REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

STENIEL MINDANAO PACKAGING CORPORATION,
Petitioner,

- versus -

CITY TREASURER OF DAVAO CITY,
Respondent.

C.T.A. AC NO. 39

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

NOV 2 7 2008
2:38 p.m.
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DECISION

UY, J.:

In this Petition for Review[1] filed pursuant to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals, petitioner seeks the reversal and setting aside of the Decision dated June 8, 2007 and the Order dated July 9, 2007, both rendered by Branch 16 of the Regional Trial Court of Davao City, in Civil Case No. 31,283-2006 entitled "Steniel Mindanao Packaging Corporation, petitioner-appellant, vs. City Treasurer of Davao, defendant", dismissing the case and denying petitioner's Motion for Reconsideration thereto, respectively, the pertinent portions of which read as follows:

[1] Denominated as "APPEAL", filed by registered mail on July 25, 2007 and received by this Court on August 2, 2007, Docket, pp. 1-15.

Decision promulgated on June 8, 2007[2]

"With the conclusion, the defendant City Treasurer of Davao City was correct in applying the tax rate provided for in Sec. 143 (A) and not Sec. 143 (C). True, the opinion of Minister of Finance cited elsewhere is not a precedent but it may, absent grave abuse of discretion in its issuance, hold as in the instant case, a persuasive effect on the Court.

ACCORDINGLY, judgment is hereby rendered dismissing the petition.

SO ORDERED."

Order promulgated on July 9, 2007[3]

"Upon review of the Decision dated June 8, 2007 dismissing the petition, the Court found no flaw to warrant its setting aside on revisal.

Accordingly, the Motion for Reconsideration filed by SPMC is denied.

SO ORDERED."

THE FACTS

As culled from the records, these are the facts of the case.

Petitioner, Steniel Mindanao Packaging Corporation, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with business address and plant at Km. 25, Bunawan, Davao City. It is engaged in the business of manufacturing and selling of packaging materials, such as corrugated fiber board containers, cartons, and boxes.

On the other hand, respondent City Treasurer of Davao (which public position is presently held by Rodrigo S. Riola), is sued in the official capacity as such. He holds office at the Office of the City Treasurer of Davao, Ground Floor, Davao City Hall Building, City Hall Drive, Davao City.

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[2] Penned by Presiding Judge Emmanuel C. Carpio, Docket, pp. 16-20.
[3] Ibid., Docket, p. 21.

As found by the court *a quo,* petitioner's total sales of its packaging materials to both export-oriented and non-export-oriented clientele amounted to Php199,419,195.13 during taxable year 2004.[4] Treating and declaring the same as "export sales" in accordance with Article 143(c) of Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code of 1991, petitioner paid taxes in the amount of Php190,002.40 corresponding to the tax rate provided in Article 143 (c).[5]

Consequently, on September 9, 2005, respondent issued a deficiency tax assessment against petitioner in the total amount of Php772,359.60, inclusive of surcharge in the amount of Php142,501.77 and interest in the amount of Php59,850.74, for its sales for the period covering taxable year 2004, based on the premise that petitioner's sales were local and not export sales, and using the rate provided under Section 143(a) of R.A. No. 7160 as tax base.

This assessment was protested by petitioner through a Letter dated November 30, 2005[6] which was denied with finality in the Letter dated December 21, 2005 signed by Rodrigo S. Riola[7] on the ground that petitioner's products cannot be considered as "essential commodities" mentioned in paragraphs (a) and (c) Article 5, Chapter III of the Davao City Local Tax Code, and therefore cannot be considered as export sales.

Subsequently, a Motion for Reconsideration[8] was filed by petitioner on January 9, 2006. However, on the same day, respondent issued a Tax Order

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[4] Annex "A", Decision, Civil Case No. 31,350-2006, June 8, 2007, Docket, pp. 16-20.
[5] Ibid.
[6] Annex "E", Appeal, Docket, pp. 26-31.
[7] Annex "F", Appeal, Docket, pp. 32-33.
[8] Annex "G", Appeal, Docket, pp. 34-37.

of Payment[9] assessing petitioner for the total amount of Php798,959.90, including surcharges and interest, representing deficiency business taxes for taxable year 2004. In a Letter dated January 12, 2006, petitioner's Motion for Reconsideration was denied.[10]

In view thereof, petitioner paid under protest[11] the full amount of assessment or the amount of Php798,959.90 in two separate checks (Php265,000.00[12] and Php533,959.90[13]), on January 20, 2006.

On February 14, 2006, petitioner filed a Petition and/or Appeal[14] before Branch 16 of the Regional Trial Court of Davao City, raising the following issues for the lower court's resolution:

1. Whether or not the sale made by Steniel Mindanao Packaging Corporation to export-oriented enterprises are considered export sales;

2. Whether or not the City Treasurer's Office of Davao was correct in making a distinction between "direct" and "indirect" exporters in applying the coverage of subsection (c) Section 143 of R.A. No. 7160; and

3. Whether or not the Davao City Treasurer's Office was correct in its ruling that in order for subsection (c) Section 143 of R.A. No. 7160 to be applicable, the exporter must be an exporter of essential products.

In the assailed Decision,[15] the lower court dismissed the Petition and/or Appeal based on the finding that what herein petitioner sells, are inputs for export products and not the export products itself. And being mere inputs,

[9] Annex "H", Appeal, Docket, p. 38.
[10] Annex "M", Appeal, Docket, pp. 44-45.
[11] Annexes "I", "J", and "K", Appeal, Docket, pp. 39-40, 41, and 42, respectively.
[12] Annex "J", Appeal, Docket, p. 41.
[13] Annex "K", Appeal, Docket, p. 42.
[14] Annex "N", Appeal, Docket, pp. 46-61.
[15] Supra.

it ruled that petitioner is not an exporter, nor its sales considered as export sales.

Petitioner's Motion for Reconsideration of said Decision was likewise denied by the court *a quo* in the Order dated July 9, 2007.[16]

Hence, this recourse denominated as Appeal[17] filed on August 2, 2007, praying for the reversal and setting aside of the lower court's Decision and Order dated June 8, 2007 and July 9, 2007, respectively, on the ground that its sales of packaging materials to its clients are covered under Section 143(c), and not under Section 143(a), of R.A. No. 7160. Petitioner further prays that the amount of Php798,959.90, which it paid under protest, be refunded or considered as tax credit in its favor.

On September 14, 2007, respondent posted his Comment[18] raising several arguments, contending that petitioner's reliance on the definition of "export sales" under R.A. No. 9377 is misplaced. Such definition refers only to taxable transactions for value-added tax (VAT) purposes and not to local sales and local taxation, which are two distinct species of tax governed by two distinct sets of laws. Similarly, petitioner cannot allegedly be considered as an "exporter" within the definition provided under R.A. 7160, nor its sales to export-oriented enterprises considered as "export sales" so as to be entitled to the reduced rate under Section 143(c). Petitioner's products are allegedly sold locally; *ergo*, should be treated as local sales under Section 143(a) of R.A. 7160. Respondent, quoting an administrative opinion of the then Minister of Finance, further argues that "a company which does not export its

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[16] Supra.
[17] Treated as a Petition for Review in a Resolution promulgated on August 9, 2007, Docket, p. 65.
[18] Docket, pp. 66-72.

products, but sells it to local companies which in turn utilize said products, as inputs in the manufacture of other products that are exported abroad, is taxable as manufacturer under Sec. 19(A) of PD No. 231 [now Section 143(a) of the new Code], and not under Section 19(A-2) [now Section 143(c) thereof]".[19]

In the Resolution dated October 11, 2007, both parties were directed to file their simultaneous Memoranda within thirty (30) days from notice. Both parties complied. And with the admission of petitioner's and respondent's Memoranda posted on December 7, 2007[20] and December 5, 2007,[21] respectively, this case was deemed submitted for decision on January 2, 2008.[22] Hence, this Decision.

THE ISSUE

Based on the pleadings and arguments raised by both parties, the principal issues raised in this case are: whether or not petitioner is considered an "exporter" as mentioned under subsection (c) of Section 143 of R.A. No. 7160, otherwise known as the Local Government Code, and which imposes a tax rate not exceeding one half (½) of thirty seven and a half percent (37½ %) of one percent (1%), instead of being made liable to pay under subsection (a) of the same Section under the classification of a "manufacturer" which is taxed at the rate of thirty seven and a half percent (37½ %) of one percent (1%); and whether or not petitioner is entitled to its subject claim for refund or issuance of tax credit certificate pertaining to the

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[19] Minister of Finance letter dated February 22, 1986 to Revenue Officer Marzan of Makati, Metro Manila.
[20] Docket, pp. 76-93.
[21] Docket, pp. 95-101.
[22] Resolution dated January 2, 2008, Docket, p. 104.

taxes it paid under protest in the total amount of Php798,959.90 for the calendar year 2004 pertaining to its sales to local domestic corporations engaged in exporting fruits and other agri-products utilizing its cartons.

Petitioner's Position

Petitioner alleges that during the year 2004, its sales to export oriented enterprises totaled P199,419,195.13 and it is summarized as follows:

BUYER (Export Oriented Enterprises)	Amount of Sales in Php
BG Fruits and Nuts MFTG	4,794,370.00
Celebes Agri. Corp.	1,853,920.00
Celebes Canning Corporation	5,224,041.55
China Fruits Corp.	19,547,010.00
Federation of ARB	4,875,580.00
General Tuna Corp.	10,441,636.52
Greenville Agro	1,217,755.55
GSL Foods Corporation	6,303,000.00
Lancer Company Inc.	7,193,780.00
Lapanday Packaging Inc.	61,597,360.00
Philbest Canning Corporation	4,400,807.86
Royce Foods Corporation	2,103,630.00
Seatrade Development	1,768,173.65
Tagum Commodities	1,684,490.00
Unifruit Philippines, Inc.	66,413,640.00
Total Export Sales	***199,419,195.13***

Petitioner avers that these sales of packaging materials in taxable year 2004 to the exporters, as enumerated, who used these packaging materials for their exports, are considered as "export sales" and should be treated as such, pursuant to Section 143(c) of the R.A. No. 7160, which provides:

> "**SEC. 143. Tax on business.** – The municipality may impose taxes on the following businesses:
>
> (a) xxx at a rate not exceeding thirty seven and a half percent (37 ½ %) of one percent (1%)
> (b) xxx
> (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential

> commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b), and (d) of this Section: xxx."

Further, petitioner contends that the business tax rate is determined by classifying the transactions, as it is the transaction that is the subject of the business tax and not the person. The classification of the person depends on its transactions. Thus, a taxpayer may not be an exporter in its general definition, but such taxpayer may make export sales and such export sales may be subject to tax exemption such as in this case. In other words, even if an establishment is not an exporter in the strictest sense as contemplated in Section 143(c) of R.A. No. 7160, if it makes sales transactions which are considered as export sales, then it is not covered by paragraph (a) but rather by paragraph (c) of said section.

Additionally, petitioner argues that R.A. No. 7160 does not define the term "export sales"; as such, similar laws may be used to fill in the deficiencies of the Local Government Code. In this case, the term "export sales" is directly defined in Section 4.106-5(a)(3) of Revenue Regulations (R.R.) No. 16-2005,[23] to wit:

> "(a) Export sales – 'Export sales' shall mean:
>
> xxx xxx xxx
>
> (1) The sale of raw materials or packaging materials to an export- oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;
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> Any enterprise whose export sales exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise."

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[23] Implementing Rules of the New VAT Law or Republic Act No. 9337.

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From the foregoing, petitioner submits that its packaging materials sold to export-oriented enterprises should then be considered as export sales. According to petitioner, respondent's basis in denying its protest is misplaced as R.A. No. 7160 does not contain any provision on "indirect exporters", and therefore, there is no basis for respondent to classify petitioner as an "indirect exporter". The only thing that Section 143 of R.A. No. 7160 mentions is the tax rate on "exporters", without any distinction whether the exporter is "direct" or "indirect". It posits that if it was the intent of the Local Government Code to provide such classification, then it should have done so from the beginning.

Respondent's Position

Respondent counters that petitioner's reliance on the definition of "export sales" under Section 4.106-5(a)(3) of R.R. No. 16-2005[24] is clearly erroneous considering that such definition applies only to taxable transactions for VAT purposes. While export sales for purposes of imposing tax on the sale, barter, lease or exchange of goods or properties or the sale or exchange of services and the lease of properties is governed by R.A. No. 9377 (now by the National Internal Revenue Code of 1997), the local business tax imposed under Section 143(c) of R.A. No. 7160 is separately governed by the latter law. Respondent explains that VAT is essentially a national tax, although it likewise partakes the nature of a sales tax. However, the tax contemplated under Section 143(c) of R.A. No. 7160 is a tax imposed upon the performance of an act, enjoyment of a privilege or engagement in an occupation; which means it is an excise tax. Consequently, the definition under the aforementioned Section 4.106-5(a)(3) of R.R. No. 16-2005 cannot apply.

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[24] Referring to Consolidated Value Added Tax Regulations of 2005

Instead, the meaning of "export sales" can be deduced from the definition of "exporter" as provided under Article 232(c) of the Implementing Rules and Regulations of R.A. No. 7160, to wit:

> "For purposes of this article, the term exporters shall refer to those who are principally engaged in the business of exporting goods and merchandise, as well as manufacturers and producers whose goods or products are both sold domestically and abroad. The amount of export sales shall be excluded from the total sales and shall be subject to the rates not exceeding one half (1/2) of the rates prescribed under paragraphs (a), (b), and (d) of this Article."

Based on the foregoing, respondent elaborates that the term "exporter" as used in R.A. No. 7160 refers to those principally engaged in the business of exporting goods and merchandise as well as manufacturers and producers whose goods or products are sold abroad. This must be so, otherwise, the distinction as to those taxed under subsection (a) and subsection (c) of Section 143 of R.A. No. 7160 would be rendered useless by the simplest expedient of claiming that a certain manufacturer or producer sells its products both domestically and abroad. What makes this apparent is the phrase that follows the aforementioned paragraph which states that:

> "The amount of export sales shall be excluded from the total sales and shall not be subject to the rates not exceeding one half (1/2) of the rates prescribed under paragraphs (a), (b), and (d) of this Article."

Verily, manufacturers and producers are obliged to declare their export sales and local sales separately for the imposition of the different tax rates under subsections (a) and (c) of Section 143 of R.A. No. 7160. Stated differently, the mere fact that a manufacturer or producer sells its goods and products domestically or abroad does not automatically qualify all its sales as export sales. Rather, the law requires such manufacturer or producer to declare all its sales separately, whether sold abroad or sold locally, so that appropriate local business taxes may be imposed.

THE COURT'S RULING

We find the petition bereft of merit.

The power of a municipality to impose business taxes derives from Section 143 of the Local Government Code that specifically enumerates several types of business on which it may impose taxes, including manufacturers, wholesalers, distributors, dealers of any article of commerce of whatever nature, those engaged in the export or commerce of essential commodities; retailers; contractors and other independent contractors; banks and financial institutions; and peddlers engaged in the sale of any merchandise or article of commerce.[25]

Corollary thereto, herein petitioner being a city, its taxing power is provided under Article III, Section 151 of the same Code which provides thus:

> ARTICLE III
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> Cities
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> **SECTION 151. Scope of Taxing Powers**. — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

Petitioner, admittedly being engaged in the business of manufacturing and selling of packaging materials, such as corrugated fiber board container

[25] Petron v. Tiangco, G.R. No. 158881, April 16, 2008

cartons and boxes, to different clients, some of whom use the same for local consumption, while others, as export oriented clients, use it to package their own products for exportation, it becomes necessary for Us to look into the liabilities of "manufacturers" and "exporters" for local business tax purposes, as provided under Section 143(a) and (c) of R.A. No. 7160, to wit:

"**SEC. 143. Tax on Business**. - The municipality may impose taxes on the following businesses:

(a) On **manufacturers,** assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or **manufacturers of any article of commerce of whatever kind or nature**, in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than 10,000.00		165.00
10,000.00 or more but less than	15,000.00	220.00
15,000.00 or more but less than	20,000.00	202.00
20,000.00 or more but less than	30,000.00	440.00
30,000.00 or more but less than	40,000.00	660.00
40,000.00 or more but less than	50,000.00	825.00
50,000.00 or more but less than	75,000.00	1,320.00
75,000.00 or more but less than	100,000.00	1,650.00
100,000.00 or more but less than	150,000.00	2,200.00
150,000.00 or more but less than	200,000.00	2,750.00
200,000.00 or more but less than	300,000.00	3,850.00
300,000.00 or more but less than	500,000.00	5,500.00
500,000.00 or more but less than	750,000.00	8,000.00
750,000.00 or more but less than	1,000,000.00	10,000.00
1,000,000.00 or more but less than	2,000,000.00	13,750.00
2,000,000.00 or more but less than	3,000,000.00	16,500.00
3,000,000.00 or more but less than	4,000,000.00	19,000.00
4,000,000.00 or more but less than	5,000,000.00	23,100.00
5,000,000.00 or more but less than	6,500,000.00	24,375.00
6,000,000.00 or more		**at a rate not exceeding thirty seven and a half percent (37½%) of one percent (1%)**

(b) xxxxxxx

(c) On **exporters**, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers **of essential commodities** enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsection (a), (b), and (d) of this Section:

(1) Rice and corn;
(2) Wheat or cassava flour, meat, dairy products xxx;
(3) Cooking oil and cooking gas;
(4) Laundry soap, detergents, and medicines;
(5) Agricultural implements, equipment and post-harvest facilities xxx;
(6) Poultry feeds and other animal feeds;
(7) School supplies; and
(8) Cement." (*Emphasis Ours*)

In relation to Subsection (c) of aforequoted Section 143, an "exporter" for purposes of imposing local business tax, shall refer to "those principally engaged in the business of exporting goods and merchandise, as well as, manufacturers and producers whose goods or products are both sold domestically and abroad" as provided under Article 232, of the Implementing Rules and Regulations of the R.A. 7160, or the Local Government Code. Thus, to be considered an "exporter" under the said Code, it is necessary that the business entity is engaged, either in the exportation of its goods and merchandise; or in the manufacture or production of goods or products that are both sold domestically and abroad.

Indubitably, petitioner is a manufacturer and a seller of packaging materials such as corrugated fiber board containers, cartons and boxes, which are sold to different clients both for local consumption and export. In other words, petitioner does not "export" its packaging materials but sells them instead to export-oriented enterprises, which in turn utilize the same to package their products for export.

Notably, the Implementing Rules and Regulations of Executive Order No. 226, otherwise known as the Omnibus Investments Code, considers packaging materials constituting supplies as forming part of the export product, to wit:

> "For purposes of article 39(k) of the Code, packaging materials and supplies necessary to put the product into exportable form shall constitute part of such export product."[26]

Article 39(k) of the Omnibus Investments Code states:

> "**ART. 39. Incentives to Registered Enterprises**. — All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;
>
> xxx xxx xxx
>
> (k) Tax Credit for Taxes and Duties on **Raw Materials**. — Every registered enterprise shall enjoy a tax credit equivalent to the National Internal Revenue taxes and Customs duties paid on the supplies, raw materials and semi-manufactured products **used in the manufacture, processing or production of its export products and forming part thereof**, exported directly or indirectly by the registered enterprise: Provided, however, that the taxes on the supplies, raw materials and semi-manufactured products domestically purchased are indicated as a separate item in the sales invoice." (*Emphasis and underscoring supplied*)

Based on the foregoing provision, packaging materials "form part" of the export products. In spite of this provision however, it does not necessarily make petitioner an exporter as contemplated under the Local Government Code. The aforequoted provision merely confirms that the packaging materials used by export oriented enterprises form part of the export product for purposes of granting incentives to Board of Investment (BOI)-registered enterprises. Furthermore, We note that the tax credit mentioned therein pertains to National Internal Revenue taxes and Customs duties. There is no

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[26] Section 1(j), Rule 1.

mention of local taxes thereby making said provision not applicable in the instant case.

The subject business tax is imposed upon petitioner for its privilege of engaging in business in the City of Davao, specifically, its business of manufacturing corrugated fiber board containers, cartons and boxes. This imposition of business tax is provided for under Section 143 of the Local Government Code of 1991. As the said Code does not make a manufacturer who sells its manufactured product to an exporter who utilizes the same to produce its export product, an exporter, petitioner therefore, cannot be considered as an "exporter", but rather, by its own admission, as a "manufacturer of any article of commerce of whatever kind and nature".

A company that does not export its products, but sells it to local companies, which in turn utilize said products, as inputs in the manufacture of other products that are exported abroad, is locally taxable as manufacturer under Section 143(a), and not under Section 143(c), of R.A. No. 7160.[27]

Additionally, as correctly found by respondent, petitioner's sales of manufactured corrugated containers, cartons, and boxes cannot fall under the term "export sales" because Section 143(c) of R.A. No. 7160 only applies to sales of "essential commodities", limited to those enumerated in said Subsection. As the manufactured corrugated boxes of petitioner are neither considered "exports" nor one of the "essential commodities" enumerated in Section 143(c) of R.A. No. 7160, petitioner's sales during taxable year 2004

[27] Letter of the Minister of Finance to Revenue Officer Marzan of Makati dated February 22, 1986 as quoted in the Decision of the lower court, Annex "A", Appeal, Docket, pp. 16-20.

are all considered local sales subject to the tax rate provided under Section 143(a) of the same Code.

In the light of the foregoing discussions, the Court finds that the court *a quo* acted correctly when it ruled that petitioner's sales is taxable as a manufacturer under Section 143(a), and not under Section 143(c), of R.A. No. 7160. Thus, petitioner is not entitled to its subject claim for refund or issuance of tax credit certificate.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the appealed Decision and Order dated June 8, 2007 and July 9, 2007, respectively, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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.

ERNESTO D. ACOSTA
Presiding Justice