

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

C.T.A. EB NO. 502
(C.T.A. Case No. 7537)

Present:

-versus-

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

PACIFIC PLANS, INC.,
Respondent.

Promulgated:
JAN 06 2010

En Apolinario
10:10 a.m.

X-----X

DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review¹ filed by the Commissioner of Internal Revenue ("CIR"), pursuant to paragraph 2, Section 18 of Republic Act No.

¹ *Rollo*, C.T.A. EB No. 502 (C.T.A. Case No. 7537), pp. 8 – 60, with Annexes.

1125, as amended by Republic Act No. 9282 and Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals, praying for the reversal of:

1. the Decision² dated February 9, 2009 rendered by the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7537, which cancelled Assessment Notices Nos. QA-06-000122 and QA-06-000123, representing surcharges, interests and compromise penalties for the late payment of withholding taxes for the months of March and April 2005, in the total amounts of ₱275,964.35 and ₱259,138.13, respectively, issued against respondent Pacific Plans, Inc. ("PPI"); and
2. the Resolution of the Court in Division promulgated on June 11, 2009, which denied the CIR's Motion for Reconsideration for lack of merit.

Antecedent Facts

The relevant facts, as culled from the records and the assailed Decision of the Court in Division³ are as follows:

The CIR is the duly appointed Commissioner of Internal Revenue, who is empowered to perform the duties of his office, including the duty to resolve disputed assessments, refunds of internal revenue taxes, fees and charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code ("NIRC"), or other laws administered by the Bureau of Internal Revenue ("BIR"), with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.

² Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring.

³ *Rollo*, pp. 31 – 38.

PPI, on the other hand, is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the 2nd Floor, Grepalife Building, 221 Sen. G. Puyat Avenue, Makati City. It is a duly registered withholding agent of the BIR.

On April 15, 2005, PPI sent a letter dated April 15, 2005 to the BIR Large Taxpayers Service, informing the latter of, among other things, the Stay Order dated April 12, 2005 issued in connection with the case entitled "*In the Matter of Petition for Corporate Rehabilitation with Prayer for Suspension of Payments, Pacific Plans, Inc.,*" docketed as SP Proc. M-6059 with the Regional Trial Court of Makati City, Branch 61 (the "Rehabilitation Proceedings").

On May 10, 2005, PPI received a Collection Letter dated May 3, 2005 from the BIR for unsettled withholding tax due for the month of March 2005 in the aggregate amount of ₱1,237,300.64, inclusive of surcharge, interest and compromise penalty. In reply thereto, PPI filed a letter dated May 16, 2005, explaining that it is in the process of getting a clearance from the court-appointed rehabilitation receiver for the payment of the withholding tax due for the months of March and April 2005, and requesting for the waiver of surcharges and interests on the withholding taxes due.

On May 18, 2005, PPI paid the withholding taxes due for the months of March and April 2005. Based on PPI's BIR Form No. 1601-E or the Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded), the amount of basic withholding taxes due for the month of March 2005 is Nine Hundred Fifty Four Thousand Seven Hundred Ninety Eight and 02/100 Pesos (₱954,798.02), while the



amount of basic withholding taxes due for the month of April 2005 is Nine Hundred Fifty Two Thousand Three Hundred Seventy Seven and 71/100 Pesos (₱952,377.71).

On July 19, 2005, PPI received from the BIR a Final Notice Before Seizure dated June 16, 2005, imposing surcharge, interest and compromise penalty in the aggregate amount of ₱282,502.62 for PPI's late payment of withholding taxes for the month of March 2005.

PPI subsequently filed a letter with the BIR requesting the latter to reconsider the imposition of the aforementioned civil penalties. On October 6, 2005, PPI filed an Application for Abatement of Tax/Penalties for the late payment of withholding tax for March 2005.

On October 10, 2005, PPI received again from the BIR a Collection Letter dated September 20, 2005, imposing surcharge, interest and compromise penalty in the aggregate amount of ₱259,665.85 for the late payment of withholding tax for the month of April 2005.

PPI then submitted a letter dated October 25, 2005, requesting for a waiver of the said civil penalties. On 28 December 2005, PPI also filed an Application for Abatement of Tax/Penalties for late payment of withholding tax for the month of April 2005.

On March 17, 2006, pending the decision of the BIR regarding PPI's Applications for Abatement, PPI received Assessment Notices Nos. QA-06-000122 and QA-06-000123, both issued on January 20, 2006, imposing surcharges, interests and penalties in the amounts of ₱275,964.35 and ₱259,138.13 for the late payment of



the creditable withholding taxes for the months of March and April 2005, respectively.

On April 4, 2006, PPI filed a letter dated March 29, 2006, protesting the assessment of the subject civil penalties for the late payment of creditable withholding taxes for the months of March and April 2005.

On October 30, 2006, PPI filed a Petition for Review with the Court in Division since the CIR failed to act on its protest.

On January 5, 2007, the CIR filed his Answer, after which trial on the merits ensued.

In a Resolution dated February 18, 2008, the case was deemed submitted for decision.

The Ruling of the Court in Division

The following issues were submitted by the parties for resolution by the Court in Division:

I

WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION TO ENTERTAIN THE PETITION FOR REVIEW DATED 26 OCTOBER 2006.

- 1.1. AS A FACTUAL ISSUE, WHETHER OR NOT THE CIR ISSUED ASSESSMENT NOS. QA-06-000122 AND QA-06-000123 BOTH DATED 20 JANUARY 2006.

II

ASSUMING THE HONORABLE COURT HAS JURISDICTION, WHETHER OR NOT THE TAXES WITHHELD BY PETITIONER PPI⁴ IS COVERED BY THE STAY ORDER DATED 12 APRIL 2005 ISSUED IN CONNECTION WITH THE REHABILITATION PROCEEDINGS.

⁴ Herein respondent.



III

WHETHER OR NOT PETITIONER PPI IS LIABLE FOR SURCHARGES, INTERESTS AND COMPROMISE PENALTIES CORRESPONDING TO THE CREDITABLE WITHHOLDING TAXES DUE FROM TRANSACTIONS IT ENTERED INTO FOR THE MONTHS OF MARCH AND APRIL 2005, AMOUNTING TO TWO HUNDRED SEVENTY FIVE THOUSAND NINE HUNDRED SIXTY FOUR AND 35/100 PESOS (P275,964.35) AND TWO HUNDRED FIFTY NINE THOUSAND ONE HUNDRED THIRTY EIGHT AND 13/100 PESOS (P259,138.13), RESPECTIVELY.

3.1. WHETHER OR NOT THE STAY ORDER DATED 12 APRIL 2005 HAD THE LEGAL EFFECT OF RESTRAINING PETITIONER PPI FROM MAKING ANY DISBURSEMENTS, INCLUDING THE PAYMENT OF THE CREDITABLE WITHHOLDING TAXES DUE FOR THE MONTHS OF MARCH AND APRIL 2005, WITHOUT THE APPROVAL OF THE COURT-APPOINTED REHABILITATION RECEIVER IN CONNECTION WITH THE REHABILITATION PROCEEDINGS.

3.2. WHETHER OR NOT THERE EXISTS JUST AND COMPELLING REASONS TO EXCUSE PETITIONER PPI FROM THE PAYMENT OF SURCHARGES, INTERESTS AND COMPROMISE PENALTIES ALLEGEDLY CORRESPONDING TO THE WITHHOLDING TAXES DUE FOR THE MONTHS OF MARCH AND APRIL 2005.

On February 9, 2009, the Court in Division rendered a Decision in favor of PPI and ruled on the aforementioned issues as follows:

1. The Court in Division has jurisdiction over the case since the Final Notice Before Seizure was not the CIR's final act from which the counting of the statutory period to appeal to the Court must be reckoned and the Petition for Review filed with the Court was timely filed within thirty (300 days from the one hundred eightieth (180th) day counted from the date of filing of PPI's protest with the BIR.

2. The issue on the coverage of the Stay Order dated April 12, 2005 need not be discussed considering that PPI paid the withholding taxes due for the months of March and April 2005 on May 18, 2005.
3. PPI should not be held liable for the surcharges and interests for the late payment of its creditable withholding taxes in view of the Stay Order issued by the Regional Trial Court of Makati City.
4. There is no basis for the imposition of the compromise penalty of ₱20,000.00 each for the months of March and April 2005 since there is no showing that PPI consented thereto.

The *fallo* of the said Decision reads:

WHEREFORE, premises considered, the present Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notices Nos. QA-06-000122 and QA-06-000123, representing surcharges, interests and compromise penalties for late payment of withholding taxes for the months of March and April 2005, in the total amounts of P275,964.35 and P259,138.13, respectively, are hereby ordered **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Aggrieved, the CIR filed a Motion for Reconsideration which was denied by the Court in Division in its Resolution dated June 11, 2009.

The Issue

Hence, this recourse, where the CIR alleges that the Court in Division erred in canceling and setting aside the subject assessments. The crucial bone of contention is whether or not the Stay Order issued in relation to PPI's Rehabilitation Proceedings covers the payment or remittance of withholding taxes.



The CIR's Arguments

The CIR maintains that PPI should be held liable for the surcharges, interests and compromise penalties for its late payment of creditable withholding taxes ("CWTs") for the months of March and April 2005, pursuant to Sections 248 and 249 of the 1997 NIRC. PPI, being registered as a withholding agent of the BIR is under obligation to collect and remit the money it withheld in trust in favor of the government.

The CIR also avers that the subject Stay Order issued in connection with PPI's petition for rehabilitation, is not a just and compelling reason to excuse PPI from the payment of the subject civil penalties imposed on the late payment of the CWTs. The suspension of claims and liabilities set forth in the Stay Order does not include the suspension of remittance of taxes which rightfully belongs to the government. There is no need to seek the approval of the court-appointed receiver for the remittance of the CWTs since said money does not belong to PPI's general fund.

The CIR further argues that the breach of duty of remitting the subject CWTs within the period prescribed by law was not beyond PPI's control but was purely a case of simple negligence to perform the duty required of a withholding agent.

Lastly, the CIR invokes the rule that tax assessments are presumed correct and made in good faith.

PPI's Counter-arguments

In its Comment/Opposition, PPI insists that the subject Stay Order issued by the rehabilitation court in the Rehabilitation Proceedings legally restrained PPI from

making any disbursement of its funds without the approval of the court-appointed rehabilitation receiver.

It also posits that the Stay Order encompasses all liabilities and claims, regardless of the entity to which said liability, claim or obligation is due, as can be gleaned from the definition of the word “claim” under the Interim Rules of Procedure on Corporate Rehabilitation. Section 1, Rule 2 of the Interim Rules, which was the prevalent rule at the time of the instant case, defines the word “claim” to “include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.”

Thus, PPI asserts that the subject CWTs are claims for payment of money. Hence, PPI was prohibited from paying CIR and the latter was also prohibited from enforcing its claims pursuant to Section 6, Rule 4 of the Interim Rules and the Stay Order issued by the rehabilitation court.

Finally, PPI asseverates that the question of what liabilities or claims may be considered covered by the Stay Order is in the nature of a difficult question of law. A mistake arising from the interpretation of a difficult question of law may be the basis of good faith. Prudence dictated that PPI seek the approval of the court-appointed rehabilitation receiver before proceeding to pay the CWTs, which it did.

The Ruling of the Court En Banc

The Petition for Review has no merit.

PPI is a pre-need company whose product is the traditional open-ended educational plan.⁵ In the case of *Abrera v. Barza*, G.R. No. 171681, September 11,

⁵ *Rollo*, p. 208.

2009, the Supreme Court discussed the pertinent laws and rules on pre-need plans and corporate rehabilitation. It stated that Section 16, Chapter IV of Republic Act ("R.A.") No. 8799, otherwise known as *The Securities Regulation Code*, provides for the regulation of pre-need plans by the SEC, viz.:

SEC.16. *Pre-Need Plans.* -- No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission (SEC) shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective planholders, prescribing advertising guidelines, providing for uniform accounting system, reports and recordkeeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans.

The High Tribunal then pointed out that Presidential Decree ("P.D.") No. 902-A, governs corporate rehabilitation and suspension of actions for claims against corporations. Section 5 of P.D. No. 902-A, as amended by P.D. No. 1758, lists the cases over which the SEC has jurisdiction to hear and decide, which include "[p]etitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts, but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee." Under R.A. No. 8799, which took effect on August 8, 2000, the SEC's jurisdiction over all cases enumerated under Section 5 of P.D. No. 902-A, as amended, was transferred to the courts of general jurisdiction or the appropriate Regional Trial Court.



It further noted that on November 21, 2000, the Supreme Court approved the Interim Rules of Procedure on Corporate Rehabilitation of 2000 ("Interim Rules"), which took effect on December 15, 2000.

Rehabilitation is said to be a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.⁶

In the case at bench, PPI filed with the RTC of Makati City, a "Petition for Corporate Rehabilitation with Prayer for Suspension of Payments" which was docketed as Sp. Proc. No. M-6059, on the ground that due to its liquidity problems, it foresaw the impossibility of meeting its obligations to its availing planholders as they fall due.⁷ PPI filed the said petition under Section 1, Rule 4 of the Interim Rules, which states:

SECTION 1. *Who May Petition.*— Any **debtor** who foresees the impossibility of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation.

Under the Interim Rules, "debtor" shall mean "any corporation, partnership, or association, whether supervised or regulated by the Securities and Exchange Commission or other government agencies, on whose behalf a petition for rehabilitation has been filed under these Rules." The Interim Rules also provides that "claim" shall include "all claims or demands of whatever nature or character

⁶ New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City, G.R. No. 165001, January 31, 2007, 513 SCRA 605, citing *Ruby Industrial Corporation v. Court of Appeals*, G.R. Nos. 124185-87, January 20, 1998, 284 SCRA 445..

⁷ *Rollo*, p. 209.

against a debtor or its property, whether for money or otherwise." "Creditor" shall mean "any holder of a claim."

At this juncture, what needs to be determined by the Court *En Banc* is whether or not the payment of withholding taxes can be stayed under Section 6, Rule 4 of the Interim Rules or Section 6(c) of P.D. No. 902-A.

Section 6, Rule 4 of the Interim Rules reads:

SEC. 6. *Stay Order.* -- **If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order:** (a) appointing a Rehabilitation Receiver and fixing his bond; (b) **staying enforcement of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor;** (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) **prohibiting the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition;** (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment, in full, of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition. *(Boldfacing supplied)*



Moreover, Section 8 thereof states that any transfer of property or any other conveyance, sale, payment, or agreement made in violation of the Stay Order or in violation of the Rules may be declared void by the court upon motion or *motu proprio*.

Pursuant to the foregoing and finding PPI's petition to be sufficient in form and substance, RTC Judge Romeo F. Barza of Branch 61-Makati City, issued a Stay Order dated April 12, 2005 against PPI, with the following pertinent provisions:

- a) **a stay in the enforcement of all claims**, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the petitioner PPI, its guarantors and sureties not solidarily liable with it;
- b) **prohibiting PPI from making any payment of its liabilities as of the filing of the instant petition**. PPI, however, is allowed to disburse the amount of at least P341 Million as tuition fee support to its availing planholders who agree to such support, and provided that such disbursement shall not entail any disposition of the covering assets (NAPOCOR bonds) in the Trust Fund; hence, availing planholders who agree to the proposed tuition fee support are directed to coordinate with PPI;⁸

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In its assailed Decision, the Court in Division held that "[t]he Stay Order, being general in tenor, and does not make any distinction as to the claims enjoined and the liabilities prohibited from payment, in the view of the Court, is a justifiable reason for petitioner not to pay the creditable withholding taxes due on April 15 and May 15, 2005."⁹

The Court *En Banc* agrees with the foregoing ruling of the Court in Division.

⁸ *Rollo*, p. 211.

⁹ *Id.* at p. 50.



In the case of *Philippine Airlines v. Kurangking*,¹⁰ the Supreme Court stated that a “claim” is said to be “a right to payment, whether or not it is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, and secured or unsecured.” In *Finasia Investments and Finance Corporations*,¹¹ it defined the word “claim,” contemplated in Section 6(c) of P. D. 902-A, as referring to debts or demands of a pecuniary nature and the assertion of a right to have money paid.

In *SobreJuanite v. ASB Development Corporation*, the Supreme Court stressed that “[t]he interim rules define a claim as referring to all claims or demands, of whatever nature or character against a debtor or its property, whether for money or otherwise. The definition is all-encompassing as it refers to all actions whether for money or otherwise. There are no distinctions or exemptions.”¹²

In *Negros Navigation Co., Inc. v. Court of Appeals*, the Supreme Court emphasized that “P.D. No. 902-A does not make any distinction as to what claims are covered by the suspension of actions for claims against corporations under rehabilitation x x x Thus, since the law does not make any exemptions or distinctions, neither should we. *Ubi lex non distinguit nec nos distinguere debemos.*”¹³

In the same vein and as pointed out by the Court in Division, there is no distinction or exemption in the law as to what liabilities are prohibited from being paid by corporations under rehabilitation.

¹⁰ G.R. No. 146698, September 24, 2002, 389 SCRA 593.

¹¹ G.R. No. 107002, October 7, 1994, 237 SCRA 446.

¹² G.R. No. 165675, September 30, 2005, 471 SCRA 772.

¹³ G.R. Nos. 163156 & 166845, December 10, 2008, 573 SCRA 451.

Therefore, there is likewise no basis for the Court *En Banc* to make any exemption or distinction. Courts are not authorized to distinguish where the Interim Rules or the law makes no distinction.

As for the CIR's argument that PPI, being registered as a withholding agent of the BIR, is under obligation to collect and remit the money it withheld in trust in favor of the government, the same is untenable. In the previously cited *Abrera* case,¹⁴ the Supreme Court stated that "even if the relationship is one of trust, there is no provision in the Interim Rules that a claim arising from a trust relationship is excluded from the Stay Order."

Based on all the foregoing, the payment of withholding taxes would fall under the category of claim and liability considering that it is for pecuniary considerations.

It bears stressing that "[t]he purpose for the suspension of the proceedings is to prevent a creditor from obtaining an advantage or preference over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. Such suspension is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora. The suspension would enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the 'rescue' of the debtor company. To allow such other action to continue would only add to the

¹⁴ G.R. No. 171681, September 11, 2009



burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation. "¹⁵

Consequently, the Court *En Banc* quotes with approval the disquisition made by the Court in Division that PPI should not be held liable for civil penalties on its late payment of CWTs for the months of March and April 2005:

In the cases of *Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue*, 138 SCRA 631-632 and *Advertising Associates, Inc. vs. Court of Appeals*, 133 SCRA 770, the Supreme Court ruled that when the assessment is highly controversial as when the taxpayer had reason not to pay the tax, it should be liable only for the tax proper and should not be held liable for the surcharge and interest. Pursuant to the foregoing ruling, **considering that there is controversy whether petitioner's obligation to pay the creditable withholding taxes is covered by the phrases: "all claims" and "any of its liabilities" enjoined in the Stay Order, petitioner, therefore, should not be held liable for the surcharge and interest for the months of March and April 2005.**

Records further show that after the court-appointed rehabilitation receiver took his oath on April 22, 2005 (*Exhibit "D"*), petitioner requested clearance and approval from him for the payment of petitioner's unsettled withholding taxes for the months of March and April 2005 (*Exhibit "S"*, *TSN dated June 25, 2007*, p. 12). Immediately after petitioner obtained clearance from the court-appointed rehabilitation receiver, it paid the creditable withholding taxes due for the months of March and April 2005, on May 18, 2005 (*Exhibit "R"*, *Joint Stipulation of Facts and Issues*, p. 3). For all the foregoing, **it is evident that petitioner acted in good faith when it remitted the creditable withholding taxes for the months of March and April 2005 late. Nevertheless, it exerted all means to remit said taxes the soonest possible time after it was granted clearance by the court-appointed rehabilitation receiver.** For these reasons, the Court rules that petitioner should not be liable for the surcharge and interest for late payment of its creditable withholding taxes.

Likewise, the Court finds no basis in the imposition of the compromise penalty of P20,000.00 each for the months of March and April 2005. Settled is the rule that compromise penalties cannot be imposed in the absence of showing that petitioner consented thereto. A

¹⁵ Supra note 10.

compromise implies agreement. Such being the case, **in the absence of a showing that petitioner consented thereto, the compromise penalties cannot be validly imposed** (*Commissioner of Internal Revenue vs. Abad*, 23 SCRA 1140).¹⁶ (*Boldfacing supplied*)

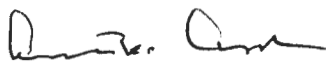
WHEREFORE, the Petition for Review is **DISMISSED**. Accordingly, the impugned Decision of the Court in Division dated February 9, 2009 and its Resolution promulgated on June 11, 2009 in C.T.A. Case No. 7537 are **AFFIRMED**.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



ERNESTO D. ACOSTA
Presiding Justice



JUANITO C. CASTAÑEDA, JR.
Associate Justice



ERLINDA P. UY
Associate Justice



CAESAR A. CASANOVA
Associate Justice



OLGA PALANCA-ENRIQUEZ
Associate Justice

¹⁶ *Rollo*, pp. 50 -52.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.


ERNESTO D. ACOSTA
Presiding Justice