

## EN BANC

[ G.R. Nos. 143803, November 17, 2005 ]

### CRESER PRECISION SYSTEMS, INC., PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

#### D E C I S I O N

#### GARCIA, J.:

Imputing grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of respondent Commission on Audit (COA), petitioner Creser Precision Systems, Inc., has come this Court *via* this special civil action of *certiorari* under Rule 65 of the Rules of Court to seek the annulment and setting aside of: (a) **COA Decision No. 98-074 dated February 3, 1998**<sup>[1]</sup> which denied petitioner's letter-appeal dated September 27, 1996 for reconsideration of the audit disallowance in the amount of P11,075,650.00, representing the second price escalation within the same year on the price of mortar fuzes delivered by it up to July, 1987 under its 1981 MANUFACTURING ARGREEMENT<sup>[2]</sup> with the Armed Forces of the Philippines (AFP), effective September 1, 1983 to July 1986; and (b) **COA Decision No. 99-131 dated August 17, 1999**,<sup>[3]</sup> denying petitioner's motion for reconsideration of the first.

The material facts are summarized in COA's basic decision, as follows:

Extant records show that sometime in 1981, the Department of National Defense (DND) entered into a contract with Creative Self-Reliance Enterprises, Inc., now CRESER Precision Systems, Inc. (CRESER for brevity), for the delivery of 340,450 mortar fuzes at P125 per piece for a total amount of P42,556.25.

It appears that as of August 1987, CRESER had delivered 295,000 mortar fuzes and had been paid the amount of P39,957,400. On September 11, 1987, Gen. Rafael M. Ilete, then Secretary of National Defense, approved a price escalation together with the payment of P8,848,750 as price differential on the deliveries made up to July, 1986. In response to a request for review and evaluation of the price adjustment on the mortar fuzes, the Technical Services Office (TSO), this Commission, on November 11, 1987, allowed the price differential for labor cost but disallowed the price escalation for material cost effective September 1983 for being violative of paragraph 6.2 of the Manufacturing Agreement which provides that the parties may renegotiate for price adjustment not oftener than once a year. It appears that recently approved price escalation was in July 1983 which was only two months prior to the requested effectivity date of escalation of September 1, 1983.

On November 23, 1987, Mr. Francis L. Romualdez, Jr., President of CRESER Precision Systems, Inc., requested Col. Danilo C. Lazo, Acting Deputy Chief of Staff for Materiel Development, J8, to make representations with this Commission for reconsideration of the results of the review and evaluation of the material cost escalation by the Technical Services Office. Thus, in a 3<sup>rd</sup> Indorsement dated December 7, 1987, Col. Danilo C. Lazo favorably indorsed the matter to the Auditor, GHQ-AFP, who, in turn, recommended approval of the price escalation, in a 4<sup>th</sup> Indorsement dated December 8, 1987.

In a Memorandum, dated December 10, 1987, Director Arcadio B. Cuenco, Jr. then of the TSO, referred to the General Counsel, both of this Commission for a more authoritative pronouncement relative to the interpretation of paragraph 6.2 of the Manufacturing Agreement with respect to the issue on price escalation.

While the request for escalation was pending at the COA Legal Office, the Armed Forces of the Philippines, relying on the notation of Auditor Archimedes Sitjar on the face of the disbursement voucher, dated October 29, 1987, which states: "This claim was referred to Chairman Eufemio C. Domingo and Directors Cuenco and Perez and they did not offer any objection to allowing it in audit", paid the amounts of P8,848,750 under TW No. B-05737473 dated December 16, 1987, representing price differentials on the mortar fuzes delivered up to July 21, 1987.

Meanwhile, in response to the request of Director Cuenco for the interpretation of the said provision of the contract, Director Emmanuel M. Dalman, then General Counsel of this Commission, in a Memorandum dated February 4, 1988, expressed the view that any request for material cost escalation should be effective not earlier than July 1984 in line with paragraph 6.2 of the Agreement. On account of said pronouncement, the then GHQ-AFP Auditor Manuel C. Samson on November 29, 1989, disallowed under CSB No. TW-89-0001-101 the amount of P11,075,650 representing the price escalation on mortar fuzes delivered up to July 21, 1987 and in a letter dated January 10, 1990, the Auditor requested the Commanding General, OJ9, GHQ-AFP to withhold the payment of salaries or any amount due to the persons determined liable under the said CSB.

Aggrieved by the Auditor's action, the CRESER Precision Systems, Inc., in a letter dated January 29, 1990, thru Ms. Jeannette D. Tolentino, filed an appeal with this Commission which was received by the Office of the Auditor, GHQ-AFP, requesting that the company be cleared as regards the transactions contending, among others, that an incident beyond the control of the company had happened. This incident was the assassination of Sen. Benigno Aquino which caused a tremendous downtrend in the country's economy.

Furthermore, Brig. General Umberto A. Rodriguez, then Deputy Chief of Staff for Materiel Development, in a letter dated March 30, 1990, requested reconsideration of the disallowance alleging that the matter is

considered closed as the same had been cleared by Honorable Chairman Eufemio C. Domingo, in a conference request by the AFP which was also participated in by Engr. Cuenco, Director Perez and Atty. Sitjar, all of this Commission and Capt. Andaya, LCDR Arcellana, and Mr. Romualdez, representing the AFP group. However, records on file show that no such appeal had been forwarded to this Commission or the pertinent documents therefor elevated for final disposition.

In a Contract Review Report dated December 29, 1990 made by the Technical Services Office, this Commission, it was found that the approved price escalation of CRESER was in order, which report was transmitted to the Office of the Auditor, GHQ-AFP, through a 4th Indorsement, dated January 25, 1991, of the Technical Services Office.

Finally, on December 6, 1995, Commodore Francis T. Mallillin, Deputy Chief of Staff for Materiel Development, in response to the request, dated January 10, 1990, of the Auditor GHQ-AFP withheld the amount of P1,591,250 representing the disallowance for material cost escalation. The request of Mr. Francis L. Romualdez, CRESER, for the Commission to intercede for the release of the said amount was returned by the Assistant Commissioner, National Government Audit Office I, this Commission, advising him to file his appeal for the release of the amount withheld being directly connected with the disallowance.

Hence, petitioner's letter-appeal dated September 27, 1996<sup>[4]</sup> for reconsideration of the audit disallowance of its claim in the amount of P11,075,650.00.

In the herein assailed **COA DECISION No. 98-074**, dated February 3, 1998, respondent COA denied petitioner's aforesaid appeal, thus:

Premises considered, the instant request for reconsideration of the audit disallowance amounting to P11,075,650 is hereby denied. Accordingly, the Auditor GHQ-AFP is instructed to take the necessary steps for the enforcement of the disallowance in question.

In time, petitioner moved for a reconsideration<sup>[5]</sup> but its motion was denied by the respondent Commission in its subsequent Resolution of August 17, 1999 (**COA Decision No. 99-131**), to wit:

Premises considered, and there being no compelling reason or valid justification to reconsider COA Decision No. 98-074, the instant motion for reconsideration is denied. Accordingly, subject decision is affirmed with finality.

Petitioner is now before us upon the following cogent grounds:

RESPONDENT COA GRAVELY ABUSED ITS DISCRETION AND/OR ACTED WITHOUT OT IN EXCESS OF JURISDICTION IN RENDERING COA DECISION NO. 98-074 AND DENYING PETITIONER'S MOTION FOR RECONSIDERATION THEREOF IN COA DECISION NO. 99-131 IN THAT -

COA DECISION NO. 98-074 AND NO. 99-131 ARE NULL AND VOID FOR HAVING BEEN RENDERED IN FLAGRANT VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT TO A SPEEDY DISPOSITION OF ITS CASE BEFORE RESPONDENT COA; SECTIONS 33 AND 34, CHAPTER 5, SUBTITLE B, BOOK V OF THE ADMINISTRATIVE CODE OF 1987 (E.O. NO. 292); AND SECTION 7, RULE IX OF THE LATTER'S OWN RULES OF PROCEDURE.

B

COA DECISIONS NO. 98-074 AND 99-131 ARE NULL AND VOID AS THEY HAVE THE EFFECT OF CAUSING THE RE-OPENING AND THE REVIEW OF THE ACCOUNT INVOLVED WHEN THE SAME HAD ALREADY BECOME FINAL SIX (6) MONTHS AFTER IT HAD BEEN PASSED IN AUDIT BY GHQ-AFP STATE AUDITOR ARCHIMEDES SITJAR IN DECEMBER 1987 IN ACCORDANCE WITH SECTION 6, RULE IV OF RESPONDENT COA'S OWN RULES OF PROCEDURE AND WITHOUT THE COMMISSION PROPER HAVING ORDERED FOR SUCH REVIEW AND/OR REVISION WITHIN THREE (3) YEARS FROM DECEMBER 1987 SUCH THAT THE SAID ACCOUNT IS DEEMED SETTLED CONFORMABLY TO SECTION 37, CHAPTER 5, SUBTITLE B, BOOK V OF THE ADMINISTRATIVE CODE OF 1987 (E.O. NO. 292).

C

RESPONDENT COA'S FINDING THAT ALLOWING THE PRICE ESCALATION VIOLATES PARAGRAPH 6.2 OF THE MANUFACTURING AGREEMENT IS WITHOUT FACTUAL AND LEGAL BASIS.

D

THE REQUESTED PRICE ADJUSTMENTS ARE WARRANTED AND JUSTIFIABLE.

E

WERE THE AFP TO BE COMPELLED TO WITHHOLD PAYMENTS DUE TO PETITIONER TO COVER FOR AND OFFSET THE SAME AGAINST THE LATTER'S ALLEGED ACCOUNTABILITY, PETITIONER WHICH OPERATES ON LOANS AND REVOLVING CREDIT LINES TO MEET THE AFP'S PRODUCTION REQUIREMENTS AND DELIVERY SCHEDULES, WOULD BE FINANCIALLY CRIPPLED, AS PAYMENTS DUE TO CREDITORS COULD BE DELAYED OR SUSPENDED, THREATENING IN TURN PETITIONER'S CREDIBILITY WITH ITS LENDERS AND RESULTANTLY, PETITIONER'S CONTINUED OPERATION, TO THE EVENTUAL DETRIMENT OF THE GOVERNMENT'S PEACE EFFORTS IN MINDANAO.

As aptly put by the Solicitor General in his Comment<sup>[6]</sup> for the respondent, the issues boil down to two; namely: