REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 772
(C.T.A. CASE NOS. 7727 and 7783)

Members:

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

- versus -

SEMIRARA MINING CORPORATION,
Respondent.

Promulgated:

JUN 22 2012 Apolinario 2:00 p.m.

x- -x

DECISION

Fabon-Victorino, J.:

Before the Court is the Petition for Review filed by petitioner Commissioner of Internal Revenue on May 18, 2011, assailing the Decision dated February 10, 2011, and the Resolution dated April 14, 2011, both rendered by the Second Division of the Court.

This appeal stemmed from the consolidated Petitions for Review docketed as C.T.A. Case Nos. 7727 and 7783, filed by respondent before the Court in Division for refund or issuance of a tax credit certificate of final value-added tax (VAT) alleged to have been erroneously withheld by the National Power Corporation (NPC) on its sales of coal for the period covering January to June 30, 2006, and remitted to the Bureau of Internal Revenue (BIR).

The undisputed facts, as found by the Court in Division are as follows:

Petitioner is the Commissioner of the BIR, with office address at the BIR National Office Building, Diliman, Quezon City.

Respondent, on the other hand, is a duly organized domestic corporation with principal office at the 2nd Floor, DMCI Plaza, 2281 Chino Roces Avenue, Makati City. It is registered with the BIR as a non-VAT enterprise engaged in the coal mining business, with Taxpayer Identification No. (TIN) 000-190-324-000 and OCN 8RC0000018119.

On July 11, 1977, respondent's predecessors-in-interest, Vulcan Industrial and Mineral Exploration Corporation and Sulu Sea Oil Development Corporation, entered into a Coal Operating Contract (COC) with the Philippine Government, through the Energy Development Board (EDB) of the then Ministry of Energy, pursuant to Presidential Decree (PD) No. 972. Subsequently, the COC and all the rights, privileges, and obligations appurtenant thereto were transferred to Semirara Coal Corporation (SCC) by virtue of a Deed of Assignment dated April 7, 1980. The COC was to expire in 2012.

The COC was to implement the declared state policy in PD No. 972, namely, to accelerate the exploration, development, exploitation, production, and utilization of the country's coal resources. In line with this policy, Section 16 of the said Decree granted various incentives to operators, viz:

> "Section 16. Incentives to Operators. – The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:
>
> a) Exemption from all taxes except income tax;
> b) Exemption from payment of tariff duties and compensating tax on importation of machinery and equipment and spare parts and materials required for the coal

> operations subject to the following conditions:"

This tax exemption benefit was incorporated in Section V, 5.2 of the COC, as follows:

> "Section V. Rights and Obligations of the Parties
>
> x x x
>
> 5.2. The OPERATOR shall have the following rights:
>
> (a) *Exemption from all taxes (national and local) except income tax...*" (emphasis supplied)

In accordance with the COC and pursuant to the Coal Supply Agreement executed in 1999, respondent sold its coal production to NPC, a government-owned and controlled corporation.

In view of the tax exemption under PD No. 972, as amended, and as embodied in the COC, respondent sold its coal production to the NPC for years without paying VAT. The same tax exemption benefit is found in Section 109 of the NIRC, thus:

> "SEC. 109. *Exempt Transactions*. – The following shall be exempt from the value-added tax:
>
> x x x x x x x x x
>
> (e) Sale or importation of coal and natural gas, in whatever form or state, and petroleum products (except lubricating oil, processed gas, grease, wax, and petrolatum) subject to excise tax imposed under Title VI;
>
> x x x x x x x x x
>
> (q) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree Nos. 66, 529 and 1590;

However when R.A. No. 9337 took effect on November 1, 2005, Section 109(E) of the NIRC of 1997 was deleted. Consequently, the NPC commenced to withhold a final VAT of five percent (5%) on coal billings of respondent, on the ground that its sales of coal were no longer exempt from VAT, pursuant to Section 114(C) of R.A. No. 9337, which states:

> "(C) *Withholding of Value-added Tax*. – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a

> final value-added tax at the rate of five percent (5%) of the gross payment thereof: x x x
>
> The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made."

Respondent assailed such withholding through a formal protest and in furtherance thereof formally requested the BIR for a ruling confirming that its sale of coal was still exempt from VAT, notwithstanding the amendments to the NIRC of 1997 by R.A. No. 9337.

On March 7, 2007, the BIR issued BIR Ruling No. 006-2007 stating that respondent's sale of coal remains exempt from VAT, to wit:

> "In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, SMC's sales of coal produced by virtue of a COC with EDB remain exempt from VAT pursuant to Section 109(k) of the Tax Code, as amended by RA 9337, in relation to PD 972, as amended."

On May 21, 2007, respondent filed with Revenue District Office No. 121 (RDO 121), Large Taxpayer's Division (LTAD) of the BIR, a letter request for the issuance of a tax credit certificate in the amount of P163,361,725.37 based on certifications provided by the NPC.

On January 29, 2008, respondent filed a letter with the BIR Large Taxpayer's Division following-up its pending claim for the issuance of a tax credit certificate for the year 2006, with emphasis on the VAT withheld by the NPC for the first quarter of 2006 in the amount of P47,560,418.57, considering that the two-year prescriptive period for filing a judicial claim for refund or issuance of a tax credit certificate for January 2006 was to expire.

Citing inaction on the part of petitioner and to allegedly toll the running of the two (2)-year prescriptive period within which to seek judicial intervention, respondent filed two separate Petitions for Review before the Court in Division for its claim for refund or issuance of tax credit certificate for the 1st and 2nd quarters of 2006 in the respective amounts of P47,560,418.57 and P38,548,207.62 or a total of P86,108,626.19, docketed as follows:

CTA Case No.	Date of Filing of Petition for Review	Period Covered	Amount of Claim (Php)
7727	February 04, 2008	Jan. 01 to Mar. 31, 2006	47,560,418.57
7783	May 06, 2008	April 01 to June 30, 2006	38,548,207.62
		Total	**86,108,626.19**

In a Resolution dated July 25, 2008,[1] CTA Case No. 7783 was consolidated with CTA Case No. 7727, being the case with the lowest docket number. The said consolidation was approved by the Court in Division in the Resolution dated August 4, 2008.[2]

Trial ensued and on February 10, 2011, a Decision on the consolidated cases was promulgated holding that the tax exemption of respondent subsists, thus the grant of its claim for refund. The dispositive portion of the Decision reads as follows:

> "WHEREFORE, the instant Petitions for Review are hereby GRANTED. Accordingly, (petitioner) is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in favor of (respondent) in the amount of EIGHTY SIX MILLION ONE HUNDRED EIGHT THOUSAND SIX HUNDRED TWENTY SIX and 10/100 PESOS (P86,108,626.10), representing 5% final VAT on its coal sales, which the National Power Corporation erroneously withheld and

[1] CTA Case No. 7783 Division docket page 175.
[2] CTA Case No. 7727 Division docket page 180.

> remitted to the BIR for the period covering January 1, 2006 to June 30, 2006.
>
> SO ORDERED."

Petitioner moved for a reconsideration of the foregoing Decision on February 23, 2011, however, it was denied for lack of merit in a Resolution dated April 14, 2011, the dispositive portion of which runs as follows:

> "WHEREFORE, premises considered, (petitioner's) Motion for Reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED."

Still unconvinced, petitioner is now before the Court *En Banc* insisting that respondent is not entitled to the refund granted as it failed to submit complete documents to petitioner in support of its claim at the administrative level as required under Revenue Memorandum Order (RMO) No. 53-98 which prescribes a checklist of requirements for the purpose. The lapse deprived petitioner of the opportunity to exercise her duty and resolve respondent's claim for refund resulting in non-exhaustion of administrative remedies on the part of respondent. Coupled with the allegation that respondent presented complete documents only before the Court in Division and the principle that matters not raised in the administrative level cannot be raised for the first time on appeal, the Court in Division should not have taken cognizance of respondent's Petitions.

Petitioner also reiterates that respondent's exemption from VAT under R.A. 8424 has been deleted in Republic Act No. 9337 or the New Expanded Value-Added Tax[3]. This only means that respondent's sale or importation of coal and natural gas, in whatever form and state, should now be subject to VAT.

Finally, BIR Ruling No. 0006-2007 which states that respondent remains tax exempt is erroneous, is clearly against the grain of R.A. No. 9337 which removed the tax exemption on the sale or importation of coal and gas. Considering that said BIR Ruling is a flawed interpretation of the law, and in view that in taxation the government is not estopped by the mistakes or error of its agents, BIR Ruling No. 0006-2007 should be deemed invalid and without legal effect.

In rejecting the instant petition, respondent avers that petitioner's appeal before the Court *En Banc* was filed beyond the

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[3] Section 109 paragraph (e) of the Tax Code, as amended.

15-day reglementary period mandated by law justifying outright denial. Respondent contends that the allegations in petitioner's Motion for Reconsideration of the Decision of February 10, 2011 were taken *verbatim* from its Memorandum filed with the Court in Division. In view thereof, the Motion for Reconsideration must be deemed *pro forma* interposed solely for delay, thus did not toll the running of the period to appeal rendering the assailed Decision of February 10, 2011 final and executory. In other words, it is no longer within the province of the Court *En Banc.*

Respondent also states that under PD No. 972, also known as the Coal Development Act of 1976, coal mining operators, such as itself, with COCs with the government, are exempt from all taxes, except income tax. Contrary to the allegation of petitioner, this tax exemption has not been repealed - expressly or impliedly - by R.A. No. 9337 since a special law, such as PD No. 972, cannot be repealed, amended or altered by a subsequent general law by mere implication.

Respondent puts premium on BIR Ruling No. 006-2007 which confirmed its tax exemption based on Section 109(k) of the NIRC, as amended. Respondent is amazed that this BIR Ruling was never disputed or assailed by petitioner before the Court in

Division and it is only in this present action that she is making a belated attempt to contest it contending that estoppel does not apply to errors on the part of agents of the government when it comes to taxation.

Further, unless patently incorrect, BIR Ruling No. 006-2007 is entitled to great weight and respect. Respondent points out that the said BIR Ruling was affirmed by the Court in Division in the assailed Decision attesting to its correctness.

More importantly, respondent was able to substantiate its claim for refund as found by the Court in Division in its Decision dated February 10, 2011. The Court in Division rendered a favorable decision based on the documents it submitted, to wit, (1) Monthly Remittance Return of Value-added Tax and other Percentage Taxes Withheld (BIR Form No. 1600) filed by the NPC with the BIR for the month January 2006 to June 2006; (2) Alphabetical List of Payees from whom Taxes were Withheld (BIR Form No. 1600-Schedule II) filed by the NPC with the BIR for the month of January 2006 to June 2006; (3) Revenue Official Receipts (BIR Form No. 2524); (4) Certificates of Final Tax Withheld at Source (BIR Form No. 2306) issued by the NPC to respondent; (5) NPC's Certification dated December 10, 2007 certifying the amount of final VAT withheld by NPC from its gross payments made to respondent from January 01, 2006 to June 30, 2006; (6) Comparison of VAT Withheld per NPC Alphalist against BIR Form 2306 for the month of January 2006 to June 2006. These very documents were likewise submitted to petitioner on May 21, 2007 in its administrative claim for refund.

Lastly, all the arguments raised by petitioner were already considered and passed upon by the Court in Division in the assailed Decision, therefore deserve scant consideration from the Court.

In the Resolution dated August 31, 2011, the instant Petition for Review was deemed submitted for decision with the Comment dated June 14, 2011 filed by respondent.

The Court *En Banc* will address first the issue of timeliness of the filing of the instant Petition for Review for upon it shall the determination of the rest will lie.

Respondent claims that the Motion for Reconsideration filed by petitioner with the Court in Division was *pro forma* for it merely reproduced *verbatim* the arguments in her Memorandum, all of which had been addressed by the Court in Division. This, according to respondent, is a clear *indicium* of petitioner's intention to delay the proceeding rendering the Motion for Reconsideration *pro forma.* That being the case, it did not toll the running of the period to appeal rendering the assailed Decision of February 10, 2011 final and executory thereby depriving of the Court *En Banc* of competence to dispose it. But this issue had been laid to rest by the Highest Court, in this wise:

> "Under established jurisprudence, the mere fact that a motion for reconsideration reiterates issues already passed upon by the court does not, by itself, make it a *pro forma motion*. Among the ends to which a motion for reconsideration is addressed is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or evidence; and in so doing, the movant has to dwell of necessity on issues already passed upon. If a motion for reconsideration may not discuss those issues, the consequence would be that after a decision is rendered, the losing party would be confined to filing only motions for reopening and new trial."[4]

Hinged on the foregoing, respondent's Motion for Reconsideration assailing the Decision of February 10, 2011 is not necessarily *pro forma* simply because it merely reiterated the arguments raised in the previously filed pleadings. Thus, the

[4] Republic of the Philippines vs. ICC, G.R. No. 141667, July 17, 2006.

instant Petition for Review is deemed seasonably filed on May 18, 2011, or within the extension granted by the Court *En Banc*.

Anent the other issues, the Court agrees with respondent that the arguments raised by petitioner are mere reiteration of the issues she previously raised, all of which had undergone serious scrutiny by the Court in Division in the assailed Decision. The arguments raised in the Petition for Review were practically truncated from petitioner's Memorandum dated February 26, 2010 filed before the Court in Division. Be that as it may and if only to put petitioner's mind to rest, the Court shall discuss them anew.

On the allegation that respondent failed to submit complete documents in support of its administrative claim equated to petitioner's failure to exhaust administrative remedies depriving the Court of authority to determine the instant Petition for Review, the ruling of the Supreme Court on the matter is reflected in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop*,[5] thus:

> "The term "relevant supporting documents" should be understood as those

[5] G.R. Nos. 172045-46, June 16, 2009.

> documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit."

While the cited jurisprudence deals with a protest on a disputed assessment, there is no reason or rhyme for the same principle to be inapplicable in cases for refund of erroneously paid taxes. To hold otherwise is to grant petitioner an unbridled authority to require supporting documents that a taxpayer cannot submit rendering the refund process under the NIRC useless if not inutile.

In the instant case, respondent's administrative application for refund through its Letter dated May 18, 2007 [6] was accompanied by various documents sufficient, as determined by petitioner, to support its claim for refund.

In conjunction with the forgoing, it was ruled in the case of *Commissioner of Internal Revenue vs. Manila Mining*

[6] Exhibit J; see also Division docket page 19.

Corporation,[7] that documentary evidence presented in the administrative proceeding for refund have no evidentiary value unless presented and formally offered before this Court where cases are litigated *de novo*, thus:

> "Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA."

Thus, respondent must substantiate its claim for refund irrespective of the outcome of the proceeding before the administrative body, as it did before the Court in Division.

On the main issue of respondent's tax exemption under PD No. 972 claimed to have been repealed by R.A. No. 9337, suffice it to say that this is no longer novel, as held by the Court in Division.

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[7] G.R. No. 153204, August 31, 2005.

In fact, about two years after the effectivity of R.A. 9337, the BIR issued BIR Ruling No. 006-2007[8] unequivocally stating that respondent is exempt from VAT on its coal sales under the COC, thus:

> "...[S]ince the tax exemption on the sale of coal products is premised on PD 972 which is a special law, and which Section 109(k) of the Tax Code, as amended so specifically provide to be the basis of the VAT exemption, the same shall apply to coal produced by SMC pursuant to the COC.
>
> In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, SMC's sales of coal produces by virtue of a COC with EDB remain exempt from VAT pursuant to Section 109(k) of the Tax Code, as amended by R.A. No. 9337, in relation to PD 972, as amended."

With respect to the alleged repeal of the provisions pertinent to this case, which according to petitioner effectively removed respondent's exemption from VAT, the repealing clause of R.A. 9337, specifically Section 24 pertinently states:

> "Sec. 24. Repealing Clause. – The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made

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[8] Exhibit I; see also Division docket page 79

> subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> (A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of National Power Corporation (NPC);
>
> (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly."

Indeed, there is no indication that R.A. 9337 repealed PD No. 972 or any section or paragraph thereof, whether express or implied. Jurisprudence has it that a special law such as PD No. 972 cannot be repealed, amended or altered by a subsequent general law by mere implication.[9] If the intent to repeal is not clear, the later act should be construed as a continuation of, and not a substitute for, the earlier act.[10] The legislature is presumed to know the existing laws; if it intended a repeal of the earlier law, it should have so expressed that intention in the

[9] Manzano vs. Valera, G.R. No. 122068, July 08, 1998.
[10] Social Justice Society vs. Atienza, Jr., G.R. No. 156052, February 13, 2008.

subsequent statute. Thus, a statute will not be deemed to have been impliedly repealed by another enacted subsequent thereto unless there is a showing that a plain, unavoidable and irreconcilable repugnancy exists between the two.[11] Absent an express repeal, as in this case, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and old laws.[12] An express repeal, is one wherein a statute declares, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed. Absent this specific requirement, an express repeal may not be presumed.[13]

There being no plain and irreconcilable repugnancy between the relevant provisions of the pertinent laws and given that the repealing clause of R.A. No. 9337, specifically Section 24 thereof, did not expressly include PD 972 in its enumeration of repealed laws or provisions, it is plain that the latter has not been repealed by R.A. No. 9337 and respondent may still claim in its favor VAT exemption under the COC.

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[11] Freedom from Debt Coalition vs. Energy Regulatory Commission, G.R. No. 161113, June 15, 2004.
[12] People v. Benipayo. G.R. No. 154473, April 24, 2009; Photokina Marketing v. Benipayo, G.R. No. 155573.
[13] Penera v. COMELEC, G.R. No. 181613, September 11, 2009.

Corollarily, Section 109 (k) of R.A. 9337 provides that transactions which are exempt under special laws are also exempt from VAT, thus:

> "Sec. 109. *Exempt Transactions*. – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (k) Transactions which are exempt under international agreements to which the Philippines is a signatory or *under special laws*, except those under Presidential Decree No. 529." (Emphasis supplied)

In connection with the issue, the Court in *Semirara Mining Corporation vs. Commissioner of Internal Revenue,*[14] ruled, thus:

> "The inherent power of the state to impose taxes includes the power to grant tax exemptions. Tax exemptions may be granted either by the Constitution or by an act of legislature, subject to limitations as the Constitution may provide.
>
> The tax exemption being availed of by the petitioner is a tax exemption granted by an act of legislature, which is, P.D. No. 972. Under Section 16 of the said law, operators of coal operating contracts are given various incentives, which include exemption from all taxes except income tax. Furthermore, the said incentive or tax exemption provided for by P.D. 972 was embodied and incorporated in Section 5.2 of the Coal Operating Contract between petitioner and the Philippine

[14] CTA Case No. 7717, October 13, 2009.

Government. In the present case, the petitioner is seeking exemption from VAT. As provided under Section 21 of the 1997 Tax Code, VAT is one of the national internal revenue taxes, hence, exemption from VAT falls within the exemptions provided by P.D. 972 and its Coal Operating Contract. Furthermore, petitioner's claim for exemption from payment of the VAT is also covered by the 1997 Tax Code notwithstanding its amendment by R.A. 9337, as provided by Section 109 (K), which reads as follows

"REPUBLIC ACT NO. 9337
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 THENATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

Sec. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

SEC. 109. **Exempt Transactions**. — (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

xxx xxx xxx

(K) **Transactions which are exempt** under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree No. 529;

xxx xxx xxx"

Based on the aforequoted provision of Section 109, petitioner is entitled to exemption from VAT since its sale of coal is exempted from VAT as provided under a special law, which is PD 972.

> In its last effort to prove that petitioner is not entitled to a tax refund or to be issued a tax credit certificate, respondent avers that the tax exemption under P.D. 972 has been effectively repealed by R.A. 9337, specifically by Section 24, which provides:
>
> xxx xxx xxx
>
> In the case at bar, there is no express repeal since as stated by the petitioner, there is no express mention of P.D. 972 in the Repealing clause of R.A. 9337. As ruled by the Supreme Court in the case of Mecano vs. Commission on Audit, it is settled that an express repeal is a declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number and title is repealed; all other repeals are implied repeals. Likewise, there cannot be an implied repeal since repeal of laws should be made clear and expressed. Repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject; Furthermore, a law cannot be deemed repealed unless it is clearly manifest that the legislature so intended it. **Considering that the exemption of the petitioner from all taxes except income tax, as provided by P.D. 972, is not enumerated in Section 24 of R.A. 9337, the tax exemption of petitioner still subsists**." (Emphasis supplied)

All told, respondent is exempt from VAT pursuant to Section 109(K) of the NIRC of 1997, as amended, in relation to Section 16 of PD No. 972. *A fortiori*, petitioner is under obligation to refund or issue a TCC in favor of respondent, in accordance with Sections 204 and 229 of the NIRC of 1997, as amended.

WHEREFORE, the Petition for Review dated May 16, 2011, filed by the Commissioner of Internal Revenue, is hereby **DENIED**, for lack of merit. Accordingly, the Decision dated February 10, 2011 and the Resolution dated April 14, 2011 rendered by the Court in Division, are **AFFIRMED** *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

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

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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 case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice