REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

GMA NETWORK, INC., Petitioner,	**CTA EB NO. 646** (CBAA Case No. M-30)
-versus-	Present: ***Acosta, P.J. Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, Fabon-Victorino, Mindaro-Grulla, and Cotangco-Manalastas, JJ.***
ONDI B. MAMALIMPING, In His Capacity As City Treasurer, Cotabato City, Respondent.	Promulgated: JAN 05 2012 9:10 a.m.

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D E C I S I O N

BAUTISTA, J.:

This is an appeal via a Petition for Review before the Court *En Banc* under Section 3(c), Rule 8 of the Revised Rules of the Court of Tax Appeals[1] from the Decision of the Central Board of Assessment Appeals ("CBAA") dated December 18, 2009,[2] which dismissed petitioner GMA Network, Inc.'s ("GMA") Appeal, and the Resolution dated May 14, 2010,[3] which denied GMA's Motion for Reconsideration in the case docketed as CBAA Case No. M-30; and accordingly sustained the inclusion

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[1] A.M. No. 05-11-07-CTA dated November 22, 2005.
[2] *Rollo*, CTA EB Case No. 646 (CBAA Case No. M-30), pp. 37-58
[3] *Id.*, at pp. 59-74.

of the subject real properties on the roll of taxable properties and denied the claim for refund of real property taxes which allegedly were wrongfully collected by Cotabato City.

The Parties

Petitioner, GMA Network, Inc., (formerly known as Republic Broadcasting System, Inc.) is a private corporation duly organized and existing under Philippine laws, with principal office at GMA Network Center, EDSA corner Timog Ave., Diliman, Quezon City. It is engaged in the business of radio and television broadcasting of all kinds and types on a commercial and/or sustaining basis.[4]

Respondent, Cleotilde B. San Luis, is the then City Treasurer of Cotabato City.[5] On August 5, 2011, respondent filed a "Motion for Substitution" for the substitution of Cleotilde B. San Luis by Ondi B. Mamalimping as the new City Treasurer of Cotabato City.[6] Accordingly, the same is hereby **GRANTED**; respondent Cleotilde B. San Luis is hereby stricken from the records of the case, and to be substituted with respondent Ondi B. Mamalimping as the new City Treasurer of Cotabato City.

The Facts

Petitioner GMA is a grantee of the legislative franchise to operate radio and television broadcasting stations in the country under Republic Act ("R.A.") No.

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[4] *Id.*, at p. 3.
[5] *Rollo*, p. 4.
[6] On August 5, 2011, the Court received a "Motion for Substitution" from the Respondent, as Cleotilde B. San Luis has already retired as of February 1, 2010 and Ondi B. Mamalimping is the new City Treasurer.

7252, which took effect on March 2, 1992.[7] In particular, Congress granted petitioner GMA the license "to construct, install, operate and maintain for commercial purposes and in the public interest, radio and television broadcasting stations in the Philippines with the corresponding auxiliary, special broadcast and other program and distribution services and relay stations, and to install radio communication facilities for private use in its broadcast services" for a term of twenty five (25) years.[8]

In pursuit of its legislative franchise, petitioner GMA acquired lands, constructed buildings and improvements, and placed machineries thereon that are necessary and essential to the operation of a television network and radio broadcasting stations in Metro Manila and various provinces.[9]

In 1998, GMA opened its television relay station in Org. Compound, Cotabato City where it acquired a building thereon ("subject property").[10] The subject property is classified under "Commercial Building" and is being used by GMA as a tower antenna transmitter site.[11] The subject property is listed in the assessment roll pursuant to which a tax declaration was issued by the Office of the City Assessor of Cotabato.[12] As a consequence of the listing, the City of Cotabato imposed real property tax, and correspondingly GMA paid the taxes, including the taxable period

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[7] *An Act Granting the Republic Broadcasting System, Inc., a Franchise to Construct, Install, Operate and Maintain Radio and Television Broadcasting Stations in the Philippines*, which took effect on March 2, 1992.
[8] *Rollo*, p. 4.
[9] *Id.*, at p. 5.
[10] *Id.*
[11] *Id*,
[12] *Id.*

2007, which totaled to Twenty Four Thousand Three Hundred Ninety Four Pesos and Forty Three Centavos (Php24.394.43).[13]

In year 2006, a decision in the case of *City Government of Quezon City v. Bayan Telecommunications, Inc.*[14] *("Bayantel Case")* was issued, wherein the Supreme Court upheld Bayantel's exemption from real estate tax on its real estate, buildings and personal property located in Quezon City which are actually, directly and exclusively used in the pursuit of its franchise on the basis of the *"exclusive of this franchise"* clause found in Bayantel's legislative franchise.[15]

In the more recent case of *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*[16] *("Digitel Case")*, the Supreme Court reiterated the Bayantel ruling in finding that the *"exclusive of this franchise"* clause is an express exemption from payment of real property taxes on real properties that are exclusively, actually and directly used in pursuit of Digitel's franchise.[17]

Invoking the rulings in the Bayantel and Digitel cases, petitioner served a letter dated March 3, 2008 to respondent on March 19, 2008, claiming for refund of real property taxes erroneously collected covering the period 2007 pursuant to Section 253 of R.A. 7160 or the Local Government Code of 1991 ("LGC of 1991").[18] However, the sixty (60)-day period from receipt of the claim for refund lapsed, without the City Treasurer acting upon such a claim.[19]

[13] *Id.*
[14] G.R. No. 162015, March 6, 2006, 484 *SCRA* 169.
[15] *Rollo*, pp. 6-7.
[16] G.R. No. 143867, February 23, 2007, 399 *SCRA* 442.
[17] *Id.*
[18] *Rollo*, p. 7.
[19] *Id.*

On May 19, 2008, GMA filed a Petition dated May 18, 2008 before the Local Board of Assessment Appeals ("LBAA") from the denial by inaction of the respondent, pursuant to Section 253 of the LGC of 1991, in relation to the 2005 Manual of Assessment on Real Property and Assessment Operations.[20]

On April 13, 2009, GMA received the LBAA's Order dated October 21, 2008 denying the Petition on the ground of lack of jurisdiction.[21] On May 12, 2009, GMA filed its Notice of Appeal dated May 11, 2009 with the Central Board of Assessment Appeals ("CBAA"), and filed its Appeal Memorandum on May 13, 2009.[22]

On February 2010, GMA received the Assailed Decision[23] of the CBAA, which disposed of the appeal for lack of merit.

Petitioner filed a Motion for Reconsideration,[24] and on May 24, 2010, received a denial of its Motion for Reconsideration. [25]

Hence this Petition.

The Issues[26]

Petitioner raises the following issues:

A. THE CBAA COMMITTED GRAVE REVERSIBLE ERROR WHEN IT DENIED PETITIONER GMA'S APPEAL ON THE GROUND THAT REPUBLIC ACT NO. 7252 DOES NOT CATEGORICALLY GRANT EXEMPTION FROM REAL PROPERTY TAX TO PETITIONER GMA.

B. THE CBAA COMMITTED GRAVE REVERSIBLE ERROR WHEN IT DENIED PETITIONER GMA'S APPEAL BY APPLYING RETROACTIVELY THE SUPREME COURT RULING IN THE CASE

[20] *Id.*, pp. 7-8
[21] *Id.*, p. 9.
[22] *Id.*, pp. 9-10.
[23] *Id.*, pp. 37-58.
[24] *Id.*, p. 10.
[25] *Id.*
[26] *Id. p. 11.*

ENTITLED *"DIGITAL [T]ELECOMMUNICATIONS PHILIPPINES, INC. VS. CITY GOVERNMENT OF BATANGAS," G.R. NO. 156040, DECEMBER 11, 2008"* AND HOLDING THAT PETITIONER GMA DID NOT ACQUIRE ANY VESTED RIGHT IN THE APPLICATION OF THE SUPREME COURT RULINGS IN THE CASES OF *"CITY GOVERNMENT OF QUEZON CITY VS. BAYAN TELECOMMUNICATIONS, INC., MARCH 6, 2006, 484 SCRA 169"* AND *"DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC. (DIGITEL) VS. PROVINCE OF PANGASINAN, FEBRUARY 23, 2007, 516 SCRA 558."*

The Ruling of the Court *En Banc*

The Petition has no merit. The Court finds no justifiable reason to overturn or modify the Decision of the CBAA dated December 18, 2009 and the Resolution dated May 14, 2010. Records disclose that the ground that the petitioner relied upon for review in the instant petition, and the respective discussions/arguments thereof are the same matters raised by the petitioner in its Notice of Appeal filed with the CBAA.

To reiterate, the main issue in this case revolves around the interpretation of the phrase "exclusive of this franchise" as contained in the first sentence of Section 8 of R.A. No. 7252,[27] which states that:

> "Section 8. *Tax Provisions.* - The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the radio/television business transacted under this franchise by the grantee, its successors or assigns and said percentage shall be in lieu of all taxes on this franchise or earnings thereof: *Provided,* That the grantee, its successors or assigns shall continue to be liable for

[27] *Supra*, note 7.

> income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.
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> xxxxx"

Petitioner relies on the interpretation made by the Supreme Court in the cases of *City Government of Quezon City v. Bayan Telecommunications, Inc.*,[28] and *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan*[29] to bolster its argument for the exclusion of its properties from the roll of assessments of taxable properties.

The abovementioned cases interpreted the phrase "exclusive of this franchise" as exempting those real properties actually, directly and exclusively used by the grantee in its franchise.

The Bayantel case explained:

> "The legislative intent expressed in the phrase 'exclusive of this franchise' cannot be construed other than distinguishing between two (2) sets of properties, be they real or personal, owned by the franchisee, namely, (a) those actually, directly and exclusively used in its radio or telecommunications business, and (b) those properties which are not so used. It is worthy to note that the properties subject of the present controversy are only those which are admittedly falling under the first category.
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> While Section 14 of Rep. Act No. 3259 may be validly viewed as an implied delegation of power to tax, the delegation under that provision, as couched, is limited to impositions over properties of the franchisee which are not actually, directly and

[28] *Supra*, note 14.
[29] *Supra*, note 16.

exclusively used in the pursuit of its franchise. Necessarily, other properties of Bayantel directly used in the pursuit of its business are beyond the pale of the delegated taxing power of local governments. In a very real sense, therefore, real properties of Bayantel, save those exclusive of its franchise, are subject to realty taxes. Ultimately, therefore, the inevitable result was that all realties which are actually, directly and exclusively used in the operation of its franchise are exempted from any property tax."[30]

The same conclusion was arrived at by the Third Division of the Supreme Court in the Digitel case, to wit:

"In view of the unequivocal intent of Congress to exempt from real property tax those real properties actually, directly and exclusively used by petitioner Digitel in the pursuit of its franchise, respondent Province of Pangasinan can only levy real property tax on the remaining real properties of the grantee located within its territorial jurisdiction not part of the above-stated classification. Said exemption, however, merely applies from the time of the effectivity of petitioner Digitel's legislative franchise and not a moment sooner."[31]

However, as noted by the CBAA's Decision,[32] the Supreme Court *En Banc* has reversed the rulings in the Bayantel and Digitel cases, to wit:

"In *City Government of Quezon City v. Bayan Telecommunications, Inc.*, this Court's Second Division held that all realties which are actually, directly and exclusively used in the operation of its franchise are exempted from any property tax. The Second Division added that Bayantel's franchise being national in character, the exemption granted applies to all its real and personal properties found anywhere within the Philippines. xxxxx

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[30] *Supra*, note 14.
[31] *Supra*, note 16.
[32] *Rollo*, pp. 34-63.

In *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan*, this Court's Third Division ruled that Digitel's real properties located within the territorial jurisdiction of Pangasinan that are actually, directly and exclusively used in its franchise are exempt from realty tax under the first sentence of Section 5 of RA 7678. xxxxx

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Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.

The heading of Section 5 is 'Tax Provisions', not 'Tax Exemptions'. To reiterate, the phrase exemption from real estate tax or other words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase 'exclusive of this franchise' in the first sentence of Section 5 merely qualifies the phrase 'personal property' to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the franchise tax. Thus, there is no grant of tax exemption in the first sentence of Section 5.

The interpretation of the phrase 'exclusive of this franchise' in the Bayantel and Digitel cases goes against the basic principle in construing tax exemptions."[33] (*citations omitted*).

As stated in the Decision of the CBAA dated December 18, 2009:

"Webster's Third International Dictionary of the English Language Unabridged (1966 ed., p. 793) defines the phrase "exclusive of" as a preposition meaning "not taking into

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[33] *Digital Telecommunications Philippines, Inc. v. City Government of Batangas, represented by Hon. Angelito Dondon A. Dimacuha, Batangas City Mayor, Mr. Benjamin S. Pargas, Batangas City Treasurer, and Atty. Teodulfo A. Dequito, Batangas City Legal Officer;* G.R. No. 156040, December 11, 2008, 573 SCRA 605.

account: excluding from consideration (there were four of us exclusive of the guide; exclusive of artillery)"

Webster's New World Dictionary, Warner Books Paperback Edition (1990), and Webster's New World Pocket Dictionary, Third Edition (1997), both define the phrase "exclusive of" as "not including".

Reader's Digest Encyclopedic Dictionary, First Edition (1994), classifies the phrase "exclusive of" as a quasi-adverb meaning "not including, not counting".

In jurisprudence, a franchise, as a right and privilege, is regarded as property, separate and distinct from the property which the corporation itself may acquire. (Fletcher's Cyclopedia of the Law of Private Corporation, Vol. 6A, pages 427-428, citing Horn Silver Min. Co. vs. New York, 143 U.S. 305 36 L. Ed. 164 12 Sup. Ct.-403; City of Campbell vs. Arkansas-Missouri Power Co., 55F (2d) 560, as quoted in The City Government of Batangas vs. Republic Telephone Company, Inc., CA-G.R. CV No. 21897, January 21, 1992.)

The interpretation of the phrase "exclusive of this franchise" was also exhaustively discussed and explained by the Supreme Court *En Banc*, as follows:

"The first sentence of Section 5 RA 7678 is the same provision found in almost all legislative franchises in the telecommunications industry dating back to 1905. It is also the same provision that appears in the legislative franchises of other telecommunications companies like Philippine Long Distance Telephone Company, Smart Information Technologies, Inc., and Globe Telecom. Since 1905, no telecommunications company has claimed exemption from realty tax based on the phrase 'exclusive of this franchise', until petitioner filed the present case on 3 July 1999.

The first sentence of Section 5 clearly states that the legislative franchisee shall be liable to pay the following taxes: (1) the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay; (2) franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications business transacted under this franchise; and (3) income taxes payable under Title II of the National Internal Revenue Code.

The crux of the controversy lies in the interpretation of the phrase 'exclusive of this franchise' in the first sentence of Section 5. Petitioner interprets the phrase to mean that its real properties that are used in its telecommunications business shall not be subject to realty tax. Respondent interprets the same phrase to mean that the term personal property shall not include petitioner's franchise, which is an intangible personal property.

We rule that the phrase exclusive of this franchise simply means that petitioner's franchise shall not be subject to the taxes imposed in the first sentence of Section 5. The first sentence lists the properties that are subject to taxes, and the list excludes the franchise. Thus, the first sentence provides:

> The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property **exclusive of this franchise** as other persons or corporations are now or hereafter may be required by law to pay.(Emphasis supplied)

A plain reading shows that the phrase 'exclusive of this franchise' is meant to exclude the legislative franchise from the properties subject to taxes under the first sentence. In effect, petitioner's franchise, which is personal property, is not subject to the taxes imposed on properties under the first sentence of Section 5.

However, petitioner's gross receipts from its franchise are subject to the franchise tax under the second sentence of Section 5. Thus, the second sentence provides:

> In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a **franchise tax** as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; xxx (Emphasis supplied)

In short, petitioner's franchise is excluded from the properties taxable under the first sentence of Section 5 but the gross receipts from its franchise are expressly taxable under the second sentence of the same Section.

The first sentence of Section 5 imposes on the franchisee the same taxes that non-franchisees are subject to with respect to real and personal properties. The clear intent is to put the franchisees and non-franchisees in parity in the taxation of their real and personal properties. Since non-franchisees have obviously no franchises, the franchise must be excluded from the list of properties subject to tax to maintain the parity between the franchisees and non-franchisees. However, the franchisee is taxable separately from its franchise. Thus, the second sentence of Section 5 imposes the franchise tax on gross receipts, which under Republic Act No. 7716 has been replaced by the 10% Value Added Tax effective 1 January 1996.

Section 5 can be divided into three parts. First is the sentence which imposes taxes on real and personal properties, excluding one property, that is, the franchise. This puts in parity the franchisees and non-franchisees in the taxation of real and personal properties. Second is the second sentence which imposes the franchise tax, which is applicable solely to the franchisee. And third is the proviso in the second sentence that imposes the income tax on the franchisee, the same income tax payable by non-franchisees.

Petitioner claims that the first sentence refers only to real properties, and that the phrase exclusive of this franchise exempts petitioner from realty tax on its real properties used in its telecommunications business. This claim has no basis in the language of the law as written in the first sentence of Section 5. First, the first sentence expressly refers to taxes on real estate and on personal property. Clearly, the first sentence does not refer only to taxes on real properties, but also to taxes on personal property. xxxxx

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Second, there is no language in the first sentence of Section 5 expressly or impliedly exempting petitioner from the realty tax.

> The phrases 'exemption from real estate tax', 'free from real estate tax' or 'not subject to real estate tax' do not appear in the first sentence. No matter how one reads the first sentence, there is no grant of exemption, express or implied, from realty tax. In fact, the first sentence expressly imposes taxes on both real and personal properties, excluding only the intangible personal property that is the franchise.
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> A tax exemption cannot arise from vague inference. The first sentence of Section 5 does not grant any express or even implied exemption from realty tax. On the contrary, the first sentence categorically states that the franchisee is subject to the same taxes currently imposed, and those taxes that may be subsequently imposed, on other persons or corporations, taxpayers that admittedly are all subject to realty tax. The first sentence does not limit the imposition of the same taxes to realty tax only but even to those taxes that may in the future be imposed on other taxpayers, which future taxes shall also be imposed on petitioner. Thus, the first sentence of Section 5 imposes on petitioner not only realty tax but also other taxes.
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> The phrase 'personal property exclusive of this franchise' merely means that personal property does not include the franchise even if the franchise is an intangible personal property. Stated differently, the first sentence of Section 5 provides that petitioner shall pay tax on its real properties as well as on its personal properties but the franchise, which is an intangible personal property, shall not be deemed personal property."[34]

Clearly, it has been established that petitioner is not exempt from realty tax, and that the phrase "exclusive of this franchise" does not provide for any tax exemption.

Petitioner further argues that the abovecited 2008 Supreme Court *En Banc* decision should only be applied prospectively and that its claim for tax exemption

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[34] *Id.*

covers taxable years when the 2006 Bayantel and the 2007 Digitel cases were in force.[35]

We disagree.

As noted in the CBAA assailed Decision, Article 4 of the New Civil Code provides that "laws shall have no retroactive effect, unless the contrary is provided." On the other hand, Article 8 of the Code provides that "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. In this regard, the absence of any tax exemption granted to petitioner starts from the date of its franchise. It is noteworthy that it is only upon the effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute.[36] Consequently, a Court's interpretation of the law is part of that law as of the date of its enactment since the Court's interpretation merely establishes contemporary legislative intent that the construed law purports to carry into effect.[37]

Petitioner has always been subject to the realty tax on its properties. When petitioner applied for the exclusion of its properties from the roll of assessments citing the rulings in the *Bayantel* and *Digitel* cases, the application for exclusion was nevertheless denied on the ground that no exemption was granted under its franchise. This has been affirmed by the Supreme Court *En Banc*. Time and again, we have ruled that tax exemptions should be granted only by clear and unequivocal

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[35] *Rollo*, p. 21.
[36] *Abakada Guro Party List, et. al. v. Cesar V. Purisima, et. al.*, G.R. No. 166715, August 14, 2008, 562 *SCRA* 25.
[37] *Philippine Constitution Association, Exequiel B. Garcia and A. Gonzales v. Hon. Salvador Enriquez, as Secretary of Budget and Management; Hon. Vicente T. Tan, as National Treasurer and Commission on Audit*; G.R. No. 113105, August 19, 1994; citing People v. Licera, 65 SCRA 270.

provision of law on the basis of language to plain to be mistaken. They cannot be extended by mere implication or inference.[38]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. The Decision of the Central Board of Assessment Appeals dated December 18, 2009, as well as the Resolution dated May 14, 2010, are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[38] *PLDT v. City of Davao*, G.R. No. 143867, August 22, 2001, 399 *SCRA* 442.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice