REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

DIAGEO PHILIPPINES, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7815

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

MAY 16 2011 ; 3:45 pm

x- x

DECISION

UY, J.:

Before the Court is a Petition for Review filed by petitioner, Diageo Philippines, Inc., against the respondent, Commissioner of Internal Revenue, seeking a refund or issuance of a tax credit certificate in the amount of **SEVEN MILLION EIGHT HUNDRED SEVENTEEN THOUSAND FOUR HUNDRED SEVENTY PESOS AND SEVENTY EIGHT CENTAVOS (₱ 7,817,470.78)**, allegedly representing unutilized/excess input value-added tax (VAT) credits covering the period from April 1, 2006 to June 30, 2006.

THE FACTS

Petitioner Diageo Philippines, Inc. is a corporation duly registered with the Securities and Exchange Commission, and existing under and by virtue of Philippine laws, and is engaged in the business of distilling, rectifying, blending, manufacturing, wholesale and exportation of alcohol products and spirits. It is a VAT registered entity with BIR VAT Reg. No. 000-161-897-000.[1]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), and is authorized under the law to act on claims for refunds, tax credit certificates and other matters involving the National Internal Revenue Code (NIRC). She holds office at the BIR National Office, Agham Road, Quezon City.[2]

From February 2006, petitioner allegedly made purchases of various raw materials for the manufacture of alcohol products from different local suppliers with the VAT for these purchases passed on to petitioner. Using these raw materials purchased, petitioner manufactured alcohol products and exported the same from April to June 2006 and allegedly paid creditable input VAT amounting to Seven Million Eight Hundred Seventeen Thousand Four Hundred Seventy Pesos and Seventy Eight Centavos (₱ 7,817,470.78) attributable either, to its foreign export sales, or allocated proportionately on the basis of the volume of such export sales.

According to petitioner, its export sales are subject to zero percent (0%) VAT rate pursuant to Section 106(A)(2)(a)(1) of the NIRC. As such, the acceptable foreign currency exchange proceeds thereof had allegedly been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations.

---

[1] Exhibit "I".
[2] Joint Stipulations of Facts and Issues (JSFI), Par. 1, Docket, p. 84.

It appears that on February 2, 2007[3] petitioner filed its Quarterly VAT Return for the period April 1, 2006 to June 30, 2006. Thereafter, on June 28, 2007, petitioner filed an Application for Tax Credits/Refunds (BIR Form No. 1914) in the amount of ₱ 7,817,470.78, covering the above-stated period. Petitioner indicated in the said Application that its reason for filing the same is *"Refunds or Tax Credits of Input Tax"*.[4] As respondent allegedly did not act on said Application, and in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for tax credit/refund, petitioner filed the instant Petition for Review on July 25, 2008, invoking Sections 112(A) and 229 of the NIRC.

On August 15, 2008, respondent filed an Answer thereto alleging the following Special and Affirmative Defenses[5], to wit :

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P7,817,470.78 being claimed by petitioner as alleged excess input VAT attributable to its VAT zero-rated export sales incurred for the period April to June 2006 was not properly documented;
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. To support its claim, it is imperative for petitioner to prove the following, viz:
>
> > a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95 and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

---

[3] Exhibit "C".
[4] Exhibit "F".
[5] Docket, pp. 42 to 52.

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the NIRC of 1997. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

d. That the input taxes of P7,817,470.78 as alleged excess input VAT attributable to its VAT zero-rated export sales from 1 April 2006 to 30 June 2006 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) year after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the NIRC of 1997;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits).

8. The petition for review was filed out of time. Section 112 (D) of the National Internal Revenue Code of 1997 (NIRC of 1997) categorically provides, thus:

> 'SEC. 112. Refunds or Tax Credits of Input Tax. -
> xxx xxx
>
> (D) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, **or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period appeal the decision or the unacted claim with the Court of Tax Appeals.**'

In the instant case, petitioner filed the administrative claim for refund on 28 June 2007. The 120-day period expired on 26 October 2007 without action on the part of the Commissioner of Internal Revenue (CIR). Hence, petitioner had only until 25 November 2007, or thirty days from the expiry of the 120-day period within which to file the petition for review before the Court of Tax Appeals. Therefore, the petition for review filed on 25 July 2008 was filed out of time, applying Section 112 (D) of the NIRC of 1997.

Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without validly and duly filed administrative claim for refund, this Honorable Court is without jurisdiction to entertain the petition for review. Petitioner's failure to comply with a condition precedent prior to the institution of this case makes this case dismissible for absence of jurisdiction on the part of this Honorable Court.

The instant case involves a claim for refund of alleged excess input VAT, hence, Section 112 (D) of the NIRC of 1997 should apply as regards the prescriptive period for filing a claim for refund.

nf

First, distinctions should be made in the application of Sections 112 (D) and 229 of the NIRC of 1997. Section 112 (D) specifically refers to refunds or tax credits of 'creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that said input tax has not been applied against output tax', while Section 229 of the same Code refers to 'any national internal revenue taxes alleged to have been erroneously or illegally assessed or collected.'

Second, Section 112 (D) provides for a specific period within which the claim for refund or tax credit of input VAT shall be made. It is clearly provided in said Section that in case of failure on the part of the CIR to act on the application, the claimant only has thirty (30) days from the expiry of the 120-day period within which to file the petition for review before the Honorable Court. There is no such specific period provided under Section 229 which merely provides for two (2) years from the date of payment of any national internal revenue tax.

Clearly from the foregoing, Section 112 (D) is specific as to the prescriptive period for claiming refunds of excess or unutilized VAT attributable to zero-rated or effectively zero-rated sales.

As held in **Commissioner of Customs vs. Court of Tax Appeals, G.R. No. L-41861, 23 March 1987:**

> 'A special and specific provision prevails over a general provision irrespective of their relative position in the statute. *Generalia specialibus non derogant.* Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment. It is a principle in statutory construction that where two statutes are of equal theoretical application to a particular case, the one specially designed for said case must prevail over the other.'

Clearly, the mandatory and jurisdictional condition *sine qua non* of filing an application for tax refund in due form and substance was blatantly ignored by petitioner by immediately filing an appeal before the Court of Tax Appeals. In the case of **Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 24 April 2007,** the Supreme Court ruled thus:

> 'From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not

> only decisions or ruling **but inaction as well of the Commissioner of Internal Revenue**. The decisions, ruling or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or **within 30 days after the expiration of the 180-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its assessments**. Such period is not merely directory but **mandatory** and it is beyond the power of the courts to extend the same.' (Emphasis Supplied)
>
> xxx xxx'

Although the above-decision is based on the provision of Section 228 of the NIRC of 1997, it may be applied to Section 112 (D) of the same Code on the basis of substantive justice and uniformity in the rules of taxation.

It bears stressing that the mandate under the said Section in filing an appeal before this Honorable Court, if not strictly complied with, would render the same inutile and impotent. It would again open the floodgates of confusion and chaos in the interpretation and implementation of filing judicial claims for refund, much like what happened to Section 228 of the NIRC of 1997.

The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions ***(Agpalo, Statutory Construction, Third Edition 1995, p. 266).*** For this reason, the courts construe these provisions of statutes as mandatory ***(Ibid., citing Alvero vs. De la Rosa, 76 Phil. 428, 434).***

The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people ***(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690).*** Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and

such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

During trial, petitioner presented documentary and testimonial evidence to support its claims and contentions. On the other hand, respondent's counsel opted not to present evidence on March 11, 2010 because there is no report of investigation. Thus, she submitted the case for decision based on the evidence on record.[6] In the Resolution dated September 27, 2010[7], this case was deemed submitted for decision, considering petitioner's Memorandum filed on September 13, 2010[8], without respondent's Memorandum.

Hence, this Decision.

THE ISSUES

The parties jointly stipulated the following issues[9] for the Court's resolution:

> "Whether Petitioner is entitled to a refund or issuance of a tax credit in the amount of Seven Million Eight Hundred Seventeen Thousand Four Hundred Seventy Pesos and Seventy-Eight Centavos (Php7,817,470.78) representing alleged excess input VAT attributable to its VAT zero-rated export sales covering the period of April to June 2006."
>
> "Whether the Honorable Court of Tax Appeals has jurisdiction to act on the instant Petition for Review."

Petitioner's arguments

Petitioner contends that contrary to respondent's claim, non-submission of supporting documents at the administrative level is not fatal to a judicial claim for refund. According to petitioner, it has submitted the following

---

[6] Minutes of Hearing held on March 11, 2010, Docket, p. 288.
[7] Docket, p. 436.
[8] Docket, pp. 379 to 402.
[9] JSFI, Pars. 2 and 3, Docket, pp. 84 to 85.

documents to the BIR in relation to its claim for Input VAT refund for the period of April to June 2006: Summary of Inward Remittances; Receipts for Second Quarter of 2006; and Hard copy and CD copy of summary list of Purchases and Input Taxes.[10]

And as allegedly held in the case of *CIR v. CE Luzon Geothermal Power Company, Inc.*[11], a careful reading of Section 112(C) reveals that although the submission of the complete supporting documents is necessary for the granting of refund or tax credit certificate, the non-submission of the same with the BIR does not make the administrative claim for refund or tax credit certificate invalid or pro forma, the effect of which makes the judicial appeal dismissible for lack of jurisdiction. It is therefore petitioner's view that since it had submitted all the necessary documents to the Court in support of its claim for Input VAT Refund, the dismissal of the instant Petition for Review is not warranted under the circumstances. Petitioner likewise argues that the period provided under Section 112(C) of the NIRC is permissive only, and thus, there is no need to observe the same before it can appeal respondent's inaction to this Court.

Petitioner further contends that it is entitled to a refund of its input VAT attributable to its export sales for the period of April to June 2006 based on the examination conducted by the independent certified public accountant (ICPA), Mary Ann Capuchino, who found petitioner to be entitled to an input VAT refund in the amount of ₱ 6,685,548.60.

---

[10] Paragraph 24, Petitioner's Memorandum, Docket, pp. 402, at p. 385
[11] C.T.A. EB CASE No. 474, September 1, 2009, Docket, p. 386.

Respondent's counter-arguments

In her Answer, respondent argues that it is imperative for petitioner to show proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the NIRC of 1997.

Furthermore, according to respondent, Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the said requirements warrants the immediate dismissal of the petition for review.

Respondent stresses that the instant Petition for Review was filed out of time, applying Section 112(D) of the NIRC of 1997.

THE COURT'S RULING

Contrary to petitioner's assertion, the period provided under the Section 112(C) of the NIRC of 1997, as amended by RA 9337, is not only permissive, but mandatory. The pertinent provisions of said Section 112 of the NIRC 1997, as amended by Republic Act No. (RA) 9337[12], provides as follows:

---

[12] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> "**SEC. 112.** *Refunds or Tax Credits of Input Tax.—*
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund or creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx
>
> *xxx xxx xxx*
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> **In case of** full or partial denial of the claim for tax refund or tax credit, or **the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**" *(Emphases supplied)*

Based on Section 112 of the NIRC of 1997, any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit certificate or refund or creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax, **within two (2) years after the close of the taxable quarter when the sales were made.**

The preliminary question is: In a claim or application for the issuance of a tax credit certificate or refund or creditable input tax due or paid attributable to zero rated sales or effectively zero-rated sales, at which level does the phrase "two-year period after the close of the taxable quarter when the sales were made" apply to. Does it pertain to the administrative level only before the Commissioner of Internal Revenue, or to both the administrative and judicial level.

In this regard, the Supreme Court held in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[13] that the two (2) year period refers to applications for refund/credit filed with the Commissioner of Internal Revenue and not to appeals filed with this Court. It held thus:

> "There is nothing in Section 112 of the NIRC to support respondent's (petitioner's in this case) view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.' The phrase 'within two (2) years x x x **apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA**. This is apparent in the first paragraph of subsection (D)[14] of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)[15]' within which to decide on the claim." *(Emphasis and underscoring supplied)*

Additionally however, the Supreme Court in the same Aichi case, explained that aside from ensuring that the administrative claim before respondent is filed before the lapse of the two-year period from the close of the taxable quarter when the sales were made, it is also necessary to observe the additional periods of 120 days and 30 days mentioned in Subsection (D), now Section (C), of the NIRC of 1997, and We quote:

> "Section 112(D)[16] of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the

[13] G.R. No. 184823, October 6, 2010.
[14] Now subsection (C).
[15] This subsection (B) has been deleted by RA 9337.
[16] Now Section 112(C), as renumbered by RA 9337.

taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. **However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days**.

xxx xxx

Respondent's (petitioner's in the instant case) **assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.**

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D)[17] of the NIRC, which already provides a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D)[18] of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**

xxx xxx ." *(Emphases supplied)*

Clearly from the foregoing jurisprudential pronouncements, upon the filing of the administrative claim before the Commissioner of Internal Revenue within the prescribed period of two (2) years after the close of the taxable quarter when the sales were made, the Commissioner may: (a) either deny or grant the claim within a period of 120 days; or (b) may not act on the claim within the said period. In both instances, the taxpayer-claimant, has a period of thirty (30) days within which to appeal said action of the Commissioner.

Thus, petitioner is in error to argue that the period provided under the Section 112(C) of the NIRC of 1997, as amended by RA 9337, is only permissive as there is nothing in Section 112 of the NIRC of 1997 to support such a view. In fact, it is readily apparent in the first paragraph of subsection

[17] Now Section 112(C).
[18] Id.

(C) of the said provision, that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)[19]' within which to decide on the claim.

In this case, it is undisputed that petitioner timely filed on June 28, 2007, its administrative claim for refund in the total amount of ₱ 7,817,470.78, supposedly representing the input VAT incurred by petitioner the period April 1, 2006 to June 30, 2006. However, the instant Petition for Review was **belatedly** filed on July 25, 2008, since it was filed beyond the 30-day period to appeal which comes after the expiration of the 120-day period prescribed under the above-quoted Section 112(C).

To bolster this point, a summary of the pertinent dates involved in this case is presented as follows:

Period	*Filing date of administrative claim(presumed also the date of submission of complete documents)*	*Last day of the 120-day period under Section 112(C) from the filing of the administrative claims*	*Last day of the 30-day period within which to file a petition for review under Section 112(C), NIRC of 1997, as amended by RA 9337*	*Filing date of the instant petition for review*
April 1 to June 30, 2006	*June 28, 2007*	*October 26, 2007*	*November 25, 2007*	*July 25, 2008*

Hence, when petitioner filed this appeal by way of the instant Petition for Review on July 25, 2008, the appellate jurisdiction of this Court had ceased, since the 30-day period, within which to make an appeal, has expired. In other words, when the instant Petition for Review was filed, the Court no longer had jurisdiction to entertain the same.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[20]

[19] This subsection (B) has been deleted by RA 9337.

and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[21] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[22]

It should be recalled that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[23] Relative thereto, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[24]

In fine, petitioner's claim for tax refund should be denied for having been filed in violation of Section 112(C) of the NIRC of 1997, as amended by RA 9337.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for being belatedly filed.

SO ORDERED.

ERLINDA P. UY
Associate Justice

---

[20] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[21] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[22] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.
[23] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[24] Section 1, Rule 9, Rules of Court.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice