REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

THE TREASURER OF THE CITY OF MANILA,
Petitioner,

- versus -

UNILEVER PHILIPPINES, INC.,
Respondent.

C.T.A. AC NO. 45

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

AUG 13 2008, 1:00 pm

x - x

DECISION

CASANOVA, J.:

STATEMENT OF THE CASE

Before Us is a Petition for Review seeking the reversal of the consolidated Decision[1] (Assailed Decision) dated November 3, 2006 and Order (Assailed Order) rendered by Honorable Judge Amor A. Reyes of Branch 21, Regional Trial Court, Manila granting the refund to herein respondent in the aggregate amount of P62,528,604.87.[2]

[1] Petition for Review, Annex "F", *Rollo,* pp. 58-64.
[2] Total amount stated in the Assailed Decision is P62,568,605.17 but upon checking, the sum should be P62,528,604.87.

STATEMENT OF THE FACTS

Petitioner, Ms. Liberty M. Toledo, is filing this petition in her official capacity as Treasurer of the City of Manila, with office address at the Ground Floor, Manila City Hall, Taft Avenue, Manila.[3]

Respondent Unilever Philippines, Inc. is a domestic corporation duly registered and existing by virtue of the laws of the Philippines, with principal address at 1351 United Nations Avenue, Manila.[4]

Herein respondent, filed several cases before herein petitioner with the following details:

> "Civil Case No. 01-102052, petitioner claims for refund in the amount of P5,482,456.26 paid for the year 1999.
>
> Civil Case No. 02-102676, petitioner claims for the first quarter of year 2000 in the amount of P6,403,030.62.
>
> Civil Case No. 02-103237, petitioner claims for the refund of the taxes for the second quarter of the year 2000 in the amount of P6,403,030.62.
>
> Civil Case No. 02-104045, petitioner claims for the refund of the taxes for the third (3rd) quarter of the year 2000 in the amount of P6,403,030.62.
>
> In Civil Case No. 04-109703, petitioner claims for the refund of the taxes paid for the second quarter of the year 2002 in the amount of P11,350,041.07.
>
> In Civil Case No. 02-104955, petitioner claims for the refund of the taxes for the fourth (4th) quarter of the year 2000 in the amount of P6,403,030.62.
>
> In Civil Case No. 03-108165, petitioner claims for the refund of the taxes for the fourth (4th) quarter of the year 2001 in the amount of P8,733,943.99.

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[3] Petition for Review, Par. 2, *Rollo*, p. 7.
[4] Ibid, Par. 3.

In Civil Case No. 04-108907, petitioner claims for the refund of the taxes for the first quarter of the year 2002 in the amount of P11,350,041.07." [5]

After trial on the merits, the Honorable Trial Court rendered the Assailed Decision[6] on November 3, 2006. The dispositive portion of the Assailed Decision reads as follows:

> "WHEREFORE, premises considered, the petitions are hereby GRANTED. The application to petitioner of Sec. 21 of the Tax Ordinance no 7988 as amended by Tax Ordinance No. 8011 is hereby declared VOID. Respondent is hereby ordered to REFUND/CREDIT petitioner the taxes paid under Sec. 21 of the said ordinance. With costs against respondents.
>
> SO ORDERED."[7]

A Motion for Reconsideration[8] dated November 27, 2006 was filed by herein petitioner.[9] However, the same was denied through the Assailed Order[10] dated July 12, 2007 the dispositive portion of which reads as follows:

> "Assessing the allegations of the contending parties, the Court believes and so holds that no new matters of significance have been raised that could convince the Court of the cogency of the reversal of the decision.
>
> Accordingly, the Motion for Reconsideration is hereby DENIED.
>
> SO ORDERED."[11]

On October 22, 2007, petitioner moved for an extension of time to file an appeal.[12]

Hence, this Petition for Review was filed on October 25, 2007.[13]

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[5] *Rollo*, pp. 59-60.
[6] Supra, note. 1.
[7] *Rollo*, p. 64.
[8] Petition for Review, Annex "G", *Rollo*, pp. 71-79.
[9] *Rollo*, pp. 72-79.
[10] *Rollo*, p. 70.
[11] Ibid.
[12] *Rollo*, pp. 1-4.

By virtue of a Resolution[14] dated November 14, 2007, respondent was ordered to file its Comment within ten (10) days from receipt thereof.

After several motions[15] for extension of time to file Comment, respondent filed its "Opposition Re: Petition for Review Dated October 25, 2007"[16] which this Court admitted on January 4, 2008.[17]

After submission by the parties of their respective Memorandum, on January 25, 2008 for petitioner[18] and on February 8, 2008 for respondent,[19] this Court submitted this case for decision on February 27, 2008.[20]

ISSUES

The following issues were raised by the petitioner Treasurer of Manila in its Petition for Review:

> "i. Whether or not the Honorable Regional Trial Court gravely erred in holding that there is double taxation in the imposition of Section 21 of the Manila Revenue Code, as amended. [;]
>
> ii. Whether or not the Honorable Regional Trial Court gravely erred in holding that Section 21 is expressly prohibited by Section 133 of the Local Government Code.[;and]
>
> iii. Whether or not the Honorable Regional Trial Court gravely erred in holding that Sections 195 and 187 of the Local Government Code do not apply in the instant case.

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[13] *Rollo,* pp. 6-28.
[14] *Rollo,* p. 83.
[15] *Rollo,* pp. 84-85 and pp. 86-87.
[16] *Rollo,* pp. 92-126.
[17] *Rollo,* pp. 131-133.
[18] *Rollo,* pp. 134-151.
[19] *Rollo,* pp. 156-191.
[20] *Rollo,* p. 276.

THE COURT'S RULING

The Philippine Constitution under Section 5, Article X on "LOCAL GOVERNMENT", specifically grants authority to the City of Manila to impose taxes, to wit:

> "Sec. 5. Each local government unit shall have the power to create its sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such fees, taxes, and charges shall accrue exclusively to the local governments."

Pursuant to the constitutional mandate, Congress enacted the Local Government Code of 1991 (LGC) that set forth the guidelines and limitations on the power to tax of local governments like the City of Manila, to wit:

> "Sec. 128. Scope. – The provisions herein shall govern the exercise by provinces, cities, municipalities, and barangays of their taxing and other revenue-raising powers.
>
> Sec. 129. Power to Create Sources of Revenue. - Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units."

The City of Manila, through Tax Ordinance No. 7988, otherwise known as the Revised Revenue Code of the City of Manila (RRCCM), as amended by Ordinance No. 8011, imposes and collects taxes on people, transactions, and businesses found within its jurisdiction.

<u>Whether or not the Honorable Regional Trial Court gravely erred in holding that there is double taxation in the imposition of Section 21 of the Manila Revenue Code, as amended.</u>

Respondent in the instant case is a manufacturer and pays taxes to the City of Manila by virtue of Sections 14 and 21 of the Tax Ordinance No. 7988, as amended. A manufacturer is defined by the LGC as:

> SEC. 131. *Definition of Terms*. - When used in this Title, the term:
>
> xxx xxx xxx
>
> (o) "Manufacturer" includes every person who, by physical or chemical process, alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured products so as to reduce it to marketable shape or prepare it for any of the use of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished products of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption;
>
> xxx xxx xxx"

Based on the above definition, a manufacturer is any person that changes, modifies or combines any product to take the form of another product or finished product for the purpose of selling or distributing them to others for a fee.

Section 14 of Ordinance No. 7988, as amended, imposes a percentage tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines, or manufacturers of any article of commerce of whatever kind or with the gross sales or receipts for the preceding calendar year in accordance with the schedule provided therein. Section 21, on the other hand, is entitled "Tax on Businesses Subject to the Excise, Value Added or Percentage Taxes under the NIRC", and it provides for the imposition of a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts on the business and articles of commerce subject to excise, value added or percentage taxes under the National Internal Revenue Code (NIRC).

Petitioner avers that a manufacturer's tax under Section 14 is distinct and different from the imposition, under Section 21, of tax on businesses subject to the excise, value-added or percentage taxes under the NIRC.

Petitioner's argument is not correct.

In the case at bench, respondent is being taxed as a manufacturer of goods under Section 14 of the Ordinance. Likewise, it is taxed under Section 21 (a) on its business of selling manufactured goods. Hence, both Sections 14 and 21 of the Manila Revenue Code are business taxes based on respondent's sales as a manufacturer.

It must be noted that among the limitations contained in the LGC on local government units like the City of Manila, is specified in Section 143 (h) thereof, which reads as follows:

> "Sec. 143. Tax on Business- The municipality may impose taxes on the following businesses:
>
> xxx xxx xxx
>
> (h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

> The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein."

From the above provision, paragraph (h) explicitly provides that the taxes therein may no longer be imposed on businesses subjected to tax under paragraphs (a) to (g) of the same section, which reads as follows:

> "SEC. 143. Tax on Business. - The municipality may impose taxes on the following businesses:
>
> (a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule: With gross sales or receipts for the Amount of Tax preceding calendar year in the amount of:
>
> xxx xxx xxx
>
> (b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule: With gross sales or receipts for the Amount of Tax preceding calendar year in the amount of:
>
> xxx xxx xxx
>
> (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:
>
> (1) Rice and corn;
> (2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;
> (3) Cooking oil and cooking gas;
> (4) Laundry soap, detergents, and medicine;
> (5) Agricultural implements, equipment and post- harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;
> (6) Poultry feeds and other animal feeds;
> (7) School supplies; and

(8) Cement.

(d) On retailers, With gross sales or receipts Rate of tax for the preceding calendar year of:

xxx xxx xxx

Provided, however, That barangays shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (P=50,000.00) or less, in the case of cities, and Thirty thousand pesos (P=30,000.00) or less, in the case of municipalities.

(e) On contractors and other independent contractors, in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of:

xxx xxx xxx

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (P50.00) per peddler annually.

xxx xxx xxx"

Under paragraph (h), it is stated that a tax may only be imposed on "any business, not otherwise specified in the preceding paragraphs", i.e. paragraphs (a) to (g). This clearly indicates the intention of the framers of the LGC to include in subsection (h) those businesses or persons not covered in subsections (a) to (g). Respondent in the instant case had already been taxed of business tax on manufacturers under Sec. 14 of the RRCCM or Tax Ordinance No. 7988. Thus, subjecting again the respondent to the "business tax of manufacturers subject to excise tax, value-added tax or percentage tax under NIRC" under Sec. 21 of the same code, is an apparent violation of Sec. 143 (h) of the LGC, and is tantamount to double taxation. Note that Section 14 of the Tax Ordinance is derived from Section 143 (a) of the Local Government Code.

Double taxation as defined by the Supreme Court means:

> "Taxing the same property twice when it should be taxed only once; that is, 'x x x taxing the same person twice by the same jurisdiction for the same thing.' It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as 'direct duplicate taxation,' the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character."[21]

Moreover, in Pepsi-Cola Bottling Co. of the Phils., Inc. vs. Municipality of Tanauan, Leyte, the Supreme Court likewise said:

> "Double taxation in general, is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union. Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality."[22]

Petitioner submits to this Court that there was no double taxation in the instant petition as the taxes imposed in Sections 14 and 21 are of two different kinds or characters, being taxed on two different entities (i.e. to respondent and its customers respectively) and for different purposes.

We rule otherwise.

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[21] *Commissioner of Internal Revenue vs. Solidbank Corporation,* G.R. No. 148191, November 25, 2003.

[22] *Pepsi-Cola Bottling Co. of the Philippines, Inc. vs. Municipality of Tanauan, Leyte,* G.R. No. L-31156, February 27, 1976, 69 SCRA 466-467.

In the long line of cases[23] decided by this Court, it was consistently held that the imposition of business taxes under Sections 14 and 21(a) of the MRC as amended, upon a manufacturer like the respondent, constitutes double taxation as there was taxation twice, for the same activity (i.e. manufacturing), by the same public authority within the same taxing jurisdiction (City of Manila) for the same purpose (i.e. to generate revenue for the City of Manila) and for the same taxable period, which is in the case at bar, is 2003. Thus, We agree with the court a quo that the imposition by the petitioner of business tax upon respondent under Section 21 of the RRCCM when the latter had already paid the same tax under Section 14 of the same code constituted obnoxious double taxation, as defined in the cited Pepsi-Cola case.

Whether or not the Honorable Court
gravely erred in holding that Sections 21
is expressly prohibited by Section 133 of
the Local Government Code

Petitioner contends that Section 21 is not a sales tax, which is within the limitation provided for under Section 133 of the Local Government Code; it is a tax upon the end-users as provided for under Section 21 of the Manila Revenue Code and respondent Unilever acts as the withholding agent tasked to remit the said tax the City Government of Manila.

Petitioner further adds that assuming *arguendo* that it is a sales tax, the City of Manila is not *per se* prohibited to impose the same as it is authorized under Section 143 in conjunction with the residual power conferred upon it by Section 186

[23] Unilever *Philippines, Inc. vs. The Treasurer of Manila,* CTA AC No. 25, July 18, 2007; *Liberty M. Toledo, in her capacity as the Treasurer of the City of Manila vs. Unilever Philippines, Inc.* , CTA A.C. No. 21, May 10, 2007; Alcan *Packaging Starpack Corporation (formerly Starpack Philippines Corporation) vs. The Treasurer of the City of Manila,* CTA AC No. 17, September 11, 2006; *Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila,* CTA AC No. 15, July 21, 2006;

of the Local Government Code. The only limitation, petitioner contends, is that the rate of tax must not be more than 2% of the gross sales pursuant to Section 143 (h) of the LGC.

Contrary thereto, respondent argued that if Unilever is merely a withholding agent, the tax is deemed imposed upon the purchaser of goods which in effect makes the tax akin to a sales tax. A tax of such nature, mandated by a local government unit, is prohibited by Section 133 of the LGC, hence invalid.

We agree with respondent.

The whole of Section 186 of the LGC which petitioner cited, states that:

> "Section 186. Power to Levy other Taxes Fees Or Charges.- Local government units may exercise the power to levy taxes, fees or charges on any base or subject **not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws**: Provided, That the taxes, fee, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further,* That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose." (Emphasis Supplied)

The pertinent part of Section 133 of the LGC reads as follows:

> "Sec. 133. Common Limitations on the Taxing Powers of the Local Government Units.- Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> xxx xxx xxx
>
> (i) **Percentage or value-added tax (VAT) on sales**, barters or exchanges or similar transactions on goods or services except as otherwise provided herein; (Emphasis Supplied)
>
> xxx xxx xxx"

On the other hand, Section 21 of the Manila Revenue Code states that:

"Sec. 21. Tax on Business Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC- On any of the following businesses and article of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter the NIRC, as amended, a tax of **fifty percent (50%) of one percent (1%) per annum on the gross sale or receipt** of the preceding calendar year is hereby imposed

xxx xxx xxx" (Emphasis Supplied)

From the above provisions, although Section 186 indeed permits a local government unit to impose any tax of whatever nature, the tax charged should not be prohibited by the National Internal Revenue Code and by the Local Government Code itself. And as aptly pointed out by respondent, Section 133 of the LGC prohibits the imposition of percentage or value-added tax on sales, barters or exchanges, which Section 21 imposes.

<u>Whether or not the Honorable Regional Trial Court gravely erred in holding that Sections 195 and 187 of the Local Government Code do not apply in the instant case.</u>

It is petitioner's contention that respondent's case is legally impermissible because it has no cause of action as it was already barred to seek redress for its failure to observe Section 187 of the LGC, which states that:

"Sec. 187. Procedure for Approval and Effectivity of Tax, Ordinances and Revenue Measures; Mandatory Public Hearings. – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That the public hearings shall be conducted for the purpose prior to the enactment thereof: Provided further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee or charge levied therein: Provided,

> finally, That within thirty (30) days after the receipt of the decision or the lapse of the sixty day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction."

Further, petitioner contends that respondent failed to appeal the revenue measure within thirty (30) days from its enactment; therefore, it is barred from filing the complaint in the court a quo. Petitioner further said that Section 187 is a condition *sine qua non* before resort to the court may be had. Moreover, petitioner said that respondent is estopped to file a claim for refund for its failure to appeal the assessment she made in utter disregard of Section 195 of the LGC, which reads as follows:

> "Sec. 195. – Protest of Assessment. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of protest or from the lapse of sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappelalable."

Petitioner added that for failure of respondent to contest the assessment, it can no longer validly claim for a tax refund or credit.

Despite petitioner's arguments, We are not persuaded.

The foregoing provisions of the LGC cover the protest of assessment and the procedure for approval and effectivity of tax ordinances and revenue measures. It must be noted that the present case involves a claim for refund under the RRCCM. Clearly, a refund is not the same as a case of disputed assessment referred to under Section 195 of the LGC. Respondent in the instant case did not raise any issue regarding incorrect assessment, since there was no notice of assessment issued by petitioner to respondent requiring the latter to pay its taxes. There was no assessment to protest.

Moreover, Section 187 of the LGC specifically provides that "any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days..." In the present case, respondent did not question the legality of Section 21. It only questioned the enforcement thereof, as it paid business taxes under both Section 14 and Section 21 RRCCM constituting double taxation. Thus, Section 187 has no application in the instant case.

From the above, Sections 195 and 187 of the LGC finds no application in this case. Hence, We affirm the ruling of the court a quo on the issue of double taxation.

All the foregoing considered, this Court finds no reversible error committed by the Regional Trial Court of Manila, Branch 21 that would merit the reversal of the Assailed Decision and Order.

The instant Petition for Review is hereby **DENIED** as there is no law authorizing the petitioner's act of taxing respondent in the instant petition. The Assailed Decision dated November 3, 2006 and the Order dated July 12, 2007 are hereby **AFFIRMED.**

Accordingly, petitioner Treasurer of the City of Manila is **ORDERED TO REFUND** to respondent Unilever Philippines, Inc. the amount of **SIXTY-TWO MILLION FIVE HUNDRED TWENTY-EIGHT THOUSAND SIX HUNDRED FOUR PESOS AND 87/100 (Php 62,528,604.87)** representing respondent's erroneously paid local business taxes as computed below:

Civil Case No. 01-102052	-	P 5,482,456.26
Civil Case No. 01-102052	-	P 6,403,030.62
Civil Case No. 02-103237	-	P 6,403,030.62
Civil Case No. 02-104045	-	P 6,403,030.62
Civil Case No. 04-109703	-	P11,350,041.07
Civil Case No. 02-104955	-	P 6,403,030.62
Civil Case No. 03-108165	-	P 8,733,943.99
Civil Case No. 04-108907	-	P11,350,041.07
TOTAL		P62,528,604.87

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(ON LEAVE)
LOVELL R. BAUTISTA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division