REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

INTEL TECHNOLOGY PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6309

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JAN 2 4 2006

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

Legal Principle Involved

The requirement of imprinting the words "zero rated" in a VAT receipt or invoice for zero-rated sales is a mandatory provision that fulfills the intent of the law not only with respect to the proper implementation of the provisions of the *National Internal Revenue Code*

328

(hereafter "NIRC") on zero-rated transactions, but also to prevent the claim for refund of non-existent input VAT. Strict compliance with said requirement must therefore be enforced.

THE CASE

This is a Petition For Review filed on June 29, 2001 by Intel Technology, Inc. (hereafter "petitioner"), which seeks the issuance of a tax credit certificate or refund in the amount of P8,757,424.63, representing input VAT it paid from April 1, 1999 to June 30, 1999.

THE FACTS

The following facts are uncontroverted:

Petitioner is a duly incorporated entity with the primary purpose "to design, manufacture, process, install, service, import, export, distribute, market, sell on wholesale, handle, store, promote, including ancillary activities, or deal in and with goods, commodities, wares and merchandise of every kind, class, nature and description including without limitation, integrated circuit component, systems board, and other computer, or computer-related, electronic and electronic-related products" (*BIR Records, p. 6*).

As such, petitioner is a duly registered Ecozone Export Enterprise (Pioneer status) with Certificate of Registration No. 95-133 with the Philippine Economic Zone Authority since 1995 (*Exhibit "B"*). It is also registered with the Bureau of Internal Revenue as a value-added tax (hereafter "VAT") entity with business address at Javalera, General Trias, Cavite (Gateway Business Park) (*Exhibit "A"*).

For the period April 1, 1999 to June 30, 1999, petitioner duly filed its VAT Returns and Monthly Declarations with the Bureau of Internal Revenue (hereafter "BIR"). In its amended VAT return for the second quarter of 1999 filed with the BIR on July 22, 1999, petitioner declared its alleged zero-rated sales of P3,365,221,687.02 and input VAT payment of P8,757,424.63, as follows:

	Amount	VAT Output Tax
Zero-Rated Sales	P3,365,221,687.02	-
	Amount	VAT Input Tax
Input Tax Carried Over from Previous Quarter		(P47,881,624.30)
Domestic Purchases		(8,757,424.63)
Total Available Input Tax		(P56,639,048.93)
Less: Any VAT Refund/TCC Claimed		41,891,086.26
Net Creditable Input Tax		(P14,747,962.67)
VAT Payable/(Excess Input Tax)		(14,747,962.67)
Less: Tax Credits/Payments		-
Total Amount Payable/(Overpayment)		(P14,747,962.67)

(*Exhibit "E"*)

Gne

330

On August 26, 1999, petitioner filed an application for tax credit/refund of VAT paid in the amount of P8,757,424.63 for its domestic purchases of taxable goods and services for the period April 1, 1999 to June 30, 1999 with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (*Exhibits "H" and "I"*). Its VAT Administration Officer Pablo V. Pablo claims that petitioner is "a 100% exporter of goods and/or services and that the ending inventory of goods as of June 1999 from which input tax credit had been claimed has been used directly or indirectly in the exportation of goods and services for the subsequent period." (*BIR Records, p. 88*).

On June 29, 2001, before the lapse of the prescriptive period to file a suit for the recovery of tax erroneously or illegally collected under *Section 229 of the NIRC*, petitioner filed before this Court a Petition for Review.

While the case was pending trial, petitioner received a Tax Credit Certificate, dated January 21, 2002, on January 24, 2002 issued by the BIR in the amount of P4,378,712.01 covering the period April 1, 1999 to June 30, 1999, which is part of the input VAT amount of P8,757,424.63, subject of the instant claim. The Court then ordered petitioner to file an amended petition for review reducing the present amount claimed by 50%. In a Manifestation filed by the petitioner on October 2, 2002, petitioner manifested that the grant of the 50% Advance Tax Credit in the amount of P4,378,712.01 which formed part of the total claim of P8,757,424.63, was prior to the completion of the evaluation by the Duty Drawback Center of the entire claim for input VAT refund filed by petitioner for the period April 1, 1999 to June 30, 1999. Thus, it could not be possibly pointed out as to which of the particular documents supporting the input VAT transactions of the petitioner for the subject period said 50% Advance Tax Credit pertains. Therefore, by virtue of the non-finality of the Tax Credit Certificate, petitioner manifested that it is only but proper that it be allowed to present evidence to prove its entitlement to a refund of the total amount of P8,757,424.63, subject matter of this case (*Original CTA Docket, pp. 80-83*).

However, Group Head Elenita V. Balonzo and Evaluators Ma. Cleofe T. Tasarra, Ruby A. Panagdato and Estela G. Buenviaje submitted a Memorandum dated November 6, 2002 (*Exhibit "1"; BIR Records, pp. 101-102*) to OIC Deputy Executive Director Ernesto Q. Hiansen of the DOF-Center, recommending that petitioner's claim be denied for its failure to

au

332

completely substantiate its claim and for the reason that the amount involved was paid outside the taxable period covered by the claim and petitioner be required to pay back the 50% Advance Tax Credit amounting to P4,378,712.01 under TCC No. 003976.

In their Joint Stipulation of Facts and Simplification of Issues, the parties stipulated as follows:

> "**Stipulation of Facts**
>
> Petitioner and Respondent hereby jointly stipulate on the following facts:
>
> 1. The export sales of the Petitioner are not subject to 10% Value Added Tax but are zero-rated. Hence, such zero-rated sales will not result to any VAT output tax pursuant to Sec. 106 (A)(2)(a)(i) and Sec. 108 (B)(1) of the Tax Code;
>
> 2. The Petitioner reported said input taxes incurred from April 1, 1999 to June 30, 1999 in its Quarterly VAT Return and Monthly Declaration for the second taxable quarter of 1999 duly filed and stamped received by the BIR or its agent;
>
> 3. For the period covering from April 1, 1999 to June 30, 1999, Petitioner duly filed with the BIR or its agent Value Added Tax Return and Monthly Declarations and the same were accordingly stamped received by the latter;

4. No final action has been taken by the Respondent on the Petitioner's claim for refund and the two (2) years prescriptive period is about to lapse;

5. The petition was filed within the two years prescriptive period for the filing of a claim with the court."

In his Answer, respondent alleged by way of special and affirmative defenses:

"4. Petitioner being allegedly registered with the Philippine Economic Zone Authority, is exempt from all taxes, including value-added tax, pursuant to Section 24 of R.A. No. 7916 in relation to Section 109 of the Tax Code. Since its sales are not zero-rated but are exempt from VAT, petitioner is not entitled to refund of input tax pursuant to Section 4.103-1 of Revenue Regulations No. 7-95. Its registration as a VAT taxpayer was, therefore, erroneous.

5. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary examination/investigation by the respondent's Bureau;

6. Petitioner failed miserably to show that the total amount of P8,757,424.63 representing VAT input taxes for the second quarter of 1999 was erroneously or illegally collected, or that the same was properly documented;

7. The amount of P8,757,424.63 representing VAT input taxes during the period from April 1, 1999 to June 30, 1999 was not properly documented;

8. In an action for tax refund/credit, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

> 9. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204(c) in relation to Section 229 of the Tax Code.
>
> 10. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax."

Petitioner presented Eliseo Aurellado, the commissioned Independent CPA, Pablo V. Pablo and Atty. Marc Paul Tan, as witnesses, and submitted its "Formal Offer of Evidence" and "Supplement To Petitioner's Formal Offer of Evidence", which were all admitted by the Court.

On the other hand, respondent formally offered in evidence Exhibits "1" and "1-a", and thereafter submitted the case for decision.

Both parties were ordered to file their respective memoranda. Only petitioner filed its Memorandum on September 8, 2005. Thereafter, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER, AS AN ECOZONE-REGISTERED ENTERPRISE, IS EXEMPT FROM VAT.

II

ASSUMING THAT PETITIONER'S SALES ARE ZERO-RATED, WHETHER OR NOT THE VAT INPUT TAXES ON DOMESTIC PURCHASES OF GOODS AND SERVICES ARE ATTRIBUTABLE TO ITS ZERO-RATED SALES.

III

WHETHER OR NOT PETITIONER'S SALES WERE ACTUALLY EXPORT SALES SUBJECT TO ZERO-RATED FOR VAT PURPOSES.

IV

WHETHER OR NOT THE EXPORT PROCEEDS OF PETITIONER WERE INWARDLY REMITTED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BANGKO SENTRAL NG PILIPINAS.

V

WHETHER OR NOT THE VAT INPUT TAXES HAVE NOT BEEN APPLIED TO THE OUTPUT TAX FOR THE PERIOD COVERED IN ITS CLAIM OR ANY SUCCEEDING QUARTER OR QUARTERS.

VI

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OF THE AMOUNT OF P8,757,424.63 REPRESENTING ALLEGED VAT INPUT TAXES ON DOMESTIC PURCHASES OF GOODS AND SERVICES FOR THE PERIOD 01 APRIL 1999 TO 30 JUNE 1999.

The foregoing issues raised by both parties boil down to the principal issue of whether or not the petitioner is entitled to a tax credit certificate or refund in the amount of P8,757,424.63, representing input VAT it paid from April 1, 1999 to June 30, 1999.

THE COURT'S RULING

The petition is unmeritorious.

Petitioner alleges that for the period covering April 1, 1999 to June 30, 1999, it exported integrated circuits and generated revenues in the amount of P3,365,221,687.02. Said export sales were paid to petitioner in acceptable foreign currency, and were inwardly remitted in accordance with existing regulations of the Bangko Sentral ng Pilipinas (hereafter "BSP"); and properly recorded in petitioner's books of accounts/accounting records. Being a VAT-registered entity engaged in export sales, petitioner claims that its revenues arising from its export operations are considered as zero-rated, pursuant to the *Tax Code*. ale

Petitioner further alleges that for the same period, it incurred and paid input VAT in the amount of P8,757,424.67 arising from its domestic purchases of goods and services. Such domestic purchases, as well as the corresponding input VAT paid, were properly substantiated and duly supported by invoices and official receipts issued by its suppliers. Also, said domestic purchases were properly recorded in petitioner's books of accounts/accounting records.

Petitioner, being a VAT-registered entity and having satisfactorily complied with all the requisites for claiming a tax refund/credit for the input VAT it paid on the domestic purchases of goods and services, concluded that it is entitled to a VAT refund/credit.

In support of its claim, petitioner invokes the provisions of *Section 106 of the NIRC, as amended*, and *Section 4.100-2(a) of Revenue Regulations No. 7-95*. *Section 106*, in pertinent part, provides:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.-*
>
> (A) xxx
>
> (1) xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

au

33X

(a) *Export Sales*.- The term '*export sales'* means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

On the other hand, *Section 4.100-2(a) of Revenue Regulations No. 7-95* reads:

"SEC. 4.100-2. Zero-rated sales. – A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods and services related to such zero-rated sale shall be available as tax credit or refundable in accordance with Sec. 16 of these Regulations. xxx"

To prove its alleged zero-rated export sales, petitioner presented the following documents:

1) Export Sales Summary, Bank Certifications of Inward Remittances, Sales Invoices, Export Declarations and Air Waybills – *Exhibits "P-1" to "P-910";*

2) Report of the Commissioned Independent CPA dated January 7, 2003 - *Exhibit "Q"*.

A perusal of the above-mentioned documents reveals that petitioner's products were actually sold and shipped abroad, and in consideration thereof, petitioner received foreign currency payments, which were inwardly remitted in accordance with the BSP rules and regulations. Thus, it appears that petitioner's export sales in the amount of P3,365,221,687.02 for the period April 1, 1999 to June 30, 1999 fall under the category of export sales transactions, subject to zero percent (0%) VAT, pursuant to the above-quoted provisions.

Principal Issue
To Be Resolved

This leads Us to the principal issue of whether petitioner, in relation to its zero-rated sales, has complied with the invoicing requirements of the *NIRC*. The resolution of this issue must take precedence over the others since an adverse ruling to such effect renders the rest of the issues moot and academic.

While *Section 112 of the NIRC of 1997, as amended*, allows tax refund or credit of input tax of zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, however, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Invoicing Requirements

Sections 113(A) and 237 of the NIRC lay down the invoicing requirements for VAT registered persons.

Section 113 provides:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT Registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
>
> xxx xxx."

On the other hand, *Section 237* reads:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing

aul

the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, that in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section."

More specifically, *Section 4-108-1 of Revenue Regulations No. 7-95* enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons. The pertinent portion thereof is quoted hereunder:

"SEC. 4-108-1. *Invoicing Requirements*.- All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoices or receipts and this shall be considered as 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax."

The afore-quoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word "shall" is used. The word "shall" is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning (*Dizon vs. Encarnacion, 9 SCRA 714*). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in said memorandum circular (*Benguet Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP Nos. 37205, 38958 and 39435, July 10, 1998*).

In the case of *Compania General de Tabacos de Filipinas vs. Hon. Court of Appeals, et al., 426 SCRA 203*, the Supreme Court held that regulations issued by the BIR that would give effect to the law are valid regulations and ruled as follows:

> "We agree with petitioner that both Sections 137 and 141 of the former Tax Code allowed the sale of stemmed leaf tobacco without any prepayment of tax. We must stress, however, that a careful reading of the aforementioned provisions show that such sale is qualified by and is subject to 'such conditions as may be prescribed in the regulations of the Department of Finance.' Said conditions were provided for in Revenue Regulations Nos. V-39 and 17-67, which were issued to clarify and implement the foregoing provisions of the Tax Code. Hence, said provisions of the Tax Code must be read and interpreted in accordance with said regulations.
>
> x x x x x x
>
> Petitioner's arguments impugning the validity of Revenue Regulations Nos. V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to Section 245 (now Section 244) of the Tax Code. The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts. Second, our scrutiny of Revenue Regulations

ae

3dd

> Nos. V-39 and 17-67 show that said regulations did not modify or deviate from the text of Sections 137 and 141 but merely implemented and clarified said two provisions by providing certain conditions under which stemmed leaf tobacco may be exempted from prepayment of specific tax."

A cursory examination of petitioner's sales invoices immediately reveals that the same do not bear the imprinted words "zero-rated" on the face thereof (*Exhibits "P-19" to "P-910"*), in violation of *Section 4.108-1 of Revenue Regulations No. 7-95*. Some of these sales invoices do not even have Taxpayer's Identification Number (TIN) followed by the word "VAT", as required.

Although petitioner was able to secure BIR permit to use computerized sales invoices (*Exhibit "T"*), the same is subject to certain requirements and subject to the condition that all data intended to be reflected in the invoices must be typewritten. A perusal of said sales invoices shows that petitioner also failed to comply with the aforesaid requirements.

Failure to Comply with the Invoicing Requirements: Effect thereof

In this regard, *Revenue Memorandum Circular No. 42-2003* has clarified the issue relative to the failure of a taxpayer claiming for tax

345

refund/credit to comply with the invoicing requirements. The pertinent portion of the said Circular provides:

> "A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (*e.g.,* failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer."

Under said Circular, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant. Thus, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer, but fails to comply with the invoicing requirements in the issuance of sales invoices, such as the failure of a claimant-taxpayer to imprint the word "zero-rated" on the sale invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied.

Rationale of Strict Compliance

Moreover, *Section 110 of the NIRC of 1997, as amended*, provides that: "Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: x x x." If the invoice or official receipt is not imprinted with "zero-rated", there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated. This is the rationale for the mandatory requirement in *Revenue Regulations No. 7-95* that the words "zero-rated" be imprinted in the invoice or receipt, as the case may be. The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with the invoicing requirements under the said regulation. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer.

Petitioner has Burden of Proof

Petitioner has the burden of proof to establish the factual basis of its claim for tax refund (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332*). Petitioner failed in this regard. The denial of the tax refund was petitioner's fault for having failed to substantiate its claim for tax refund with clear and convincing evidence. The sales invoices submitted by petitioner in violation of the invoicing requirements cannot be considered as valid proof of its zero-rated export sales for VAT purposes.

Moreover, even assuming that petitioner's export sales qualify for zero-rating, still, the input VAT refund being sought for cannot be granted.

The input VAT of P8,757,424.63 subject of this claim pertains to petitioner's rental payment on March 17, 1999 of the land owned by Silicon Properties, Inc. (*Exhibits "O-1" and "Q"*). Pursuant to *Section 110(A) of the NIRC of 1997, as amended*, the input tax payment on the

ae

340

lease of properties shall be creditable to the lessee upon payment of the rental. *Section 110* provides:

> "SEC. 110. *Tax Credits.-*
> (A) *Creditable Input Tax.-*
> (1) xxx
> (2) The input tax on domestic purchase of goods or properties shall be creditable:
> (a) To the purchaser upon consummation of sale and on importation of goods and properties; and
> (b) xxx
>
> However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

The input VAT payment of P8,757,424.63 made on March 17, 1999 should have been recognized and declared by petitioner in its VAT return for the first quarter of 1999. Petitioner should have declared the input VAT it paid on the lease of the land owned by Silicon, Inc. Properties, at the end of the corresponding taxable quarter when the payment for the lease was made. Therefore, the input VAT payment of P8,757,424.63, supported by an official receipt dated earlier than the subject period of claim, can not be refunded, by express mandate of *Section 110(A) of the NIRC of 1997, as amended.*

Laws granting tax exemption are construed stricticissimi juris against the taxpayer and liberally in favor of the taxing authority

Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting exemption from tax are construed *stricticissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444*).

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

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice