REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PILIPINAS SHELL PETROLEUM CORPORATION,
Respondent.

CTA EB NO. 1215
(CTA CASE NO. 7871)

Present:

DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
and
RINGPIS-LIBAN, *JJ.*

Promulgated:
APR 2 8 2015
1:35 p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by the Commissioner of Internal Revenue on October 3, 2014 seeking the reversal and setting aside of the Amended Decision dated June 5, 2014 and the Resolution dated September 1, 2014 of the Special Third Division[1] of this Court in CTA Case No. 7871, entitled *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue.*

The respective dispositive portions of the assailed Amended Decision and Resolution are as follows:

[1] Composed of Associate Justice Lovell R. Bautista as Chairperson and Associate Justice Amelia R. Cotangco-Manalastas as member.

Amended Decision dated June 5, 2014

> "**WHEREFORE**, petitioner's 'Motion for Reconsideration (Of the Decision dated December 5, 2013),' is hereby **PARTIALLY GRANTED**. Accordingly, the Decision promulgated on December 3, 2013 is hereby **REVERSED** *and* **SET ASIDE**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱89,032,170.49** representing excise taxes paid on its petroleum products sold to international carriers for the period March 2 to 31, 2007.
>
> **SO ORDERED.**"[2]

Resolution dated September 1, 2014

> "**WHEREFORE**, in view of the foregoing, respondent's 'Motion for Partial Reconsideration (Re: Amended Decision dated 05 June 2014),' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[3]

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the BIR National Office Building located at Agham Road, Diliman, Quezon City.[4]

Respondent, Pilipinas Shell Petroleum Corporation (PSPC), is a corporation organized and existing under the laws of the Philippines with office address at Shell House, 156 Valero Street, Salcedo Village, Makati City.[5]

THE FACTS

Respondent PSPC is engaged, among others, in the business of manufacturing, processing, treating and refining petroleum for the purpose of producing marketable products and by-products and the subsequent sale thereof. Respondent PSPC also imports finished Jet A-1 fuel.[6]

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[2] *Rollo*, p. 60.
[3] *Rollo*, p. 64.
[4] *Rollo*, p. 10.
[5] *Id.*
[6] *Id.*

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Respondent PSPC filed a formal claim for refund or tax credit with the Large Taxpayers Audit and Investigation Division II of the Bureau of Internal Revenue (BIR) on July 4, 2008, seeking the recovery of excise taxes paid on Jet A-1 fuel sold to tax exempt international air carriers for the period March 2 to 31, 2007 in the aggregate amount of Php90,272,619.48.[7]

Since respondent PSPC's claim for refund or tax credit is still pending action by the BIR, respondent PSPC filed a Petition for Review with the Court of Tax Appeals (CTA) on February 12, 2009.

On May 23, 2012, petitioner CIR filed her Answer and raised the following special and affirmative defenses: (a) respondent PSPC did not submit complete documents in support of its administrative claim for refund; (b) respondent PSPC miserably failed to show that the total amount of Php90,272,619.48 claimed as excise taxes paid on Jet A-1 sold to tax exempt international air carriers for the period March 2 to 31, 2007 was erroneously or illegally collected, or the same was properly documented; (c) taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable; (d) it is incumbent upon respondent PSPC to show that it has complied with the provisions of Section 204 in relation to Section 229 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended; (d) it is incumbent upon respondent PSPC to show that it complied with the essential requirements to be entitled to the refund or tax credit;[8] (e) in an action for tax refund/credit, the *onus probandi* of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit; and, (f) claims for refund are strictly construed against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

After trial, the Court in Division promulgated its Decision[9] on December 3, 2013 denying respondent PSPC's Petition for Review for lack of merit. Aggrieved, respondent PSPC filed a Motion for Reconsideration on December 19, 2013. Petitioner CIR filed her Opposition on February 12, 2014.

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[7] *Rollo*, pp. 10-11.
[8] (i) the petroleum products are sold to an international carrier for use and consumption outside the Philippines; (ii) the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the CIR; and (iii) the petroleum products are sold to exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use and consumption, provided that the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities, or agencies.
[9] CTA Division Docket, Vol. 3, pp. 1338-1351.

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On June 5, 2014, the Court in Division issued its Amended Decision[10] partially granting respondent PSPC's Motion for Reconsideration and ordering petitioner CIR to refund or issue a tax credit certificate (TCC) in favor of respondent PSPC in the reduced amount of Php89,032,170.49, representing excise taxes paid on its petroleum products sold to international carriers for the period March 2 to 31, 2007. Petitioner CIR moved for the partial reconsideration of the Court in Division's Amended Decision which was, however, denied by the Court in Division in its Resolution dated September 1, 2014.

On October 3, 2014 or within the extended period granted by the Court *En Banc* per its Resolution[11] dated September 23, 2014, petitioner CIR filed the present Petition for Review.[12] After the filing of respondent PSPC's Comment[13] on December 5, 2014, the Court *En Banc* submitted the case for decision.[14]

THE ISSUES

Petitioner CIR raises the following issues for resolution of the Court *En Banc*:

1. Whether or not respondent PSPC is entitled to refund or issuance of TCC representing excise taxes paid on Jet-A1 fuel sold to tax-exempt international air carriers for the period March 2 to 31, 2007; and,

2. Whether or not the CTA has jurisdiction over respondent's judicial claim for refund or issuance of TCC.

THE PARTIES' ARGUMENTS

<u>Petitioner CIR's Arguments</u>

Petitioner CIR avers that the exemption granted under Section 135 (a) of the 1997 NIRC, as amended, is conferred on international carriers who purchased the same for their use or consumption outside the Philippines, and that no grant of exemption was ever granted to respondent PSPC on its sale of Jet-A1 fuel to international carriers. Allegedly Section 148 (g) of the 1997

[10] CTA Division Docket, Vol. 3, pp. 1415-1426.
[11] *Rollo*, p. 5.
[12] *Rollo*, pp. 9-16.
[13] *Rollo*, pp. 73-82.
[14] *Rollo*, unpaginated.

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NIRC, as amended, makes respondent PSPC statutorily liable to pay the excise taxes.[15]

Arguing that claims for refund must be strictly construed against the claimant and liberally in favor of the taxing authority, petitioner CIR insists that respondent PSPC should have cited laws and presented convincing evidence to prove that it is entitled to the refund of excise taxes.

Petitioner CIR likewise avers that respondent PSPC failed to submit documents to support its administrative claim for refund. As such, petitioner CIR posits that the administrative claim should be regarded as pro-forma and without validity. In the absence of a validly and duly filed administrative claim, petitioner CIR contends that the CTA is without jurisdiction to entertain respondent PSPC's judicial claim.[16]

Respondent PSPC's Counter-Arguments

Respondent PSPC, on the other hand, submits that the issue of its entitlement to refund of the excise taxes it paid pursuant to Section 135 of the 1997 NIRC, as amended, has already been resolved with finality by the Honorable Supreme Court in the case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation.*[17]

Contrary to petitioner CIR's claim that respondent PSPC failed to submit documents in support of its administrative claim, thereby making the same pro-forma, respondent PSPC maintains that it duly submitted the documents necessary for the determination of the propriety of its claim for refund. Respondent PSPC points out that it was petitioner CIR who never presented witnesses or evidence to prove that she evaluated the documents submitted by respondent PSPC and that she found the same incomplete. Respondent PSPC likewise stresses that the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level.[18]

THE RULING OF THE COURT *EN BANC*

The Court *En Banc* finds the present Petition for Review bereft of merit.

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[15] *Rollo*, pp. 42-43.
[16] *Rollo*, pp. 43-44.
[17] *Rollo,* pp. 73-74.
[18] *Rollo*, p. 79.

In granting respondent PSPC's claim for refund or TCC, the Court *En Banc* finds that the Court in Division, in affirming respondent PSPC's right to claim refund or tax credit of excise taxes on petroleum products sold to international carriers, correctly applied the Supreme Court's categorical pronouncement in its Resolution dated February 19, 2014 in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,*[19] *viz.*:

> **"We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, we agree that there is a need to reexamine the *effect* of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention.**
>
> The Chicago Convention, which established the legal framework for international civil aviation, did not deal comprehensively with tax matters. Article 24 (a) of the Convention simply provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements (ASAs) between individual countries.
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> The importance of exemption from aviation fuel tax was underscored in the following observation made by a British author in a paper assessing the debate on using tax to control aviation emissions and the obstacles to introducing excise duty on aviation fuel, thus:
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>> Without any international agreement on taxing fuel, it is highly likely that moves to impose duty on international flights, either at a domestic or European level, would encourage 'tankering': carriers filling their aircraft as full as possible whenever they landed outside the EU to avoid paying tax. Clearly this would be entirely counterproductive. Aircraft would be travelling further than necessary to fill up in low–tax jurisdictions; in addition they would be burning up more fuel when carrying the extra weight of a full fuel tank.
>
> With the prospect of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices , the practice of "tankering" would not be discouraged. This scenario does not augur well for the Philippines' growing economy and the booming tourism industry. Worse, our Government would be risking retaliatory action under several bilateral agreements

[19] G.R. No. 188497

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with various countries. Evidently, construction of the tax exemption provision in question should give primary consideration to its broad implications on our commitment under international agreements.

In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. **We therefore hold that respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC.**" *(Emphasis supplied)*

Since the Supreme Court has confirmed respondent PSPC's right to claim for refund or tax credit of excise taxes it paid for petroleum products sold to international carriers, the Court *En Banc* finds no legal or justifiable basis to deviate from the same.

Unless and until modified by the Supreme Court *En Banc*, said pronouncement of the Supreme Court stands. It need not be emphasized that in our judicial hierarchy, the Supreme Court reigns supreme. All courts, tribunals and administrative bodies exercising quasi-judicial functions are obliged to conform to its pronouncements. It has the last word on what the law is; it is the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts should take their bearings.[20]

After carefully reviewing the records of this case, the Court *En Banc* finds no basis to deviate from the factual findings of the Court in Division that respondent PSPC is entitled to the refund or issuance of TCC in the amount of Php89,032,170.49. Thus, the Court *En Banc* quotes with affirmation the pertinent disquisition of the Court in Division in the assailed Amended Decision, *viz.*:

"As found earlier by the Court in the assailed Decision dated December 3, 2013, petitioner [respondent herein] is engaged, among others, in the business of manufacturing, processing, treating and refining petroleum to produce marketable products and by-products and the subsequent sale thereof; that it manufactures Jet A-1 fuel in its refinery in Tabangao, Batangas ("Tabangao Refinery") utilizing imported crude as raw material; that it imports finished Jet A-1 fuel through its refinery in Tabango, Batangas for sale and delivery to foreign and domestic air carriers and other customers; that on February 13, 2007 and March 9, 2007, petitioner [respondent herein] imported Jet A-1 fuel through its refinery in Tabangao, Batangas, and accordingly, paid to the Bureau of Customs in

[20] *Development Bank of the Philippines v. NLRC*, March 1, 1995, 242 SCRA 59; *Albert v. Court of First Instance of Manila (Branch VI)*, L-26364, May 29, 1968, 23 SCRA 948 *cited in* the Concurring Opinion of Sandoval–Gutierrez, J., *Raul L. Lambino v. The Commission on Elections*, G.R. No. 174153, October 25, 2006.

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Batangas the corresponding duties, taxes and fees, including excise taxes at the rate of ₱3.67 per liter on the imported Jet A-1 fuel. The details of petitioner's [respondent herein] importations and payments of excise taxes are as follows:

Exh.	Arrival Date	IEIRD No.	IEIRD Date	Volume in Liters	Amount of Excise Taxes Paid	Date of Final Payment
"A"	Feb. 13, 2007	77758423	March 9, 2007	9,645,374	₱35,398,523.00	March 9, 2007
"B"	March 9, 2007	77357847	April 4, 2007	12,896,868	47,331,505.56	April 4, 2007
				22,542,242	**₱82,730,028.56**	

Likewise, within the same period of February to March 2007, petitioner [respondent herein] purchased imported Jet A-1 fuel from PTT Philippines Trading Corporation ("PTT") at the Subic Bay Freeport Zone, and correspondingly paid to the Bureau of Customs in Subic the excise taxes at the rate of P3.67 per liter on the imported Jet A-1 fuel. The details of its importations and payments of excise taxes are as follows:

Exh.	Arrival Date	IEIRD No.	IEIRD Date	Volume in Liters	Amount of Excise Taxes Paid	Date of Final Payment
"C"	March 6, 2007	78696353	March 6, 2007	2,431,005	₱8,921,788.00	April 4, 2007
"D"	March 9, 2007	79039326	March 9, 2007	2,169,780	7,963,093.00	April 4, 2007
				4,600,785	**₱16,884,881.00**	

The foregoing importations of Jet A-1 fuel are supported by the following documents:

a. Import Entry and Internal [Revenue] Declaration ("IEIRD");
b. Import Entry Declaration ("IED");
c. Certificate of Quantity/Quantity Report;
d. Certificate of Quantity Received ("CQR");
e. Certificate of Origin/Processing;
f. Bill of Lading;
g. Withdrawal Certificate;
h. Sales/Tax Invoice;
i. Authority to Release Imported Goods ("ATRIG"); *and,*
j. Official Receipts and Payment Advices.

From the foregoing importations and withdrawals of Jet A-1 fuel in the total of 27,143,027 liters (22,542,242 plus 4,600,785), petitioner [respondent herein] avers that it had sold a total of 24,597,444 liters, with excise tax payments of ₱90,272,619.49, to various international airlines from March 2 to 31, 2007 for their use or consumption outside the Philippines as follows:

CUSTOMERS	Volume in Liters
Philippine Airlines-International	3,094,690
Air Asia	453,537
Asiana Airlines	1,812,780
China Airlines	1,048,723
China Southern	287,360
Japan Airlines	3,477,550
Jetstar Asia	325,388
Korean Airline	2,646,990
Malaysian Airlines	712,811
Royal Brunei Airlines	208,560

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Qantas Airways	933,060
Qantas [Qatar] Airways	2,867,100
Singapore Airlines	2,372,900
UPS	4,355,995
TOTAL AVIATION SALES	**24,597,444**
Excise Tax Rate	₱3.67
TOTAL EXCISE TAX	**₱90,272,619.48**

To prove that the foregoing airlines were registered in the countries that grant reciprocal tax exemption to Philippine-registered airline carriers, petitioner secured from the Department of Foreign Affairs a list of countries that grant such exemptions with their corresponding dates of effectivity, as well as Certification issued by the Civil Aviation Authority of the Philippines indicating the nationality and country of registration of the aircrafts listed therein. Likewise, Certifications issued by the Civil Aeronautics Board ("CAB") were submitted to prove that the airline companies to whom petitioner [respondent herein] sold Jet A-1 fuel during the period subject of the present claim have been issued Foreign Air Carrier Permits by the CAB which allow them to operate on international route.

Petitioner [respondent herein] also presented, among others, the following documentary evidence to prove the sale and delivery of Jet A-1 fuel to the international carriers, the same were duly examined by the Court-commissioned Independent Certified Public Accountant ("ICPA"), Mr. Benjamin P. Valdez of Punongbayan and Araullo:

1. Withdrawal Certificates (WCs) – which show the removal of imported Jet A-1 fuel from petitioner's [respondent herein] refinery at Tabangao, Batangas to Pandacan Depot which shall be delivered to Joint Oil Company Aviation Storage Plants ("JOCASP") and to Lubwell Facility in Clark for eventual sale and delivery to various international and domestic carriers;

2. Official Register Books (ORBs) – which show the documentation relevant to the receipts and withdrawals of Jet A-1 fuel at the Tabangao refinery, Pandacan installation and JOCASP, as prepared by the BIR personnel, the Revenue Officer on Premises (ROOP) and petitioner's [respondent herein] representative;

3. Various Sales Invoices – to prove petitioner's [respondent herein] sale and delivery of Jet A-1 fuel to international carriers;

4. Printouts of Petitioner's [respondent herein] Computerized Accounting System Showing "Overview of Billing Items" and "Pricing Details" (F4 Display Printouts) – to show printouts of the reports generated under petitioner's [respondent herein] computerized accounting system to support sales and deliveries to various customers;

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5. Aviation Service Returns – which show the volume of Jet A-1 fuel delivered to international carrier;

6. Certification from various air carriers – to show that the international carriers purchased from petitioner [respondent herein] Jet A-1 fuel for its international operations.

As ascertained by the ICPA and further verified by this Court, out of the total claim of ₱90,272,619.48, only the amount of ₱89,032,170.49, as summarized below, was properly supported by relevant documents:

CUSTOMERS	Volume in Liters
Philippine Airlines-International	3,094,690
Air Asia	434,860
Asiana Airlines	1,812,780
China Airlines	1,048,723
China Southern	280,650
Japan Airlines	3,477,550
Jetstar Asia	325,388
Korean Air	2,646,990
Malaysian Airlines	712,811
Royal Brunei Airlines	208,560
Qantas Airways	620,450
Qatar Airways	2,867,100
Singapore Airlines	2,372,900
UPS	4,355,995
TOTAL AVIATION SALES	**24,259,447**
Excise Tax Rate	₱3.67
TOTAL EXCISE TAX	**₱89,032,170.49**

On the other hand, the remaining amount of P1,240,448.99 consisting of 337,997 liters of Jet A-1 fuel shall be denied since the same were not supported by sales invoices to prove the delivery or billing to the international carriers, and F4 display printouts to show the recording of the transactions in the petitioner's [respondent herein] system and that no excise tax component was billed to international carriers.

Thus, based on the foregoing, it is clear that within the period from February to March 2007, petitioner [respondent herein] imported, sold and delivered petroleum products to international carriers, for which the corresponding excise taxes thereof were paid by petitioner [respondent herein] upon importation.

Corollary to the second and third requisites, i.e., the claim for refund have been duly filed with respondent, and with this Court, within two years form the date of payment of the excise tax, records show that the earliest importation arrived on February 13, 2007 for which the first payment of excise tax was made on February 19, 2007. Counting from February 19, 2007, petitioner [respondent herein] therefore had until February 19, 2009 within which to file the administrative claim for refund with the BIR and the judicial claim for refund with this Court. Since petitioner [respondent herein] filed its administrative claim for refund on July 4, 2008 and the instant Petition for Review on February 12, 2009, petitioner's [respondent herein] claim for refund was seasonably filed within the two-year prescriptive period.

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> In sum, petitioner [respondent herein] is entitled to a refund or issuance of a tax credit certificate in the reduced amount of P89,032,170.49 representing excise taxes paid by petitioner [respondent herein] on petroleum products sold to international carriers from March 2 to 31, 2007, computed as follows:

Claimed Excise Taxes	₱	90,272,619.48
Less: Disallowed Excise Taxes		1,240,448.99
Substantiated Excise Taxes	₱	89,032,170.49

Anent petitioner CIR's allegation that respondent PSPC failed to submit complete supporting documents in support of its administrative claim, the same is belied by the evidence presented by respondent PSPC which proves that upon filing of its administrative claim[21] with the BIR on July 4, 2008, respondent PSPC submitted documents to support its claim. Indeed, if petitioner CIR evaluated respondent PSPC's claim and found the documents submitted in support thereof insufficient, petitioner CIR should have denied the same. On the contrary, records disclosed that respondent PSPC's claim for refund or tax credit remained unacted upon by the BIR which prompted respondent PSPC to file a judicial claim with the CTA before the expiration of the two-year prescriptive period.

Finally, even assuming that respondent PSPC failed to submit complete documents in support of its administrative claim, still, the CTA is not *ipso facto* divested of its jurisdiction over respondent PSPC's judicial claim. Truth to tell, in *Atlas Consolidated and Mining Development Corporation vs. Commissioner of Internal Revenue*,[22] the Supreme Court, after noting that the taxpayer was not able to present all the necessary documents required by the BIR to support its administrative claim, upheld the CTA's jurisdiction to resolve the judicial claim.

WHEREFORE, premises considered, the subject Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Amended Decision dated June 5, 2014 and the Resolution dated September 1, 2014, both rendered by the Special Third Division of this Court, which ordered petitioner Commissioner of Internal Revenue to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of respondent Pilipinas Shell Petroleum Corporation in the reduced amount of **Php89,032,170.49** representing excise taxes paid on its petroleum products sold to international carriers for the period March 2 to 31, 2007, are hereby affirmed.

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[21] CTA Division Docket, Vol. 2, pp. 708-711.
[22] G.R. Nos. 141104 & 148763, June 08, 2007.

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SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice