



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

**JESS CHRISTOPHER S. BIONG,**  
Petitioner,

**G.R. No. 258510**

Present:

GESMUNDO, *C.J.*,  
LEONEN,  
CAGUIOA,  
HERNANDO,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,  
ROSARIO,  
LOPEZ, J.  
MARQUEZ,  
DIMAAMPAO,  
KHO, JR., and  
SINGH, *JJ.*

- versus -

**COMMISSION ON AUDIT, et al.,**  
Respondents.

Promulgated:

May 28, 2024

X-----*Inting-Cruz*-----X

**DECISION**

**INTING, J.:**

This resolves the Petition for *Certiorari*<sup>1</sup> under Rule 64 in relation to Rule 65 of the Rules of Court filed by Jess Christopher S. Biong

<sup>1</sup> *Rollo*, pp. 3-41.

(petitioner Biong) assailing Decision No. 2019-040<sup>2</sup> of the Commission on Audit (COA). In the assailed Decision, the COA approved with modification the Notice of Disallowance (ND) No. 11-002-000-(10)<sup>3</sup> dated July 5, 2011, ND No. 11-003-000(10)<sup>4</sup> dated August 15, 2011, and COA RO3 Decision No. 2012-46.<sup>5</sup>

The disallowed amounts pertain to payments made by the Philippine Health Insurance Corporation (PhilHealth) Region III to Silicon Valley, with office at SM Pampanga, San Jose, City of San Fernando, Pampanga,<sup>6</sup> for office supplies, particularly printer inks and toners, purchased under Purchase Order (PO) No. 09-236 dated December 4, 2009, PO No. 043 dated April 25, 2008, PO No. 160 dated November 4, 2008, and PO No. 09-005 dated February 4, 2009.<sup>7</sup>

#### *The Antecedents*

Sometime in August 2010, the Comptrollership/Accounting Unit of PhilHealth Region III found that there were no inspection and acceptance reports (IARs) on the deliveries. Hence, the payments due to Silicon Valley were withheld by PhilHealth Region III.<sup>8</sup>

Thereafter, Rodolfo M. Balog (Balog), Vice President of PhilHealth Region III, consulted Trinidad Gozun (Gozun), State Auditor IV and Audit Team Leader of PhilHealth Region III, who suggested that in lieu of IARs, alternative documents may be attached to the disbursement voucher (DV).

Accordingly, PhilHealth Region III attached the following documents: (1) Certification from the General Services Unit (GSU) issued by petitioner Biong, as the Head of the GSU, that the supplies were delivered; (2) Supplies Withdrawal Slips (SWSs) which contained the items requisitioned by the end-users; and (3) Monthly Report of Supplies

<sup>2</sup> *Id.* at 47–56. Decision No 2019-040 dated March 21, 2019, was signed by Commissioners Michael Jose A. Fabia (with Concurring and Dissenting Opinion) and Roland C. Pondoc of the Commission on Audit, Commonwealth Avenue, Quezon City.

<sup>3</sup> *Id.* at 59–63.

<sup>4</sup> *Id.* at 64–70.

<sup>5</sup> *Id.* at 42–46. COA RO3 Decision No. 2012-46 dated October 4, 2012, was penned by Assistant Commissioner Winnie Rose H. Encallado of the Commission on Audit, Regional Office No. III, City of San Fernando, Pampanga.

<sup>6</sup> *Id.* at 42.

<sup>7</sup> *Id.* at 47–48.

<sup>8</sup> *Id.* at 49.

and Materials Inventory (MRSMI) prepared by the GSU to support the journal entry voucher of the Comptrollership/Accounting Unit.<sup>9</sup>

After evaluation of the documents, PhilHealth Region III processed and released the Philippine Veterans Bank Check Nos. 5227 (PHP 117,207.95) and 5226 (PHP 373,094.20), both dated December 22, 2010, and Check Nos. 5274 (PHP 398,934.59) and 5273 (PHP 216,962.78), both dated December 30, 2010, to Silicon Valley.<sup>10</sup>

A month after, or on January 31, 2011, petitioner Biong discovered incidents of theft of office supplies and falsification of SWSs in the GSU office.<sup>11</sup>

In an Incident Report<sup>12</sup> dated February 22, 2011, petitioner Biong revealed that inks and toners delivered by Masangkay Computer Center on January 20, 2011, and January 24, 2011, respectively, and inks delivered by PC Worx on January 28, 2011, were declared missing on January 31, 2011. In the same report, petitioner Biong recommended that an official and more thorough investigation be conducted by the PhilHealth Legal Office on the alleged loss of office supplies and expressed the willingness of GSU personnel to cooperate with the investigation.<sup>13</sup>

According to petitioner Biong, he was informed by Susan David (David) and Mary Joy Cruz (Cruz), the personnel in charge of inventories and issuances, that some of the inks and toners which were delivered by PC Worx on January 28, 2011, and were stored inside the GSU Office were missing.<sup>14</sup> Consequently, they held a meeting on February 19, 2011, at the Managements Services Division (MSD) Office to clarify the sequence of events that transpired. Thereafter, they requested David, Cruz, and Jenalyn Deang to submit their respective statements relative to their personal knowledge of the alleged theft of office supplies.<sup>15</sup>

In her statement, Cruz accused Jajomar Marbebe (Marbebe), who at that time was a project-based employee, of routinely bringing inks out

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 64.

<sup>11</sup> *Id.* at 50.

<sup>12</sup> *Id.* at 268–270.

<sup>13</sup> *Id.* at 269.

<sup>14</sup> *Id.* at 270.

<sup>15</sup> *Id.* at 269.

of the office.<sup>16</sup> When confronted, however, Marbebe denied Cruz's allegations. He explained that he had other sources of income which allowed him to obtain loans to purchase houses and a motorcycle and put up a sari-sari store.<sup>17</sup> Thereafter, his contract was no longer renewed on March 17, 2011.<sup>18</sup>

On March 18, 2011, petitioner Biong wrote a letter to signify his intention to file a request for a relief of accountability in connection with the missing office supplies and a Request for Relief from Accountability from Loss of Property<sup>19</sup> with the COA Audit Team.<sup>20</sup> However, it does not appear from the records whether an audit decision had been issued on petitioner Biong's request for relief of accountability.

Thereafter, the COA Audit Team issued the subject NDs to officers of PhilHealth Region III, including Biong, on the purchases of printer inks and toners of PhilHealth Region III from Silicon Valley.

The subject matter of ND No. 11-002-000(10) dated July 5, 2011, was PO No. 09-236 dated December 4, 2009.<sup>21</sup> On the other hand, ND No. 11-003-000(20) dated August 15, 2011, pertained to (i) PO No. 043 dated April 25, 2008, (ii) PO No. 160 dated November 4, 2008, and (iii) PO No. 09-005 dated February 4, 2009.<sup>22</sup>

For ND No. 11-002-000(10), the disallowance was based on the following findings of the Audit Team:

- (1) The items covered by PO No. 09-236 were delivered on a staggered basis in a span of almost six months contrary to the stipulation in the PO that the goods shall be delivered within 15 calendar days from receipt thereof.
- (2) When the items were delivered, they were not inspected by an authorized inspector, in violation of

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 272. See Renewal/Non-Renewal of Project-Based Personnel Contracts dated March 16, 2011.

<sup>19</sup> *Id.* at 276.

<sup>20</sup> *Id.* at 273.

<sup>21</sup> *Id.* at 59.

<sup>22</sup> *Id.* at 64.

- Section 465<sup>23</sup> of COA Circular No. 368-91 or the Government Accounting and Auditing Manual.
- (3) In lieu of authorized IARs, the document that was attached to the DV to prove that deliveries were made was a Certification issued by petitioner Biong, SWSs, and MRSMI.
  - (4) Some SWSs were altered resulting in the discovery of padded issuances amounting to PHP 75,400.00.
  - (5) Purported issuances valued at PHP 119,240.00 as reflected in the GSU copy of the SWSs did not have the corresponding SWS from the end-users' file of served requisitions.
  - (6) GSU copies of SWS show that PHP 3,580.00 worth of supplies were issued to unknown end-users and recipients.
  - (7) There were unaccounted deliveries with a total amount of PHP 16,720.00.<sup>24</sup>

The payments made to Silicon Valley under PO Nos. 043, 160, and 09-005 were likewise disallowed in ND No. 11-003-000(20) dated August 15, 2011, on similar grounds, i.e., lack of IARs, Silicon Valley's staggered delivery, altered SWSs with a total value of PHP 49,995.00, SWSs with no counterpart end-users' copies valued at PHP 414,020.00, PHP 21,720.00 worth of supplies issued to unknown end-users, and unaccounted deliveries with a total amount of PHP 129,370.00.<sup>25</sup>

<sup>23</sup> SECTION 465. *Inspection of purchases.* — Inspection and verification of purchases shall be done according to these rules:

a. Purchases made by the agency must be inspected and verified by their authorized inspector for conformity with specifications in the order. However, the chief of the Inspection Service or Section who is authorized by the head of the agency, bureau or office, may waive the inspection of purchases of insignificant value, provided he is fully convinced that the delivery in question is in accordance with the specifications of the order. The waiver of inspection must be stamped on the original copies of the order and invoice.

b. Evidence of inspection of deliveries of insignificant value for supplies and materials, must be shown by notation on the original copies of the order and invoice, thus:

Inspected by:

(signature)

(Printed Name)

Date \_\_\_\_\_

c. All items to be inspected shall invariably be accepted first by the requisitioning or property officer.

d. Report of inspection of all consumables shall be submitted to the COA auditors within twenty four (24) hours (COA Cir. 89-299A, *supra*).

<sup>24</sup> *Rollo*, pp. 59-60.

<sup>25</sup> *Id.* at 64-67.

Thus, the following PhilHealth Region III personnel were held civilly liable for the disallowances:

1. *PO No. 09-236 - paid through Check No. 5226 dated December 22, 2010, amounting to PHP 373,094.20<sup>26</sup>*

Name	Position	Participation
Balog	PhilHealth Region III Vice President	Approved the transaction.
Grace M. Mamawal (Mamawal)	Chief of the MSD	Certified that the expense was lawful, necessary, and authorized.
Petitioner Biong	Administrative Officer III/Former GSU Chief	Certified that the items were delivered.
Angelita S. Reyes (Reyes)	Fiscal Controller IV	Certified that the expenditure was supported by documents.
Leonidas A. Lumba (Lumba)	Fiscal Controller III	Determined the propriety and validity of supporting documents as the head of the Comptrollership Unit.
Cruz	Project-based Clerk	Signed Sale[s] Invoice Nos. 525336, 551046 and 63543.
Marbebe	Project-based Data Encoder	Signed Sale[s] Invoice Nos. 525558, indicating that he received the goods listed therein.
Ryan Steven Algraea Quizon (Quizon)	Administrative Officer II/Canvasser	Signed Sale[s] Invoice Nos. 538788 and 538863, indicating that he received the goods listed therein.

2. *PO No. 043 - paid through Check No. 5227 dated December 22, 2010, amounting to PHP 117,207.95<sup>27</sup>*

Name	Position	Participation
Balog	PhilHealth RO3 Vice President	Approved the transaction.
Reyes	OIC, MSD	Certified that the expense was lawful, necessary and authorized.
Lumba	Fiscal Controller III	Determined the propriety and validity of supporting documents as the head of the Comptrollership Unit.

<sup>26</sup> *Id.* at 62–63.

<sup>27</sup> *Id.* at 67–68.

Cruz	Project-based Clerk	Signed Sale[s] Invoice Nos. 106555 and 129024, indicating that she received the goods listed therein.
Petitioner Biong	GSU Head	Certified that the items in question were delivered and issued.

3. *PO No. 160 – paid through Check No. 5274 dated December 30, 2010, amounting to PHP 398,934.59*<sup>28</sup>

Name	Position	Participation
Reyes	OIC, MSD	Signed for the approving officer in the transaction and certified that the expense was necessary, lawful, and authorized.
Lumba	Fiscal Controller III	Determined the propriety and validity of supporting documents as the head of the Comptrollership Unit.
Cruz	Project-based Clerk	Signed Sale[s] Invoice Nos. 291417, 234594, and 234443, indicating that she received the goods listed therein.
Petitioner Biong	GSU Head	Certified that the items in question were delivered and issued.

4. *PO No. 09-005 – paid through Check No. 5273 dated December 30, 2010, amounting to PHP 216,962.78*<sup>29</sup>

Name	Position	Participation
Mamawal	OIC, Office of the PhilHealth RO3 Branch A Manager	Signed for the approving officer in the transaction.
Reyes	OIC, MSD	Signed for the approving officer in the transaction and certified that the expense was necessary, lawful, and authorized
Lumba	Fiscal Controller III	Determined the propriety and validity of supporting

<sup>28</sup> *Id.* at 68.

<sup>29</sup> *Id.* at 68–69.

		documents as the head of the Comptrollership Unit.
Cruz	Project-based Clerk	Signed Sale[s] Invoice No. 423262, indicating that she received the goods listed therein.
Quizon	Administrative Officer II	Signed Sale[s] Invoice No. 106579, indicating that he received the goods listed therein.
Petitioner Biong	GSU Head	Certified that the items in question were delivered and issued.

Notably, Silicon Valley was not among the persons held liable under the subject NDs.

Thereafter, the concerned PhilHealth Region III officials and personnel sought the lifting of the subject NDs on the following justifications:

1. PhilHealth had a valid contractual obligation with Silicon Valley, and the staggered delivery of supplies did not render the transaction irregular.
2. They consulted the Audit Team Leader regarding the lack of inspection reports before they processed the payments to Silicon Valley.
3. There was no suspicion of anomaly at the time of the submission of the alternative supporting documents in lieu of the IAR.
4. They acted in good faith and exercised due diligence.
5. Reyes should be excluded from any liability because, while her name was printed on the DV, it was Lumba who signed it.

In her Answer dated January 16, 2012,<sup>30</sup> the Audit Team Leader, Gozun, did not categorically deny that she suggested the submission of alternative documents in lieu of IARs but clarified that she referred only to authentic copies of the documents which, in her opinion, are the best proof of deliveries in the absence of the IARs.<sup>31</sup> She further clarified that it was not the staggered delivery that rendered the transaction irregular but

<sup>30</sup> *Id.* at 339–346.

<sup>31</sup> *Id.* at 53.



the fact that Silicon Valley failed to complete the delivery within the required 15-day period.<sup>32</sup>

*The Ruling of the COA Regional Office*

In the COA RO3 Decision No. 2012-46<sup>33</sup> dated October 4, 2012, Assistant Commissioner Winnie Rose H. Encallado (Encallado) upheld the disallowance but excluded Reyes among the persons liable under ND No. 11-002-000(10), to wit:

WHEREFORE, the stand taken by the Audit Team Leader under ND No. 11-002-000(10), amounting to [PHP] 373,094.20 and ND No. 11-003-000(10), in the aggregate amount of [PHP] 733,105.32, are hereby affirmed. With respect to Appellant Angelita S. Reyes, the decision is MODIFIED to the extent that she is excluded as one of the persons liable under ND No. 11-002-000(10).

The decision is not final and shall be subject to automatic review by the Commission Proper pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit.<sup>34</sup>

Encallado noted that although the subject disallowances budded from the lack of IARs and the delay by the supplier in the delivery, they actually revolved around the management of office supplies. She further noted that it took two to three years to process the payments to Silicon Valley, and this strengthens the Audit Team Leader's finding that the transactions were occasioned by irregularities.<sup>35</sup>

In particular, Escallado opined that petitioner Biong, as the Chief of the GSU, should have ensured that inspection of the deliveries was conducted as soon as possible, and even if some of the supplies had been consumed or issued to end-users, inspection could still have been made on the remaining stocks.<sup>36</sup>

In fine, Encallado held that the concerned PhilHealth officials and personnel failed to exercise due diligence in their acceptance of the deliveries as well as in their custody thereof.<sup>37</sup> She, however, excluded

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<sup>32</sup> *Id.* at 345.

<sup>33</sup> *Id.* at 42-46.

<sup>34</sup> *Id.* at 45.

<sup>35</sup> *Id.* at 44.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

Reyes from liability under ND No. 11-002-000(10) because she had no participation in the transaction.<sup>38</sup>

Pursuant to Rule V, Section 7 of the 2009 Revised Rules of Procedure, the case was elevated to the COA Proper for its automatic review.

*The Ruling of the COA Proper*

In Decision No. 2019-040<sup>39</sup> dated March 21, 2019, the COA Proper ruled that the payments made to Silicon Valley were irregular. Thus, it affirmed the subject NDs with modification in that Balog, Lumba, Mamawal, Quizon, and Marbebe were likewise excluded from liability.

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, Commission on Audit Regional Office No. III Decision No. 2012-46 dated October 4, 2012 is hereby APPROVED with MODIFICATION in that Mr. Rodolfo M. Balog, Ms. Leonidas Lumba, Ms. Grace Mamawal, Mr. Ryan Steven Quizon, and Mr. Jomar Marbebe are likewise excluded from liability under Notice of Disallowances Nos. 11-002-000(10) and 11-003-000(10) dated July 5, 2011 and August 15, 2011, respectively, without prejudice to the result of the formal investigation on the alleged losses.<sup>40</sup>

Finding that the PhilHealth Region III had a valid obligation to pay Silicon Valley, the COA Proper excluded the following persons from liability: (1) Balog, who approved the transaction; (2) Mamawal, who certified that the expense was lawful and necessary; (3) Reyes, whose participation was limited to certifying on the DVs as to the availability of funds and legality of the expenditure; (4) Lumba, as there was no proof that she had prior knowledge that the SWSs were falsified at the time she signed the DVs; and (5) Quizon and Marbebe, whose participation was merely the affixing of their signatures in the sales invoices certifying receipt of the goods delivered.<sup>41</sup>

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<sup>38</sup> *Id.* at 45.

<sup>39</sup> *Id.* at 47-56.

<sup>40</sup> *Id.* at 54-55.

<sup>41</sup> *Id.* at 52-53.

However, the COA found Cruz liable based on the initial inquiry report that she falsified the SWSs to hide the loss of office supplies.<sup>42</sup>

As to petitioner Biong, the COA found him liable due to his “apparent and consistent negligence” as the GSU Head as shown by his failure to discover the falsified SWSs and MRSMI that led PhilHealth Region III to pay Silicon Valley despite the lack of supporting documents.<sup>43</sup>

On November 17, 2021, the COA issued Notice of Finality of Decision No. 2021-252.<sup>44</sup>

Aggrieved, petitioner Biong filed the present petition.

#### *Petitioner Biong’s Arguments*

Petitioner Biong maintains that he was not served a copy of Decision No. 2019-040 dated March 21, 2019,<sup>45</sup> and that, by his request, he received a certified true copy of the assailed Decision only on January 25, 2022.<sup>46</sup>

On the merits, petitioner Biong argues that he exerted utmost efforts in the recognition of Silicon Valley’s claim under the principle of *solutio indebiti* vis-à-vis the government’s interest when he issued the Certificate of Delivery after due consultation with the Office of the Auditor.<sup>47</sup>

Although petitioner Biong admits that there was a defective system in the release, monitoring, and auditing of properties and supplies at the PhilHealth Region III, which permitted the alleged pilferage by Marbebe, he nonetheless points out that (1) the theft of office supplies had been happening since 2006, even before he got designated in the GSU based on Cruz’s confession;<sup>48</sup> (2) the anomalies were difficult to detect even by the members of the inventory team consisting of representatives from the

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<sup>42</sup> *Id.* at 53–54.

<sup>43</sup> *Id.* at 54.

<sup>44</sup> *Id.* at 387–388.

<sup>45</sup> *Id.* at 16.

<sup>46</sup> *Id.* at 19.

<sup>47</sup> *Id.* at 8–9.

<sup>48</sup> *Id.* at 10, *see* petitioner’s Petition for *Certiorari*. According to Biong, Cruz confessed to the falsification of the SWSs to cover up the missing stocks. By tampering the records, Cruz was able to make the physical count match or tally with the records of the GSU.

COA, Finance, GSU, and the end-users; and (3) immediately after Cruz's confession, Biong initiated an investigation within the GSU to gather evidence and reported the theft afterwards so that appropriate actions and measures could be taken.<sup>49</sup> Thus, he maintained that he could not be entirely faulted for failure to prevent or stop the theft of supplies as he had no knowledge thereof until it was reported to him in January 2011.<sup>50</sup>

Petitioner Biong contends that the COA acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it upheld the notices of disallowances on the following grounds:<sup>51</sup>

*First, the Inspection and Acceptance Report has been substantially complied with.*<sup>52</sup>

Petitioner Biong maintains that it is undisputed that Silicon Valley delivered the items in question. He contends that while there was a procedural lapse because the lone inspector was often unavailable during the delivery of supplies by Silicon Valley, they reported the matter to the Office of the Auditor and complied with the Audit Team Leader's recommendation; and payments to Silicon Valley were released only after the alternative supporting documents have been submitted.<sup>53</sup>

*Second, petitioner Biong exercised the proper diligence of a good father of a family and good faith in the performance of his duties as GSU Head.*<sup>54</sup>

Petitioner Biong further maintains that, as confessed by Cruz, the tampering of documents was done after all transaction had been consummated, i.e., after office hours and/or during the weekends, and thus, was beyond his control. More, it was only during his term as the GSU Head that the alleged theft (that has been ongoing years before he assumed office) was discovered, reported to the PhilHealth Region III management, and discontinued.

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<sup>49</sup> *Id.* at 9–10.

<sup>50</sup> *Id.* at 17.

<sup>51</sup> *Id.* at 21.

<sup>52</sup> *Id.* at 20.

<sup>53</sup> *Id.* at 22–23.

<sup>54</sup> *Id.* at 20.

Assuming *arguendo* that the transaction was questionable, petitioner Biong argues that he should not be held for the disallowances in light of the Court's ruling in *Madera v. Commission on Audit*.<sup>55</sup>

Applying the rules set in *Madera*, petitioner Biong posits that he should not be held liable to pay for the disallowance because (1) he acted in good faith and exercised the due diligence of a good father of a family in the performance of his official functions; (2) there was no showing that he acted in bad faith, malice, or gross negligence in certifying the subject transactions; (3) he is not a recipient of the disallowed amounts, and it was the procedure he undertook and the performance of his duties and responsibilities as the GSU Head that were put in question; (4) the persons directly involved and who benefited from the theft and falsifications were not held liable; and (5) the penalty imposed is too harsh considering that, prior to this case, he had an unblemished public record for two decades and his office performance has been consistently rated as "Very Satisfactory."<sup>56</sup>

Petitioner Biong highlights that he was not directly involved in the falsification and theft.<sup>57</sup> Following the presumption of regularity in the performance of official duties, he maintains that he had no reason to doubt the integrity of the alternative supporting documents, i.e., SWSs and MRSMI, because the thefts and falsifications were not yet discovered at the time the payments to Silicon Valley were processed.<sup>58</sup>

*Third, the government did not suffer losses due to the payments made to Silicon Valley.*<sup>59</sup>

Petitioner Biong asserts that there is no question that the PhilHealth Region III had a valid and legal obligation to Silicon Valley which had to be settled,<sup>60</sup> as evidenced by the sales invoices in the possession of Silicon Valley showing that the office supplies were delivered to and actually received by PhilHealth Region III employees. He also avers that no government funds were squandered due to the payments made to Silicon Valley. As to the internal and procedural issues which confronted

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<sup>55</sup> 882 Phil. 744 (2020).

<sup>56</sup> *Rollo*, pp. 33-34.

<sup>57</sup> *Id.* at 20.

<sup>58</sup> *Id.* at 25.

<sup>59</sup> *Id.* at 20.

<sup>60</sup> *Id.* at 22.

PhilHealth Region III, i.e., *the lack of inspection reports, theft of office supplies, and falsification of SWSs*, Biong argues that these did not liberate the PhilHealth Region III from its obligations to Silicon Valley.<sup>61</sup>

Contrary to the findings of the Audit Team, Biong contends that (1) the staggered delivery of items did not affect the regularity of the procurement of office supplies from Silicon Valley as delay is sometimes unavoidable in the ordinary course of business; (2) it is for this reason that the first condition in the POs states that PhilHealth Region III “shall impose a penalty in an amount equivalent to 1/10 of 1 percent of the value of undelivered order for each day of delay as liquidated damages”; and (3) because of this provision, PhilHealth Region III charged penalties against Silicon Valley.<sup>62</sup>

*Lastly, the COA violated Biong’s constitutional right to due process and speedy trial.*<sup>63</sup>

According to Biong, his administrative case for gross neglect of duty has been dismissed in 2019, as evidenced by a certified true copy of the Formal Investigation Report<sup>64</sup> issued by the PhilHealth’s *Ad Hoc* Investigation Committee finding him guilty of simple neglect of duty only.<sup>65</sup> Thus, petitioner Biong thought all the while that the disallowance case would likewise be dismissed in his favor, and he was surprised when he received the Notice of Finality Decision No. 2021-252 holding him liable for the aggregate amount of PHP 1,106,199.52.<sup>66</sup>

Petitioner Biong argues that the COA committed inordinate delay, in violation of his constitutional right to speedy disposition of cases. He points out that the COA decided the case only after eight years from when the proceedings started in 2011, or on March 21, 2019.<sup>67</sup>

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<sup>61</sup> *Id.* at 24.

<sup>62</sup> *Id.* at 24–25.

<sup>63</sup> *Id.* at 34.

<sup>64</sup> *Id.* 347–372.

<sup>65</sup> *Id.* at 371.

<sup>66</sup> *Id.* at 34–35.

<sup>67</sup> *Id.* at 35.

*Respondent's Arguments*

The COA argues that petitioner Biong failed to show that the COA acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it upheld the disallowances.<sup>68</sup>

According to the COA, civil liability may arise upon showing that the approving or certifying officer performed their official duties with bad faith, malice, or *gross negligence*;<sup>69</sup> and, in the case, petitioner Biong's gross negligence was evidenced by the fact that he certified the delivery without the necessary IARs and allowed the falsification of SWSs and MRSMI.<sup>70</sup>

The COA did not deny that PhilHealth Region III was not prejudiced as it had already received the items. However, it maintains that such benefit cannot outweigh the disallowance and petitioner Biong's liability, citing Section 4(7) of the Government Auditing Code which states that "financial transactions and operations of the government agency shall be governed by the fundamental principle, among others, that all laws and regulations applicable to financial transactions shall be faithfully adhered to."<sup>71</sup>

*The Issue*

The core issue for the Court's resolution is whether the COA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in upholding ND Nos. 11-002-000-(10)<sup>72</sup> and 11-003-000(10)<sup>73</sup> as to petitioner Biong's liability based on the following findings that render the transactions with Silicon Valley irregular: (1) delay in the delivery; (2) lack of IARs; and (3) falsification of SWSs.

*The Ruling of the Court*

The petition is meritorious.

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<sup>68</sup> *Id.* at 403.

<sup>69</sup> *Id.* at 405.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 407.

<sup>72</sup> *Id.* at 59-63.

<sup>73</sup> *Id.* at 64-69.

At the outset, it is worth noting that the COA did not dispute Biong's contention that he was not served a copy of Decision No. 2019-040 dated March 21, 2019,<sup>74</sup> before the COA issued the Notice of Finality of Decision No. 2021-252.

Evidently, there was an invalid service of the COA's Decision to petitioner Biong. As a result, petitioner Biong was deprived of his right to due process: he was not given the opportunity to file a motion for reconsideration because, by the time he secured a copy of the assailed Decision, the COA had already issued the Notice of Finality of Decision No. 2021-252.<sup>75</sup>

On this score alone, the Notice of Finality of Decision No. 2021-252 should be set aside. The failure of the COA to serve a copy of its decision to petitioner Biong is in clear violation of Section 7 of the 2009 Revised Rules of Procedure of the Commission on Audit which states:

SECTION 7. Service of Copies of ND/NC/NS, Order or Decision.  
— The ND, NC, NS, order, or decision shall *be served to each of the persons liable/responsible by the Auditor, through personal service, or if not practicable through registered mail.* . . . (Italics supplied.)

The COA's failure to abide by their own rules of procedure is tantamount to grave abuse of discretion.

On the merits of the case, the Court likewise finds for petitioner Biong.

As a rule, the COA's findings of fact are generally accorded great respect, if not finality, by the Court as long as they are supported by substantial evidence because of their presumed expertise over matters falling under their jurisdiction.<sup>76</sup> Nonetheless, the Court will not hesitate to exercise its expanded power of judicial review under the second paragraph<sup>77</sup> of Section 1, Article VIII of the 1987 Constitution upon a

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<sup>74</sup> *Id.* at 47–56.

<sup>75</sup> *Id.* at 387–388.

<sup>76</sup> *Gonzaga v. Commission on Audit*, G.R. No. 244816, June 29, 2021.

<sup>77</sup> SECTION 1. . . .

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.



showing that the COA's decision is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>78</sup>

In *De Castro v. Commission on Audit*,<sup>79</sup> the Court held that “the power of COA to disallow expenditures proceeds from its *duty to prevent* irregular, unnecessary, excessive, or extravagant expenditures or uses of government funds or property, and those which are illegal and unconscionable.”<sup>80</sup> Thus, in the absence of any finding that an expenditure falls under any of these anomalous types on disbursements, a disallowance is unwarranted.<sup>81</sup>

Here, the disallowance was based on the COA's finding that the payments made to Silicon Valley were irregular expenditures.

The term *irregular expenditure* “signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law.” An irregular expenditure is “incurred without conforming with prescribed usages and rules of discipline”; it is a “[a] transaction conducted in a manner that deviates or departs from, or which does not comply with[,] standards.”<sup>82</sup>

Verily, for a transaction to be deemed an irregular expenditure, the deviation from established rules, regulations, procedural guidelines, policies, principles, or practices should have transpired *at the time the expenditure is incurred*. Stated differently, if the irregularity transpired after the expenditure had been incurred, or worse, was disconnected from the transaction in question, disallowance is not warranted.

Here, the COA found that PhilHealth Region III had a valid legal obligation to pay Silicon Valley. Still, the COA is of the opinion that Silicon Valley's (1) delay in the delivery of office supplies covered by the subject POs, (2) lack of IARs, and (3) falsified SWSs rendered the payments made to Silicon Valley irregular expenditures.

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<sup>78</sup> *Land Bank of the Philippines v. Commission on Audit*, 813 Phil. 568 (2017).

<sup>79</sup> 886 Phil. 104.

<sup>80</sup> *Id.* at 148–149.

<sup>81</sup> *Id.* at 149.

<sup>82</sup> Amended Rules and Regulations on the Prevention of Irregular, Unnecessary, Excessive or Extravagant Expenditures or Uses of Funds and Property, COA Circular No. 055-A-85 (1985). *See also Miralles v. Commission on Audit*, 818 Phil. 380, 392 (2017).

The Court is not convinced.

*First.* The 15-day delivery period is not an established rule, regulation, procedural guideline, policy, principle, or practice that has gained recognition in law. It is a mere contract stipulation, the violation of which is regarded as a breach or default on the part of Silicon Valley in the performance of its contractual obligations. The violation consequently triggers the application of the penalty clause, as provided in the subject POs, or the termination of the contract, following the procedures stated in GPPB Resolution No. 18-2004 dated December 22, 2004. Considering that it is undisputed that Silicon Valley had delivered all the items covered in the subject POs and that it paid the penalties due to PhilHealth Region III as a result of the delay, the issuance of a notice of disallowance by reason thereof is unwarranted.

*Second.* As to the lack of IAR, this procedural lapse on the part of the PhilHealth Region III does not warrant a disallowance to the prejudice of Silicon Valley.

In *Theo-Pam Trading Corp. v. Bureau of Plant Industry*,<sup>83</sup> the Court held that violation of internal rules is not a ground to evade payment for goods that were actually received and used:

The COA Proper found the following lapses: *First*, there were no Inspection and Acceptance Reports to support the alleged deliveries. *Second*, the inspection of the alleged deliveries was not conducted by the authorized property officer. *Third*, the NPAL personnel who received and inspected the alleged deliveries merely relied on the delivery receipts, in violation of standard government procurement procedures and internal control policies on the proper segregation of duties.

The lapses are not disputed. However, the primary responsibility of complying with these procedural requirements rests on BPI and NPAL because these are internal rules. That the BPI Process Flow were internal in nature is evident from the following: (a) it was communicated only through an office memorandum addressed to all BPI *employees*, and (b) none of the steps within the process flow requires a third-party supplier's active participation.

In other words, BPI/NPAL has no one to blame other than its own personnel if the deliveries' acceptance, inspection, and supporting documentation were not performed as required by its process flow. On

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<sup>83</sup> G.R. No. 242764, January 19, 2021.

the other hand, a third-party supplier's right to recover cannot be conditioned upon strict compliance with these requirements inasmuch as they are *strangers* to these internal rules.<sup>84</sup> (Emphasis in the original, citations omitted)

To the Court's mind, the sales invoices showing that the items were delivered to and actually received by PhilHealth Region III employees is sufficient basis for PhilHealth Region III to comply with its contractual obligation to pay Silicon Valley under the subject POs. PhilHealth Region III cannot be excused from the performance of its reciprocal obligation merely because the assigned inspector failed to perform his duty.<sup>85</sup>

*Third.* Although it can be argued that the falsification of SWS in the present case is an irregularity, this incident that transpired after the completion of the transactions is clearly disconnected from the subject POs in question. This is not a ground for disallowance.

It must be kept in mind that the office supplies in question are fungible goods. In other words, the inks and toners that were sold by Silicon Valley are interchangeable with the inks and toners sold by other suppliers to PhilHealth Region III.

Notably, the COA gave no logical reasoning as to how it concluded that the inks and toners covered by the falsified SWSs were the ones sold by Silicon Valley under the subject POs and not the ones sold by other suppliers mentioned in petitioner Biong's Incident Report, i.e., Masangkay Computer Center and PC Worx.

Notwithstanding Silicon Valley's delay in the performance of its obligation, it should not be faulted for and prejudiced by the theft of office supplies and falsification of SWSs in the GSU office. Evidently, the COA arbitrarily and capriciously chose to disallow the subject POs in view of the absence of a causal relationship between Silicon Valley's delay and the theft of office supplies and falsification of SWSs in the GSU office. It would be the height of injustice if an innocent supplier would be deprived of compensation for goods delivered and/or services rendered due to a government agency's poor internal control and security.

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<sup>84</sup> *Id.*

<sup>85</sup> *See rollo*, pp. 340-341.

In fine, the reasons cited by the COA, which revolved mainly around the management of office supplies by PhilHealth Region III,<sup>86</sup> are not proper grounds for disallowance. Verily the subject NDs in the case must be set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

To be sure, the government can recover the value of stolen government properties.

In cases of loss of government property, the pertinent provisions are Sections 102, 104, and 105 of the Government Auditing Code of the Philippines,<sup>87</sup> viz.:

SECTION 102. *Primary and Secondary Responsibility.* — (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

(2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government.

SECTION 104. *Records and Reports Required by Primarily Responsible Officers.* — The head of any agency or instrumentality of the national government or any government-owned or controlled corporation and any other self-governing board or commission of the government shall exercise the diligence of a good father of a family in supervising accountable officers under his control to prevent the incurrance of loss of government funds or property, otherwise he shall be jointly and solidarily liable with the person primarily accountable therefore. The treasurer of the local government unit shall likewise exercise the same degree of supervision over accountable officers under his supervision otherwise, he shall be jointly and solidarily liable with them for the loss of government funds or property under their control.

SECTION 105. *Measure of Liability of Accountable Officers.* — (1) Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. He shall likewise be liable for all losses, damages, or deterioration occasioned by negligence in the keeping or use of the property, whether or not it be at the time in his actual custody.

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<sup>86</sup> See *id.* at 44 and 52, respectively.

<sup>87</sup> Presidential Decree No. 1445 (1978).

In order to be relieved from liability, an accountable officer may apply for a relief from accountability pursuant to Section 73 of the same law, to wit:

SECTION 73. *Credit for Loss Occurring in Transit or Due to Casualty or Force Majeure.* — (1) When a loss of government funds or property occurs while they are in transit or the loss is caused by fire, theft, or other casualty or force majeure, the officer accountable therefore or having custody thereof shall immediately notify the Commission or the auditor concerned and, within thirty days or such longer period as the Commission or auditor may in the particular case allow, shall present his application for relief, with the available supporting evidence. Whenever warranted by the evidence credit for the loss shall be allowed. An officer who fails to comply with this requirement shall not be relieved of liability or allowed credit for any loss in the settlement of his accounts.

....

Assuming without conceding that petitioner Biong should be held civilly liable for the theft of office supplies, it is clear from Section 73 of the Government Auditing Code of the Philippines that his liability, if any, is limited to the money value of the loss, not the sum of all the subject POs as provided in the NDs.

In any event, petitioner Biong's liability for the money value of stolen office supplies, if any, would be better determined by the resolution of his Request for Relief from Accountability from Loss of Property. Stated differently, petitioner Biong's liability as regards the theft of office supplies in the GSU Office should be divorced from the present disallowance case where the scope of inquiry is limited to whether the payments made to Silicon Valley are indeed irregular, as found by the COA, and if so, whether petitioner Biong, as a certifying officer, should be held liable for the disallowed amount.

As discussed, the subject NDs in the case must be set aside for having been issued by the COA with grave abuse of discretion. Following the guidelines in *Madera*, no return shall be required from any of the persons held liable under the subject NDs, including petitioner Biong.

It is settled that when a disbursement is adjudged to be illegal, irregular, excessive, extravagant, and/or unconscionable, the payee's receipt of any portion thereof is regarded as erroneous, and thus, the payee is liable for the return of the disallowed amount under the principle of

*solutio indebiti*.<sup>88</sup> With respect to the officers who were found to have acted in bad faith, malice, and gross negligence, their solidary liability is limited to the *net disallowed amount*, which refers to the total disallowed amount minus the amounts excused to be returned by the payees.<sup>89</sup> Thus, when the COA or the Court exercises an act of liberality in favor of the payees in a disallowance case, the reduction or absolution of the obligations of the payees would redound to the benefit of the officers.<sup>90</sup>

In the case, however, it does not escape the Court's attention that Silicon Valley, the payee, was not among the persons held liable under the subject NDs.<sup>91</sup> Evidently, the COA disregarded the prevailing jurisprudence when it exempted Silicon Valley from returning the amount paid to it and at the same time imposed the inequitable burden of paying for the entire disallowed amount to petitioner Biong.

What is more, under Section 16.1 of the Rules and Regulations on Settlement of Accounts,<sup>92</sup> the liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (1) the nature of the disallowance/charge; (2) the duties and responsibilities of the officers concerned; (3) the extent of their participation in the disallowed transaction; and (4) *the amount of damage or loss to the government*.

Interestingly, the COA did not deny petitioner Biong's contention that PhilHealth Region III was not prejudiced as a result of the payments made to Silicon Valley.<sup>93</sup> Still, the COA required petitioner Biong to reimburse the government despite the undisputed fact that PhilHealth Region III had a valid contractual obligation to pay Silicon Valley.

To stress, a liability for disallowance partakes of the nature of an obligation for *restitution*.<sup>94</sup> Thus, the amount that should be returned by persons held liable under an ND should not exceed the loss, damage, or injury to the government. Consequently, the absence of loss, damage, or injury to PhilHealth Region III as a result of the payments made to Silicon

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<sup>88</sup> *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 250787, September 27, 2022, citing *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020, and *Social Security System v. Commission on Audit*, G.R. No. 231391, June 22, 2021.

<sup>89</sup> *Aquino v. Commission on Audit*, 888 Phil 643, 678 (2020).

<sup>90</sup> *Id.* at 684.

<sup>91</sup> See *rollo*, pp. 59–70.

<sup>92</sup> COA Circular No. 2009-006.

<sup>93</sup> See *rollo*, p. 407.

<sup>94</sup> *De Castro v. Commission on Audit*, 886 Phil. 104, 151 (2020).

Valley is inconsistent with petitioner Biong's liability under the subject NDs.

Evidently, the disallowances in the case were impelled by the COA's desire to punish petitioner Biong for his supposed "apparent and consistent negligence" as the GSU Head—not to obligate the return of the amounts paid to Silicon Valley.

To the Court's mind, the COA's imposition of civil liability on petitioner Biong on the ground of his gross negligence already partook of the nature of a fine or a penalty. Verily, the COA overstepped its audit powers and had effectively usurped the disciplinary powers of the PhilHealth, the Civil Service Commission, and/or the Office of the Ombudsman over petitioner Biong.

In *De Castro*, the Court similarly held that the COA overstepped its authority in a disallowance case when it imposed liability on the ground of a supposed misfeasance.<sup>95</sup>

*A final note*

The COA should be reminded that the conduct of an audit is not an exercise of the government's administrative supervision over public officers.<sup>96</sup> More, the liability of erring public officers in a disallowance case should partake of the nature of an obligation for restitution—not a fine or a penalty.

Stated differently, absent any monetary loss, damage, or injury on the part of the government, the imposition of a fine or a penalty on the ground of misfeasance, nonfeasance, or malfeasance of a public officer is outside the scope of the COA's audit powers. Upon the discovery of a violation of a law or regulation during an audit, the COA's authority is limited to initiation of the appropriate administrative, civil, and/or criminal action.<sup>97</sup> The COA cannot expand its audit powers so as to include the imposition of administrative penalties on erring public officers.

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<sup>95</sup> *Id.*

<sup>96</sup> See *Ramiscal v. Commission on Audit*, 819 Phil. 597, 612 (2017).

<sup>97</sup> *De Castro v. Commission on Audit*, 886 Phil. 104, 153 (2020).

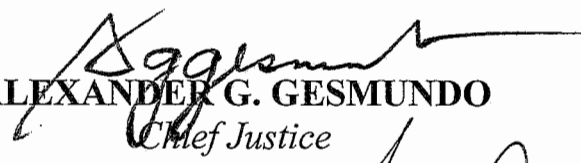
**ACCORDINGLY**, the Petition for *Certiorari* is **GRANTED**. The assailed Commission on Audit Decision No. 2019-040 dated March 21, 2019, and Notice of Finality of Decision No. 2021-252 dated November 17, 2021, are **SET ASIDE**.

**SO ORDERED.**



**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

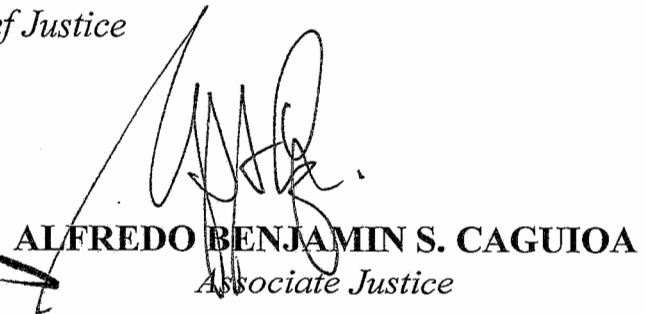
WE CONCUR:



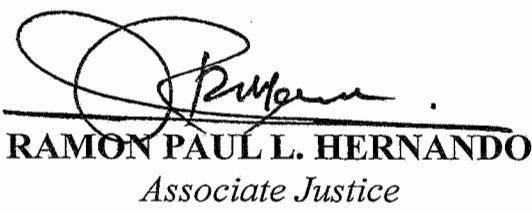
**ALEXANDER G. GESMUNDO**  
*Chief Justice*



**MARVIC M.V.F. LEONEN**  
*Associate Justice*



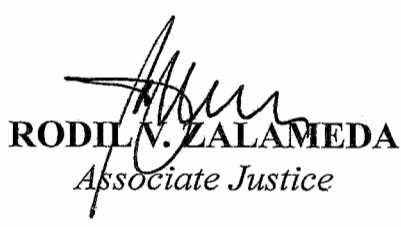
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



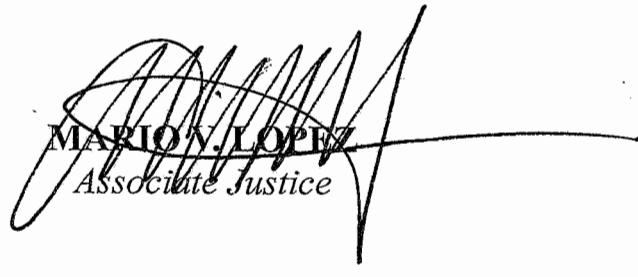
**RAMON PAUL L. HERNANDO**  
*Associate Justice*



**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**RODIL V. ZALAMEDA**  
*Associate Justice*



**MARION LOPEZ**  
*Associate Justice*




**SAMUEL H. GAERLAN**  
*Associate Justice*



**RICARDO R. ROSARIO**  
*Associate Justice*



  
**JHOSEP Y. LOPEZ**  
*Associate Justice*

  
**JAPAR B. DIMAAMPAO**  
*Associate Justice*

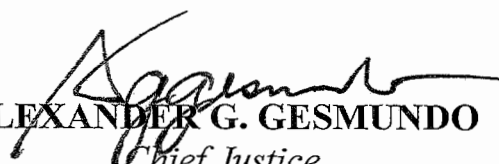
  
**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*

  
**ANTONIO T. KHO, JR.**  
*Associate Justice*

  
**MARIA FILOMENA D. SINGH**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

