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

## *En Banc*

**ALLEGRO MICROSYSTEMS PHILIPPINES, INC.,**
*Petitioner,*

*-versus -*

**THE UNDERSECRETARY OF THE DEPARTMENT OF FINANCE AND CHAIRMAN OF THE ONE-STOP-SHOP INTERAGENCY TAX CREDIT AND DUTY DRAWBACK CENTER, THE COMMISSIONER OF INTERNAL REVENUE, AND THE COMMISSIONER OF THE BUREAU OF CUSTOMS,**
*Respondents.*

**CTA *EB* NO. 1327**
(CTA Case No. 8882)

**Present:**

*Del Rosario, P.J.*
*Castañeda, Jr.,*
*Bautista,*
*Uy,*
*Casanova,*
*Fabon-Victorino,*
*Mindaro-Grulla,*
*Ringpis-Liban, and*
*Manahan, JJ.*

**Promulgated:**

JAN 30 2017 2:56 p.m.

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# *DECISION*

***BAUTISTA, J:***

This is a Petition for Review[1] filed pursuant to *Section 3(b)*[2], *Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals ("RRCTA")*, as amended, seeking to annul, reverse and set aside the two (2) Resolutions promulgated by the First Division of the Court of Tax Appeals ("Court in Division") dated January 20, 2015[3] and May 25, 2015[4]; and to order respondents to refund or to issue a tax credit

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[1] *Rollo, CTA EB No. 1327, Petition for Review,* pp. 1-463, with annexes.

[2] "SEC. 3. *Who may appeal; period to file petition.* –

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution…"

[3] *Records, CTA Case No. 8882, January 20, 2015 Resolution,* pp. 114-121.

[4] *Id., May 25, 2015 Resolution,* pp. 562-568.

certificate ("TCC") in favor of petitioner in the amount of Php129,770,030.10.[5] The Resolutions dismissed the Petition for Review filed by petitioner before the Court in Division, effectively denying petitioner's claim for refund or issuance of a TCC for its unutilized input value-added tax ("VAT") from importations attributable to its zero-rated export sales for fiscal year ("FY") April 1, 2012 to March 31, 2013, in the aggregate amount of Php129,770,030.10.[6]

## *The Parties*[7]

Petitioner Allegro Microsystems Philippines, Inc. ("AMPI") is a corporation duly organized under Philippine laws, with principal office at Sampaguita Street, Marimar Village, Parañaque City.

Respondent Undersecretary of the Department of Finance ("DOF Undersecretary") is the Chairman of the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center ("One-Stop-Shop"); and has the authority to accept applications for tax credits.

Respondent Commissioner of Internal Revenue ("CIR") is the Chief of the Bureau of Internal Revenue ("BIR"), the government agency charged with the duty of processing applications for refund of internal revenue taxes.

Respondent Commissioner of Customs ("COC") is the Chief of the Bureau of Customs, which has the duty to examine supporting documents for claims for refund of input VAT on importations attributable to zero-rated transactions.

## *The Facts*

As stated in the Resolution[8] dated January 20, 2015, the material dates are the following:

> On 26 September 2013, AMPI filed its administrative claim for the issuance of a TCC in the aggregate amount of

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[5] *Rollo, Petition for Review*, p. 16.
[6] *Id.* at 1-2.
[7] *Records, Petition for Review*, pp. 10-11; as admitted by respondents in their Answer, see *Records, CTA Case No. 8882, Answer with Motion to Dismiss*, p. 84.
[8] *Id., January 20, 2015 Resolution*, p. 116.

> Php129,770,030.10 with One-Stop-Shop, representing its unutilized excess Input VAT for FY 2013.
>
> On 29 August 2014, AMPI filed a Petition for Review to annul, reverse and set aside the alleged Decision of respondent CIR, through the office of Assistant Commissioner Erlinda A. Simple denying AMPI's claim for a tax refund or issuance of a TCC for its unutilized Input [VAT] arising from importations attributable to its zero-rated export sales for the FY 1 April 2012 to 31 March 2013 in the aggregate amount of Php129,770,030.10.

It is also relevant to note that petitioner alleges that its administrative claim was verbally denied on July 30, 2014; and that the reason given for the denial was the issuance of *Revenue Memorandum Circular No. ("RMC") 54-14*[9].[10]

The Court in Division found that it had no jurisdiction to decide the case since petitioner filed its appeal beyond the one hundred and twenty (120) + thirty (30)-day period provided in *Section 112(C) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*.[11] Thus, it granted respondents' Motion to Dismiss[12], as follows:

> **WHEREFORE**, premises considered, respondent's "Motion to Dismiss" is **GRANTED**. Accordingly, the Petition for Review filed by Allegro Microsystems Philippines, Inc. on 29 August 2014 is hereby **DISMISSED**.
>
> **SO ORDERED.**[13]

The Court in Division, citing *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[14] (*"Mindanao II Geothermal"*) explained that the taxpayer can file the appeal in one of two (2) ways: *(1)* file the judicial claim within thirty (30) days after the CIR denies the claim within the one hundred and twenty (120)-day period; or *(2)* in case of inaction by the CIR, file the judicial claim within thirty (30)

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[9] *Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended,* June 11, 2014.
[10] *Rollo, Petition for Review,* pp. 10-12.
[11] *Records, January 20, 2015 Resolution,* pp. 116-121.
[12] *Id., Answer with Motion to Dismiss,* pp. 84-93.
[13] *Id., January 20, 2015 Resolution,* p. 121.
[14] G.R. No. 191498, January 15, 2014, 713 SCRA 644.

days from the expiration of the one hundred and twenty (120)-day period.[15]

In denying petitioner's Motion for Reconsideration, the Court in Division held that the appeal was filed beyond the one hundred and twenty (120) + thirty (30)-day period; and that the alleged verbal denial of petitioner's administrative claim for refund cannot be considered as the CIR's denial contemplated under *Section 112(C) of the 1997 NIRC*.[16] The dispositive portion of the Resolution states:

> **WHEREFORE**, finding no cogent reason to reverse the ruling in the assailed Resolution, petitioner's **Motion for Reconsideration (of the Resolution dated 20 January 2015)** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[17]

Consequently, petitioner filed the present Petition for Review before the Court *En Banc* on June 25, 2015.[18] Respondents, despite the extension granted[19], failed to file their comment/s.[20]

The Court *En Banc* gave due course to the petition and ordered the parties to submit their respective memoranda.[21] Petitioner filed its Memorandum[22] on February 17, 2016. Respondent CIR filed his Memorandum[23] by registered mail on February 22, 2016, while respondents DOF Undersecretary and COC filed their Manifestation and Motion (In Lieu of Memorandum)[24] adopting the Memorandum filed by respondent CIR.

On March 17, 2016, the Court *En Banc* deemed the case submitted for decision;[25] hence, this Decision.

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[15] *Records, January 20, 2015 Resolution*, p. 120.
[16] *Records, May 25, 2015 Resolution*, pp. 564-568.
[17] *Id.* at 568.
[18] *Rollo, Petition for Review*, p. 1.
[19] *Id.* at 467-470, in relation to 471.
[20] *Id.* at 472.
[21] *Id.* at 474-475.
[22] *Id., Petitioner's Memorandum*, pp. 481-505.
[23] *Id., Respondent CIR's Memorandum*, pp. 508-519.
[24] *Rollo, Manifestation and Motion (In Lieu of Memorandum)*, pp. 520-524.
[25] *Rollo*, pp. 527-528.

## *The Issues*[26]

WHETHER THE COURT IN DIVISION ERRED IN DISMISSING THE PETITION FOR REVIEW DOCKETED AS CTA CASE NO. 8882 FOR LACK OF JURISDICTION; AND

WHETHER PETITIONER IS ENTITLED TO THE REFUND OR THE ISSUANCE OF A TCC IN THE AMOUNT OF PHP129,770,030.10.

### *Petitioner's Arguments*[27]

Petitioner claims that the verbal denial of its claim is appealable to the CTA; and that the Court in Division has jurisdiction over the dismissed case since petitioner timely filed the appeal within thirty (30) days from receipt of the said verbal denial. Petitioner further argues that *Section 112(C) of the 1997 NIRC* allows the CIR to render a decision even beyond the one hundred twenty (120)-day period; and that the same is appealable to the CTA within thirty (30) days from receipt of the denial.

With respect to *RMC No. 54-14,* petitioner argues that the same should not be applied to its administrative claim, as it would result to a retroactive application that is prejudicial to it, in violation of *Section 246*[28] *of the 1997 NIRC.* Petitioner also questions the "deemed denial" provision on the ground that the same has no basis in the *1997 NIRC.* Petitioner asserts that the interpretation of *Section 228*[29] *of the 1997 NIRC,* giving the taxpayer the option to wait for the decision of the CIR after the lapse of the period to act, is applicable to claims for refund under *Section 112(C) of the 1997 NIRC.*

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[26] *Rollo, Petition for Review,* p. 6.
[27] *Id., Petitioner's Memorandum,* pp. 486-500.
[28] "Sec. 246. *Non-Retroactivity of Rulings.* - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, xxx"
[29] "Sec. 228. *Protesting of Assessment.* - xxx

xxx xxx xxx

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Petitioner likewise reiterates its entitlement to the refund or the issuance of a TCC for its unutilized input VAT amounting to Php129,770,030.10.

***Respondents' Counter-Arguments***[30]

Respondents argue that the Court in Division correctly dismissed the Petition for Review for lack of jurisdiction since petitioner failed to present evidence to prove the actual denial of its claim for refund. Citing the Court in Division's Resolutions, respondents argue that petitioner's appeal to the Court in Division did not comply with *Section 112(C) of the 1997 NIRC* when it was filed beyond the thirty (30)-day period from the lapse of the one hundred twenty (120)-day period within which respondent CIR should have acted on the claim.

Lastly, respondents stressed that tax refunds are in the nature of tax exemptions; and that petitioner has to prove its entitlement thereto.

***The Ruling of the Court En Banc***

The Court *En Banc* finds no merit in the instant Petition for Review.

**The Court *En Banc* has jurisdiction over the present case.**

On January 30, 2015[31], petitioner received the Court in Division's Resolution dated January 20, 2015. Petitioner timely filed its Motion for Reconsideration[32] on February 13, 2015.

On June 10, 2015[33], petitioner received the Resolution dated May 25, 2015, denying its Motion for Reconsideration. Therefore, petitioner had (15) fifteen days[34] from receipt of the May 25, 2015

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[30] *Rollo, Respondent CIR's Memorandum,* pp. 508-517.
[31] *Records,* p. 113.
[32] *Id., Motion for Reconsideration,* pp. 122-543, with annexes.
[33] *Id.* at 560.
[34] *RRCTA, Rule 8, Section 3(b).*

Resolution, or until June 25, 2015, within which to file its Petition for Review with the Court *En Banc.*

Records reveal that petitioner timely filed the present Petition for Review on June 25, 2015[35]; hence, the Court *En Banc* acquires jurisdiction.

**The Court in Division correctly dismissed the Petition for Review.**

The main issue revolves around the timeliness of petitioner's judicial claim. For reference, *Section 112(C) of the 1997 NIRC* is quoted hereunder:

> Sec. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx 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.[36]

The one hundred twenty (120) + thirty (30)-day period provided above is mandatory and jurisdictional,[37] such that failure to comply with the same deprives the CTA of jurisdiction.

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[35] *Rollo*, p. 1.
[36] Underscoring ours.
[37] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

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In the instant case, petitioner filed its administrative claim[38] with the One-Stop-Shop on September 26, 2013, together with its supporting documents.[39] Counting one hundred and twenty (120) days therefrom, respondents had until January 24, 2014 within which to deny or grant the same. Upon the period's lapse on January 24, 2014, petitioner had thirty (30) days, or until February 24[40], 2014 within which to file its appeal to the CTA.

Records reveal that petitioner filed its appeal with the Court in Division on August 29, 2014,[41] clearly beyond the thirty (30)-day period for filing an appeal.

**Petitioner belatedly filed its Petition for Review with the Court in Division.**

Petitioner argues that its appeal is not based on inaction, but on a denial of its claim pursuant to the "deemed denial" provision in *RMC No. 54-14*; that it was filed within thirty (30) days from receipt of the verbal denial of its administrative claim; and that it should be considered as timely filed to secure the jurisdiction of the Court in Division.[42] It likewise alleges that the "deemed denial" provision has no basis in the *1997 NIRC*; hence, the retroactive application of *RMC No. 54-14* is in violation of *Section 246 of the 1997 NIRC*.[43]

On the other hand, respondents argue that the Petition for Review filed before the Court in Division was filed out of time, reckoning the thirty (30) days from the lapse of the one hundred and twenty (120)-day period.[44]

The procedure and applicable prescriptive periods for a claim for refund of unutilized input VAT under *Section 112 of the 1997 NIRC* has been the subject of several cases before the Supreme Court.

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[38] *Records, January 20, 2015 Resolution*, p. 116.
[39] *Id., Petitioner's Letter to Department of Finance-OSS Center*, p. 144.
[40] February 23, 2014 fell on a Sunday.
[41] *Records, Petition for Review*, p. 7.
[42] *Rollo, Petition for Review*, pp. 10-12.
[43] *Id.* at 12-15.
[44] *Id., Respondents' Memorandum*, p. 509.

In the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[45] *("Aichi")*, the Supreme Court clarified that it is only the administrative claim that must be filed within the two (2)-year prescriptive period.

In *Commissioner of Internal Revenue v. San Roque Power Corporation*[46] (*"San Roque"*), the Supreme Court clarified the mandatory and jurisdictional nature of the one hundred and twenty (120)-day waiting period, which may extend beyond the two (2)-year prescriptive as long as the administrative claim was filed within the two (2)-year period; that the thirty (30)-day period to file the judicial claim applies to both denial and inaction on the claim; that the date of reckoning the two (2)-year prescriptive period for filing an administrative claim should be from the close of the taxable quarter when the sales were made, provided for the scope and effectivity of the *Atlas*[47] and *Mirant*[48] doctrines; and, that during the effectivity of *BIR Ruling No. DA-489-03* dated December 10, 2003 up to its reversal by *Aichi* on October 6, 2010, taxpayers may file their judicial claim without waiting for the lapse of the one hundred and twenty (120)-day period. The *San Roque* case likewise limited the period of filing the judicial claim to two (2) instances only, as follows:

> Section 112(D)[49] of the 1997 Tax Code is clear, unequivocal, and categorical that the [CIR] has 120 days to act on an administrative claim. The taxpayer can file the judicial claim (1) **only within thirty days after the Commissioner partially or fully denies the claim** <u>within the 120-day period</u>, or (2) **only within thirty days from the expiration of the 120-day period** if the Commissioner does not act within the 120-day period.[50]

In *Commissioner of Internal Revenue v. Mindanao II Geothermal*[51], the Supreme Court summarized the rules on the prescriptive periods for claiming refunds or credits of input VAT as explained in *Aichi* and *San Roque*, in the following manner:

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[45] G.R. No. 184823, October 6, 2010, 632 SCRA 422.
[46] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.
[47] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 141104 and 148763, June 8, 2007, 524 SCRA 73.
[48] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[49] Now, *Section 112(C)*.
[50] Emphases retained, underscoring ours.
[51] G.R. No. 191498, January 15, 2014.

**A.** ***Two-Year Prescriptive Period***

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)

3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008**. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. (*San Roque*)

**B.** ***120+30 Day Period***

1. The taxpayer can file an appeal in one of two ways: (1) <u>file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period</u>, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi* and *San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-06 was in force. (*San Roque*)[52]

Based on the foregoing, the Supreme Court has categorically stated that the denial of the claim for refund must also be made within the one hundred and twenty (120)-day period in order for it to be appealable to the CTA.

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[52] Underscoring ours.

Considering that petitioner's claim was not denied within the one hundred and twenty (120)-day period, the second option applies to petitioner, such that petitioner should have filed its judicial claim within thirty (30) days from the expiration of the one hundred and twenty (120)-day period.

Petitioner claims that due to the alleged similiarities in *Section 228 and Section 112(C)*, the ruling in *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[53] ("*Lascona*"), should also apply to claims for refund under *Section 112 of the 1997 NIRC*. In *Lascona*, the Supreme Court, interpreting *Section 228 of the 1997 NIRC*, held that the taxpayer may await the final decision [to the protest] of the CIR and appeal the same within thirty (30) days after receipt of the copy of the decision, despite the expiration of the one hundred and eighty (180)-day period.

Petitioner's reliance on *Lascona* is misplaced. *Lascona* refers to the judicial appeal of a disputed assessment pursuant to *Section 228 of the 1997 NIRC*. Here, what is involved is the timeliness of the judicial appeal with respect to a claim for refund of unutilized input VAT under *Section 112 of the 1997 NIRC*.

Petitioner also cannot allege that it became aware of the "deemed denial" provision only when the BIR issued *RMC No. 54-14* on June 11, 2014, considering that *San Roque* and *Mindanao II Geothermal* were promulgated on February 12, 2013 and January 15, 2014, respectively. In fact, a perusal of *RMC No. 54-14* readily shows that it is a mere application of the said Supreme Court rulings.

A comparison of the dates of petitioner's claim for refund and judicial appeal *vis-à-vis* the promulgation of *San Roque* and *Mindanao II Geothermal* shows that petitioner had no reason to rely on *Lascona;* and that petitioner failed to timely appeal the inaction of respondents to the CTA.

To illustrate, *San Roque* was promulgated on February 12, 2013, while petitioner filed it administrative claim with the One-Stop-Shop on September 26, 2013. Thus, at the time petitioner filed its administrative claim, the Supreme Court has already stated that a denial of the claim for refund must be within the one hundred and twenty (120)-day period and that the same must be appealed to the

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[53] G.R. No. 171251, March 5, 2012, 667 SCRA 455.

CTA within thirty (30)-days after receipt of said denial. Absent such denial, appeal must be made to the CTA within thirty (30)-days from the expiration of the one hundred and twenty (120)-day period.

Furthermore, the one hundred and twenty (120)-day period from the filing of the petitioner's administrative claim expired on January 24, 2014, giving petitioner until February 24, 2014 to file its judicial claim. Prior thereto, or on January 15, 2014, the Supreme Court promulgated *Mindanao II Geothermal,* which reiterated that appeals to the CTA must be made within thirty (30) days after the CIR denies the claim within the one hundred and twenty (120)-day period, or within thirty (30) days from the expiration of the one hundred and twenty (120)-day period if there is inaction on the part of the CIR.

Starting from the promulgation of *San Roque* in 2013, petitioner's options for appealing to the CTA with respect to a claim for refund or issuance of TCC for unutilized input VAT pursuant to *Section 112 of the 1997 NIRC* has been clearly stated, *viz.*:

> The taxpayer can file an appeal in one of two ways: (1) <u>file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period</u>, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.[54]

Therefore, petitioner had no reason to rely on the *Lascona* ruling and had no basis to await respondents' decision on its claim for refund beyond the one hundred and twenty (120)-day period.

Following the foregoing pronouncements, when respondents did not act on petitioner's claim within the one hundred and twenty (120)-day period, petitioner should have filed its judicial appeal within thirty (30) days therefrom, in accordance with the doctrines in *San Roque* and *Mindanao II Geothermal.* Unfortunately, petitioner relied instead on *Lascona* and waited for the respondents' decision which was not issued, and filed its Petition for Review only on August 29, 2014, or one hundred and eighty-six (186) days late. As such, the Court in Division correctly ruled that it has no jurisdiction to entertain the appeal.

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[54] Underscoring ours.

**WHEREFORE**, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated January 20, 2015 and May 25, 2015, rendered by the First Division, are hereby **AFFIRMED**.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
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

**CAESAR A. CASANOVA**
Associate Justice

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

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

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

Catherine T. Manahan
**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 case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice