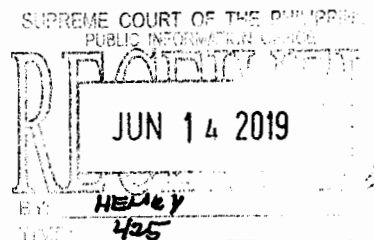


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Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 3, 2019** which reads as follows:*

“G.R. No. 243687 – Kepco SPC Power Corporation, petitioner, v. Legal and Compliance Service-Board of Investments, and the Board of Investments, respondents.

Acting on petitioner’s Motion for Extension of Time, the Court resolves to **GRANT** petitioner a period of thirty (30) days from the expiration of the reglementary period within which to file a Petition for Review on *Certiorari*.

After a careful review of the allegations, issues, and arguments adduced in the instant Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court, the Court resolves to **DENY** the same for failure of petitioner to show that the Court of Appeals (CA) in CA-G.R. SP No. 154991 committed any reversible error in its September 21, 2018 Decision and December 19, 2018 Resolution. The CA correctly affirmed the ruling of the Board of Investments (BOI) in BOI Case No. 2017-020, which denied petitioner’s request to move to a later date the reckoning of its Income Tax Holiday (ITH) incentive.

Petitioner contends that the reckoning date of its ITH incentive should be on May 25, 2011, the date its power plant became completely operational, not February 21, 2011 as only Unit 1 was operational at that time.

The Court is not persuaded.

Rule 1, Section 1(u) of the Implementing Rules and Regulations (IRR) of Executive Order (EO) No. 226, otherwise known as the Omnibus Investments Code of 1987, states that:

- over – three (3) pages ...

(u) ‘Start of commercial operations’ for purposes of the income tax holiday, shall be **the date specified in the project study submitted to the Board or the date when a particular enterprise actually begins** production of the registered product for commercial purposes or commercial harvest in the case of agricultural activities, whichever comes first, **irrespective of phases or modules or schedule of development**. In the case of service[-]oriented activities, it shall mean the date when a particular registered enterprise begins **catering to or servicing its clients on a commercial basis**. In the case of export traders and service exporters, the term shall mean the date when the initial export shipment in commercial quantity has been made or initial performance of service as borne out by the appropriate supporting documents. (Emphasis supplied)

Considering that the “start of commercial operations” for purposes of the ITH should be the date specified in the project study submitted to the Board, or the date when a service-oriented enterprise begins catering to or servicing its clients on a commercial basis, whichever comes first, irrespective of phases or modules or schedule or development, the Court finds no error on the part of the CA in ruling that the start of petitioner’s commercial operations for purposes of the ITH was on February 21, 2011, the date Unit 1 of petitioner’s power plant started operating. The fact that only Unit 1 of the power plant was operational at that time is of no moment as the rules clearly states “irrespective of phases or modules or schedule or development.”

Besides, as aptly pointed out by the CA and the BOI, since petitioner already declared February 21, 2011 as the actual start of its commercial operations when it applied for Certificates of Entitlement for taxable years 2011 to 2016, it was estopped from claiming otherwise.

Finally, it bears stressing that factual findings of administrative agencies, which have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction, are binding on the Court especially when affirmed by the CA.¹

ACCORDINGLY, the Court resolves to **AFFIRM** the September 21, 2018 Decision and the December 19, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 154991.

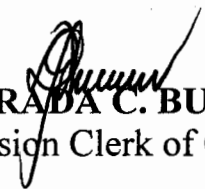
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¹*NGEI Multi-Purpose Cooperative, Inc. v. Filipinas Palmoil Plantation, Inc.*, 697 Phil. 433, 443-444 (2012).

SO ORDERED.” *Carandang, J., on official leave.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{mal/1}
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(BOI Case No. 2017-020)

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