REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILEX MINING CORPORATION, *Petitioner,*	**C.T.A. EB NO. 569 (C.T.A. CASE NO. 7687)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** DEC 03 2010

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

The phrase "within two (2) years xxx apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the *first paragraph of subsection (D) of the same provision*, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with *Subsections (A) and (B)* within which to decide on the claim. In fact, applying the two-year period to judicial claims would render nugatory *Section 112(D) of the NIRC of 1997*, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR *(Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010)*.

THE CASE

This is a Petition for Review filed by Philex Mining Corporation (hereafter "petitioner") under *Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals), as amended*, in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended,* praying for the reversal of the Decision dated July 20, 2009 and Resolution dated November 10, 2009 rendered by the Former Second Division of this Court in C.T.A. Case No. 7687, the respective dispositive portions of which read, as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED due to prescription.
>
> **SO ORDERED.**"
>
> "**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts, as culled from the records, are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, which is principally engaged in the mining business, which includes the exploration and operation of mine properties and commercial production and marketing of mine products, with office address at 27 Philex Building, Fairlaine St., Kapitolyo, Pasig City.

Respondent, on the other hand, is the head of the Bureau of Internal Revenue ("BIR"), the government entity tasked with the duties/functions of assessing and collecting all national internal revenue taxes, fees, and charges, and enforcement of all forfeitures, penalties and fines connected therewith, including the execution of judgments in all cases decided in its favor by this Court and the ordinary courts, where she can be served with court processes at the BIR Head Office, BIR Road, Quezon City.

On October 21, 2005, petitioner filed its Original VAT Return for the third quarter of taxable year 2005 and Amended VAT Return for the same quarter on December 1, 2005.

On March 20, 2006, petitioner filed its claim for refund/tax credit of the amount of P23,956,732.44 with the One Stop Shop Center of the Department of Finance. However, due to respondent's failure to act on such claim, on October 17, 2007, pursuant to *Sections 112 and 229 of the NIRC of 1997, as amended*, petitioner filed a Petition for Review, docketed as C.T.A. Case No. 7687.

In his Answer, respondent CIR alleged the following special and affirmative defenses:

> "4. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of an exemption;
>
> 5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;

ehl

6. The Petitioner should prove its legal basis for claiming for the amount being refunded."

After trial on the merits, on July 20, 2009, the Former Second Division of this Court rendered the assailed Decision denying the Petition for Review due to prescription.

On August 12, 2009, petitioner filed a Motion for Reconsideration, which was denied by the Former Second Division in a Resolution dated November 10, 2009.

On December 2, 2009, petitioner filed the instant Petition for Review raising the sole issue of:

ISSUE

WHETHER PETITIONER'S JUDICIAL CLAIM IS BARRED BY PRESCRIPTION BY VIRTUE OF SECTION 112(A) OF THE 1997 TAX CODE AND THE MIRANT DECISION OF THE SUPREME COURT.

On January 5, 2010, without necessarily giving due course to the petition, we required the respondent to file his comment, not a motion to dismiss, within ten (10) days from notice. Despite notice, respondent CIR failed to file his comment.

In a Resolution dated February 12, 2010, the Court *en Banc* ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice.

On March 12, 2010, petitioner filed its Memorandum.

Despite notice, respondent failed to file his memorandum. Thus, the petition was submitted for decision on April 13, 2010.

On April 16, 2010, this case was raffled for study and report to Justice Lovell R. Bautista. Because of the divergence in the opinions of the Justices during the initial deliberation of the case as regards the application of *Section 112 (A) and (C) of the NIRC of 1997, as amended*, on July 9, 2010, the case was re-raffled and re-assigned to Justice Olga Palanca-Enriquez to write the Majority decision.

Hence, this decision.

THE COURT *EN BANC'S* RULING

The petition is without merit.

A statute must be so construed as to harmonize and give effect to all its provisions whenever possible *(People v. Polmon, 86 Phil. 350)*. The meaning of the law, it must be borne in mind, is not to be extracted from any single part, portion or section or from isolated words and phrases, clauses or sentences but from a general consideration or view of the act as a whole *(82 C.J.S., Section 345, pp. 699-700)*. Every part of the statute must be interpreted with reference to the context. This means that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment, not separately and independently *(Tamayo v. Gsell, 35 Phil, 953; Republic vs. Sandiganbayan, 173 SCRA 82)*.

Section 112 of the NIRC of 1997, as amended, provides, as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided further*, That where the taxpayer is engaged in

> zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of volume of sales."
>
> xxx xxx
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant to the above-quoted *Section 112 (A),* a taxpayer may apply a claim for refund of unutilized input VAT payments not otherwise used for any internal revenue tax due, within two years reckoned from the close of the taxable quarter when the relevant sales were made.

While, *Section 112(C)* provides that the CIR has 120 days from the submission of supporting documents to decide the claim for refund. In

Orl

case of full or partial denial, or inaction of the CIR, the taxpayer may file an appeal with the CTA, within 30 days from receipt of the decision, or from the lapse of the 120-day period.

Section 112 (A) of the NIRC of 1997, as amended, Pertains to Administrative Remedy, While Section 112 (C) Pertains to the Judicial Remedy of Claims for Refund/Issuance of a TCC

Upon a careful reading of *Section 112(A) of the NIRC of 1997, as amended*, it is clear that *Section 112(A)* pertains solely to the administrative remedy of claiming for refund of unutilized input VAT for the following reasons:

> First, settled is the rule that a taxpayer must exhaust all administrative remedies before going to court. Thus, he must first apply a claim for refund with the BIR, within two years from the close of the quarter when such sales were made.
>
> Second, the use of the word "apply" in *Section 112(A)* clearly shows that the claim must be made with the BIR. If Congress intended to include judicial remedy under *Section 112(A)*, Congress should have used the word "file" in addition to

apply, or should have made clear that it is a suit or proceeding maintained or instituted in court, as clearly provided in *Section 229 of the same Code* for recovery of tax erroneously or illegally collected.

Third, the judicial remedy is provided under *Section 112(C) of the NIRC of 1997, as amended.* This is clear when *Section 112(C)* made reference to *Subsection (A) thereof*, as to the application of claim for refund with the BIR.

Lastly, adhering to the interpretation that an appeal to the CTA should likewise be made, within the two-year prescriptive period, would render the provision of *Section 112 (C)* nugatory as the taxpayer will consider two different periods within which to elevate its judicial claim to the CTA. If the two-year period is about to expire, the taxpayer in order to comply with the two-year prescriptive period will file the judicial claim within the period, without taking into consideration whether the 120-day period for the CIR to decide has been complied with and/or whether the judicial claim is filed within the 30-day period to appeal. This makes the 30-day period to appeal to the CTA optional, which the law does not intend, as the period to appeal is mandatory and jurisdictional.

Hence, while *Section 112 (A)* pertains to the administrative remedy, *Section 112 (C)* clearly pertains to the judicial remedy for filing claims for refund of unutilized input VAT.

Section 112 (A) of the NIRC of 1997, as amended, Should Not Be Correlated with Section 229 of the NIRC of 1997, as Amended

We agree with petitioner that *Section 112 (A) of the NIRC of 1997, as amended,* should not be correlated with *Section 229 of the same Code* in supporting the argument that the two-year prescriptive period should likewise be applied to the judicial remedy of claiming refund or issuance of tax credit certificate of excess input VAT. Unlike in *Section 229*, *Section 112(A)* does not provide that the case must be filed in court, within two years from the payment of the tax. It only mentions when a VAT-registered person may apply for the issuance of a TCC or refund of creditable input tax due. The obvious reason is because *Section 112,* under *sub-paragraph (C) of the NIRC of 1997, as amended,* has now a specific prescribed period, which is 30 days, within which a taxpayer may appeal the decision or the unacted claim to the CTA.

It is well-settled that if the words of the law are clear and free of ambiguity, it must be given its literal meaning and applied without any interpretation *(Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, 554 SCRA 398, 409)*. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication *(Commissioner of Internal Revenue vs. Ariete, 610 SCRA 472)*.

It must be emphasized that prior to the amendments introduced in the *1997 Tax Code*, *Section 106 of the 1977 Tax Code* does not provide for a period within which to file a judicial claim for refund of input taxes. The amendments introduced by *RA 7716*, otherwise known as "The Expanded Value Added Tax Law", and *RA 8428*, otherwise known as "The Tax Reform Act of 1997", which took effect on May 28, 1994 and January 1, 1998, respectively, Congress manifested its intent to fill up the void and provided a period within which to appeal the claim for refund to the CTA.

Hence, in the *Tax Reform Act of 1997*, *Section 106 of the 1977 Tax Code* was renumbered to *Section 112*, and the 60-day period given to the Commissioner to act on the claim for refund of input tax was increased to 120 days. In addition, the second paragraph of *Section 112 (D)* (now, *Section 112 (C) after the amendment of RA 9337)* prescribes a 30-day period from receipt of the decision denying the claim or after the expiration of the 120-day period, within which to appeal the decision or unacted claim to the CTA.

This is the reason why prior to the effectivity of *RA 7716* and *RA 8428,* the period provided in *Section 230 (now 229) of the NIRC of 1997, as amended*, which is two years from the date of payment of the tax or penalty, is applied to cases for refund of input taxes, as in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 524 SCRA 96.* However, at present, with the incorporation of *Section 112(C) of the NIRC of 1997, as amended*, the two-year period prescribed in *Section 229 of the NIRC of 1997, as amended*, can no longer be applied to claims for refund of input taxes.

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, 565 SCRA 172-173*, the Supreme Court categorically ruled that taxpayers cannot avail of the provisions of either *Sections 204(C) or 229 of the NIRC of 1997, as amended*, as regards the refund of any unutilized creditable input VAT. Both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes. A refund of unutilized input VAT is not an erroneously, illegally, or wrongfully collected tax.

Both RA 9282 and the 2005 Revised Rules of the CTA, as amended, Provide for a Period When the Decision of the CIR or Her Inaction Shall be Filed with the CTA

Moreover, both *RA 9282, as amended*, and the *2005 Revised Rules of the CTA, as amended,* provide that a claim for refund must be filed with this Court, within 30 days from the receipt of the CIR's decision or inaction of the CIR.

Section 11 of RA 9282, as amended, provides:

> "SEC.11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the

> Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.
>
> xxx xxx".

Corollary, thereto, *Section 3(a), Rule 8 of the 2005 Revised Rules of the CTA, as amended,* provides:

> "(a) a party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or **claims for refund of internal revenue taxes,** or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for

ap

> review filed **within thirty days** after the receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes" *(Emphasis supplied).*

Pursuant to *Section 11 of RA 9282, as amended,* any party adversely affected by a decision, ruling or inaction of the CIR, may file an appeal with the CTA, within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law.

Clearly, from the provision of *Section 3(a), Rule 8 of the 2005 Revised Rules of the CTA, as amended,* the afore-quoted first sentence of *Section 3(a)* applies to judicial claims for refund or issuance of tax credit certificates of excess input VAT. Wherein, such judicial claim must be filed with this Court, within 30 days from receipt of the decision or from the lapse of the 120-day period.

On the other hand, the underscored second sentence of *Section 3(a)* specifically applies to claims for refund of erroneously or illegally collected taxes. As already discussed, VAT refunds are not erroneously or

awe

illegally collected taxes. VAT are legally required to be collected, but they are being refunded when they remain unutilized, pursuant to *Section 110 of the NIRC of 1997, as amended.*

Since the *2005 Revised Rules of the CTA, as amended,* provides for a period of thirty days within which to appeal the decision/ruling or inaction of the CIR; then such period is mandatory and jurisdictional.

In the case of *Ker and Company, Ltd. vs. Court of Tax Appeals, 4 SCRA 163*, the Supreme Court ruled that while the right to appeal a decision of the Commissioner to the CTA is merely a statutory remedy, nevertheless, the requirement that it must be brought within 30 days is jurisdictional. Settled is the rule that if a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time. Such requisite is jurisdictional and failure to comply therewith may be raised in a motion to dismiss *(Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 491 SCRA 221).*

Hence, the use of the word "may" in *Section 11 of RA 9282, as amended,* and in *Section 3(a), Rule 8 of the 2005 Revised Rules of the CTA,* and *Section 112(C) of the NIRC of 1997, as amended*, does not mean that the judicial recourse, within thirty days from the receipt of the decision/ruling or from the lapse of the 120-day period, is directory and permissive. The phrase "may file an appeal with the CTA" simply means that the taxpayer is given the option of whether or not to appeal the adverse ruling or inaction of the CIR within the 30-day reglementary period. It does not mean that the taxpayer has the option of whether or not to comply with the 30-day period to appeal to the CTA the decision or inaction of the CIR. Otherwise, the taxpayer's failure to appeal the decision/ruling or the inaction within the 30-day period will deprive the CTA of jurisdiction to entertain the judicial claim for refund.

Settled is the rule that courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings *(Ace Publications, Inc., vs. Commissioner of Customs and the Collector of Customs, 11 SCRA 153)*.

Finally, in the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010*, the Supreme Court categorically settled the issue, to wit:

> ***"The filing of the judicial claim was premature***
>
> However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent' claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:
>
> > SEC. 112. Refund or Tax Credits of Input Tax.
> >
> > –
> >
> > xxxx
> >
> > (D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) and (B) hereof.
> >
> > In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. *(Emphasis supplied.)*
>
> Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application for tax

Ove

refund/credit,' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within the two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.' The phrase 'within two (2) years xxx apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsection (A) and (B)' within which to decide on the claim.

> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.
>
> With regard to Commissioner of Internal Revenue vs. Victorias Milling, Co., Inc. (22 SCRA 12) relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
>
> In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."

In this case, while there is no dispute that petitioner's administrative claim for refund was filed within the two-year prescriptive period; however, as to its judicial claim for refund/credit, records show that on March 20, 2006, petitioner applied the administrative claim for refund of unutilized input VAT in the amount of P23,956,732.44 with the One Stop Shop Center of the Department of Finance, per Application No.

alw

52490. From March 20, 2006, which is also presumably the date petitioner submitted supporting documents, together with the aforesaid application for refund, the CIR has 120 days, or until July 18, 2006, within which to decide the claim. Within 30 days from the lapse of the 120-day period, or from July 19, 2006 until August 17, 2006, petitioner should have elevated its claim for refund to the CTA. However, petitioner filed its Petition for Review only on October 17, 2007, which is 426 days way beyond the 30-day period prescribed by law.

Evidently, the Petition for Review in C.T.A. Case No. 7687 was filed 426 days late. Thus, the Petition for Review in C.T.A. Case No. 7687 should have been dismissed on the ground that the Petition for Review was filed way beyond the 30-day prescribed period; thus, no jurisdiction was acquired by the CTA in Division; and not due to prescription.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE,** and, accordingly **DISMISSED.** The assailed Decision dated July 20, 2009, dismissing the Petition for Review in C.T.A. Case No. 7687 due to prescription, and

Resolution dated November 10, 2009 denying petitioner's Motion For Reconsideration are hereby **AFFIRMED**, with modification that the dismissal is based on the ground that the Petition For Review in C.T.A. Case No. 7687 was filed way beyond the 30-day prescribed period to appeal.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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