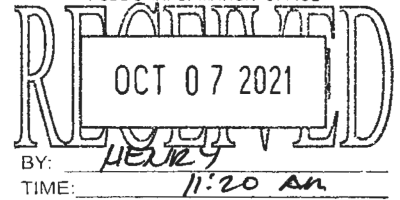

Republic of the Philippines
Supreme Court
Manila

**EN BANC**

| | |
|---|---|
| **SOCIAL SECURITY SYSTEM,**<br>Petitioner, | **G.R. No. 224182** |
| | Present: |
| -versus- | PERALTA, *Chief Justice,*<br>PERLAS-BERNABE,<br>LEONEN,<br>CAGUIOA,<br>GESMUNDO,<br>HERNANDO,<br>CARANDANG,<br>LAZARO-JAVIER,<br>INTING,<br>ZALAMEDA,<br>LOPEZ, M.,<br>DELOS SANTOS,<br>GAERLAN,<br>ROSARIO, and<br>LOPEZ, J., *JJ.* |
| **COMMISSION ON AUDIT,**<br>Respondent. | **Promulgated:**<br>March 2, 2021 |

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## DECISION

**LEONEN, *J.:***

The grant of incentives to employees should be in accordance with law, not discretion. More so when the officers entrusted with its disbursement are mere trustees of the funds used. Failure to abide by the law, compels all the officers and employees to return the amount unlawfully released.

This Petition for Certiorari[1] assails the Decision[2] of the Commission on Audit, which dismissed Social Security System's appeal and declared as final and executory the disallowance on the payment of Collective Negotiation Agreement incentives to employees of the Social Security System – Central Visayas Division.

From January 2005 to December 2009, the Social Security System Central Visayas Division granted Collective Negotiation Agreement incentives to its employees in the total amount of ₱41,311,073.83.[3] The incentives were granted pursuant to Social Security Commission Resolution No. 259 s. 2005,[4] Resolution No. 400 s. 2007,[5] Resolution 685 s. 2008,[6] Resolution 703 s. 2009,[7] Resolution 482 s. 2010,[8] and Resolution 499 s. 2010.[9]

On June 26, 2012, the Social Security System Central Visayas Division received Notice of Disallowance No. 12-002-CF (2005-2009) issued by the Commission on Audit Central Visayas Division.[10]

In the Notice of Disallowance, the grant of Collective Negotiation Agreement incentives was disallowed, because: (1) the cash incentives for 2005, 2006 and 2007 were paid although the Collective Negotiation Agreement did not provide for it, contrary to Section 5.1 of the Department of Budget and Management Budget Circular No. 2006-01; (2) excessive accruals of cash incentives for 2006, 2007 and 2008 were made basis for paying additional cash incentives contrary to Sections 5.7 and 7.1 of Budget Circular No. 2006-01; and (3) no conclusive proof was shown that savings from Maintenance and Other Operating Expenses from 2005 to 2009 were generated out of cost-cutting measures.[11] The Notice of Disallowance further stated that there was irregular or excessive disbursement, considering that one of the conditions under Section 3 of the Public Sector Labor Management Council Resolution (PSLMC) No. 2, s. 2003 was not met.[12]

Aside from the recipients of the incentives listed in the Notice of Disallowance,[13] the following officers were found liable for their individual

[1] *Rollo*, pp. 3–22.
[2] Id. at 24–27. Decision No. 2015-450, dated December 29, 2015, was signed by Chairperson Michael G. Aguinaldo and Commissioner Jose A. Fabia of the Commission on Audit.
[3] Id. at 32.
[4] Id. at 86–87.
[5] Id. at 88–89.
[6] Id. at 90.
[7] Id. at 91.
[8] Id. at 92.
[9] Id. at 93–94.
[10] Id. at 42–55.
[11] Id. at 42.
[12] Id. at 43.
[13] Id. at 44–51. Name of Person Liable: 1. Helen C. Solito; 2. Janet A. Acasio; 3. Joselita G. Crispo; 4. Marie Ann B. Chavez; 5. Mario V. Corro; 6. Salvador G. Demetrio; Name of Person Liable: CEBU CLUSTER: Acasio, Janet A.; Borbon, Dorilyn T.; Cadusale, Herminigildo; Cafe, Gabriel L.; Crispo, Joselita G.; Dejacto, Merceditas E.; Emborgo, Ricky C.; Estalani, Ernesto S.; Fuentes, Myrna A.;

participation in the transactions: (1) AVP-Central Visayas Cluster Helen C. Solito, who signed as approving officer in the payrolls and debit advices with Land Bank; (2) Team Head-Administration Section Janet A. Acasio, who signed as certifying officer in the payrolls; (3) Head of Administration and General Accounting Section Joselita G. Crispo, who signed as certifying officer as to availability of funds in the payrolls and signed as approving officer in the debit advices with Land Bank for 2005 and 2007; (4) Senior Attorney Marie Ann B. Chavez, who signed as approving officer in the debt advices with Land Bank for 2008 and 2009; (5) Branch Head-Cebu Branch Mario V. Corro, who signed as approving officer in the debit advices with Land Bank for 2008; and (6) OIC RC/Senior Physician Salvador G. Demeterio, who signed as approving officer in the debit advices with Land Bank for 2007.[14]

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Gonzales, Kathleen; Llamido, Archilire B.; Pueblo, Amelito O.; Raga, David A.; Ruiz, Ronald Dindo C.; Sanchez, Ronald S.; Sia, Francis Giovanni D.; Sionomio, Merlyn B.; LEGAL DEPARTMENT: Bato, Ligaya T.; Chavez, Marie Ann B.; Domaboc, Glenito D.; Montalbo, Alberto L.; Pacarro, Unesco Jr. C.; Solito, Helen C.; Yu, Joebel M.; MANDAUE BRANCH: Montemayor, Remigio B.; CEBU BRANCH: Abregana, Nelson F.; Aguilar, Lea M.;Alivio, Oscar C.; Ang, Johanna F.; Arizobal, Helen Rose R.; Arnado, Edna S.; Arreza, Myna Q.; Bacus, Marie Anne P.; Barbon, Loreen M.; Bernales, Araceli P.; Bernardo, Enrico C.; Caballes, Janice L.; Cabanero, Maria Cleotilda O.; Cabungcag, Mary Jessielyn M.; Camacho, Damiano Jr. S.; Cañeda, Philamer S.; Canque, Viviana D.; Castañares, Grace C.; Corominas, Louela V.; Corro, Mario V.; Datahan, Cherry Jean P.; Delos Santos, Alexander S.; Delfin, Maria Cecilia G.; Estavilla, Wivina S.; Gaviola, Vanda Charissa E.; Gelbolingo, Maria Teresa L.; Inting, Maria Anabell E.; Iñigo, Jerome P.; Jamandron, Jaymar R.; Judilla, Ulysses S.; Lomongo, Froilan Faustino R.; Lucernas, Carmencita B.; Madarang, Evelyn M.; Manlangit, Estrellita I.; Montecillo, Donald A.; Montemayor, Wilfreda O.; Moring, Rosario Connie C.; Nacua, Benedict Joseph S.; Orozco Golda D.; Piedad, Wilma T.; Ranara, Maria Olga L.; Rara, Joseph P.; Ricardo Mellaine M.;Robillos, Gideon M.; Rosende, Lilibeth E; Rusiana, Robert Francis L.; Samaco, Esperanza Mabel L.; Sayson, Celerina D.; Sumile, Ceres T.; Tam, Janet B.; Tan, Reah; Tapia, Brenda F.; Tecson, Gaudencia S.; Teopiz, Peregrina C.; Torrefranca, Verda S.; Villacin, Janette F.; Yap, Emmanuel; Yap, Georgina D.; Zozobrado, Lorna A.; Zurbano, Cynthia; LAPULAPU BRANCH: Anil, Ma. Lourdes M.; Arro, Emmanuel A.; Banguiran, Nanita K.; Barrete, Ma. Corazon U.; Basubas, Alieta I.;Bolic, Jim C.; Descartin, Eloisa S.;Descartin, Joaquin B.; Doncillo, Magdalena H.; Galeon, Irene M.; Lisondra, Ma. Concesa; Ortega, Marvin G.; Peñas, Uldarico A.; Pilayre, Cheryl H.; Rivera, Joselito C.; Setrina, Donna Jean E.; Simene, Paris Jr. J.; Solon, Esther I.; Torayno, Jeryl R.; Villacastin, Roland John A.; Warque, Stella D.; Zozobrado, Belen E.; TAGBILARAN BRANCH: Amora, Marife B.; Bernales, Eutiquio, Jr. A.; Chavez, Prescillana T.; Formento, Agnes A.; Laolao, Democrito, Jr. M.; Lingo, Leonard B.; Madanguit, Dioscoro M.; Maris, Antolin R.; Medilo, Klarisa L.;Pueblo, Annabelle A.; Rebultan, Corazon M.;Redulla, Jeremy M.; Tahil, Antonette; Talictic, Marino B.; Torculas, Modesta D.; TOLEDO BRANCH: Coronado, Eric A.;Santos, Dindo D.; TACLOBAN BRANCH; Abano Francisco Jr. M.;Agner, Emilio D.;Alvarado, Ghyrzle G.; Cajucom, Lilibeth A.; Diaz, Mae Jennifer D.; Gacutno, Jocelyn P.; Go, Maria Judy G., Laceras, Arcano Q.; Lodero, Stefana D.; Loyola, Erwin E.; Montana, Maria Eleonor A.; Novillo, Felicidad D.; Olaran, Aileen A.;Pacoli, Marco Antonio G.; Petilos, Jenny Rose C.; Po, James P.; Pobadora, Francisco I.; Regala, Elvira P.; Salonoy, Angelica A.; Tonido, Genevieve S.; Tonido, Joel C.; Tuazon, Jeanette Gay P.; Tugado, Ma. Hazel E.; Yepes, Bernardo C.; CALBAYOG BRANCH: Anıban, Ricardo A.; Arpon, Agnes A.; Cortado, Tyron T.; Juego, Elma A.; Lusara, Herminia T.; Miscreola, Herbert B.; Navales, Roger D.; Pombo, Benjamin A.; Racuyal, Eudora G.; Samson, Loperio Jr. G.; CATBALOGAN BRANCH: Bacarra, Liberty M.; Baclay, Troy Ian A.;Carretas, Niceta M.; Esplago, Bonifacio Jr. D.; Mañoza, Jean T.; Martinez, Adelvina G.; Menda, Oliver A.; Mercado, Vina Socorro A.; Rojo Monina; MAASIN BRANCH: Cobile, Lorenzo Jr. D.; De Jesus, Aurelio Jr. M.; Duazo, Merlinda L.; Gregana, Rodrigo B.;Gulles, Consuelo M.; Lagusad, Jessette A.; Molar, Victor D.; Montederamos, Ma. Emmalyn S.; Paler, Jerome D.; Penserga, William P.; Salidaga, Porferio Jr. A.; Vasquez, Rodolfo S.; ORMOC BRANCH: Abas, Nicefura S.; Abit, Delsergs Jose M.; Agapito, Ma. Nena S.; Barja, Adora R.; Baroza, Gregorio S.; Bazarte, Laarni Amor J.; Bontuyan, Rhia Noreen C.; Caberte, Gemma C.; Dacalos, Rainelda I.; Jugar, Gina D.; Majait, Salvador Jr. C.; Nasayao, Melinda Y.; Pilapil, Roselyn P.; Reloba, Anna Liza L.; Suralta, Ronelito F.; Verano, Anecita B.; Villaber, Roy Roque S.; OTHERS: Andone, Rowena; Bael, Jonas; Bruza, Rogelio; Capidan, Lolita; Demeterio, Salvador; Escobal, Jesus Jr.; Latras, Edwin; Lerum, Florita.

[14] Id. at 43.

Social Security System, through its President and Chief Executive Officer Emilio S. de Quiros, Jr., filed its Appeal Memorandum on December 21, 2012.[15]

The Appeal Memorandum states that: (1) the incentives for 2005 was lawfully granted, because it was clearly provided for in the Supplemental Collective Negotiation Agreement, in accordance with Section 5.1 of Budget Circular No. 2006-1;[16] (2) the grant of additional incentives from 2006 to 2009 was not based on excessive accrual, but based on cost-cutting measures identified in the Collective Negotiation Agreements[17] and on additional savings out of the unimplemented or partially completed projects, which is allowed under Section 7.3 of Budget Circular No. 2006-1;[18] (3) the maximum allocation of eighty percent of the savings from the Maintenance and Other Operating Expenses as basis for computing cash incentives is in accordance with Section 6.1.3 of Budget Circular No. 2006-1;[19] (4) the grant of incentives for 2005 and 2007 met the requirements of Section 3 of PSLMC Resolution No. 2, s. 2003;[20] (5) staggered payments of incentives is not prohibited under Budget Circular No. 2006-1, Section 8 of PSLMC Resolution No. 2, s. 2003, and Section 5 of Administrative Order No. 135;[21] and (6) granting the incentives to its rank-and-file employees was an exercise of its statutory prerogative under its charter.[22]

In a Reply Memorandum, the Commission on Audit Central Visayas Division maintained their position and expounded on their basis for the disallowance.[23]

In Decision No. 2015-003,[24] the Commission on Audit's Corporate Government Sector Cluster 2 (CGS-Cluster 2) denied the appeal and affirmed the Notice of Disallowance. The dispositive portion of the Decision read:

> **WHEREFORE**, foregoing premises considered, Notice of Disallowance No. 12-002-CF-(2005-2009) dated June 22, 2012, issued by the Office of the Supervising Auditor, Audit Group C – Corporate Government Sector, COA – Region VII, Cebu City is hereby **AFFIRMED**. Accordingly, the instant appeal is hereby **DENIED** for lack of merit.
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> So ordered.[25] (Emphasis in the original)

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[15] Id. at 56–70.
[16] Id. at 59.
[17] Id. at 66.
[18] Id. at 63 and 65.
[19] Id. at 67.
[20] Id. at 60.
[21] Id. at 65.
[22] Id. at 69.
[23] Id. at 35.
[24] Id. at 32–40. The Decision dated January 27, 2015 was penned by Director IV Mary S. Adelino.
[25] Id. at 40.

The CGS-Cluster 2 ruled that the grant of incentives from 2005 to 2009 had no legal basis.[26] It held that the conditions for the grant of the Collective Negotiation Agreement incentives under Budget Circular No. 2006-01 were not complied with, because the Supplemental Collective Negotiation Agreement was not produced.[27] Assuming it exists, the Collective Negotiation Agreements did not also satisfy the requirements of PSLMC Resolution No. 2, s. 2003, since cost-cutting measures were not identified and actual operating income was less than the targeted operating income for 2005.[28] The CGS-Cluster 2 further found violations of Section 5.7 of Budget Circular No. 2006-01 on one-time benefit after end of the year, and of Section 7.1 of Budget Circular No. 2006-01 for not limiting the source from savings from released Maintenance and Other Operating Expenses allotments.[29]

On March 5, 2015, the Social Security System, through its Chief Executive Officer and President, received a copy of the CGS-Cluster 2 Decision.[30] The same was received by the Legal Services Division of the Social Security System on March 9, 2015.[31]

On March 12, 2015, the Social Security System filed its Petition for Review with the Commission on Audit Proper.[32]

On December 29, 2015, the Commission on Audit Proper rendered Decision No. 2015-450[33] dismissing the petition for having been filed out of time, to wit:

> **WHEREFORE**, premises considered, the petition for review is hereby **DISMISSED** for having been filed out of time. Accordingly, CGS Cluster 2 Decision No. 2015-003 dated [January 27, 2015], which affirmed Notice of Disallowance No. 12-002-CF-(2005-2009) dated June 22, 2012 on the payment of Collective Negotiation Agreement incentives to its employees at the Central Visayas Division from January 2005 to December 2009 in the total amount of P41,311,073.83, is **FINAL AND EXECUTORY**.[34] (Emphasis supplied)

The Commission on Audit Proper held that Social Security System only had until March 8, 2015 to file its petition for review, in accordance with Section 3, Rule VII of the 2009 Revised Rules of Procedure of the Commission on Audit, but it filed its petition for review on March 12, 2015

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[26] Id. at 37.
[27] Id.
[28] Id. at 38.
[29] Id. at 38–39.
[30] Id. at 24.
[31] Id. at 6.
[32] Id. at 111.
[33] Id. at 24–27.
[34] Id. at 26.

or beyond the reglementary period to appeal, rendering CGS-Cluster 2 Decision final and executory.[35]

On May 11, 2016, Social Security System filed this Petition for *Certiorari* under Rule 64 of the Rules of Court.[36]

Petitioner claims that it timely filed its petition for review before the Commission on Audit Proper, because the reckoning date of its receipt of the CGS-Cluster 2 Decision should be March 9, 2015, or when its Chief Legal Counsel received it, and not on March 5, 2019.[37] It maintains that its grant of incentives was an exercise of its judgment pursuant to its operational autonomy under its Charter.[38] It also claims to have exercised reasonable discretion in accordance with the limitation of the law, specifically Section 25 of Social Security Act of 1997.[39] Petitioner insists that Presidential Decree No. 1597 is not applicable and has been repealed by Social Security Act of 1997, and there is nothing in Social Security Act of 1997 which requires approval of the president before it can grant reasonable compensation, allowance and benefits to its employees.[40]

In its Comment,[41] respondent argues that the Petition for Review was filed beyond the period provided under Rule V, Sections 1, 4 and 5, and Rule VII, Section 3 of the Commission on Audit 2009 Revised Rules of Procedure.[42] Respondent claims that the reckoning period for the filing of the petition for review is on March 5, 2016, and not March 9, 2016.[43] It avers that the service of the CGS-Cluster 2 Decision to the President and Chief Executive Officer on March 5, 2016 was proper, because petitioner filed its Appeal Memorandum through him.[44]

Respondent further claims that the grant of Collective Negotiation Agreement incentives was properly disallowed as it was not provided for in the Collective Negotiation Agreements, in contravention of Section 5.1 of Budget Circular No. 2006-1.[45] It further argues that the Supplemental Collective Negotiation Agreement was not proven to exist, since petitioner only presented Social Security Commission Resolution No. 259, s. 2005 to prove its existence.[46] Thus, respondent argues the grant of incentives violated PSLMC Resolution No. 2, s. 2003 and Budget Circular No. 2006-01.[47]

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[35] Id. at 25.
[36] Id. at 3.
[37] Id. at 12.
[38] Id. at 13.
[39] Id. at 15.
[40] Id. at 16–17.
[41] Id. at 144–161.
[42] Id. at 148.
[43] Id. at 150.
[44] Id. at 151–152.
[45] Id. at 152.
[46] Id. at 152–153.
[47] Id. at 156.

Respondent further claims that upon investigation and assessment, petitioner's actual operating income in 2005 was only ₱59.80 billion, or below its targeted operating income of ₱60.42 billion, and its actual operating income in 2007 was only ₱72.564 billion, which falls short of its target of ₱78.300 billion, contrary to Section 3 of PSLMC Resolution No. 2, s. 2003.[48] Finally, respondent claims that it did not commit grave abuse of discretion, considering that its decisions were issued after judicious exercise of its general audit power, in accordance with laws, and rules of procedure.[49]

In its Reply,[50] petitioner claims that its Appeal Memorandum clearly indicated that it is represented by its Corporate Legal Department. Thus, service should have been made to it.[51] Petitioner insists that it filed the Petition within the reglementary period for filing appeal as the reckoning point should be March 9, 2015.[52] It reiterates that the grant of incentives to its rank-and-file employees was clearly an exercise of its statutory prerogative.[53]

In a November 21, 2017 Resolution,[54] this Court required the parties to submit their respective memoranda.

In its Memorandum,[55] petitioner reiterates the same arguments raised in the Petition. Respondent likewise, in its Memorandum,[56] reiterates the same arguments in its Comment. Respondent insists that petitioner was not represented by counsel when it filed its Appeal Memorandum on December 21, 2012. Rather, it was petitioner's Chief Executive Officer and President who filed and signed its Appeal Memorandum.[57]

The issues for this Court's resolution are:

First, whether or not respondent's CGS-Cluster 2 Decision became final and executory for failure of petitioner to file its Petition for Review on time;

Second, whether or not respondent correctly disallowed the grant of Collective Negotiation Agreement incentives to petitioner's Central Visayas Division employees; and

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48 Id. at 156–157.
49 Id. at 158.
50 Id. at 164–172.
51 Id. at 165.
52 Id. at 167.
53 Id. at 169.
54 Id. at 177–178.
55 Id. at 200–212.
56 Id. at 179–198.
57 Id. at 187.

Finally, whether or not the approving and certifying officers, and the recipients of the Collective Negotiation Agreement incentives should return the amounts they received.

We dismiss the Petition.

I

As a general policy, this Court sustains the decisions of administrative authorities, especially those by constitutionally created bodies like the Commission on Audit, "not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce."[58]

A judgment or final order or resolution of the Commission on Audit may only be brought before this Court by a party through a petition for *certiorari* under Rule 65.[59] Further, the Rule 65 petition will only be entertained when the Commission on Audit acted without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction.[60] Grave abuse of discretion exists "when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism."[61]

Presidential Decree No. 1445 provides that a person aggrieved by the decision of an auditor may, within six months from receipt of a copy of the decision, appeal in writing to the Commission.[62] Under Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit, as amended, an appeal from the decision of the auditor to the director should be made by filing an Appeal Memorandum within six months from the receipt of the decision appealed from.[63] Thereafter, Rule VII, Section 3[64] of the same Rules provides that a petition for review of the Director's decision to the Commission on Audit Proper shall be filed within the time remaining of the

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[58] *Yap v. Commission on Audit,* 633 Phil. 174 (2010) [Per J. Leonardo-de Castro, En Banc]

[59] RULES OF COURT, Rule 64, Section 2.

[60] RULES OF COURT, Rule 65, Section 1.

[61] *Yap v. Commission on Audit,* 633 Phil. 174, 195–196 (2010) [Per J. Leonardo-de Castro, En Banc] citing *Ferrer v. Office of the Ombudsman,* 583 Phil. 50 (2008).

[62] Presidential Decree No. 1445 (1978), sec. 48.

[63] 2009 Revised Rules of Procedure of the Commission on Audit, Rule V, sec. 1 provides:
SECTION 1. *Who May Appeal.* - An aggrieved party may appeal from the decision of the Auditor to the Director who has jurisdiction over the agency under audit.

[64] 2009 Revised Rules of Procedure of the Commission on Audit, Rule VII, sec. 3 provides:
SECTION 3. *Period of Appeal* – The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision.

six months period under Rule V, Section 4,[65] taking into account the suspension of the running thereof under Rule V, Section 5.[66]

In *Abpi v. Commission on Audit*,[67] this Court held that the Special Audit Office's Decision, upholding the validity of the Notices of Disallowances, became final and executory, because "petitioner filed the Petition for Review beyond the reglementary period which is six (6) months or 180 days after receipt of copies of the [Notices of Disallowances.]"[68]

Here, the records show that petitioner received the Notice of Disallowance on June 26, 2012 and filed its Appeal Memorandum 178 days later on December 21, 2012. Thus, petitioner only had two days left to file its Petition for Review before the Commission on Audit Proper.

Meanwhile, the CGS-Cluster 2 issued its Decision on January 27, 2015 which petitioner appealed to the Commission on Audit Proper on March 12, 2015. Whether we reckon the two-day remaining period from March 5, 2015 when petitioner's President and Chief Executive Officer received the CGS-Cluster 2 Decision, or on March 9, 2015 when petitioner's Corporate Legal Counsel received the same Decision, its Petition for Review filed on March 12, 2015 was still beyond the two days remaining of the six-month period. A decision of the Commission or auditor upon any matter within its jurisdiction shall be final and executory, if not properly appealed.[69] Thus, the CGS-Cluster 2 Decision became final and executory, for petitioner's failure to appeal within the reglementary period.

Petitioner failed to show how respondent committed grave abuse of discretion or acted out of caprice, whim or despotism, when it merely dismissed the Petition for being filed out of time according to its rules of procedure. Nevertheless, even if this Court ignores the procedural infirmity and rule on the merits, the Petition must still be dismissed.

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[65] 2009 Revised Rules of Procedure of the Commission on Audit, Rule V, sec. 4 provides:
SECTION 4. *When Appeal Taken* - An Appeal must be filed within six (6) months after receipt of the decision appealed from.

[66] 2009 Revised Rules of Procedure of the Commission on Audit, Rule V, sec. 5 provides:
SECTION 5. *Interruption of Time to Appeal.* - The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellant of the Director's decision.

[67] G.R. No. 252367, July 14, 2020, < https://sc.judiciary.gov.ph/14197/> [Per J. Delos Santos, En Banc].

[68] Id.

[69] Presidential Decree No. 1445 (1987), sec. 51; 2009 Revised Rules of Procedure of the Commission on Audit, Rule X, sec. 13 further provides:
SECTION 13. *Entry of Decision.* - If no appeal is filed within the time provided in these rules, the decision of the Commission shall be entered by the Commission Secretary in the Docket which shall contain the dispositive part of the decision and shall be signed by the Secretary with a certificate that such decision has become final and executory. Such recording of the decision shall constitute the entry."

**II**

Public Sector Labor-Management Council Resolution No. 2, series of 2003, authorizes the grant of Collective Negotiation Agreement incentives to rank-and-file employees of government-owned-or-controlled corporations and government financial institutions "in recognition of the joint efforts of labor and management to attain more efficient and viable operations,"[70] provided the following conditions are satisfied:

> SECTION 2. The CNA must include, among others, provisions on improvement of income and productivity, streamlining of systems and procedures, and cost cutting measures that shall be undertaken by both the management and the union so that the operations of the GOCC/GFI can be undertaken at a lesser cost.
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> SECTION 3. The CNA Incentives may be granted if all the following conditions are met by the GOCC/GFI:
>
> a) Actual operating income at least meets the targeted operating income in the Corporate Operating Budget (COB) approved by the Department of Budget and Management (DBM)/Office of the President for the year. For GOCCs/GFIs, which by the nature of their functions consistently incur operating losses, the correct year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's levels;
>
> b) Actual operating expenses are less than the DBM-approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentive; and
>
> c) For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with provisions of Republic Act No. 7656 dated November 9, 1993.[71]

On December 27, 2005, Administrative Order No. 135 confirmed the grant of Collective Negotiation Agreement incentives to rank-and-file employees, if the same is provided for in the respective Collective Negotiation Agreements and supplements executed between the management and employee's organization, and compliant with Public Sector Labor-Management Council Resolution No. 2, series of 2003.[72]

On February 1, 2006, the Department of Budget and Management issued Budget Circular No. 2006-1 prescribing the policy and procedural guidelines on the grant of the Collective Negotiation Agreement incentives, the relevant provisions of which are:

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[70] Public Sector Labor-Management Council Resolution No. 2, series of 2003, sec. 1.

[71] Public Sector Labor-Management Council Resolution No. 2, series of 2003, secs 2 and 3.

[72] Administrative Order No. 135, Sections 1 and 2.

> 5.1 The CNA Incentive in the form of cash may be granted to employees covered by this Circular, if provided for in the CNAs or in the supplements thereto, executed between the representatives of the management and the employees' organization accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002 and as updated.
>
> ....
>
> 5.6 The amount/rate of the individual CNA Incentive:
>
> > 5.6.1 Shall not be pre-determined in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity and income in GOCCs and GFIs;
>
> ....
>
> 5.7 The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year.
>
> ....
>
> **7.0 Funding Source**
>
> 7.1 The CNA Incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:
>
> > 7.1.1 Such savings were generated out of cost-cutting measures identified in the CNAs and supplements thereto;
>
> ....
>
> 7.3 GOCCs/GFIs and LGUs may pay the CNA Incentive from savings in their respective approved corporate operating budgets or local budgets.

In the recent case of *Social Security System v. Commission on Audit*,[73] the Court upheld the Notice of Disallowance against the Collective Negotiation Agreement incentives granted to petitioner's employees for lack of legal basis and failure to comply with the rules in the grant of incentives, specifically: (1) the Social Security Resolution authorizing its grant was inexistent; (2) its grant was not part of a duly executed Collective Negotiation Agreement for 2005-2008, in violation of Section 5.1 of Budget

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[73] G.R. No. 244336, October 6, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66557> [Per J. Lazaro-Javier, En Banc].

Circular No. 2006-1; (3) Sections 5.6.1, 5.7 and 6.1.3 of Budget Circular No. 2006-1 were violated when petitioner granted a pre-determined amount of ₱20,000.00, breaching its apportionment of savings by using 80% of it for 2005-2007; (4) there was no evidence that the amounts given came from savings, in violation of Section 7.1.1. of Budget Circular No. 2006-1 and Public Sector Labor-Management Council Resolution No. 2, series of 2003; and (5) the conditions under Public Sector Labor-Management Council Resolution No. 2, series of 2003 were not complied with.

Similarly, in this case, respondent's CGS-Cluster 2 found violations of Sections 2 and 3 of Public Sector Labor-Management Council Resolution No. 2, series of 2003, Administrative Order No. 135, and Sections 5.1, 5.7 and 7.1 of Budget Circular No. 2006-1, to wit:

> Foremost, there was non-compliance with the pre-conditions for the grant of the CNA Incentives. BC No. 2006-1 which implements AO No. 135 and PSLMC Resolution No. 2, s. 2003 and PLSMC Resolution No. 4, s. 2002, provides inter alia:
>
> . . . .
>
> In the case at bar, none in the 2003 and 2007 CNAs between SSS and ACCESS can there be read a provision on the grant of CNA Incentives to SSS rank-and-file employees contrary to the abovequoted provision. The claim that the grant of a CNA Incentive was stipulated in a Supplemental CNA cannot stand unless the Appellant is able to produce an authentic copy of said agreement. The fact that the CNA was categorically mentioned and approved in SSC Resolution No. 259, s. 2005 dated July 6, 20015 is insufficient.
>
> . . . .
>
> . . . It is rather suspicious that the Appellant is able to quote specific provisions of the alleged Supplemental CNA but is not capable of producing an authentic copy of the alleged agreement for proper verification, scrutiny and examination by the Appellees. Clearly, there exists no "*sufficient and relevant documents to establish validity of claims.*"
>
> Granting arguendo that there exists a valid Supplemental CNA appropriately containing a provision on the grant of the CNA Incentives, the disallowance would still be appropriate. The 2003 and 2007 CNAs do not contain provisions to satisfy the requirement of Section 2 of PSLMC Resolution No. 2, s. 2003, to wit:
>
> . . . .
>
> The argument of the Appellant that Sections 2 and 3 of Article IV of the 2003 and 2007 CNAs are sufficient to comply with the requirement of the above provision is misplaced. Substantially, what Section 2 of PSLMC Resolution No. 2, s. 2003 calls for are specific steps, procedures and measures that both the SSS management and its rank-and-file employees should undertake to improve income and productivity,

> streamline procedures and reduce operational costs. Neither does OO No. 161-P comply with the above provision as the cost-cutting measures should be identified in the CNA itself or in a supplement thereto.
>
> Disregarding the above defects in the grant of the CNA Incentives, the issuance of [a] ND would still be warranted because of the further lapses committed by the Appellant.
>
> In 2005, the Appellant's actual operating income was P620 million less than the COB targeted operating income. PSLMC Resolution No. 2, s. 2003 is very clear in instructing that the actual operating income should at least meet the COB targeted operating income before a grant can be made. While it might be true that the Appellant had a strong financial performance which is primarily assessed in terms of net income, the requirement under Section 3 (b) of PSLMC Resolution No. 2, s. 2003 is so unambiguous to be misinterpreted.
>
> Further, the Appellant by paying additional CNA Incentives for calendar years 2005, 2006, 2007 and 2008 violated Section 5.7 of BC 2006-2, viz:
>
> . . . .
>
> Finally, the Appellant erred further by not limiting the funding source of its CNA Incentives from savings from released MOOE allotments as mandated by Section 7.1 of BC 2006-1. Its exploit of Section 7.3 thereof as the reason for its action is unmeritorious. Section 7.3 simply gives additional detail to Section 7.1 in that the savings should be determined and paid in relation to the approved COBs for GOCCs/GFIs and local budgets for LGUs. . . .[74] (Emphasis in the original)

Moreover, aside from the patent lack of Collective Negotiation Agreements or supplements supporting the grant of the incentives, the Social Security Commission Resolutions offered in evidence show other violations of Budget Circular No. 2006-1, in that the incentives were predetermined, not paid as a one-time benefit, and not solely sourced from savings.

Specifically, Resolution No. 259 series of 2005 provided that the grant of incentives is payable in two tranches and "the total estimated amount of ₱80.8 [million] needed for the grant of CNA Incentive of ₱20,000 shall be sourced from the 2005 Contingency Fund."[75] Resolution No. 400, series of 2007 stated that: "[t]he amount needed for the payment of ₱25,936.19 each to 4,143 officials and employees is approximately ₱107.45M, which has been accrued in the 2006 [e]xpenses."[76] Lastly, Resolution No. 482 and 499 series of 2010 further approved the partial payment of the incentive.[77]

Under Article IX-D, Section 2(2) of the Constitution, the Commission on Audit shall have exclusive authority to "promulgate accounting and

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[74] *Rollo,* 37–39.
[75] Id. at 86.
[76] Id. at 89.
[77] Id. at 92 and 93.

auditing rules and regulations, including those for the prevention of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties."

"'Irregular expenditure" signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws."[78] Here, petitioner's grant of Collective Negotiation Agreement incentives was an irregular expenditure, as it was granted without full compliance with Budget Circular No. 2006-1, Administrative Order No. 135, and Public Sector Labor-Management Council Resolution No. 2, series of 2003.

Thus, there is no grave abuse of discretion on the part of respondent's CGS-Cluster 2 in disallowing the incentives paid to petitioner's rank-and-file employees in the Central Visayas Division from 2005 to 2009.

Contrary to petitioner's contention, the provisions of the Social Security Act of 1997 empowering the Social Security Commission to allocate funds to pay for the salaries and benefits of its officials and employees are not absolute, as held in *Social Security System v. Commission on Audit:*[79]

> . . . In *SSS v. COA*, the Court expounded that the funds of the SSS were merely held in trust for the benefit of workers and employees in the private sector, to wit:
>
> > **This Court has been very consistent in characterizing the funds being administered by SSS as a trust fund for the welfare and benefit of workers and employees in the private sector.** In *United Christian Missionary v. Social Security Commission,* we were unequivocal in declaring the funds contributed to the Social Security System by compulsion of law as funds belonging to the members which were merely held in trust by the government, and resolutely imposed the duty upon the trustee to desist from any and all acts which would diminish the property rights of owners and beneficiaries of the trust fund. **Consistent with this declaration, it would indeed be very reasonable to construe the authority of the SSC to provide for the compensation of SSS personnel in accordance with the established rules governing the remuneration of trustees —**
> >
> > **. . . the modern rule is to give the trustee a reasonable remuneration for his skill and industry.** . . In deciding what is a reasonable compensation for a trustee the court will consider the amount of income and capital received and disbursed, the pay customarily given to agents or

[78] COA Circular No. 2012-003 (2012), Item no. 3.1.

[79] 794 Phil. 387 (2016) [Per J. Mendoza, En Banc].

> servants for similar work, the success or failure of the work of the trustee, any unusual skill which the trustee had and used, the amount of risk and responsibility, the time consumed, the character of the work done (whether routine or of unusual difficulty) and any other factors which prove the worth of the trustee's services to the cestuis. . . The court has power to make extraordinary compensation allowances, but will not do so unless the trustee can prove that he has performed work beyond the ordinary duties of his office and has engaged in especially arduous work.
>
> On the basis of the foregoing pronouncement, we do not find the signing bonus to be a truly reasonable compensation. The gratuity was of course the SSC's gesture of good will and benevolence for the conclusion of collective negotiations between SSC and ACCESS, as the CNA would itself state, but for what objective? Agitation and propaganda which are so commonly practiced in private sector labor-management relations have no place in the bureaucracy and that only a peaceful collective negotiation which is concluded within a reasonable time must be the standard for interaction in the public sector. This desired conduct among civil servants should not come, we must stress, with a price tag which is what the signing bonus appears to be.

> Thus, the provisions of the SS Law empowering the SSC to allocate its funds to pay for the salaries and benefits of its officials and employees are not absolute and unrestricted because the SSS is a mere trustee of the said funds. In other words, the salaries and benefits to be endowed by the SSS must always be reasonable so that the funds, which it holds in trust will be devoted to its primary purpose of servicing workers and employees from the private sector.[80] (Emphases in the original)

Petitioner, as mere trustee of its funds, should construe its authority to provide for the compensation of its personnel strictly in accordance with the law and established rules. For failing to do so, the Court upholds Notice of Disallowance No. 12-002-CF (2005-2009) issued by respondent's CGS-Cluster 2 against Petitioner.

## III

As to the disallowed amounts, *Madera v. Commission on Audit*[81] laid down the general rules on its return as follows:

> 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

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[80] Id. at 399–400 citing *Social Security System v. Commission on Audit,* 433 Phil. 946 (2002) [Per J. Bellosillo, En Banc].

[81] G.R. No. 244128, September 8, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

> a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
>
> b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
>
> c. Recipients—whether approving or certifying officers or mere passive recipients—are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
>
> d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.[82]

The Administrative Code of 1987, in turn, provides:

> SECTION 38. *Liability of Superior Officers.* — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.
>
> . . . .
>
> (3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.[83]
>
> SECTION 43. *Liability for Illegal Expenditures.* — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.
>
> Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he

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82 Id.

83 ADM. CODE, Book I, Chapter 9, sec. 38.

> fail to remove such official or employee, the President may exercise the power of removal.[84]

Section 16 of Commission on Audit Circular No. 006-09 provides how to determine the liability of a public officer in audit disallowances, as follows:

> SECTION 16. Determination of Persons Responsible/Liable. —
>
> 16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:
>
>> 16.1.1 Public officers who are custodians of government funds shall be liable for their failure to ensure that such funds are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.
>>
>> 16.1.2 Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications.
>>
>> 16.1.3 Public officers who approve or authorize expenditures shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.
>>
>> 16.1.4 Public officers and other persons who confederated or conspired in a transaction which is disadvantageous or prejudicial to the government shall be held liable jointly and severally with those who benefited therefrom.
>>
>> 16.1.5 The payee of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.
>
> 16.2 The liability for audit charges shall be measured by the individual participation and involvement of public officers whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.
>
> 16.3 The liability of persons determined to be liable under an ND/NC shall be solidary and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.[85]

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[84] ADM. CODE, Book VI, Chapter 5, sec. 43.

[85] *Lazaro v. Commission on Audit,* G.R. No. 213323, January 22, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64954> [Per J. Leonen, En Banc].

In *Madera,* the Court provided the circumstantial factors to determine whether approving or certifying offices should not be liable, as follows:

> As mentioned, the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence. For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties, as further emphasized by Senior Associate Justice Estela M. Perlas-Bernabe (Justice Bernabe). . . .
>
> . . . To ensure that public officers who have in their favor the unrebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:
>
>> ***. . . For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.***
>
> Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.[86] (Emphasis supplied, citations omitted)

As for the recipients, the foundations of their responsibility to return the disallowed amount is explained in *Madera*:

> In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of

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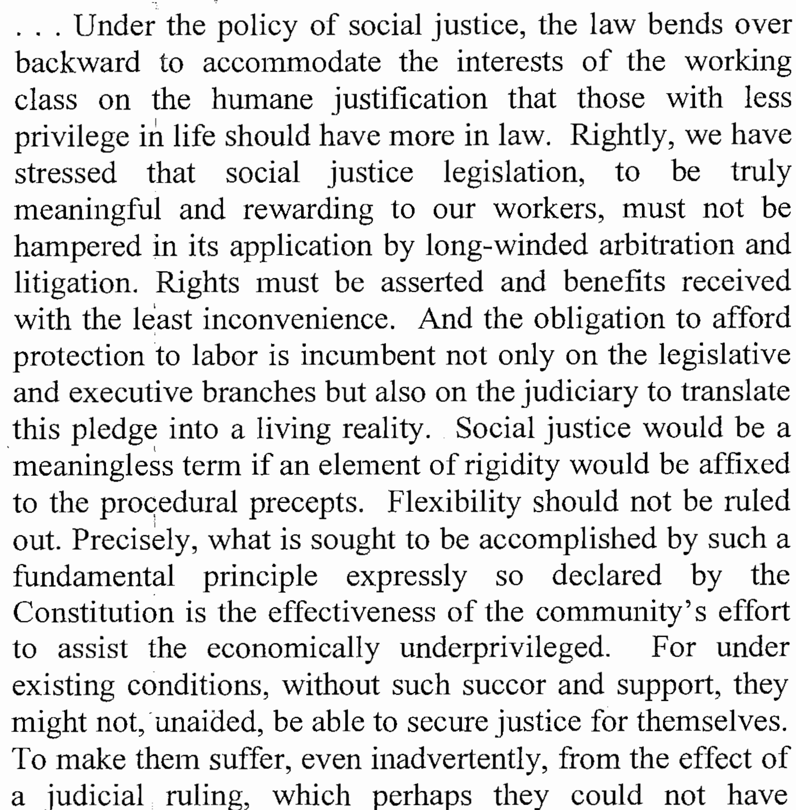
[86] G.R. No. 244128, September 8, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

passive recipients. **<u>This, as well, is the foundation of the rules of return that the Court now promulgates</u>**.

Moreover, *solutio indebiti* is an equitable principle applicable to cases involving disallowed benefits which prevents undue fiscal leakage that may take place if the government is unable to recover from passive recipients amounts corresponding to a properly disallowed transaction.

Nevertheless, while the principle of *solutio indebiti* is henceforth to be consistently applied in determining the liability of payees to return, the Court, as earlier intimated, is not foreclosing the possibility of situations which may constitute *bona fide* exceptions to the application of *solutio indebiti*. As Justice Bernabe proposes, and which the Court herein accepts, the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely given in consideration of services rendered (or to be rendered) negating the application of unjust enrichment and the *solutio indebiti* principle). As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case bona fide exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.

Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant. Verily, the Court has applied the principles of social justice in COA disallowances. Specifically, in the 2000 case *of Uy v. Commission on Audit* (Uy), the Court made the following pronouncements in overturning the COA's decision:



> . . . Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law. Rightly, we have stressed that social justice legislation, to be truly meaningful and rewarding to our workers, must not be hampered in its application by long-winded arbitration and litigation. Rights must be asserted and benefits received with the least inconvenience. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice would be a meaningless term if an element of rigidity would be affixed to the procedural precepts. Flexibility should not be ruled out. Precisely, what is sought to be accomplished by such a fundamental principle expressly so declared by the Constitution is the effectiveness of the community's effort to assist the economically underprivileged. For under existing conditions, without such succor and support, they might not, unaided, be able to secure justice for themselves. To make them suffer, even inadvertently, from the effect of a judicial ruling, which perhaps they could not have

> anticipated when such deplorable result could be avoided, would be to disregard what the social justice concept stands for. (Italics in the original)
>
> The pronouncements in *Uy* illustrate the Court's willingness to consider social justice in disallowance cases. These considerations may be utilized in assessing whether there may be an exception to the rule on *solutio indebiti* so that the return may be excused altogether. As Justice Inting correctly pointed out, "each disallowance case is unique, inasmuch as the facts behind, nature of the amounts involved, and individuals so charged in one notice of disallowance are hardly ever the same with any other."[87] (Emphasis in the original)

In *Dubongco v. Commission on Audit*,[88] all recipient employees of the disallowed Collective Negotiation Agreements incentives were ordered to refund what they received, on the grounds of unjust enrichment, their participation and knowledge for the release of the incentives, and their liability as trustees, thus:

> Every person who, through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. Unjust enrichment refers to the result or effect of failure to make remuneration of, or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconveyance. Rather, it is a prerequisite for the enforcement of the doctrine of restitution. Thus, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another. Conversely, there is no unjust enrichment when the person who will benefit has a valid claim to such benefit.
>
> In this case, it must be emphasized that the grant of CNA Incentive was financed by the CARP Fund, contrary to the express mandate of PSLMC Resolution No. 4, Series of 2002, A.O. No. 135 and DBM Budget Circular No. 2006-01. This is not simply a case of a negotiating union lacking the authority to represent the employees in the CNA negotiations, or lack of knowledge that the CNA benefits given were not negotiable, or failure to comply with the requirement that payment of the CNA Incentive should be a one-time benefit after the end of the year. Here, the use of the CARP Fund has no basis as the three issuances governing the grant of CNA Incentive could not have been any clearer in that the CNA Incentive shall be sourced solely from savings from released MOOE allotments for the year under review. Consequently, the payees have no valid claim to the benefits they received.

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[87] Id.

[88] G.R. No. 237813, March 5, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051> [Per J. J.C. Reyes, Jr., En Banc].

Further, CNA Incentive are granted to government employees who have contributed either in productivity or cost-saving measures in an agency. In turn, CNA Incentive are based on the CNA entered into between the accredited employees' organization as the negotiating unit and the employer or management. Rule XII of the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize provides:

> Rule XII
> COLLECTIVE NEGOTIATIONS
>
> SEC. 1. Subject of negotiation. - Terms and conditions of employment or improvements thereof, except those that are fixed by law, may be the subject of negotiation.
>
> SEC. 2. Negotiable matters. - The following concerns may be the subject of negotiation between the management and the accredited employees' organization:
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> . . . .
>
> (m) CNA incentive pursuant to PSLMC Resolution No. 4, s. 2002 and Resolution No. 2, s. 2003[.]
>
> . . . .
>
> SEC. 4. Effectivity of CNA. - The CNA shall take effect upon its signing by the parties and ratification by the majority of the rank-and-file employees in the negotiating unit.

Hence, it can be gleaned that unlike ordinary monetary benefits granted by the government, CNA Incentives require the participation of the employees who are the intended beneficiaries. The employees indirectly participate through the negotiation between the government agency and the employees' collective negotiation representative and directly, through the approval of the CNA by the majority of the rank-and-file employees in the negotiating unit. Thus, the employees' participation in the negotiation and approval of the CNA, whether direct or indirect, allows them to acquire knowledge as to the prerequisites for the valid release of the CNA Incentive. They could not feign ignorance of the requirement that CNA Incentive must be sourced from savings from released MOOE.

In addition, the obligation of the recipients to return the CNA Incentive financed by the CARP Fund finds support in Section 103 of the Presidential Decree No. 1445 or the Government Auditing Code of the Philippines, to wit:

> SEC. 103. *General liability for unlawful expenditures*. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. If property is acquired

> through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, *or where, although acquired originally without fraud,* it is against equity that it should be retained by the person holding it. In fine, the payees are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.[89] (Citations omitted)

In the same manner, all the recipients were also ordered to return the Collective Negotiation Agreement incentives they received in *Department of Public Works and Highways v. Commission on Audit*,[90] thus:

> It is settled that the subject CNA Incentive was invalidly released by the DPWH IV-A to its employees as a consequence of the erroneous application by its certifying and approving officers of the provisions of DBM Budget Circular No. 2006-1. As such, it only follows that the DPWH IV-A employees received the CNA Incentive without valid basis or justification; and that the DPWH IV-A employees have no valid claim to the benefit. Moreover, it is clear that the DPWH IV-A employees received the subject benefit at the expense of another, specifically, the government. Thus, applying the principle of unjust enrichment, the DPWH IV-A employees must return the benefit they unduly received.
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> The obligation of the DPWH IV-A employees to reimburse the amounts they received becomes more obvious when the nature of CNA Incentive as negotiated benefit is considered.
>
> It must be recalled that CNA Incentive is granted as a form of reward to motivate employees to exert more effort toward higher productivity and better performance. However, before any CNA Incentive may be granted, the CNA on which it is based must first be negotiated, approved, and implemented. . . .
>
> . . . .
>
> From the provisions of the aforecited rule, there are two necessary steps which must be undertaken before the CNA Incentive could be released to the government employees: *first*, the negotiation between the government agency and the employees' collective negotiation representative; and *second*, the approval by the majority of the rank-and-file employees in the negotiating unit. In the first step, the government employees concerned participates through their duly-elected representative; in the second, the rank-and-file employees participate directly. ***Thus, unlike ordinary monetary benefits granted by the government, the CNA Incentive involve the participation of the employees who are intended to be the beneficiaries thereof.***

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[89] Id.

[90] G.R. No. 237987, March 19, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65047> [Per J. J.C. Reyes, Jr., En Banc].

> In this case, the DPWH IV-A employees' participation in the negotiation and approval of the CNA, whether direct or indirect, certainly gives them the necessary information to know the requirements for the valid release of the CNA Incentive. Verily, when they received the subject benefit, they must have known that they were undeserving of it.[91] (Emphasis supplied)

In *Rotoras v. Commission on Audit*,[92] this Court specified instances when public officers who disbursed the benefits or allowances and the recipients were required to return the benefits or disallowances:

> Meanwhile, officials and officers who disbursed the disallowed amounts are liable to refund: (1) when they patently disregarded existing rules in granting the benefits to be disbursed, amounting to gross negligence; (2) when there was clearly no legal basis for the benefits or allowances; (3) when the amount disbursed is so exorbitant that the approving officers were alerted to its validity and legality; or (4) when they knew that they had no authority over such disbursement.
>
> . . . .
>
> The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit. Neither would the defense be available to the rank and file should the allowance or benefit be the subject of collective negotiation agreement negotiations. Furthermore, the rank and file's obligation to return shall be limited only to what they have actually received. They may, subject to the Commission on Audit's approval, agree to the terms of payment for the return of the disallowed funds. For the approving board members or officers, however, the nature of the obligation to return—whether it be solidary or not—depends on the circumstances.[93] (Citations omitted)

Thus, this Court categorically held that the approving officers' obligation to return depends on the circumstances, while the rank-and-file employees, who received the benefit subject of the Collective Negotiation Agreement negotiations, should return the amount they actually received.

In the recent case of *Social Security System v. Commission on Audit*,[94] this Court held the certifying and approving officers jointly and severally liable to return the disallowed amounts received by the individual employees, upon a finding of the officers' patent disregard of existing rules and lack of legal basis in granting the Collective Negotiation Agreement incentives. The recipient employees were also ordered to return the

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[91] Id.

[92] *Rotoras v. Commission on Audit*, G.R. No. 211999, August 20, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65585> [Per J. Leonen, En Banc].

[93] Id.

[94] G.R. No. 244336, October 6, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66557> [Per J. Lazaro-Javier, En Banc].

incentives they unduly received, on the grounds of unjust enrichment and *solutio indebiti.*

In the present case, none of the requisites as enumerated in *Madera* exist to absolve the approving and certifying officers, as well as the recipient employees from liability on the amounts disbursed. Instead, like in the similar and recent case of *Social Security System,* the approving and certifying officers granted the Collective Negotiation Agreement incentives in patent violation of Public Sector Labor-Management Council Resolution No. 2, series of 2003, Administrative Order No. 135, and Budget Circular No. 2006-1. Thus, the recipient employees of the Collective Negotiation Agreement incentives have no valid claim to the benefits they received, and accordingly, received the benefits at the expense of the government.

Applying *Madera, Dubongco, Department of Public Works and Highways, Rotoras* and *Social Security System*, the approving and certifying officers of the Social Security System Central Visayas Division are jointly and severally liable for the disallowed amounts received by the individual employees, while the recipient employees are liable to return the amounts they respectively received.

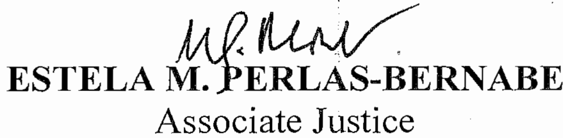
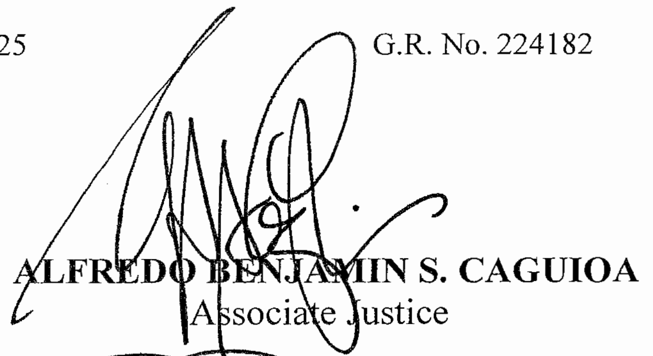
**WHEREFORE,** the Petition for Certiorari is **DISMISSED**. The Social Security System Central Visayas Division employees are individually liable to return the amounts they received pursuant to the 2005, 2006, 2007, 2008, and 2009 Collective Negotiation Agreement Incentives; and the Social Security System Central Visayas Division officials who took part in the approval of the unauthorized incentives are jointly and severally liable for the return of the disallowed amounts in connection with the 2005, 2006, 2007, 2008 and 2009 Collective Negotiation Agreement Incentives.

**SO ORDERED.**

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

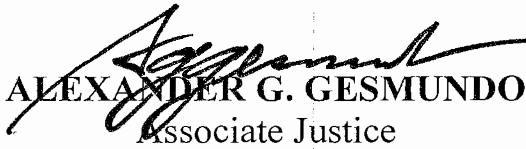
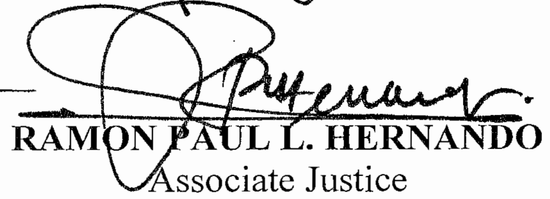
WE CONCUR:

**DIOSDADO M. PERALTA**
Chief Justice

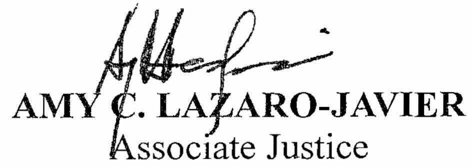
**ESTELA M. PERLAS-BERNABE**
Associate Justice

**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice

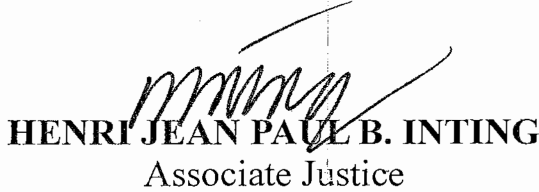
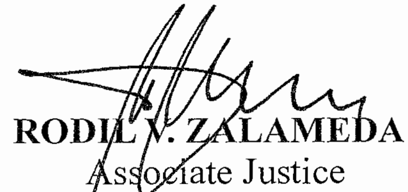
**ALEXANDER G. GESMUNDO**
Associate Justice

**RAMON PAUL L. HERNANDO**
Associate Justice



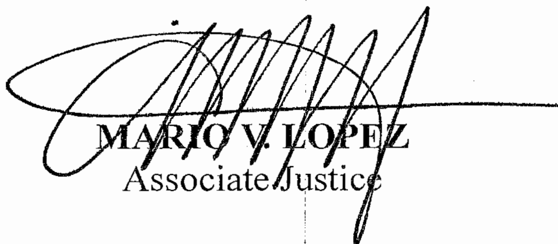
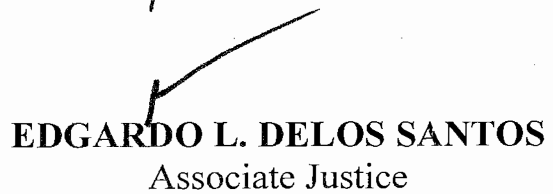
**ROSMARI D. CARANDANG**
Associate Justice

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

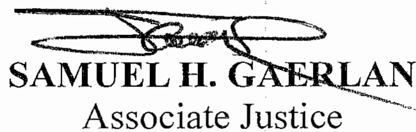
**HENRI JEAN PAUL B. INTING**
Associate Justice

**RODIL V. ZALAMEDA**
Associate Justice

**MARIO V. LOPEZ**
Associate Justice

**EDGARDO L. DELOS SANTOS**
Associate Justice



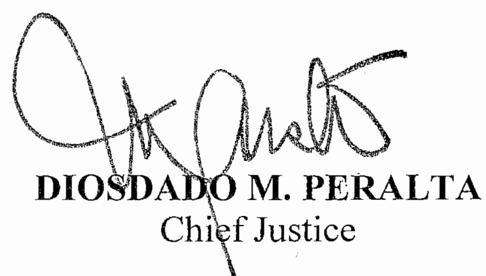
**SAMUEL H. GAERLAN**
Associate Justice

**RICARDO R. ROSARIO**
Associate Justice

**JHOSEP Y. LOPEZ**
Associate Justice

## CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.



**DIOSDADO M. PERALTA**
Chief Justice