REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

## SECOND DIVISION

**ROY M. GARCHITORENA,**
Petitioner,

- versus -

**HON. ISIDRO S. LAPEÑA, in his capacity as COMMISSIONER OF CUSTOMS,**
Respondent.

**CTA CASE NO. 9972**

Members:

**CASTAÑEDA, JR.,** *Chairperson, and*
**BACORRO-VILLENA,** *JJ.*

Promulgated:
DEC 09 2020
2:50 p.m.

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# DECISION

***BACORRO-VILLENA, J.:***

At bar is a Petition for Review[1] filed by Roy M. Garchitorena, (**petitioner/Garchitorena**) pursuant to Rule 8, Section 3(a)[2] of the

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[1] Filed on 18 October 2018, Division Docket, pp. 30-42.

[2] **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal [R]evenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal of respondent Commissioner of Customs' (**respondent's/COC's**) Order dated 10 September 2018[3], affirming the 19 June 2018 Order[4] of the District Collector of Customs (**District Collector**), Manila International Container Port (**MICP**).

Petitioner is a Filipino citizen, of legal age with residence at Zone 6 Belano TIHMV Concepcion Pequeña, Naga City, represented herein by his Attorney-in-fact, Anna Caroline B. Balarbar (**Atty. Balarbar**). On the other hand, respondent is the duly appointed Commissioner of the Bureau of Customs (**BOC**) vested with the authority to carry out the functions and duties of said office, among which, is the enforcement of importation and tariff laws.

**The antecedent facts follow.**

As an Overseas Filipino Worker (**OFW**), petitioner sought to import into the country his personal motor vehicle, a Silver 2004 Rolls Royce Sedan with Chassis No. SCA1S68004UX00029 (the "vehicle"/the "shipment"), purchased from Al Maidan Motors in Dubai, United Arab Emirates (**UAE**).

Petitioner's shipment was covered by Bill of Lading No. HDMUAEML0239917 and it eventually arrived at the MICP on 02 May 2017. Consigned to petitioner, he filed Import Entry No. C-129426-17[5] through his customs broker, Christian G. Lao.

Thereafter, through a First (1[st]) Indorsement dated 22 May 2017[6], then MICP's District Collector, Atty. Vincent Philip C. Maronilla (**Atty. Maronilla**), forwarded the pertinent shipping documents to the Director of Import Assessment Service (**IAS**) for the vehicle's value verification and clearance.

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[3] Division Docket, pp. 52-58.
[4] Id., pp. 43-51.
[5] Id., p. 64, Annex "D" of the Petition for Review.
[6] Id., p. 65, Annex "E" of the Petition for Review.

In a Memorandum dated 31 May 2017[7], then Director of IAS, Milo D. Maestrecampo (**Maestrecampo**) recommended that the shipment's value be set at US$76,320.00 instead of its declared Free on Board (**FOB**) value of US$54,460.00.

Subsequently, petitioner was able to procure an Authority to Release Imported Goods (**ATRIG**) dated 02 June 2017[8] from the Bureau of Internal Revenue (**BIR**) wherein the shipment's value was indicated to be US$54,460.00.

Petitioner thereafter sought reconsideration of Director Maestrecampo's findings in his previous Memorandum of 31 May 2017.[9] Petitioner argued that the shipment's value should be based on the vehicle's actual purchase price of 200,000 Dirhams as stated in the Car Selling Agreement.

In a 1st Indorsement dated 19 June 2017[10], Director Maestrecampo granted petitioner's request. Attached to the Indorsement is a Memorandum[11] (of even date) recommending the shipment's value to be fixed at US$54,460.00 and a declaration holding its previous valuation on 31 May 2017, superseded.

Unfortunately, petitioner failed to process his shipment within the reglementary period. As a result, the shipment was tagged as "abandoned". On 29 June 2017, petitioner filed a Request for Continuous Processing of Entry which was approved the following day.

After petitioner again failed to process his shipment within the allotted time, the shipment was tagged anew as "abandoned". Sometime in December 2017, petitioner again requested for continuous processing alleging that health issues and accompanying financial difficulties prevented him from paying.

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7 Id., p. 66, Annex "F" of the Petition for Review.
8 Id., pp. 69-70, Annex "G" and Annex "H" of the Petition for Review.
9 Supra at note 7.
10 Division Docket, p. 73, Annex "K" of the Petition for Review.
11 Id., p. 74, Annex "K-1" of the Petition for Review.

On 30 January 2018, upon recommendation of Michael Angelo D. Vargas, Acting Deputy Collector for Operations, Atty. Balmyrson M. Valdez ([**Atty. Valdez**] then Acting District Collector of MICP), granted petitioner's Request for Continuous Processing of Entry.[12]

Despite the grant of petitioner's request, on 05 February 2018, Atty. Valdez issued Alert Order (**AO**) No. A/MI/20180205-029[13] against the vehicle for suspected violations of Customs Administrative Order (**CAO**) 08-2007[14], Customs Memorandum Order (**CMO**) 28-2007[15], Revenue Regulations (**RR**) Nos. 2-2016[16] and 25-2003[17] and Section 1400 in relation to Section 1113 of the Customs Modernization and Tariff Act[18] (**CMTA**).

On 08 February 2018, petitioner paid the customs duties for the subject shipment in the amount of ₱2,987,312.00 under Official Receipt (**OR**) No. R-55345.

On 13 February 2018, Atty. Valdez issued a Warrant of Seizure and Detention[19] (**WSD**) against the vehicle upon recommendation that petitioner's vehicle was grossly undervalued and that the invoice petitioner submitted is spurious (since he also appeared to be the issuer thereof).

Subsequently, several hearings before the Law Division of the MICP were held. On 19 June 2018, MICP's District Collector, Atty. Vener S. Baquiran (**Atty. Baquiran**), issued an Order declaring the vehicle forfeited in favor of the government.

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12 Id., pp. 67-68, Annex "L" of the Petition for Review.
13 Id., p. 75, Annex "M" of the Petition for Review.
14 DESCRIPTION OF IMPORTED ARTICLES IN TARIFF TERMS.
15 Implementing CAO No. 8-2007 DESCRIPTION OF IMPORTED ARTICLES IN TARIFF TERMS.
16 ISSUANCE OF AUTHORITY TO RELEASE IMPORTED GOODS (ATRIGs) FOR IMPORTED AUTOMOBILES ALREADY RELEASED FROM CUSTOMS CUSTODY.
17 Amended Revenue Regulations Governing the Imposition of Excise Tax on Automobiles pursuant to the Provisions of Republic Act No. 9224, An Act Rationalizing the Excise Tax on Automobiles, Amending for the Purpose the National Internal Revenue Code of 1997, and For Other Purposes.
18 Republic Act No. 10863.
19 Division Docket, pp. 78-79, Annex "P" of the Petition for Review.

Aggrieved, petitioner filed an appeal with respondent who denied the same in an Order dated 18 September 2018.

Hence, this instant Petition for Review filed on 18 October 2018.[20]

After summons was served on respondent, he filed his Answer.[21] Pre-trial followed where the parties appeared. They also submitted their Joint Stipulation of Facts and Issues (**JSFI**).[22]

In the JSFI, the parties submitted a sole legal question for the Court's determination. Pursuant thereto, on 12 April 2019, petitioner filed a Motion to Dispense with Trial.[23]

In a Resolution dated 17 April 2019[24], the Second Division approved the parties' JSFI. Taking account of the parties' manifestation, it granted petitioner's motion and gave the parties thirty (30) days from such order within which to file their respective Memoranda.

Respondent filed his Memorandum 29 May 2019[25], while petitioner filed his Memorandum on 10 June 2019.[26]

On 09 July 2019, petitioner filed a Motion to Set Case for Mediation[27] and a Motion to Allow Settlement by Redemption[28] on 30 August 2019.

The Second Division *via* a Resolution dated 06 January 2020[29] denied petitioner's Motion to Set Case for Mediation while at the same time declaring the Motion to Allow Settlement by Redemption moot.

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20 Supra at note 1.
21 Division Docket, pp. 116-123.
22 Filed on 03 April 2019, id., pp. 163-169.
23 Id., pp. 171-174.
24 Id., p. 176.
25 Id., pp. 177-189.
26 Id., pp. 191-198.
27 Id., pp. 199-202.
28 Id., pp. 219-223.
29 Id., pp. 247-251.

The Second Division further ordered the case submitted for promulgation.

The sole legal issue for resolution is -

WHETHER THERE IS LEGAL BASIS FOR THE FORFEITURE OF THE SUBJECT SHIPMENT.

In support of the above issue, petitioner argues that he did not cause the irregularity in the invoice submitted for the valuation and release of the vehicle. According to him, it was his customs broker who took care of it. Petitioner further contends that his subsequent payment of the amount of ₱2,987,312.00 was already sufficient for the release of the vehicle, the same having been based on the higher assessed value of US$76,320.00 out of fear for the vehicle's forfeiture. He thus claims that, with the payment, the BOC has no legal right to withhold the release of his shipment.

Petitioner likewise invokes the Supreme Court's ruling in *Hon. Farolan, Jr., in his capacity as Commissioner of Customs v. Court of Tax Appeals and Bagong Buhay Trading*[30] (**Farolan**), wherein it held that:

> ...
> We support the stance of the Court of Tax Appeals that the Commissioner of Customs failed to show that fraud had been committed by the private respondent. The fraud contemplated by law must be actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. As explained earlier, the import entry was prepared on the basis of the shipping documents provided by the foreign supplier or shipper. Hence, Bagong Buhay Trading can be considered to have acted in good faith when it relied on these documents.
> ...

Respondent, on the other hand, maintains the propriety of the shipment's seizure. In sum, he sustains the seizure on the sole basis of

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[30] G.R. No. 42204, 21 January 1993; Citations omitted.

his findings regarding the spurious nature of the invoice submitted by petitioner.

**The Court's ruling follows below.**

At the onset, it is worthy to note that the AO over the subject shipment only came after the issuance of an ATRIG and after two (2) separate requests for continuous processing of the shipment had been granted petitioner. Petitioner was also able to pay customs duties despite the AO's issuance. The CMTA provides, thus:

> ...
> SEC. 1111. *Alert Orders.* – Alert orders are written orders issued by customs officers as authorized by the Commissioner on the basis of derogatory information regarding possible noncompliance with this Act. **An alert order will result in the suspension of the processing of the goods declaration** and the conduct of physical or nonintrusive inspection of the goods within forty-eight (48) hours from issuance of the order. Within forty-eight (48) hours or, in the case of perishable goods, within twenty-four (24) hours from inspection, the alerting officer shall recommend the continuance of processing of goods in ease of a negative finding, or issuance of a warrant of seizure and detention if a discrepancy between the declaration and actual goods is found. The Bureau's information system shall immediately reflect the imposition or lifting of an alert order.[31]
> ...

The foregoing provision also provides that processing of goods covered by an AO shall continue only after a negative finding of the grounds for its issuance. This makes the fact of petitioner's subsequent payment of customs duties highly irregular since no order to lift the AO was issued.

CMO 35-2015[32], which was then in effect during the time of the shipment's seizure, outlines the procedure for an AO's implementation, to wit:

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[31] Emphasis supplied.

[32] REVISED RULES FOR THE ELECTRONIC/MANUAL ISSUANCE AND LIFTING OF ALERT ORDERS AT ALL PORTS OF ENTRY.

...

**V. Procedure for the Implementation of Alert Orders**

5.1 The Alerting Office, shall within the same day of issuance of Alert Order shall disseminate/distribute the same thru personal service, electronic mail and facsimile, to the following:

...

5.1.5 Consignee, broker or their authorized representative, within twenty-four (24) hours from the issuance thereof. In case personal service, electronic mail and facsimile of the Alert Order cannot be made to the consignee, broker or their authorized representative, the corresponding Alert Order shall be posted at the port's bulletin board or in any conspicuous place within the port of discharge for three (3) consecutive days. After the lapse of the three-day period and the consignee, broker or their authorized representative fails to coordinate with the Alerting Office, the latter may cause the examination of the alerted shipment, without the consignee, broker or their authorized representative.

5.2 The District Collector concerned shall, within twenty-four (24) hours from receipt of the Alert Order, assign a Customs Examiner, who shall perform the following functions:

5.2.1 Determine if the shipment has been released from Customs, or if the shipment has been transferred to another Customs Bonded Warehouse under Transfer Under Guard (for airports), or if the shipment has been examined prior to the issuance of the Alert Order;

5.2.2 If examination has already been conducted or it has been released from Customs or transferred to a Customs Bonded Warehouse, prior to the issuance of the Alert Order, copy of the Examination Report and/or details and documents showing proof of the release shall be furnished to the Alerting Office, for reference.

5.2.3 If no previous examination has been conducted, inform the District Collector concerned, the Alerting Office, and the consignee, broker or his authorized representative, of the date and time of the examination.

5.2.4 Conduct a 100% examination of the alerted shipment/s within seven (7) days from the issuance of the Alert Order. Once commenced, the conduct of examination must be done continuously, until the completion thereof.

> 5.2.5 Within twenty-four (24) hours from completion of the examination, submit duly accomplished Alert Order Report Form (*Annex "B"*) to the District Collector, Alerting Office and Office of the Commissioner.
>
> 5.3 The Alerting Officer shall designate a representative, who shall witness the conduct of the 100% examination of the alerted shipment. Provided, that if the Alerting Officer is the District Collector, representatives from the IG and/or EG shall be the witnesses thereof.
>
> ...

Since the parties decided to dispense with trial, the Court is left without evidence on whether the proper procedure was observed in the present case. Normally, under these circumstances, the Court would see it best to presume the regularity in the performance of respondent's duties. However, certain irregularities in the series of events that transpired lead this Court to deem otherwise.

*First*, as previously mentioned, petitioner's shipment was seized only after an issuance of an ATRIG and after two (2) separate requests for continuous processing of the shipment had been granted. The parties' allegations disclose that the foregoing events took place over the span of almost a year giving several opportunities for respondent's agents to reassess the veracity of petitioner's documents.

*Second*, despite the AO's issuance, petitioner was nevertheless allowed to pay the customs duties on the subject shipment in accordance with the higher value as respondent so assessed.

Section 1111 of the CMTA is clear that, upon the AO's issuance, the processing of the goods subject of the order should have been suspended. Likewise, CAO 35-15 does not appear to provide a mode of payment of duties on the proper value suspected by the issuing officer.

*Third*, the facts do not disclose that the shipment was even physically examined either before or after the AO's issuance in accordance with Section 5.2 of the CAO 35-2015. Rather, it seems that the allegation of the shipment's undervaluation rested solely on the IAS' previous determination of US$76,320.00 as the vehicle's value in its

31 May 2017 Memorandum.[33] However, the same valuation had already been subsequently abandoned by the IAS through its 19 June 2017 Memorandum[34] in favor of the shipment's transaction value of US$54,460.00.

It is also noteworthy that neither the 31 May 2017 Memorandum nor the 19 June 2018 Order states the basis of the US$76,320.00 valuation. A copy of the 31 May 2017 Memorandum[35], which the parties do not dispute, merely states:

> ...
> **RECOMMENDATION**
>
> TARIFF HEADING : 8703.2459
> VALUE/UNIT : $76,320.00
>
> ...

In connection with this, the CMTA provides for six (6) methods in determining proper dutiable values on imported goods. First among them is the transaction value system wherein the goods are valued on the basis of their actual purchase price, to wit:

> ...
> SEC. 701. *Transaction Value System* - Method One. - The transaction value shall be the price actually paid or payable for the goods when sold for export to the Philippines adjusted in accordance with the provisions of tins section: Provided, That:
>
> (a) There are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
>
> (i) Are imposed or required by law or by Philippine authorities;
>
> (ii) Limit the geographical area in which the goods may be resold; or
>
> (iii) Do not substantially affect the value of the goods;

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33 Supra at note 7.
34 Supra at note 10.
35 Supra at note 7.

> (b) The sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued; and
>
> (c) The buyer and the seller are not related, or where the buyer and the seller are related, that the transaction value is acceptable for customs purposes under the provisions hereof.
>
> ...

In the absence of stipulation to the contrary, these methods are applied sequentially from first to last, in the following manner:

> ...
> SEC. 700. *Sequential Application of Valuation Methods.* – Imported goods shall be valued in accordance with the provisions of Section 701 of this Act whenever the conditions prescribed therein are fulfilled.
>
> Where the customs value cannot be determined under the provisions of Section 701 of this Act, it is to be determined by proceeding sequentially through the succeeding sections hereof to the first such section under which the customs value can be determined. Except as provided in Section 704 of this Act, it is only when the customs value cannot be determined under the provisions of a particular section that the provisions of the next section in the sequence can be used.
>
> If the importer does not request that the order of Sections 704 and 705 of this Act be reversed, the normal order of the sequence is to be followed. If the importer so requests but it is impossible to determine the customs value under Section 705 of this Act, the customs value shall be determined under Section 704.
>
> When the customs value cannot be determined under Sections 701 through 705, it may be determined under Section 706 of this Act.
>
> ...

In the present case, in importing his vehicle from the UAE, petitioner declared the vehicle's FOB value at US$54,460.00 based on its purchase price of 200,000 Dirhams. Therefore, such valuation must prevail unless the shipment's proper value cannot be determined in accordance with Section 701 of the CMTA.

*Fourth*, respondent is silent on whether petitioner caused the irregularity in the invoice (although petitioner himself insisted it was his customs broker who is responsible for the irregularity). In this respect, the Court finds the case of *Farolan*[36], as petitioner has so invoked, applicable.

In *Farolan*, the importer was spared the forfeiture of his imported goods on account of the BOC's failure to prove that the misdeclaration in the shipment's quantity was caused by the importer himself. There, the Supreme Court particularly relied on Section 2530 paragraph (m), subparagraphs (3), (4) and (5) of the now defunct Tariff and Customs Code (**TCC**) which states:

> ...
>
> SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.* — Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:
>
> ...
>
> l. Any article sought to be imported or exported:
>
> ...
>
> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
>
> (4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and,
>
> (5) Through any other practice or device contrary to law by means of which such articles was entered through a custom-house to the prejudice of government.
>
> ...

Although the ruling in *Farolan* was promulgated under the old law, its applicability in herein case is undeniable considering that Section 1113 of the CMTA (which petitioner allegedly violated) is a mere reenactment of Section 2530 of the TCC. Section 1113 paragraph (l), subparagraphs (3), (4) and (5) of the CMTA provides:

36 Supra at note 30.

> ...
> SEC. 1113. *Property Subject to Seizure and Forfeiture.* – Property that shall be subject to seizure and forfeiture include:
> ...
>
> (l) Goods sought to be imported or exported:
>
> ...
>
> (3) Through a false declaration or affidavit executed by the owner, importer, exporter, or consignee concerning the importation of such goods;
>
> (4) On the strength of a false invoice or other document executed by the owner, importer, exporter, or consignee concerning the importation or exportation of such goods; or
>
> (5) Through any other practice or device contrary to law by means of which such goods entered through a customs office to the prejudice of the government.
>
> ...

Therefore, in ruling in the importer's favor, the Supreme Court held that the following requisites must concur for a case of forfeiture to prosper:

> ...
> ...(1) the wrongful making by the owner, importer, exporter or consignees of any declaration or affidavit, or the wrongful making or delivery by the same persons of any invoice, letter or paper — all touching on the importation or exportation of merchandise; and (2) that such declaration, affidavit, invoice, letter or paper is false.[37]
> ...

In this case, respondent does not even allege that petitioner caused the execution of the supposedly spurious document but only the existence of the irregularity. This alone justifies the setting aside of respondent's order of forfeiture.

Additionally, the ATRIG's issuance, the IAS' Memorandum on 19 June 2017 and the grant of two (2) consecutive requests for the shipment's continuous processing lend credence to petitioner's claim

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[37] Supra at note 30; Citation omitted.

that his valuation of US$54,460.00 was supported by other independent documents reflecting the transaction value of the vehicle.

Given the foregoing irregularities and bereft of basis or proof of the supposed undervaluation, and considering further that no fraudulent act can be attributed to petitioner, the Court is inclined to grant the present petition. It must be emphasized at this point that, despite the CMTA's enactment, the principle laid down in *The Commissioner of Customs, et al. v. New Frontier Sugar Corporation*[38] remains a good law. There, the Supreme Court held thusly:

> ...
> Time and again, and consistently, this Court has ruled that the *onus probandi* to establish the existence of fraud is lodged with the Bureau of Customs which ordered the forfeiture of the imported goods. Fraud is never presumed. It must be proved. Failure of proof of fraud is a bar to forfeiture. The reason is that forfeitures are not favored in law and equity. The fraud contemplated by law must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. Absent fraud, the Bureau of Customs cannot forfeit the shipment in its favor.
> ...

To reiterate, the allegations in the present case fail to disclose that petitioner willfully sought to defraud the government in declaring the FOB value of US$54,460.00. Equally, respondent's agents have also not supported their claim of the higher valuation of US$76,320.00. However, despite the unfounded valuation, petitioner was able to pay the customs duties corresponding thereto leaving no reason for respondent to deny the release of petitioner's shipment.

**WHEREFORE**, the foregoing considered, petitioner Romy M. Garchitorena's Petition for Review filed on 18 October 2018 is hereby **GRANTED.** Accordingly, respondent Commissioner of Customs' Order dated 10 September 2018 and the 19 June 2018 Order of the District Collector of the Manila International Container Port are hereby **REVERSED** and **SET ASIDE.**

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[38] G.R. No. 163055, 11 June 2014; Citations omitted.

Accordingly, respondent is **ORDERED** to **RELEASE** to petitioner the Silver 2004 Rolls Royce Sedan bearing Chassis No. SCA1S68004UX00029 shipment covered by Import Entry No. C-129426-17.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**I CONCUR:**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

## ATTESTATION

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

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
2nd Division Chairperson

# CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice