

## FIRST DIVISION

**[ G.R. No. 105014, December 18, 2001 ]**

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

### D E C I S I O N

#### KAPUNAN, J.:

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

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

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

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

<u>Project</u>	<u>Certificate of Registration No.</u>	<u>Date Issued</u>	<u>Law of Registration</u>
1.	76-611	Aug. 24, 1976	R.A. No. 6135
2.	78-725	Mar. 20, 1978	R.A. No. 6135
3.	87-1247	Jan. 08, 1987	P.D. No. 1789, as amended by B.P. Blg. 391
4.	87-1476	July 29, 1987	P.D. No. 1789 as amended by B.P. Blg. 391
5.	88-0240	Feb. 29, 1988	E.O. No. 226
6.	EP 88-496	July 26, 1988	E.O. No. 226

7. EP 89-965 Jan. 31, E.O. No. 226  
1990
8. EP 90-082 Mar. 16, E.O. No. 226  
1990

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

Each project is entitled to a certain set of incentives depending upon, among others, the law of registration and the status and type of registration. The present controversy refers only to the tax incentives provided for under Article 48 of P.D. No. 1789, as amended by B.P. Blg. 391, which states:

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

"xxx                      xxx                      xxx

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

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

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

(c) Tax Credit on net value earned. - For the first five (5) years of commercial operation, all registered domestic producers shall be entitled to a tax credit equivalent to five percent (5%) of net value earned. Those engaged in pioneer projects shall be entitled to this incentive to the extent ten percent (10%) of net value earned over the same period or coterminous with the remaining period of availment of the

registrant who first starts commercial operation in case there are several registered pioneer enterprises in the same activity, regardless of their respective dates of registration. For purposes of calculation of the tax credit, 'net value earned' shall mean value of sales less cost of raw materials and components, supplies and utilities and depreciation of capital equipment. For raw materials and components which are produced by the registered enterprise; allocated costs may be determined by the Board.' (Underscoring supplied) (pp. 4-5, Petition; pp. 11-12, Rollo).

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

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

#### "NET VALUE EARNED COMPUTATION

Total Sales for the Taxable Year of Availment	P280,562,286
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Less: Raw Materials and Components	P <u>155,565,701</u>
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Supplies	P <u>15,868,160</u>
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Utilities	P <u>20,132,446</u>
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Depreciation of Capital Equipment	P <u>3,162,698</u> <u>194,729,005</u>
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Net Value Earned (NVE)	P <u>85,833.281</u>
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Tax Credit  
Computation

1. For Pioneer

Tax Credit on Net Value Earned (10% of NVE)	P <u>8,583,328</u>
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#### NET LOCAL CONTENT COMPUTATION

Export Sales for  
the Taxable Year  
of Availment P278,369,748

Less: Imported  
Raw Materials  
and Components P4,598,624

Imported  
Content of locally  
Purchased Raw  
Materials and  
Components P\_\_\_\_\_

Imported  
Supplies P11,321,699

Imported  
Content of locally  
Purchased  
Supplies P\_\_\_\_\_

Depreciation of  
Capital P3,162,698  
Equipment

Indigenous  
Commodities  
Excluded By the  
Board (If  
Applicable) P\_\_\_\_\_ P19,083,021

Net Local  
Content (NLC) P259,286,727

Tax Credit  
Computation

1. For Pioneer  
Tax Credit on Net  
Local Content  
(10%) Of NLC P25,928,673"  
(pp. 7-8,  
Petition, pp. 14-  
15, *Rollo*)

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

NVE-----  
----- P1,542,758.00  
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NLC----- P2,681,018.00  
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Total----- P4,223,776.00  
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(Annes "9",  
Comment)

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

#### "NET VALUE EARNED COMPUTATION

Total Sale for the  
Taxable Year of  
Availment P282,054,852

Less: Raw  
Materials  
and Components P149,817,799

Supplies P16,051,486

Utilities P17,652,136

Depreciation of  
Capital P2,038,846 185,560,267  
Equipment

Net Value Earned  
(NVE) P96,494,585

Tax Credit  
Computation

##### 1. For Pioneer

Tax credit on Net  
Value Earned  
(10% of NVE) P9,649,459

#### NET LOCAL CONTENT COMPUTATION

Export Sales for  
the Taxable Year  
of Availment P280,227,963

Less: Imported  
Raw  
Materials and  
Components P11,242,443

Imported  
Content of P\_\_\_\_\_