

**REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY**

***FORMER EN BANC***

**FORTUNE TOBACCO  
CORPORATION,**

Petitioner,

**C.T.A. EB No. 530**  
(C.T.A. CASE Nos. 6365,  
6383 and 6612)

Present:

-versus-

Acosta, P.J.,  
Castañeda, Jr.,  
Bautista,  
Uy,  
Casanova, and  
Palanca-Enriquez, JJ.

**COMMISSIONER                      OF  
INTERNAL REVENUE,**  
Respondent.

**Promulgated:**

**MAR 12 2010**

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**DECISION**

**CASTAÑEDA, JR., J.:**

This Petition for Review before the Court *en banc* assails the Resolution dated June 4, 2009 denying Fortune Tobacco Corporation's Motion for the Issuance of Additional Writ of Execution and the Resolution *Je*

dated August 10, 2009 also denying its Motion for Reconsideration both issued by the CTA First Division.<sup>1</sup>

## THE FACTS

Fortune Tobacco Corporation ("FTC") is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines; while the Commissioner of Internal Revenue ("Commissioner") is a public official tasked in the assessment, collection of internal revenue taxes, fees and charges and refund of erroneously or excessively paid taxes.<sup>2</sup>

FTC is engaged in manufacturing or producing cigarette brands with tax rate classification based on net retail price prescribed as follows:

| Brand                  | Tax Rate                     |
|------------------------|------------------------------|
| Champion M 100         | P1.00                        |
| Salem M 100            | P1.00                        |
| Salem M King           | P1.00                        |
| Camel F King           | P1.00                        |
| Camel Lights Box 20's  | P1.00                        |
| Camel Filters Box 20's | P1.00                        |
| Winston F King         | P5.00                        |
| Winston Lights         | P5.00 <sup>3</sup> <i>ju</i> |

<sup>1</sup> Penned by Presiding Justice Ernesto D. Acosta, Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.

<sup>2</sup> Joint Stipulation of Facts and Issues. Dockets, CTA Case No. 6365, p.34; CTA Case No. 6383, p.108 & CTA Case No. 6612, p. 108.

<sup>3</sup> Joint Stipulation of Facts and Issues, Dockets, CTA Case No. 6365, p. 34; CTA Case No. 6383, p. 108 and CTA Case No. 6612, pp. 108-109.

Prior to January 1, 1997, the aforesaid cigarette brands were subject to ad-valorem tax under Section 142 of the 1977 Tax Code, as amended. However, upon the effectivity of Republic Act (R.A.) No. 8240 on January 1, 1997, a shift from ad valorem tax system to the specific tax system was adopted imposing excise taxes on cigarette brands under Section 142 thereof, now renumbered as Section 145 of the 1997 Tax Code, stating the following pertinent provision:

The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996. xxx xxx xxx The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.<sup>4</sup>

Upon the Commissioner's recommendation, the Secretary of Finance, issued Revenue Regulations (RR) No. 17-99 dated December 16, 1999 for the purpose of implementing the provision for a 12% increase of excise tax on, among others, cigars and cigarettes packed by machines by January 1, 2000. RR No. 17-99 provides that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.<sup>5</sup> *je*

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<sup>4</sup> Joint Stipulation of Facts and Issues, Dockets, CTA Case No. 6365, pp. 35-37; CTA Case No. 6383, pp. 110-111 & CTA Case No. 6612, pp. 109-111.

<sup>5</sup> Joint Stipulation of Facts and Issues, Dockets, CTA Case No. 6365, pp. 37-38; CTA Case No. 6383, pp. 111-112 & CTA Case No. 6612, p. 112.

FTC paid excise taxes on all its cigarettes manufactured and removed from its place of production for the following period:

| PERIOD                                | PAYMENT                          |
|---------------------------------------|----------------------------------|
| January 1, 2000 to January 31, 2000   | P 585,705,250.00 <sup>6</sup>    |
| February 1, 2000 to December 31, 2001 | P 19,366,783,535.00 <sup>7</sup> |
| January 1, 2002 to December 31, 2002  | P 11,359,578,560.00 <sup>8</sup> |

FTC subsequently sought administrative redress for refund before the Commissioner on the following dates:

| PERIOD                                | ADMINISTRATIVE FILING OF CLAIM                              | AMOUNT CLAIMED                |
|---------------------------------------|-------------------------------------------------------------|-------------------------------|
| January 1, 2000 to January 31, 2000   | February 7, 2000                                            | P 35,651,410.00 <sup>9</sup>  |
| February 1, 2000 to December 31, 2001 | Various claims filed from March 21, 2000 – January 28, 2002 | P644,735,615.00 <sup>10</sup> |
| January 1, 2002 to December 31, 2002  | February 3, 2003                                            | P355,385,920.00 <sup>11</sup> |

*Proceedings before the Court of Tax Appeals and Court of Appeals*

Due to the Commissioner's inaction on its refund claim, on December 11, 2001 and January 30, 2002, FTC filed Petitions for Review docketed as CTA Case Nos. 6365 and 6383 with the CTA in Division praying for the refund of P35,651,410.00 and P644,735,615.00 *jc*

<sup>6</sup> Joint Stipulation of Facts and Issues, Docket, CTA Case No. 6365, p. 38.

<sup>7</sup> Joint Stipulation of Facts and Issues, Docket, CTA Case No. 6383, p. 112.

<sup>8</sup> Joint Stipulation of Facts and Issues, Docket, CTA Case No. 6612, pp. 112- 113.

<sup>9</sup> Joint Stipulation of Facts and Issues, Docket, CTA Case No. 6365, p. 38.

<sup>10</sup> Joint Stipulation of Facts and Issues, Docket, CTA Case No. 6383, p. 112.

<sup>11</sup> Joint Stipulation of Facts and Issues, Docket, CTA Case No. 6612, p. 113.

representing overpaid excise taxes for January 1, 2000 to January 31, 2000 and February 1, 2000 to December 31, 2001, respectively, with the common issue of whether or not the last paragraph of Section 1 of RR No. 17-99 is in conformity with Section 145 of the 1997 Tax Code.<sup>12</sup>

In ruling for FTC, the CTA in Division rendered a Decision dated October 21, 2002 in CTA Case Nos. 6365 and 6383 ordering the Commissioner to refund erroneously paid excise taxes in the amounts of P35,651,410.00 for the period January 1, 2000 to January 31, 2000 and P644,735,615.00 for the period February 1, 2000 to December 31, 2001.<sup>13</sup>

On March 12, 2003, FTC commenced a Petition for Review docketed as CTA Case No. 6612 also premised on the issue as to the validity of Revenue Regulations No. 17-99 with a prayer seeking for refund for overpaid excise tax in the amount of P355,385,920.00 for the period January 1, 2002 to December 31, 2002.

The Commissioner thereafter moved for the reconsideration of the Decision dated October 21, 2002. The CTA in Division granted the same and denied FTC's refund claim as shown in the Resolution dated July 15, 2003 pertaining to CTA Case Nos. 6365 and 6383.<sup>14</sup>

In response to FTC's consolidated Motions for Reconsideration against the July 15, 2003 Resolution in CTA Case Nos. 6365 and 6383, the 

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<sup>12</sup> See Dockets, CTA Case No. 6365, p. 1 & CTA Case No. 6383, p. 78.

<sup>13</sup> Dockets, CTA Case No. 6365, pp. 124-137 and CTA Case No. 6383, pp. 151-165.

<sup>14</sup> Dockets, CTA Case No. 6365 pp. 259-269 & CTA Case No. 6383, pp. 288-298.

CTA in Division issued another Resolution dated November 4, 2003 ordering the Commissioner to refund erroneously paid excise taxes of P35,651,410.00 for the period covering January 1 to January 31, 2000 and P644,735,615.00 for the period covering February 1, 2000 to December 31, 2001, or in the aggregate amount of P680,387,025.00. The November 4, 2003 Resolution in effect reversed and set-aside the earlier Resolution dated July 15, 2003.<sup>15</sup>

On December 4, 2003, the CTA in Division in CTA Case No. 6612 ruled on the invalidity of RR No. 17-99 which is contrary to Section 145 of the 1997 NIRC. The Commissioner was ordered to pay FTC the amount of P355,385,920.00 representing overpaid excise taxes for the period covering January 1, 2002 to December 31, 2002.<sup>16</sup>

On December 10, 2003, the Commissioner filed before the Court of Appeals a Petition for Review docketed as CA-G.R. SP No. 80675 questioning the Resolution dated November 4, 2003 in CTA Case Nos. 6365 and 6383.<sup>17</sup>

On March 17, 2004, the CTA in Division in CTA Case No. 6612 resolved to deny the Commissioner's Motion for Reconsideration of the Decision dated December 4, 2003, due to lack of merit.<sup>18</sup> *jr*

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<sup>15</sup> Docket, CTA Case No. 6365, pp. 320-323.

<sup>16</sup> Docket, CTA Case No. 6612, pp. 380-396.

<sup>17</sup> Docket, CTA Case No. 6365 p. 346.

<sup>18</sup> Docket, CTA Case No. 6612, p. 555.

Dissatisfied, on April 28, 2004, the Commissioner eventually filed an appeal docketed as CA-G.R. SP No. 83165 before the Court of Appeals. CA-G.R. SP No. 83165 questioned the CTA in Division's Ruling Dated December 4, 2003 in CTA Case No. 6612.<sup>19</sup>

On May 18, 2004, FTC filed a Consolidated Motion for Execution Pending Appeal for CTA Case Nos. 6365 and 6383 and an Amended Motion for Execution Pending Appeal for CTA Case No. 6612 seeking the execution of the Court's Resolution dated November 4, 2003 approving the refund claim in the amount of P680,387,025.00 for the period January 1, 2000 to December 31, 2001 and the Decision dated December 4, 2003 granting the refund claim of erroneously paid excise taxes in the total amount of P355,385,920.00 for the period January 1, 2002 to December 31, 2002. But the same was denied in the Resolutions dated August 2, 2004 and August 3, 2004 where the CTA in Division reasoned that Section 12, Rule 43 of the 1997 Rules of Civil Procedure should be interpreted in the light of Section 18, R.A. 1125 which provides that CTA rulings become final and conclusive only when there is no perfected appeal. Since the Commissioner filed an appeal with the Court of Appeals, the CTA in Division's rulings granting the amount of P355,385,920.00 and P680,387,025.00 are not final and executory.<sup>20</sup> *je*

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<sup>19</sup> Docket, CTA Case No. 6612, p. 587.

<sup>20</sup> See Dockets, CTA Case No. 6365, pp. 977-981 & CTA Case No. 6612, pp. 959-963.

In resolving the consolidated Petitions for Review docketed as CA G.R. SP Nos. 80675 and 83165 filed by the Commissioner, the Court of Appeals issued a Decision dated September 28, 2004 affirming FTC's refund claim of erroneously paid excise taxes in the amounts of P680,387,025.00 in CTA Case Nos. 6365 and 6363 and P355,385,920.00 in CTA Case No. 6612, respectively.<sup>21</sup>

Acting upon Commissioner's Motion for Reconsideration of the Decision dated September 28, 2004, the Court of Appeals denied the same due to lack of merit based on the Resolution dated March 1, 2005.<sup>22</sup>

*Proceedings before the Supreme Court*

Unfazed, the Commissioner elevated the case to the Supreme Court by way of a Petition for Review on Certiorari docketed as G.R. Nos. 167274-75 on May 4, 2005. He subsequently filed his Supplemental Petition for Review on June 22, 2005.<sup>23</sup>

Finding no reversible error committed by the Court of Appeals in its Ruling dated September 28, 2004 and Resolution dated March 1, 2005 in CA-G.R. SP No. 80675, the Supreme Court issued a Decision dated July 21, 2008 granting FTC's claim for refund. The Supreme Court declared as *je*

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<sup>21</sup> Docket, CTA Case No. 6365, pp. 988-1020.

<sup>22</sup> Docket, CTA Case No. 6365, pp. 1148-1154.

<sup>23</sup> Docket, CTA Case No. 6365, pp. 1163-1208, 1403.

invalid R.R. No. 17-99 and treated it as an "unauthorized administrative legislation".<sup>24</sup> Pertinent excerpts of the July 21, 2008 Decision read:

xxx xxx xxx Clearly and unmistakably, Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this period may turn out to be lower than that collected prior to this date.

By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, Revenue Regulations No. 17-99 effectively imposes a tax which is the higher amount between the ad valorem tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraphs (1)-(4), as increased by 12% - a situation not supported by the plain wording of Section 145 of the Tax Code.<sup>25</sup>

On September 15, 2008, the Supreme Court denied the Commissioner's Motion for Reconsideration of the Decision dated July 21, 2008.<sup>26</sup>

Considering that the Supreme Court's Decision dated July 21, 2008 became final and executory, the same was recorded in the Book of Entries of Judgments.<sup>27</sup> 

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<sup>24</sup> Docket, CTA Case No. 6365, pp.1554-1577.

<sup>25</sup> Docket, CTA Case No. 6365. p. 1568.

<sup>26</sup> Docket, CTA Case No. 6368, p. 452.

<sup>27</sup> Docket, CTA Case No. 6365 p. 1584.

*The Writ of Execution*

On January 23, 2009, FTC moved for the execution of the Supreme Court's Decision dated July 21, 2008 which in effect affirmed the Decision dated December 4, 2003 pertaining to CTA Case No. 6612 in the amount of P355,385,920.00, as well as the Decision dated October 21, 2002 and the Resolution dated November 4, 2003 in the cumulative amount of P680,387,025.00 in CTA Case Nos. 6365 and 6383.<sup>28</sup>

On April 14, 2009, the CTA First Division issued a Writ of Execution pertaining to the amount of P680,387,025.00 representing FTC's erroneously paid excise taxes for January 1 to January 31, 2000 and February 1, 2000 to December 31, 2001.<sup>29</sup>

On April 21, 2009, FTC moved for the issuance of additional Writ of Execution by requesting the CTA First Division to order the Commissioner payment of its claimed amount of P355,385,920.00 in CTA Case No. 6612 and P680,387,025.00 in CTA Case Nos. 6365 and 6383. FTC alleges that while the CTA First Division issued a Writ of Execution dated April 14, 2009, the Writ failed to cover the amount of P355,385,920.00 pertaining to CTA Case No. 6612.<sup>30</sup> *je*

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<sup>28</sup> Dockets, CTA Case No. 6365, p. 1586; CTA Case No. 6383, pp. 419-420 & CTA Case No. 6612, p. 969.

<sup>29</sup> Docket, CTA Case No. 6365, pp. 1623-1624.

<sup>30</sup> Docket, CTA Case No. 6612, p. 1006.

The CTA First Division issued a Resolution dated June 4, 2009 denying the Motion for the Issuance of Additional Writ of Execution due to lack of merit. The Court reasoned that CTA Case No. 6612 was appealed to the Court of Appeals and was docketed as CA-G.R. SP No. 83165; while CTA Case Nos. 6365 and 6383 were both appealed to the Court of Appeals and docketed as CA-G.R. SP No. 80675. The Book of Entries of Judgments states that the Supreme Court affirms the Court of Tax Appeals' Decision in CA-G.R. SP No. 80675 only, thus, an order of execution for CA-G.R. SP No. 83165 is improper.<sup>31</sup>

Displeased, FTC filed a Motion for Reconsideration of the Resolution dated June 4, 2009.<sup>32</sup> However, the CTA First Division denied the same due to lack of merit in the Resolution dated August 10, 2009.<sup>33</sup>

On September 8, 2009, this Court *en banc* granted FTC's request for additional period to file its Petition for Review from September 3, 2009 or until September 18, 2009.<sup>34</sup> 

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<sup>31</sup> Rollo, pp. 36-38.

<sup>32</sup> Docket, CTA Case No. 6612, p. 1019.

<sup>33</sup> Rollo, pp. 40-42.

<sup>34</sup> Rollo, p.5.

## THE ISSUES

FTC appealed by way of a Petition for Review before this Court *en banc* interposing the following grounds:<sup>35</sup>

THE HONORABLE COURT OF TAX APPEALS SERIOUSLY ERRED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT HELD IN THE ASSAILED DECISION AND RESOLUTION THAT PETITIONER FORTUNE TOBACCO CORPORATION IS NOT ENTITLED TO THE WRIT OF EXECUTION COVERING THE DECISION IN CTA CASE NO. 6612.

THE DECISION OF THE COURT OF TAX APPEALS IN CTA CASE NOS. 6365, 6383 AND 6612 HAS BECOME FINAL AND EXECUTORY.

THE DECISION OF THE HONORABLE SUPREME COURT IN GR NOS. 1627274-75 COVERS BOTH CA GR SP NO. 80675 AND 83165.<sup>36</sup>

On October 16, 2009, the Commissioner filed his Comment.<sup>37</sup>

After both parties filed their Memoranda, the case was eventually submitted for decision.

## THE COURT'S RULING

According to FTC, the Supreme Court stressed that there is no issue as to the facts of the case as well as on the amount it erroneously paid. Since the Supreme Court ruled on the invalidity of RR No. 17-99, it *re*

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<sup>35</sup> Rollo, p. 6.

<sup>36</sup> Rollo, pp. 20, 21 & 25.

<sup>37</sup> Rollo, p. 46.

logically follows it is entitled to refund of excise taxes illegally collected by the Bureau of Internal Revenue. Consequently, when the Supreme Court denied the Commissioner's Petition for Review and Motion for Reconsideration and struck down R.R. No. 17-99 as invalid, this Court's Decision became final and executory.

The dispositive portion of the Supreme Court's Decision dated July 21, 2008 should simply be interpreted to mean that the first part thereof implies that the whole consolidated decision of the Court of Appeals is upheld by the Supreme Court; while the second part denotes that the ruling includes both CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165. The Supreme Court's Decision dated July 21, 2008 applies not only to the refund claim in CA-G.R. SP No. 80675 involving CTA Case Nos. 6383 and 6365, but also in CA-G.R. SP No. 83165 pertaining to the refund claim in CTA Case No. 6612.

The Supreme Court did not intend to create an incongruity in its Decision. The inadvertent omission of CA-G.R. SP No. 83165 in the dispositive portion should be clarified in the body of the Decision.

The Commissioner on the other hand, asserts that the writ of execution should be in harmony with the dispositive portion of the promulgated decision, thus, the CTA First Division correctly applied the writ of execution only to CA-G.R. SP No. 80675 or the refund claim of *Je*

erroneously paid excise taxes of P35,651,410.00 and P644,735,615.00 or the cumulative amount of P680,387,025.00 for the periods January 1, 2000 to January 31, 2000 and February 1, 2000 to December 31, 2001.

In essence, the focal point of the case is whether or not the December 4, 2003 Decision and March 17, 2004 Resolution in CTA Case No. 6612 embodied in CA-G.R. SP No. 83165 are enforceable and should be covered by the Writ of Execution dated April 14, 2009.

We disagree with FTC's contention.

An order of execution must substantially conform to the terms of the dispositive portion of the decision. A Court that issues an order of execution in contravention of its final judgment exceeds its jurisdiction and renders its order invalid.<sup>38</sup> Clearly, the dispositive portion of the decision controls the execution of judgment as to settlement rights of the parties.<sup>39</sup>

The venerable late Chief Justice Moran explained the relevance on why the writ of execution should be in consonance with the decretal portion of a decision:

The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has pro tanto no validity. To maintain



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<sup>38</sup> *Lydia Lao, et al. v. Philip King*, G.R. No. 160358, August 31, 2006, 500 SCRA 599.

<sup>39</sup> *Balagtas Realty Corporation v. Hon. Manuel Romillo, Jr. as Judge of the Court of First Instance of Rizal in Pasay City*, G.R. Nos. L-48376-85, May 22, 1982, 114 SCRA 28 citing *Heirs of Juan Presto v. Ereberto Galang*, G.R. NO. L-45629, August 31, 1977, 78 SCRA 534.

otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law.<sup>40</sup>

As shown in the records as of November 6, 2008, Deputy Clerk of Court and Chief, Judicial Records Office, Ma. Lourdes C. Perfecto attested that the July 21, 2008 Supreme Court Decision, now final and executory was recorded in the Book of Entries of Judgments.<sup>41</sup>

The decretal portion of the July 21, 2008 Supreme Court Decision states:

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA G.R. SP No. 80675, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.

SO ORDERED.<sup>42</sup>

Indubitably, the dispositive portion of the July 21, 2008 Supreme Court Decision only made reference to the Decision and Resolution in CA-G.R. SP No. 80675 pertaining to CTA Case Nos. 6365 and 6383 and the Book of Entries of Judgments declared the same as final and executory. No mention whatsoever was made as to CA-G.R. SP Case No. 83165 involving CTA Case No. 6612. Thus, the CTA First Division correctly issued a Writ of Execution to enforce the Decision and Resolution in CA-G.R. SP No. 80675 pursuant to the Supreme Court's Ruling dated July 21, 2008. *ju*

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<sup>40</sup> Moran, Comments on the Rules of Court, Vol. I, 1952 Ed., p. 809 cited in *James Yu and Wilson Young v. NLRC*, et al. G.R. Nos. 111810-11, June 16, 1995, 245 SCRA 134.

<sup>41</sup> Docket, CTA Case No. 6612, p. 1003.

<sup>42</sup> Docket, CTA Case No. 6365, p. 1584.

The dispositive part of a final decision or order is definite, clear and unequivocal, and can wholly be given effect without the need of interpretation or construction.<sup>43</sup>

Considering that Writ of Execution dated April 14, 2009 duly conformed with the wordings of the Supreme Court decision dated July 21, 2008 which now has become final and executory, FTC cannot at this stage impugn validity of the Writ by way of a Petition for Review. Judgment of courts should attain finality at some point; otherwise, there will be no end to litigation. The final judgment in this case may no longer be reviewed, or in anyway modified directly or indirectly, by a higher court, not even by the Supreme Court.<sup>44</sup>

**WHEREFORE**, premises considered, the Petition for Review is **DISMISSED**. The Resolutions dated June 4, 2009 and August 10, 2009 are **AFFIRMED**.

**SO ORDERED.**

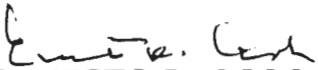
*Juanito C. Castañeda, Jr.*  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice

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<sup>43</sup> *Resurreccion Obra v. Spouses Victoriano and Myrna Badua, et al.*, G.R. No. 149125 August 9, 2007, 529 SCRA 621.

<sup>44</sup> *C-E Construction Corporation v. NLRC*, G.R. No. 180188, March 25, 2009, 582 SCRA 449.

**WE CONCUR:**

  
**ERNESTO D. ACOSTA**  
Presiding Justice

  
**LOVELL R. BAUTISTA**  
Associate Justice

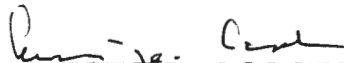
  
**ERLINDA P. UY**  
Associate Justice

  
**CAESAR A. CASANOVA**  
Associate Justice

  
**OLGA PALANCA-ENRIQUEZ**  
Associate Justice

**CERTIFICATION**

Pursuant to 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