REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CHINA BANKING CORPORATION,
Petitioner,

-versus-

HON. LIBERTY M. TOLEDO, in her capacity as City Treasurer of Manila,
Respondent.

CTA AC Case No. 69
Civil Case No. 06-115494
For: Cancellation of Assessment and Refund of Tax Payment

Members:

CASTAÑEDA, JR.,
CASANOVA,
MINDARO-GRULLA, *JJ.*

Promulgated:

OCT 20 2011

10:50 a.m.

X- X

DECISION

Casanova, J.:

Before this Court is an appeal via a Petition for Review[1], seeking the reversal of the Decision[2] dated April 14, 2010 denying petitioner's claim for refund (Assailed Decision) and the Order[3] dated August 9, 2010 denying petitioner's Motion for Reconsideration (Assailed Order), both rendered by Branch 39 of the Regional Trial Court (RTC) of Manila in the Civil Case No. 06-115494 entitled ***China Banking Corporation vs. Hon. Liberty M. Toledo in her capacity as City Treasurer of Manila.***

[1] Petition for Review, Docket, pp. 4-28.
[2] "Annex A", Petition for Review, Docket, pp. 29-43.
[3] "Annex C", Petition for Review, Docket, pp. 54-55.

The facts of the case, as culled from the records, are briefly narrated as follows:

Petitioner is a universal banking corporation established, existing and organized under the laws of the Republic of the Philippines, with corporate office at 8745 Paseo de Roxas corner Villar Street, Makati City.[4] Petitioner may be served with notices and other processes of this Honorable Court through its undersigned counsel.[5]

Respondent was the duly appointed Treasurer of the City of Manila at the time of the tax payment in question, and was impleaded as such officer. The Office of the City Treasurer of Manila is currently headed and administered by the Hon. Vicky R. Valientes, and is located at the Ground Floor City Hall, Manila, where respondent may be served with the summons and other processes of this Honorable Court. Respondent was represented in the court *a quo* by Atty. Joseph C. Aquino of Office of the City Legal Officer of Manila, with office at the 2nd Floor, City Hall, Manila, through whom the respondent may alternatively be served with summons, orders and other processes of this Honorable Court.[6]

On January 2006, on the basis of the financial report submitted by petitioner's Binondo Business Center (BBC) branch for purposes of the computation and payment of the local business tax and other local fees and charges for the renewal of the local business permits and, without issuing a written assessment therefor, respondent informed BBC that the total amount due from it in taxes, charges and fees payable to the city government is Php5,388,799.58. This amount includes Php1,973,811.40 as tax on petitioner as a commercial bank, Php3,289,685.68 as tax allegedly due pursuant to Section 21 of Manila City Ordinance No. 7988 for its operations at the BBC. The total amount was to be paid on a quarterly basis, broken down as follows:

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[4] Paragraph 2, Petition for Review, Docket, p. 5.
[5] *Id.*
[6] *Id.*, pp. 5-6.

	Total Amount Payable	Section 21 Tax
First Quarter	Php1,388,529.27	Php822,421.42
Second Quarter	Php1,388,529.27	Php822,421.42
Third Quarter	Php1,388,529.27	Php822,421.42
Fourth Quarter	Php1,388,529.27	Php822,421.42
Total	**Php5,338,799.58**	**Php3,289,685.68**[7]

On January 20, 2006, petitioner's BBC branch paid under protest the amount of Php1,388,529.27 as the amount due for taxes and other fees and charges for the first quarter (See Annex "B," 15, rec.). On the same date, the BBC sent a letter to respondent protesting the additional tax assessed under Section 21 of the Manila Revenue Code, but explained that it was paying the amount due to avoid penalties or surcharges and the threat of closure (see Annex "C," p. 16, rec.). Subsequently, the BBC sent a letter to the respondent, dated February 20, 2006, for the refund of the amount paid under protest (see Annex "D," p. 17, rec.)[8]

On April 18, 2006, the BBC branch, likewise paid under protest the total amount of Php1,316,756.77 for the taxes and fees for the second quarter (see Annex "E," p. 18, rec.). On the same date, the BBC sent respondent a letter worded similarly as its January 20, 2006 letter, protesting the additional tax assessed under Section 21 of the Manila Revenue Code for the second quarter payment (see Annex "F," p. 18, rec.). On June 20, 2006, the BBC wrote respondent for the refund of the amount paid under protest (see Annex "G", p. 20, rec.). On June 26, 2006, respondent wrote petitioner acknowledging receipt of the June 20, 2006 letter and insisting that the imposition of Section 21 of the Manila Revenue Code does not constitute double taxation. It also invokes the rule on sub-judice by citing the pendency of the other tax cases filed by petitioner against respondent, which, however,

[7] Annex "A", Petition for Review, RTC Decision, Docket, pp. 29-30.
[8] *Id.*, p. 30.

relate to the tax paid under protest on different dates for the operations of petitioner's various branches within Manila for different taxable periods (see Annex "H," pp. 21-22, rec.).[9]

As the protest letters remained unresolved and the claim for refund for the second quarter payment denied, petitioner filed a Petition for Review[10] on July 17, 2006 before the RTC, praying for the refund of the local business taxes it paid pursuant to Section 21 of Manila Revenue Code (MRC), as amended by City Ordinance No. 7988. Petitioner likewise sought the cancellation of all assessments made against it on the basis of the same section of the city ordinance as well as the issuance of an order permanently enjoining respondent from assessing and collecting the same.

Petitioner argues that Section 21 of the MRC does not include banks in the enumeration of businesses and articles of commerce subject thereto. It further argues that abovementioned provision cannot be applied to it as it would be in excess of the authority granted to the City by the Local Government Code (LGC).

Respondent, on the other hand, alleges that Section 21 of the MRC does not constitute double taxation as it is an indirect tax, payable by the person paying for the services rendered. Furthermore, it alleges that the said petition should be dismissed for lack of merit.

After trial, the RTC rendered the Assailed Decision in favor of respondent, the dispositive portion of which is quoted below:

> "WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered **DISMISSING** the above-entitled case for failure of the petitioner to establish a cause of action and for lack of merit.
>
> SO ORDERED."

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[9] *Id.*, p. 30-31.
[10] RTC Records, pp. 1-13.

On May 17, 2010, petitioner filed its Motion for Reconsideration[11], which was denied by the RTC in the Assailed Order for lack of merit. Hence, this Petition for Review.

In the subject petition, the following issues were raised:

I.

WHETHER OR NOT THE COURT *A QUO* COMMITTED ERROR IN RULING THAT PETITIONER IS STILL LIABLE FOR THE SECTION 21 TAX UNDER MANILA ORDINANCE NO. 7794, AS AMENDED.

II.

WHETHER OR NOT THE COURT *A QUO* COMMITTED ERROR IN RULING THAT THE IMPOSITION OF TAX UNDER SECTION 21 OF MANILA ORDINANCE NO. 7794, AS AMENDED ON PETITIONER IS NOT IN EXCESS OF THE REVENUE AUTHORITY OF LOCAL GOVERNMENT UNITS.

III.

WHETHER OR NOT THE COURT *A QUO* COMMITTED ERROR IN RULING THAT THE IMPOSITION OF TAX UNDER SECTION 21 OF MANILA ORDINANCE NO. 7794, AS AMENDED ON PETITIONER DOES NOT AMOUNT TO A NOXIOUS DOUBLE TAXATION.

IV.

WHETHER OR NOT THE COURT *A QUO* COMMITTED ERROR IN RULING THAT PETITIONER FAILED TO FILE A WRITTEN PROTEST PURSUANT TO SECTION 195 OF THE LOCAL GOVERNMENT CODE.

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[11] Docket, pp. 44-53.

In a Resolution[12] dated October 15, 2010, this Court ordered respondent to file her comment thereto. On October 22, 2010, respondent filed her Comment, and sought the dismissal of the subject Petition for Review for lack of merit.

This Court, in a Resolution[13] dated November 17, 2010, ordered the parties to submit their respective memorandum. Furthermore, this Court ordered the Branch Clerk of Court or the Officer-In-Charge of Branch 39 of RTC Manila to elevate to it the entire original records of Civil Case No. 06-115494.

On January 10, 2011, Branch 39 of the RTC Manila transmitted to this Court the complete records of the petitioner and respondent, as well as the index of record, index of exhibits and the minutes, in the Civil Case No. 06-115494.

Petitioner, on December 28, 2010, filed its Memorandum, while respondent failed to file her Memorandum.[14]

After a careful and thorough evaluation of the arguments of both parties, as well as the evidence each presented to support their respective position, this Court finds merit in the present petition.

Tax Ordinance Nos. 7988 and 8011 are null and void and without legal effect

The Supreme Court, in the case of *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, LIBERTY M. TOLEDO – City Treasurer and JOSEPH SANTIAGO – Chief, Licensing Division*[15], already settled the issue on the nullity of Tax Ordinance Nos. 7988 and 8011 for failure to comply with the publications requirement under Section 188 of LGC. It held that:

> "It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by

[12] *Id.*, p. 59.
[13] *Id.*, pp. 64-65.
[14] Records Verification, Docket, p. 104.
[15] G.R. No. 156252. June 27, 2006.

> the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by law. Neither is there quibbling on the fact that the said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal.
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> Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.
>
> Despite the nullity of Tax Ordinance No. 7988, the court a quo, in the assailed Order, dated 8 May 2002, went on to dismiss the petitioner's case on the force of the enactment of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988. Significantly, said amending ordinance was likewise declared null and void by the DOJ Secretary in a Resolution, dated 5 July 2001, elucidating that '[I]nstead of amending Ordinance No. 7988, (herein) respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive. The passage of the assailed ordinance did not have the effect of curing the defects of Ordinance No. 7988 which, any way, does not legally exist.' Said, Resolution of the DOJ Secretary had, as well, attained finality . . . ." (Emphasis in the original)"

In view of the nullification of Tax Ordinance Nos. 7988 and 8011, this Court holds that imposition of local business tax on petitioner, pursuant to Section 21 of the MRC, is devoid of legal basis.

In the Assailed Decision, the RTC held that notwithstanding the fact that Ordinance Nos. 7988 and 8011 had been declared null and void and without legal effect, petitioner is still liable to pay under Section 21 as the same is part and parcel of the MRC as it is covered by the excise, value-added or percentage tax under the NIRC. The Supreme Court, in the case of *The City of Manila, Liberty M. Toledo, in her capacity as the Treasurer of Manila and Joseph Santiago, in his capacity as the Chief of the License Division of the City of Manila vs. Coca-Cola Bottlers Philippines, Inc.*[16] already settled this issue, holding that:

> "Emphasis must be given to the fact that prior to the passage of Tax Ordinance No. 7988 and Tax Ordinance No. 8011 by petitioner City of Manila, petitioners subjected and assessed respondent only for the local business tax under Section 14 of Tax Ordinance No. 7794, but never under Section 21 of the same. This was due to the clear and unambiguous proviso in Section 21 of Tax Ordinance No. 7794, which stated that 'all registered business in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof.' The 'aforementioned tax' referred to in said proviso refers to local business tax. Stated differently, Section 21 of Tax Ordinance No. 7794 exempts from the payment of the local business tax imposed by said section, businesses that are already paying such tax under other sections of the same tax ordinance. The said proviso, however, was deleted from Section 21 of Tax Ordinance No. 7794 by Tax Ordinances No. 7988 and No. 8011. Following this deletion, petitioners began assessing respondent for the local business tax under Section 21 of Tax Ordinance No. 7794, as amended.
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> The Court easily infers from the foregoing circumstances that petitioners themselves believed that prior to Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent was exempt from the local business tax under Section 21 of Tax Ordinance No. 7794. Hence, petitioners had to wait for the deletion of the exempting proviso in Section 21 of Tax Ordinance No. 7794 by Tax Ordinance No. 7988 and Tax Ordinance No. 8011 before they assessed respondent for the local business tax under said section. Yet, with the pronouncement by this Court in

[16] G.R. No. 181845, August 4, 2009.

> the Coca-Cola case that Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were null and void and without legal effect, then Section 21 of Tax Ordinance No. 7794, as it has been previously worded, with its exempting proviso, is back in effect. Accordingly, respondent should not have been subjected to the local business tax under Section 21 of Tax Ordinance No. 7794 for the third and fourth quarters of 2000, given its exemption therefrom since it was already paying the local business tax under Section 14 of the same ordinance."

From the foregoing, it is clear that there is no legal basis for respondent to impose local business tax on petitioner pursuant to Section 21 of the MRC. It is explicit in Tax Ordinance No. 7794, as amended, that all registered businesses in the City of Manila that are already paying the local business tax under Section 19 shall be exempted from payment of the same under Section 21 of the same ordinance.

Registered businesses in the City of Manila already taxed under Section 19 may no longer be taxed under Section 21 as the same constitutes double taxation

The RTC, in the Assailed Decision, held that imposing taxes pursuant to Section 21 does not constitute double taxation as the tax imposed thereby is not on the petitioner bank but on the person paying for the services rendered.[17] Petitioner contended that contrary to the position taken by RTC and respondent, a careful reading of Section 21 will show that the same is not an indirect tax, rather it is imposed upon on the registered business, thus constituting double taxation.

Petitioner's argument is meritorious.

Double taxation was defined by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Solidbank Corporation*[18], as follows:

[17] Docket, p. 42.
[18] G.R. No. 148191, November 25, 2003.

> "Double taxation means taxing the same property twice when it should be taxed only once; that is, '. . . taxing the same person twice by the same jurisdiction for the same thing.' It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as 'direct duplicate taxation,' the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character. (Emphasis supplied)"

The Supreme Court likewise held, in the case of *Pepsi-Cola Bottling Company of the Philippines, Inc. vs. Municipality of Tanauan, Leyte, the Municipal Mayor, et al.*[19] that:

> "Moreover, double taxation, in general, is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union. Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality."

Sections 19 and 21 of the Tax Ordinance No. 7988, as amended by Tax Ordinance No. 8011, respectively, provide:

> "**SECTION 19**. Tax on Banks, Insurance Companies and Other Financial Institutions. — A percentage tax is hereby imposed on banks and other financial institutions, at the rate of seventy-five percent (75%) of one percent (1%) on the gross receipts of the preceding calendar year derived from the interests, commissions and discounts from lending activities, income from financing leasing, dividends, rentals from property and profit from exchange or sale of property, insurance premium.[20]

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[19] G.R. No. L-31156, February 27, 1976.
[20] Manila Ordinance No. 7988.

SECTION 21. Tax on Business Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC. — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter to as NIRC, as amended, a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar is hereby imposed:

A) On persons who sell goods and services in the course of trade of business, and those who import goods whether for business or otherwise, as provided for in sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said code.

B) On the gross receipts of keepers of garages, cars for rent or hire driven by the lessee, transportation contractors, persons who transport passengers or freight for hire, and common carriers land, air or water, except owners of bancas and owners of animal-drawn two-wheel vehicle.

C) On the amount paid on every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services, except amounts paid by the government, its political subdivisions or instrumentalities; diplomatic services; public international organizations or any of their agencies based in the Philippines; and news services.

The tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.

D) Exciseable goods subject to VAT

(1) Distilled spirits
(2) Wines
(3) Tobacco products (other than cigarettes, cigar and chewing tobacco)
(4) Tobacco specially prepared for chewing
(5) Fireworks

(6) Cinematographic film
(7) Saccharine
(8) Coal and Coke
(9) Fermented liquor, brewer's wholesale price, excluding the ad valorem tax
(10) Automobiles, manufacturers or importers selling price
(11) Non-essential goods based on the wholesale price, net of excise tax and vat

(a) Jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitation thereof; goods made of, or ornamented, mounted or fitted with precious metals or imitation thereof or ivory (not including surgical and dental instruments. silver-plated wares, frames or mountings for spectacles of eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of teeth.)
(b) Perfumes and toilet waters.
(c) Yacht and other vessels intended for pleasure or sports.

(12) Mineral products, based on actual market value of the annual gross output the time of removal

E) Excisable goods not subject to vat
(1) Naptha when used as raw material for production of petrochemical products
(2) Asphalt"[21]

Applying the ruling in the abovequoted jurisprudence to Sections 19 and 21 will reveal that there is indeed a direct duplicate taxation in the case at bench. Petitioner is taxed twice; for the same subject matter, which is the business of operating a bank; by the same taxing authority, which is the City of Manila; by the same jurisdiction, which is also the City of Manila; for the same purpose, which is to generate revenue for the City of Manila; and for the same taxing periods, which are the first and second quarters of the taxable year 2006.

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[21] *Id.*

Moreover, a perusal of Section 143 of the LGC, the very provision from which the power of cities and municipalities to impose local business tax emanates, will show that when a municipality imposes local business tax on a bank or financial institution pursuant to Section 143(f)[22], the same municipality may no longer subject the same bank or financial institution under Section 143(h)[23] of the same Code. In the same manner, banks and financial institutions already made liable to local business tax under Section 19 of the MRC, which is based on Section 143(f) of the LGC, may no longer be subjected to local business tax pursuant to Section 21 of the MRC, which is based on Section 143(h) of the LGC.

Section 195 of the LGC is not applicable to the case at bench, thus petitioner did not need to file a written protest with the local treasurer

Anent the last issue raised by petitioner in the present case, this Court rules that the RTC committed an error in holding that petitioner had erroneously taken steps in the matter and that instead of filing a formal written protest as mandated by Section 195 of the LGC, petitioner filed a written claim for refund under Section 196 of the same Code.

A perusal of Section 195 of the LGC reveals that it applies to cases where the taxpayer failed to pay the correct taxes, fees and charges, and the local treasurer issues a notice of assessment stating the deficiencies and the

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[22] **Section 143**. *Tax on Business*. - The municipality may impose taxes on the following businesses:

xxx xxx xxx

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

xxx xxx xxx

[23] (h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year. The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.

required payment, including the penalties and surcharges. In the said cases, the taxpayer shall file a written protest with the local treasurer contesting the assessment and follow the procedure provided therein, otherwise such assessment shall become final and executory.

In the case at bench, there was no notice of assessment issued for the payment of unpaid taxes. As correctly found by the RTC, respondent merely informed petitioner of the amount due from it in taxes, charges and fees payable to the city government when the latter renewed its local business license. More applicable in the present petition is Section 196 of the same Code which provides for the filing of claim for refund or credit, to wit:

> **Section 196**. Claim for Refund of Tax Credit. - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

Pursuant to the aforequoted provision, to successfully sue in court for a refund of any local tax, fee, or charge, two things must be done, to wit:

1) the taxpayer concerned must file a written claim for refund or credit with the local treasurer; and

2) the case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.[24]

Thus, it is clear that petitioner is not required under the LGC to file a written protest before respondent. Section 196 applies to the case at bench and the written claims for refund[25] dated February 20, 2006 and June 20,

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[24] China Banking Corporation vs. City Treasurer of Manila, C.T.A. E.B. NO. 182, July 27, 2006; City of Manila, et. al. vs. Ace Hardware Phils., Inc., et. al., C.T.A. AC NO. 52. September 29, 2008.
[25] Annex "D" and Annex "G", RTC Docket, pp. 17 & 20.

2006, timely filed by petitioner before respondent, complied with the requisite provided in the said section. Petitioner was able to exhaust its administrative remedies when it submitted the said written claims for refund. Moreover, petitioner timely filed its judicial claim for refund before the RTC. Hence, petitioner complied with all the requisites set forth under the law for the claim for refund under the LGC.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. The Decision dated April 14, 2010 and Order dated August 9, 2010 rendered in the Civil Case No. 06-115494 are **REVERSED** and **SET ASIDE**. Accordingly, respondent, the Treasurer of the City of Manila, is hereby **ORDERED TO CANCEL THE ASSESSMENT** and **TO REFUND** to petitioner, China Banking Corporation, the amount of One Million Six Hundred Forty Four Thousand Eight Hundred Forty-Two Pesos & 84/100 (P1,644,842.84), plus interest, representing the erroneously paid local business taxes for first and second quarters of taxable year 2006.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
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.
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