REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

PURECHEM CORPORATION, Petitioner,	**CTA EB No. 1856** (CTA Case No. 9653)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** AUG 13 2019 3:50 p.m.

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DECISION

UY, *J*.:

The instant *Petition for Review*[1] filed on June 7, 2018 by Purechem Corporation, petitioner, against the Commissioner of Internal Revenue, respondent, prays to set aside the Order dated February 1, 2018 issued by the Second Division of this Court (Court in Division) in CTA Case No. 9653, entitled *"Purechem Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent,"* the dispositive portion of which reads:

ORDER dated February 1, 2018

"WHEREFORE, the case in caption is hereby **DISMISSED** for failure of petitioner's counsel to appear at

[1] EB Docket, pp. 11 to 25.

the scheduled pre-trial and for failure of petitioner to file its pre-trial brief (Sections 5 & 6, Rule 18 of the 1997 Rules of Civil Procedure, as amended).

SO ORDERED." [2]

This Petition for Review likewise assails the Court in Division's Resolution dated April 18, 2018 denying petitioner's Motion for Reconsideration with attached Pre-Trial Brief[3], the dispositive portion of which reads as follows:

"**WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit. Accordingly, the assailed Order promulgated on February 1, 2018 is hereby **AFFIRMED.**

SO ORDERED."[4]

THE FACTS

Petitioner Purechem Corporation is a domestic corporation duly registered with the Securities and Exchange Commission and existing under and by virtue of Philippines laws, with principal office at 348 Jorge Street, San Rafael Village, Navotas City.[5] It is engaged in the business of importation and trading of a wide variety of high-grade food and beverage ingredients in the Philippines.[6] It is an income tax and value-added tax (VAT) taxpayer registered with the Bureau of Internal Revenue (BIR) as such in accordance with Section 236 of the National Internal Revenue Code of 1997, with VAT registration/Taxpayer Identification No. 002-763-985-000.[7]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested by law with the power to decide disputed assessments of internal revenue taxes, and holds

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[2] EB Docket, p. 27.
[3] EB Docket, pp. 28-35, 36-42, respectively
[4] EB Docket, pp. 44-47
[5] Par. 1, *Petition for Review*, vis-à-vis Par. 7, *Answer*, Division Docket (CTA Case No. 9653), pp. 10 and 77.
[6] Par. 3, *Petition for Review*, vis-à-vis Par. 7, *Answer*, Division Docket (CTA Case No. 9653), pp. 11 and 77.
[7] Par. 4, *Petition for Review*, vis-à-vis Par. 7, *Answer*, Division Docket (CTA Case No. 9653), pp. 11 and 77.

office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[8]

Petitioner filed a *Petition for Review* on August 18, 2017[9] before the Court in Division docketed as CTA Case No. 9653, praying that the following assessment notices issued by the BIR be reversed, set aside, withdrawn and cancelled, to wit:

1. Final Assessment Notice (FAN) dated December 14, 2016 issued by the OIC-Regional Director Myrna S. Leonida of Revenue Region No. 5 – Caloocan City, assessing petitioner for deficiency VAT for taxable periods 1st and 2nd quarters of 2015 in the total amount of ₱16,399,588.33 (inclusive of penalties); and

2. Revised FAN dated July 11, 2017 issued by the same OIC-Regional Director, assessing petitioner for deficiency VAT and compromise penalty for taxable periods 1st and 2nd quarters of 2015 in the total amount of ₱18,427,903.45 (inclusive of penalties) and ₱75,000.00, respectively.

For his part, respondent filed his *Answer* on November 27, 2017,[10] interposing certain special and affirmative defenses, to wit: lack of jurisdiction over the subject matter; and failure of the petitioner (Purechem Corporation) to file its Petition for Review within thirty (30) days from receipt of the ruling issued by the CIR renders the said ruling final, executory, unappealable and demandable.

A Notice of Pre-trial Conference was issued on December 4, 2017 setting CTA Case No. 9653 for pre-trial conference on January 18, 2018.[11] Respondent filed his *Pre-Trial Brief* on January 16, 2018.[12] However, despite due notice, petitioner's counsel failed to appear during the scheduled pre-trial conference on January 18, 2018, while respondent's counsel failed to present his Special Power of Attorney to represent respondent for pre-trial. Thus, the pre-trial conference was cancelled and reset to February 1, 2018, with warning to the petitioner.[13]

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[8] Par. 2, *Petition for Review*, vis-à-vis Par. 7, *Answer*, Division Docket (CTA Case No. 9653), pp. 10 to 11, and 77.
[9] Division Docket (CTA Case No. 9653), pp. 10 to 20.
[10] Answer, Division Docket (CTA Case No. 9653), pp. 76 to 83.
[11] Notice of Pre-trial Conference, Division Docket (CTA Case No. 9653), pp. 96 to 97.
[12] Division Docket (CTA Case No. 9653), pp. 98 to 102.
[13] Order dated January 18, 2018, Division Docket (CTA Case No. 9653), p. 104.

During the pre-trial conference on February 1, 2018, petitioner's counsel again failed to appear. Thus, for failure of the petitioner's counsel to appear despite notice, and to file petitioner's pre-trial brief, the Court in Division dismissed CTA Case No. 9653 in the assailed Order dated February 1, 2018, pursuant to Sections 5 and 6, Rule 18 of the 1997 Rules of Civil Procedure, as amended.

Petitioner then filed its *Motion for Reconsideration* on February 26, 2018 praying to reconsider and set aside the said assailed Order. Respondent did not file comment thereto despite notice.

In the assailed Resolution dated April 18, 2018,[14] the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

Consequently, petitioner filed a *Motion for Extension to File Petition for Review* on May 23, 2018 before the Court *En Banc.*[15] The same was granted by the Court *En Banc* and petitioner was given a final and non-extendible period of fifteen (15) days from May 23, 2018, or until June 7, 2018 to file its *Petition for Review.*[16]

Thereafter, petitioner filed the instant *Petition for Review* on June 7, 2018.[17] In the Resolution dated June 29, 2018,[18] respondent was ordered by the Court *En Banc* to file his comment thereto within ten (10) days from receipt. Despite due notice, however, respondent failed to file the required comment.[19]

In the Resolution dated October 24, 2018,[20] the case was submitted for decision. Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for the Court *en Banc's* resolution, to wit:

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[14] EB Docket, pp. 44 to 47; and Division Docket (CTA Case No. 9653), pp. 128 to 132.
[15] EB Docket, pp. 1 to 4.
[16] Minute Resolution dated May 24, 2018, EB Docket, p. 10.
[17] EB Docket, pp. 11 to 25.
[18] EB Docket, pp. 49 to 50.
[19] Records Verification dated August 8, 2018 issued by the Judicial Records Division of this Court, EB Docket, p. 51.
[20] EB Docket, pp. 65 to 66.

"A. WHETHER THE CTA 2ND DIVISION ERRED IN DISMISSING THE PETITION.

B. WHETHER THE CTA 2ND DIVISION ERRED IN DENYING THE MOTION FOR RECONSIDERATION WITH ATTACHED PRE-TRIAL BRIEF."[21]

Petitioner's arguments:

Petitioner contends that it has a meritorious case but the negligence of its previous counsel in handling its case in CTA Case No. 9653, allegedly prevented it from presenting its case. Allegedly, if CTA Case No. 9653 is not reinstated to allow its presentation of evidence, it will result in the deprivation of petitioner's property, in the amount of ₱18,427,903.45. Moreover, petitioner's fundamental right to due process will also be violated.

While it is true that clients are bound by the acts of their counsels, petitioner submits that in instances where the former counsel showed negligence in the discharge of his duty in maintaining his client's cause and the same would result to injustice, the Court must allegedly come to the aid of petitioner. The Court must allegedly be disposed to grant relief to litigants aggrieved by the acts of their counsel because it has the effect of depriving the litigant his day in court.

In the event that CTA Case No. 9653 is remanded to the Second Division, respondent will allegedly not be prejudiced by the reopening or continuance thereof, because there is no action by respondent that will be adversely affected by the reopening or continuance of said case. Respondent will be given the turn to object to the validity and merits of the petition, if respondent wishes.

Lastly, if petitioner will be given its day in court, it can prove that the assessment lacks legal and factual bases, and is therefore, invalid.

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[21] EB Docket, pp. 16 to 17.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Notably, the ground for the dismissal of the *Petition for Review* in CTA Case No. 9653 by the Court in Division, was due to the failure of petitioner's counsel to attend the scheduled pre-trial conference, not once, but twice, on January 18, 2018 and February 1, 2018, as well as, for the failure of petitioner's counsel to file the requisite pre-trial brief within the given period.

The pertinent provisions in our procedural rules relative to pre-trial proceedings are as follows:

Section 1, Rule 11 of the Revised Rules of the Court of Tax Appeals (RRCTA), reads:

> "SECTION 1. *Applicability.* – **The rule on pre-trial under Rules 18 and 118 of the Rules of Court, as amplified in A.M. No. 03-1-09-SC dated July 13, 2004 (Re: Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures), shall apply to all cases falling within the original jurisdiction of the Court**, except that the parties may not be allowed to compromise the criminal liability."

Based on the foregoing, the rules on pre-trial under the 1997 Rules of Civil Procedure and A.M. No. 03-1-09-SC dated July 13, 2004 are applicable to this Court. Relative thereto, Sections 4 and 5, Rule 18 of the 1997 Rules of Civil Procedure, provides as follows:

> "SEC 4. *Appearance of parties.* - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

> SEC 5. *Effect of failure to appear.* - **The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court.** A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof." *(Emphasis supplied)*

The foregoing provisions specifically impose upon the parties and their respective counsels, the duty to appear at the pre-trial. The failure of plaintiff (petitioner in this case) to appear shall be cause for the dismissal of the action with prejudice, unless otherwise ordered by the court. On the other hand, a similar failure on the part of the defendant (respondent in this case) shall be cause to allow the plaintiff (or petitioner) to present his evidence *ex parte* and the court to render judgment on the basis thereof

As mentioned earlier, petitioner failed to timely file its Pre-Trial Brief in Civil Case No. 9653. Relative thereto, the requisite filing of Pre-Trial Brief by the parties is mandated under Section 6, Rule 18 of the 1997 Rules of Civil Procedure reads:

> "SEC. 6. *Pre-trial brief.* - The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:
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> xxx xxx xxx
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> **Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.**" *(Emphasis supplied)*

Clearly from the foregoing, failure of the parties to file Pre-Trial brief shall have the same effect as failure to appear at the pre-trial.

As held by the Supreme Court in the case of "***Clodualda D. Daaco v. Valeriana Rosaldo Yu***", the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the

plaintiff (or petitioner in this case), then he may be declared non-suited and his case dismissed. If it is the defendant (or respondent in this case) who fails to appear, then the plaintiff or petitioner may be allowed to present his evidence *ex parte* and the court to render judgment on the basis thereof.[22]

In certain instances, however, the non-appearance of a party may be excused if a valid cause is shown. What constitutes a valid ground to excuse litigants and their counsels at the pre-trial is subject to the sound discretion of a judge. Unless and until clear and manifest abuse of discretion is committed by the judge, his appreciation of a party's reasons for his nonappearance will not be disturbed.[23]

In this case, the Court *En Banc* finds no valid cause or justifiable reason to disturb the ruling of the Court in Division, as shown by the following circumstances:

1) The Notice of Pre-Trial Conference was issued on December 4, 2017 setting CTA Case No. 9653 for pre-trial conference on January 18, 2018 at 1:30 p.m.[24] Said notice was duly received by petitioner's counsel on January 4, 2018.[25]

2) Petitioner's counsel and its authorized representative failed to appear during the scheduled pre-trial conference on January 18, 2018 despite due notice constraining the Court to reset the pre-trial conference to February 1, 2018 with warning to petitioner. [26]

3) On January 29, 2018, petitioner's counsel received a copy of the Order dated January 18, 2018, resetting the pre-trial conference to February 1, 2018.[27] Despite due notice, petitioner and its counsel still failed to appear on February 1, 2018.[28] Moreover, the Court in Division noted that petitioner likewise failed to file the

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[22] G.R. No. 183398, June 22, 2015
[23] *Ibid.*
[24] Notice of Pre-trial Conference, Division Docket (CTA Case No. 9653), pp. 96 to 97.
[25] Division Docket (CTA Case No. 9653), p. 96.
[26] Order dated January 18, 2018, Division Docket (CTA Case No. 9653), p. 104.
[27] Division Docket (CTA Case No. 9653), p. 104 (back page).
[28] Minutes of the Hearing held on, and Order dated, February 1, 2018, Division Docket (CTA Case No. 9653), pp. 107 to 108.

requisite pre-trial brief, as mandated under Section 6, Rule 18 of the 1997 Rules of Civil Procedure.[29]

4) It was only on February 26, 2018, when petitioner, through counsel, filed its *Motion for Reconsideration*, stating that the failure of petitioner's counsel to file a *Pre-Trial Brief* and to attend the scheduled Pre-Trial Conference was due to "mere inadvertence and excusable" negligence, to wit:

> "b. It is respectfully submitted that the failure of Petitioner's counsel to file a Pre-Trial Brief and to attend the scheduled Pre-Trial Conference was through **mere inadvertence and excusable as the Associate of the then Counsel for the Petitioner (Lapinid & Lapinid Law Offices), Atty. Marites S. Candido, who has been signing the pleadings in this case, has been appointed on 23 October 2017 (assumed office on 06 November 2017) as a Board Member of the Movie Television Review and Classification Board (MTRCB).** Since the only one (1) practicing lawyer of the then Counsel for the Petitioner (Lapinid & Lapinid Law Offices), **Atty. Ian B. Lapinid, was unable to sign pleadings before this Honorable Court due to completion of requirements in compliance with the rules on Mandatory Continuing Legal Education**, the Petitioner was constrained to belatedly look for another legal counsel or law firm that can represent Petitioner in the instant case. Apparently, the delay by the then legal counsel for the Petitioner in informing the Petitioner of said factual circumstances as well as the difficulty in looking for a legal counsel or law firm specializing in taxation practice and BIR cases, and whom the Petitioner can trust, contributed to the delay and non-filing of the Pre-Trial Brief and non-appearance during the Pre-Trial Conference."[30] *(Emphases supplied).*

In other words, the reasons proffered by petitioner are: (a) Atty. Marites Candido, the lawyer formerly handling CTA Case No. 9653 from the law firm, Lapinid and Lapinid Law Offices, was appointed on October 23, 2017 as a Board Member of MTRCB, and assumed public office on November 6, 2017; (b) the only one (1) practicing

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[29] *Id.*
[30] Motion for Reconsideration, Division Docket (CTA Case No. 9653), p. 110.

lawyer of the said law firm was unable to sign pleadings because he was still completing MCLE requirements.

Clearly from the foregoing antecedent circumstances, petitioner's counsel had sufficient time from the assumption of office of Atty. Candido, on November 6, 2017 until January 18, 2018 (the date of first Pre-Trial Conference) or February 1, 2018 (the date of the second Pre-trial Conference), to either (1) prepare and submit the required Pre-Trial Brief; (2) inform petitioner-client of the inability of the remaining practicing lawyer of the law firm to sign the requisite pleadings, and to appear during the scheduled Pre-Trial Conferences; or (3) inform the Court in Division of its predicament and request for a postponement thereof. However, petitioner's counsel failed to do so.

In the case of ***"Ultra Mar Aqua Resource, Inc., vs. Fermida Construction Services",***[31] it was held that the negligence and mistakes of a counsel are binding on the client. Moreover, clients have a concomitant obligation to inform themselves of the progress of their case, exercising the standard of care of an ordinarily prudent man, to wit:

> "Ultra Mar would nevertheless point an accusing finger at its counsel for the latter's gross negligence. However, nothing is more settled than the rule that the **negligence and mistakes of a counsel are binding on the client.**
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> The rationale for this rule is reiterated in the case of *Lagua v. Court of Appeals:*[32]
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> > 'The general rule is that a client is bound by the counsel['s] acts, including even mistakes in the realm of procedural technique. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the

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[31] *Ultra Mar Aqua Resource, Inc., etc. vs. Fermida Construction Services, etc.,* G.R. No. 191353, April 17, 2017.

[32] G.R. No. 173390, June 27, 2012 (citations omitted).

authority is regarded, in the eyes of the law, as the act or omission of the client himself.'

Ultra Mar, on the other hand, has the following **concomitant obligation**:

> '**As clients, petitioners should have maintained contact with their counsel from time to time, and informed themselves of the progress of their case, thereby exercising that standard of care which an ordinarily prudent man bestows upon his business**.
>
> Even in the absence of the petitioner['s] negligence, the rule in this jurisdiction is that a party is bound by the mistakes of his counsel. In the earlier case of *Tesoro v. Court of Appeals*, we emphasized:
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> > It has been repeatedly enunciated that a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently. **A client is bound by the mistakes of his lawyer. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced or learned** (citation omitted).'

Consequently, neither Ultra Mar nor its counsel can evade the effects of their misfeasance." *(Emphasis and underscoring supplied)*

Based on the foregoing, it is clear that the client is bound by the mistakes and negligence of its counsel. More importantly, however, there is likewise a ***duty*** on the part of the client, to maintain contact with its counsel, keep itself informed with the progress of the case, and exercise a standard of care that an ordinarily prudent man bestows upon his business.

To the mind of the Court, petitioner failed in this aspect, as the records are bereft of any showing that petitioner exercised the requisite standard of care in handling its affairs.

Petitioner however invokes the pronouncement of the Supreme Court in the case of "***R.N. Development Corporation v. A.I. I. System, Inc***."[33] wherein the High Court held that it is the policy of the Court to afford every litigant the amplest opportunity for the proper and just determination of his cause, free from constraints of technicalities. Since rules of procedure are mere tools designed to facilitate the attainment of justice, courts must avoid the rigid application thereof which tends to frustrate rather than promote the ends of justice.

Allegedly, following the pronouncements of the Supreme Court in the above cited case, petitioner must be given the opportunity to present its case without the rigid application of technicalities in order to promote the ends of justice.

We are not convinced.

Considering the attendant circumstances that led to the dismissal of CTA Case No. 9653, the Court *En Banc* cannot accord petitioner the liberality invoked in the instant case, as the failure of petitioner's former counsel to appear for Pre-Trial occurred not only once, but twice. Likewise, petitioner's counsel was remiss in the filing of the required Pre-Trial Brief within the requisite period.

On the significance of Pre-trial proceedings, the Supreme Court in the case of *Clodualda D. Daaco vs. Valeriana Rosaldo Yu,* elucidated on the value of a pre-trial conference, and the circumstances that would warrant a liberal construction of the rules, to wit:

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[33] G.R. No. 166104, June 26, 2008

> "xxx xxx xxx pre-trial cannot be taken for granted. It is more than a simple marking of evidence. **It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation**. Hence, it should not be ignored or neglected, as petitioner had.
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> xxx xxx xxx
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> In view of the foregoing, this Court does not find that the facts in the case at hand warrant a liberal construction of the rules. **Considering that the petitioner failed to offer sufficient justification for her failure to appear at the pre-trial conference, this Court finds no compelling reason to disturb the findings of the trial court. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least promptly explain its failure to comply with the rules**. Indeed, technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. **Utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction.**" *(Emphases supplied)*

As gleaned from the foregoing, pre-trial cannot be taken for granted by party-litigants, and the rules thereon should not be taken lightly. Petitioner cannot simply invoke the liberal construction of the rules, without providing an acceptable explanation for its failure to comply with the rules of procedure.

All told, the Court *En Banc* finds no error committed by the Court in Division in dismissing CTA Case No. 9653 as the Court *En Banc* finds petitioner's explanation for the failure of petitioner's authorized representative and its counsel to appear despite due notice, twice during the scheduled Pre-trial Conferences in said case, and to submit its Pre-Trial brief within the requisite period unsatisfactory.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Order

dated February 1, 2018 and the Resolution dated April 18, 2018, rendered by the Second Division of this Court in CTA Case No. 9653 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice