

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

MIRAMAR FISH COMPANY, INC.,
Petitioner,

C.T.A. CASE NO. 7466

Members:

-versus-

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

Respondent.

FEB 1 2010 *3:20 p.m.*
JTB Fernandez

X ----- X

DECISION

PALANCA-ENRIQUEZ, J.:

Only VAT invoices can be used for the sale of goods that are subject to VAT. The corresponding taxes thereon shall be allowed as input tax credits for those subject to VAT. *Section 113 of the NIRC of 1997, as amended*, expressly provides for the invoicing and accounting requirements for VAT-registered persons. A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer. Conversely, non-



compliance with the invoicing requirements will not give rise to effective zero-rating of the transactions of a taxpayer.

THE CASE

This is a Petition for Review filed by Miramar Fish Company, Inc. (hereafter “petitioner”) praying for the issuance of a tax credit certificate in favor of petitioner in the total amount of P9,920,486.64, allegedly representing unutilized input value-added tax (VAT) paid on its domestic purchases of goods and services attributable to its zero-rated sales for calendar years 2004 and 2005.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office at Barangay Recodo, Zamboanga City.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credit of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.



THE FACTS

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

Petitioner filed with the BIR its original Quarterly VAT Returns for the four quarters of calendar year 2004 on the following dates:

2004	Date of Filing
First Quarter	April 22, 2004
Second Quarter	July 7, 2004
Third Quarter	October 18, 2004
Fourth Quarter	January 18, 2005

On March 11, 2005, petitioner filed an administrative claim for refund of its unutilized input VAT for the four quarters of calendar year 2004.

Petitioner filed with the BIR its original Quarterly VAT Returns for calendar year 2005 on the following dates:

2005	Date of Filing
First Quarter	April 15, 2005
Second Quarter	July 19, 2005
Third Quarter	October 20, 2005
Fourth Quarter	January 16, 2006

On March 31, 2006, petitioner filed with the BIR an administrative claim for refund or issuance of a tax credit certificate amounting to P4,457,062.52 for its unutilized input VAT for the first, second, third and fourth quarters of calendar year 2005.



Since respondent has not acted on petitioner's claim for refund, on April 21, 2006, petitioner filed the present Petition for Review.

On June 15, 2006, respondent filed his Answer, alleging the following:

- "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;
5. The amount of P9,920,486.64 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of goods and services for calendar years 2004 and 2005 is not properly documented;
6. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
7. Petitioner must show that it has complied with the provisions of Sections 112 and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;
8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211**)."

Petitioner presented Sherman Biniza and Felix Garsuta, as witnesses, and documentary evidence, marked as *Exhibits "E" to "10C-*



4-001-01", which the Court admitted in its Resolution dated December 2, 2008.

Upon manifestation of counsel for respondent that she is submitting the case for decision without presenting any evidence, the parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.

On March 26, 2009, respondent filed his Memorandum while petitioner's Memorandum was filed on April 1, 2009. Hence, the case was deemed submitted for decision on April 3, 2009.

ISSUES

The parties stipulated on the following issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER IS ENTITLED TO THE ISSUANCE OF A TCC IN THE AMOUNT OF P9,920,486.64, REPRESENTING UNUTILIZED INPUT VAT ON ITS PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES FOR THE FOUR (4) QUARTERS OF CYS 2004 AND 2005.

II

WHETHER OR NOT PETITIONER'S INPUT VAT FOR THE FOUR (4) QUARTERS OF CYS 2004 AND 2005 IN THE TOTAL AMOUNT OF P9,927,266.01



ARE DULY SUPPORTED BY VAT INVOICES OR
OFFICIAL RECEIPTS.

III

WHETHER OR NOT THE INPUT TAXES BEING
CLAIMED FOR REFUND BY PETITIONER WERE
APPLIED AGAINST ANY OUTPUT TAX OR
CARRIED OVER TO SUCCEEDING
MONTH(S)/QUARTER(S).

IV

WHETHER OR NOT PETITIONER'S
ADMINISTRATIVE AND JUDICIAL CLAIMS FOR
REFUND OR ISSUANCE OF TCC FOR ITS
UNUTILIZED INPUT VAT FOR THE FOUR (4)
QUARTERS OF CYS 2004 AND 2005 WERE FILED
WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD.

Principal Issue

All of the above issues boil down to the principal issue of whether
or not, based on the evidence presented, petitioner is entitled to the
issuance of a tax credit certificate in the amounts of P5,463,424.12 and
P4,457,062.52, or the total amount of P9,920,486.64, representing its
unutilized input VAT on domestic purchases of goods and services for
calendar years 2004 and 2005.

THE COURT'S RULING

We deny the Petition.



Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, prescribes the requisites for claims for issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated or effectively zero-rated sales, 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 sales 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 the volume of sales.”

Pursuant to the above provision, in order to be entitled to a refund or tax credit of unutilized input tax, petitioner must prove the following:

- 1) there must be zero-rated or effectively zero-rated sales;
- 2) that input taxes were incurred or paid;



- 3) that such input taxes are directly attributable to zero-rated or effectively zero-rated sales;
- 4) that the input taxes were not applied against any output VAT liability; and
- 5) that the claim for refund was filed within the two-year prescriptive period.

Prescription

The Court deems it necessary to first determine petitioner's compliance with the fifth requisite. Below are the dates pertinent to the present case:

Year 2004	Close of Taxable Quarter	End of Two-year period	Date of Filing		Amount
			Administrative Claim	Judicial Claim	
1st Qtr	03/31/04	03/31/06	03/11/05	04/21/06	P 1,368,409.81
2nd Qtr	06/30/04	06/30/06			1,982,004.35
3rd Qtr	09/30/04	09/30/06			941,825.08
4th Qtr	12/31/04	12/31/06			1,171,184.88
				Total-2004	P 5,463,424.12
Year 2005					
1st Qtr	03/31/05	03/31/07	03/31/06	04/21/06	P 2,111,524.34
2nd Qtr	06/30/05	06/30/07			1,251,695.27
3rd Qtr	09/30/05	09/30/07			1,019,308.42
4th Qtr	12/31/05	12/31/07			74,534.49
				Total-2005	P 4,457,062.52
			Grand Total-2004 and 2005		P 9,920,486.64

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*, 565 SCRA 154, the Supreme Court ruled that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under *Section 112(A) of the NIRC of 1997, as amended*, starts from the close of



the taxable quarter when the relevant sales were made pertaining to input VAT regardless of whether said tax was paid or not.

Counting from the end of each of the taxable quarters of 2004 and 2005, the period covered by the subject claim, petitioner had until March 31, 2006, at the latest, within which to file its claim both in the administrative and judicial levels. As can be seen from the above table, petitioner's claim covering the second quarter of 2004 to the fourth quarter of 2005 in the total amount of P8,552,076.83 was filed within the two-year prescriptive period, both administratively and judicially. However, as regards petitioner's claim for the first quarter of 2004 in the amount of P1,368,409.81, while the administrative claim was timely filed on March 11, 2005, the instant Petition for Review was filed only on April 21, 2006, which is way beyond the two-year prescriptive period. Hence, petitioner's claim for the first quarter of 2004 in the amount of P1,368,409.81 is hereby denied on ground of prescription.

Invoicing Requirements

We now proceed to the claim for the remaining input VAT for the second, third and fourth quarters of 2004 and all the four quarters of 2005 in the total amount of P8,552,076.83, which were filed within the two-year prescriptive period.



As regards the first requisite, petitioner claims that its export sales are subject to zero percent (0%) VAT, pursuant to *Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended*, which provides as follows:

“SEC. 106. Value-added Tax on Sale of Goods or Properties. –

(A) Rate and Base of Tax. - xxx

xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. - The term ‘*export sales*’ means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).”

To substantiate its export sales covering the taxable quarters of 2004 and 2005 and the foreign currency proceeds thereof, petitioner formally offered the following documents:

DESCRIPTION	EXHIBIT
Quarterly VAT Returns for the four quarters of 2004 and 2005 with the related Schedule of Zero-Rated Sales and VAT Computation	“G” to “R” (inclusive of sub-markings)



Export invoices covering petitioner's export sales for the four quarters of 2004 and 2005	"III-01-001" to "III-04-227", "LLL-01-001" to "LLL-04-003"
Export declarations covering petitioner's export sales for the four quarters of 2004 and 2005	"JJJ-01-001" to "JJJ-04-062", "MMM-01-001" to "MMM-04-003"
Bills of lading covering petitioner's export sales for the four quarters of 2004 and 2005	"KKK-01-001" to "KKK-04-219", "NNN-01-001" to "NNN-04-003"
Official receipts and passbook covering the inward remittance of the proceeds from petitioner's export sales for the four quarters of 2004 and 2005	"OOO-001" to "OOO-075", "PPP-001" to "PPP-071"
Final Report of the Court-commissioned Independent CPA dated January 9, 2008 (Volumes I and II)	"SSS-3" to "SSS-5"
Supplemental Report of the Court-commissioned Independent CPA dated June 27, 2008	"SSS-6" to "SSS-7"

A perusal of the aforesaid documents reveals that petitioner's products were actually sold and shipped abroad, in consideration of which, petitioner received foreign currency payments, which were inwardly remitted in accordance with the BSP rules and regulations. These export sales, therefore, fall within the export sales transactions, subject to zero percent (0%) VAT under *Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended*.

However, *Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended*, should be read in conjunction with *Section 113(A)* of the same



Code, which provides that a VAT-registered person shall for every sale issue an invoice or receipt which must contain the information mentioned therein and under *Section 4.108-1 of Revenue Regulations No. 7-95*.

Section 113 (A) of the NIRC of 1997, as amended, provides:

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

(A) Invoicing Requirements. - A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

- (1) A statement that the seller is a VAT-registered person, followed by his taxpayer’s identification number (TIN); and
- (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.”

On the other hand, *Section 4.108-1 of Revenue Regulations No. 7-95* provides, as follows:

“SEC. 4.108-1. Invoicing Requirements. - All VAT-registered persons shall, for every sale or lease of goods or properties or services, **issue duly registered receipts or sales or commercial invoices** which must show:

1. the name, TIN, and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;



5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx

xxx

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.”(*Emphasis supplied*)

Corollary thereto, *Section 237 of the NIRC of 1997, as amended*, provides:

“SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx” (*Emphasis supplied*)

From the aforecited provisions, it is expressly provided that a VAT-registered person, like petitioner, should issue a duly registered VAT invoice or official receipt, which must contain the following information:

- 1) A statement that the seller is a VAT-registered person;



- 2) The taxpayer identification number ("TIN");
- 3) The total amount which the purchaser pays or is obligated to pay to the seller indicating the inclusion of the value-added tax;
- 4) Transaction date;
- 5) Quantity of merchandise;
- 6) Description of merchandise or nature of service;
- 7) Unit cost;
- 8) The name, business style, if any, and address of the purchaser, customer or client in case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees; and
- 9) The TIN of the VAT-registered purchaser.

In conjunction thereto, *Section 4.108-1 of Revenue Regulations No. 7-95* requires that the word "zero-rated" be imprinted on the invoice covering zero-rated sales. Also, *Section 4.108-1 of Revenue Regulations No. 7-95* provides that only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts, which will be considered as a "VAT Invoice", such that all purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.



A perusal of petitioner's Sales Invoices shows that the Sales Invoices failed to comply with the invoicing requirements provided in *Section 113 of the NIRC of 1997, as amended*, and *Section 4.108-1 of Revenue Regulations No. 7-95*. The Sales Invoices do not show that petitioner is a VAT-registered person. What is only indicated therein is petitioner's Tax Identification Number, without stating that petitioner is a VAT registered entity, in violation of *Section 113 of the NIRC of 1997, as amended*.

A further perusal of said Sales Invoices shows that the aforesaid invoices do not bear the word "zero-rated", as required by *Revenue Regulations No. 7-95*.

It bears stressing that the law and regulations are explicit in emphasizing strict compliance with the invoicing requirements because for the same transactions the output VAT of the seller becomes the input VAT of the purchaser. Pursuant to *Sections 106(D)(1) and 108(C) of the NIRC of 1997, as amended*, in relation to *Section 110 of the same Code*, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the invoice, while the output or input tax on



the sale or purchase of services is determined by the total amount indicated in the official receipt.

In case of zero-rated sales transactions, the rules and regulations further require that the word zero-rated be imprinted on the face of the covering invoices or official receipts. The rationale of the requirement for imprinting of the word “zero-rated” on the face of the covering invoices or official receipts of the seller is to prevent the situation that the purchaser of the goods or services may be able to claim input tax from the said purchases, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer.

More importantly, petitioner failed to show that its sales invoices were duly registered with the BIR, in violation of *Section 237 of the NIRC of 1997, as amended*. There was no authority to print or BIR permit number reflected on said invoices, nor is there any proof to show that petitioner secured such authority from the BIR for the operation of its export business.



While the Supreme Court ruled in the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, 522 SCRA 657, that the BIR authority to print need not be reflected or indicated in the invoices/receipts, however, the Supreme Court held that entities engaged in business are required to secure from the BIR an authority to print receipts or invoices and to issue duly registered receipts or invoices, to wit:

“It is clear from the foregoing that while entities engaged in business are required to secure from the BIR an authority to print receipts or invoices and to issue duly registered receipts or invoices, it is not required that the BIR authority to print be reflected or indicated therein. xxx

xxx xxx

It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. Indeed, **what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered.**” (*Emphasis Ours*)

In the case at bench, the evidence on record does not show that petitioner secured a BIR authority to print its export sales invoices. Thus, petitioner failed to comply with the rules. The rule is that before a printer



can print receipts or sales or commercial invoices, an authority to print must first be secured from the BIR by all persons who are engaged in business, pursuant to *Section 238 of the NIRC of 1997, as amended*, to wit:

“SEC. 238. Printing of Receipts or Sales or Commercial Invoices. - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.”

The above provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem - the printer.

**Effect of Failure to
Comply With the Invoicing
Requirements**

In *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*, 451 SCRA 159, the Supreme Court ruled that “A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer.” Conversely, non-compliance with the invoicing requirements will not give rise to effective zero-rating of the transactions of a taxpayer.

For petitioner’s failure to comply with the invoicing requirements prescribed by law and revenue regulations, the sales invoices issued by



petitioner cannot be considered as VAT Invoices. Hence, the said invoices cannot qualify for VAT zero-rating.

In conjunction thereto, *Revenue Memorandum Circular No. 42-2003* [Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters] expressly provides in clear and unequivocal words that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements will result to the disallowance of the claim for input tax. Pertinent portion of said Memorandum Circular provides:

“A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customer does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall



be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.”

Pursuant to said Memorandum Circular, if the claim for refund/issuance of a tax credit certificate is based on the existence of zero-rated sales by the taxpayer, but fails to comply with the prescribed invoicing requirements in the issuance of sales invoices, such as the failure of the claimant-taxpayer to indicate that it is a VAT-registered entity and/or to imprint the word “zero-rated” on the sales invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied.

Considering that herein petitioner failed to indicate in its sales invoices that it is a VAT registered entity and considering further that petitioner failed to imprint the word “zero-rated” on said sales invoices and failed to show that it has secured an authority to print from the BIR, we are left with no recourse but to deny the claim for the second, third and fourth quarters of 2004 and all the four quarters of 2005. Petitioner’s export sales for the second, third, and fourth quarters of 2004 and all four quarters of 2005 cannot validly qualify for VAT zero-rating under *Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.*



Consequently, petitioner's claimed input VAT allegedly attributable thereto in the total amount of P8,552,076.83 cannot be granted.

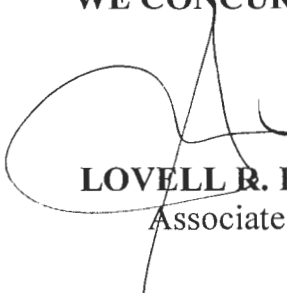
For all the foregoing, the Court finds it unnecessary to discuss petitioner's compliance with the other prescribed requisites for refund of unutilized input VAT.

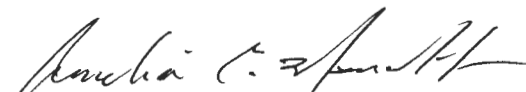
WHEREFORE, premises considered, petitioner's claim for the first quarter of 2004 in the amount of P1,368,409.81 is hereby **DENIED** on ground of prescription, while the remaining claim covering the second, third and fourth quarters of 2004 and all four quarters of 2005 in the amount of P8,552,076.83 is hereby **DENIED** for petitioner's failure to properly substantiate its alleged zero-rated sales.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

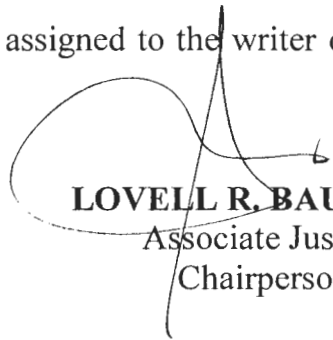
WE CONCUR:


LOVELL R. BAUTISTA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

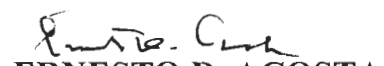
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ERNESTO D. ACOSTA
Presiding Justice