REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

## ***EN BANC***

| | |
|---|---|
| LITTLEGIANT STEEL PIPE CORPORATION,<br>*Petitioner,*<br><br>-versus-<br><br>COMMISSIONER OF INTERNAL REVENUE,<br>*Respondent.* | **C.T.A. E.B. NO. 141**<br>**(C.T.A. CASE NO. 6203)** |

x ---------------------------------------------- x

| | |
|---|---|
| COMMISSIONER OF INTERNAL REVENUE,<br>*Petitioner,*<br><br>-versus-<br><br>LITTLEGIANT STEEL PIPE CORPORATION,<br>*Respondent.* | **C.T.A. E.B. NO. 142**<br>**(C.T.A. CASE NO. 6203)**<br><br>Present:<br><br>ACOSTA, Presiding Justice,<br>CASTAÑEDA, JR.,<br>BAUTISTA,<br>UY,<br>CASANOVA, and<br>PALANCA-ENRIQUEZ, JJ.<br><br>**Promulgated:**<br>OCT 23 2006 GHpabinario |

x------------------------------------------------------------------------------------------------x

# DECISION

**PALANCA-ENRIQUEZ, J.:**

## THE CASES

Before the Court are consolidated Petitions for Review separately filed by Littlegiant Steel Pipe Corporation (hereafter "petitioner

Littlegiant") and the Commissioner of Internal Revenue (hereafter "petitioner Commissioner of Internal Revenue") which seek the review of the Decision dated July 19, 2005 of the First Division of this Court in C.T.A. Case No. 6203, entitled "Littlegiant Steel Pipe Corporation vs. Commissioner of Internal Revenue", denying the Petition for Review filed by Littlegiant and the Resolution dated October 28, 2005 denying both Littlegiant's "Motion For Reconsideration" and Commissioner of Internal Revenue's "Motion For Partial Reconsideration". The respective dispositive portions of the Decision and Resolution read as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby ***DENIED***. The deficiency assessments for income and value-added taxes are hereby ***UPHELD*** but in reduced amounts, computed as follows:

| | Basic | Interest | Total |
|---|---|---|---|
| Deficiency Income Tax (ST-INC-97-0160-2000) | P2,530,682.57 | P610,122.26 | P3,140,804.83 |
| Deficiency Value-Added Tax (ST-VAT-97-0159-2000) | 195,079.57 | 168,429.35 | 363,508.92 |
| Totals | P2,725,762.14 | P778,551.61 | P3,504,313.75 |

> Accordingly, petitioner is **ORDERED** to **PAY** the respondent the aggregate amount of P3,504,313.75, plus 20% delinquency interest per annum from February 21, 2000 until fully paid, pursuant to Section 249 of the National Internal Revenue Code of 1993. In addition, a fine of three hundred pesos (P300.00) is imposed for violation of the Bookkeeping Regulations.

**SO ORDERED.**"

"WHEREFORE, finding no compelling reason to alter or modify the rulings reached in the assailed decision, the Motions For Partial Reconsideration of respondent and petitioner are hereby DENIED for lack of merit. The pronouncement reached in the assailed decision is REITERATED.

SO ORDERED."

## THE FACTS

In their "Joint Stipulation of Facts" the parties agreed as follows:

1. Petitioner Littlegiant Steel Pipe Corporation is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It may be served with summons and other court processes through its counsel;

2. Respondent Commissioner of Internal Revenue is the public officer authorized under the National Internal Revenue Code of 1997 ( the "Tax Code") to examine any taxpayer and to assess the correct amount of internal revenue tax. He may be served with summons and other court processes at the Bureau of Internal Revenue (BIR), National Office Building, Diliman, Quezon City;

3. On July 1998, Respondent served Letter of Authority No. 000018424 on Petitioner authorizing the examination of its [Petitioner's] books of accounts and other accounting records for "all internal revenue taxes" for "1997 & unverified prior years," a true copy of which is attached in the Petition as Annex "A" and made an integral part thereof;

4. In the course of the examination, documents requested by Respondent were submitted by Petitioner and formed part of BIR records;

5. Respondents issued two (2) undated assessment notices with an accompanying demand letter and an explanation of the deficiency tax assessments. The assessment notices (the "Assessments") indicate deficiency in income tax and value-added taxes in the aggregate amount of P140,958,961.72, inclusive of increments, as follows:

| | Basic Tax | Interest | Compromise Penalty | Total |
|---|---|---|---|---|
| **Deficiency Income tax ST- Income-97-0160-2000** | **P 76,635,252.15** | **P 2,142,909.11** | **P25,000** | **P95,136,628.27** |
| **Deficiency value-added tax SV-VAT-97-0159-2000** | **30,196,045.36** | **15,601,288.09** | **25,000** | **45,822,333.45** |
| **TOTALS** | **P106,831,297.51** | **P34,077,664.21** | **P 50,000** | **P140,958,961.72** |

Copies of the assessment notices, demand letter, and explanation of the deficiency tax assessments are attached as Annexes "B", "C", "D" and "E", respectively, and made integral parts thereof;

6. In a letter dated February 21, 2000 received by respondent, petitioner through its counsel protested the Assessment by requesting for reconsideration thereof (the "Protest"), a true copy of which is attached in the Petition as Annex "F" and made an integral part thereof;

7. In a letter dated 24 April 2000 which was received by respondent on even date, Petitioner stated that it submitted all relevant documents in support of the Protest and manifested that its Protest dated 21 February 2000 and those documents previously submitted to the BIR examiners which formed part of the BIR records, as constituting all relevant supporting documents of the protest in compliance with Section 228 of the Tax Code. A true copy of this letter was attached thereto as Annex "G" and made an integral part thereof;

8) To date, no decision has been made by Respondent on the Protest, notwithstanding one hundred eighty (180) days has passed since the filing of the documents of 24 April 2000. Consequently, to be well within the 30-day period from the earlier 180-day period given to the Respondent to decide the Protest, the Petition for Review was filed for the purpose of having the assessment cancelled/or withdrawn.

In his Answer filed on January 16, 2001, respondent Commissioner of Internal Revenue alleged, by way of special and affirmative defenses, that in September 1997, petitioner Littlegiant Steel Pipe Corporation sold to Milwaukee Industries Corporation, an affiliate, 21,448 metric tons of hot rolled steel coils valued at P193,032,000.00, the proceeds of which were not recorded in petitioner's books of account, hence constituting undeclared income for income tax purposes and undeclared sales for value added tax (VAT) purposes; the amount of P12,444,701.84 claimed as miscellaneous expense/exchange rate differential is not allowable because the liabilities under Trust Receipt Payable were restated by debiting Miscellaneous Expense-Exchange Rate Differential and crediting Trust Receipt Payable; petitioner availed of the Voluntary Assessment Program (VAP) by paying VAT of P61,900.00 and income tax of P216,650.00 or sales of P619,000.00 and in the same series of entries, imported purchases of P1,295,759.00 were debited with corresponding credit to cash for the same amount; this additional cost adjustment of P1,295,759.00 against the cost of P619,000.00 on which the VAT and income tax were paid through the VAP is not allowable because it would negate the effect of the VAP; discounts granted after sales in the amount of P1,245,823.76, while allowable for income tax purposes, are not allowable for VAT purposes pursuant to *Section 100 (b) (3) of the 1997 Tax Code and Section 6 of Revenue Regulations No. 5-87*; export sales amounting to P1,727,504.38 are not supported by documents; undeclared sales traceable to unrecorded imported purchases amounted to P70,403,242.00, and the amounts were issued in accordance with law and regulations.

After trial on the merits, the First Division rendered the assailed Decision on July 19, 2005, in the terms earlier set forth.

On August 8, 2005, petitioner Littlegiant filed its "Motion For Reconsideration".

On August 11, 2005, petitioner Commissioner of Internal Revenue filed his "Motion For Partial Reconsideration", to which petitioner Littlegiant filed its "Comment And/or Opposition To Respondent's Motion For Partial Reconsideration" on September 26, 2005.

On October 28, 2005, the First Division denied both petitioner Littlegiant's "Motion For Reconsideration" and petitioner Commissioner of Internal Revenue's "Motion For Partial Reconsideration" for lack of merit.

Not satisfied, both Littlegiant Steel Pipe Corporation and Commissioner of Internal Revenue filed separate Petitions for Review docketed as C.T.A. E.B. No. 141 and C.T.A. E.B. No. 142, respectively.

*C.T.A E.B. No. 141*
*(Appeal of Petitioner Littlegiant)*

On January 20, 2006, We required respondent Commissioner of Internal Revenue to file his comment on the petition, within ten (10) days from notice.

On February 15, 2006, respondent Commissioner of Internal Revenue filed his "Comment (Re: Petition For Review)".

On February 28, 2006, We ordered both parties to file their simultaneous memoranda, within fifteen (15) days from notice.

On February 27, 2006, petitioner Littlegiant filed a "Manifestation" stating:

> "1. On 20 February 2006, petitioner voluntarily paid the 1997 deficiency income tax and value added tax to the extent of ₱769,023.27 plus 20% delinquency interest *per annum* in the amount of ₱922,872.92, or a sum total of ₱1,691,851.19, computed based on the Decision of the First Division of the Court of Tax Appeals dated 19 July 2005 as reiterated in the Resolution promulgated on 28 October 2005.

2. The payment was made by depositing to Respondent's BTR-BIR account at Land Bank of the Philippines, Cainta Branch, Manager's Check No. 18143 amounting to P1,691,851.19 drawn from International Exchange Bank, Pasong Tamo Branch. A copy of the BIR payment Form 0605 (approved by the OIC- Asst. Revenue District Officer on 17 February 2006), the attached computation thereto and the BIR Tax Payment Deposit Slip are attached herewith as Annexes "A", "A-1" and "B" respectively.

3. By paying the above amount, the following assignment of errors raised in the Petition for Review *en Banc* filed by Petitioner on 9 December 2005 are deemed withdrawn:

> 'B. WHILE THE HONORABLE FIRST DIVISION OF THE CTA WAS CORRECT IN FINDING THAT PETITIONER SHOULD NOT BE ASSESSED FOR ALLEGED UNRECORDED SALES, IT OVERLOOKED THE FACT THAT PETITIONER IS NOT LIABLE FOR DEFICIENCY INTEREST ON VAT LIABILITY ON CANCELLED SALES TO MILWAUKEE.
>
> C. THAT PETITIONER IS NOT LIABLE FOR 10% VAT ON EXPORT SALES HAS BEEN OVERLOOKED BY THE HONORABLE FIRST DIVISION OF THE CTA.

4. Consequently, the remaining issue to be resolved in the Petition for Review *en banc* is the assignment of error on the disallowed exchange rate differential to wit:

> 'A. THE HONORABLE FIRST DIVISION OF THE CTA FAILED TO CONSIDER THAT THE CONVERSION FROM US-DOLLAR DENOMINATED LETTERS OF CREDIT UNDER TRUST RECEIPT (LC/TRS) INTO PESO DENOMINATED OBLIGATION HAS BEEN PROPERLY SUBSTANTIATED.'"

On March 6, 2006, We ordered respondent Commissioner of Internal Revenue to comment on the above "Manifestation", within ten (10) days from notice.

Despite notice, respondent has failed to file his Comment, thus petitioner Littlegiant's said Manifestation dated February 27, 2006 is noted.

On March 22, 2006, petitioner Littlegiant filed its "Memorandum".

To date, despite notice petitioner Commissioner of Internal Revenue has failed to file his Memorandum.

*C.T.A. E.B. No. 142*
*(Appeal of Commissioner*
*of Internal Revenue)*

Upon motion, petitioner Commissioner of Internal Revenue was granted a non-extendible period of 15 days until December 12, 2005 within which to file his Petition For Review.

On December 12, 2005, petitioner Commissioner of Internal Revenue filed a "Motion For Extension of Time To File Petition For Review" praying for five (5) days from December 11, 2005, within which to file his Petition For Review.

On December 15, 2005, petitioner Commissioner of Internal Revenue filed his "Petition For Review".

On December 23, 2005, We directed petitioner Commissioner of Internal Revenue to file a Motion To Admit Petition For Review, within five (5) days from notice.

On January 19, 2006, petitioner Commissioner of Internal Revenue filed a "Manifestation and Motion" praying for the admission of his Petition For Review.

On March 14, 2006, We granted the said "Manifestation and Motion", and admitted the Petition For Review, and ordered respondent Littlegiant to comment thereto, within ten (10) days from notice.

On March 31, 2006, respondent Littlegiant filed its "Comment (to Petition For Review dated 9 December 2005)."

On September 15, 2006, pursuant to *Section 1, Rule 31 of the 1997 Rules of Civil Procedure, as amended*, We ordered the consolidation of C.T.A. E.B. No. 142 with C.T.A. E.B. No. 141, the case bearing the lower docket number.

The parties having filed their respective Comments to each other's petition, and petitioner Littlegiant having filed its Memorandum, the consolidated petitions are now deemed submitted for resolution.

*Petitioner Littlegiant's Assigned Error*

As stated in petitioner Littlegiant's "Manifestation" filed on February 27, 2006, the second and third issues raised in its Petition For Review are deemed withdrawn and the remaining issue to be resolved is –

> THE HONORABLE FIRST DIVISION OF THE CTA FAILED TO CONSIDER THAT THE CONVERSION FROM US-DOLLAR DENOMINATED LETTERS OF CREDIT UNDER TRUST RECEIPTS (LC/TRs) INTO PESO DENOMINATED OBLIGATION HAS BEEN PROPERLY SUBSTANTIATED.

*Petitioner Commissioner of Internal Revenue's Assigned Error*

For his part, petitioner Commissioner of Internal Revenue anchors his petition on the following sole ground:

> THE FIRST DIVISION OF THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE SALES BETWEEN PETITIONER AND ITS AFFILIATE, MILWAUKEE INDUSTRIES CORPORATION OF 21,448 METRIC TONS OF HOT ROLLED COILS VALUED AT P193,032,000.00 WAS CANCELLED.

*Principal Issues To Resolve*

The foregoing grounds raised by both parties boil down to the following issues:

1) whether or not the First Division of this Court failed to consider that the conversion from US-dollar denominated Letters of Credit Under Trust Receipts (LC/TRs) into peso denominated obligation has been properly substantiated; and

2) whether or not the First Division erred in holding that the sales between petitioner and its affiliate, Milwaukee Industries Corporation, of 21,448 metric tons of hot rolled coils valued at P 193,032,000.00 was cancelled.

## THE COURT *EN BANC'S* RULING

Both petitions lack merit.

*C.T.A. E.B. No. 141*
*Petitioner Littlegiant's*
*Arguments*

Petitioner Littlegiant contends that while the First Division is correct in finding that it sustained in 1997 forex losses on its dollar-denominated LC/TRs paid during the same year, it failed to consider that petitioner also incurred forex losses during the same year upon conversion of the two (2) LC/TRs, under the accrual method of accounting.

It further contends that while the First Division is correct in finding that forex losses amounting to P1,305,828.36 from the three (3) LC/TRs

(96-7005, 97-1080 and 97-0563) were sustained by petitioner in 1997 and are proper deductions from gross income, the First Division overlooked certain points when it disallowed P6,296,984.90 as deduction from gross income, particularly P5,972,071.00 thereof.

Petitioner Littlegiant also posits that although a portion of the converted LC/TRs were paid in 1998, the amount of P5,972,071.00 forms part of the forex losses of P6,387,000.00 incurred by petitioner in 1997 as a result of the conversion into peso-denominated obligation of the two (2) dollar-denominated LC/TRs (i.e., 96-7005 and 97-0563).

| LC/TR No. | Outstanding Balance in US$ | Forex Rate at Opening | Forex Rate at Conversion | Forex Rate Differential | Forex Loss/Gain |
|---|---|---|---|---|---|
| 96-7005 | 430,000.00 | 26.20 | 37.900 | 11.640 | 5,005,200.00 |
| 97-0563 | 120,000.00 | 26.385 | 37.900 | 11.515 | 1,381.800.00 |
| **TOTAL** | **550,000.00** | | | | 6,387,000.00 |

The amount of P 5,972,071.00 represents the balance of forex losses incurred upon conversion of the LC/TRs after partial payment in 1997 and the same was determined following the computation below:

| | |
|---|---|
| Forex losses from the 3 LC/TRs in 1997 | P 7,277,899.00 |
| Less: Paid in 1997 and allowed as deduction | 1,305,828.00 |
| **Balance** | **P 5,972,071.00** |

Gel

It further contends that the findings of the First Division that the conversion from US-dollar-denominated LC/TRs to peso-denominated obligation were undocumented, and that the testimony of petitioner's witness and the certification issued by RCBC as to conversion of US-dollar to peso-denominated obligation in December 1997 is lacking of details, it failed to consider that the fact of conversion of LC/TRs 96-7005 and 97-0563 into peso-denominated obligation can be proven not through Peso Trust Receipts Statements alone, it can also be proven by a recital of the contents in an authentic document or by the recollection of the witnesses.

Petitioner Littlegiant's contention cannot be sustained.

The fact of the conversion from US-dollar denominated LC/TRs to peso denominated obligation is an affirmative averment, the *onus probandi* on which falls on petitioner Littlegiant's shoulder. The duty of showing to our satisfaction that such a conversion actually took place devolves upon it. The only evidence presented by the petitioner to prove the fact of conversion is the testimony of its witness, Benson J. Hari-Ong, Vice President of the Account Management Division of the Rizal Commercial Banking Corporation (hereafter "RCBC"), Binondo Branch, who certified and testified that the "peso trust receipt statements and/or other documents covering the conversion transaction can no longer be located in their records". This bare assertion cannot be accepted because it is unsatisfactory and unconvincing, being inherently improbable. The conversion of the dollar-denominated obligations into peso-denominated obligations is a transaction peculiar to the banking business. Banks, being greatly affected with public interests are expected to exercise a degree of diligence in the handling of its affairs higher than that expected of an ordinary business firm (*Lim Sio Bio vs. Court of Appeals, 221 SCRA 307, 316; Aguirre, Jr. vs. De Castro, 321 SCRA 94*). The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. It is also its obligation to see to it that all transactions are duly posted and recorded in its ledgers. In computerized systems of account, ways and means are available whereby bank transactions and accounts are properly recorded. We, therefore, cannot accept petitioner's claim that the peso trust receipts statements and other documents covering the conversion transaction can no longer be located in the RCBC's records.

We quote the First Division at this juncture:

> "The controversy now lies with the remaining balance of P6,296,984.90 (P12,444,701.84 less P6,147,716.94)

which was allegedly sustained by petitioner during the year 1997 under accrual method.

After a careful scrutiny of the documents relative to the claimed deduction, the Court is not convinced that the amount of P6,296,984.90 was sustained during the year 1997. The testimony of petitioner's witness is wanting of corroborative documents. The Certification issued by RCBC as to conversion of US$ to Peso denominated obligation in December 1997 is lacking of details. In addition, as noted by the commissioned independent CPA, the above amount was not supported by Peso Trust Receipts Statements."

Petitioner Littlegiant having failed to present any cogent reason to convince Us to disregard the findings of the First Division, We affirm said findings and conclusion of the First Division.

*C.T.A. E.B. No. 142*
*Petitioner Commissioner of*
*Internal Revenue's Arguments*

On the other hand, petitioner Commissioner of Internal Revenue contends that the dates of the checks issued by Littlegiant in favor of Milwaukee as reimbursement of the amounts drawn on the Letters of Credit (LC's) are the same dates the LC's were opened. Hence, when the checks were deposited with the RCBC, Milwaukee's liability under the LC's was extinguished.

Petitioner Commissioner of Internal Revenue further contends that the BIR examiners found that the delivery receipts issued by Littlegiant to

Milwaukee do not belong to the series used in 1997. Only pro-forma invoices were used to cover the sales instead of regular invoices.

He further argues that the agreement between Littlegiant and Milwaukee contained in a letter dated October 8, 1997 to cancel the sales does not negate the fact that the sale actually occurred.

Littlegiant, on the other hand, maintains that the delivery and drawings of the LCs were erroneous being based on the understanding of the parties. The alleged unrecorded sales were not even perfected there being no meeting of minds between the parties. There being no perfected contract of sale, there is no consummated sale either.

We rule for Littlegiant.

The letter dated October 8, 1997 of Milwaukee Industries Corporation to Littlegiant clearly shows that the parties agreed to cancel the sales. The said letter reads as follows:

"October 8, 1997

LITTLEGIANT STEEL PIPE CORPORATION
F.P. Felix Avenue, Cainta, Rizal

Attention: Mr. Nazarito Fua
Plant Manager
Re: Hot Rolled Steel Coils

ael

Gentlemen:

We write to confirm our agreement on the matter. To prevent litigation and by way of compromise, we agreed on the following:

(1) Milwaukee will be returning the hot rolled steel coils. Littlegiant deliver under Delivery Receipts Nos. 16872, 17915, 17918, 17952, 17857, 179556, 179652, and 179673 on September 8 to 26, 1997. Wilwaukee shall be able for returning the cost of returning the same. Milwaukee confirms receipt through Rizal Commercial Banking Corporation (RCBC) check nos. 651119, 651142, 651143 and 651179 totalling 193,032,000.00 (in pesos) of drawing erroneously made by Littlegiant on RCBC Letters of Credit BFX109LC9700D4233,BFX103LC9700D4236,FBX109LC9700D4238, and BFX109LC9700D4241;

(2) Milwaukee and Littlegiant shall release, remiss and forever discharge each other, their officers, employees, agents and successors-in-interest from any action, sum of money or other obligations arising from or in connection with the above-referenced matter.

If the foregoing reflects our agreement, kindly signify your signature by signing the space provided below.

Very truly yours,

(Sgd.) Philip Go
Milwaukee Industries Corporation

Conforme:

(Sgd.) Nazarito Fua
Littlegiant Steel Pipe Corporation" (*Exhibit "KKKKKK"*)

Considering that the sales in question were cancelled by the parties, the assessment for the undeclared sales has no factual and legal basis, and should therefore be cancelled.

As aptly ruled by the First Division:

> "Likewise, to prove that petitioner returned the proceeds of the LCs in the sum of P193,032,000.00, four checks in favor of Milwaukee Industries Corporation were offered as evidence to the Court, to wit:

| Date | Check No. | Exh. | Amount | Date | LC No. | Exh. | Amount |
|---|---|---|---|---|---|---|---|
| 09/26/97 | 651119 | A,A-1 | P 52,020,000.00 | 09/26/97 | BFX109LC9700D4233 | F | P 52,020,000.00 |
| 09/30/97 | 651142 | B,B-1 | 54,000,000.00 | 09/30/97 | BFX103LC9700D4236 | G | 54,000,000.00 |
| 10/02/97 | 651143 | C,C-1 | 47,007,000.00 | 10/02/97 | BFX109LC9700D4238 | H | 47,007,000.00 |
| 10/06/97 | 651179 | D,D-1 | 40,005,000.00 | 10/06/97 | BFX109LC9700D4241 | I | 40,005,000.00 |
| | | | P193,032,000.00 | | | | P193,032,000.00 |

> Moreover, the deliveries of the returned hot rolled steel coils to petitioner by Milwaukee were supported by the following documents:

| Date | Exh. | Covered by DR No. | Weight in MT | Amount |
|---|---|---|---|---|
| 10-13-97 | Z | 179652 | 2,222.50 | P 20,002,500.00 |
| 10-16-97 | AA | 179673 | 2,222.50 | 20,002,500.00 |
| 10-20-97 | BB | 16872 | 2,890.00 | 26,010,000.00 |
| 10-23-97 | CC | 17857 | 2,890.00 | 26,010,000.00 |
| 10-27-97 | DD | 17952 | 2,611.50 | 23,503,500.00 |
| 10-29-97 | EE | 179556 | 2,611.50 | 23,503,500.00 |
| 11-02-97 | FF | 17918 | 3,100.00 | 27,900,000.00 |
| 11-05-97 | GG | 17915 | 2,900.00 | 26,100,000.00 |
| | Total | | 21,448.00 | P193,032,000.00 |

> We find the above documentary evidence of petitioner sufficient to support its explanation that indeed its sales to Milwaukee Industries corporation of hot rolled steel coils were cancelled.

> We are also convinced that the unrecorded sales were cured by the unrecorded sales returns emanating from the cancelled sales. In fact, the examiners additionally noted that the proceeds of sales were not recorded by petitioner. This means that while petitioner drew the LCs, it did not record the amount encashed, denoting petitioner's intention not to reflect the whole cancelled sale transaction.
>
> Hence, there is no reason for the petitioner to be assessed for undeclared sales because the said sales were cancelled."

In the light of the laws and jurisprudence on the matter, We see no reason to reverse the assailed Decision dated July 19, 2005 and Resolution dated October 28, 2005.

**WHEREFORE,** premises considered, both petitions are hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**.

SO ORDERED.

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Justice

**JUANITO C. CASTANEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

# C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

**ERNESTO D. ACOSTA**
Presiding Justice