her power. She delegated it to the FIRB, which, for purposes of E.O. No. 93 (S'86), is a delegate of the legislature. Clearly, she was not sub-delegating her power.

And E.O. No. 93 (S'86), as a delegating law, was complete in itself — it set forth the policy to be carried out[85] and it fixed

[85] "WITHDRAWING ALL TAX AND DUTY INCENTIVES, SUBJECT TO CERTAIN EXCEPTIONS, EXPANDING THE POWERS OF THE FISCAL INCENTIVES REVIEW BOARD AND FOR OTHER PURPOSES."

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the standard to which the delegate had to conform in the performance of his functions,[86] both qualities having been enunciated by this Court in *Pelaez vs. Auditor General*.[87]

Thus, after all has been said, it is clear that the NPC had its tax exemption privileges restored from June 11, 1984 up to the present.

VII

The next question that projects itself is — who pays the tax?

The answer to the question could be gleaned from the manner by which the Commissaries of the Armed Forces of the Philippines sell their goods.

By virtue of P.D. No. 83,[88] veterans, members of the Armed Forces of the Philippines, and their dependents buy groceries

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[86] "In the discharge of its authority hereunder the Fiscal Incentives Review Board shall take into account any or all of the following considerations:

a) the effect on relative price levels;

b) relative contribution of the beneficiary to the revenue generation effort;

c) nature of the activity the beneficiary is engaged; and

d) in general, the greater national interest to be served."

[87] 15 SCRA 569 (1965).

[88] WHEREAS, pursuant to Proclamation No. 1081, dated September 21, 1972, martial law is in effect throughout the land;

WHEREAS, in order to extend further assistance to the Veterans of the Philippines in World War II, and their widows and orphans, as well as to the members of the Armed Forces of the Philippines (who are now carrying the greater part of the burden of suppressing the activities of groups of men actively engaged in a criminal conspiracy to seize political and state powers in the Philippines and of eradicating lawlessness, anarchy, disorder and wanton destruction of lives and property) and their dependents, I ordered the Philippine Veterans Bank to set aside the sum of five million pesos (₱5,000,000.00) in Letter of Instruction No. 31, October 23, 1972, as amended, for the operation and maintenance of a commissary and PX facilities for the aforementioned veterans, their widows and orphans, and the members of the Armed Forces of the Philippines and their dependents;

WHEREAS, to better realize the objectives of the aforementioned Letter of Instructions and in order to render fuller meaning to said objectives, it is necessary that certain commodities which are to be sold by the commissary

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and other goods free of all taxes and duties if bought from any AFP Commissaries.

In practice, the AFP Commissary suppliers probably treat the unchargeable specific, *ad valorem* and other taxes on the goods earmarked for AFP Commissaries as an added cost of operation and distribute it over the total units of goods sold as it would any other cost. Thus, even the ordinary supermarket buyer probably pays for the specific, *ad valorem* and other taxes which these suppliers do not charge the AFP Commissaries.[89]

IN MUCH THE SAME MANNER, it is clear that private respondents-oil companies have to absorb the taxes they add to the bunker fuel oil they sell to NPC.

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from local producers, manufacturers or suppliers be free of all taxes, duties and/or charges imposed by the Government;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to the Letter of Instruction cited above, do hereby promulgate and decree as part of the law of the land that all purchases from local sources, manufacturers, suppliers and producers of commodities or items decided by the AFP Exchange and Commissary Service to be sold to persons entitled to commissary and PX privileges under Letter of Instruction No. 31, dated October 23, 1972, as amended, *shall be free* of all taxes, duties and other charges prescribed for similar commodities or items under existing revenue and other laws and regulations.

The Chief of Staff, AFP, with the approval of the Secretary of National Defense, is authorized to promulgate rules and regulations to carry out the provisions of this decree.

Done in the City of Manila, this 20th day of December, in the year of Our Lord, nineteen hundred and seventy-two." (Italics Supplied)

[89] Footnote No. 15, *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue*, 20 SCRA 1056, at 1064: "In the long run a sales tax is probably shifted to the consumer, but during the period when supply is being adjusted to changes in demand it must be in part absorbed. In practice the business man will treat the levy as an added cost of operation and distribute it over his sales as he would any other cost, increasing by more than the amount of tax prices of goods demand for which will be least affected and leaving other prices unchanged." [47 Harv. Ld. Rev. 860, 869 (1934)].

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It should be stated at this juncture that, as early as May 14,1954, the Secretary of Justice rendered an opinion,[90] wherein he stated and We quote:

"x x x x x x x x x

"Republic Act No. 358 exempts the National Power Corporation from 'all taxes, duties, fees, imposts, charges, and restrictions of the Republic of the Philippines and its provinces. cities, and municipalities.' This exemption is broad enough to include all taxes, whether direct or indirect, which the National Power Corporation may be required to pay, such as the specific tax on petroleum products. That it is indirect is of no amount [should be of no moment], for it is the corporation that ultimately pays it. *The view which refuses to accord the exemption because the tax is first paid by the seller disregards realities and gives more importance to form than to substance. Equity and law always exalt substance over form.*

"x x x x x x x x x

"Tax exemptions are undoubtedly to be construed strictly but not so grudgingly as to defeat their purpose. It is common knowledge that many impositions taxpayers have to pay are in the nature of indirect taxes. To limit the exemption granted the National Power Corporation to direct taxes notwithstanding the general and broad language of the statute will be to thwart the legislative intention in giving exemption from all forms of taxes and impositions without distinguishing between those that are direct and those that are not. (Italics supplied).

In view of all the foregoing, the Court rules and declares that the oil companies which supply bunker fuel oil to NPC have to pay the taxes imposed upon said bunker fuel oil sold to NPC. By the very nature of indirect taxation, the economic burden of such taxation is expected to be passed on through the channels of commerce to the user or consumer of the goods sold. Because, however, the NPC has been exempted from both direct and indirect taxation, the NPC must be held exempted from absorbing the economic burden of indirect taxation. This means, on the one hand, that the oil companies which wish to

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[90] Opinion No. 106, S'54.

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sell to NPC must absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes. This means also, on the other hand, that the NPC may refuse to pay that part of the "normal" purchase price of bunker fuel oil which represents all or part of the taxes previously paid by the oil companies to BIR. If NPC nonetheless purchases such oil from the oil companies — because to do so may be more convenient and ultimately less costly for NPC than NPC itself importing and hauling and storing the oil from overseas — NPC is entitled to be reimbursed by the BIR for that part of the buying price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR.

It should be noted at this point in time that the whole issue of who WILL pay these indirect taxes HAS BEEN RENDERED *moot and academic* by E.O. No. 195 issued on June 16, 1987 by virtue of which the *ad valorem* tax rate on bunker fuel oil was reduced to ZERO (0%) PER CENTUM. Said E.O. No. 195 reads as follows:

"EXECUTIVE ORDER NO. 195.

"AMENDING PARAGRAPH (b) OF SECTION 128 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, BY REVISING THE EXCISE TAX RATES OF CERTAIN PETROLEUM PRODUCTS.

"x x x x x x x x x

"SECTION 1. Paragraph (b) of Section 128 of the National Internal Revenue Code, as amended, is hereby amended to read as follows:

'Par. (b) — For products subject to *ad valorem* tax only:

PRODUCT	*AD VALOREM* TAX RATE
'1. x x x	
'2. x x x	
'3. x x x	

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'4. *Fuel oil, commercially known as bunker oil and on similar fuel oils having more or less the same generating power 0%*

'x x x x x x x x x

'x x x x x x x x x

"SEC. 3. This Executive Order shall take effect immediately.

"Done in the City of Manila, this 17th day of June, in the year of Our Lord, nineteen hundred and eighty-seven." (Italics supplied)

The oil companies can now deliver bunker fuel oil to NPC without having to worry about who is going to bear the economic burden of the *ad valorem* taxes. What this Court will now dispose of are petitioner's complaints that some indirect tax money has been illegally refunded by the Bureau of Internal Revenue to the NPC and that more claims for refunds by the NPC are being processed for payment by the BIR.

A case in point is the Tax Credit Memo issued by the Bureau of Internal Revenue in favor of the NPC last July 7, 1986 for ₱58,020,110.79 which were for "erroneously paid specific and *ad valorem* taxes during the period from October 31, 1984 to April 27, 1985."[91] Petitioner asks Us to declare this Tax Credit Memo illegal as the NPC did not have indirect tax exemptions with the enactment of P.D. No. 938. As We have already ruled otherwise, the only questions left are whether NPC is entitled to a tax refund for the tax component of the price of the bunker fuel oil purchased from Caltex (Phils.) Inc. and whether the Bureau of Internal Revenue properly refunded the amount to NPC.

After P.D. No. 1931 was issued on June 11, 1984 withdrawing the tax exemptions of all GOCCs — NPC included, it was only on May 8, 1985 when the BIR issued its letter authority to the NPC authorizing it to withdraw tax-free bunker fuel oil from the oil companies pursuant to FIRB Resolution No. 10-85.[92] Since the tax exemption restoration was retroactive to June 11, 1984

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[91] *Rollo*, p. 212; Petition, Annex "F".

[92] *Rollo*, p. 124; Petition, Annex "D" of Annex "A".

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there was a need, therefore, to recover said amount as Caltex (Phils.) Inc. had already paid the BIR the specific and *ad valorem* taxes on the bunker oil it sold NPC during the period above indicated and had billed NPC correspondingly.[93] It should be noted that the NPC, in its letter-claim dated September 11,1985 to the Commissioner of the Bureau of Internal Revenue DID NOT CATEGORICALLY AND UNEQUIVOCALLY STATE that it itself paid the ₱58,020,110.79 as part of the bunker fuel oil price it purchased from Caltex (Phils.) Inc.[94]

The law governing recovery of erroneously or illegally collected taxes is Section 230 of the National Internal Revenue Code of 1977, as amended, which reads as follows:

"SEC. 230. *Recovery of tax erroneously or illegally collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may he maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

"In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

x x x x x x x x x

Inasmuch as NPC filed its claim for ₱58,020,110.79 on September 11, 1985,[95] the Commissioner correctly issued the Tax Credit Memo in view of NPC's indirect tax exemption.

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[93] *Rollo*, p. 156; Petition, Annex "N-1" of Annex "A".

[94] *Rollo*, p. 128; Petition, Annex "G" of Annex "A".

[95] *Ibid*.

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Petitioner, however, asks Us to restrain the Commissioner from acting favorably on NPC's claim for ₱410,580,000.00 which represents specific and *ad valorem* taxes paid by the oil companies to the BIR from June 11, 1984 to the early part of 1986.[96]

A careful examination of petitioner's pleadings and annexes attached thereto does not reveal when the alleged claim for a ₱410,580,000.00 tax refund was filed. It is only stated in paragraph No. 2 of the Deed of Assignment[97] executed by and between NPC and Caltex (Phils.) Inc., as follows:

"That the ASSIGNOR (NPC) has a pending tax credit claim with the Bureau of Internal Revenue amounting to ₱442,887,716.16, ₱58,020,110.79 of which is due to Assignor's oil purchases from the Assignee (Caltex [Phils.] Inc.)"

Actually, as the Court sees it, this is a clear case of a "Mexican standoff." We cannot restrain the BIR from refunding said amount because of Our ruling that NPC has both direct and indirect tax exemption privileges. Neither can We order the BIR to refund said amount to NPC as there is no pending petition for review on *certiorari* of a suit for its collection before Us. At any rate, at this point in time, NPC can no longer file any suit to collect said amount EVEN IF it has previously filed a claim with the BIR because it is time-barred under Section 230 of the National Internal Revenue Code of 1977, as amended, which states:

"In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty *REGARDLESS* of any supervening cause that *may arise after* payment. x x x" (italics supplied)

The date of the Deed of Assignment is June 6, 1986. Even if We were to assume that payment by NPC for the amount of ₱410,580,000.00 had been made on said date, it is clear that more than two (2) years had already elapsed from said date. At the same time, We should note that there is no legal obstacle to the BIR granting, even without a suit by NPC, the tax credit or refund claimed by NPC, assuming that NPC's claim had been

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[96] *Rollo*, p. 12.

[97] *Rollo*, p. 213, Petition, Annex "G".

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made seasonably, and assuming the amounts covered had actually been paid previously by the oil companies to the BIR.

WHEREFORE, in view of all the foregoing, the Motion for Reconsideration of petitioner is hereby *DENIED* for lack of merit and the decision of this Court promulgated on May 31, 1991 is hereby *AFFIRMED*.

SO ORDERED.

Narvasa, C.J., Feliciano, Bidin, Regalado, Romero, Bellosillo, and *Melo, JJ.*, concur.

Cruz, J., (Maintains his original dissent in G.R. No. 88291, May 31, 1991.)

Griño-Aquino and *Davide, Jr., JJ.*, (Joined Justice Sarmiento in his original dissent in G.R. No. 88291, May 31, 1991.)

Padilla and *Quiason, JJ.*, took no part.

FIRST DIVISION

[G.R. No. 96354. June 8, 1993]

LAPERAL DEVELOPMENT CORPORATION and SUNBEAMS CONVENIENCE FOOD CORPORATION, *petitioners, vs.* **HON. COURT OF APPEALS and THE HEIRS OF FILOTEO T. BANZON,** *respondents*.

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; CORPORATION IS CLOTHED WITH A PERSONALITY SEPARATE AND DISTINCT FROM THAT OF THE PERSON COMPOSING IT. — It is settled that a corporation