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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DYNAMIC LOGISTICS INTERNATIONAL CORPORATION AND EXPORT SUPPLY CENTER, INC.,

Petitioners,

CTA EB NO. 531
(CTA CASE NO. 7036)

- versus -

Present:
ACOSTA, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
JAN 0 4 2011
3:10pm

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DECISION

COTANGCO-MANALASTAS, *J.*:

STATEMENT OF THE CASE

Before the Court is an appeal filed by Dynamic Logistics International Corporation and Export Supply Center, Inc., praying that the Court *En Banc* set aside the Decision dated May 11, 2009 and the Resolution dated August 6, 2009 of the Court of Tax Appeals Second Division, and in lieu thereof, another decision be rendered ordering the following:

"1. The Honorable Court ANNUL and SET ASIDE the Decision of the Honorable Customs Commissioner which denied petitioners' Offer of Settlement and reversed the favorable recommendation of the District Collector in the latter's 04 April 2004 Consolidated Decision and ordered the forfeiture of the proceeds of the auction of the rice shipments covered by Seizure Identification Nos. 2002-127 to 2002-159, in the total amount of One Hundred Forty Million Eighty Thousand Pesos (P140,080,000.00);

2. Declare petitioners to be exempt from securing an import permit insofar as the subject articles are concerned and allow it to claim the auction proceeds of the rice shipments amounting to in the total amount of One Hundred Forty Million Eighty Thousand Pesos (P140,080,000.00) together with its interests; and

3. Declare the seizure of the subject articles null and void."[1]

STATEMENT OF FACTS

The facts as found by the CTA Second Division are as follows:

Petitioners Dynamic Logistics International Corporation and Export Supply Center, Inc. are corporations duly organized and existing under Philippine laws.

Respondent, on the other hand, is the Commissioner of the Bureau of Customs, who is duly appointed and empowered by law to perform duties of his office, including, among others, the duty to act on cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto; or other matters arising under the Customs Laws or other laws administered by the Bureau of Customs.

On different occasions in 2002, petitioners shipped rice into the country without import permits issued by the National Food Authority (NFA).

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[1] *Rollo*, p. 57

In September 2002, the Bureau of Customs (BOC) issued several warrants of seizure and detention all dated September 11, 2002 against petitioners' shipment of rice.

Seizure Identification Nos. 2002-127 to 2002-131 and 2002-137 to 2002-140 were issued against the rice shipments of petitioner Dynamic Logistics International Corporation.

Meanwhile, Seizure Identification Nos. 2002-132 to 2002-136 and 2002-141 to 2002-159 were issued against the rice shipments of petitioner Export Supply Center, Inc.

On September 26, 2002, the four seizure cases were consolidated by agreement of the parties.

On October 21, 2002, petitioners filed motions to quash the writs of seizure and detention issued against the said rice shipments.

The Collector of Customs for the Port of Manila, Napoleon L. Morales, issued an Order dated March 6, 2003 denying petitioners' motion to quash, and directing the parties to present their respective evidence during hearings to be set for said purpose.

By agreement of the parties during the hearing on May 19, 2003, trial was dispensed with and in lieu of trial, the parties agreed to submit the case for resolution by the BOC's Law Division based on the parties' respective position papers and other supporting documents.

In order to prevent the spoilage of the seized rice shipments, the same were sold at public auction.

During the pendency of the case before the BOC, petitioners sought to settle the forfeiture proceedings. On February 5, 2004, petitioner Dynamic Logistics filed a Manifestation of Intention to Settle Pending Forfeiture Proceedings in the pending seizure and detention case with Seizure Identification Nos. 2002-127 to 2002-131.

On even date, petitioner Dynamic Logistics filed a similar Manifestation of Intention to Settle Pending Forfeiture Proceedings in the pending seizure and detention cases with Seizure Identification Nos. 2002-137 to 2002-140.

Similar Manifestations of Intention to Settle Pending Forfeiture Proceedings were filed by petitioner Export Supply Center, Inc. in the pending seizure and detention case with Seizure Identification Nos. 2002-132 to 2002-136 and Seizure Identification Nos. 2002-141 to 2002-159.

Through an undated Consolidated Decision, District Collector of Customs Atty. Ronnie Silvestre granted the settlement.

However, upon submission of the same to respondent, in an undated Decision, respondent reversed the earlier Consolidated Decision and denied petitioners' offer of settlement, and likewise ordered the forfeiture of the proceeds from the auction of petitioners' rice shipment.

On August 12, 2004, a Petition for Review was filed before this Court's Second Division.

In an Answer (With Counterclaim) filed on November 8, 2004, respondent interposed the following affirmative defenses and counterclaim:

"<u>AFFIRMATIVE DEFENSES</u>

5. Respondent respectfully repleads the foregoing allegations in paragraphs 1 to 4 as integral parts hereof.

6. It is undisputed that petitioner's rice importations were made without the required import permits from the National Food Authority (NFA) in violation of Section 2530 of the TCCP, as amended, the existing Memorandum of Agreement (MOA) dated August 2, 2001 between NFA and the Bureau of Customs (BOC), and Customs Memorandum Order (CMO) No. 20-2001. Hence, the forfeiture of the subject rice importations is valid.

7. Petitioner cannot successfully invoke DOJ Opinion No. 95, Series of 1994 to exempt themselves from securing the required import permits. To begin with, the said DOJ Opinion pertains only to the Philippine Export Zone Authority (PEZA)-registered firms, and not to bonded trading warehouses like petitioner Dynamic Logistics International Corporation. Besides, a DOJ Opinion cannot prevail over the provisions of the Tariff and Customs Code of the Philippines and related laws. It should be stressed that the other co-petitioner Export Supply Center, Inc. is not even a licensed bonded trading warehouse and is therefore stripped of any personality to bring this suit.

8. In the same vein, petitioners cannot seek refuge under a letter of exemption supposedly issued by NFA Assistant Administrator Jessup P. Navarro. In the first place, the existence and due execution of the said letter is doubtful. For the record, NFA Assistant Administrator Navarro has no authority to sign any letter of exemption. More importantly, the letter of exemption cannot prevail over the clear provisions of law and the issuance of then NFA Administrator Anthony Abad that such exemption could not be granted.

COUNTERCLAIM

9. Respondent respectfully repleads the foregoing allegations under paragraphs 1 to 8 inclusive as integral parts hereof.

10. Because of petitioners' unfounded actions, respondent was constrained to refer this case to the Office of the Solicitor General (OSG) for legal representation, on account of which, respondent has incurred and will incur litigation expenses in the amount of not less than Three Hundred Thousand Pesos (P300,000.00)."

On February 17, 2005, both petitioners and respondent filed their respective pre-trial brief.

In a Resolution dated March 31, 2005, the Court approved the Joint Motion for Approval of the Parties' Joint Stipulation of Facts and Issues. Thereafter, trial on the merits ensued. Subsequently, the parties presented their respective testimonial and documentary evidence.

In a Resolution dated March 31, 2009, the Court submitted the case for decision upon submission of the parties' respective memorandum.

In a Decision dated May 11, 2009, the CTA Second Division dismissed the Petition for Review filed by herein petitioners. The *fallo* of said Decision states:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. The counterclaim of Commissioner of Customs is dismissed for lack of legal and factual basis."

Subsequently, petitioners filed a Motion for Reconsideration against said Decision. However, the same was denied by the Court in a Resolution dated August 6, 2009. Hence, petitioner elevated the case before the Court *En Banc* via Petition for Review filed on August 25, 2009.

The case was submitted for decision on January 26, 2010, after both parties filed their respective Memorandum on January 8, 2010.

STATEMENT OF ISSUES

Petitioners raised the following issues in their Petition for Review for the resolution of this Court:

> "A.
>
> WHETHER OR NOT THE SEIZURE OF PETITIONERS' RICE SHIPMENTS FOR LACK OF AN NFA IMPORT PERMIT IS VALID.
>
> B.
>
> WHETHER OR NOT THE FORFEITURE OF PETITIONERS' RICE SHIPMENTS BY RESPODENT BUREAU OF CUSTOMS IS VALID, DESPITE

PETITIONERS' AVAILMENT OF THE SETTLEMENT PRIVILEGE UNDER SECTION 2307 OF THE TCC."[2]

Petitioners aver that the NFA had been exempting Customs Bonded Warehouses from securing Import Permits for their rice shipments. They claim that even the NFA Director himself affirmed that the NFA has previously allowed Customs Bonded Warehouses to ship in rice without any Import Permit. Petitioners further assert that the Memorandum of Agreement (MOA) executed on August 3, 2001 did not repeal or withdraw said benefit from petitioners.

Petitioners also contend that the Import Permit exemption given by NFA to PEZA-registered entities should also be extended to Customs Bonded Warehouses considering the similarities in their operation. They claim that the exemption given to PEZA-registered enterprises is premised on the fact that their rice shipments will neither be sold nor distributed in the domestic market, which in this case, is also what petitioners do.

Lastly, petitioners posit that the CTA Second Divison erred in upholding the validity of the forfeiture of petitioners' rice shipments considering that petitioners availed of the remedy of settlement under Section 2307 of the Tariff and Customs Code. They assert that even if the seizure of the subject rice shipment is warranted for lack of an Import Permit, the forfeiture is nonetheless unwarranted in view of petitioners' offer to settle the seizure proceeding and the advantage of expediting the government's revenue collection efforts on the said shipments.

For his part, respondent counters that the NFA has the exclusive authority to import rice when necessary. Further, respondent cited the MOA dated August 3, 2001 entered into between the NFA and the BOC, which provided that the NFA shall

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[2] *Rollo*, p. 17

issue an Import Authority for every imported rice shipment. Respondent asserts that pursuant to said MOA, the BOC issued Customs Memorandum Order (CMO) No. 20-2001 dated August 27, 2001, which requires that all shipments of rice imported into the country must be covered by an Import Authority from the NFA.

DISCUSSION/RULING

The Petition is devoid of merit.

<u>Rice shipments by petitioners require Import Permits from the NFA.</u>

We rule that an Import Permit obtained from the NFA is necessary before petitioners may import rice into the country. Two rules govern this requirement, namely; the MOA dated August 3, 2001 and the CMO No. 20-2001 issued by the BOC on August 27, 2001.

The MOA entered into between the NFA and the BOC explicitly states:

"IMPORT AUTHORITY

a. **NFA shall issue an Import Authority, copy furnished BOC, for every imported rice shipment** in accordance with its rules and regulations and shall designate as Port of Entry/Discharge only the District Ports, and not any sub-port or private wharf;

xxx xxx xxx

c. **Upon arrival of the carrying vessel at the designated Port of Entry/Discharge, BOC shall demand from the importer/consignee/carrier the presentation of the Import Authority for the imported rice shipment;** and failure to present the same or any violation thereof shall be a ground for the seizure of the shipment(s)/vessel in question, which shall then be proceeded against in accordance with law, in which case, NFA commits to extend full support and assistance to BOC in the prosecution of the case." *(Emphasis supplied)*

Pursuant to this MOA, the BOC issued CMO No. 20-2001 which provides:

> "3.1. **All shipments of rice imported into the country shall be covered by an Import Authority from the National Food Authority** and the same shall be entered and discharged only in a District Port and not in any sub-port or private wharf.
>
> xxx xxx xxx
>
> 4.4 The absence of the pertinent Shipping Permit and/or Import Authority or any violation thereof shall be a ground for the seizure of the rice shipment/vessel in question, which shall be then proceeded against in accordance with applicable law, rules and regulations." *(Emphasis supplied)*

From the foregoing rules, it is apparent that an Import Permit from the NFA is required for the importation of rice into the country. It was wrong for petitioners to assume that they can import rice into the Philippines without the necessary Import Authority issued by the NFA.

Further, this Court cannot subscribe to petitioners' claim that the aforesaid rules merely govern importations of rice which are intended for domestic consumption.

As can be gleaned from the afore-quoted rules, it is clear that the MOA and CMO No. 20-2001 made no distinction as to which importation an Import Authority is required. Hence, the NFA Import Authority is a mandatory requirement for every imported rice shipment into the country, whether for domestic consumption or not.

In addition, petitioners contend that Customs Bonded Warehouses are similar to PEZA-registered entities as regards their use of raw materials for export products. They claim that a PEZA-registered firm's exemption is based on the fact that the rice shipments received by them are neither sold nor distributed to the domestic market, but instead processed for eventual re-exportation. They argue that since the same principle holds true for them, petitioners should also be exempted from the requirement of obtaining an Import Permit.

We are not persuaded.

Petitioners and PEZA-registered firms are not similarly situated; thus, the former is not entitled to the same exemptions granted the latter as there is a huge distinction between the two entities.

As correctly observed by the Second Division, the PEZA-registered firm is the same entity that will process and export the end-product using the raw materials it previously imported into the country. Petitioners, however, are not the direct exporters of rice or its possible end-product. In fact, the Court's Second Division, in its Decision, explained the distinction in this wise:

> "Petitioners and PEZA-registered firms are not similarly situated. PEZA-registered firm is the same entity that will process and export the end product using the raw materials it previously imported into the country. In contrast, petitioners are not the direct exporters of rice or its possible end product. A Customs Bonded Trading Warehouse has been defined in Customs Administrative Order No. 2-91 as:
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>> Section 25. A **Bonded Trading Warehouse (BTW) is a warehouse operated by a Registered Export Trading Company (RETC) duly registered with the BOI and licensed by the Bureau of Customs to receive imported cargoes**, except fabrics and accessories in the manufacture of garments, **for storage and subsequent sale to an export producer operating a Customs Bonded Manufacturing Warehouse, or for transfer to a duly accredited export producer**.
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> Based on the foregoing, a Customs Bonded Trading Warehouse is authorized to receive imported cargoes for storage and subsequent sale to an export producer operating a Customs Bonded Manufacturing Warehouse or transfer to a duly accredited export producer.
>
> In its Memorandum, petitioners admitted that subject articles were clearly intended for storage and subsequent sale to an export producer operating Customs Bonded Manufacturing Warehouse or transfer to a duly accredited export producer, and thereafter exported abroad.

> Evidently, petitioners are not the direct exporters of the rice shipments but will have to sell it to export producers. xxx"[3] *(Emphasis supplied)*

Lastly, petitioners' reliance on DOJ Opinion No. 95 is clearly misplaced.

First, petitioners cannot rely on DOJ Opinion No. 95 as this opinion is merely persuasive and not necessarily controlling on the courts.[4] In *Energy Regulatory Board vs. Court of Appeals, et al.*[5], the Supreme Court held that when an administrative agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law and the administrative interpretation is at best advisory for it is the courts that finally determine what the law means. Thus, an action by an administrative agency may be set aside by the judicial department if there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law. Pertinent portions of the said case are quoted hereunder:

> "Generally, the interpretation of an administrative government agency, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts. The reason behind this rule was explained in *Nestle Philippines, Inc. vs. Court of Appeals*, in this wise:
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>> 'The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central v. Commissioner of Customs*, the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency or officials charged with the

[3] *Rollo*, pp. 80-81
[4] *Associated Communications & Wireless Services-United Broadcasting Networks vs. National Telecommunications Commission*, G.R. No. 144109, February 17, 2003
[5] G.R. No. 113079, April 20, 2001

> implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are drafters of the law they interpret.'
>
> **As a general rule, contemporaneous construction is resorted to for certainty and predictability in the laws**, especially those involving specific terms having technical meanings.
>
> **However, courts will not hesitate to set aside such executive interpretation when it is clearly erroneous**, or when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily understandable to any ordinary reader." *(Emphasis supplied)*

Second, as correctly pointed out by the CTA Second Division, DOJ Opinion No. 95 was issued in 1994; while both the MOA and CMO No. 20-2001 were issued in 2001, just a year before the arrival of the subject rice importations.

Evidently, the prevailing rule at the time the importation took place in 2002 was the MOA entered into between the NFA and the BOC as well as CMO No. 20-2001 issued by the BOC, which requires Import Authority for all rice importations. Therefore, petitioners cannot rely on said DOJ Opinion since the government agency tasked to implement Executive Order (E.O). No. 1098 already issued the MOA with the related CMO, requiring Import Authority for all rice importations at the time petitioners shipped their goods into the country.

Third, assuming that DOJ Opinion No. 95 still applies even after the MOA between NFA and BOC and CMO No. 20-2001, this Court cannot allow the application of said ruling to petitioners since said opinion specifically pertained to PEZA-registered firms and not to corporations engaged in the operation of Customs Bonded Warehouse.

In sum, rice importations in the Philippines require Import Permit from the NFA.

Anent the question of whether the duties and tax exemptions given to PEZA-registered firms on their rice importations are applicable to petitioners, this Court would like to adopt the observations of the Second Division that the tax exemptions extended to PEZA-registered firms are not applicable to petitioners, to wit:

> "The duties and tax exemptions given to PEZA-registered firms on their importations are provided for in special laws specifically designed for PEZA-registered firms, either in Presidential Decree No. 66 or Executive Order No. 226. **These special laws expressly grant preferential tax treatment to business establishments registered and operating within an ecozone, which by law is considered as a *separate customs authority.***
>
> On the contrary, Petitioners Dynamic Logistics International Corporation and Export Supply Center, Inc. are corporations engaged in the operation of Customs Bonded Warehouses although there is nothing in the record of the case that will show Export Supply possessed a renewed license duly approved by the BOC at the time of the importation of the subject rice shipments. **These Customs Bonded Warehouses are governed by and subject to the provisions of the TCCP** which provides specific provisions on exemptions from duties of bonded manufacturing and smelting warehouses upon meeting certain conditions.
>
> Hence, petitioners cannot seek relief by invoking special laws designed only for PEZA-registered entities because it is the TCCP that applies to them."[6] *(Emphasis supplied)*

<u>The forfeiture by the Commissioner of Customs of the subject rice shipment is proper.</u>

Section 2307 of the Tariff and Customs Code of the Philippines (TCCP), as amended, provides:

> "SEC. 2307. *Settlement of Case by Payment of Fine or Redemption of Forfeited Property.* – Subject to approval of the Commissioner, the district collector may, while the case is still pending, except when there is fraud, accept the settlement of any seizure case provided that the owner, importer, exporter, or consignee or his agent shall offer to pay to the collector a fine imposed by him upon the property, or in case of forfeiture, the owner, exporter, importer or

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[6] *Rollo*, pp. 81-82

> consignee or his agent shall offer to pay for the domestic market value of the seized article. The Commissioner may accept the settlement of any seizure case on appeal in the same manner.
>
> Upon payment of the fine as determined by the district collector which shall be in amount of not less than twenty percentum (20%) nor more than eighty percentum (80%) of the landed cost of the seized imported article of the F.O.B. value of the seized article for export, or payment of the domestic market value, the property shall be forthwith released and all liabilities which may or might attach to the property by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any cash deposit or bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged.
>
> Settlement of any seizure case by payment of the fine or redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the release of the property would be contrary to law."

Adverting to the terms of the law, settlement of a case by payment of a fine or redemption of forfeited property is allowed provided the following requisites are present:

(1) There is a pending seizure and forfeiture proceeding;

(2) There is no finding of fraud;

(3) The importation is not absolutely prohibited;

(4) Where the release of the property would not be contrary to law;

(5) Offer to pay a fine of not less than twenty percentum (20%) nor more than eighty percentum (80%) of the landed cost of the seized imported article or the F.O.B. value of the seized article for export or in case of forfeiture, payment of the domestic value of the seized article; and

(6) Approval of the Commissioner of Customs.[7]

Here, petitioners failed to comply with the fifth requisite, that is, to "offer to pay a fine of not less than twenty percentum (20%) nor more than eighty percentum

[7] *Rollo*, p. 94

(80%) of the **landed cost** of the seized imported article or the **F.O.B. value** of the seized article for export or in case of forfeiture, payment of the **domestic value** of the seized article." As correctly noted by the Second Division, the "Manifestation of Intention to Settle Pending Forfeiture Proceedings" of petitioners clearly shows that petitioners' offer to pay a fine is to be computed based on the actual depreciated value of the seized articles at the time they were sold at a public auction, not on landed cost or F.O.B value or domestic value as required by Section 2307 of the Tariff and Customs Code.

This Court is not persuaded by the circuitous explanation of petitioners in their Memorandum. The law, Section 2307 of the TCCP, is specific and mandatory. Hence, it merely calls for the application of the law as worded.

As held by the Supreme Court in *Signey vs. Social Security System, et al.*[8], under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. The "plain meaning rule" or *verba legis*[9] rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent by the use of such words as are found in the statute.

Finally, We rule that respondent did not abuse his discretion when he denied petitioners' offer of settlement.

Quoting the findings of the Second Division, as stated in the assailed Resolution, We find that the Commissioner of Customs acted within legal bounds when he refused the settlement offered by petitioners' since the latter's rice shipments fall within the class of articles the importation of which is effected contrary

[8] G.R. No. 173582, January 28, 2008
[9] *Verba legis non est recedendum* or from the words of a statute there should be no departure

to law. Consequently, respondent may validly seize and order its forfeiture under Section 2530(f) of the TCCP, to wit:

> "(W)e rule that the respondent did not commit any grave abuse of discretion when it denied petitioners' offer of settlement. We quote the pertinent portion of the undated Decision of the Commissioner of Customs:
>
>> The Consolidated Decision granting settlement should further be denied since it erroneously grants a thirty (30%) depreciation on the rice shipment. The consideration of depreciation in the computation of the settlement value is misplaced. It should be stressed that despite its weevil infestation, the rice shipment was still able to fetch the price level it did during auction. It is worth stressing that the aspect of depreciation would only come into play for purposes of computing the settlement/redemption value in cases where the rice shipments are to be released to the claimants and not in these cases where the rice shipments were auctioned off. Also, the use of the World Indicative Market Price of US$175.00 per metric ton likewise lacks legal imprimatur. It should be noted that in cases of rice auction, it is the NFA which sets a floor price pursuant to rules and regulations implemented by this Bureau. There is, however, no indication in the instant cases that the NFA Floor Price was utilized or considered."

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED** and the Decision dated May 11, 2009 and the Resolution dated August 6, 2009 are hereby **AFFIRMED** *in toto*.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
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

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice