REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

MINDANAO II GEOTHERMAL PARTNERSHIP,
Respondent.

CTA *EB* NO. 1768
(CTA Case Nos. 7899, 7942 & 7960)

x--x

MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NOS. 1770
(CTA Case Nos. 7899, 7942 & 7960)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

AUG 30 2019 2:33p.m.

x- x

DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) on February 9, 2018

[1] *Rollo*, CTA EB No. 1768, pp. 53-61.

through registered mail which was received by this Court on February 15, 2018 under CTA EB No. 1768 and the *Petition for Review* [2] filed by petitioner Mindanao II Geothermal Partnership (Mindanao II for brevity) on February 12, 2018 under CTA EB No. 1770, pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[3] which pray for the modification, reversal and setting aside of the July 25, 2017 *Amended Decision*[4] and January 5, 2018 *Resolution*[5] promulgated by the Special Third Division of the Court of Tax Appeals (CTA) in CTA Case Nos. 7899, 7942, & 7960, entitled "*Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue,*" and the issuance of a new decision instead.

The dispositive portions of the assailed *Decision* and *Resolution* read as follows:

Amended Decision[6] dated July 25, 2017:

> "**WHEREFORE**, premise considered, the Petitions for Review are hereby **GRANTED** but in a modified amount. Respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE MILLION SEVEN HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED SEVENTY NINE AND 78/100 PESOS (Php1,771,479.78)**, representing its creditable input value-added taxes paid and attributed to its effectively zero-rated sales for the first and second quarters of CY 2007.
>
> **SO ORDERED.**"

Resolution[7] dated January 5, 2018:

> "**WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration and petitioner's Motion for Partial Reconsideration are hereby **DENIED** for lack of merit. Accordingly, the Amended Decision dated July 25, 2017 is **AFFIRMED** and **UPHELD**.

---

[2] *Rollo*, CTA EB No. 1770, pp. 40-76.

[3] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

[4] *Rollo*, CTA EB No. 1768, pp. 64-85.

[5] *Id.*, pp. 86-93.

[6] *Supra*, Note 4.

[7] *Supra*, Note 5.

SO ORDERED."

The Facts

As culled from the assailed Amended Decision, petitioner CIR is the duly appointed officer vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.[8]

On the other hand, petitioner Mindanao II is a partnership duly registered with the Securities and Exchange Commission, with principal address at Barangay Homavis, Kidapawan City, Cotabato.[9]

On March 11, 1997, petitioner Mindanao II entered into a Build-Operate-Transfer (BOT) Contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the finance, engineering, supply, installation, testing, commissioning, operation and maintenance of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to the former at no cost. In turn, it shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and on behalf of PNOC-EDC.[10]

As a power generation company utilizing geothermal energy and steam, petitioner Mindanao II's sale of generated power and delivery of electric capacity and energy to NPC for and on behalf of PNOC-EDC, under the BOT contract, is value-added tax (VAT) zero-rated, pursuant to Section 108(B) of the 1997 National Internal Revenue Code (NIRC), as amended.[11]

As a result of said transactions, petitioner Mindanao II allegedly incurred input VAT, which are attributed and allocated to effectively zero-rated sales in the amount of Php8,255,554.02 for taxable year 2007.[12]

---

[8] *Rollo*, CTA EB No. 1768, Amended Decision dated July 25, 2017, p. 65.
[9] *Id.*
[10] *Id.* at 65-66.
[11] *Id.* at 66.
[12] *Id.*

On the following dates, petitioner Mindanao II filed with the BIR its Original Quarterly VAT Returns for taxable year 2007:[13]

Taxable Quarter	Date of Filing of Original Return
1st	April 25, 2007
2nd	July 25, 2007
3rd	October 24, 2007
4th	January 28, 2008

On March 30, 2009, it filed its administrative claim for refund of unutilized input VAT for taxable year 2007, together with the supporting documents.[14]

Due to petitioner CIR's inaction, petitioner Mindanao II filed with the CTA the following Petitions for Review:[15]

CTA Case No.	Quarters	Unutilized Input VAT	Date of Filing of Petition for Review
7899	1st	Php4,048,011.48	March 31, 2009
7942	2nd	Php1,484,924.01	June 30, 2009
7960	3rd & 4th	Php2,722,618.53	August 12, 2009

On August 12, 2009, petitioner Mindanao II filed a "Motion to Consolidate CTA Case No. 7960 with CTA Case Nos. 7899 and 7942, which the Court in Division granted. Thus, CTA Case Nos. 7960 and 7942 were consolidated with CTA Case No. 7899, the case bearing the lowest docket number.[16]

Initially, the Court in Division promulgated a Decision dated August 1, 2012, with the dispositive portion reading as follows:[17]

> WHEREFORE, premises considered:
>
> 1) As regards CTA Case No. 7899, the Petition for Review is hereby **DISMISSED** for having been prematurely filed;
>
> 2) As regards CTA Case No. 7942, the Petition for Review is hereby **DISMISSED** for having been prematurely filed; and

---

[13] *Rollo*, CTA EB No. 1768, Amended Decision dated July 25, 2017, p. 66.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.* at 67-68.

> 3) As regards CTA Case No. 7960, the Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent CIR is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SIX THOUSAND SIX HUNDRED THIRTY FOUR PESOS and 29/100 (PHP6,634.29)**, representing unutilized input VAT paid on its domestic purchases of goods and services which are attributable to zero-rated sales for the third and fourth quarters of calendar year 2007.
>
> **SO ORDERED.**

Petitioner Mindanao II filed a Motion for Reconsideration on August 28, 2012 which was denied by the Court in Division on November 7, 2012.[18]

Not satisfied, it elevated the case to the Court *En Banc* on December 12, 2012 which the latter partially granted and remanded the case to the Court in Division.[19] Both petitioners CIR and Mindanao II moved for the reconsideration of said ruling but the Court denied said motions.[20]

Both parties filed their own petitions for certiorari before the Supreme Court which subsequently denied both petitions, hence, the case was remanded and resolved by the Court in Division through the assailed amended decision.[21] Again, both parties moved for the reconsideration of the amended decision which were denied anew by the Court in Division. Hence, the filing of the instant petitions.

On February 21, 2018, the Court *En Banc* decided to consolidate both petitions considering that the same pertains to the assailed amended decision and resolution.[22] Both parties were ordered to comment on each other's petitions.[23]

On May 15, 2008, this Court had given due course to both petitions and ordered both parties to submit their respective memoranda.[24] Thus, petitioner CIR filed his Memorandum[25] on June 21, 2018 while Petitioner Mindanao II

---

[18] *Rollo*, CTA EB No. 1768, Amended Decision dated July 25, 2017, p. 68.
[19] *Id.* at 68-69.
[20] *Id.* at 69.
[21] *Id.* at 70-72.
[22] *Id.*, Minute Resolution dated February 21, 2018, p. 98.
[23] *Id.*, Resolution dated March 14, 2018, pp. 100-101.
[24] *Id.*, Resolution dated May 15, 2018, pp. 129-130.
[25] *Id.* at 131-139.

filed its Memorandum[26] on June 28, 2018 through registered mail and received by this Court on July 4, 2018. Hence, the consolidated cases were deemed submitted for resolution.[27]

The Issue

Whether or not the partial grant of petitioner's judicial claim for refund of creditable input VAT attributed to its effectively zero-rated sales for the first and second quarters of CY 2007amounting to Php1,771,479.78 was proper.

Arguments of Petitioner CIR[28]

Petitioner CIR, in CTA EB No. 1768, argues that he was not given a single day to process the claim for refund, thus no inaction nor decision can be appealed to this Court. He also asserts that the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention. He also argues that the administrative authority must be given opportunity to decide the matter, to act and correct the errors in the administrative forum.

Moreover, he avers that petitioner Mindanao II is not entitled to the claim for refund because it is not the proper party to such remedy, citing the cases of *Contex Corporation vs. Commissioner of Internal Revenue*[29] (*Contex* case) and *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[30], (*Coral Bay* case) and that the doctrine of *stare decisis* on the cited cases be applied in the instant case.

Arguments of Petitioner Mindanao II[31]

Petitioner Mindanao II, in CTA EB No. 1770, argues that the Court in Division erred in denying its claim for refund or the issuance of tax credit certificate amounting to Php2,479,138.93 notwithstanding its support to the claim by competent evidence citing the case of *Kepco Philippines*

---

[26] *Rollo*, CTA EB No. 1768, pp. 141-181.
[27] *Id.*, Resolution dated September 5, 2018, pp. 192-193.
[28] *Supra.*, Note 25.
[29] G.R. No. 151135, July 2, 2004.
[30] G.R. No. 190506, June 13, 2016.
[31] *Supra.*, Note 26.

Corporation v. Commissioner of Internal Revenue[32] wherein the Supreme Court ruled that the VAT invoice is the seller's best proof of the sale of the goods and services to the buyer and the VAT receipt is the buyer's evidence of the payment for goods or services received from the seller.

Petitioner also argues that technicalities and legalism should not be misused to defeat a claim when it is clear from the collective evidence that substantial justice, equity and fair play are on its side. It further argues that the doctrine of *strictissimi juris* should be relaxed when it is clear from the claim for refund or issuance of tax credit certificate that such is sufficiently supported by competent evidence.

Ruling of the Court *En Banc*

Although the arguments raised by both parties were merely a rehash of earlier discourse and have already been discussed or passed upon by the Court in Division in the assailed resolution, this Court shall reiterate the disquisitions therein.

As to petitioner CIR's arguments that it was not given a single day to process the claim for refund as well as its conclusion that respondent Mindanao II, in CTA EB No. 1768, was not the proper party to file the claim for tax refund or credit, the Court in Division found that such arguments were only raised by petitioner in his motion for partial reconsideration (MPR) for the first time, to wit:[33]

> "Anent respondent's MPR, the Court notes that the issues raised therein, i.e. that he was not given even a single day to perform his duties and that petitioner is not the proper party to file for the tax refund or TCC, were raised for the first time in the instant MPR..."

In *Multi-Realty Development Corporation v. The Makati Tuscany Condominium Corporation*[34], the Supreme Court ruled that issues raised for the first time on appeal should not be allowed, to wit:

---

[32] G.R. No. 181858, November 24, 2010.
[33] *Rollo*, CTA EB No. 1768, Resolution dated January 5, 2018, p. 89.
[34] G.R. NO. 146726, June 16, 2006.

> Settled is the rule that no questions will be entertained on appeal unless they have been raised below. Points of law, theories, **issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal**. Basic considerations of due process impel this rule. (*Emphasis supplied*)

Thus, this Court will not discuss further said issues considering that those were raised only for the first time in petitioner CIR's MPR before the Court in Division as well as his petition for review under CTA EB No. 1768, hence, we are constrained to disregard the same. Furthermore, this is violative of the right to due process of respondent Mindanao II that was not given the opportunity at the first instance to impugn the same.[35]

Petitioner Mindanao II's also argues that the amount of VAT on the following sales invoices, official receipts, and transaction receipts were shown as a separate item therein, hence, a fact that the VAT was actually paid, to wit:

Invoice No.	**Official Receipt No.**	**Transactions Receipts No.**
645 (Exhibit Q.2B)	0243 (Exhibit Q.1)	0032 (Exhibit Q.5)
646 (Exhibit Q.2C)	0854 (Exhibit Q.3)	0094 (Exhibit Q.17)
647 (Exhibit Q.2D)	22024 (Exhibit Q.7)	0108 (Exhibit R.21)
653 (Exhibit Q.12B)	360355 (Exhibit Q.9)	0004 (Exhibit R.40)
654 (Exhibit Q.12C)	0245 (Exhibit Q.11)	
655 (Exhibit Q.12D)	877 (Exhibit Q.13)	
661 (Exhibit Q.45B)	22404 (Exhibit Q.19)	
662 (Exhibit Q.45C)	2132 (Exhibit Q.23)	
663 (Exhibit Q.45D)	382 (Exhibit Q.25)	
15009653063 (Exhibit Q.28A & Q.28B)	22405 (Exhibit Q.33)	
15009755469 (Exhibit Q.49)	0354 (Exhibit Q.40)	
669 (Exhibit R.14B)	0247 (Exhibit Q.44)	
670 (Exhibit R.14C)	388 (Exhibit Q.46)	
671 (Exhibit R.14D)	22937 (Exhibit Q.52)	
15009858175 (Exhibit R.18)	020 (Exhibit R.1)	
683 (Exhibit R.28B)	1162 (Exhibit R.3)	
684 (Exhibit R.28C)	2142 (Exhibit R.10)	
685 (Exhibit R.28D)	0249 (Exhibit R.13)	
15009961505 (Exhibit R.35)	0384 (Exhibit R.19)	

[35] Spouses Jose Dycoco and Joela E. Dycoco v. The Honorable Court of Appeals et al., G.R. No. 147257, July 31, 2013.

691 (Exhibit R.53B)	23482(Exhibit R.23)	
692 (Exhibit R.53C)	0253 (Exhibit R.27)	
693 (Exhibit R.53D)	0399 (Exhibit R.36)	
1501006544 (Exhibit R.55)	2389 (Exhibit R.42)	
11442 (Exhibit R.69B)	24138 (Exhibit R.44)	
	24571 (Exhibit R.46)	
	0256 (Exhibit R.52)	
	0416 (Exhibit R.56)	
	24855 (Exhibit R.68)	

However, the Court in Division found that said invoices and official receipts had failed to comply with the substantiation requirements because either the VAT was not separately indicated therein or that the transactions were supported only by a statement of account or a transaction receipt and not by valid VAT invoices and official receipts.[36]

In *Crisanto M. Aala et al. v. Hon. Rey T. Uy et al.*[37], the Supreme Court recognizes the duty of the trial court in appreciation of the evidence presented to it during the trial, to wit:

> "There is another reason why this Court enjoins strict adherence to the doctrine on hierarchy of courts. As explained in *Diocese of Bacolod v. Commission on Elections*, "[t]he doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner." Thus:
>
>> Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. **Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them.** In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the

---

[36] *Rollo*, CTA EB No. 1768, Amended Decision dated July 25, 2017, pp. 36-37.
[37] G.R. No. 202781, January 10, 2017.

> constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals..." (*Emphasis supplied*)

In Heirs of *Teresita Villanueva et al. v. Heirs of Petronila Syquia Mendoza et al.*[38], the Supreme Court ruled that findings of facts by the trial court are accorded respect because it is in a much better position to determine which party was able to present evidence with greater weight, to wit:

> Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight.

Thus, this Court *a quo* will not disturb the factual findings of the Court in Division on said sales invoices, official receipts, and transactions receipts absent any allegation of abuse, arbitrariness, or capriciousness committed by the said court against petitioner Mindanao II.

As to petitioner Mindanao II's argument to relax the application of the doctrine of *strictissimi juris*, it should be aware that the subject matter it elevated before this Court was its claim for refund and jurisprudence dictates that it should prove every aspect of its claim as ruled in the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*,[39] to wit:

> Clearly, it would not be proper to allow Atlas to simply prevail and compel a tax credit or refund in the amount it claims without proving the amount of its claim. After all, "[t]ax refunds are in the nature of tax exemptions," and are to be construed *strictissimi juris* against the taxpayer.

---

[38] G.R. No. 209132, June 05, 2017.
[39] G.R. No. 159490 dated February 18, 2008.

The strictness of such doctrine against tax exemptions, which is the nature of tax refunds, was thoroughly explained in the case of *Commissioner of Internal Revenue v. A.D. Guerrero, Special Administrator, in substitution of Nathaniel I. Gunn, as Administrator of the Estate of the late Paul I. Gunn*,[40] to wit:

> From 1906, in *Catholic Church vs. Hastings*[3] to 1966, in *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs*, it has been the constant and uniform holding that **exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer.** Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*. The state of the law on the subject was aptly summarized in the *Esso Standard Eastern, Inc.* case by Justice Sanchez thus: "The drive of petitioner's argument is that marketing of its gasoline product 'is corollary to or incidental to its industrial operations.' But this contention runs smack against the familiar rules that exemption from taxation is not favored, and that exemptions in tax statutes are never presumed. Which are but statements in adherence to the ancient rule that exemptions from taxation are construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tested by this precept, we cannot indulge in expansive construction and write into the law an exemption not therein set forth. Rather, we go by the reasonable assumption that where the State has granted in express terms certain exemptions, those are the exemptions to be considered, and no more . . . ."
>
> In addition to Justice Tracey, who first spoke for this Court in the *Hastings* case in announcing "the cardinal rule of American jurisprudence that exemption from taxation not being favored," and therefore "must be strictly construed" against the taxpayer, two other noted American jurists, Moreland and Street, who likewise served this Court with distinction, reiterated the doctrine in terms even more emphatic. According to Justice Moreland: "Even though the complaint in this regard were well founded, it would have little bearing on the result of the litigation when we take into consideration the universal rule that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be mistaken." From Justice Street: "Exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right. It cannot be allowed to exist upon a vague implication such

---

[40] G.R. No. L-20942 dated September 22, 1967.

> as is supposed to arise in this case from the omission from Act No. 1654 of any reference to liability for tax. The books are full of very strong expressions on this point." (*Emphasis supplied*)

Petitioner Mindanao II should also be reminded that the doctrine of *strictissimi juris* is part of our jurisprudence, which are rulings rendered by the Supreme Court, and this Court is mandated to take cognizance of such rulings as ruled in the case of *The Heirs of Felicidad Canque v. Court of Appeals et al.*,[41] to wit:

> Clearly, the Court of Appeals committed a reversible error because it palpably failed to consider in its August 25, 1994 Decision the aforementioned ruling of the Supreme Court promulgated twenty months earlier on January 27, 1993. Unfortunately, this is not the first time for this Court to come upon such a slip. *Peltan Development vs. Court of Appeals* ruled that **every court must take cognizance of decisions this Court has rendered because they are proper subjects of mandatory judicial notice** xxx [and] **more importantly form part of the legal system**. We stress that **members of the bench have a responsibility to know and to apply the latest holdings of the Supreme Court**. The nature of their calling requires no less. (*Emphasis supplied*)

Such duty to follow the legal doctrine enunciated by the Supreme Court is not only pursuant to the doctrine of judicial notice but because it is the only institution which the courts should follow as pronounced in the case of *Manila Electric Company v. Philippine Consumers Foundation, Inc. et al.*,[42] to wit:

> A lower court cannot reverse or set aside decisions or orders of a superior court, especially of this Court, for to do so will negate the principle of hierarchy of courts and nullify the essence of review. A final judgment, albeit erroneous, is binding on the whole world. Thus, it is the duty of the lower courts to obey the Decisions of this Court and render obeisance to its status as the apex of the hierarchy of courts. "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation." "**There is only one Supreme Court from whose decisions all other courts should take their bearings**," as eloquently declared by Justice J. B. L. Reyes. (*Emphasis supplied*)

---

[41] G.R. No. 119184, July 21, 1997.
[42] G.R. No. 101783, January 23, 2002.

Further, it is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the doctrine of *stare decisis* as amply explained in the case of *Amelia D. De Mesa et al. v. Pepsi Cola Products, Inc. et al.*,[43] to wit:

> The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:
>
> > ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
>
> It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. **The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument**. (emphasis supplied)

WHEREFORE, premises considered, the Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the assailed July 25, 2017 *Amended Decision*[44] and January 5, 2018 *Resolution*[45] are hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

---

[43] G.R. Nos. 153063-70, August 19, 2005.
[44] *Supra.*, Note 4.
[45] *Supra.*, Note 5.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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