

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF
INTERNAL REVENUE,

Petitioner,

CTA EB NO. 2294
(CTA Case No. 9361)

Present:

DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

- versus -

DUNLEVY FOOD
CORPORATION,

Respondent.

Promulgated:

FEB 08 2022

[Signature] 9:28 a.m.

X-----X

DECISION

RINGPIS-LIBAN, J:

Before the Court *en banc* is a Petition for Review¹ filed by petitioner Commissioner of Internal Revenue (CIR) against the respondent Dunlevy Food Corporation (Dunlevy) within an extended period² granted by the Court³, seeking the reversal of the Decision dated December 11, 2019⁴ (assailed Decision) rendered by the Second Division of this Court in CTA Case No. 9361, as well as the Resolution dated June 16, 2020⁵ (assailed Resolution) denying his motion for reconsideration.

¹ *Rollo*, pp. 5-14, with Annexes "A" to "E", pp. 15-50; pp. 51-59, with Annexes "A" to "E", pp. 60-95.

² *Id.*, pp. 48-50.

³ *Id.*, pp. 3, 93-95.

⁴ *Id.*, pp. 64-80.

⁵ *Id.*, pp. 89-92.

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In the Petition, the CIR prays that both the assailed Decision and Resolution ordering the refund or issuance of tax credit certificate in favor of Dunlevy in the amount of ₱7,800,000.00 be reversed and set aside.

The Parties

Petitioner CIR is the duly appointed Commissioner of Internal Revenue, empowered to perform his/her duties and responsibilities as such, including but not limited to, the power to decide, approve and grant refunds of erroneously or excessively paid taxes or penalties imposed without authority, as provided by law.⁶

On the other hand, respondent Dunlevy is a domestic corporation duly organized and existing under and by virtue the laws of the Republic of the Philippines, with principal offices at Room 117 G/F Ortigas Building, Ortigas Avenue, Pasig City.⁷

The Facts⁸

On March 21, 2014, the Regional Director for the Bureau of Internal Revenue (BIR) Revenue Region No. 7 issued Mission Order No. 00096205⁹, directing the officers of BIR Revenue District Office (RDO) No. 43A to (i) verify the registration and bookkeeping requirements of Dunlevy, as well as its compliance with the new invoicing requirements, and (ii) validate its permit to use Cash Register Machines (CRM) and/or Point of Sales machines (POS).¹⁰

On various dates after March 21, 2014, the officers of the BIR RDO No. 43A conducted the (i) verification of the registration and bookkeeping requirements of Dunlevy, and (ii) validation of its permit to use CRM and/or POS pursuant to the Mission Order.¹¹

Relative thereto, on May 30, 2014, Dunlevy was made to pay the compromise penalties for the following violations in the aggregate amount of ₱7,800,000.00, to wit:¹²

⁶ Docket, pp. 11 to 12, 51, and 125.

⁷ *Id.*, p. 11.

⁸ As found by the Second Division and as culled from the records of the case.

⁹ *Id.* at Note 6, p. 110, Exhibit "P-1"; p. 65, BIR Records, Exhibit "R-1".

¹⁰ Docket, p. 125.

¹¹ *Id.*, pp. 125 to 126.

¹² *Id.*, pp. 111 to 112, Exhibits "P-2", "P-3", "R-13", and "R-13-a".

Alleged Violation	Penalty Imposed
a. No Books	P2,100,000.00
b. No Official Receipts	P2,100,000.00
c. No Back End Report	P2,100,000.00
d. Unaccounted POS	P1,500,000.00
Total	P7,800,000.00

Thereafter, Dunlevy requested the refund of the said compromise penalties through a letter dated May 2, 2016¹³ and an Application for Tax Credits/Refunds (BIR Form No. 1914)¹⁴ filed with the BIR on May 3, 2016.

On May 27, 2016, Dunlevy filed a Petition for Review with the Court in Division, docketed as CTA Case No. 9361.¹⁵

On August 22, 2016, the CIR filed his Answer,¹⁶ interposing the following special and affirmative defenses that: the Court of Tax Appeals has no jurisdiction over the case as the Petition for Review does not allege that the taxes paid by Dunlevy were erroneously or illegally assessed or collected; the penalties paid by Dunlevy was in the nature of a compromise penalty it paid to avoid criminal prosecution and imposition of administrative sanctions; in an action for tax refund/credit, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund/credit; tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris*; and Dunlevy failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected and, hence, is not entitled to the refund.

After the CIR submitted his Respondent's Pre-Trial Brief on September 21, 2016¹⁷ and Dunlevy filed its Pre-Trial Brief on September 23, 2016,¹⁸ the Pre-Trial Conference was held on November 24, 2016.¹⁹

On December 9, 2016, the parties filed their Joint Stipulation of Facts and Issues (JSFI).²⁰ Consequently, the Pre-Trial Order dated January 17, 2017 was issued,²¹ approving the said JSFI, and pre-trial was terminated.

Trial of the case ensued thereafter.

¹³ *Id.*, pp. 113 to 117, Exhibit "P-4".

¹⁴ *Id.*, p. 118, Exhibit "P-5".

¹⁵ *Id.*, pp. 10 to 27.

¹⁶ *Id.*, pp. 51 to 59.

¹⁷ *Id.*, pp. 62 to 65.

¹⁸ *Id.*, pp. 95 to 100.

¹⁹ *Id.*, pp. 123 to 124.

²⁰ *Id.*, pp. 125 to 128.

²¹ *Id.*, pp. 130 to 132.

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During trial, Dunlevy presented its documentary and testimonial evidence. Mr. Jose Marion L. Calvendra,²² Dunlevy's custodian of records, was its lone witness.

On March 27, 2017, Dunlevy filed its Formal Offer of Documentary Evidence.²³ Despite due notice, the CIR failed to file his comment thereon.²⁴ In the Resolution dated April 25, 2017,²⁵ the Court admitted Exhibits "P-1", "P-2", "P-4", and "P-5" and denied Exhibits "P-6", and "P-6-A", for Dunlevy's failure to comply with Section 3(b) and (c) of the Judicial Affidavit Rule in relation to Section 10(c) thereof; and Exhibit "P-3", for failure to have the same identified.

Consequently, Dunlevy filed its Motion for Reconsideration on May 8, 2017,²⁶ praying for the admission of Exhibits "P-3", "P-6", and "P-6-A" which the Court in Division granted and admitted in the Resolution dated June 27, 2017.²⁷

During the CIR's turn to present documentary and testimonial evidence, he presented the following witnesses: (1) Mr. Rodel S. Buenaobra,²⁸ Assistant Revenue District Officer of RDO No. 28; (2) Mr. Alfredo M. Santos,²⁹ Group Supervisor (GS) of RDO No. 38; (3) Mr. Roland F. Zamora,³⁰ GS of RDO No. 40; and (4) Ms. Teresita Florendo,³¹ Revenue Officer at RDO No. 38.

The CIR filed his Formal Offer of Evidence on May 4, 2018.³² Dunlevy then filed its Comment thereon on May 28, 2018.³³ Thus, in the Resolution dated July 20, 2018,³⁴ the Court in Division admitted the CIR's Exhibits "R-2", "R-2-A", "R-3", "R-4", "R-13", "R-13-A", "R-14", "R-14-A", "R-15", "R-15-A", "R-16", "R-16-A", "R-17", and "R-17-A"; but denied Exhibits "R-1", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", and "R-12", for failure to present their originals for comparison.



²² *Id.*, pp. 73 to 81, Exhibit "P-6"; pp. 138 to 139, Minutes of the hearing held on, and Order dated, February 27, 2017.

²³ *Id.*, pp. 147 to 150.

²⁴ *Id.*, p. 151, Records Verification dated March 30, 2017 issued by the Judicial Records Division of this Court.

²⁵ *Id.*, pp. 157 to 158.

²⁶ *Id.*, pp. 161 to 166.

²⁷ *Id.*, pp. 180 to 182.

²⁸ *Id.*, pp. 188 to 197, Exhibit "R-14"; pp. 214 to 215, Minutes of the hearing held on, and Order dated, August 2, 2017.

²⁹ *Id.*, pp. 262 to 270, Exhibit "R-15"; pp. 286 to 287, Minutes of the hearing held on, and Order dated, April 11, 2018.

³⁰ *Id.*, pp. 280 to 285, Exhibit "R-16"; pp. 286 to 287, Minutes of the hearing held on, and Order dated, April 11, 2018.

³¹ *Id.*, pp. 271 to 276, Exhibit "R-17"; pp. 286 to 287, Minutes of the hearing held on, and Order dated, April 11, 2018.

³² *Id.*, pp. 296 to 303.

³³ *Id.*, pp. 307 to 313.

³⁴ *Id.*, pp. 315 to 316.

On August 9, 2018, the CIR filed his Motion for Reconsideration (Resolution of 20 July 2018),³⁵ praying for the admission of the denied Exhibits. The Motion, however, was denied for lack of merit in the Resolution dated October 10, 2018.³⁶

Dunlevy filed its Memorandum on December 5, 2018,³⁷ while the CIR failed to file his memorandum.³⁸

The Court in Division submitted the case for decision on January 11, 2019.³⁹

On December 11, 2019, the Court in Division promulgated the assailed Decision and granted Dunlevy's Petition. The dispositive portion of the assailed Decision reads, as follows:

"WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **P7,800,000.00**, representing compromise penalties imposed without authority or were wrongfully collected.

SO ORDERED."⁴⁰

On December 26, 2019, the CIR filed his Motion for Reconsideration (Decision dated 11 December 2019)⁴¹ praying that the assailed Decision be reversed and set aside. Dunlevy filed its Comment/Opposition to Motion for Reconsideration dated 26 December 2019 through registered mail on February 3, 2020 which was received by the Court on February 11, 2020.

On June 16, 2020, the Court in Division issued the assailed Resolution denying the motion for lack of merit.⁴² The dispositive portion of the Assailed Resolution reads, as follows:



³⁵ *Id.*, pp. 317 to 321.

³⁶ *Id.*, pp. 335 to 340.

³⁷ *Id.*, pp. 341 to 363.

³⁸ *Id.*, p. 365, Records Verification dated December 13, 2018 issued by the Judicial Records Division of this Court.

³⁹ *Id.*, p. 366, Resolution dated January 11, 2019.

⁴⁰ *Id.* at Note 4, p. 47.

⁴¹ *Id.* at Note 1, pp. 81 to 87.

⁴² *Id.* at Note 5.

"WHEREFORE, premises considered, respondent's Motion for Reconsideration (Decision dated 11 December 2019) is **DENIED** for lack of merit.

SO ORDERED."⁴³

Within an extended period⁴⁴ granted by the Court⁴⁵, the CIR timely filed through electronic mail his appeal via Petition for Review on August 3, 2020, which the Court *en banc* received on August 4, 2020.⁴⁶

On September 23, 2020, the CIR was directed to submit a compliant Verification and Certification of Non-Forum Shopping within five (5) days from notice.⁴⁷

On October 7, 2020, the CIR filed his Compliance⁴⁸, which the Court *en banc* noted in its Resolution dated October 28, 2020.⁴⁹ In that same Resolution, Dunlevy was directed to file its Comment to the Petition.

On December 4, 2020, Dunlevy filed its Comment to Petition for Review dated 30 July 2020.⁵⁰

On January 13, 2021, the Court *en banc* issued a Resolution submitting the case for decision.⁵¹

The Assignments of Errors

The CIR did not indicate in his Petition the assignment of errors in the assailed Decision and Resolution. Instead, the CIR listed "Issues", as follows:

1. Dunlevy is not entitled to the refund of or issuance of a tax credit certificate in the amount of ₱7,800,000.00;
2. Dunlevy failed to comply with Section 229 of the National Internal Revenue Code (NIRC), as amended; and

⁴³ *Id.*, p. 92.

⁴⁴ *Id.* at Note 1, pp. 93-95.

⁴⁵ *Id.* at Note 3.

⁴⁶ *Id.* at Note 1.

⁴⁷ *Id.*, pp. 97-98.

⁴⁸ *Id.*, pp. 99-101.

⁴⁹ *Id.*, pp. 103-104.

⁵⁰ *Id.*, pp. 105-117.

⁵¹ *Id.*, pp. 120-121.

3. The Court has no jurisdiction over the Petition for Review.

The Arguments of the Parties

The CIR argues that Dunlevy is not entitled to the refund of, or issuance of tax credit certificate in the amount of ₱7,800,000.00 because under RMO No. 19-2007, the CIR or his duly authorized representatives are not prevented from accepting a compromise penalty higher than what is provided for. Moreover, the payment of the compromise penalty was made voluntarily by Dunlevy.

The CIR also contends that there has been no erroneous or illegal assessment and collection of tax in this case that could be the basis for a refund. Even assuming that Dunlevy paid an amount beyond what is required by law, the same cannot be construed to mean an erroneously assessed or collected tax.

Lastly, the CIR claims that the Court has no jurisdiction over the Petition for Review because the penalties paid by Dunlevy were in the nature of a compromise penalty which were not erroneously or illegally assessed and collected and, hence, beyond the jurisdiction of the Court.

On the other hand, Dunlevy counters that it did not voluntarily pay the compromise penalties, but instead, was constrained and forced to pay it because the continued operation of its business was threatened by the non-payment of the said penalties. Moreover, the CIR imposed penalties in excess of the amounts prescribed under RMO No. 19-2007 and the Payment Form was merely approved by the Revenue District Officer and not the CIR or the concerned Regional Director.

Dunlevy also claims that the penalties imposed and collected were grossly arbitrary, excessive, and were collected without authority. Since Dunlevy complied with the requisites for claiming a refund under Section 229 of the NIRC, the Court has jurisdiction over the Petition which should be dismissed for utter lack of merit.

The Ruling of the Court

We deny the Petition for lack of compelling ground to merit the reversal of the assailed Decision and Resolution.

It is obvious from a plain reading of the Petition of the CIR that it is a ***verbatim quote*** of its Motion for Reconsideration filed on December 26, 2019 which the Court in Division already resolved in the assailed Resolution dated June 16, 2020. The arguments the CIR raises in his Petition are the very same



arguments which have been amply considered and exhaustively discussed by the Court in Division in the assailed Decision and Resolution, and to discuss them anew is superfluity.

Jurisdiction of the Court over the Present Case

Section 7(a)(1) of Republic Act No. (RA) 1125,⁵² as amended by RA 9282⁵³, reads as follows:

"SECTION 7. *Jurisdiction.* - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds** of internal revenue taxes, fees or other charges, **penalties in relation thereto, or other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds** of internal revenue taxes, fees or other charges, **penalties in relation thereto, or other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which the inaction shall be deemed a denial;" (*Emphasis supplied*)

As aptly observed by the Court in Division, the above-quoted provisions state that the exclusive appellate jurisdiction of the CTA includes the CIR's decisions and inactions in cases involving, *inter alia*, refunds of penalties in relation to taxes. The second part of the provision covers other cases that arise out of the NIRC of 1997, as amended, or related laws administered by the BIR. The wording of the provision is clear and simple.⁵⁴

⁵² AN ACT CREATING THE COURT OF TAX APPEALS.

⁵³ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPEGAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

⁵⁴ *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

What is sought to be refunded in this case are compromise *penalties* collected by, or imposed by the BIR, for supposed violations committed by Dunlevy. Both parties likewise invoked Section 229 of the NIRC,⁵⁵ which deals with the refund of "*any penalty claimed to have been collected without authority*". Since this case involves penalties, and also may be categorized under "other matters" arising from the NIRC, the Court has exclusive appellate jurisdiction to entertain the same.

Moreover, Section 229 of the NIRC of 1997, as amended, provides as follows:

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court **for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

xxx xxx xxx." (*Emphasis supplied*)

The foregoing provision allows the recovery by a taxpayer of certain sums from the CIR, such as:

1. Any national internal revenue taxes alleged to have been erroneously or illegally assessed or collected;
2. **Any penalty** claimed to have been collected without authority; and
3. **Any sum** alleged to have been excessively or in any manner wrongfully collected.

These have been expounded on in the assailed Decision, thus:

"The *first* classification covers an 'erroneous or illegal tax', which is defined as one levied without statutory authority, or upon

⁵⁵ Refer to Par. 4, Petition for Review, Docket, p. 11; and Par. 12, Answer, Docket, pp. 55 to 56.

property not subject to taxation or by some officer having no authority to levy the tax, or one which in some other similar respect is illegal.⁵⁶ The *second* classification clearly refers to penalties collected without authority; while the *third* classification pertains to sums of money excessively or in any manner wrongfully collected.

Considering that subject matter of the instant case involves the refund of compromise penalties, the same may fall under either the *second* or *third* classification."

Given the foregoing, *We* find no error in the Court in Division's finding that this Court has jurisdiction over the instant case.

***The Imposition of Penalties Should
Conform to Annex A of RMO No.
19-2007***

RMO No. 19-2007 dated August 8, 2007, otherwise known as "The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code", is controlling in determining the legality of the penalties imposed on Dunlevy for the said violations.

Item III Nos. (1), (3), (4), (6), and (7) of RMO No. 19-2007 provide the following guidelines and instructions to all Internal Revenue Officers concerned:

"III. Guidelines and Instructions

1. The internal revenue officers concerned shall apply the Revised Schedule of Compromise Penalties embodied in Annex "A" to ensure uniformity of action.
2. x x x
3. **In no case shall the compromise penalty differ in amount from those specified in the aforementioned Schedule, except when duly approved by the Commissioner or concerned Deputy Commissioner, or in proper cases, by the Regional Directors.**
4. **Although all amounts of compromise penalties incident to violations shall be itemized in the assessment notice and/or**

⁵⁶ *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

demand letter, the same should not form part of assessment notice that reflects deficiency basic tax, surcharge and interest but should appear in a separate assessment notice/demand letter as the amount suggested to the taxpayer to pay in lieu of criminal prosecution. If paid, the compromise penalties shall be collected and accounted for under the usual procedures, as internal revenue collection.

5. x x x

6. **The schedule of compromise penalties herein prescribed shall not prevent the Commissioner or his duly authorized representative from accepting a compromise amount higher than what is provided hereof.** A compromise offer lower than the prescribed amount may be accepted after approval by the Commissioner of Internal Revenue or the concerned Deputy Commissioner/ Assistant Commissioner/ Regional Director.
7. In cases where Apprehension Slips were issued, **all offers shall be made by accomplishing the form as shown in Annex "B".** (*Emphasis supplied*)

Under the said RMO, strict adherence to the schedule of penalties listed in the Annex A of RMO No. 19-2007 is required. As it stands, there are only two exceptions when the penalties may differ from the said schedule:

- (1) when a **compromise offer is lower** than what is provided in the said schedule, there must be an approval from the CIR, or concerned Deputy Commissioner/ Assistant Commissioner/ Regional Director; and
- (2) when a **compromise offer is higher** than those penalties, the offer must be in writing and if there is an Apprehension Slip, the form provided in Annex B of RMO No. 19-2007 shall be used.

In all cases, **all amounts of compromise penalties incident to violations shall be itemized in an assessment notice and/or demand letter, and if the compromise offer is higher, then all offers must be in**



writing. In the event that an Apprehension Slip is issued, the form designated as Annex "B" in the said RMO must be used.

As the Court in Division correctly observed:

"In this case, the supposed criminal violations committed by petitioner are not clearly shown as falling under any of the items stated in the *Revised Schedule of Compromise Penalties* attached to RMO No. 19-2007. Thus, it could not be said that the imposition of the subject compromise penalties strictly followed the amounts stated in the said *Revised Schedule*.

Furthermore, it was established that after conducting the verification and validation of the BIR, petitioner was made to pay on May 30, 2014 the following compromise penalties for the alleged corresponding violations in the aggregate amount of ₱7,800,000.00, **without an assessment notice or demand letter being issued.**⁵⁷

Such being the case, in imposing the subject compromise penalties, respondent or the BIR did not follow the strict mandate that all amounts of compromise penalties shall be itemized in a *separate assessment notice/demand letter*. (*Emphasis supplied*)

Corollary to the above, a compromise offer must be written either in the form of Annex B of RMO No. 19-2007 or, in cases wherein it is not applicable, the compromise agreement regarding penalties must be signed by both the taxpayer and the CIR, or his concerned deputies, or the RD, in appropriate cases.

The records of the case show a dearth of evidence not only as regards the assessment notice or demand letter, but also as to the required written offer from the taxpayer.

The Court, therefore, sees no error committed by the Court in Division in the assailed Decision and Resolution.

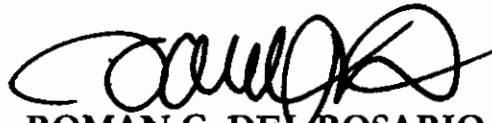
WHEREFORE, premises considered, the Petition for Review is **DENIED.** The assailed Decision dated December 11, 2019 and the Resolution dated June 16, 2020 of the Second Division in CTA Case No. 9361 are **AFFIRMED.** ✓

⁵⁷ *Id.* at Note 6, pp. 111 to 112, Exhibits "P-2", "P-3", "R-13", and "R-13-a".

SO ORDERED.

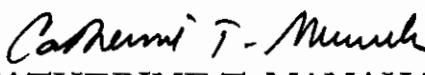

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

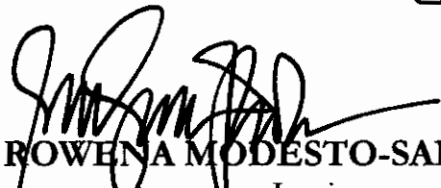

ROMAN G. DEL ROSARIO
Presiding Justice

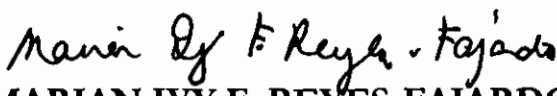

JUANITO C. CASTANEDA JR.
Associate Justice


ERLINDA P. UY
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

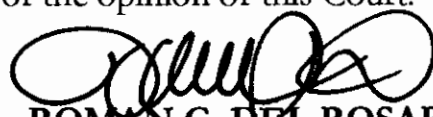

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
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 this Court.


ROMAN G. DEL ROSARIO
Presiding Justice