Republic of the Philippines
Supreme Court
Manila

EN BANC

SECRETARY MARIO G. MONTEJO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF SCIENCE AND TECHNOLOGY (DOST), Petitioner,	**G.R. No. 232272**
	Present:
	CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, PERALTA, BERSAMIN, DEL CASTILLO, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA, MARTIRES, TIJAM, REYES, JR., and GESMUNDO, *JJ.*
- *versus* -	
COMMISSION ON AUDIT (COA), AND THE DIRECTOR, NATIONAL GOVERNMENT SECTOR, CLUSTER B – GENERAL PUBLIC SERVICES II AND DEFENSE, COMMISSION ON AUDIT, Respondents.	**Promulgated:** July 24, 2018

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DECISION

PERALTA, *J.*:

For this Court's resolution is the Petition for Review[1] on *Certiorari* under Rule 64 of the Revised Rules of Civil Procedure assailing the Decision[2] dated September 26, 2016 and the Resolution[3] dated February 27, 2017 of the Commission on Audit (COA), which affirmed Notice of Disallowance No. 2011-021-101-(11) dated November 17, 2011 and Notice of Disallowance No.

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1 Dated June 6, 2017.
2 *Rollo*, pp. 39-47.
3 *Id.* at 48.

2011-022-101-(11) dated November 18, 2011 issued by the Office of the Auditor, COA, Taguig City disallowing the grant/release of Collective Negotiation Agreement Incentives (CNA Incentives) to the officials and employees of the Department of Science and Technology (*DOST*).

The facts follow.

During the Calendar Year 2010, petitioner released CNA Incentives in the total amount of Five Million Eight Hundred Seventy Thousand Eight Hundred Eighty-Three Pesos and Seventy-Nine Centavos (₱5,870,883.79) to the DOST employees, covered by the following reference documents and particulars:

Date	Payee	Check No.	Amount
May 25, 2010	Mario P. Bravo	530803	₱25,000.00
May 25, 2010	DOST Officers and Employees	307423	₱2,575,000.00
May 28, 2010	Lilibeth O. Furoc	530888	₱25,000.00
December 16, 2010	Mario G. Montejo	534033	₱25,000.00
December 16, 2010	Marilyn M. Yap	534034	₱25,000.00
December 16, 2010	Mario P. Bravo	534035	₱25,000.00
December 22, 2010	DOST Officers and Employees	307547	₱3,166,667.12
December 29, 2010	Maxima M. Taparan	534285	₱4,166.67
		TOTAL	₱5,870,883.79

Thereafter, on July 5, 2011, petitioner received an Audit Observation Memorandum (AOM) dated June 27, 2011 from the Audit Team Leader of the Office of Auditor, COA, noting various alleged deficiencies in the grant of CNA Incentives by petitioner to its employees, such as:

> 1. The payment of the CNA Incentive was not supported with written resolution by the DOST Management and SIKAT; DBM approved level of operating expenses; Certificate issued by the Head of the Agency; Detailed computation of unencumbered savings; Proof of the planned program; List of *bonafide* SIKAT members and application for registration;
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> 2. The cost-cutting measures and specific systems improvement to be jointly undertaken by DOST Management and the employees' organization to achieve effective service delivery and agency targets a lesser cost were not identified in the CNA contrary to Section 3 of Administrative Order No. 135;
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> 3. The amount of CNA Incentive was predetermined in the Collective Negotiation Agreement signed by SIKAT and DOST

Management contrary to paragraph 5.6.1 of Budget Circular No. 2006-1;

4. Mid-year CNA Incentive amounting to ₱25,000.00 each was paid to DOST officers and employees contrary to Section 5.7 of Budget Circular No. 2006-1;

5. Officers or DOST Managerial employees were granted the CNA Incentive contrary to Section 2 of Administrative Order No. 135, DBM Budget Circular No. 2006-1, PSLM Resolution No. 4, s. 2002 and Section 5.7 of the Collective Negotiation Agreement.[4]

On July 14, 2011, petitioner filed his Letter-Reply[5] dated July 11, 2011 and submitted the required documents, certifications, detailed computations and justifications as required by the Office of the Auditor.

State Auditor IV Flordeliza A. Ares and State Auditor V Myrna K. Sebial issued Notice of Disallowance No. 2011-021-101-(11)[6] dated November 17, 2011 disallowing petitioner's grant of CNA Incentives to DOST employees in the total amount of ₱5,870,883.79 on the alleged ground that it is violative of the provisions of Public Sector Labor Management Council (PSLMC) Resolution No. 4 dated November 14, 2002, Budget Circular No. 2006-1 dated February 1, 2006 and Administrative Order No. 135 dated December 27, 2005.

Then in CY 2011, petitioner also released to DOST employees CNA Incentives in the total amount of Four Million Seven Hundred Seventy-Three Thousand Eight Hundred Twenty-One Pesos and Forty-Nine Centavos (₱4,773,821.49).

Thereafter, State Auditor IV Ares and State Auditor V Sebial issued Notice of Disallowance No. 2011-022-101-(11) dated November 18, 2011[7] disallowing petitioner's grant of CNA Incentives to its employees, covered by the following reference documents and particulars:

Date	Payee	Check No.	Amount
May 31, 2011	DOST Officers and Employees	360753	₱4,557,800.00
May 31, 2011	Mario G. Montejo	582737	₱40,000.00
May 31, 2011	Rodel A. Lara	582740	₱40,000.00
December 31, 2011	Wilhelmina R. Mercado	582742	₱40,000.00
December 31, 2011	Marilyn M. Yap	582739	₱40,000.00

4 *Id.* at 58-62.
5 *Id.* ad 64-67.
6 *Id.* at 68-70.
7 *Id.* at 16-17.

December 31, 2011	Mario P. Bravo	582738	₱40,000.00
December 31, 2011	Floramel E. Gaerlan	382741	₱9,354.83
December 31, 2011	Corazon M. Garcia	582743	₱6,666.66
		TOTAL	₱4,773,821.49

Petitioner appealed to the National Government Sector (*NGS*), Cluster B-General Services II and Defense, COA, the two Notices of Disallowance issued by the Office of Auditor.

The NGS rendered its Decision dated October 4, 2012, affirming the two Notices of Disallowance, the dispositive portion of which states:

> WHEREFORE, premises considered, the instant appeal is hereby DENIED and the Notices of Disallowance Nos. 2011-021-101-(11) dated November 17, 2011 and 2011-022-101-(11) dated November 18, 2011 in the amount of ₱5,870,883.79 and ₱4,773,821.49, respectively, are AFFIRMED. This decision is without prejudice to a further appeal that the parties may deem proper.[8]

Petitioner filed a Petition for Review with respondent COA, assailing the NGS Decision dated October 4, 2012 which affirmed the Notices of Disallowances. On October 18, 2016, the COA *En Banc* rendered its Decision, the dispositive portion of which states:

> WHEREFORE, premises considered, the petition for review of secretary Mario G. Montejo, Department of Science and Technology (DOST), of National Government Sector Cluster B Decision No. 2012-013 dated October 4, 2012, is hereby DENIED for lack of merit. Accordingly, Notice of Disallowance Nos. 2011-021-101-(11) dated November 17, 2011 and 2011-022-101-(11) dated November 18, 2011, on the payment of Collective Negotiation Agreement Incentives for calendar years 2010 and 2011 to DOST Central Office officials and employees in the total amount of P10,644,705.28 are AFFIRMED.[9]

According to the COA *En Banc*, the grant of CNA Incentives by petitioner violated Sections 5.7, 7.1 and 7.1.1 of DBM Budget Circular No. 2006-1, since petitioner paid the CNA Incentives during the middle of CY 2010 and 2011 and at the end of CY 2010. The COA *En Banc* also found that petitioner failed to submit proof that the grant of CNA Incentives was sourced from the savings generated from the cost-cutting measures through a comparative statement of DBM-approved level of operating expenses and actual operating expenses. Furthermore, the COA *En Banc* held that the officers who approved the grant of CNA Incentives should be solidarily liable

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8 *Id.* at 17-18.

9 *Id.* at 46-47.

for the total disbursement and that the payees should be held liable for the amount they received pursuant to the principle of *solutio indebiti*.

Hence, the present petition after the COA *En Banc* denied petitioner's motion for reconsideration.

Petitioner raises the following grounds for the allowance of the present petition:

> Respondent COA gravely erred in affirming the 17 and 18 November 2011 Notices of Disallowance Nos. 2011-021-101-(11) and 2011-022-101-(11), which disallowed the payment of Collective Negotiation Agreement Incentives (CNAI) for calendar years 2010 and 2011 to DOST Central Office employees in the total amount of P10,644,705.28 because:
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> a) Petitioner's grant of CNAI was based on identified cost-cutting measures;
> b) Petitioner's grant of CNAI was sourced from the savings generated from the cost-cutting measures through a comparative statement of DBM approved level of operating expenses and actual operating expenses;
> c) Petitioner's grant of CNAI substantially complied with the requirements under DBM Circular No. 2006-1; and
> d) The payment of CNAI was done in good faith, hence, no liability attaches therefrom.[10]

Petitioner argues that the grant of CNA Incentive was based on duly identified and approved cost-cutting measures and systems improvement. He also claims that its grant of the CNA Incentive was sourced from the savings generated from the cost-cutting measures through a comparative statement of DBM-approved level of operating expenses and actual operating expenses. Petitioner further avers that the grant of CNA Incentive substantially complied with the requirement of DBM Circular No. 2006-1 and that the payment of CNA Incentives was made in good faith, hence, no liability attaches therefrom.

In its Comment[11] dated August 30, 2017, respondent claims that it did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed decision as the same is in consonance with prevailing laws, rules and regulations and established jurisprudence. Respondent also argues that it correctly disallowed petitioner's grant of CNA Incentives to DOST officials and employees and that the employees and officials of petitioner agency are not excused from refunding the amounts unduly disbursed to them.

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10 *Id.* at 20.
11 *Id.* at 154-178.

The petition is partly meritorious.

This Court finds that the COA did not err in disallowing petitioner's grant of CNA Incentives to DOST officials and employees.

As aptly found by the COA, several provisions of DBM BC No. 2006-1, particularly Items 5.7 and 7.1, have been violated in the release of the CNA Incentives. The said provisions read as follows:

> 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.
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> xxx
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> 7.1 **The CNA Incentive shall be sourced solely from savings from released MOOE allotments** for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:
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> > 7.1.1 Such **savings were generated out of the cost-cutting measures identified in the CNA** and supplements thereto; xxx[12]

In this case, the DOST paid or granted the CNA Incentive during the middle of CY 2010 and CY 2011, and again at the end of the same year in 2010. Petitioner, however, claims that the DOST substantially complied with the requirement of DBM BC No. 2006-1 in its grant of the CNA Incentives. According to petitioner, while the DBM Circular provides that the grant of the CNA Incentives should be granted after the end of the year, it was qualified by a provision that the grant shall be released only after the planned/activities/projects of the concerned agency have been implemented in accordance with the performance targets for the year. Petitioner adds that the DOST has repeatedly submitted documents proving that the proposed program or planned activities for the particular month have been achieved and savings were generated following the DOST Internal Guidelines, thus, while the CNA Incentives was released in the middle of the year, the grant was nevertheless compliant with the condition that it should be anchored on savings actually generated for a particular year.

Petitioner's reasoning is flawed. The above-provisions of DBM BC No. 2006-1 is clear and self-explanatory. As correctly ruled by the COA *En Banc*, petitioner did not comply with the directive of the DBM Circular, thus:

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[12] *Id.* at 44.

> x x x It is clear from the aforecited provisions that the payment of CNA incentive should be a one-time benefit after the end of the year, when the planned programs/activities/projects have already been implemented and completed in accordance with the performance targets for the year. DOST did not comply with this directive as it made a mid-year payment of CNA incentive. While the savings could be possibly determinable by then, it is mandated that programs/activities/projects should have already been implemented and completed to determine whether such activities generated savings from which CNA incentive can be sourced.
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> Likewise, DOST could have easily proven that the payment of CNA incentive was solely sourced from the savings generated from the cost-cutting measures conducted by showing a comparative statement of DBM approved level of operating expenses. But DOST failed to submit proof to that effect, thus, payment of CNA incentive should be disallowed.[13]

COA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect, as expounded in *Espinas, et al. v. COA*,[14] thus:

> The CoA's audit power is among the constitutional mechanisms that gives life to the check-and-balance system inherent in our system of government.[15] As an essential complement, the CoA has been vested with the exclusive authority to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. This is found in Section 2, Article IX-D of the 1987 Philippine Constitution which provides that:
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> Sec. 2. x x x.
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> (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.
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> As an independent constitutional body conferred with such power, it reasonably follows that the CoA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect. In the recent case of *Delos Santos v. CoA*,[16] the Court

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13 *Id.* at 44-45.

14 731 Phil. 67, 76-78 (2014). (Emphases and underscoring omitted)

15 *Dimapilis-Baldoz v. COA*, 714 Phil. 171, 183 (2013).

16 716 Phil. 322 (2013).

explained the general policy of the Court towards CoA decisions reviewed under *certiorari*[17] parameters:[18]

> [T]he CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately, the people's property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.
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> x x x [I]t is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x.
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> The concept is well-entrenched: 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.[19] Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. The abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[20]

Nevertheless, in cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence[21] has settled that recipients or payees in good faith need not

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17 Under Rule 64, Section 2 of the 1997 Rules of Civil Procedure, a judgment or final order of the COA may be brought by an aggrieved party to this Court on *certiorari* under Rule 65. Thus, it is only through a petition for *certiorari* under Rule 65 that the COA's decisions may be reviewed and nullified by us on the ground of grave abuse of discretion or lack or excess of jurisdiction. (*Benguet State University v. COA,* 551 Phil. 878, 883 [2007]).

18 *Delos Santos v. COA, supra* note 16, at 332-333.

19 *Id.*

20 *Dimapilis-Baldoz v. COA*, *supra* note 15, at 187.

21 *Development Academy of the Philippines v. Pulido- Tan, et al.,* G.R. No. 203072, October 18, 2016, 806 SCRA 362, 386-387, citing *Mendoza v. Commission on Audit,* 717 Phil. 491 (2013) [Per J. Leonen, *En Banc*]; *Magno v. Commission on Audit,* 558 Phil. 76 (2007) [Per J. Chico-Nazario, *En Banc*]; *Singson v. Commission on Audit,* 641 Phil. 154 (2010) [Per J. Peralta, *En Banc*]; *Lumayna v. Commission on Audit,* 616 Phil. 928 (2009) [Per J. del Castillo, *En Banc*]; *Barbo v. Commission on Audit,* 589 Phil. 289 (2008) [Per J. Leonardo-De Castro, *En Banc*]; *Kapisanan ng mga Manggagawa sa Government Service Insurance System v. Commission on Audit, et al,* 480 Phil. 861 (2004) [Per J. Tinga, *En Banc*]; *Veloso v. Commission on Audit,* 672 Phil. 419 (2011) [Per J. Peralta, *En Banc*]; *Abanilla v. Commission on Audit,* 505 Phil. 202 (2005) [Per

refund these disallowed amounts.[22] For as long as there is no showing of ill intent and the disbursement was made in good faith, public officers and employees who receive subsequently disallowed benefits or allowances may keep the amounts disbursed to them.[23] Good faith has always been a valid defense of public officials that has been considered by this Court in several cases.[24]

In *PEZA v. Commission on Audit, et al.*,[25] this Court applied good faith as a valid reason to absolve the responsible officers from liability from refund, thus:

> The question to be resolved is: To what extent may accountability and responsibility be ascribed to public officials who may have acted in good faith, and in accordance with their understanding of their authority which did not appear clearly to be in conflict with other laws? Otherwise put, should public officials be held financially accountable for the adoption of certain policies or programs which are found to be not in accordance with the understanding by the Commission on Audit several years after the fact, which understanding is only one of several ways of looking at the legal provisions?
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> Good faith has always been a valid defense of public officials that has been considered by this Court in several cases. Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.
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> In *Arias v. Sandiganbayan*, this Court placed significance on the good faith of heads of offices having to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter into negotiations, thus:
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> > There is no question about the need to ferret out and convict public officers whose acts have made the bidding out and construction of public works and highways synonymous with graft or criminal inefficiency in the public eye. However, the remedy is not to indict and jail every person

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J. Sandoval-Gutierrez, *En Banc*]; *Home Development Mutual Fund v. Commission on Audit*, 483 Phil. 666 (2004) [Per J. Carpio, *En Banc*]; *Public Estates Authority v. Commission on Audit*, 541 Phil. 412 (2007) [Per J. Sandoval-Gutierrez, *En Banc*]; *Bases Conversion and Development Authority v. Commission on Audit*, 599 Phil. 455 (2009) [Per J. Carpio, *En Banc*]; *Benguet State University v. Commission on Audit*,. *supra* note 13 [Per J. Nachura, *En Banc*]; *Agra v. Commission on Audit*, 661 Phil. 563 (2011) [Per J. Leonardo-De Castro, *En Banc*]; and *Blaquera v. Commission on Audit*, 356 Phil. 678 (1998) [Per J. Purisima, *En Banc*].

22 *Id.* at 387, citing *Manila International Airport Authority v. Commission on Audit*, 681 Phil. 644, 668-670 (2012) [Per J. Reyes, *En Banc*]; *Benguet State University v. Commission on Audit, supra* note 13 [Per J. Nachura, *En Banc*]

23 *Id.*, citing Brion, Concurring and Dissenting Opinion in *Technical Education and Skills Development Authority v. Commission on Audit*, 729 Phil. 60, 88 (2014) [Per J. Carpio, *En Banc*]

24 *PEZA v. Commission on Audit, et al.*, 690 Phil. 104, 115 (2012), as cited in *Maritime Industry Authority v. COA*, 750 Phil. 288, 377 (2015).

25 G.R. No. 210963, October 11, 2016, 805 SCRA 618, 642-645. (Citations omitted)

> who may have ordered the project, who signed a document incident to its construction, or who had a hand somewhere in its implementation. The careless use of the conspiracy theory may sweep into jail even innocent persons who may have been made unwitting tools by the criminal minds who engineered the defraudation.
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> x x x x
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> We would be setting a bad precedent if a head of office plagued by all too common problems - dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence - is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.
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> x x x x
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> We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter into negotiations. x x x.

Similarly, good faith has also been appreciated in *Sistoza v. Desierto*, thus:

> There is no question on the need to ferret out and expel public officers whose acts make bureaucracy synonymous with graft in the public eye, and to eliminate systems of government acquisition procedures which covertly ease corrupt practices. But the remedy is not to indict and jail every person who happens to have signed a piece of document or had a hand in implementing routine government procurement, nor does the solution fester in the indiscriminate use of the conspiracy theory which may sweep into jail even the most innocent ones. To say the least, this response is excessive and would simply engender catastrophic consequences since prosecution will likely not end with just one civil servant but must, logically, include like an unsteady streak of dominoes the department secretary, bureau chief, commission chairman, agency head, and all chief auditors who, if the flawed reasoning were followed, are equally culpable for every crime arising from disbursements they sanction.
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> Stretching the argument further, if a public officer were to personally examine every single detail, painstakingly trace every step from inception, and investigate the motives

> of every person involved in a transaction before affixing his signature as the final approving authority, if only to avoid prosecution, our bureaucracy would end up with public managers doing nothing else but superintending minute details in the acts of their subordinates.
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> Stated otherwise, in situations of fallible discretion, good faith is nonetheless appreciated when the document relied upon and signed shows no palpable nor patent, no definite nor certain defects or when the public officer's trust and confidence in his subordinates upon whom the duty primarily lies are within parameters of tolerable judgment and permissible margins of error. As we have consistently held, evidence of guilt must be premised upon a more knowing, personal and deliberate participation of each individual who is charged with others as part of a conspiracy.

And recently in *Social Security System v. Commission on Audit*, this Court ruled that good faith absolves liable officers from refund, thus:

> Notwithstanding the disallowance of the questioned disbursements, the Court rules that the responsible officers under the ND need not refund the same on the basis of good faith. In relation to the requirement of refund of disallowed benefits or allowances, good faith is a state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.
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> x x x x
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> x x x In *Mendoza v. COA,* the Court held that the lack of a similar ruling is a basis of good faith. There is yet to be jurisprudence or ruling that the benefits which may be received by members of the SSC are limited to those enumerated under Section 3 (a) of the SS Law.

It is the same good faith, therefore, that will absolve the responsible officers of PEZA from liability from refund.

Similarly, in *Development Bank of the Philippines v. Commission on Audit*,[26] good faith was also appreciated, thus:

> Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."

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26 G.R. No. 221706, March 13, 2018.

In *Zamboanga City Water District v. COA*, the Court held that approving officers could be absolved from refunding the disallowed amount if there was a showing of good faith, to wit:

> Further, a thorough [reading] of Mendoza and the cases cited therein would lead to the conclusion that ZCWD officers who approved the increase of GM Bucoy's are also not obliged either to refund the same. In de Jesus v. Commission on Audit, the Court absolved the petitioner therein from refunding the disallowed amount on the basis of good faith, pursuant to de Jesus and the Interim Board of Directors, Catbalogan Water District v. Commission on Audit. In the latter case, the Court absolved the Board of Directors from refunding the allowances they received because at the time they were disbursed, no ruling from the Court prohibiting the same had been made. Applying the ruling in *Blaquera v. Alcala (Blaquera),* the Court reasoned that the Board of Directors need not make a refund on the basis of good faith, because they had no knowledge that the payment was without a legal basis.
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> In *Blaquera*, the Court did not require government officials who approved the disallowed disbursements to refund the same on the basis of good faith, to wit:
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> > Untenable is petitioners' contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.
> >
> > Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.
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> > x x x x
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> > Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.
> >
> > A careful reading of the above-cited jurisprudence shows that even approving officers may be excused from being personally

> liable to refund the amounts disallowed in a COA audit, provided that they had acted in good faith. Moreover, lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith.

In *Mendoza v. COA*, the Court held that the lack of a similar ruling disallowing a certain expenditure is a basis of good faith. At the time that the disallowed disbursement was made, there was yet to be a jurisprudence or ruling that the benefits which may be received by members of the commission were limited to those enumerated under the law.

By the same token, in *SSS v. COA*, the Court pronounced that good faith may be appreciated because the approving officers did not have knowledge of any circumstance or information which would render the disallowed expenditure illegal or unconscientious. The Board members therein could also not be deemed grossly negligent as they believed they could disburse the said amounts on the basis of the provisions of the R.A. No. 8282 to create their own budget.

On the other hand, in *Silang v. COA*, the Court ordered the approving officers to refund the disbursed CNA incentives because they were found to be in bad faith as the disallowed incentives were negotiated by the collective bargaining representative in spite of non-accreditation with the CSC.

In *MWSS v. COA*, the Court affirmed the disallowance of the grant of mid-year financial, bigay-pala bonus, productivity bonus and year-end financial assistance to MWSS officials and employees. It also ruled therein that the MWSS Board members did not act in good faith and may be held liable for refund because they approved the said benefits even though these patently contravened R.A. No. 6758, which clearly and unequivocally stated that governing boards of the GOCCs can no longer fix compensation and allowances of their officials or employees.

Based on the foregoing cases, good faith may be appreciated in favor of the responsible officers under the ND provided they comply with the following requisites: (1) that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.

Here, the DBP believed in good faith that they could grant additional benefits to the Board members based on Section 8 of the DBP Charter. When the Board issued DBP Resolution Nos. 0121 and 0037, they honestly believed they were entitled to the said compensation. More so, the DBP claimed that the additional benefits had the imprimatur of President Arroyo.

Likewise, at the time of the issuance of the said DBP resolutions on March 29, 2006 and August 23, 2006, there was still no existing jurisprudence or administrative order or regulation expressly prohibiting the disbursement of benefits and compensation to the DBP Board

> members aside from per diems. It was only on February 26, 2009 that the Court promulgated *BCDA v. COA* prohibiting the grant of compensation other than per diems to Board members.
>
> Certainly, it is only in the present case that the Court is given the opportunity to construe Section 8 of the DBP Charter. The said provision has to be categorically interpreted by Court in order to conclude that the Board members are not entitled to benefits other than per diems and that the phrase "[u]nless otherwise set by the Board and approved by the President of the Philippines" solely refers to per diems. Thus, the Board members and the accountable officers cannot be faulted for their flawed interpretation of the law.
>
> The Court reached a similar conclusion in *BCDA v. COA* where it held that while the grant of benefits was disallowed, the Board members acted in good faith and were not required to refund the same due to the following reasons: the BCDA Charter authorized its Board to adopt their own compensation and benefit scheme; there was no express prohibition against Board members from receiving benefits other than the per diem; and President Ramos approved the said benefits.
>
> Further, in *DBP v. COA*, the Court affirmed the disallowance of the subsidy granted by DBP to its officers who availed themselves of the Motor Vehicle Lease-Purchase Plan (MVLPP) benefits amounting to 50% of the acquisition cost of the motor vehicles. It found that the RR-MVLPP did not permit the use of the car funds in granting multi-purpose loans or for investment instruments. Nonetheless, the officers of DBP, including its Board members, were absolved from liability in good faith because there was no specific provision in the RR-MVLPP that prohibited the manner in which DBP implemented the plan and there was no showing that the officers abused the MVLPP benefits.
>
> In fine, the responsible officers of the DBP in this case have sufficiently established their defense of good faith, thus, they cannot be held liable to refund the additional benefits granted to the Board members. To reiterate, good faith may be appreciated because the approving officers were without knowledge of any circumstance or information which would render the transaction illegal or unconscientious. Likewise, they had the belief that the President approved their expenditure. Neither could they be deemed grossly negligent as they also believed they could disburse the said amounts on the basis of the provisions of the DBP Charter.

This Court also ruled, in *Veloso, et al. v. COA*,[27] that refund is not required as long as all the parties acted in good faith, thus:

> However, in line with existing jurisprudence, we need not require the refund of the disallowed amount because all the parties acted in good faith. In this case, the questioned disbursement was made pursuant to an ordinance enacted as early as December 7, 2000 although deemed approved only on August 22, 2002. The city officials disbursed the retirement and gratuity pay remuneration in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such reward.

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27 *Supra* note 21, at 436. (Citations omitted)

Petitioner's erroneous interpretation of the DBM circular aside, the action of petitioner was indicative of good faith because he acted in an honest belief that the grant of the CNA Incentives had legal bases. It is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith.[28] If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively.[29] A contrary rule would be counterproductive.[30]

Thus, although this Court considers the questioned Notices of Disallowance valid, this Court also considers it to be in the better interest of justice and prudence that petitioner, other officials concerned and the employees who benefited from the CNA Incentives be relieved of any personal liability to refund the disallowed amount.

WHEREFORE, the Petition for Review on *Certiorari* dated June 6, 2016 of petitioner Secretary Mario G. Montejo is **DISMISSED**. Consequently, the Decision dated September 26, 2016 and the Resolution dated February 27, 2017 of the Commission on Audit, which affirmed Notice of Disallowance No. 2011-021-101-(11) dated November 17, 2011 and Notice of Disallowance No. 2011-022-101-(11) dated November 18, 2011 issued by the Office of the Auditor, Commission on Audit, Taguig City disallowing the payment of Collective Negotiation Agreement Incentives are **AFFIRMED**. However, the petitioner, the other officers concerned and the DOST employees are absolved from refunding the amount covered by the same notices of disallowance.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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28 *PEZA v. COA, et al., supra* note 25, at 645.
29 *Id.*
30 *Id.*

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court