

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

**ATLAS CONSOLIDATED MINING
AND DEVELOPMENT
CORPORATION,**

Petitioner,

- versus -

C.T.A. CASE NO. 4794

Members:

CASTAÑEDA, JR., *Chairperson*
UY, and
PALANCA-ENRIQUEZ, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

MAR 18 2010

X-----X

10:05 a.m.

RESOLUTION

UY, J.:

This Resolution is issued pursuant to the Resolution dated June 13, 2007 issued by the former Second Division of this Court which is herein referred to as Special Second Division, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the instant Petition for Revival of Judgment, which is hereby treated as a Motion for Further Proceedings in hereby **GRANTED**. Accordingly, let this case be set for hearing on **July 18, 2007 at 9:00 a.m.** for **further proceedings** on petitioner's claim for refund.¹"

THE FACTS

The antecedents in this case are as follows.

¹ Docket, CTA Case No. 4794, Volume II, pp. 636-636



The Petition for Review filed on April 20, 1992² before the former Court of Tax Appeals³ seeking the refund or the issuance of a tax credit in the amount of ₱ 40,078,267.81 representing petitioner's unutilized input value-added tax (VAT) for the first quarter of taxable year 1990 was denied in the Decision dated November 8, 1993. The dispositive portion thereof reads as follows:

"WHEREFORE, in view of the foregoing, the Court resolves to DENY the petition for lack of merit.

SO ORDERED.

Quezon City, November 8, 1993.⁴"

The reason for the denial of said Petition for Review was based on the findings of the Court *a quo* that petitioner was not a VAT-registered person during the period for which it is applying for refund or tax credit.

Petitioner's motion for the reconsideration of the said Decision was likewise denied for lack of merit in the Resolution dated April 5, 1994.⁵

Dissatisfied, petitioner elevated the matter to the Court of Appeals (CA)⁶ in a Petition for Review entitled "*Atlas Consolidated Mining and Development Corporation, petitioner, v. Court of Tax Appeals and Commissioner of Internal Revenue, respondents*", docketed as **CA-G.R. SP No. 34152**. A Decision therein was rendered on February 6, 1998.⁷

The Court of Appeals said thus:

² Docket, Volume 1, pp. 1-2.

³ The former Court of Tax Appeals then had the rank of a Regional Trial Court under Republic Act No. 1125.

⁴ Decision dated November 8, 1993, rendered by the Hon. Manuel K. Gruba, Associate Judge, concurred by Hon. Ramon O. De Veyra, Associate Judge, with Concurring and Dissenting Opinion rendered by the Hon. Ernesto D. Acosta, Presiding Judge of the old Court of Tax Appeals, Docket, Volume 1, pp. 347-363

⁵ Docket, Volume 1, pp. 394 to 411.

⁶ The case was docketed as CA-GR SP No. 34152.

⁷ Docket, Volume I, pp 716 to 741. Docket, Volume II, pp. 264 to 287.



"On the basis of the Joint Stipulation of Facts, particularly in paragraph 2 thereof (page 40 of the CTA Records), and as clearly specified in the VAT Registration Certificate (page 250 of the CTA Records) and the Tax Credit Certificate issued on March 28, 1990 (page 107 of the CTA Records), it is beyond cavil that the petitioner is registered with the BIR as a VAT enterprise "effective August 15, 1990. The parties are thus bound by such stipulation of fact. They cannot controvert the same. Neither can this Court modify such stipulated fact. Besides, findings of fact of the Court of Tax Appeals are entitled to the highest respect and can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court (NASIAD v. Court of Appeals, L-29318, November 29, 1974; Raymundo v. Commissioner of Customs, L-277733, December 3, 1980; Commissioner of Internal Revenue vs. Mitsubishi Metal Corp. et al. 181 SCRA 214; Commissioner of Internal Revenue vs. Court of Appeals, 204 SCRA 182).

xxx

xxx

xxx

In sum, this Court hereby resolves the issues jointly stipulated by the parties as follows:

a. VAT Ruling No. 008-92, in imposing 10% VAT on sales of copper concentrates to PASAR pyrite to PHILPHOS and gold to the Central Bank lacks legal bases, hence, of no effect.

b. VAT Ruling No. 059-92 (dated April 20, 1992) which applies retroactively to January 1, 1988 VAT Ruling No. 008-92 (dated January 23, 1992) is contrary to law.

c. Refund of input tax for zero-rated sale of goods to Board of Investment (BOI)-registered exporters shall be allowed only upon presentation of documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which have been actually exported (Revenue Regulations No. 2-88).

d. Revenue Regulations that automatically disallow VAT refunds on account of failure to faithfully comply with the documentary requirements enunciated thereunder are valid.

e. A VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed transitional input tax which shall be credited against output tax. Be that as it may, current input tax, excluding the presumptive input tax, may be credited against output tax on miscellaneous taxable sales if the suspended taxes on purchases and importations has not been fully paid. Further, direct offsetting of excess input over output taxes

my

(87)

against other internal revenue tax liabilities of the zero-rated taxpayer is not allowed.

f. Section 106(e) of the NIRC prescribing a sixty (60) day period from the date of filing of the VAT refund/tax credit application within which the Commissioner shall refund the input tax is merely directory. Hence, no interest can be due as a result of the failure of the Commissioner to act on the petitioner's claim within sixty (60) days from the date of application therefor.

g. *Motu proprio* application of excess tax credits to other tax liabilities is not allowed.

WHEREFORE, premises considered, the assailed decision and resolution of the Court of Tax Appeals in C.T.A. Case No. 4794 are hereby **REVERSED** and **SET ASIDE**. Let the records of this case be remanded to the court a quo for a proper computation of the refundable amount which should be remitted, without interest, to the petitioner within sixty (60) days from the finality of this decision. No pronouncement as to costs.

SO ORDERED."

Petitioner filed a Motion for Clarification/Partial Reconsideration of the Decision rendered by the Court of Appeals. The same, however, was denied by the said Court in its Resolution dated July 2, 1998.⁸

Thereafter, petitioner filed a Petition for Review on Certiorari before the Supreme Court entitled "*Atlas Consolidated Mining and Development Corporation, petitioner, v. Commissioner of Internal Revenue, respondent*" docketed as **G.R. No. 134467** challenging in part the said Decision and Resolution of the Court of Appeals.

On November 17, 1999, the High Court rendered a Decision, the dispositive portion of which states:

"WHEREFORE, the Petition is hereby partially **GRANTED** and the assailed Decision is **MODIFIED** as follows: (1) petitioner is deemed VAT-registered for the first quarter of 1990 and beyond; and (2) it is the totality of petitioner's sales to Philphos and PASAR that

⁸ Docket, Volume II, p. 311.

876

my

must be taken into account, not merely the proportion of such sales to the actual exports of the said enterprise. Other than the above modifications, the challenged Decision is **AFFIRMED**.

SO ORDERED.”

This Decision became final and executory on December 15, 1999 and was recorded in the Book of Entries of Judgments of the Supreme Court.⁹

On July 11, 2006, petitioner filed before the former Second Division of this Court a “Motion for Computation of Refund”,¹⁰ praying that the amount of its VAT refund for the first quarter of taxable year 1990 be computed pursuant to the decisions of the CA and of the Supreme Court.

In the Resolution promulgated on October 13, 2006,¹¹ this Court denied said Motion for Computation of Refund, declaring in part that:

“ (t)here is a necessity for the filing of an independent action for the *revival of judgment* before it is barred by the statute of limitations because the judgment can no longer be enforced by mere motions following Section 6, Rule 39 of the Revised Rules of Court, which states that:

Section 6. Execution by motion or by independent action.— A final and executory judgment or order may be executed on motion within five (5)-days from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may also be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.”

Petitioner’s Motion for Reconsideration of said Resolution was likewise denied for lack of merit.¹²

⁹ Docket, Volume I , p. 742.

¹⁰ Docket, Volume I, pp. 768 to 771.

¹¹ Docket, Volume I, pp. 855 to 857.

¹² Resolution dated January 24, 2007, Docket, Volume II, pp. 867 to 869.



Thus, on April 10, 2007, petitioner filed a Petition for Revival of Judgment,¹³ praying for the revival and execution of the aforequoted Decision of the Supreme Court specifically the VAT refund for the first quarter of taxable year 1990.

As mentioned earlier, the former Second Division of this Court issued a Resolution dated June 13, 2007, treating petitioner's Petition for Revival of Judgment, as a Motion for Further Proceedings,¹⁴ and trial was conducted in this case. Petitioner presented and offered a new set of evidence, which were all admitted by this Court.¹⁵

On the other hand, respondent's counsel manifested that she will not be presenting any additional evidence and is submitting the case for decision during the hearing held on January 14, 2009.¹⁶ Thus, both parties were directed to simultaneously file their respective Memorandum within a period of thirty (30) days from said date.

On March 16, 2009, only petitioner filed its Memorandum while respondent failed to do so within the given period.

Hence, this Resolution for the proper computation of the refundable amount in favor of petitioner

THE ISSUE

The lone issue for the determination of the Court is as follows: Whether or not petitioner is entitled to the full amount of its claim for the refund or issuance of tax credit of its unutilized input VAT for the first quarter of 1990 in the total amount of ₱ 35,522,056.58.

¹³ Docket, Volume II pp. 546 to 555.

¹⁴ Docket, Volume II, pp. 635 to 636.

¹⁵ Resolution dated October 6, 2008, Docket, Volume II pp. 935 to 936.

¹⁶ Minutes of hearing held on January 14, 2009, Docket, Volume II p. 950.



Petitioner's arguments

Petitioner submits that at the outset, the legal issues regarding Sections 100 and 106 of the Tax Code have been settled by the Supreme Court in its 17 November 1999 Decision in G.R. No. 134467, entitled ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue***. In particular, the Supreme Court ruled that : (a) petitioner was a VAT-registered entity in 1990 and beyond, and (b) the sales to CB, Philphos and PASAR are zero-rated.

Thus, petitioner contends that its sales to Philippine Phosphate, Inc. (Philphos) and Philippine Smelting and Refining Corporation (PASAR) should be zero-rated for the first quarter of 1990, and not only as of "August 15, 1990" as held by the CA, which allegedly ignored "clear evidence" that its VAT registration had been effected earlier, on January 1, 1988.

Hence, petitioner argues that it is entitled to the amount of refund or tax credit being claimed.

THIS COURT'S RULING

Section 106(b) of the NIRC, as amended by Executive Order No. 273 (July 25, 1987), lays down the requisites for refunds or tax credits of input tax due or paid attributable to zero-rated or effectively zero-rated sales. It reads:

"SEC. 106. **Refunds or Tax Credits of Input Tax.** – xxx

(b) *Zero-rated or effectively zero-rated sales.* – Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax."



In this connection, Section 16(a) of Revenue Regulations No. (RR) 5-87, as amended by RR 3-88, provides:

"SEC. 16. Refunds or tax credits of input tax.— (a) Zero-rated sales of goods and services. — Only a VAT-registered person may be given a tax credit or refund of value-added taxes paid corresponding to the zero-rated sales of goods or services, to the extent that such taxes have not been applied against output taxes, upon showing of proof of compliance with the conditions stated in Section 8 of these Regulations." (*Emphasis supplied*)

Based on the foregoing provisions, petitioner must comply with the following requisites to be entitled to a refund or issuance of a tax credit certificate, to wit:

1. it must be a VAT-registered entity;
2. its sales are zero-rated or effectively zero-rated;
3. its input VAT are attributable to such zero-rated sales or effectively zero-rated sales;
4. said input VAT has not been applied against any output VAT liability; and
5. the application for the issuance of a tax credit certificate or refund was filed within the two (2) years after the close of the quarter when said zero-rated or effectively zero-rated sales were made.

Anent the first requisite, as correctly pointed out by petitioner, the fact that petitioner is VAT-registered "*for the first quarter of 1990 and beyond*" is already a settled matter, pursuant to the case of ***Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue***.¹⁷

Furthermore, as regards the second requisite, it is likewise settled, in the same case, that petitioner's sales of raw materials to PASAR and Philphos are subject to the zero percent (0%) VAT.

The Court of Appeals, in its finding that the respondent commissioner had indeed already approved the zero-rating of petitioner's past sales to PASAR and Philphos, ruled as follows:

¹⁷ G.R. No. 134467, November 17, 1999.



'Indeed, the BIR has already recognized and admitted that said transactions are zero-rated (paragraph 3, pages 1-2 of the Joint Stipulation of Facts; pages 40-41 of the CTA Records). Said stance is demonstrated in the following acts of the BIR:

a. the grant of petitioner's applications for zero-rating of sales to PASAR AND PHILPHOS (Annexes 'A' and 'B,' Joint Stipulation of Facts; pages 56-57 of the CTA Record);

b. Revenue Regulation No. 2-88, wherein it recognized sales to BOI-registered enterprises which export over 70% of its sales as zero-rated, subject to certain conditions (Annex 'H,' Joint Stipulation of Facts; pages 70-71 of the CTA Record);

c. VAT Ruling No. 271-88 (dated June 24, 1988), wherein it was recognized that sales to PHILPHOS are zero-rated (Annex 'I,' Joint Stipulation of Facts; p. 72 of the CTA Record);

d. Letter dated April 18, 1988, whereby it recognized that sales of copper concentrates to PASAR are zero-rated (Annex 'J,' Joint Stipulation of Facts; page 73 of the CTA Record); and

e. VAT Ruling No. 008-92, which states that the sale of raw materials to BOI-registered enterprises can qualify for zero-rating (Annex 'N,' Joint Stipulation of Facts; pages 79-82 of the CTA Record).¹⁸

With respect to petitioner's sale of gold to the CB, it is also jointly stipulated that the same is subject to the zero percent (0%) VAT.¹⁹ Hence, respondent has likewise already conceded that such sale of gold qualifies for zero-rating.

Thus, respondent's disallowances on petitioner's claim which are closely intertwined with the question on whether said sales by petitioner is subject to the zero percent (0%) VAT, namely: (i) *input tax attributable to sales to PASAR* in the amount of ₱ 12,404,150.65; (ii) *input tax attributable to sales to Philphos* in the amount of ₱ 501,652.00; and (iii) *output tax due on sale of gold to the CB* in the amount of ₱ 16,301,277.11, have no legal basis.

¹⁸ Decision, CA-G.R. SP No. 34152, pp. 10, CTA Case No. 4794, Docket, Vol. I, p. 725

¹⁹ JSF, Par. 3(a) and Annex "A" thereof, Docket, Volume I, pp. 40 to 41, and 56. BIR Records, p. 253.

881

my

As for the disallowance representing *output tax due on miscellaneous sales* in the amount of ₱ 972,535.67, it is petitioner's position that said amount cannot be deducted/assessed against current input VAT as it is properly chargeable against its PIT.²⁰ However, the CA has already ruled as follows:

"e. A VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed transitional input tax which shall be credited against output tax. Be that as it may, current input tax, **excluding the presumptive input tax**, may be credited against output tax on miscellaneous taxable sales if the suspended taxes on purchases and importations has not been fully paid. Further, direct offsetting of excess input over output taxes against other internal revenue tax liabilities of the zero-rated taxpayer is not allowed." (*Emphasis supplied*)

The foregoing declaration has become the law of the case²¹.

Furthermore, We find no law or regulation that will support the position of petitioner. Particularly, there is no provision which commands or requires that a particular type of output tax is chargeable only against a particular type of input tax (such as the PIT) or vice versa. In fact, the law made no distinction on whether an input tax is merely presumptive, transitional or otherwise, for the purpose of it being credited against the output tax. Apropos, Section 104 of the NIRC, as amended, provides:

"SEC. 104. Tax Credits. (a) *Creditable input tax*.— **Any input tax** on the

- (1) purchase or importation of goods;
- (A) for sale or for conversion into or intended to form part of a finished product for sale or for use in the course of business; or
- (B) for use as supplies in the course of business; or

²⁰ JSF, Par. 10, Docket, Volume I, p. 45.

²¹ The law of the case principle generally finds application in cases where an appellate court passes on a question and remands the case to the lower court for proceedings—the question there settled becomes the law of the case. (*Ariola vs. Philex Mining Corporation*, G.R. No. 147756, August 9, 2005)

882

my

- (C) for use of materials supplied in the sale of service; or
- (D) for use in trade or business for which deduction for depreciation is allowed under Section 29(f) of this Code; and

(2) service performed by a VAT-registered person **shall be credited against the output tax payable** by the VAT-registered person: xxx

A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

- (A) Total input tax which can be directly attributed to transactions subject to value-added tax; and
- (B) A ratable portion of any input tax which cannot be directly attributed to either activity.

'Input tax' means the value-added tax paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchases of goods or services from a VAT-registered person. **It shall also include the transitional input tax determined in accordance with Section 106 of this Code and other transitional input taxes as prescribed by regulations.**

xxx xxx xxx

The term 'output tax' means the value-added tax due on the sale of taxable goods or services by any person registered or required to register under Section 107 of this Code.

(b) *Excess output tax.*— If at the end of any taxable quarter **the output tax exceeds the input tax**, the excess shall be paid by the VAT-registered person. If **the input tax exceeds the output tax**, the excess shall be carried over to the succeeding quarter or quarters. **Any input tax** attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 106." (*Emphases supplied*)

Thus, the disallowance pertaining to the *output tax due on miscellaneous sales* in the amount of ₱ 972,535.67 and correspondingly deducted from petitioner's claim was properly made by respondent.

For purposes of the third requisite, it is noteworthy that respondent, in his findings, was able to dichotomize which input tax are attributable to petitioner's

mm

183

sales to PASAR in the amount of ₱ 12,404,150.65 and to Philphos in the amount of ₱ 501,652.00. It is therefore implied that as for the other amounts of input VAT being claimed by petitioner, the same is in fact attributable to its zero-rated sales; otherwise, respondent could have easily deducted or disallowed the same on such ground. Hence, it is without question that the amount of input VAT being claimed in this case is attributable to petitioner's zero-rated sales.

As to the fourth requisite, an examination of petitioner's Quarterly VAT Returns for the second, third and fourth quarters of 1990²² would reveal that although the amount of the claim, *i.e.*, ₱ 35,522,056.58²³, was carried-over in the succeeding quarters, the same was not applied against any output tax liability.

Going now to the fifth requisite, as held in the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue***,²⁴ it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing,²⁵ should be made within twenty (20) days from the end of each quarter. Considering that petitioner filed its VAT Return for the first quarter of 1990 on April 20, 1990, both the filing of the *administrative* claim for refund/credit of VAT input taxes for the said period on or about July 24, 1990²⁶ and of the

²² Exhibits "I" to "K", Docket (Folder II), pp. 886 to 888.

²³ JSF, Par. 7, Docket (Folder I), p. 42. BIR Records, p. 265.

²⁴ G.R. Nos. 141104 and 148763, June 8, 2007.

²⁵ SEC. 110. *Return and payment of value-added tax.* — x x x.

(b) *Time for filing of return and payment of tax.* — The return shall be filed and the tax paid within 20 days following the end of each quarter specifically prescribed for a VAT-registered person under regulations to be promulgated by the Secretary of Finance: *Provided, however,* That any person whose registration is cancelled in accordance with paragraph (e) of Section 107 shall file a return within 20 days from the cancellation of such registration.

²⁶ JSF, Par. 6, Docket, pp. 41 to 42. BIR Records, p. 262.



judicial claim thereof on April 20, 1992, are made within the two-year prescriptive period.

We shall now proceed to determine the propriety of certain disallowances made by respondent in the aggregate amount of ₱ 2,814,318.83, on account of failure to faithfully comply with the documentary requirements under Revenue Regulations No. 5-87. Said amount is broken down as follows:

No O.R./Invoices/ Proper Documents	₱ 1,384,172.48
Invoice without VAT Registration Number	474,606.87
Invoice with Sold to "Cash"	31,499.04
Invoice without Authority to Print	326,374.23
VAT No. stamped/ typewritten/handwritten printed in 1988-1989	441,195.54
Others	71,088.09
Erroneous computation	85,382.58
Total	<u>₱ 2,814,318.83</u>

Except for the amounts of ₱ 31,499.04, ₱ 326,374.23, ₱ 71,088.09, and ₱ 85,382.58, petitioner questions the legality of the foregoing disallowances on the ground that the provisions of said Revenue Regulations relied upon by respondent are not valid.²⁷

However, it has already been ruled, *inter alia*, by the CA in its Decision in CA-GR SP No. 34152 that:

"d. Revenue Regulations that automatically disallow VAT refunds on account of failure to faithfully comply with the documentary requirements enunciated thereunder are valid."

It must be emphasized that the foregoing ruling was already affirmed, by the Supreme Court in G.R. No. 134467. In fact, it even declared that Section 21 of the same Revenue Regulations, to which the disallowances in the amounts of ₱ 1,384,172.48 and ₱ 474,606.87 were anchored, "*is not invalid*". Thus, the

²⁷ Memorandum for Petitioner filed on March 20, 1993, Docket (Folder I), pp. 246 to 252.



foregoing declarations of the CA and the High Court have also become the law of the case.²⁸

Accordingly, We find no reason to reverse the disallowances made by respondent in the aggregate amount of ₱ 2,814,318.83.

Finally, anent the corresponding penalty for the issuance of invoices without authority to use loose leaf sales invoices in the amount of ₱ 10,000.00, the same should be cancelled. Compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same.²⁹ In other words, compromise penalties imply mutual agreement between the taxpayer, on one hand, and the Commissioner of Internal Revenue, on the other. As there is no indication in this case that petitioner is willing to pay the said amount, there is no legal basis to deduct the same from the amount of petitioner's claim for refund.

In sum, petitioner sufficiently proved that it is entitled to a refund/issuance of a tax credit certificate in the amount of ₱ 31,735,202.08 representing unutilized input VAT for the period covering the first quarter of 1990 as computed below:

Input tax claimed	₱	35,522,056.58
Less: Disallowances per respondent's findings		(2,814,318.83)
Output tax due on miscellaneous taxable sales		(972,535.67)
Refundable Input VAT	₱	<u>31,735,202.08</u>

Having now computed the refundable amount in favor of petitioner as directed by the Court of Appeals in its Decision rendered in CA-G.R. SP No.

²⁸ See footnote no. 39.

²⁹ Revenue Memorandum Order No. 1-90.

mo

886

34152 (reversing the Decision rendered in this case) and as affirmed by the Supreme Court in G.R. No. 134467, and considering the findings of this Court partially disallowing a portion of petitioner's total claim as discussed above, this Court hereby finds petitioner only partially entitled to its subject refund claim.

WHEREFORE, in view of the foregoing, respondent is hereby **ORDERED** to refund or to issue a tax credit certificate in favor of petitioner in the amount of **THIRTY ONE MILLION SEVEN HUNDRED THIRTY FIVE THOUSAND TWO HUNDRED TWO PESOS AND EIGHT CENTAVOS (P 31,735,202.08)**, representing its unutilized input VAT for the first quarter of 1990 within sixty days from finality of this Resolution.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

