**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES), LTD.,
*Petitioner,*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
*Respondent.*

CTA EB No. 1804
(CTA CASE No. 9015)

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COMMISSIONER OF INTERNAL REVENUE,
*Petitioner,*

-versus-

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES), LTD.,
*Respondent.*

CTA EB No. 1805
(CTA CASE No. 9015)

*Present*:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
APR 29 2019 3:10 pm

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**DECISION**

***MINDARO-GRULLA, J.:***

Submitted for decision on September 5, 2018, are the Petitions for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax*

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[1] SEC. 4. *Where to appeal; mode of appeal. –*

*Appeals (RRCTA), as amended,* of the Decision, in the case entitled *Maersk Global Services Centres (Philippines) Ltd. vs. Commissioner of Internal Revenue,* docketed as CTA Case No. 9015, dated November 17, 2017,[2] and the Resolution dated February 14, 2018,[3] both rendered by the Former Third Division of this Court, the dispositive portions of which read as follows:

> <u>CTA Case No. 9015:</u>
> <u>Decision dated November 17, 2017:</u>
>
> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P13,446,412.82, representing unutilized excess input VAT attributable to its zero-rated sales for the four quarters of CY 2013.
>
> **SO ORDERED.**"
>
> <u>CTA Case No. 9015:</u>
> <u>Resolution dated February 14, 2018:</u>
>
> "**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration (of Decision promulgated on November 17, 2017)** and respondent's Motion for Reconsideration are **DENIED** for lack of merit.

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by former Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino, *En Banc* no. 1804 Docket, pp. 32-54.
[3] *Ibid.*, pp. 56-63.

**SO ORDERED.**"

The facts of the case, as recited by the former Third Division in its Decision, read as follows:

> "Petitioner Maersk Global Services Centres (Philippines), Ltd. is a foreign corporation, duly organized and existing under the laws of Hong Kong and licensed to do business in the Philippines. Its principal office is at the 29th Floor, Wynsum Corporate Plaza, F. Ortigas Jr. Road, Ortigas Center, Pasig City. It is also registered with the Bureau of Internal Revenue (BIR) as a VAT entity with Certificate of Registration No. 3RC0000466671 dated August 24, 1998.
>
> Petitioner renders corporate and administrative services for the ocean transportation business of its foreign affiliate, A.P. Moller-Maersk A/S ("APMM" for brevity).
>
> On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office, including among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Petitioner flied its amended Quarterly VAT Returns for CY 2013 on the following dates:

| Quarter | Date of Filing |
|---|---|
| $1^{st}$ | February 14, 2014 |
| $2^{nd}$ | February 19, 2014 |
| $3^{rd}$ | February 19, 2014 |
| $4^{th}$ | February 19, 2014 |

> On November 4, 2014, petitioner filed with the Department of Finance One-Stop Shop Inter-agency Tax Credit and Duty Drawback Center ("DOFOSS" for brevity) an application for tax refund in the total

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amount of P29,950,760.67. Petitioner submitted supporting documents in relation to its claim for VAT refund together with its application.

Subsequently, pursuant to the mandatory audit-claim for VAT credit certificate, respondent issued Letter of Authority No. LOA-411-2014-00000140 dated November 10, 2014, which was received by petitioner on December 5, 2014.

On March 23, 2015, petitioner filed the instant Petition for Review.

xxx xxx xxx"

The former Third Division ruled that Maersk Global Services Centres (Philippines) Ltd. (Maersk-GSCPL) was able to prove that it is a VAT-registered entity and that its sale of services to APMM qualify for VAT zero-rating pursuant to Section 108(B)(4)[4] of the 1997 National Internal Revenue Code (NIRC), as amended. However, upon scrutiny of the official receipts (ORs) submitted by Maersk-GSCPL, the Court in Division found out that the ORs issued from July to December 2013 do not bear the words "zero-rated sale," and ruled to be in violation of the invoicing requirements prescribed by Section 113 of the NIRC, to wit:

"SEC. 113. *Invoicing and Accounting Requirements for VAT Registered Persons.-*

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[4] "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

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(B) *Transaction Subject to Zero Percent (0%) Rate.* – **The following services performed in the Philippines by VAT registered persons shall be subject to zero-percent (0%) rate:**

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(4) **Services rendered to persons engaged in international shipping** or international air transport operations, including leases of property for use thereof." (Emphases in the assailed Decision.)

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**(A)** *Invoicing Requirements.* - **A VAT-registered person shall issue:**

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

**(2) A VAT official receipt for every** lease of goods or properties, and for every **sale**, barter or exchange **of services.**

**(B)** *Information Contained in the VAT Invoice or VAT Official Receipt.* - **The following information shall be indicated in the VAT invoice or VAT official receipt:**

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

(a) The amount of the tax shall be shown as separated item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term 'VAT -exempt sale' shall be written or printed prominently on the invoice or receipt

(c) **If the sale is subject to zero-percent (0%) value-added tax, the term 'zero-rated sale'**

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**shall be written or printed prominently on the invoice or receipt;**

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT - exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt; *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT -registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client." (Emphases in the assailed Decision.)

Thus, the Court in Division denied the sales from July to December 2013 for being supported by ORS without the words "zero-rated sale" written or imprinted therein.

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Both parties filed their Motions for Reconsideration.[5] Maersk-GSCPL assailed in its Motion that the ORs for its export sales of services from July to December 2013 bear the pre-printed words "zero-rated sales," and were printed and issued strictly in compliance with the new invoicing requirements and format prescribed under Revenue Regulations (RR) No. 18-2012 and Revenue Memorandum Order (RMO) No. 12-2013. It asserts that the change in format of its ORs, which started on July 1, 2013, was to comply with the CIR's implementation of new invoicing requirements and invoice format under RR No. 18-2012 and RMO No. 12-2013. It further contends that in the sample ORs found in Annexes C.1.1 and C.1.2 of RMO No. 12-2013, which it claims was followed essentially by the accredited printer authorized by the CIR to print its ORs, the words "zero-rated sales" are printed in the same prominence as "VATable sales" and "VAT Exempt sales". In addition, assuming that the new invoicing requirements and new OR format prescribed under RR No. 18-2012 and RMO No. 12-2013 are not compliant with Section 113 of the Tax Code, the doctrine of equitable estoppel applies.

The CIR on the other hand, avers in his motion that APMM is doing business in the Philippines and has removed itself from being engaged in international shipping since its vessels ply Philippine ports. Thus, the CIR contends that Maersk-GSCPL's transactions with APMM are not zero-rated sales.

In its comment to the CIR's motion, Maersk-GSCPL points out that as an entity engaged in international shipping operations, it is understood that APMM's vessels ply international routes and the Philippine ports are only ports of entry and departure of the international vessels. It adds that Philippine laws do not allow foreign vessels to engage in domestic shipping. Hence, it would be illegal for APMM's international shipping vessels to engage in domestic shipping.

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[5] Maersk-GSCPL's Motion for Reconsideration (of Decision promulgated on November 17, 2017), filed on December 7, 2017 and CIR's Motion for Reconsideration filed on December 11, 2017.

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The Court in Division denied both motions. It ruled that Maersk-GSCPL knows and admits that its client, APMM, is actually doing business in the Philippines as it stated that "while APMM's international shipping business is primarily conducted outside the Philippines, less than one percent of its shipping business may be considered related to the Philippines because its international vessels ply Philippine ports." Considering that the recipient of Maersk-GSCPL's services is doing business in the Philippines, such sales of services cannot qualify for VAT zero-rating under Section 108(B)(2) of the Tax Code. However, the Court finds that Maersk-GSCPL may claim refund since APMM is a non-resident foreign corporation engaged in container transportation business worldwide, including transport and receipt of cargoes to and from the Philippines; and that its "main objects are to carry on shipping, chartering and related business, but it shall be a further object to engage in other transport business, commercial and industrial activities at home and abroad within the scope deemed appropriate by the Board of Directors." Thus, Maersk-GSCPL's sales of services to APMM qualify for VAT zero-rating pursuant to Section 108(B)(4) of the Tax Code.

With respect to the copies of alleged correct ORs to be presented as evidence by Maersk-GSCPL, the Court in Division ruled that the judicial affidavits as well as the cashier's copy of the ORs, were not formally offered in evidence, thus, cannot be considered in deciding the merits of the case. However, the Court in Division takes judicial notice of RR No. 18-2012 and RMO No. 12-2013, and these two do not do away with the requirement that the term "zero-rated sale" be written or printed prominently on the ORs and Service Invoices (SIs). As stated in the assailed Resolution:

> "In particular, paragraphs J and M under the section "Policies" of RMO No. 12-2013 suggest that the contents of the ORs and SIs enumerated therein are not exclusive, to wit:
>
>> J. The ORs/SIs/CIs shall be printed showing among others the following (see Annex C for sample receipts/invoices):

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> M. The sample format of principal and supplementary receipts/invoices (Annex C) contains the basic information required under this Order. Other information, size, and/or format as necessary depending on industry peculiarity and taxpayer needs are hereby allowed, provided that such receipts/invoices are compliant with this Order; xxx

> Hence, the fact that petitioner's purpose in changing its OR format was to comply with BIR regulations is irrelevant, as RR No. 18-2012 and RMO No. 12-2013, on the one hand, and Section 113 of the Tax Code, on the other, are not incompatible. Petitioner can follow the guidelines under the said BIR regulations, and still comply with Section 113 of the Tax Code." (Underlinings in the assailed Resolution.)

The Court further ruled that upon closer examination of the subject ORs issued by Maersk-GSCPL to APMM from July to December 2013, the ORs indicate the terms "Vatable Sales," "VAT-Exempt Sales," "Zero-Rated Sales," and "VAT Amount." However, the space provided for the amount of each of these items are all left blank, and instead, the amount of the sale is indicated only in the "Total Amount" portion of the OR, making it evident that these ORs are not compliant with the 1997 NIRC, the BIR Issuances and the purpose of the law.

The Court in Division elaborated that the ORs do not depict that the sale transactions are zero-rated sales. Moreover, since only the total amount is indicated on the ORs, the buyer or purchaser would not be able to ascertain whether the transaction is subject to 12% VAT, is exempt, or is zero-rated, making the transactions not properly segregated.

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Hence, both parties filed their respective Petitions for Review.[6]

In its Petition for Review, Maersk-GSCPL reiterates its argument that the change in format of its OR was to comply with the implementation of new invoicing requirements and invoice format under RR No. 18-2012 and RMO No. 12-2013. According to Maersk-GSCPL, the new invoicing format prescribes only one set of SI or OR for use for all types of sales and the types of sales are broken down in a single SI or OR. Hence, if the words "zero-rated sale" are printed after the TIN No., the OR will be misleading. Moreover, Maersk-GSCPL points out that under the new invoicing requirements under RMO No. 12-2013, only the word "EXEMPT" is required to be prominently indicated on the SI or OR and no such rule is prescribed for zero-rated sales.

Maersk-GSCPL also points out that the ORs actually bear the pre-printed words "zero-rated sales," as found in the assailed Resolution, and the only reason why the Court in Division still did not consider the ORs sufficient was that the space provided for the amount each of the items were all left blank and instead, the amount of the sale is indicated only in the total amount portion of the OR. Contrary to the assailed Resolution, Maersk-GSCPL contends that the disallowed ORs do not violate the purpose of such since the ORs do not indicate any amount for VAT as the space provided for "VAT amount" was left blank, that the client in this case is a non-resident foreign corporation, thus, impossible that input VAT will be claimed based on the disallowed ORs, and that the Court in Division was actually able to determine the sale of corporate and administrative services in 2013 to APMM that qualifies for VAT zero-rated.

Maersk-GSCPL adds that the ICPA Report itself states that all ORs issued by it in 2013, including the disallowed ORs, comply with the invoicing requirements and that the disallowed ORs are zero-rated ORs. However, the ORs examined by the ICPA were not the same ORs submitted to

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[6] Maersk-GSCPL filed tis Petition for Review on March 22, 2018, *EB No. 1805 Docket*, pp. 9-26. The CIR filed his Petition for Review on March 26, 2018, *EB No. 1804 Docket*, pp. 5-9.

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the Court in Division, thus in the interest of justice, Maersk-GSCPL pleads that the judicial affidavits and the Cashier's Copy of the ORs be considered in deciding on the merits of this case.

On the other hand, the CIR reiterates its contention that APMM is doing business in the Philippines, thus, Maersk-GSCPL's transactions with APMM are not zero-rated sales.

Comment[7] was filed by Maersk-GSCPL on May 16, 2018, stating therein that the CIR merely reiterates his argument in his Motion for Reconsideration before the Court in Division, while a Memorandum[8] was filed by Maersk-GSCPL on August 6, 2018, reiterating its arguments in its Petition for Review. Meanwhile, the CIR failed to file his Comment and Memorandum per Records Verification dated May 24, 2018[9] and August 8, 2018.[10]

The Court rules.

With respect to the CIR's Petition for Review, the Court in Division has already considered and extensively discussed in the assailed Decision and Resolution the above-mentioned contention, and the CIR merely repeats the arguments herein. In view of the foregoing, this Court no longer needs to further elucidate on the CIR's position.

As to the contention of Maersk-GSCPL that the change in format of its OR was to comply with the implementation of new invoicing requirements and invoice format under RR No. 18-2012 and RMO No. 12-2013, the Court in Division correctly ruled that the contents of the OR and SI enumerated therein are not exclusive, since what was stated is that the ORs/SIs/CIs shall be printed showing, among others, the enumerated contents therein.

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[7] *EB No. 1805 Docket*, pp. 194-201.
[8] *Ibid.*, pp. 207-231.
[9] *Ibid.*, p. 202.
[10] *Ibid.*, p. 233.

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Also to emphasize, it is explicit from the provisions of Section 113 of the NIRC of 1997 that if the sale is subject to zero-percent VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt. Considering so, the sales to APMM from July to December 2013 must be covered by duly registered VAT ORs bearing all the required information, including the term "zero-rated sales". Without valid VAT ORs, the said sales cannot qualify for VAT zero rating.

Even on the assumption that RR No. 18-2012 and RMO No. 12-2013 contradicts Section 113 of the 1997 NIRC, even prior to the enactment of RR No. 18-2012 and RMO No. 12-2013, a taxpayer is required to issue an OR for the sale of services, bearing the words "zero-rated sales" for zero-rated transactions.

It bears stressing that Section 113 of the NIRC of 1997, which provides that if the sale is subject to zero-percent VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt, is a law on VAT invoicing requirements for purposes of refund, as opposed to RR No. 18-2012 and RMO No. 12-2013, which are mere regulations intended to govern the Processing of Authority to Print (ATP), ORs, SIs and Other Commercial Invoices (CIs) in the Interim Period until the On-line ATP System pursuant to Revenue Regulations (RR) No. 18-2012 is fully developed. Well settled is the rule that in cases of conflict between the law and the rules and regulations implementing the law, the law shall always prevail, and the doctrine of estoppel, as an equitable remedy, cannot allegedly be applied when clear positive law is applicable.[11]

No other than Maersk-GSCPL points out that even if the ORs actually bear the pre-printed words "zero-rated sales" as found in the assailed Resolution, another reason why the Court in Division still did not consider the ORs sufficient was that the space provided for the amount each of the items were all left blank and instead, the amount of the sale is indicated only in the total amount portion of the OR, which is

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[11] *Commissioner of Internal Revenue vs. Coral Bay Nickel Corporation,* CTA EB No. 1652, February 6, 2019.

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a clear violation of the invoicing requirements prescribed by Section 113 of the Tax Code, which states that the amount of the tax shall be shown as separated item in the invoice or receipt.

Lastly, as to the contention that the ICPA Report states that all ORs issued by Maersk-GSCPL in 2013, including the disallowed ORs, comply with the invoicing requirements and that the disallowed ORs are zero-rated ORs, but the ORs examined by the ICPA were not the same ORs submitted to the Court, hence, its prayer to allow it to present such copies with the judicial affidavits, while this Court is not governed strictly by technical rules of evidence,[12] the presentation of evidence is not a mere procedural technicality which may be disregarded.[13] As stated in the case of *Heirs of Pedro Pasag vs. Parocha:*[14]

> "A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court."

Failure to offer the judicial affidavits and cashier's copy of the disallowed ORs, the Court in Division correctly denied its admission as evidence to decide on the merits of this case.

Moreover, Section 3 of Rule 13 of the Revised Rules of the Court of Tax Appeals ("RRCTA"), as amended, provides that:

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[12] *Calamba Steel Center, Inc. (formerly JS Steel Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482, 494.
[13] *Dizon vs. Court of Tax Appeals,* G.R No. 140944, April 30, 2008.
[14] G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416, citing *Constantino vs. Court of Appeals*, G.R. No. 116018, November 13, 1996, 264 SCRA 59.

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> "xxx. The findings and conclusions of the ICPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusion subject to verification."

The Court is not bound by the findings of the ICPA. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court, it is free to adopt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[15]

The Court, justifying its findings based on the ORs presented before it, cannot merely rely on the findings in the ICPA Report, especially when such report contradicts what is shown on the face of the evidence presented. The alleged correct ORs cannot even be considered as newly discovered evidence, which the Court may grant allowance for their admission.

The Court has always decreed that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government.[16] These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.[17] Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[18]

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[15] *Stateland, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 1148, July 4, 2016, citing *First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 563, March 1, 2011; further cited in *Phil. Gold Processing & Refining Corp. vs.* Commissioner of Internal Revenue, CTA Case No. 8763, May 25, 2017.
[16] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.
[17] *Ibid.*
[18] *Ibid.*, citing *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010.

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There being no reversible error committed by the Court in Division in this case, the Court *En Banc* finds no cogent reason to reverse and set aside the Court in Division's Decision promulgated on November 17, 2017 and its Resolution dated February 14, 2018.

**WHEREFORE,** premises considered, the Petitions for Review are hereby **DENIED** for lack of merit.

**SO ORDERED.**

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

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Ma. Belen
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court En Banc.

**ROMAN G. DEL ROSARIO**
Presiding Justice