REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AGC FLAT GLASS PHILIPPINES, INC.,
Petitioner,

-*versus*-

BUREAU OF CUSTOMS,
Respondent.

CTA Case No. 8752

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

MAY 09 2018

3:15 p.m.

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DECISION

MANAHAN, *J.:*

This involves a Petition for Review[1] filed on December 27, 2013 by petitioner AGC Flat Glass Philippines, Inc. (AGC FGPI) on the supposed inaction of respondent Bureau of Customs, praying for the refund of **TWENTY EIGHT MILLION FIVE HUNDRED SEVENTY THREE THOUSAND TWO HUNDRED FIFTY and 15/100 PESOS (Php28,573,250.15)** representing the total customs duties paid covering the period January 1, 2008 to December 31, 2009.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Asahi Special Economic Zone (ASEZ) 730 MH Del Pilar St., Pinagbuhatan, Pasig City.[2]

[1] Docket, CTA Case No. 8752, Vol. I, pp. 6-49.
[2] Docket, Vol. I, Petition for Review, p. 7.

Respondent Bureau of Customs (BOC) is headed by a Commissioner who is vested by the Tariff and Customs Code (TCC) in relation to Republic Act No. 1125, as amended, with the authority to decide, approve and grant refunds for custom duties located at the Office of the Commissioner, Bureau of Customs, G/F OCOM Building, Port Area, Manila, Metro Manila.[3]

THE FACTS

Petitioner is primarily engaged in the export production of various industrial glass products such as float glass, figure glass, and glass mirrors.[4] It is a duly registered Ecozone Export Enterprise pursuant to Republic Act (RA) No. 7916 otherwise known as "The Special Economic Zone Act of 1995" (PEZA Law) by the Philippine Economic Zone Authority (PEZA) under Certificate of Registration No. 07-33.[5]

According to petitioner, one of its production requirements is petroleum fuel.[6] Thus, to secure a steady supply of petroleum fuel, petitioner entered into a Supply Agreement[7] with Pilipinas Shell Petroleum Corporation (PSPC).

Pursuant to the Supply Agreement, the purchase price of petroleum fuel sold by PSPC to petitioner included "import duty imposed by the government".[8]

Petitioner claims that the customs duties for petroleum fuel purchases passed on by PSPC to petitioner amounted to ₱11,284,069.24 for the year 2008 and ₱17,289,180.91 for the year 2009, or a total of ₱28,573,250.15.[9]

Believing that it should have been exempted from paying the customs duties which were included in the cost of said procured fuel, petitioner filed a letter dated October 19, 2010 to am

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[3] *Id.*
[4] *Id.*
[5] Docket, vol. I, Par. 3, Petition for Review, p. 7; Par. 3 of respondent's Answer, Docket, vol. I, p. 206.
[6] Docket, Vol. I, Petition for Review, p. 8.
[7] Docket, Vol. II, Exhibit "P-15", pp. 819-835.
[8] Docket, Vol. II, Par. 4.0, Exhibit "P-15", p. 821.
[9] Docket, Vol. I, Par. 10, Petition for Review, pp. 10-11.

the respondent's District Collector of Batangas International Port requesting for the refund of the customs duties imposed on the procured petroleum fuel covering the year 2008 in the amount of Php11,284,069.24.[10]

On February 16, 2011, petitioner filed another claim for refund for the customs duties imposed on its 2009 procured petroleum fuel amounting to Php17,289,180.91.[11]

Respondent, through the District Collector of Batangas International Port, in a letter dated October 28, 2011, informed petitioner that its request for refund of customs duties paid for the period covering January 1, 2008 to December 31, 2009 amounting to Php28,573,250.15 is denied citing that under the Registration Agreement between PEZA and the petitioner dated March 13, 2007, the latter was not entitled to PEZA incentives because "the area is ready fully developed."[12]

Thus, on November 14, 2011, petitioner filed a letter request to the respondent for the reversal of said denial where it prays and argues for the approval of said claim for refund considering that it had fulfilled and submitted all the requirements for such claim.[13] Petitioner filed the appeal fee amounting to Php3,000.00.[14]

On December 25, 2012, petitioner through its representative KPMG, sent a letter dated December 20, 2012 to the respondent where it reiterated its prayer for the approval of said refund claim.[15] However, petitioner did not receive any decision from the respondent.

Thus, to avoid having its claim for refund prescribed, petitioner filed the instant petition on December 27, 2013. Respondent was then required by this Court to file its Answer

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[10] Par. 14 of Petition for Review which was admitted in respondent's Answer, Docket, Vol. 1, p. 207.
[11] Par. 17 of Petition for Review which was admitted in respondent's Answer, Docket, Vol. 1, p. 207.
[12] Par. 18 of Petition for Review which was admitted in respondent's Answer, Docket, Vol. 1, p. 207.
[13] Par. 19 of Petition for Review which was admitted in respondent's Answer, Docket, Vol. 1, p. 207.
[14] Par. 20 of Petition for Review which was admitted in respondent's Answer, Docket, Vol. 1, p. 207.
[15] Par. 21 of Petition for Review which was admitted in respondent's Answer, Docket, Vol. 1, p. 207.

on the said petition.[16] However, respondent filed several motions to extend the filing of its answer.

On May 23, 2014, respondent through registered mail, filed its Answer[17] which was received by this Court on May 30, 2014. Respondent argued in the said Answer that the instant petition was already filed out of time because there was already a decision dated May 21, 2012 which was supposed to be final and executory.[18]

On June 3, 2014, petitioner asked this Court to declare respondent in default for filing its Answer beyond the period granted by this Court.[19] However, this Court ruled that at the time the Answer was filed by the respondent, it was not yet in default or declared in default, hence, the Answer was admitted.[20]

On August 4, 2014, pre-trial conference was set and both parties were directed to submit their respective pre-trial brief.[21] Petitioner, through registered mail, filed its pre-trial brief[22] on October 20, 2014 which was received by this Court on October 29, 2014. However, on January 13, 2015, petitioner filed an amended pre-trial brief.[23] On the other hand, respondent filed its pre-trial brief[24] on January 14, 2015.

On March 27, 2015, pre-trial was terminated and petitioner was directed to present first its evidence.[25] On May 25, 2015, petitioner moved for the appointment of an independent certified public accountant (ICPA) which was granted by this Court.[26]

After presenting its evidence, petitioner, through registered mail, filed its formal offer of evidence[27] on November 3, 2015 which was received by this Court on November 12,

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[16] Docket, Vol. I, Summons, p. 114.
[17] *Id.*, Vol. I, pp. 206-214.
[18] Docket, Vol. I, Answer, Annex "1", pp. 215-219.
[19] *Id.*, Motion to Declare in Default, pp. 227-235.
[20] *Id.*, Resolution dated August 4, 2014, pp. 292-300.
[21] *Id.*, Notice of Pre-Trial Conference, p. 301.
[22] *Id.*, pp. 340-350.
[23] Docket, Vol. II, pp. 352-367.
[24] *Id.*, pp. 368-374.
[25] *Id.*, Pre-Trial Order, pp. 747-752.
[26] *Id.*, Resolution dated June 1, 2015, pp. 1293-1294.
[27] Docket, Vol. IV, pp. 1475-1517.

2015. However, substantial amount of its evidence was not admitted.[28]

Thus, petitioner moved for the reconsideration of said disallowed evidence.[29] Petitioner, through registered mail, filed its amended formal offer of evidence[30] on September 2, 2016 which was received by this Court on September 15, 2016. The motion was partially granted by the Court.[31]

Respondent, instead of presenting its own evidence merely adopted several exhibits of the petitioner.[32] The Court then ordered both parties to submit their respective Memoranda.[33] Respondent submitted its Memorandum[34] on March 31, 2017 through registered mail and was received by this Court on April 17, 2017. Petitioner having filed its Memorandum[35] beyond the period allowed, moved[36] for its admission on April 6, 2017 which the Court eventually admitted on May 16, 2017, hence, the case was submitted for decision.[37]

ISSUE

The sole issue to be resolved by this Court is whether the petitioner is entitled to the amount of customs duties claimed.[38]

Petitioner's Arguments[39]

Petitioner argues that the instant petition is filed pursuant to the principle of *solutio indebiti* as contained in Article 2154 of the Civil Code, which provides as follows:

> Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. *am*

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[28] *Id.*, Resolution dated January 18, 2016, pp. 1530-1534.
[29] *Id.*, Omnibus Motion dated February 1, 2016, pp. 1542-1560.
[30] *Id.*, pp. 1658-1704.
[31] Docket, Vol. V, Resolution dated November 23, 2016, pp. 1711-1715.
[32] *Id.*, Manifestation and Motion, pp. 1717-1721.
[33] *Id.*, Resolution dated January 31, 2017, p. 1723.
[34] *Id.*, pp. 1795-1811.
[35] *Id.*, pp. 1758-1792.
[36] *Id.*, Motion to Admit Attached Memorandum, pp. 1750-1757.
[37] *Id.*, Resolution dated May 16, 2017, pp. 1821-1822.
[38] *Supra.*, Note 24.
[39] *Supra.*, Note 35.

Such legal basis of petitioner's claim is further amplified in the case of *Commissioner of Customs v. Philippine Phosphate Fertilizer Corporation.*[40]

Petitioner also argues that it is entitled to a duty and tax-free importation incentive under the PEZA Law and its Registration Agreement with PEZA.

Respondent's Counter-Arguments[41]

Respondent, on the other hand, argues that this Court has no jurisdiction over the inaction of the Commissioner of Customs pursuant to Section 7(2) of RA No. 1125 as amended by Section 7(a)(4) of RA 9282 and that petitioner is not entitled to PEZA incentives, hence, the claim was properly denied by the District Collector.

RULING OF THE COURT

CTA has jurisdiction on claims of PEZA-registered enterprise not acted upon by the Commissioner of Customs

We shall resolve the question on jurisdiction raised by the respondent before we delve into the substantial issue of this case.

Respondent predicates its defense on two conflicting theories: first, in its *Answer*[42], it argues that the petition was already filed out of time because the Commissioner of Customs issued a decision on the claim dated May 21, 2012 which was already final and executory at the time that the instant case was filed; and second, in its *Memorandum*,[43] respondent contends that the inaction of the Commissioner of Customs (COC) is not appealable to the Court of Tax Appeals citing Section 7(a)(4)[44] of RA No.1125 as amended by RA No. 9282, hence, the case is

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[40] G.R. No. 144440, September 01, 2004.
[41] *Supra.*, Note 34.
[42] *Supra.*, Note 19.
[43] *Id.*
[44] "Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs"

prematurely filed and does not fall under the exclusive appellate jurisdiction of this court.

On the first theory that the petition is filed out of time, this court finds it difficult to lend credence to the existence of said decision considering that this piece of evidence, although included in respondent's Pre-Trial Brief[45] as a document to be presented and confirmed by this Court in the Pre-Trial Order, was not offered in respondent's formal offer of evidence as there was no such pleading filed. Instead, respondent in a Manifestation[46] merely adopted the evidence submitted by petitioner, which included PEZA Certification of Board Resolution No. 08-673,[47] Registration Agreement between PEZA and AGC Philippine Ecozone Management Corporation,[48] Letter dated October 28, 2011 from the District Collector, Port of Batangas,[49] and Registration Agreement dated March 13, 2007 between PEZA and Asahi Glass Philippines, Inc.[50]

Furthermore, proof of its issuance to and receipt by the petitioner was never established by respondent, and the consistent assertion of the petitioner that it has not received any COC decision yet on its appeal from the denial of its claim for refund from the respondent's District Collector of Batangas was never controverted by respondent. In fact, if such decision was indeed in existence already as of May 21, 2012, then, respondent should have disclosed that during the personal visit of petitioner's counsel at the office of the COC on December 18, 2012. The purpose of said visit was to follow up the status of the pending appeal of petitioner, as confirmed by the letter of petitioner's counsel to respondent's COC on December 20, 2012.[51] However, respondent failed to advise petitioner of such decision during the said visit. Thus, this court cannot countenance this proposition of respondent.

On the second theory that the filing of this case was premature as inaction by respondent's COC is not within the exclusive appellate jurisdiction of this court, the disquisition of the Supreme Court in the case of *Commissioner of Customs vs.* cam

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[45] Docket, Vol. II, pp. 368-374.
[46] *Id.*, Vol. V, Manifestation with Motion, pp. 1717-1721.
[47] *Id.*, Vol. II, Exhibit "P-12," p. 815.
[48] *Id.*, Vol. II, Exhibit "P-13," pp. 816-817.
[49] *Id.*, Vol. II, Exhibit "P-22," p. 872.
[50] *Id.*, Vol. II, Exhibit "P-23," pp. 874-881.
[51] *Id.*, Vol. II, Exhibit "P-26," pp. 885-886.

Philippine Phosphate Fertilizer Corporation[52] (*Philphos* case) is illuminating, portions of which are quoted hereinbelow:

> This leads to another question well-worth resolving — what is the prescriptive period which a duly registered enterprise should observe in applying for a refund to which it is entitled under the EPZA Law? The EPZA Law itself is silent on the matter, and the prescriptive periods under the Tariff and Customs Code and other revenue laws are inapplicable, by specific mandate of Section 17(1) of the EPZA Law. This does not mean though that prescription will not lie, as the Civil Code provisions on *solutio indebiti* may find application. The Civil Code is not a customs and internal revenue law. The Court has in the past sanctioned the application of the provisions on *solutio indebiti* in cases when taxes were collected thru error or mistake. <u>*Solutio indebiti* is a quasi-contract, thus the claim for refund must be commenced within six (6) years from date of payment pursuant to Article 1145(2) of the New Civil Code.</u> Clearly then, Philphos's right to refund has not yet prescribed. *(underscoring supplied)*

The factual milieu of the above-quoted case falls squarely with the instant case considering that the petitioner is a PEZA-registered enterprise and the legal basis of its claim for refund is found in the provisions of the PEZA law and its implementing rules and regulations (IRR) that were adopted from the EPZA law or Presidential Decree (PD) No. 66. The relevant provisions of the foregoing laws and IRR are quoted below, viz.:

> **<u>Section 17 (1), P.D. No. 66 (EPZA Law)</u>**
> **Section 17.** *Tax Treatment of Merchandise in the Zone.* (1) Except as otherwise provided in this Decree, foreign and <u>domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description</u>, except those prohibited by law, <u>brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity, shall not be subject to Customs and internal revenue laws and regulations</u> nor to local tax ordinances, the provisions of law to the contrary notwithstanding. (*underscoring supplied*)
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> **<u>Section 23, RA No. 7916 as amended by RA No. 8748</u>**
> **SEC. 23.** *Fiscal Incentives.* – <u>Business establishments operating within the ECOZONES shall be entitled to the fiscal</u> am

[52] G.R. No. 144440, September 1, 2004.

incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987. *(underscoring supplied)*

Section 1, Rule VIII, Rules and Regulations Implementing RA No. 7916 as amended by RA No. 8748

Rule VIII. Tax Treatment of Merchandise in the Restricted Areas of the Ecozones

SECTION 1. *Exemptions* - Merchandise brought to the restricted areas in the ECOZONES by registered Export or Free Trade Enterprises, except prohibited merchandise, shall not be subject to all customs and internal revenue laws and regulations of the Philippines nor to local tax ordinances: Provided, That they are to be sold, stored, broken-up, replaced, assembled, manipulated, manufactured and/or mixed with foreign or domestic merchandise within the restricted areas in the ECOZONES. (*underscoring supplied*)

Similarly, in the CTA En Banc case of *Commissioner of Customs and the Bureau of Customs vs. DOLE Philippines, Inc.*[53], this court has laboriously quoted the ruling in the *Philphos* case, highlights of which are hereinafter reproduced:

It is erroneous for respondents to insist on the application of the TCCP to claims for refund that involve passed-on customs duties arising from purchases of supplies brought into the ECOZONE and used, directly or indirectly, by a duly-registered PEZA enterprise. In *Philphos*, the Supreme Court categorically ruled that the prescriptive periods under the TCCP and other revenue laws are inapplicable on claims for refund of passed-on customs duties arising from purchases of supplies brought into the ECOZONE and used, directly or indirectly, by a duly-registered PEZA enterprise, and that the prescriptive periods or procedural requirements under the TCCP should not serve as a bar for the claim for refund. It further held that said claims for refund of passed-on customs duties must be commenced within six (6) years from the date of payment pursuant to Section 1145 (2) of the New Civil Code. (*underscoring supplied*)

Besides, this Court finds it anomalous, if not highly iniquitous, if the petitioner will be totally at the mercy of the respondent and be left without recourse but to await the decision of the respondent COC which may or may not be am

[53] CTA EB Case No. 1142, January 5, 2015.

forthcoming. Such possible inaction can deprive lawful tax refund claimants of positive and expedient relief from the courts of justice. Thus, the provisions of the law on *solutio indebiti* are applicable to the claims for refund of PEZA-registered enterprise.

On this issue of inaction, the case of *Nestle Philippines, Inc. (Formerly Filipro, Inc.) vs. Honorable Court of Appeals, Court of Tax Appeals and Commissioner of Customs*,[54] succinctly unveils the harm and injustice that failure to act can bring to the taxpayers, to wit:

> Accordingly, once a written protest is seasonably filed with the Collector of Customs **the failure or inaction of the latter** to promptly perform his mandated duty under the Tariff and Customs Code **should not be allowed to prejudice the right of the party adversely affected thereby. Technicalities and legalisms,** however exalted, **should not be misused by the government to keep money not belonging to it**, *if any is proven*, **and thereby enrich itself at the expense of the taxpayers.** If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, *if any*, of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness. (*Emphasis supplied*)

In fine, this Court has jurisdiction and can take cognizance of this case.

Petitioner is entitled to the claim for refund

Petitioner maintains that being a PEZA-registered entity, it enjoys a duty and tax-free importation privilege under the PEZA law and its implementing rules and regulations (IRR). Relevant provisions of RA No. 7916, as amended, otherwise and its IRR are quoted below:

> **<u>Section 23, RA No. 7916 as amended by RA No. 8748</u>**
> **SEC. 23.** *Fiscal Incentives.* – <u>Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or</u> am

[54] G.R. No. 134114, July 6, 2001.

those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987. *(underscoring supplied)*

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Rule XV - Incentives to Ecozone Export and Free Trade Enterprises

SECTION 1. *Exemption from Duties and Taxes on Merchandise* - **Merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares** of every description **brought into** the ECOZONE Restricted Area **by an ECOZONE Export or Free Trade Enterprise to be** sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, grade or otherwise **processed**, manipulated, manufacture, mixed with foreign or domestic merchandise **whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations of the Philippines nor to local tax ordinances**... (*Emphasis supplied*)

Likewise, the PEZA Registration Agreement of the petitioner provides such incentive, as quoted below:[55]

ARTICLE XIII
SPECIAL CONDITIONS

13. The REGISTRANT's project shall be entitled to the remaining incentives under its Board of Investments (BOI) registration and other incentives under R.A. 7916, as amended, subject to the following terms and conditions; xxx xxx

Section 24 of RA No. 7916 also provides the exemption of PEZA-registered entities from local and national taxes, to wit:

SEC. 24. Exemption from National and Local Taxes.- Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

a. Three percent (3%) to the National Government;

b. Two percent (2%) which shall be directly remitted by the ccm

[55] Docket, Vol. II, Exhibit "P-4," p. 800.

> business establishments to the treasurer's office of the municipality or city where the enterprise is located.

Meanwhile, respondent argues that petitioner is not entitled to such claim because the provision in the Original Registration Agreement dated March 13, 2007, particularly in paragraph a of Article XIII pertaining to Special Conditions provides that registrant shall not be entitled to PEZA incentives under RA No. 7916.

However, evidence will show that what respondent was alluding to is petitioner's registration agreement[56] as an ECOZONE Developer/Operator and not its registration as a PEZA-registered Ecozone Export Enterprise (EEE).

The evidence adduced by petitioner in support of its claim for refund, as admitted by this Court, pertains to its registration as an EEE under PEZA Certificate of Registration No. 07-33 issued on June 29, 2007.[57] At the time of the procurement of petroleum fuel in 2008 and 2009, petitioner is a PEZA-registered EEE which qualifies it to the incentives provided under RA No. 7916 and its IRR.

Among the incentives granted to a PEZA-registered EEE under Section 23 of RA No. 7916 as amended and Section 1, Rule XV of its IRR, are the following:

> **SEC. 23.** *Fiscal Incentives.* – Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
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> xxx xxx
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> **Rule XV - Incentives to Ecozone Export and Free Trade Enterprises**
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> **SECTION 1**. *Exemption from Duties and Taxes on Merchandise* - **Merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares** of every description **brought into** the ECOZONE Restricted Area **by an ECOZONE Export or Free Trade Enterprise to be** sold, *am*

[56] *Supra.,* Note 51.
[57] *Supra.,* Note 5.

> stored, broken up, repacked, assembled, installed, sorted, cleaned, grade or otherwise **processed**, manipulated, manufacture, mixed with foreign or domestic merchandise **whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations of the Philippines nor to local tax ordinances**... (*Emphasis supplied*)

The afore-quoted legal provisions allow a PEZA-registered EEE to acquire the necessary materials and supplies to be used for its operation without being subjected to any customs duties or internal revenue taxes. And this is what the petitioner has done when it purchased petroleum fuel from PSPC under the Supply Agreement to be used in the manufacture of its glass products for export.

The rationale for extending such tax-and-duty-free incentive to an otherwise local purchase by petitioner is found in the case of *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*,[58] where the Supreme Court ruled that an ECOZONE is treated as a foreign territory, to wit:

> Since the purchases of respondent are not exempt from the VAT, the rate to be applied is zero. Its exemption under both PD 66 and RA 7916 effectively subjects such transactions to a zero rate, because the **ecozone within which it is registered is managed and operated by the PEZA is a separate customs territory**. This means that in **such zone is created the legal fiction of foreign territory**. Under the cross-border principle of the VAT system being enforced by the Bureau of Internal Revenue (BIR), no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. If exports of goods and services from the Philippines to a foreign country are free of the VAT, then the same rule holds for such exports from the national territory -- except specifically declared areas -- to an ecozone. (*Emphasis supplied*)

Thus, any purchases made by a PEZA-registered EEE from a local supplier based outside the ECOZONE are considered importations which should not be subjected to any customs duties or internal revenue taxes.

The *Philphos* case which involved a local supplier of petroleum to an EPZA (former name of PEZA)-based buyer is on

[58] G.R. No. 153866, February 11, 2005.

all fours with the present case. Relevant portions of the ruling of the case are reproduced hereinbelow:

> Section 17 of the EPZA Law particularizes the tax benefits accorded to duly registered enterprises. It states:
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>> SEC. 17. *Tax Treatment of Merchandize in the Zone.* – (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, **supplies, articles, equipment, machineries, spare parts and wares of every description**, except those prohibited by law, brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise **or used whether directly or indirectly in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the following provisions of law to the contrary notwithstanding**. (emphasis supplied)
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> The cited provision certainly covers petroleum supplies used, **directly or indirectly**, by Philphos to facilitate its production of fertilizers, subject to the minimal requirement that these supplies are brought into the zone. The supplies are not subject to customs and internal revenue laws and regulations, nor to local tax ordinances. **It is clear that Section 17(1) considers such supplies exempt even if they are used indirectly**, as they had been in this case.
>
> Since Section 17(1) treats these supplies for tax purposes as beyond the ambit of customs laws and regulations, the arguments of the Commissioner invoking the provisions of the Tariff and Customs Code must fail. Particularly, his point that the importation of the petroleum products by Petron was deemed terminated under Section 1202 of the Tariff and Customs Code, and that the termination consequently barred any future claim for refund under Section 1603 of the same law is misplaced and inconsequential. Moreover, the cited provisions of the Tariff and Customs Code if related to Section 17(1) of the EPZA Law would significantly render the argument strained and, if upheld, obviate many of the benefits granted by Section 17(1), for the provision does not limit the tax exemption only to direct taxes. Following the Commissioner's interpretation, any duly registered enterprise sought to be held liable for the controverted custom's duty because the importer had shifted the duty to the buyer would forever be precluded from challenging the duty, which it is not in the first place obliged to pay under the law. Hand in hand with its patent noxiousness to the spirit of the EPZA Law, the approach calls for the unwarranted application of the Tariff and Customs

> Code to investors and players in the zones, which under the EPZA Law are beyond the reach of domestic customs and tax laws, as well as regulations.

Similarly, in *Commissioner of Customs et al. v. DOLE Philippines, Inc.*,[59] this Court reiterated the ruling in the *Philphos* case, to wit:

> Applying the foregoing doctrine, the Court in Division, therefore, aptly ruled:
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> > "Apparently, respondent Commissioner's denial of the claim on mere technicalities is erroneous **as neither the prescriptive periods nor procedural requirements provided under the Customs laws serve as a bar for claim for refund of duties passed-on to a duly-registered PEZA enterprise pursuant to the pronouncement in Philphos**.
> >
> > Considering that the present claim involves **customs duties passed-on by its supplier** Petron Corporation **for** petitioner's **purchases of petroleum products, which is a form of an indirect tax, and consistent with existing jurisprudence, the party to which the economic burden of the tax is shifted is entitled to claim for refund of tax where the law clearly grants the said party an exemption from both direct and indirect taxes**. More importantly, since the PEZA law clearly provides for tax exemption anent the supplies brought into the zone, *i.e., the merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity, shall not be subject to Customs and internal revenue laws and regulations*, the claim for refund of petitioner deserves consideration by respondent Commissioner." (*Emphasis supplied*)

In the case of *Commissioner of Internal Revenue v. Philippine Associated Smelting and Refining Corporation*,[60] the

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[59] CTA EB Case No. 1142 (CTA Case No. 8409, January 5, 2015.
[60] G.R. No. 186223 dated October 1, 2014.

abovementioned doctrine was also applied by the Supreme Court, to wit:

> The rule that it is the statutory taxpayer which has the legal personality to file a claim for refund finds no applicability in this case. In *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,* the Court distinguished between the kinds of exemption enjoyed by a claimant in order to determine the propriety of a tax refund claim. **"If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax**. On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim."[25] In PASAR's case, Section 17 of P.D. No. 66, as affirmed in *Commissioner of Customs,* specifically declared that supplies, including petroleum products, whether used directly or indirectly, shall not be subject to internal revenue laws and regulations. Such exemption includes the payment of excise taxes, which was passed on to PASAR by Petron. PASAR, therefore, is the proper party to file a claim for refund. (*underscoring supplied*)

Thus, having established the legal bases of the claim for refund, let us now consider the factual support to such claim.

Petitioner presented its Supply Agreements with Pilipinas Shell Petroleum Corporation (PSPC) dated February 22, 2007[61], November 15, 2007[62] and April 8, 2009[63] which show that for the subject period of claim, PSPC agreed to sell, supply and deliver to petitioner its regular fuel oil requirements for its glass plant located in Bo. Pinagbuhatan, Pasig City (Asahi Special Economic Zone). The Supply Agreements state that sales prices shall include the duty, and duty shall mean the prevailing import duty for fuels currently set by the Philippine Government at 3% for regular fuel oil. Further, any additional taxes and/or duties that will be imposed by the government will also be applied to the prices quoted.

Per the Certifications[64] of Manufacture and Delivery Payments of Taxes and Duties issued by PSPC, the details of the quantity in liters of fuel oil purchased and the corresponding

[61] Docket, Vol. II, Exhibit "P-81", Annex C, pp. II-14 to II-30.
[62] *Id.,* Vol. II, Exhibit "P-81", Annex C, pp. II-31 to II-33.
[63] *Id.,* Vol. II, Exhibit "P-81", Annex C, pp. II-34 to II-55.
[64] *Id.,* Vol. XI, Exhibit "P-81", Annex G, pp. XI-28 to XI 48.

customs duties paid by petitioner for the years 2008 and 2009 are as follows:

Invoice Number	Delivery Date	Quantity (In Liters)	Duty Portion (In PHP)	Exhibit Number
Various Invoices	Jan-08	3,180,900	2,130,344.21	P-1254
Various Invoices-Other Products	Jan-08	284,000	190,203.32	P-1255
Various Invoices-Other Products	Feb-08	86,000	61,611.45	P-1256
Various Invoices	Feb-08	54,000	38,686.26	P-1257
Various Invoices	Feb-08	3,732,188	2,673,785.26	P-1258
Various Invoices	Mar-08	70	49.42	P-1259
Various Invoices	Mar-08	1,672	1,180.45	P-1260
Various Invoices	Mar-08	96,000	67,777.26	P-1261
Various Invoices	Mar-08	3,405,409	2,404,263.47	P-1262
Various Invoices-Other Products	Apr-08	82,000	19,217.47	P-1263
Various Invoices	Apr-08	14,454	3,387.43	P-1264
Various Invoices	Apr-08	2,755,003	645,660.87	P-1265
Various Invoices	May-08	288	71.4	P-1266
Various Invoices-Other Products	May-08	150,000	37,189.23	P-1267
Various Invoices	May-08	3,030,032	752,230.32	P-1268
Various Invoices-Other Products	Jun-08	120,000	32,836.69	P-1269
Various Invoices	Jun-08	108	29.55	P-1270
Various Invoices	Jun-08	5,110,575	1,398,453.16	P-1271
Various Invoices	Dec-08	254	76	P-1272
RFO products	Dec-08	207	61.94	P-1273
RFO products	Dec-08	2,767,016	827,953.58	P-1274
Sub-Total		**24,870,176**	**11,285,068.74**	
Various Invoices-RFO and Other Products	Jan-09	3,528,939	1,942,336.52	P-1275
Various Invoices-RFO and Other Products	Feb-09	3,152,531	1,167,489.34	P-1276
Various Invoices-RFO and Other Products	Mar-09	1,916,555	579,851.45	P-1277
Various Invoices-RFO and Other Products	Apr-09	4,746,160	1,265,293.11	P-1278
Various Invoices	May-09	4,056,138	1,184,528.63	P-1279
Various Invoices	Jun-09	3,141,367	1,469,336.72	P-1280
Various Invoices	Jul-09	1,084,682	601,673.12	P-1281
Various Invoices	Aug-09	4,929,655	3,240,209.84	P-1282
Various Invoices	Sep-09	1,790,349	1,157,122.11	P-1283
Various Invoices	Oct-09	2,232,000	1,370,547.27	P-1284
Various Invoices	Nov-09	3,086,325	1,993,426.94	P-1285
Various Invoices	Dec-09	1,983,867	1,317,345.86	P-1286
Sub-Total		**35,648,568**	**17,289,160.91**	
Total		**60,518,744.00**	**28,574,229.65**	

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However, upon examination of the documents[65] supporting the above-stated amounts, the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Leandro M. Lontok of CLTA Accounting, Law and Taxation Services, presented in his supplemental report[66] dated August 24, 2015, a re-computation of the total quantity in liters of fuel oil purchased and the corresponding customs duties paid by petitioner for the years 2008 and 2009, which is reproduced hereunder:

	Quantity (In Liters)			Customs Duty (In PHP)		
	2009	**2008**	**Total**	**2009**	**2008**	**Total**
Based on Documents	35,598,568	21,137,988	56,736,556	17,279,546.00	8,609,901.00	25,889,447.(
Based on Estimate	-	3,478,237	3,478,237	-	2,491,809.00	2,491,809.(
Total	**35,598,568**	**24,616,225**	**60,214,793**	**17,279,546.00**	**11,101,710.00**	**28,381,256.(**

The total amounts of customs duties paid as recomputed above were based on two factors, namely: 1) quantity in liters of fuel oil purchased, and 2) customs duty per liter paid.

Quantity in Liters of Fuel Oil Purchased

The ICPA classified the recomputed customs duties based on the quantity in liters of fuel oil purchased by petitioner as they are supported with documents, to wit[67]:

- *Based on documents* are those supported with sales invoices, delivery notes, official receipts and/or other supplementary evidence.

- *Based on estimate* pertains to purchases supported with official receipt(s) but unsupported with evidence of the actual quantity of liters purchased. The estimated quantity is based on the average quantity in liter per invoice amount. am

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[65] *sales invoices* (Exhibit "P-81", Vols. II to VII, Annex D); *delivery notes, refinery bulk product shipment (RBPS), certificates of quantity delivered (CQD) issued by PSPC and petitioner's receiving and issue slips (RIS) and BFO delivery inspection reports together with the certificates of quantity by Intertek Caleb Brett, an independent appraiser expert in measuring fuel oil* (Exhibit "P-81", Vol. VIII to X); and *official receipts issued by PSPC* (Exhibit "P-81", Vol. XI, Annex F).
[66] Exhibit "P-82", p. 2.
[67] Docket, Vol. I, Exhibit "P-81", p. I-5.

The ICPA stated that the estimated customs duties of ₱2,491,809.00 pertain to the following purchases in February 2008 supported with official receipt dated March 31, 2008 and Certification from PSPC but unsupported with evidence of the actual quantity of liters purchased such as sales invoices, delivery notes and other supplementary evidence:[68]

Invoice No.	**Invoice Date**	**Official Receipt No.**	**Official Receipt Date**	**Amount**
913646021	February 2008	3008[69]	3/31/2008	₱ 5,774,944
913646022				68,546,355
Total				**₱ 74,321,299**

The ICPA computed the estimated quantity in liters of fuel oil purchases in February 2008 related to the aforesaid payment based on the prior month's (January 2008) average quantity in liter per invoice amount and compared the same with that reflected in the Certification issued by PSPC, as shown below:

Total quantity in liters in January 2008	3,464,900
Divided by: Total in invoice amounts in liters in January 2008	74,030,506.00
Quantity in liter per invoice amount	0.0468
Multiply by: Total of Sales Invoices Nos. 913646021 and 913646022	74,321,299.00
Estimated Quantity in liters	**3,478,237**
Quantity in liters per Certification	**3,732,188**

Using the lower or estimated quantity of 3,478,237 liters, the ICPA computed the estimated customs duties of ₱2,491,809.00 as follows:

Estimated Quantity in liters	3,478,237
Customs duty per Liter[70]	₱ 0.7164
Estimated Customs Duties	**₱ 2,491,808.98**

The Court finds that the amount of ₱2,491,809.00 should be disallowed from petitioner's claim since it was based merely on an estimated quantity. While petitioner provided a Certification from PSPC attesting that it has delivered and sold 3,732,188 liters of fuel oil, the same must be corroborated by am

[68] *Id.*, Vol.I, Exhibit "P-81", p. I-13.
[69] *Id.*, Exhibit "P-1234".
[70] Exhibit "P-81", Vol. I, p. I-16.

sales invoices, delivery notes and other documents proving the actual quantity sold and delivered.

It bears stressing that tax refunds, being in the nature of tax exemptions, are construed *strictissimi juris* against the taxpayer and liberally in favor of the Government.[71] Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit. In this case, petitioner failed to discharge this burden with regard to the claimed amount of ₱2,491,809.00.

Customs Duty Per Liter Paid

The ICPA used the customs duty per liter per month reflected in the PSPC's Certifications which were based on the related Import Entry and Internal Revenue Declarations (IEIRDs)[72] filed by PSPC with the Bureau of Customs (BOC) and computed by dividing the total customs duty paid to BOC by the total quantity in liters of imported fuel oil per month, as shown below:

OMonth	**Quantity in Barrels**	**Quantity in Liters (A)**	**Total Customs Duty Amount (B)**	**Customs Duty per Liter (B÷A)**
January 2008	3,147,655	315,724,216	₱ 211,449,984	0.6697
February 2008	Not Determinable	296,303,012	212,275,112	0.7164
March 2008	2,088,382	331,858,000	234,296,106	0.706
April 2008	2,045,522	325,047,216	76,177,873	0.2344
May 2008	800,915	127,270,696	31,553,992	0.2479
June 2008	1,538,158	244,423,587	66,883,851	0.2736
December 2008	1,578,326	250,806,622	75,046,997	0.2992
January 2009	1,975,876	373,995,917	208,011,113	0.5562
February 2009	1,742,773	373,348,807	138,263,748	0.3703
March 2009	1,740,817	375,446,829	113,590,994	0.3025
April 2009	1,520,853	465,534,765	124,108,317	0.2666
May 2009	674,466	161,807,594	47,253,256	0.292
June 2009	1,920,042	305,107,360	142,710,307	0.4677
July 2009	1,843,031	292,563,916	162,457,017	0.5553
August 2009	1,007,145	160,053,485	105,220,409	0.6574

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[71] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008; *Commissioner of Internal Revenue v. A. D. Guerrero, Special Administrator, in substitution of Nathaniel I. Gunn, as Administrator of the Estate of the late Paul I. Gunn*, G.R. No. L-20942, September 22, 1967.

[72] Exhibit "P-81", Vol. XI, Annex H, pp. XI-70 to 242.

September 2009	435,042	69,132,771	44,681,265	0.6463
October 2009	1,833,527	290,883,070	178,615,142	0.614
November 2009	Not Determinable	287,697,245	185,820,819	0.6459
December 2009	Not Determinable	159,936,628	106,205,611	0.664
Total		**5,206,941,736**	**₱ 2,464,621,913**	

However, a scrutiny of the related IEIRDs shows that the following do not have machine validation or BOC official receipt or Statement of Settlement of Duties and Taxes (SSDT) or any other document to prove payment to the BOC of the total amount of customs duties and VAT indicated in thereon:

Exhibit	**Entry No.**
P-1308	364-08
P-1314	609-08
P-1315	610-08
P-1344	784-09
P-1345	786-09
P-1346	91758791
P-1347	91758825
P-1348	91758843
P-1349	95807363
P-1350	99166803
P-1351	99166812
P-1352	99166821
P-1353	99166837
P-1354	99166846
P-1355	99169016
P-1357	99169043
P-1358	99169052
P-1359	99166776
P-1360	99166785
P-1361	99457084
P-1362	173209
P-1363	173309
P-1364	173409
P-1365	173509
P-1366	173609
P-1367	173709
P-1368	173809

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P-1369	101649475
P-1370	101649493
P-1371	101649511
P-1372	101649536
P-1373	2327-09
P-1374	2328-09
P-1375	2329-09

Likewise, it was noted that the second page of IEIRD marked as Exhibit P-1321 was not submitted and the machine validation thereon does not match with the indicated total amount of customs duties and VAT. Also, the IEIRD marked as Exhibit P-1343 has machine validation but is unreadable and IEIRD marked as Exhibit P-1356 has no machine validation and the second page thereof was not submitted.

While, as stated earlier, the Supply Agreements prove that the fuel prices charged by PSPC against petitioner included the customs duties imposed on the imported fuel oil, petitioner must also establish that PSPC actually paid the said customs duties to the BOC. Thus, for petitioner's failure to prove that the customs duties covered by the aforementioned IEIRDs were remitted to the BOC, petitioner's claim must be reduced by an amount of ₱13,668,201.66, as computed below:

			Per PSPC's Certification				*Per ICPA Report (Exh. "P-81", Vol. I)*			
				PSPC's Crude Oil Importation						
	IEIRD			**Quantity In Liters**						
Period of Claim	**Exh**	**Entry No.**	**Exhibit**	**Per IEIRD (a)**	**Total Importa-tion (b)**	**% to Total Impor-Tation c=(a/b)**	**Page No.**	**Total Deliveries to Petitioner In Liters (d)**	**Duty/ Liter (In PHP) (e)**	**Disallowed Customs Duties (In PHP) f=(c) x (d) x (e)**
April 2008	P-1308	364-08	P-1263 to P-1265	81,045,238	325,047,216	25%	I-26 to I-31	2,851,457	0.2344	166,650.06
May 2008	P-1314	609-08	P-1266 to P-1268	47,803,748						
May 2008	P-1315	610-08		79,466,948						
				127,270,696	127,270,696	100%	I-31 to I-36	3,180,320	0.2479	788,401.33
June 2008	P-1321	733-08	P-1269 to P-1271	14,665,339	244,423,587	6%	I-36 to I-42	5,230,683	0.2736	85,866.45
April 2009	P-1343	95806961	P-1278	142,089,704	465,534,765	31%	I-52 to I-55	4,746,160	0.2666	386,200.06

May 2009	P-1344	784-09	P-1279	79,173,690						
May 2009	P-1345	786-09		82,633,904						
				161,807,594	161,807,594	100%	I-55 to I-58	4,056,138	0.2920	1,184,392.30
June 2009	P-1346	91758791		66,125,831						
June 2009	P-1347	91758825	P-1280	79,483,191						
June 2009	P-1348	91758843								
June 2009	P-1349	95807363		159,498,338						
				305,107,360	305,107,360	100%	I-58 to I-61	3,141,367	0.4677	1,469,217.35
July 2009	P-1350	99166803								
July 2009	P-1351	99166812		169,945,281						
July 2009	P-1352	99166821	P-1281							
July 2009	P-1353	99166837		83,534,092						
July 2009	P-1354	99166846		39,384,543						
				292,863,916	292,863,916	100%	I-61 to I-62	1,084,682	0.5553	602,323.91
Aug. 2009	P-1356	99169025		150,530,664						
Aug. 2009	P-1355	99169016								
Aug. 2009	P-1357	99169043	P-1282	137,462,503						
Aug. 2009	P-1358	99169052								
				287,993,167	287,993,167	100%	I-62 to I-66	4,929,655	0.6574	3,240,755.20
Sept. 2009	P-1359	99166776		16,587,398						
Sept. 2009	P-1360	99166785	P-1283	41,432,412						
Sept. 2009	P-1361	99457084		11,112,961						
				69,132,771	69,132,771	100%	I-66 to I-67	1,790,349	0.6463	1,157,102.56
Oct. 2009	P-1362	173209								
Oct. 2009	P-1363	173309								
Oct. 2009	P-1364	173409		150,551,464						
Oct. 2009	P-1365	173509	P-1284							
Oct. 2009	P-1366	173609								
Oct. 2009	P-1367	173709		75,455,691						
Oct. 2009	P-1368	173809		64,875,915						
				290,883,070	290,883,070	100%	I-67 to I-75	2,914,325	0.6140	1,789,395.55

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Nov. 2009	P-1369	101649475		75,847,132						
		101649527								
Nov. 2009	P-1370	101649493	P-1285	61,661,625						
Nov. 2009	P-1371	101649511		150,188,488						
Nov. 2009	P-1372	101649536								
				287,697,245	287,697,245	100%	I-75 to I-86	2,354,000	0.6459	1,520,448.60
Dec. 2009	P-1373	2327-09		33,666,548						
Dec. 2009	P-1374	2328-09	P-1286	49,795,136						
Dec. 2009	P-1375	2329-09								
		2325-09		76,474,945						
				159,936,629	159,936,628	100%	I-86 to I-89	1,923,867	0.6640	1,277,447.70
								38,203,003		13,668,201.66

In sum, petitioner has sufficiently proven its entitlement to a refund in the amount of ₱12,413,239.49 representing customs duties paid on its purchases of fuel oil from PSPC covering the period of January 1, 2008 to December 31, 2009, computed as follows:

Amount of claimed customs duties		₱ 28,573,250.15
Less:	Disallowances	
	a) Customs duties based on estimated quantity of fuel liters purchased	₱ 2,491,809.00
	b) Customs duties pertaining to IEIRDs without machine validation or any other proof of payment to the BOC of the total customs duties and excise taxes indicated in the IEIRDs	13,668,201.66
	Total Disallowances	₱ 16,160,010.66
Refundable customs duties		**₱ 12,413,239.49**

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**, and accordingly, respondent is **ORDERED** to **REFUND OR ISSUE TAX CREDIT CERTIFICATE** in the amount of **TWELVE MILLION FOUR**

HUNDRED THIRTEEN THOUSAND TWO HUNDRED THIRTY NINE & 49/100 PESOS (Php12,413,239.49).

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice