REPUBLIC OF THE PHILIPPINES
*Court Of Tax Appeals*
QUEZON CITY

# *EN BANC*

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| COMMISSIONER OF INTERNAL REVENUE, ***Petitioner,*** | **C.T.A. EB NO. 431 (C.T.A. CASE NO. 6909)** |
| | Present: |
| -versus- | ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ. |
| MINDANAO II GEOTHERMAL PARTNERSHIP, ***Respondent.*** | **Promulgated:** MAY 2 9 2009 3:30 p.m. |

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# DECISION

**PALANCA-ENRIQUEZ, J.:**

The doctrine of *estoppel* is based on grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. Since *estoppel* is based on equity and justice, it is essential that before a person can be barred from asserting a fact contrary to his act or conduct, it must be shown that such act or conduct has been intended and would unjustly cause harm to those who are misled if the principle were not applied against him *(Rockland Construction Company, Inc vs. Mid-Pasig Land Development Corporation, 543 SCRA 603).*

## THE CASE

This is a "Petition for Review" filed by the Commissioner of Internal Revenue (hereafter "petitioner"), *under Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals), in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended,* praying for the reversal and setting aside of the Decision dated June 4, 2008, and Resolution dated October 7, 2008, rendered by the First Division of this Court, in C.T.A. Case No. 6909, entitled "Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue", the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P689,313.37, representing unutilized input VAT incurred by petitioner in connection with its zero-rated sales for taxable year 2002.
>
> **SO ORDERED**."

"**WHEREFORE**, for want of merit, respondent's Motion for Partial Reconsideration is hereby **DENIED**.

**SO ORDERED.**"

## THE PARTIES

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) (hereafter "petitioner CIR") empowered to perform the duties of the office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with principal office address at the 4th Floor, BIR National Building, Agham Road, Diliman, Quezon City.

Respondent Mindanao II Geothermal Partnership (hereafter "respondent Mindanao II"), on the other hand, is a partnership duly registered with the Securities and Exchange Commission, with principal office at Barangay Ilomavis, Kidapawan City, North Cotabato. It is a value-added tax ("VAT")-registered taxpayer, engaged in the production and sale of electricity, as a generation company, and sells electricity solely to the National Power Corporation, for and in behalf of the Philippine National Oil Corporation-Energy Development Corporation ("PNOC-EDC") under a Build-Operate-Transfer ("BOT") contract.

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## THE FACTS

The facts, as culled from the records, are as follows:

Respondent Mindanao II filed with the BIR its Quarterly VAT Returns for the four quarters of taxable year 2002, declaring zero-rated sales in the amount of P769,384,702.23 and input VAT of P7,427,965.37 on domestic purchases of goods and services of P74,279,653.78, detailed as follows:

| Exhibit | Taxable Quarter | Zero-rated Sales | Purchases | Input VAT |
|---|---|---|---|---|
| D | 1st Quarter | P213,813,056.47 | P17,516,718.65 | P1,751,671.86 |
| E | 2nd Quarter | 210,379,134.36 | 14,294,058.68 | 1,429,405.85 |
| F | 3rd Quarter | 176,468,276.36 | 24,719,490.96 | 2,471,949.09 |
| G | 4th Quarter | 168,724,235.04 | 17,749,385.49 | 1,774,938.57 |
| | Total | P769,384,702.23 | P74,279,653.78 | P7,427,965.37 |

On May 30, 2003, respondent Mindanao II filed with the BIR Revenue District Office No. 108 a claim for the issuance of a TCC corresponding to its unutilized input taxes for the four quarters of taxable year 2002 in the amount of P7,427,965.37.

Due to petitioner CIR's inaction on its claim, on March 31, 2004, respondent Mindanao II filed a Petition for Review with the Court in

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Division, docketed as C.T.A. Case No. 6909. On June 11, 2004, petitioner CIR filed his Answer to the petition.

However, on July 30, 2004, respondent Mindanao II filed a "Motion for Leave of Court to Amend its Petition for Review" in order to correct the amount prayed, which is from P3,891,414.38 to P7,427,965.37, representing excess and/or unutilized input VAT for the period covering January 1, 2002 to December 31, 2002, which the First Division granted in its Resolution dated September 22, 2004.

During the trial, respondent Mindanao II presented its evidence, while petitioner CIR submitted the case for decision without presenting any evidence.

After the case was submitted for Decision on November 13, 2007, petitioner CIR issued to respondent Mindanao II TCC No. 200600003060 in the amount of P6,251,065.74, which belatedly and partially granted respondent Mindanao II's administrative claim for issuance of a TCC in the amount of P7,427,965.37, arising from its excess creditable input taxes for taxable year 2002.

On December 17, 2007, due to the partial grant of respondent Mindanao II's administrative claim for issuance of a TCC, respondent Mindanao II filed a "Motion for Leave of Court to File Attached Supplemental Petition for Review", which was granted by the First Division in a Resolution dated February 13, 2008. With the admission of respondent Mindanao II's Supplemental Petition for Review, petitioner CIR was ordered to submit his Supplemental Answer, which he failed to do.

After trial on the merits, on June 4, 2008, the First Division rendered the assailed Decision partially granting respondent Mindanao II's claim for refund in the amount of P6,940,379.11. In as much as petitioner CIR already issued a TCC in the amount of P6,251,065.74, petitioner CIR was ordered to issue a TCC to respondent Mindanao II the balance of P689,313.37.

On June 23, 2008, petitioner CIR filed a "Motion for Partial Reconsideration", which was denied by the First Division in a Resolution dated October 7, 2008.

Hence, the instant "Petition for Review" raising the sole:

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## ISSUE

**WHETHER OR NOT RESPONDENT MINDANAO II IS ENTITLED TO THE CLAIM FOR REFUND OR TAX CREDIT IN THE AMOUNT OF P689,313.17, REPRESENTING ITS UNUTILIZED AND/OR UNAPPLIED INPUT VAT FOR TAXABLE YEAR 2002.**

Without necessarily giving due course to the "Petition for Review", on December 3, 2008, We ordered respondent Mindanao II to file its comment on the petition.

On January 9, 2009, respondent Mindanao II filed its "Comment (To Petition for Review)", after it filed two extensions of time, which was admitted by the Court in a Resolution dated January 15, 2009.

On January 15, 2009, We ordered both parties to file their simultaneous memoranda, afterwhich, the case shall be deemed submitted for decision.

Both parties having filed their respective memorandum, the case was deemed submitted for decision on March 12, 2009.

Petitioner CIR's Arguments

Petitioner CIR argues that respondent Mindanao II's unqualified acceptance of petitioner's partial grant of the administrative claim for refund, thru the issuance of a TCC in the amount of P6,251,065.74, estops respondent Mindanao II from seeking further relief, invoking the doctrine of *estoppel in pais*. Moreover, the power to grant or deny a claim for refund or issuance of a TCC rests within the authority of petitioner CIR, hence, respondent Mindanao II should have sought reconsideration with the CIR first. The First Division of this Court, therefore, overstepped its boundaries when it granted the issuance of additional TCC in the amount of P689,313.37, in addition to the TCC of P6,251,065.74 already issued by petitioner CIR. Respondent's claim for additional TCC in the amount P689,313.37 was not properly substantiated.

Respondent Mindanao II's Counter-Arguments

Respondent Mindanao II, on the other hand, counter-argues that its acceptance of a TCC issued by petitioner in the amount of P6,251,065.74 did not bar respondent from claiming the remaining portion since upon receipt of the said TCC from petitioner CIR, respondent immediately informed the First Division of the issuance thereof by filing on December 17, 2007 a "Motion for Leave of Court to File Attached Supplemental

Petition for Review". Respondent's claim for refund or issuance of TCC in the amount of P689,313.37 was properly substantiated.

**<u>THE COURT *EN BANC'S* RULING</u>**

We rule for respondent Mindanao II.

<u>There is no *Estoppel in Pais*</u>

*Estoppel in pais* arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts *(Salvador vs. Ortoll, 343 SCRA 667)*. In *estoppel by pais*, as related to the party sought to be estopped, it is necessary that there be a concurrence of the following requisites: (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or

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constructive, of the actual facts *(Pacific Mills, Inc. and Clover Manufacturing Corporation vs. Court of Appeals, 477 SCRA 425)*.

In the instant case, record shows that there is no concurrence of the above requisites. There was no false representation or concealment of any material fact on the part of respondent Mindanao II. Respondent Mindanao II filed an administrative claim for the issuance of a TCC of its unutilized input taxes for the four quarters of taxable year 2002 in the amount of P7,427,965.37 before the BIR Revenue District Office No. 108 on May 30, 2003. However, due to inaction of petitioner CIR on respondent's administrative claim, on March 31, 2004, respondent Mindanao II filed a Petition for Review with this Court, docketed as C.T.A. Case No. 6909, before the lapse of the two year prescriptive period. After the case was submitted for decision by the First Division, on November 13, 2007, petitioner CIR issued to respondent Mindanao II TCC No. 200600003060 in the amount of P6,251,065.74. Since respondent Mindanao II's administrative claim was only partially granted, on December 17, 2007, it filed with the First Division a "Motion for Leave of Court to File Attached Supplemental Petition for Review",

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praying for the issuance of another TCC in the amount of P1,176,218.14. From the foregoing, it is clear that respondent Mindanao II did not falsely represent nor conceal any material fact. In fact, respondent Mindanao II immediately informed the First Division of this Court and even amended its Petition for Review when it found out that petitioner CIR only partially granted its administrative claim for refund, and filed its Supplemental Petition For Review on December 17, 2007.

There was, likewise, no intent on the part of respondent Mindanao II to deceive petitioner CIR because CIR issued the TCC during the pendency of the case before the First Division. Thus, when respondent Mindanao II filed an amended Petition for Review to claim the refund or issuance of a TCC as regards its remaining unutilized input taxes, respondent Mindanao II was merely asserting its right as to the portion of its administrative claim that was denied by petitioner CIR. Evidently, respondent Mindanao II has no intention of deceiving petitioner CIR.

Finally, respondent Mindanao II could not have anticipated whether petitioner CIR would grant its administrative claim for refund or would issue a TCC. Record shows that as early as May 30, 2003, respondent Mindanao II filed its administrative claim for refund with the BIR, however, petitioner CIR failed to act on respondent's claim. In order to protect its interest and to toll the running of the two-year prescriptive period, respondent Mindanao II instituted a judicial claim for refund with this Court on March 31, 2004. Unexpectedly, petitioner CIR partially granted respondent Mindanao II's administrative claim for refund thru the issuance of a TCC during the pendency of the case, only on November 13, 2007, after the lapse of 4 years and 166 days from the time respondent instituted its administrative claim for refund.

Wanting the above requisites, clearly, respondent Mindanao II is not guilty of *estoppel in pais*.

The First Division Of This Court Did Not Overstep Its Boundaries When It Decided The Case, Granted Respondent's Claim And Ordered The Issuance Of Additional TCC In The Amount Of P689,313.37.

While We agree with petitioner CIR that the power to grant or deny a claim for refund or issuance of a TCC rests within its authority, as provided in *Section 112(D) of the NIRC of 1997, as amended*, this

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authority of petitioner CIR, however, pertains to the administrative claim for refund or issuance of a TCC. But, the taxpayer is not precluded from resorting to judicial remedy in case of partial denial of the claim for refund or issuance of a TCC, or in case of inaction by the Commissioner, as provided in the second paragraph of *Section 112(D) of the NIRC of 1997, as amended*, to wit:

> "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."

It is clear from the above-quoted provision that in case of partial denial of the taxpayer's administrative claim for refund or issuance of a TCC, or in case of inaction of the CIR, 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 to this Court.

In the case at bench, record shows that respondent Mindanao II filed its administrative claim for refund with the BIR Revenue District

Office No. 108 on May 30, 2003 *(Exhibit "I")*. However, petitioner CIR failed to act on respondent Mindanao II's administrative claim for refund. Hence, before the lapse of the two-year prescriptive period, or on March 31, 2004, before its claim will be barred by prescription, respondent filed its judicial claim for refund with this Court, docketed as C.T.A. Case No. 6909. From the moment that respondent Mindanao II filed its judicial claim for refund with the First Division of this Court, the Court in Division acquired exclusive appellate jurisdiction over the case, as provided in *Section 7 of RA 9282*, to wit:

> "SEC. 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
>
> xxx xxx."

Pursuant to the above provision, the appellate jurisdiction of the CTA over claims for refund of internal revenue taxes is exclusive. Meaning, once a court acquires jurisdiction over the subject matter of a case, it does so to the exclusion of all other courts, including related incidents and ancillary matters *(Madriñan vs. Madriñan, 527 SCRA 494)*. Equally settled is the rule that once the jurisdiction of a court attaches, it continues until the case is finally terminated. The trial court cannot be ousted therefrom by subsequent happenings or events, although of a character that would have prevented jurisdiction from attaching in the first instance *(Baritua vs. Mercader, 350 SCRA 96)*.

Considering that the First Division has already acquired exclusive appellate jurisdiction over C.T.A. Case No. 6909, then the First Division acted within its authority when it admitted respondent Mindanao II Supplemental Petition for Review and subsequently rendered a Decision on July 4, 2008, partially granting respondent Mindanao II's claim for refund, notwithstanding petitioner CIR's partial grant of respondent Mindanao II's administrative claim for refund on November 13, 2007. Therefore, it cannot be said that the First Division of this Court overstepped its boundaries when it granted respondent Mindanao II's claim for refund.

The Amount of P689,313.37
Was Properly Substantiated

The Court *En Banc* finds that respondent Mindanao II's claim for refund or issuance of a TCC of its unutilized input VAT has sufficient legal basis.

*Section 112 of the NIRC of 1997, as amended,* provides:

> **"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 of 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; *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to

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> any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Pursuant to the above provision, to be entitled to a refund or issuance of TCC, respondent Mindanao II must prove compliance with the following requisites:

1. that there must be zero-rated or effectively zero-rated sales;
2. that the input taxes were incurred or paid;
3. that such input taxes are directly attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

<u>First Requisite</u>

As to the first requisite, record shows that petitioner has complied with the first requirement. Petitioner sales of electricity, as a power generation company qualify for VAT zero-rating under *Section 6 of RA 9136*, otherwise known as the *"Electric Power Industry Reform Act of 2001"*, which reads:

> "SEC. 6. *Generation Sector.* - Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.
>
> Upon implementation of retail competition and open access, the prices charged by a generation company for supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.
>
> Pursuant to the objective of lowering electricity rates to end-users, **sales of generated power by generation companies shall be value added tax zero-rated**.
>
> The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements." *(Emphasis supplied)*

In the instant case, respondent Mindanao II was able to prove that it is a generation company. It entered into a BOT contract with the PNOC-EDC for the finance, construction, design, testing, operation,

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maintenance and repair of a 48.25-megawatt geothermal power plant, provided that PNOC-EDC supplies and delivers steam to respondent at no cost. In turn, respondent Mindanao II converts the steam into electric capacity and energy and delivers it to the NPC for and in behalf of PNOC-EDC *(Exhibit "M")*. In a Letter dated August 30, 2001 of the Secretary of the Department of Energy, respondent Mindanao II was confirmed, as one of the duly accredited generating companies *(Exhibit "C-1")*. In fact, it was issued a Certificate of Accreditation by the Department of Energy, as a Block Power Production Facility, under the Implementing Rules and Regulations of EO 215, as amended *(Exhibit "B")*. For the four (4) quarters of 2002, petitioner actually generated zero-rated sales from power generation services to PNOC-EDC in the aggregate amount of P769,384,702.23 (P213,813,056.47+ P210,379,134.36 + P176,468,276.36 + P168,724,235.04), which was properly declared in its Quarterly VAT Returns *(Exhibits "D" to "G")* and duly covered by VAT official receipts and invoices *(Exhibits "P" to "P-13-b")*.

Second Requisite

As regards the second requisite, We agree with the First Division that out of the total input VAT of P7,427,965.37 claimed by respondent Mindanao II, the amount of P6,940,379.11 was validly substantiated by corresponding official receipts, invoices and Certificate of Creditable Tax Withheld at Source attributable to its domestic purchases of goods and services within the taxable year 2002 *(Exhibits "O" to O-26, "O-28" to "O-42", "O-44" to "O-49", "O-51" to "O-64", "O-66" to "O-75", "O-75-b" to "O-77-a", and "O-78" to "O-78-a").*

Third and Fourth Requisites

As regards the third and fourth requisites, We find that respondent Mindanao II input taxes were directly attributable to its zero-rated sales and they were not applied against any output VAT liabilities, as shown in its Quarterly VAT Returns for the four (4) quarters of 2002 *(Exhibits "D" to "G")*. Also, the unutilized input VAT reflected in respondent Mindanao II's Quarterly VAT Returns for taxable year 2002 was not carried over to the succeeding taxable quarters, as shown in its Quarterly VAT Return for the first quarter of taxable year 2003 *(Exhibit "H")*.

Fifth Requisite

Finally, anent the fifth requisite, *Section 112(A) of the NIRC of 1997, as amended*, and the recent ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.), 565 SCRA 171,* explicitly provides that the two-year prescriptive period to claim a refund or issuance of a TCC of input VAT attributable to zero-rated or effectively zero-rated sales should be reckoned not from the payment of the tax, but from the close of the taxable quarter when the sales were made.

Applying *Section 112(A) of the NIRC of 1997, as amended*, and the ruling of the Supreme court in the Mirant Case, the following are the pertinent dates to petitioner's claim for refund:

| **Period (2002)** | **Close of Taxable Quarter** | **Last Day for Filing the Claim** |
|---|---|---|
| 1st Quarter | March 31, 2002 | March 31, 2004 |
| 2nd Quarter | June 30, 2002 | June 30, 2004 |
| 3rd Quarter | September 30, 2002 | September 30, 2004 |
| 4th Quarter | December 31, 2002 | December 31, 2004 |

Record shows that petitioner filed its administrative claim for refund or issuance of a TCC for the four quarters of 2002 with the BIR on May 30, 2003 (*Exhibit "I"*), and its judicial claim for refund with this

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Court on March 31, 2004 *(Original Docket, p. 1)*. Clearly, both the administrative and judicial claims for refund were filed within the prescriptive period.

Having complied with all the prescribed requisites, respondent Mindanao II has validly substantiated its claim for refund in the amount of P6,940,379.11. However, considering that respondent Mindanao II already received from petitioner CIR a TCC in the amount of P6,251,065.74, representing its excess creditable input taxes for taxable year 2002, which is the same subject matter of the instant case, the amount of P6,251,065.74 will be deducted from the said amount of P6,940,379.11. Hence, petitioner is only entitled to the remaining balance of P689,313.37.

As aptly ruled by the First Division of this Court:

> "With the foregoing disquisitions, petitioner has sufficiently proven its entitlement to the issuance of a tax credit certificate representing unutilized input VAT attributable to zero-rated sales for taxable year 2002 in the reduced amount of P6,940,379.11, computed as follows:

| | |
|---|---|
| Amount of Input VAT Claim | P7,427,965.37 |
| Less: Disallowances | 487,586.26 |
| Validly supported Input VAT | P6,940,379.11 |

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> However, inasmuch as petitioner already received a Tax Credit Certificate of the amount of P6,251,065.74, representing petitioner's excess creditable input taxes for taxable year 2002, which is the same subject matter of this present case; the amount of P6,251,065.74 will be deducted from the above-stated amount of P6,940,379.11. Hence, petitioner will only be entitled to the amount of P689,313.37."

Finding no reversible error, We affirm the assailed Decision dated June 4, 2008, and Resolution dated October 7, 2008, rendered by the First Division of this Court in C.T.A. Case No. 6909.

**WHEREFORE**, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Justice

Juanito C. Castañeda, Jr.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

# CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the cases was assigned to the writer of the opinion of the Court.

**ERNESTO D. ACOSTA**
Presiding Justice