REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR SIBULAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE No. 774
(CTA Case No. 8125)

Members:
ACOSTA, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAR 14 2012 3:20pm

X- X

DECISION

Casanova, J.:

This is an appeal to the Court of Tax Appeals (CTA) *En Banc* by way of a verified Petition for Review[1], under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking the reversal of the resolutions dated January 31, 2011[2] and April 18, 2011[3] (Assailed Resolutions) rendered by the CTA Third Division in CTA Case No. 8125 entitled ***"Hedcor Sibulan,***

[1] En Banc Rollo, pp. 7-57.
[2] Division Docket, pp. 357-362.
[3] *Ibid.*, pp. 442-446.

Inc. vs. Commissioner of Internal Revenue," granting the Motion to Dismiss petitioner's appeal for lack of jurisdiction and denying petitioner's Motion for Reconsideration of the said resolution.

The facts of the case, as culled from the records, are briefly narrated as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Sta. Cruz, Davao Del Sur. It may be served orders, notices, resolutions, and other processes of this Court through its undersigned counsel at its office address stated below.[4]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. She may be served summons, pleadings and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

On July 21, 2008, petitioner filed with the Revenue District Office (RDO) No. 115 of the Bureau of Internal Revenue (BIR) its Original Quarterly VAT Return for the 2nd quarter of Calendar Year (CY) 2008. Thereafter, petitioner filed its Amended Quarterly VAT Return for the same period on June 23, 2010.[6]

On June 25, 2010, petitioner filed with BIR RDO No. 115 a written application for the refund or issuance of a tax credit certificate (TCC) for its unutilized input VAT for the 2nd quarter of CY 2008 in the amount of P29,299.077.37. On June 29, 2010, petitioner filed its Petition for Review before the CTA Division.[7]

On August 5, 2010, respondent filed her Answer[8] and interposed the following Special and Affirmative Defenses, to wit:

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[4] Par. 4, The Parties, Petition for Review, En Banc Rollo, pp. 8-9.
[5] Par. 5, The Parties, Petition for Review, *Ibid.*, p. 9.
[6] Par. 8, The Facts, Petition for Review, Division Docket, p. 4.
[7] Pars. 11 & 12, Statement of Facts, Petition for Review, En Banc Rollo, p. 11.
[8] Division Docket, pp. 172-182.

"Special and Affirmative Defenses

5. Respondent hereby repleads the foregoing admissions and denials as part of her special and affirmative defenses.

6. Petitioner must prove that it has filed a claim for refund within the reglementary period provided by law.

6.1 Section 112 of the NIRC of 1997 reads:

> (A) *Zero-Rated or Effectively Zero-Rated Sales.* - any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2)(B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> (B) *Capital Goods.* - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.
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> (C) *Cancellation of VAT Registration.* - A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

> (D) *Period Within Which Refund or Tax Credit of Input Taxes Shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.-
>
> (E) *Manner of Giving Refund.* - Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: *Provided*, That refunds under this paragraph shall be subject to post audit by the Commission on Audit.

6.2 Explicit from the foregoing is that in cases of a claim for refund of excess input Value-Added Tax, a VAT-registered person may file a claim for refund within 2 years after the close of the taxable quarter when the sales were made. Respondent shall act on the matter within 120 days from submission of relevant supporting documents. In case of inaction or after the lapse of the 120-day period, the claimant may file a Petition for Review within 30 days from receipt of the decision denying his claim or the lapse of the 120-day period.

6.3 Section 11 of Republic Act No. 1125, as amended by R.A. No. 9282 reads:

> Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the

> CTA within thirty (30) days after the receipt of such decision or ruling or after expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

6.4 Section 7(a)(2) of R.A. No. 1125 is quoted hereunder for easy reference:

> Jurisdiction.- The CTA shall exercise:
>
> Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> xxx xxx xxx
>
> Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

6.5 In the case at bar, petitioner filed an administrative claim for refund WITH respondent on 25 June 2010. Barely four (4) days later, or on 29 June 2010, petitioner hurriedly filed a Petition for Review before the Honourable Court. Considering the ridiculously short interval between the application for refund, there would hardly be anything to be reviewed by the Honourable Court. The Petition for Review merits dismissal due to premature filing of the judicial claim for refund in utter disregard of administrative procedure.

7. Petitioner violated the doctrine of exhaustion of administrative remedies.

7.1 A taxpayer must observe administrative proceedings before appealing to the Court of Tax Appeals to give respondent opportunity to decide on the claim in order for her to correct the action of subordinate officers. This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies. The doctrine rests upon the presumption that the administrative body, board or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Hence, before resort to the courts can be obtained, all administrative remedies available should first be exhausted.

7.2 An administrative relief, once initiated, must be pursued up to its proper conclusion before seeking judicial intervention. In the case of *Paat vs. Court of Appeals*, the Supreme Court expounded on the doctrine of exhaustion of administrative remedies. The ruling in the *Paat* case reads in part:

> This Court in a long line of cases has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all means of administrative due processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before the court's judicial power can be sought. The premature intervention of courts is fatal to one's cause of action.

8. Petitioner must prove compliance with the substantiation requirements under the law in cases involving claims for refund.

8.1 While it is true that Section 112 NIRC of 1997 allows tax refund or credit on input tax of zero-rated sale, nonetheless, compliance with certain invoicing requirements must be met before such claim for refund or credit can be granted.

8.2 Sections 113(A) and 237 NIRC of 1997 provides for invoicing requirements for VAT-registered persons. Sections 4-108-1 of RR No. 7-95 specifically enumerate the information that must appear on the face of receipts or invoices issued by all VAT-registered persons. Quoted hereunder are the pertinent provisions of the law:

Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons.-

(A) Invoicing Requirements.- A VAT registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

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Section 237. Issuance of Receipts or Sales or Commercial Invoices.-All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall allow the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer identification Number (TIN) of the purchaser.

Revenue Regulations No. 7-95

xxx xxx xxx

SEC. 4.108.1. Invoicing Requirements- All Vat registered persons shall for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT registered purchaser, customer or client;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

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9. Petitioner's claim for refund is subject to administrative investigation/examination. Pending the closure of this investigation, no grant of refund may be given to petitioner based on the filed claim. It has been held by the Supreme Court that a claim for refund is not *ipso facto* granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.

10. A claim for refund partakes the nature of exemption from taxation and is thus, construed against the taxpayer and in favor of the State. In the case at bar, petitioner anchors its claim on Republic Act No. 9136, a statute that, if read in conjunction with Section 108(B)(7) of the NIRC of 1997, allows an electric power company to claim a refund on input taxes on purchase of goods and services attributable to zero-rated sales. In the case of *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue* the Supreme Court held:

> In establishing tax exemptions, it should be borne in mind that taxation is the rule, exemption is the exception. Accordingly, statutes granting tax exemptions must be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority."

In the pre-trial hearing of the case on November 5, 2010, respondent's counsel manifested that respondent invoked the affirmative defense of premature filing of the instant Petition for Review. Petitioner was, thereafter given fifteen (15) days from November 5, 2010 or until November 20, 2010 within which to file its Comment on respondent's affirmative defense.[9]

On December 15, 2010, petitioner filed its Comment[10] to respondent's affirmative defense of premature filing of the Petition for Review.

The CTA Third Division, in a Resolution dated January 31, 2011, dismissed petitioner's judicial claim for being prematurely filed, stating that:

> "In this case, records show that petitioner filed its administrative claim for refund on June 25, 2010. The same date shall be the reckoning point in counting the 120-day period considering that the records do not show when petitioner filed its supporting documents. On June 29, 2010 or barely four (4) days from the

[9] Resolution dated November 12, 2010, Division Docket, p. 215.
[10] Division Docket, pp. 247-297.

> filing of its administrative claim for refund, petitioner filed the instant Petition for Review. Thus, it is apparent that petitioner filed its judicial appeal without waiting for the lapse of the 120-day period provided for under Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended.
>
> Consequently, petitioner's premature filing of the Petition for Review on June 29, 2010, failed to effectively clothe this Court with jurisdiction to take cognizance of the instant case.
>
> **WHEREFORE**, premises considered the instant ***Motion to Dismiss*** is hereby **GRANTED.** Accordingly, the instant Petition for Review is hereby **DISMISSED** for having been prematurely filed.
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> **SO ORDERED.**"

On February 16, 2011, petitioner filed its Motion for Reconsideration[11] and on March 16, 2011, respondent filed her Comment (Re: Motion for Reconsideration dated 16 February 2011)[12].

On April 18, 2011, the CTA Third Division issued a Resolution[13] dismissing petitioner's Motion for Reconsideration for lack of merit.

Hence, petitioner filed the instant Petition for Review alleging that the CTA Third Division erred in the following respects:

> For granting a "Motion to Dismiss" when no such motion was filed by the respondent;
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> For dismissing the petition for review on the ground of prematurity when the same is not one of the specific grounds mentioned under Rule 16, Rules of Court.
>
> For dismissing the petition for review for lack of jurisdiction;
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> For not applying the doctrine in *Aichi* prospectively since the said decision was not yet final and executory when the petition for review was filed with the CTA.

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[11] *Id.*, pp. 370-418.
[12] *Id.*, pp. 433-438.
[13] *Id.*, pp. 442-446.

On June 16, 2011, this Court issued a Resolution[14] ordering respondent to file her Comment within ten (10) days from the receipt thereof. On July 7, 2011, respondent filed her Comment (Re: Petition for Review)[15].

In a Resolution[16] dated July 21, 2011, this Court resolved to give due course to the present petition and ordered the parties to submit their respective memorandum within thirty (30) days from receipt thereof. On September 19, 2011, petitioner filed its Memorandum[17] while respondent failed to file her memorandum.[18] On October 19, 2011, the instant case was submitted for Decision.[19]

The crux of the controversy in the present petition is the propriety of CTA Third Division's decision dismissing petitioner's judicial claim for the refund or issuance of tax credit certificate for its unutilized input VAT for the 2nd quarter of CY 2008 on the ground that the said claim was prematurely filed.

After a careful and thorough evaluation and consideration of the records of the case, including both parties' arguments in their respective pleading, the CTA *En Banc* finds no new matters which have not yet been considered and passed upon by the CTA Third Division in the Assailed Resolutions.

The CTA Third Division was correct in granting respondent's Motion to Dismiss despite petitioner's opposition. Respondent's affirmative defense of prematurity in her Answer may be regarded as having the effect of a Motion to Dismiss pursuant to Section 6 Rule 16 of the Rules of Court, which states:

> "Sec. 6. *Pleading grounds as affirmative defenses.* – If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the

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[14] CTA En Banc Rollo, pp. 82-83.
[15] *Ibid.*, pp. 84-89.
[16] *Id.*, pp. 91-92.
[17] *Id.*, pp. 100-151.
[18] Verification of Records, *Id.*, p. 152.
[19] *Id.*, pp. 154-155.

> answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.
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> The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer.

The premature filing of the instant Petition for Review is tantamount to a violation of the doctrine of exhaustion of administrative remedies. Petitioner filed its judicial claim before the CTA Third Division without giving the respondent ample opportunity to decide on its claim for refund at the administrative level, in defiance with the procedure and periods clearly prescribed in the 1997 NIRC.

It is a well-settled rule that failure to exhaust administrative remedies is crucial to one's cause of action. In the recent case of *National Electrification Administration vs. Val L. Villanueva*[20], the Supreme Court held that:

> "It is settled that under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted. If remedy is available within the administrative machinery, this should be resorted to before recourse can be made to courts. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court. The non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint."

If a litigant goes to court without first pursuing his administrative remedies, his action is premature or he has no cause of action to ventilate in court. His case is not ripe for judicial determination.[21]

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[20] G.R. No. 168203, March 9, 2010 *citing* Josefina Teotico v. Rosario Baer, G.R. No. 147464, June 8, 2006 and Montanez v. Provincial Agrarian Reform Adjudicator, G.R. No. 183142, September 17, 2009.

[21] Aboitiz and Co., Inc., Visayan Coconut Growers, Inc., Lu Do and Lu Ym Corp., Federal Marketing Corp., Overseas Commodity Corp., Southern Products Import and Export Corp., International Copra Export Corp., East Visayas Products, Gran Export Corp., Aic Development Corp., Kaylin International,

We quote with approval the CTA Third Division's ruling in the Assailed Resolution dated January 31, 2011 that:

> "Significantly, in the aforecited case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, the Supreme Court expounded on the mandatory nature of the periods provided in Section 112 (D) [now Section 112(C)] of the NIRC of 1997 as amended. The Supreme Court ruled that failure to observe the said period is fatal to one's case and in case of premature filing, this Court will not be clothe with jurisdiction to entertain the appeal, to wit:
>
>> **Section 112 (D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],'** within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>>
>> xxxx
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>> In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with CTA. **As we see it then, the 120-day period is crucial in filing an appeal with the CTA."**

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Inc., and Jomasco, Inc., vs. The Collector of Customs of Cebu, in his capacity as Acting General Manager of the Cebu Customs Arrastre Service, and Cebu Port Terminal, Inc., G.R. No. L-29466 May 18, 1978 *citing* Allied Brokerage Corporation vs. Commissioner of Customs, L-27641, August 31, 1971, Pestanas vs. Dyogi L-25786, February 27, 1978, per Santos, G. S., J.; and Pineda vs. Court of First Instance of Davao, 111 Phil 643.

> **In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."** *(Emphasis supplied)*[22]

Petitioner filed its Petition for Review barely four days after it filed its administrative claim. Hence, it is crystal clear that it failed to exhaust its administrative remedies. It is apparent that petitioner filed its judicial appeal without waiting for the lapse of the 120-day period provided for under Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended.[23] Consequently, petitioner's premature filing of the Petition for Review on June 29, 2010, failed to confer on this Court with jurisdiction to take cognizance of the instant case. As its petition is prematurely filed, there is no case over which the Court may acquire jurisdiction.[24]

Finally, as regards the contention of petitioner on the retroactive application of the doctrine in the Aichi case, it is likewise settled that the law takes effect from the time of its effectivity. It is only upon effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. The provisions of Section 112 have been effective as of January 1, 1998 when the said law took place. The fact that the cases interpreting the same were promulgated years after its effectivity does not mean that the Court implements a retroactive application of law.

In sum, the *CTA En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the Assailed Resolutions dated January 31, 2011 and April 18, 2011, both promulgated by the CTA Third Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon by the Court.

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[22] CTA En Banc Rollo, pp. 65-66.
[23] *Ibid.*, p. 66.
[24] *Id.*

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the Assailed Resolutions dated January 31, 2011 and April 18, 2011 in CTA Case No. 8125 entitled *"Hedcor Sibulan, Inc. vs. Commissioner of Internal Revenue"*, are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my ***Dissenting Opinion*** as promulgated by the Third Division of the Court in the assailed Resolutions dated January 31, 2011, and April 18, 2011.)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
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

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.

ERNESTO D. ACOSTA
Presiding Justice