REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CHEVRON PHILIPPINES, INC., Petitioner,	CTA CASE NO. 8022
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 30 2012 ; 2:00 p.m.

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DECISION

***Fabon-Victorino, J.*:**

This is a *Petition for Review*[1] filed by petitioner Chevron Philippines, Inc. on January 11, 2010, on the ground of inaction on the part of respondent Commissioner of Internal Revenue (CIR) on its administrative claim for the refund or issuance of Tax Credit Certificate (TCC) in the amount of Php11,092,500.00, representing excise taxes it allegedly paid on its importation of

[1] Docket, pp. 1-27.

petroleum products which was subsequently sold to Clark Development Corporation (CDC).

Petitioner is a duly organized and existing domestic corporation, with address at 6th Floor, 6750 Building, Ayala Avenue, Makati City.[2] It is engaged primarily in the importation, distribution, marketing and sale of petroleum products in the Philippines.[3] It is registered with the Bureau of Internal Revenue (BIR) as a value-added and excise taxpayer with Tax Identification No. 000-349-759-000, as evidenced by its Certificate of Registration No. OCN8RC0000017557.[4]

On the other hand, respondent, as the Commissioner of the Bureau of Internal Revenue, is vested with authority to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

[2] Paragraph 1, Petition for Review, docket, p. 2.
[3] Exhibit "C".
[4] Exhibit "D".

Petitioner alleges that it sold and delivered to CDC the following gasoline products for the period between February to September 2008:[5]

Product	Volume	Price
Gold 95-ron ("Gold")	1,078,000 liters	P45,920,043.40
Silver 93-ron ("Silver")	1,472,000 liters	P59,001,148.20

The petroleum products sold to CDC, which were taken from petitioner's Batangas Terminal, were imported between January and July 2008 and the excise taxes due thereon were paid as follows:[6]

Date of Arrival/Importations	Quantity (liters)	Excise Tax Paid
GOLD		
01/11/2008	14,256,809	62,017,119
01/30/2008	7,972,876	34,682,011
02/10/2008	7,192,651	31,288,032
02/18/2008	13,993,775	60,872,921
03/10/2008	14,349,855	62,421,869
04/05/2008	14,778,973	64,288,533
04/23/2008	13,809,221	60,070,111
05/13/2008	14,010,953	60,947,646
06/04/2008	7,534,975	32,777,141
06/23/2008	14,536,158	63,232,287
07/14/2008	6,554,626	28,512,623
07/20/2008	14,494,055	63,049,139
SILVER		
01/11/2008	25,949,617	112,880,834
02/10/2008	6,888,141	29,963,413
02/18/2008	25,285,510	109,991,969
03/10/2008	25,269,941	109,924,243

[5] Par. 12, Petition for Review, docket, p. 8.
[6] Par. 13, Petition for Review, docket, pp. 5-6.

03/18/2008	7,368,611	32,053,458
04/15/2008	13,098,730	56,979,476
04/23/2008	25,547,552	111,131,851
04/24/2008	7,385,750	32,128,012
05/13/2008	25,124,623	109,292,110
06/15/2008	7,323,314	31,856,416
06/23/2008	25,614,096	111,421,318
07/20/2008	25,855,456	112,471,234

Since CDC enjoys exemption from payment of direct and indirect taxes under Section 135(c) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Republic Act (R.A.) Nos. 9400 and 7916[7], petitioner did not pass on or shifted to CDC the excise taxes it paid on the imported petroleum products.[8]

On January 6, 2010, petitioner filed with respondent an application for the issuance of tax credit certificate or tax refund of excise taxes paid on its importation of petroleum products that it subsequently sold to CDC in the amount of Php11,092,500.00.[9]

[7] The Special Econimic Zone of 1995.
[8] Par. 18, Petition for Review, docket, p. 7.
[9] Par. 19, Petition for Review, docket, p. 7; Exhibits "A", "A-1", and "A-2".

Some five (5) days thereafter or January 11, 2010, petitioner filed the instant *Petition for Review* alleging inaction on the part of the respondent.

In her *Answer*[10] filed on January 27, 2010, respondent submits the following *Special and Affirmative Defenses*:

> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by the Bureau.
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> 5. The amount of P11,092,500.00 being claimed by petitioner as alleged excise taxes paid on its importation of petroleum products for the period January to July 2008 was not properly documented.
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> 6. In an action for refund, 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.
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> 7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the National Internal Revenue Code of 1997 (NIRC of 1997) on the prescriptive period for claiming tax refund/credit.
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> 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*

[10] Docket, pp. 425-429.

> *SCRA 95*) and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*).

After filing of their respective Pre-Trial Briefs, the parties submitted their Joint Stipulation *of Facts and Simplification of Issues* on March 9, 2010,[11] which the Court approved on March 30, 2010. [12]

Trial ensued during which petitioner presented four (4) witnesses, namely, Ericson S. Inocensio, Josephine San Juan-Macatingrao, Emmanuel R. Estacion, and Martin C. Pacatang.

Witness Ericson S. Inocencio, by way of a *Judicial Affidavit*[13], testified that as the District Manager, Northern Luzon, Commercial and Industrial, of Chevron Philippines, Inc., he was familiar with the case as the subject transactions with CDC were within his jurisdiction. The instant case is about petitioner's claim for refund of excise taxes amounting to Php11,092,500.00, that it paid for the period January to July, 2008, on its imported petroleum products which were subsequently sold to CDC.

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[11] Docket, pp. 458-462.
[12] Docket, p. 464.
[13] Docket, pp. 503-507.

CDC is a government-owned and controlled corporation established under Executive Order (EO) No. 80, Series of 1993[14] as the operating and implementing arm of the Bases Conversion and Development Authority (BCDA). It manages the Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ). It is a duly registered CSEZ enterprise operating within the CFZ, thus it enjoys, under Section 5 of EO No. 80, all the applicable incentives in the Subic Special Economic and Free Port Zone under Republic Act (RA) No. 7227 as well as those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may thereafter be enacted.

Since CDC was legally exempt from the payment of direct and indirect taxes, petitioner was barred from passing on to CDC its payment for excise taxes on its imported petroleum products sold to the latter. Thus, the petroleum products sold to CDC were exclusive of indirect taxes such as value-added and excise taxes as shown in the invoices[15] issued to CDC.

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[14] Authorizing the Establishment of the Clark Development Corporation as the Implementing Arm of the Bases Conversion and Development Authority for the Clark Special Economic Zone, and Directing All Heads of Departments, Bureaus, Offices, Agencies and Instrumentalities of Government to Support the Program.
[15] Exhibits "E" with sub-markings "E-1" to "E-203".

It is unfortunate however that only photocopies of these invoices issued to CDC for the taxable year 2008 were presented because he could no longer locate the originals. But based on his personal knowledge and/or experience, these photocopies were faithful reproductions of the original invoices.

Petitioner's Tax Accountant Josephine San Juan-Macatingrao also executed a *Judicial affidavit,*[16] as her direct testimony. She stated that her duties include the payment and filing of various national taxes, preparation of reports and other documents required by the BIR as well as the Bureau of Customs (BOC), safekeeping of all documents related to petitioner's tax cases/claims and all documents related to its importation. She also coordinates with the concerned business units/tax counsel of the company with regard to the various reportorial requirements related to petitioner's tax cases/claims.

The petroleum products sold to CDC were imported by petitioner between January and July 2008. In compliance with Section 1301 of the Tariff and Customs Code of the Philippines, as amended, petitioner filed the corresponding Import Entry Declarations (IEDs) and paid in advance ninety percent (90%) of

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[16] Docket, pp. 529-540.

the approximate taxes and duties due on the imported petroleum products. Thereafter, petitioner filed Import Entry and Internal Revenue Declarations (IEIRDs) to fully pay the taxes and duties.

Witness Josephine San Juan-Macatingrao explained that only photocopies of the purchase invoices were presented in court as the originals of the said documents were submitted to the BOC for the processing of the IEIRDs for the release of the shipments in compliance with Customs Memorandum Order No. 127-88.

She opined that CDC was legally exempt from payment of direct and indirect taxes. As a Philippine Economic Zone Authority (PEZA) registered entity, CDC had the option to choose between two (2) fiscal incentives, to wit: 1) 5% preferential tax rate on gross income earned in lieu of national and local taxes pursuant to P.D. No. 66, as amended, and Section 24 of R.A. No. 7916; and 2) income tax holiday of four (4) or six (6) years depending on whether an entity is registered as a pioneer or non-pioneer enterprise as provided under Book VI of E.O. No. 226, in relation to Rule VI of its Implementing Rules and Regulations. CDC opted for the first for taxable year 2008.

For his part Emmanuel R. Estacion declared that he is familiar with petitioner's transactions with CDC being its Business Consultant for Northern Luzon, Commercial and Industrial. Petitioner generally passes indirect taxes to customers but not with CDC. The prices of the petroleum products sold to the latter were exclusive of indirect taxes such as value-added and excise taxes which petitioner paid upon importation, as indicated in the sales invoices it issued to CDC. Petitioner was precluded from passing the excise taxes on CDC since the latter is an entity legally exempt from payment of direct and indirect taxes.

He confirmed that only photocopies of some of the invoices[17] were presented before the Court since the original copies are no longer available. Their office personnel at the Beata warehouse Martin Pacatang informed him that the missing invoices might have been destroyed during the onslaught of typhoon Ondoy that flooded petitioner's Beata warehouse. Some of the original sales invoices recovered were either partially destroyed or with watermarks.

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[17] Exhibits "E-19", "E-22", "E-29", "E-69", "E-70", "E-83", "E-115", "E-131", "E-158", and "E-167".

Witness Martin Pacatang confirmed that he is an employee of Facilities Managers, Inc., assigned at petitioner's Beata Warehouse in Pandacan to manage the inactive files from petitioner's Makati office kept in Beata Warehouse. Sometime in May, 2010, upon request of Ericson Inocencio and Emmanuel Estacion, he was able to retrieve the original sales invoices pertaining to the subject petroleum products sold by petitioner to CDC in 2008 except Exhibits "E-19", "E-22", "E-29", "E-69", "E-70", "E-83", "E-115", "E-131", "E-158", and "E-167", despite efforts. The loss of the rest of the invoices could be attributed to the flooding at the Beata Warehouse brought about by Typhoon Ondoy sometime in September 2009.

Except Exhibits "T-2" and "Y-1", which are mere photocopies of the purported documents, and Exhibit "D", which was neither marked nor submitted to the Court, all the evidence presented by petitioner were admitted.

On August 2, 2011, respondent informed the Court that she would no longer present any evidence and in lieu thereof would just file her Memorandum within the granted thirty (30)-day period. The same period was granted to petitioner for its own *Memorandum*.

On October 10, 2011, the instant petition was submitted for decision after respondent filed her *Memorandum*[18] on September 13, 2011, and that of petitioner, on October 6, 2011[19].

The parties focused on the following issues for the resolution of the Court[20], to wit:

1. Whether sales by petitioner of imported Petroleum Products to CDC are deemed sales to an entity that is by law exempt from indirect taxes.

2. Whether sales by petitioner of imported petroleum products to CDC are tax exempt transactions.

3. Whether petitioner may claim a refund for excise taxes it paid on imported petroleum products which it later sold to CDC.

4. Whether petitioner is entitled to the refund/tax credit in the amount of P11,092,500.00 representing excise taxes allegedly paid on its importation of petroleum products for the period January to July 2008.

Petitioner avers that, as a general rule, excise tax on petroleum products is paid by the manufacturer or producer before its removal from its place of production or by the importer

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[18] Docket, pp. 704-713.
[19] Docket, pp. 715-747.
[20] Simplification of Issues, JSFSI, docket, p. 461.

upon its importation. Excise tax, being an indirect tax, can be passed on to the customer or end-user except when the latter is by law exempt from direct or indirect taxes pursuant to Section 135 of the NIRC of 1997, as amended.

Allegedly, petitioner has complied with all the requirements for entitlement for a tax credit certificate or refund under Section 135(c) of the NIRC of 1997, as amended, and as laid down by the Court in the case of *Filpride Resources Inc. vs. Bureau of Internal Revenue.*[21] It was able to establish that CDC was and still is exempt by law from direct and indirect taxes, such as excise tax precisely it paid the excise taxes due on the imported petroleum products sold to CDC. The instant claim for refund was filed within two (2) years from the payment of excise taxes on the petroleum products.

In refutation, respondent counters that petitioner is liable for excise tax for its importation of petroleum products from January to July 2008 pursuant to Section 131(A) in relation to Section 148 of the NIRC of 1997. Further, the excise tax on petroleum products is the direct liability of the manufacturer/importer, and when added to the cost of the goods

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[21] C.T.A. Case No. 6696, March 14, 2007.

sold to the buyer, it is no longer a tax but part of the price which the buyer has to pay to obtain the article, as held in the case of *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue.*[22]

Lastly, she claims that petitioner's failure to submit documents in support of its claim for refund makes its administrative claim for refund *pro forma*. Thus, without a valid and duly filed administrative claim for refund, the Court has no jurisdiction to entertain the instant *Petition for Review*.

THE RULING OF THE COURT

Indeed, the burden is on the part of petitioner to establish by sufficient evidence that it is entitled to a tax credit certificate or refund of the alleged excise taxes it paid on its imported petroleum products sold to CDC in the amount of Php11,092,500.00. But was petitioner able to discharge the burden? The answer is in the negative.

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[22] No. L-19707, August 17, 1967, 20 SCRA 1056.

Excise taxes refer to taxes imposed on certain specified goods or articles manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported into the Philippines. These taxes are imposed in addition to the VAT.[23]

Invariably entwined with the issues raised by petitioner is Section 135(c) of the NIRC of 1997, as amended, which reads as follows:

> SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — **Petroleum products sold to the following are exempt from excise tax**:
>
> (a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
>
> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

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[23] Section 129, NIRC of 1997.

> (c) **Entities which are by law exempt from direct and indirect taxes.** (*Emphasis supplied*)

Contrary to petitioner's claim, there is nothing in the foregoing provision that explicitly grants it, as seller of imported petroleum products, exemption from the payment of excise taxes for the same. The exemption in the provision is explicit and petitioner does not fall in any of the categories enumerated therein.

Corollarily, Section 131 of the NIRC of 1997, identifies the persons liable to pay excise taxes, thus:

> SEC. 131. Payment of Excise Taxes on Imported Articles. —
>
> (A) *Persons Liable*. — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers**, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, **or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption**.
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> In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers

> thereof, and shall be liable for the duty and internal revenue tax due on such importation.
>
> xxx xxx xxx

Hence, as the importer of the petroleum products sold to CDC, petitioner is liable to pay the excise tax due on the said importation.

The Supreme Court, in the case of *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue,*[24] has declared that a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer/importer of the goods for any tax due to it as the manufacturer/importer. The excise tax imposed on importation of petroleum products under Section 131 of the NIRC of 1997, as amended, is the direct liability of the importer who cannot thus invoke the excise tax exemption granted to its buyers who, by law, are legally exempted from the payment of direct and indirect taxes.

Recently, the Final Arbiter, in the case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,*[25] made a categorical pronouncement that oil companies who sold

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[24] 20 SCRA 1056.
[25] G.R. No. 188497, April 25, 2012.

their petroleum products to international carriers are **not entitled to a refund of excise taxes previously paid** on the petroleum products sold. The pertinent portion of the decision reads, viz:

> Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135 (a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buys petroleum products from the local manufacturers. Said provision thus merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods.

With the foregoing, there can be no dispute that Section 135(c) of the NIRC of 1997, as amended, cannot be used as basis for any claim for refund of excise tax paid on imported petroleum products subsequently sold to exempt entities. In fact, the Supreme Court, in the same cited case, agreed with the Solicitor General that the **only** claim for refund of excise taxes authorized by the NIRC is the payment of excise taxes on exported goods, as provided in Section 130(D) of the NIRC of 1997, as amended, to wit:

> SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. —
>
> xxx xxx xxx
>
> (D) *Credit for Excise Tax on Goods Actually Exported*. — **When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment**: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported. (*Emphasis supplied*)

Thus, when **goods locally produced or manufactured** are removed and actually exported, any excise tax paid thereon shall be credited or refunded upon submission by the producer or manufacturer of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment.

The record shows that CDC is a duly registered PEZA enterprise, and as such, all sales in its favor are deemed "export sales" pursuant to Article 23 of Executive Order No. 226,[26] which provides as follows:

> Article 23. "Export sales" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: Provided, further, That without actual exportation **the following shall be considered constructively exported for purposes of this provision**: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) **<u>sales to export processing zones</u>**; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: xxx (*Emphases supplied*)

[26] The Omnibus Investments Code of 1987.

But note that petitioner admitted that the petroleum products it sold to CDC were not locally produced or manufactured but all imported. This fact is shown in all the importation documents presented in Court by no less than petitioner itself. In fine, petitioner's claim for refund has no leg to stand on and should be rejected outright.

A last note, tax refunds are in the nature of tax exemptions resulting in loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be mis-interpreted,[27] it is never presumed[28] nor be allowed solely on the ground of equity.[29] These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed

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[27] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006, 489 SCRA 147, 155, citing *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005 and *Commissioner of Internal Revenue v. Mitsubishi Metal Corporation*, G.R. Nos. 54908 & 80041, January 22, 1990, 181 SCRA 214, 224.

[28] *Province of Abra v. Hernando*, No. L-49336, August 31, 1981, 107 SCRA 104, 109, citing early cases.

[29] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. Nos. 122161 & 20991, February 1, 1999, 302 SCRA 442, 453, citing *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue*, G.R. No. 117359, July 23, 1998, 293 SCRA 76, 91.

against the taxpayer, as taxes are the lifeblood of the government.[30]

WHEREFORE, the instant *Petition for Review* is hereby **DENIED** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

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[30] *Silkair(Singapore) PTE. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, citing *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461.

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's Division.

ERNESTO D. ACOSTA
Presiding Justice