REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. E.B. No. 419
(C.T.A. CASE No. 7500)

-versus-

SINGAPORE AIRLINES CARGO PTE. LTD.,
Respondent.

Present:
Acosta, *P.J.*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:
OCT 0 2 2009

x---x

D E C I S I O N

CASTAÑEDA, Jr., *J.:*

This is a petition for review filed with the Court *en banc* on September 18, 2008 by petitioner Commissioner of Internal Revenue ("CIR", for brevity/respondent in the division level) seeking that the assailed Decision dated May 19, 2008 by the First Division of this Court (Court in division) in C.T.A. Case No. 7500 entitled *"SINGAPORE AIRLINES CARGO PTE. LTD vs. COMMISSIONER OF INTERNAL REVENUE"* ordering to refund or issue a tax credit certificate to Singapore Airlines Cargo Pte. Ltd. ("Singapore Airlines" for brevity/petitioner in the division level) in the amount of P3,229,647.52 and the Resolution dated August 12, 2008 affirming the same, be set aside and another one entered denying the claim for refund in its entirety.

The dispositive portion of the assailed decision states:

> **WHEREFORE**, upon consideration of all documents and evidence submitted by petitioner, Singapore Airlines is liable to the rate of 1 ½% on its Gross Philippine Billings pursuant to Article 8 of the Philippines-Singapore Treaty and not 2% based on Revenue Regulations No. 6-2001. As a result of its overpayment, the Commissioner of Internal Revenue is hereby ordered to **REFUND** or **ISSUE** a tax credit certificate in petitioner's favor in the amount of P3,229,647.52.
>
> **SO ORDERED.**

The dispositive portion of the assailed resolution reads, as follows:

> **WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

The Facts

As found by the Court in Division, the following are the facts of this case: Je

Petitioner Singapore Airlines Cargo Pte. Ltd. (Singapore Airlines)[1] is a corporation duly organized and existing under and by virtue of the laws of Singapore with principal office address at 05-J, Airfreight Terminal 5, 30 Airline Road Singapore. By virtue of a License to Transact Business in the Philippines issued by the Securities and Exchange Commission, its Philippine branch at 2/F PAIR-PAGS Center, Ninoy Aquino Avenue, Pasay City, Philippines was granted the authority to engage in the business of airline transport carriage of freight and mail without operating domestic freighter flights.

Respondent Commissioner of Internal Revenue (Commissioner)[2], on the other hand, is the government official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the 1997 National Internal Revenue Code (1997 Tax Code), with office address at the BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other court processes.

In the course of its operations and in the conduct of its business in the Philippines, Singapore Airlines filed its quarterly and annual income tax returns for Fiscal Year ending March 31, 2003. In computing for its tax liabilities, Singapore Airlines' basis of computation is Article 8 of the Philippines-Singapore Treaty which granted it a preferential tax rate of 1 ½% on its Gross Philippine Billings (GPB). However, its withholding agents deducted an equivalent of 2% on its sales pursuant to Section 2.57.2 (E)(4)(e) of Revenue Regulations No. 6-2001 (RR 6-2001). As a result of this over-deduction, petitioner claims the .5% difference as excess tax paid making it refundable under Section 76 of the 1997 Tax Code.

Specifically for the period of the claim, the quarterly returns showed the following details:

Quarter	**1ST Quarter**	**2ND Quarter**	**3RD Quarter**
Date Filed	**Aug. 29, 2003**	**Dec. 4, 2003**	**Mar. 1, 2004**
Exhibit	**Exhibit "E"**	**Exhibit "F"**	**Exhibit "G"**
Sales/Revenues/Receipts	107,114,919.24	113,968,248.73	173,839,372.60
Less: Cost of Sales/Services			
Gross Income	107,114,919.24	113,968,248.73	173,839,372.60
Add: Other Income			
Total Gross Income	107,114,919.24	113,968,248.73	173,839,372.60

---

1 Respondent in this *en banc* case.

2 Petitioner in this *en banc* case.

1271

Less: Deductions			
Taxable Income this Quarter	107,114,919.24	113,968,248.73	173,839,372.60
Add: Taxable Income from Previous Quarter(s)			221,083,167.97
Total Taxable Income to Date	107,114,919.24	113,968,248.73	394,922,540.57
Tax Rate	1.5%	1.5%	1.5%
Tax Due	1,606,723.79	1,709,523.73	5,923,838.11
Aggregate Tax Due	1,606,723.79	1,709,523.73	5,923,838.11
Less: Tax Credits/Payments			
CWT for Previous Quarters			5,567,235.03
CWT for this Quarter	2,767,065.14	2,800,169.89	4,768,425.67
Total tax Credits/Payments			10,335,660.70
Total Payable	(1,160,341.35)	(1,090,646.16)	(4,411,828.59)

On the other hand, its Annual Income Tax Return, filed on June 13, 2004 presented the following data:

Sales/Revenues/Receipts	P	540,519,349.01	
Less: Cost of Sales/Services			
Gross Income			
Add: Other Income			
Total Gross Income		540,519,349.01	
Less: Deductions			
Taxable Income		540,519,349.01	
Tax Rate		1.5%	
Income Tax		8,107,790.24	
Aggregate Income Tax Due			8,107,790.24
Less:Tax Credits/Payments			
CWT for Previous Quarters		10,335,660.70	
CWT for the Fourth Quarter		3,485,873.40	
Total Tax Credits/ Payments			13,821,534.10
Total Payable/(Overpayment)		P	(5,713,743.86)

Its Gross Philippine Billings (GPB) for all four quarters were alleged by petitioner to have been taxed at an average rate of two percent (2%) duly reflected on the Certificates of Creditable Withholding Taxes issued by the withholding agents of petitioner. Over the fiscal year, this repetitive excessive withholding accumulated to P5,713,743.86.

On July 29, 2005, petitioner filed a letter-request before the respondent asking for a ruling that Singapore Airlines be subjected to the preferential tax rate of 1 ½ % and at the same time requesting that it be issued a tax refund or a tax credit certificate in the amount of P5,713,743.86. As an argument, Singapore Airlines cited BIR Ruling No. 022-96 dated February 22, 1996 wherein the 1 ½% treaty rate was applied to the GPB derived by a Brazilian Airline company from Philippine sources pursuant to paragraph 1, Article 8 and paragraph 5 of the ge

Protocol of the RP-Brazil Treaty. It likewise cited BIR Ruling No. 91-04 dated August 31, 2004 again applying the 1.5% tax on profits earned by Gulf Air Company G.S.C in its operation of aircraft in international traffic beginning January 1, 2004 when the Philippines-Bahrain Treaty took effect.

The Commissioner replied on November 23, 2005, confirming that indeed under Article 8 of the Philippines-Singapore tax treaty, Singapore Airlines is entitled to the preferential tax rate of 1 ½%. The Commissioner further elucidated in his reply that:

> "In reply, please be informed that paragraph 1, Article 8 (Shipping and Air Transport) of the Philippines-Singapore tax treaty provides:
>
> ARTICLE 8
> SHIPPING AND AIR TRANSPORT
>
> 1. Profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships or aircraft in international traffic may be taxed in the first-mentioned State but the tax so charged shall not exceed whichever is the lesser of either:
>
> (a) one and one-half per cent of the gross revenues derived from sources in that State; or
>
> (b) the lowest rate of Philippines tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.
>
> *xxx xxx xxx'*
>
> Paragraph 1 states that profits derived by Singapore Airlines from the operation of aircraft in international traffic from sources in the Philippines may be taxed in the Philippines at the rate of one and one-half percent (1 ½%) or at the lowest rate imposed by the Philippines on such profits derived under similar circumstances by a resident of a third State (the *most-favored-nation* tax rate).
>
> Accordingly, since the Philippines, as of this date, has not yet granted to a resident of a third State a *most-favored-nation* tax rate on profits from the operation of aircraft in international traffic, such profits derived by *Singapore Airlines* from sources within the Philippines shall be subject to 1 ½% income tax, based on the gross amount thereof. (BIR Ruling No. DA-ITAD 91-04 dated August 31, 2004)."

With the favorable ruling, the docket of petitioner's claim for refund was forwarded to Revenue District Office No. 51 (RDO 51) for processing and investigation. However, due to lack of developments on its claim, petitioner wrote another letter to RDO 51 on May 26, 2006. In said letter, Singapore Airlines reiterated its request for the refund of

P5,713,743.86 and further cited a portion of BIR Ruling No. DA-130-04 dated March 26, 2004 where the BIR ruled that the withholding tax rates on income payments to international airlines that is a resident shall be 1.5% under RR 6-2001.

Despite petitioner's second letter, no action was made on its claim. Hence, in order to protect its interests, Singapore Airlines filed the Petition for Review before Us on July 11, 2006.

On May 19, 2008, the Court in division promulgated the assailed decision granting refund or issuance of a tax credit certificate in Singapore Airlines' favor in the amount of P3,229, 647.52.

On August 12, 2008 , the Court in division in its resolution denied for lack of merit CIR's "Motion for Partial Reconsideration".

On September 8, 2008, the Court *en banc* granted CIR 's "Motion for Extension of Time to File Petition for Review" filed on September 2, 2008. Within the period granted, this petition for review *en banc* was filed on September 18, 2008. In a resolution dated October 13, 2008, Singapore Airlines' was ordered to file its Comment. On October 27, 2008, the Court *en banc* granted Singapore Airlines' " Motion for Extension of Time to File Comment" filed on October 24, 2008. Within the period granted, Singapore Airlines' "COMMENT/OPPOSITION" was filed on October 30, 2008. In a resolution dated November 4, 2008, the parties were required to submit their respective Memoranda within a non-extendible period of thirty (30) days from receipt of the said resolution. Both parties submitted their respective Memoranda. CIR submitted his "MEMORANDUM" on December 10, 2008. On the other hand, Singapore Airlines submitted its "MEMORANDUM [FOR THE RESPONDENT]" on December 11, 2008. In a resolution dated December 18, 2008, this case was submitted for decision.

Hence, this decision.

ISSUE

WHETHER OR NOT THE FIRST DIVISION ERRED IN GRANTING RESPONDENT'S CLAIM FOR REFUND

CIR'S ARGUMENTS

CIR reiterates that Singapore Airlines is not entitled to the refund as the evidence it presented, i.e. certificates of creditable taxes withheld accomplished by its withholding agents showing the amount deducted and withheld from its income in support of the tax refund, does not constitute conclusive evidence of payment and remittance to the Bureau of Internal Revenue of the withheld taxes on petitioner's income. The act of withholding is one thing while the act of remittance is another thing. The best evidence or proof of remittance is the certification from the BIR's Revenue Accounting Division as to the fact of remittance of the tax withheld. CIR alleges that respondent failed to prove that the creditable taxes withheld by the payors were indeed remitted to the Bureau of Internal Revenue. CIR likewise alleges that respondent even failed to present the various payors and withholding agents in order to establish the fact of withholding and remittances made. CIR submits that any probative weight given to Ms. Maria Lourdes Liguanas' testimony should have been limited to those facts of which she has personal knowledge and testified to. CIR also alleges that the certifications were prepared by other persons and any other attempt to attach truth to the contents of the document through Ms. Ma. Lourdes Ligunas would be hearsay.

Finally, CIR reiterates that 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. According to CIR, respondent failed to discharge that burden.

SINGAPORE AIRLINES' ARGUMENTS

Singapore Airlines argues that the testimony of Ms. Ligunas is not hearsay because being its accountant she has personal knowledge of its various transactions including the matter covered by this refund. In addition, Singapore Airlines alleges that the Creditable Withholding Tax Certificates which were identified by the said witness are public documents executed by withholding agents of the Bureau of Internal Revenue, thus, need not be identified by the withholding agents. Singapore Airlines' alleges that it may be true that the contents of the Certificates are only prima facie evidence of the fact of withholding. However, if the presumption is uncontroverted by competent evidence to the contrary, the presumption stands. Singapore Airlines states that the utter failure of petitioner to present any evidence at all makes the presumption that the withholding agents withheld the taxes and remitted the same to the BIR stands. It also alleges that the law and jurisprudence made no mention of any requirement, much less the purported certification from the BIR's Accounting Division. It cited CTA cases allegedly showing that its rationale was that the fact of actual remittance is the responsibility of the withholding agent and proof of actual remittance is not needed to prove withholding and remittance of taxes.

THIS COURT'S RULING

The petition is denied.

We find that the issue and arguments raised by CIR have already been considered by the Court in Division in its assailed decision and resolution.

In this case, it is undisputed that Singapore Airlines is entitled to a preferential rate of 1 ½% of its Gross Philippine Billings pursuant to Philippines-Singapore Treaty.

We agree with the Court in division that there are requisites in order to be entitled to the refund, as follows:

1. The claim for refund was filed within the two-year prescriptive period provided under Section 204 (C) in relation to Section 229 of the NIRC of 1997;

2. The fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom and the income upon which the taxes were withheld was included in the return of the recipient pursuant to Section 2.58.3 (B) of Revenue Regulations No. 2-98; and

3. The excess unutilized tax is not carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years pursuant to Section 76 of the NIRC of 1997.

The crux of this appeal pertains to the second requisite as stated above wherein the Court in division found that Singapore Airlines duly established the fact of withholding by submitting various Certificates of Creditable Tax Withheld at Source, pertinent portion of the assailed Decision reads as follows:

> Xxx xxx xxx
>
> For the second requirement, in order to establish the fact of withholding, petitioner submitted various Certificates of Creditable Tax Withheld at Source showing creditable withholding taxes from its cargo and mail revenue for the fiscal year ending March 31, 2004.
>
> Xxx xxx xxx

Testimonial evidence of the payors/ withholding agents is not required

The allegation of CIR that there is a need to present the signatory of the Certificates or any person who had a hand in the preparation thereof; therefore, any attempt to pass as absolute truth the contents of this document as identified by Singapore Airlines' witness would be hearsay is untenable.

We have already ruled in several *en banc* cases that there is no need to present evidence of the testimony of the person who made entries in the CWT Certificate because this certificate covers essential matters to prove the fact of withholding.[3] Moreover, the statements therein are executed under the penalties of perjury. Section 267 of the 1997 NIRC, as amended provides:

> SEC. 267. Declaration under Penalties of Perjury. — Any declaration, return and other statement required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code. *Je*

---

[3] *Commissioner of Internal Revenue vs. Roxas Land Corporation*, C.T.A. EB Case No. 407,February 18, 2009.;*Commissioner of Internal Revenue vs. Team (PHILIPPINES) OPERATIONS CORPORATION [Formerly: Mirant (Philippines) Operations Corporation]*, C.T.A. EB No. 369, August 27, 2008; *Commissioner of Internal Revenue vs. F.F. Cruz and Company, Inc.*, C.T.A. EB No. 372, June 12, 2008; and *Commissioner of Internal Revenue vs. Philippine National Bank*, C.T.A. Case No. 285, October 1, 2007.

Thus, figures appearing in the CWT certificates should be taken at face value.[4]

In the Supreme Court case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals et al*[5], it was categorically stated that "the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid." A pertinent portion of this case reads:

> In fine, **the document which may be accepted as evidence of** the third condition, that is, **the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.**
>
> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. **It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.** *(Emphasis Supplied; Citations Omitted).*

---

[4] *Commissioner of Internal Revenue vs. Roxas Land Corporation, C.T.A. EB Case No. 407,* February 18, 2009;and *Commissioner of Internal Revenue vs. Philippine National Bank,* C.T.A. Case No. 285, October 1, 2007.

[5] G.R. No.155682, March 27, 2007, 519 SCRA 93,99-100.

In this case, the various Certificate of Creditable Tax Withheld at Source (BIR Form 2307) issued by the payors/ withholding agents to payee Singapore Airlines showing the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid are complete in relevant details which aid this Court in evaluating the claim for refund of creditable withholding taxes.

Proof of actual remittance
is not required

Proof of remittance is the responsibility of the withholding agent as expressly provided in Sec. 2.58.3 (B) of Revenue Regulations 2-98, as follows:

> *Sec. 2.58.3 Claim for tax credit or refund.*
> Xxx xxxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.
>
> **Proof of remittance is the responsibility of the withholding agent.** *(Emphasis Supplied).* ge

We have already ruled in *Commissioner of Internal Revenue vs. Asian Transmission Corporation*[6] that there is no need for the claimant, to prove the actual remittance by the withholding agent (payor) to the BIR, a pertinent portion of this case provides:

> It is worthy to note that proof of actual remittance by respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulations No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Sections 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, being the payee in this case, has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld At Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents. **We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove the actual remittance by the withholding agent (payor) to the BIR.** *(Emphasis Supplied).*

[6] C.T.A. EB Case No. 205, July 16, 2007; see also *Commissioner of Internal Revenue vs. F.F. Cruz and Company, Inc.*, C.T.A. E.B. Case No. 372, June 12, 2008.

Based on the foregoing, considering that Singapore Airlines is not a withholding agent but a payee of the creditable withholding tax, proof of actual remittance is not required.

We agree with the following finding of the Court in division in the assailed resolution which reads:

> As properly cited by petitioner, Section 2.58.3 (B) of Revenue Regulations (RR) 2-98 specifically states that in claims for tax credit or refund of excess creditable withholding taxes paid, the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. Neither the cited regulation, nor the 1997 National Internal Revenue Code, requires that a certification from the BIR's Accounting Division be presented to prove entitlement to refund/issuance of a tax credit certificate.

Right to refund
was duly established

The argument of CIR that Singapore Airlines failed to discharge the burden of proof in establishing the claim for refund is untenable. On the contrary, it has duly established its claim for refund because of the evidence it presented, as follows:

> During the hearing, Singapore Airlines presented various documentary and testamentary evidence to prove its claim. In addition to its **income tax returns**, the bulk of petitioner's documentary evidence consisted of **Certificates of Creditable Withholding Taxes**, airway bills, International Air Transport Association Cargo Accounts Settlement System (IATA-CASS) reports, sales invoices, cargo and mail manifests primarily offered to prove that Singapore Airlines conducted operations during the period claimed and that withholding agents withheld 2% of its sales to remit to the BIR. Petitioner even commissioned an independent Certified Public Accountant (ICPA) to examine its voluminous records and authenticate its right to tax refund. *(Emphasis Supplied).* ge

The rule is that failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.[7] In this case, CIR made no objection as to the evidence presented. In addition, CIR even failed to present evidence before this case was submitted for decision in the Court in division.

Based on the foregoing discussions, We find no reversible error to disturb the assailed decision and resolution of the Court in division. We, thus, agree with the following as discussed in the assailed decision:

> A review of the records of the case shows that petitioner met all of the three conditions above.
>
> As early as its follow-up letter on May 26, 2007, petitioner had sufficiently argued the timeliness of its refund claim since it has until July 13, 2006 to file its administrative claim for refund considering that its Annual Income Tax Return for the fiscal year ending March 31, 2004 was filed on July 13, 2004. Still within the two-year period, petitioner filed its Petition for Review on July 11, 2006. Hence, both claims in the administrative and judicial levels are within the prescriptive period provided for by law.
>
> For the second requirement, in order to establish the fact of withholding, petitioner submitted various Certificates of Creditable Tax Withheld at Source showing creditable withholding taxes from its cargo and mail revenue for the fiscal year ending March 31, 2004. As discussed above, these certificates were reviewed and were found to be substantiated at the reduced amount, however, of P13,125,146.68.
>
> Finally, as to the third requirement, petitioner submitted its annual income tax return for the fiscal year ending March 31, 2005 and showed that the excess unutilized tax was not carried over and credited against its income tax liabilities in the succeeding taxable year.

---

[7] *Asian Construction and Development Corporation vs. COMFAC Corporation*, G.R. No. 163915, October 16, 2006, 524 SCRA 519,524.

Accordingly, We reiterate the finding of the Court in division as to the amount to be refunded, as follows:

> With the increase of its tax liability and the disallowances of certain Certificates of Creditable Withholding Tax, petitioner's excess tax payments proper claim for refund for the fiscal year ending March 31, 2004 only amount to P3,229,647.52 and not P5,713,743.86 based on the following computation:

Gross Philippine Billings					P	659,699,944.19
Applicable tax rate						1.50%
Income tax due					P	9,895,499.16
Less: Verified creditable taxes withheld per BIR Forms 2307						
Cargo *(Exh. X-4)*	P	13,488,411.99				
Mail *(Exh. X-9)*		246,458.86	P	13,734,870.85		
Less: Disallowance per Court's verification						
Outside the period of claim	P	563,802.53				
No signature		45,921.64		609,724.17		13,125,146.68
Excess creditable tax withheld					**P**	**(3,229,647.52)**

WHEREFORE, premises considered, We deny the petition for lack of merit. Accordingly, We **AFFIRM** the May 19, 2008 Decision and the August 12, 2008 Resolution promulgated by the First Division of this Court.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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 the Court.

ERNESTO D. ACOSTA
Presiding Justice