Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ERICSSON TELECOMMUNICATIONS, INC., Petitioner,	**CTA Case No. 8027**
-versus-	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MINDARO-GRULLA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 07 2012 11:05 a.m.

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DECISION

CASANOVA, *J.*:

In this Petition for Review[1], filed on January 20, 2010, petitioner prays for the refund or the issuance of a tax credit certificate in the amount P8,092,182.94, representing erroneously paid excess input VAT for the fourth quarter of 2007.

As culled from the records of the case, the facts are as follows:

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission to do business in the Philippines, with principal office address at the 20th Floor, Net Square Building, 3rd Ave. Cor. 28th St., Crescent Park West, Bonifacio Global City, Taguig.[2]

Respondent is the Commissioner of Internal Revenue being sued in her official capacity, having been duly appointed and empowered to perform the

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[1] Docket, pp. 1-7.
[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Ibid, p. 95.

duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. She may be served with summons, notices and other court processes at BIR National Office Building, Diliman, Quezon City.[3]

Petitioner is a VAT-registered entity as evidenced by Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC0000017794 VAT and was assigned with Taxpayer's Identification Number (TIN) 000-116-932-000 VAT. It is also registered with the Securities and Exchange Commission (SEC) to develop, manufacture, assemble, purchase, promote, sell, and distribute goods, wares and merchandise of all kinds and perform services of all kinds, including but not limited to, those relating to communications and telecommunications, providing design, project management, installation, assembly, supervision, construction, rehabilitation, planning, testing and maintenance services for communications and telecommunications facilities, and act as technical advisor in the communications and telecommunications field including the development, adaptation and evaluation of standards, routines, documentation, electronic data processing systems and software packages, without however engaging in the retail trade, mass media or telecommunication business.[4]

On January 24, 2008, petitioner filed, through the Electronic Filing and Payment System (EFPS) of the BIR, its Quarterly Value-Added Tax Return (BIR Form No. 2550Q) and paid the same electronically on the following day.[5]

The foregoing BIR Form No. 2550Q reported an output VAT due for the quarter in the amount of P41,965,071.76[6] and total available input VAT of P50,057,254.70[7] that resulted to an excess input tax of P8,092,182.94 for the fourth quarter of 2007.[8]

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[3]Par. 2, Summary of Admitted Facts, JSFI, Id., p. 96.
[4]Par. 3 and 4, Summary of Admitted Facts, JSFI, Id., pp. 96-97.
[5]Par. 5, Petition for Review, Id., p. 3.
[6] Exhibit "D-1"
[7] Exhibit "D-2"
[8] Par. 6, Petition for Review, Id., p. 3.

Notwithstanding its excess input VAT, petitioner inadvertently and erroneously interpreted the same as tax due to the government for which payment was processed and made. Thus, petitioner erroneously paid the amount of P8,092,182.94, despite the fact that this is actually an excess input tax over output tax and not an excess output tax over input tax.[9]

Consequently, petitioner filed an application for the refund or issuance of tax credit certificate in the amount of P8,092,182.94 on January 12, 2010 before the Large Taxpayers Audit and Investigation Division 1 of the BIR.[10] Thereafter, petitioner filed its judicial claim before the Court of Tax Appeals on January 20, 2010.

In her Answer,[11] filed on April 7, 2010, respondent averred the following Special and Affirmative Defenses:

> "6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.
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> 7. The amount of P8,092,182.94 being claimed by petitioner as alleged erroneously paid VAT input taxes for the 4th quarter of the year 2007 is not properly documented.
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> 10. Petitioner must prove that it has complied with the provisions of Section 112(A) and (C) of the National Internal Revenue Code of 1997 (1997 Tax Code), as amended, on the prescriptive period for claims for VAT refund/credit.
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> 11. Proof compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma. Further, Section 112(C) of the 1997 Tax Code, as amended, requires the submission of complete documents in support of the application filed with the BIR before the 20-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance

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[9] Par. 7, Petition for Review, Id., p. 3.
[10] Par. 8, Petition for Review, Id., p. 4.
[11] Id., pp. 47-52.

with the above-stated requirements warrants immediate dismissal of the Petition for Review.

12. Petitioner must likewise prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations No. 7-95.

13. In an action for refund/tax credit, the ***onus probandi*** is on the taxpayer to establish its right to refund/tax credit, and failure to sustain the burden is fatal to its claim for refund/tax credit **(ASIATIC PETROLEUM CO. VS. LLANES, 49 PHIL. 466 cited in COLLECTOR OF INTERNAL REVENUE VS. MANILA JOCKEY CLUB, INC., 98 PHIL. 670).**

14. Claims for refund are construed in ***strictissimi juris*** against the claimant for the same partake the nature of exemption from taxation **(COMMISSIONER OF INTERNAL REVENUE VS. LEDESMA, 31 SCRA 95)** and as such, they are looked upon with disfavor **(WESTERN MINOLCO COPR. VS. COMMISSIONER OF INTERNAL REVENUE, 124 SCRA 1211).**

15. The Honorable Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of the petitioner to comply with the provision of Section 112 (C) of the 1997 Tax code (sic), as amended, which provides, thus:

> 'Section 112. Refunds or Tax Credits of Input Tax –
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> xxx xxx xxx
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> (C) ***Period within which refund or tax Credit of Input Taxes shall be made*** – In proper cases, the Commissioner shall grant refund or issue tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in support of the application (sic) filed in accordance with subsections (A) and (B) hereof.**

> In case of full or partial denial 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.'** (Emphasis supplied)

> 16. As stated in the petition, petitioner filed the administrative claim for refund with respondent on January 12, 2010. Subsequently on January 20, 2010, or only eight (8) days thereafter, the instant petition was filed. Obviously, the 120 days given to respondent to decide on the claim had not yet lapsed when the petition was filed. The petition was prematurely filed; hence, it must be dismissed for lack of jurisdiction and/or lack of cause of action.

> 17. Petitioner did not observe or comply with the conditions required by said provision of the 1997 Tax Code, as amended. Hence petitioner is estopped from questioning the premature filing of its claim for refund with the Honorable Court."

During trial, petitioner presented its documentary and testimonial evidence.

Subsequently, upon considering the manifestation of respondent's counsel that this case has no final report on petitioner's administrative claim for refund and that he is submitting this case for decision based on the pleadings and, likewise, upon motion of the counsels for both parties, the Court granted the parties a period of thirty (30) days to submit their respective memorandum, after which, this case shall be considered submitted for decision.[12]

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[12] Minutes of the Hearing dated October 19, 2011, Id., p. 220.

In a Resolution dated December 21, 2011, the case was submitted for decision after taking into consideration respondent's Manifestation[13] filed on November 17, 2011, as well as petitioner's Memorandum[14] filed on December 19, 2011.

From the parties' Joint Stipulation of Facts and Issues, the questions for decision are as follows:

1. Whether or not the instant petition is prematurely filed;

2. Whether or not petitioner is entitled to a refund of the amount of P8,092,182.94 as alleged erroneously paid input VAT for the 4th quarter of 2007.

3. Whether or not petitioner exhausted administrative remedies prior to the filing of the instant petition.

The first and third issues shall be discussed jointly since the first issue is a consequence of the third issue.

In her Answer, respondent contends that there is a need for petitioner to prove that it has complied with the provisions of Section 112 (A) and (C) (now Sec. D) of the 1997 NIRC, as amended, with respect to the prescriptive period in claiming VAT refund/credit, following the ruling in Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., (Aichi case).[15] Accordingly, failure to submit proof of compliance therewith warrants dismissal of the instant Petition for Review.

Respondent's contention has no leg to stand on. What should be applied in the instant case in determining the start of the two-year period for claiming refund of erroneously paid tax is Section 229 and not Section 112 (A) and (D) of the 1997 NIRC as amended.

Section 112 (A) and (D) of the NIRC explicitly provide the following:

SEC. 112. ***Refunds or Tax Credits of Input Tax. -***

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[13] Id., pp. 221-224.
[14] Id., pp. 230-240.
[15] GR No. 184823, October 6, 2010.

> ***(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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> ***(D) Period Within Which Refund or Tax Credit of Input Taxes Shall be Made.*** - In proper cases, the **Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of compelete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
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> 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. (Emphasis supplied).

In the Aichi case, the High Tribunal categorically ruled that the aforementioned sections are applicable only in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT. The same case, likewise, discussed that Section 229 of the 1997 NIRC, as amended, applies only to instances of erroneous payment or illegal collection of internal revenue taxes, to wit:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, where we ruled that **Section 112 (A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204 (C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes." We explained that:**
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> The above proviso [Section 112 (A) of the NIRC] clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precised, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.
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> xxx xxx xxx
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> To be sure, MPC cannot avail itself of the provisions of either **Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point**

for the two-year prescriptive limit for the filing of a claim therefor.

xxx xxx xxx

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.

Since the present case does not cover refund of input VAT but on petitioner's mistake of paying its excess input VAT, the prescriptive period that should be applied is Section 229 and not Section 112 (A) and (D) of the 1997 NIRC, as amended. Section 229 of the 1997 NIRC as amended, provides:

> "SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> **In any case, no such suit or proceedings shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** Provided however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Applying the foregoing provision to the instant case, petitioner erroneously paid the excess input VAT on January 25, 2008 as shown in the confirmation payment generated under the EFPS payment system of the BIR.[16]; filed its administrative claim with respondent on January 12, 2010; and, filed its judicial claim on January 20, 2010. Therefore, counting from January 25, 2008, when petitioner made its erroneous payment of tax, both the administrative and the judicial claims, fell within the two-year prescriptive period under Section 229 of the 1997 NIRC, as amended. Thus, CIR's contention that the instant petition was prematurely filed deserves scant consideration.

We now proceed to the second issue.

This Court has consistently ruled that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund; it therefore falls upon petitioner to first establish that its sales qualify for VAT zero-rating under the existing laws (legal basis), and then to present sufficient evidence that said sales were actually made and resulted in refundable or creditable input VAT in the amount being claimed (factual basis). [17]

The invoicing and accounting requirements for VAT-registered persons are explicitly provided under Sections 113 and 237 of the NIRC of 1997, as amended. Sections 113 and 237, respectively, provide:

> "SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —
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> (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 informations shall be indicated in the invoice or receipt:
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> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

[16] Exhibit "E."

[17] AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue, C.T.A. E.B. Case No. 540, June 7, 2010.

(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.

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"**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 (₱25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing 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 (₱100.00) 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."

Corollary thereto, Section 4-108-1 of Revenue Regulations No. 75 (The Consolidated Value-Added Tax Regulations) enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons, pertinent portion of which states:

"SEC. 4-108-1. Invoicing Requirements. — All VAT-registered person 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."

The afore-quoted revenue regulations implementing the NIRC provision on VAT invoicing and accounting requirements are 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.[18] Thus, the seller-taxpayer is duty bound to comply with the invoicing requirements laid down in said memorandum circular.

In the case at bench, notwithstanding this Court's findings that the instant petition was timely filed, the excess input VAT which was erroneously paid by petitioner shall be disallowed, due to its failure to submit complete documents in support of the said claim. From the records of the case, petitioner presented the following:

1) Summary of Monthly Purchases and Corresponding Input VAT for the period October 1, 2007 to December 31, 2007;[19]
2) Schedule of Purchases and Corresponding Input VAT for the months of October, November and December 2007;[20]
3) Summary of Monthly Sales and Corresponding Output VAT for the period October 1, 2007 to December 31, 2007;[21]
4) Schedule of Sales and Corresponding Output VAT for the months of October, November and December 31, 2007;[22]

[18] Filipino vs. Macabuhay, G.R. No. 158960, November 24, 2006; Francisco vs. Court of Appeals, G.R. No. 108747, April 6, 1995.
[19] Exhibit "AAAAA".
[20] Exhibit "BBBBB".
[21] Exhibit "CCCCC".
[22] Exhibit "DDDDD".

5) General Ledger for October 2007 (Input VAT) with Account Code No. 165101;[23]
6) General Ledger for November 2007 (Input VAT) with Account Code No. 165101;[24]
7) General Ledger for December 2007 (Input VAT) with Account Code No. 165101;[25]
8) General Ledger for October 2007 (Output VAT) with Account Code No. 261101;[26]
9) General Ledger for November 2007 (Output VAT) with Account Code No. 261101;[27]
10) General Ledger for December 2007 (Output VAT) with Account Code No. 261101.[28]

Clearly, nowhere in the documentary evidence presented by petitioner does it appear that it offered official receipts and/or invoices to prove that it actually paid the input taxes that resulted to the erroneous payment of output VAT. Consequently, petitioner's failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the denial of the claim for input tax.

Moreover, Revenue Memorandum Circular No. 42-2003 [Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters] expressly provides that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements will result to the denial of the claim for input tax. Pertinent portion of said Revenue Memorandum 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.

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[23] Exhibit "EEEEE".
[24] Exhibit "FFFFF".
[25] Exhibit "GGGGG".
[26] Exhibit "HHHHH".
[27] Exhibit "IIIII".
[28] Exhibit "JJJJJ".

> If the claim for refund/TCC is based on 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 concerned BIR office for verification of other tax liabilities of the taxpayer."

In claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult.[29]

Considering that petitioner has not established by sufficient evidence its entitlement thereto in accordance with the foregoing requirements, then its claim for the refund or issuance of tax credit certificate should be denied.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for failure to substantiate.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[29] ECW Joint Venture, Inc. vs. Commissioner of Internal Revenue, C.T.A. E.B. No. 14 (C.T.A. Case No. 6509), March 22, 2006.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice