REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ELECTROLUX INDUSTRIAL, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5736

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 17 2003

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DECISION

This is a claim for refund of P205,069.00 allegedly representing overpaid Value-Added Tax (VAT) on the importations of equipment erroneously classified as household cleaning equipment under H.S. 85.09.10 of the Tariff and Customs Code.

As borne out by the records, the antecedent facts of the case are as follows:

Petitioner Electrolux Industrial, Incorporated is a domestic corporation existing under and by virtue of Philippine laws with principal office at the 2nd Floor, A & M Building, 397 J. P. Rizal Street corner Binakod Street, Makati City. It is engaged in the business of importing and trading of cleaning equipment *(par. 2, Petition for Review; par. 1, Stipulation of Facts).*

On January 1, 1996, it was registered with the Bureau on Internal Revenue, Revenue District No.49, as a Value-Added Tax (VAT) taxpayer with Taxpayer Identification No. 000-116-383-000 and with BIR Certificate of Registration bearing OCN 9RC000001540 *(Exhibit SS).*

In 1997, petitioner made (4) importations of cleaning equipment, on the following dates: 30 January 1997, 10 February 1997, 21 May 1997, and 14 December 1997. Petitioner paid the three percent (3%) tariff rate under H.S. 8479.89 and H.S. 8479.90 of the Tariff and Customs Code, under which its previous importation had always been classified *(par. 3, Stipulation of Facts).*

Subsequently, however, the Examiner of Customs re-classified the cleaning equipment imported by petitioner as domestic appliances under H.S. 8509.10, for which a thirty percent (30%) duty is imposed. As a result, petitioner was assessed a discrepancy and was constrained to pay under protest, additional value-added taxes for the following importations:

SERIES NO.	DATE PAID	EXCESS PAYMENT	EXHIBIT
05878101	25 February 1997	P27,139.00	C
06175802	25 February 1997	P41,922.00	G
07868332	11 June 1997	P54,533.00	K
11452052	9 January 1998	P81,475.00	O
TOTAL		**P205,069.00**	

The re-classification was based on the Memorandum Circular issued by then Commissioner of Customs Guillermo Parayno, Jr. dated September 8, 1995 which states:

> *"For sometime now, difficulty has been experienced in determining whether or not a particular shipment of vacuum cleaner should be classified as household/domestic as against industrial. Household/domestic vacuum cleaners falls* (sic) *under H.S. Code 8509.10 00 with a rate of duty of 35% while industrial vacuum cleaner falls under H. S. Code 8479.89 90 with a rate of duty of only 3%.*

Some shipments of household/domestic vacuum cleaners were found to have been cleared under H.S. Code 8479.89 90 as industrial vacuum cleaners. To escape seizure for fraud, no reference is made in the declaration as to whether or not the cleaner is household/domestic or is industrial.

To ensure collection of proper duties and taxes and to prevent a household/domestic vacuum from being passed on as industrial vacuum cleaner, the following regulations are hereby issued:

1. *SGS must indicate in the Clean Report of Findings (CRF) the type of vacuum cleaners, i.e., household/domestic vs. industrial;*

2. *The entry receiving officers of the Bureau must not accept any entry covering vacuum cleaners unless it is specifically described therein the kind of vacuum cleaner, i.e., household/domestic or industrial vacuum cleaners;*

   Entries covering vacuum cleaners not so specified in the declaration as either household/domestic or industrial vacuum cleaner must be returned to the importer;

3. *The Formal Entry Division or related office must insure that vacuum cleaners satisfying all of the below stated criteria must be categorized as household/domestic vacuum cleaners and classified under H.S. Code 8509.10 00;*

3.1 Movability/Operability
The vacuum cleaner may be moved from one part of the house to another and operated by a single individual.

3.2 Utilization

3.2.1 The appliance may be used in a house, restaurant, hotel, garage and even hospitals for such purposes as for cleaning carpets, computers, the passenger compartments of a car and similar other applications.

3.2.2 The vacuum cleaner is not exclusively and solely for industrial use.

All concerned should be guided accordingly."

On January 20, 1999, petitioner filed a letter-claim to the Commissioner of Internal Revenue for the refund of additional value-added taxes which petitioner paid as a result of the erroneous re-classification of its importations *(Exhibit W).* In its letter, it stated:

> (a) That its previous importations of industrial cleaning equipment have always been classified under H.S. Code 8479.89 and 90 of the Tariff and Customs Code, and thus subjected to the 3% duty pertaining to said classification.
>
> (b) That in 1997, petitioner paid the same duties for its importation, but the Collector of Customs re-classified the imported items as domestic appliances, under H.S. Code 8509.10, and thus imposed a 30% duty on the importation.
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> (c) That petitioner was assessed and was constrained to pay under protest the additional import duties and value-added taxes.
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> (d) That the classification and the corresponding assessment of higher duties and additional value-added taxes were erroneous and illegal, and thus requested for a refund of the erroneously collected value-added taxes.

On February 24, 1999, petitioner filed the instant Petition for Review because the two-year reglementary period provided for in Section 229 was about to expire without any resolution from the office of the respondent.

In his Answer, respondent raised the following Special and Affirmative Defenses:

"5. The petitioner's claim has partially, if not totally, prescribed;

6. The petition is fatally defective since the Commissioner of Customs was not joined as respondent who is an indispensable party in interest without whom no final determination can be had in its action considering that the alleged additional value added tax is a direct result of the latter's reclassification of the cleaning equipment, hence, his joinder to the case is compulsory;

7. The action taken by the Collector of Customs in reclassifying the cleaning equipment is presumed to have been regularly performed, thus, the reclassification undertaken and the imposition of the alleged additional value added tax are valid, hence, not refundable.

8. In an action for tax refund, the burden of proof is on the taxpayer to establish its right thereto and failure to sustain the burden is fatal to the action;

9. It is incumbent upon the petitioner to show compliance with the provisions of Section 204 and 229 of the Tax Code, as amended;

10. Well-settled is the rule that claims for refund are construed strictly against the claimants since they partake of the nature of exemption from taxation (Resins, Inc. vs. Auditor General, 75 SCRA 754, 1968)."

In view of the fact that the Bureau of Customs is the agency of the government in charge of the administration and enforcement of all the tariff and customs laws, rules and regulations issued relative thereto, including the collection of the value-added tax on imported articles, petitioner was advised to amend its Petition for Review *(pp. 17-18, May 19, 1999, TSN).* Thus, on May 24, 1999 petitioner filed a Motion for Leave to Amend Petition for Review and Motion to Admit Attached Amended Petition for Review, making as additional respondent the Commissioner of Customs *(p.57, CTA Records)*.

The court granted the motion and subsequently issued summons to the Commissioner of Customs. Instead of filing an Answer, on July 1, 1999, the Commissioner of Customs filed a Motion to Dismiss on the ground that the Court of Tax Appeals has no jurisdiction to entertain the Petition for Review, the protest filed by petitioner not having been perfected. It cited as its legal bases Sections 2508, 3301, and 3303 of the Tariff and Customs Code *(p. 204, CTA Records)*.

In a Resolution dated August 17, 1999, the Motion to Dismiss was denied. The court believed that petitioner had duly complied with the requirements of the law having paid the required fees for each formal protest filed before the Collector of Customs.

On September 9, 1999, the Commissioner of Customs filed his Answer and alleged that:

> "3. That he specifically DENIES each and every material allegation under paragraphs 9, 10 and 11 of the petition and as its AFFIRMATIVE DEFENSES reiterate his earlier contention in his Motion to Dismiss herein Amended Petition for Review (sic) that the Honorable Court of Tax Appeals has no jurisdiction to entertain said petition.
>
> The Honorable Court cannot take cognizance of petitioner's appeal, the same having been interposed prematurely. Granting *arguendo* that a timely protest has been filed and perfected with the Collector of Customs, the same is still within the jurisdiction of the District Collector, having been unacted upon by the latter.
>
> The law on cases with similar nature as the instant one is explicit. As enunciated by the Supreme Court in the case of *CALTEX (Phils.) INC. vs. Commissioner of Internal Revenue (14 SCRA 596),* "when the Collector of Customs has not yet acted upon the protest of the importer for refund of special input tax imposed under R.A. No. 1394, there is no adverse ruling for which an appeal may be taken by the Commissioner of Customs in accordance with Section 2313 of the Tariff and Customs Code. Likewise, there is no decision or ruling of the Commissioner of Customs which may be appealed to the Court of Tax Appeals pursuant to Section 2402 of R.A. No. 7937" *(citing CNS Estate, Inc. vs. Commissioner of Customs, G.R. No. L-18773, January 31, 1964).*
>
> While it is a well-settled rule that taxpayers may seek the refund of the taxes if erroneously paid within the period of two (2) years, as provided for by Section 229 of the Tax Code, there is, however, no equivalent provision in the TCCP, as amended. Thus, the importer/taxpayer, when in disagreement with the assessment of the Collector of Customs, has to pay the duty under protest. And when the protest has been perfected on time, the

> importer/protestant does not run risk of having his refund of the duties prescribed."

On October 15, 1999, petitioner filed a Manifestation asserting that it already withdrew its claim for refund as regards the internal revenue taxes paid, pending before the Bureau of Customs in MCIP Protest Case No. 100-97 and 100-97A *(p. 238, CTA Records).* As a consequence, the court issued an order dropping as party-respondent the Commissioner of Customs. This was confirmed in a Resolution dated November 29, 1999 *(p. 261, CTA Records).*

On November 22, 2000 petitioner filed its Formal Offer of Evidence, but respondent did not submit his Comment thereto. Consequently, on March 2, 2001, the Court issued a Resolution admitting the evidence of the petitioner without prejudice to the court's final determination as regards its purposes, materiality, relevancy, and probative value to the issues involved in the case.

The court allowed respondent several hearing dates to present his evidence. However, he failed to do so. Petitioner then moved to consider respondent to have waived his right to present evidence. The motion was granted in open court and confirmed in a Resolution dated June 19, 2001*(p.593, CTA Records).*

On June 19, 2002, petitioner filed a Motion to Admit Attached Comment, which explains *Societe Generale de Surveillance's* (SGS) classification of the imported equipments of petitioner under Tariff Headings 8479.89 00, 8479.10 00 and 8479.90 00 or as industrial equipment *(pp.599-600, CTA Records).* On August 3, 2001, respondent opposed such motion on the ground that the SGS's Comment was not introduced and offered as evidence. Thus, respondent claimed that it is immaterial and irrelevant *(p.608, CTA Records).* On even date, petitioner filed its memorandum.

Initially, the court denied the motion on the ground that it was a wrong motion. In view thereof, petitioner filed a Motion to Re-open the Case for Reception of Additional Evidence *(p.656, CTA Records),* which the court granted in open court and confirmed through a Resolution dated September 18, 2001.

On the succeeding hearings, petitioner tried to present a witness from SGS. However, its witness failed to appear despite notice. Hence, it decided to rest its case without submitting any Supplemental Offer of Evidence.

On June 24, 2002, this case was submitted for decision sans evidence and memorandum of the respondent.

The issues for this court's consideration have been stipulated by the parties to be as follows:

1. Whether the re-classification of the Bureau of Customs is correct.

2. Whether the petitioner is entitled to a refund of the value-added taxes erroneously collected.

We now resolve the issue on the re-classification made by the Bureau of Customs.

Petitioner claimed that the cleaning equipment it has been importing since 1986 are industrial cleaning machines or equipment under Tariff Heading No. 84.79 and not domestic cleaning machines under Tariff Heading No. 85.09, for several reasons.

First, petitioner relied on the description of the manufacturers of the imported equipment, which described them as "various industrial cleaning equipment and spare parts." These manufacturers are Kent Company and Electrolux Euroclean AB. The former manufactures industrial and heavy duty floor machines, carpet extractors and carpet dryers while the latter manufactures industrial wet and dry vacuum cleaners and industrial vacuum cleaners.

Second, petitioner argued that although the imported equipment include vacuum cleaners and floor polishers, these are not commonly used for domestic purposes due to their bulk, huge sizes, heavy weight, huge motor power ratings, enormous capacity and highly specialized features. To illustrate, petitioner described the imported equipment as follows:

1. KF 175A Floor machine. These are designed to scrub, strip and spray buff floors, and are intended to handle commercial and industrial cleaning situations. It is not a vacuum cleaner and is more complicated or has more functions than a floor polisher. Moreover, its weight (40.9 kg.) and size (43.2 cm in diameter) make it burdensome for use in houses and thus prohibit it from being commonly used for domestic purposes.

2. KF-1500E/KF-1501E Floor machines. These are burnishing machines with a dust control system. It is not a vacuum cleaner; neither is it merely a floor polisher. Its weight (47.6 kg.), size (diameter of 48.3 cm), and power (1 ½ hp 66 frame dual capacitor) show that it is not intended to be commonly used for domestic purposes.

3. DuraTrac 19 KX-19SCA. This is a carpet cleaner which soaps the surface, brushes and vacuums it, all in one pass. It is not a vacuum cleaner or floor polisher. It is too big (dimension of 55.9 cm w x 84 cm h x 79 cm l), too heavy (53.6 kg) and too powerful (2.8 PHP 3-stage bypass) to be used for the home. It also has a huge tank capacity to contain solutions and for the recovered items (11 gallons). Furthermore, it has a very specialized and limited function to be classified as commonly used for domestic purposes.

4. Blower dryer KD-3SA and KD-3SB. It is a heavy duty dryer or carpet dryer, not a vacuum cleaner or floor polisher. Due to its highly specialized function, it is obviously not commonly used for domestic

purpose. Moreover, it is also too big (55.9 cm high and 48.3 cm wide) and too heavy (15.9 kg) for use at home.

5. UZ 778 industrial vacuum cleaner. This machine is, as stated in the brochure, the all-around wet and dry industrial vacuum cleaner and is obviously intended for industrial applications. It weighs 25 kg., has a 2000 watt motor, has a tank capacity of 60 l. and has the following dimensions: 750 x 475 x 870 mm.

6. KS-270 commercial sweeper. It is not a vacuum cleaner or a floor polisher. Rather, it is designed for sweeping, which a broom could very well take care of in the domestic setting, but this one is equipped with a motor debris collection bin capacity to collect the swept debris in the machine and is obviously designed for bigger areas. It weighs 22.2 kg, has the following dimensions: 76.2 cm x 90 cm x 109.2 cm and has a debris collection bin capacity of 40 liters;

7. KF 1500SL (now SLF1500) floor polisher. This weighs 50 kg, has a speed of 1500 rpm and has a 1.5 hp motor. It is obviously too big and too powerful for domestic use;

8. SLO62 wet or dry pickup vacuum cleaner. This machine has a tank capacity of 15 gallons, dimension of 678 mm l x 516 mm w x 1037 mm h, and weighs 20.2 kg;

9. Carpet extractor WXS-250. It weighs 54 kg., operates on a 1350 watt motor and has the following dimensions: 71 x 56 x 122 cm. It also has a 42 liter solution tank and 42 liter recovery tank capacity. Its weight, dimensions, capacity and specialized function show that it is not of a kind commonly used for domestic purposes *(pp. 628-631, CTA Records).*

Third, *Societe Generale de Surveillance* (SGS), in all the Clean Report of Findings (CRF) pertaining to the four importations, identified the imported equipment as "industrial cleaning machines" and classified them under Heading No. 84 of the Tariff and Customs Code *(Exhibits D, H, L and P).* And in view of the obligations of the SGS in the aforequoted Memorandum and considering its expertise in the field, SGS's findings should not be ignored, considered lightly or set aside by the Customs Examiner.

Fourth, petitioner claimed that despite the existence of the Memorandum Circular of the Commissioner of Customs, its previous importations, which consisted of exactly the same equipment and spare parts have been consistently classified under H.S. Code No. 8479.10.00 or 8479.89 of the Tariff and Customs Code, which the Bureau of Customs accepted as the proper classification of the imported equipment *(p. 635, CTA Records).*

Fifth, the prices of the imported equipment are too expensive, which entail that these were not intended for sale to household but to corporations or industries.

Lastly, petitioner claimed that that it is not engaged in the business of selling domestic equipment, as testified to by Mr. Ramoncito Ramirez and Ms. Clarita Figueroa, former General Manager and Finance and Administration Manager, respectively, of the company.

Considering all the foregoing explanations, petitioner advanced the argument that it is legally entitled to the refund of its overpaid value-added tax on its importations.

Respondent, on the other hand, argued that the action taken by the Collector of Customs in reclassifying the cleaning equipment is presumed to have been regularly performed; thus, the reclassification undertaken and the imposition of the alleged additional value-added tax are valid, hence, not refundable (*par. 7, Answer, pp. 46-47, CTA Records*).

We agree with the petitioner on the point of classification.

The re-classification was brought about by the Memorandum Circular dated September 8, 1995, issued by then Commissioner of Customs Guillermo L. Parayno, Jr. This is in accordance with the power granted to the Commissioner under Section 608 of the Tariff and Customs Code of the Philippines to promulgate needful rules and regulations to enforce the provisions of the said code, thus:

> **Section 608.** *Commissioner to Make Rules and Regulations.* The Commissioner shall, subject to the approval of the Secretary of Finance, promulgate all rules and regulations necessary to enforce the provisions of this Code. He shall also cause the preparation and publication of a customs manual covering up-to-date rules and regulations and decisions of the Bureau of Customs. The manual shall be published and made available to the public at least once every quarter within the first month after the end of every quarter. The Secretary of Finance and/or the Commissioner of Customs shall furnish the Central Bank of the Philippines, Board of Investments, the NEDA and the Tariff Commission with at least three copies each of every department order, administrative order, memorandum circulars and such rules and regulations which are promulgated from time to time for the purpose of implementing the provisions of this Code.

Also, it is a well settled rule that the court will not interfere in matters which are addressed to the sound discretion of the government agencies entrusted with the regulation of activities coming under special technical knowledge and training of such agencies *(Province of Zamboanga del Norte vs. Court of Appeals, 342 SCRA 549).*

Nonetheless, while we do not question the validity of the said memorandum circular, we cannot, however, stamp with approval the validity of the re-classification of the Examiner of Customs of petitioner's subject importation from Tariff Heading No. 8479.89 90 to Tariff Heading No. 8509.10 00, subject to 3% and 30% tariff rate, respectively.

For one thing, the Memorandum Circular itself upon which the questioned re-classification was based clearly states that the SGS must indicate in the Clean Report of Findings (CRF) the type of vacuum cleaners, i.e. household/domestic vs. industrial. A closer review of the Clean Report of Findings *(pp. 365, 372, 380 and 514, CTA Records)* reveal that the imported items of petitioner were classified as various industrial cleaning equipment.

But granting that the classification of SGS is questionable and respondent believes that it is not correct, the Customs Examiner should have raised the issue to the BOC-SGS Appeals Committee, in accordance with *Customs Memorandum Order No. 12-96-A,* which provides:

> **III**
>
> **Jurisdiction**
>
> The Committee shall have jurisdiction relative to questions/disputes:
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> **1. Arising from SGS classification as reported in the SGS-CRF.**
>
> *2.* On the applicability, comparability and correctnessof published values. *(Emphasis supplied)*

In this case, there is no showing that the Bureau of Customs brought the dispute before the said committee. Instead, the Customs Examiner disregarded the classification made by SGS and proceeded to assess petitioner of the discrepancy between the declaration and the findings, prompting the latter to pay under protest.

Moreover, respondent re-classified petitioner's importations as electro-mechanical domestic appliances, with self-contained electric motor under Tariff Heading No. 85.09. In *Commentaries on the Revised Tariff and Customs Code (p. 2149, Montano A. Tejam, Fourth and Revised Edition),* the author pointed out that the term "domestic appliances" in this heading means appliances normally used in the household. It does not cover appliances driven by a separate electric motor (whether by means of flexible shaft, transmission belts or other transmission equipment), nor appliances which, though similar in construction and use, are clearly intended solely for industrial use (e.g., in the food industries, in chimney sweeping, machine cleaning or road cleaning); these are classified, in general, in ***heading 82.02*** or ***in Chapter 84***. After reviewing the specifications of the imported equipment, it would appear that these equipment are commonly used for industrial purposes. Likewise worthy to note is the fact that the invoices issued by the manufacturers of the imported articles, Kent Company and Electrolux Euroclean AB, to petitioner *(Exhibits Q, R, S, and U),* show that the imported articles are described as various industrial equipment and spare parts.

Finally, the court took notice that using movability/operability as a criterion for classifying vacuum cleaners as domestic or industrial is not very practical. We are not unaware that technology has been introducing innovations accomplishing a purpose in more ways than one. Hence, as regards vacuum cleaners, either for domestic or industrial purposes, common observation points the same to be movable from one place to another. Based on the foregoing premise, we believe that the main use of the subject importations weighs more than the criterion of movability. Thus, in the case at bar, we conclude that the subject importations of petitioner fall under industrial vacuum cleaners subject to the 3% tariff rates.

We proceed to the second issue.

After an examination of the evidence adduced solely by petitioner, this court finds that petitioner's claim for refund should be denied. Although there appears to be an overpaid value-added tax when the same was computed on the basis of the higher tariff heading, there is still a necessity to prove that the overpayment remained unutilized. In the ordinary course of business, customs duties and taxes paid on imported articles are passed on by the importer to the buyer as part of the selling price. The articles sold by the importer are also subject to output VAT but his output VAT liability may be reduced by the VAT it paid when the articles were imported in which case the VAT paid may be considered an input VAT. To be entitled to the refund being claimed, petitioner should prove by documentary evidence that it failed to utilize said excess payment to reduce his output VAT liability. Otherwise, it will be benefited twice.

In this case, petitioner failed to show that the input VAT claimed were not utilized as credits against its output tax liability. During the trial of the case, no evidence was submitted by petitioner declaring that the input VAT remained unutilized during the succeeding taxable period. The testimonies and documents submitted in evidence mainly proved the fact of importations, that they were subjected to 30% customs duties instead of 3% and the fact of petitioner's payment of the value-added tax.

In the case of *AMI Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 5187 & 5199, dated October 02, 1997*, this court ruled on the importance of submitting in evidence the VAT returns for the succeeding taxable quarters:

> "As regards the last issue, this Court finds that petitioner failed to convincingly show that its input taxes have not been applied to its output tax liabilities. We note that petitioner's excess VAT credits (input taxes) beginning from the last quarter of 1992 up to the last quarter of 1993 have been cumulatively added and forwarded to succeeding quarters as shown under box no. 16 of the respective VAT return for each quarter involved (Exhibits "B" to "B-4"). Thus, the input taxes being claimed by the petitioner have been forwarded to the succeeding first quarter of 1994. At this point, We cannot ascertain whether or not said input taxes have been applied to petitioner's output tax liability for the first quarter of 1994 and other succeeding quarters thenceforth. Petitioner has not introduced any evidence to prove this point. It could have submitted one of its succeeding VAT returns right after

> it decided to file an application for refund and reflecting under box 15 thereof that it had deducted the amount being claimed for refund. Unless shown, there is really nothing to refund because the input taxes being claimed have actually been elected by the petitioner to be forwarded as excess VAT credits to the succeeding first quarter of 1994. To grant petitioner's claim for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government."

In the light of the aforementioned ruling of this court, petitioner should have presented the monthly VAT declarations and quarterly VAT returns to show that the amount being refunded has been deducted from the total available input VAT, if any, or was not utilized as credits to its output VAT liability. In the absence of such documents, the court cannot declare with certainty that its VAT inputs remain unutilized and, therefore, must be refunded.

At this point, it is worthy to emphasize that tax refunds are in the nature of tax exemption and must be construed strictissimi juris *(Philippine Bobbin Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5050, promulgated on March 6, 1998 and affirmed by the Court of Appeals on March 31, 2000).* Hence, the taxpayer has the burden of proof to show that it is entitled to the refund of the amount claimed legally and substantially. Otherwise, the court is left with no other course of action than to deny the claim.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUSTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge