Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

THE COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 181276**
	Present:
	VELASCO, *J.*, Chairperson, PERALTA, ABAD,
- versus -	MENDOZA, and LEONEN, *JJ.*
VISAYAS GEOTHERMAL POWER COMPANY, INC., Respondent.	Promulgated: **November 11, 2013**

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D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the November 20, 2007 Decision[1] and the January 9, 2008 Resolution[2] of the Court of Tax Appeals *(CTA) En Banc* in C.T.A. EB No. 282 (C.T.A. Case Nos. 6790 and 6838) entitled "*Commissioner of Internal Revenue vs. Visayas Geothermal Power Company, Inc.*"

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[1] *Rollo*, pp. 67-85; Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Ernesto D. Acosta (with concurring and dissenting opinion) and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez.
[2] Id. at 86-92.

THE FACTS

Respondent Visayas Geothermal Power Company, Inc. (*VGPCI*), a corporation authorized by the Department of Energy to own and operate a power plant facility in Malibog, Leyte, is engaged in the business of generation and sale of electricity. In the course of its business operations, VGPCI incurred input value added tax of ₱20,213,044.50 on its domestic purchase of goods and services and importation of goods used in its business for the third and fourth quarter of 2001 and for the entire year of 2002.[3] Due to the enactment of Republic Act *(R.A.)* No. 9136,[4] which became effective on June 26, 2001, VGPCI's sales of generated power became zero-rated and were no longer subject to VAT at 10%.[5]

On June 26, 2003, VGPCI filed before the Bureau of Internal Revenue (*BIR*) Revenue District No. 89 of Ormoc City a claim for refund of unutilized input VAT payment in the amount of ₱1,142,666.32 for the third quarter of 2001. On December 18, 2003, another claim was filed in the amount of ₱19,070,378.18 for the last quarter of 2001 and the four quarters of 2002. For failure of the BIR to act upon said claims, VGPCI filed separate petitions for review before the CTA on September 30, 2003 and December 19, 2003, praying for a refund on the issuance of a tax credit certificate in the amount of ₱1,142,666.32 covering the period from July to September 2001 and ₱19,070,378.18 for the period from October 2001 to December 2002, CTA Case Nos. 6790 and 6838, respectively.[6]

In its Decision[7] dated January 18, 2007, the First Division of the CTA partially granted the consolidated petitions for review and ordered petitioner

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[3] Id. at 68-69.
[4] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes, otherwise known as "The Electric Power Industry Reform Act of 2001."
[5] *Rollo*, p. 232.
[6] Id. at 70-71.
[7] Id. at 231-245; Penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta (with Dissenting Opinion) and Associate Justice Caesar A. Casanova.

Commissioner of Internal Revenue (*CIR*) to refund or to issue a tax credit certificate to VGPCI in the amount of ₱16,355,749.74 representing unutilized input VAT incurred from September 1, 2001 to December 31, 2002.[8]

Aggrieved, the CIR elevated the case to the CTA *En Banc* alleging that the First Division erred in ruling in favor of VGPCI because: (1) VGPCI did not submit evidence of its compliance with the VAT registration requirements; (2) its purchases of goods and services were not undertaken in the course of its trade or business and were not duly substantiated by VAT invoices or receipts; (3) it failed to file an application for a VAT tax credit or refund before the Revenue District Office of the city or municipality where the principal place of business was located; (4) it did not file its administrative claim for refund prior to the filing of its petition before the CTA; and (5) it was unable to prove that its claimed input VAT payments were directly attributable to its zero-rated sales.[9]

On November 20, 2007, the CTA *En Banc* promulgated its Decision dismissing the petition and affirming the decision of the CTA First Division, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is hereby DISMISSED for lack of merit. The assailed Decision dated January 18, 2007 and the Resolution dated May 17, 2007 are AFFIRMED.
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> SO ORDERED.[10]

The tax court ruled that: (1) the law does not require the submission by a taxpayer of its VAT registration documents in order to be able to claim for a refund of unutilized input VAT; (2) VGCPI was able to show, by

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[8] Id. at 240.
[9] Id. at 72-73.
[10] Id. at79.

submitting its VAT invoices and official receipts, that its purchases of goods and services were incurred in the course of its trade and business; (3) VGCPI sufficiently proved that its claimed input VAT was directly attributable to its zero-rated sales or sales of power generation services to PNOC-EDC; and (4) the petition was timely filed before the CTA because the taxpayer was not bound by the 120-day audit period but by the two-year prescriptive period. As explained by the tax court, when the two-year period is about to lapse, the taxpayer may, without awaiting the verdict of the CIR, file its claim for refund before the CTA.

The CIR subsequently filed its Motion for Reconsideration but the same was denied by the CTA *En Banc* in its Resolution dated January 9, 2008.[11]

Hence, this petition.

THE ISSUES

The CIR raises only one ground for the allowance of the petition:

> **The Court of Tax Appeals erred in assuming jurisdiction and giving due course to VGPCI's petition despite the latter's failure to file an application for refund in due course before the BIR and observe the proper prescriptive period provided by law before filing an appeal before the CTA**.[12]

The pivotal question in this case then is whether VGPCI failed to observe the proper prescriptive period required by law for the filing of an appeal before the CTA because it filed its petition before the end of the 120-day period granted to the CIR to decide its claim for refund under Section 112(D) of the National Internal Revenue Code (*NIRC*).

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[11] Id. at 86.
[12] Id. at 53.

THE COURT'S RULING

The CIR insists that VGPCI should have waited for the decision of the CIR or the lapse of the 120-day period from the date of submission of complete documents in support of the application for refund as provided in Section 112(D) of the NIRC.[13] The filing by VGPCI of its petition for review before the CTA almost immediately after filing its administrative claim for refund is premature.

On the other hand, VGPCI, in its Memorandum[14] defends the decision of the CTA *En Banc* and puts forth the following arguments: (1) Section 112(D) of the NIRC is not a limitation imposed on the taxpayer; rather, it is a mandate addressed to the CIR, requiring it to decide claims for refund within 120 days from submission by the taxpayer of complete documents in support thereof;[15] (2) Section 229 of the NIRC is the more specific provision with respect to the prescriptive period for the filing of an appeal because it expressly requires that no suit in court can be maintained for the recovery of taxes after two years from the date of payment of the taxes, while Section 112(D) deals only with VAT and the periods within which the CIR shall grant a refund or a tax credit and does not discuss the period within which a taxpayer can go to court;[16] (3) pursuant to the cases of *Gibbs v. Collector of Internal Revenue*[17] and *College of Oral & Dental Surgery v. Court of Tax Appeals*,[18] when the two-year prescriptive period is about to expire, the taxpayer need not wait for the decision of the BIR before filing a petition for review with the CTA because the filing of a judicial claim beyond the two-year period bars the recovery of the tax paid, and (4) the CIR has not been denied due process in evaluating VGPCI's claim for refund because the

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[13] Id. at 260-261.
[14] Id. at 178-230.
[15] Id. at 207-208.
[16] Id. at 209.
[17] 107 Phil. 232 (1960).
[18] 102 Phil. 912 (1958).

filing of the judicial claim does not preclude the CIR from continuing the processing of VGPCI administrative claim. The latter insists that it is imperative and jurisdictional that both the administrative and the judicial claims for refund be filed within the two-year prescriptive period, regardless of the length of time during which the administrative claim has been pending with the CIR. It concludes that had it waited for the end of the 120-day period, it would have lost its right to file a petition for review with the CTA.[19]

The petition is partly meritorious.

Section 229 is not applicable

VGPCI's reliance on *Gibbs* and *College of Oral & Dental Surgery* is misplaced. Of note is the fact that at the time of the promulgation by this Court of the said cases, there was no provision yet in the NIRC in force (Commonwealth Act No. 466,[20] as amended) similar to Section 112. Therefore, the said cases hold no sway over the case at bench.

VGPCI is also mistaken to argue that Section 229 is the more relevant provision of law. A simple reading of Section 229 reveals that it only pertains to taxes erroneously or illegally collected:

> SEC. 229. Recovery of Tax Erroneously or Illegally Collected. - No suit or proceeding shall be maintained in any court for the **recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected**, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or**

[19] *Rollo*, pp. 210-212 212.
[20] An Act to Revise, Amend and Codify the Internal Revenue Laws of the Philippines (June 15, 1939).

> **penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. [Emphases supplied]

The applicable provision of the NIRC is undoubtedly Section 112, which deals specifically with creditable input tax:

> SEC. 112. Refunds or Tax Credits of Input Tax.
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> (A) Zero-rated or Effectively Zero-rated Sales. – **any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> (D) Period Within Which Refund or Tax Credit of Input Taxes Shall be Made. - In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application** filed in accordance with Subsections (A) and (B) hereof.
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> **In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.** [Emphases supplied]

The Court, in earlier cases, had the opportunity to decide which provision of the NIRC was applicable to claims for refund or tax credit for creditable input VAT. In the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*,[21] it was held that Section 229 of the NIRC, which provides for a two-year period, reckoned from the date of payment of the tax or penalty, for the filing of a claim of refund or tax credit, is only pertinent to the recovery of taxes erroneously or illegally assessed or collected; and that the relevant provision of the NIRC for claiming a refund or a tax credit for the unutilized creditable input VAT is Section 112(A):

> To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:
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> Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes
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> Considering the foregoing discussion, it is clear that Sec. 112(A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes.[22]

This ruling was later reiterated in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[23] where this Court upheld the ruling in *Mirant* that the appropriate provision for determining the prescriptive

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[21] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[22] Id. at 172-173 and 175.
[23] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

period for claiming a refund or a tax credit for unutilized input VAT is Section 112(A), and not Section 229, of the NIRC.[24]

Finally, the recent pronouncement of the Court *En Banc* should put an end to any question as to whether Section 229 may apply to claims for refund of unutilized input VAT. In the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[25] this Court categorically stated that the "input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper."[26]

As such, it is now clear and indisputable that it is Section 112, and not 229, of the Tax Code which is applicable to all cases involving an application for the issuance of a tax credit certificate or refund of unutilized input VAT.

Judicial claim was prematurely filed;
120+30 day period is mandatory and jurisdictional

The Court in *Aichi* further made a significant pronouncement on the importance of the 120-day period granted to the CIR to act on applications for tax refunds or tax credits under Section 112(D):

> Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. **In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.**

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[24] Id. at 437.
[25] G.R. No. 187485, February 12, 2013.
[26] Id.

> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
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> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
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> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.
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> In fact, **applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR.** The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. **As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**[27] [Emphases supplied]

Moreover, it is imperative that the Court take a look at the jurisdiction of the CTA as a guide in the resolution of this case. Section 7 of R.A. No. 1125,[28] as amended by R.A. No. 9282,[29] states that:

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[27] Id. at 443-444.

[28] An Act Creating the Court of Tax Appeals (June 16, 1954).

[29] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for other Purposes (March 30, 2004).

> Sec. 7. Jurisdiction. - The CTA shall exercise:
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> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
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> > 1. **Decisions of the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
> >
> > 2. **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**; (emphases supplied)
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It cannot be stressed enough that the jurisdiction of the CTA over the decisions or inaction of the CIR is only appellate in nature. Thus, it necessarily requires the prior filing of an administrative case before the CIR. The CTA can only validly acquire jurisdiction over a case after the CIR has rendered its decision or, should the CIR fail to act, after the lapse of the period of action provided in the Tax Code, in which case the inaction of the CIR is considered a denial.

The application of the 30-day period from receipt of the decision of the CIR or from the lapse of the 120-day period (the "120+30 day period") given to the taxpayer within which to file a petition for review with the CTA, as provided for in Section 112(D) of the Tax Code, was further explained in *San Roque*,[30] which affirmed the *Aichi* doctrine and explicitly ruled that "the 120-day waiting period is mandatory and jurisdictional."

[30] G.R. No. 187485, February 12, 2013.

However, the court also took into account the issuance by the BIR of Ruling No. DA-489-03 dated December 10, 2003 which allowed for the filing of a judicial claim without waiting for the end of the 120-day period granted to the CIR to decide on the application for refund:

> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.**" Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
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> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.[31]

Therefore, although the 120+30 day period in Section 112(D) is mandatory and jurisdictional and must be applied from the effectivity of the 1997 Tax Code on January 1, 1998, an exception shall be made for judicial claims filed from the issuance of BIR Ruling No. DA 489-03 on December 10, 2003 until the promulgation of *Aichi* on October 6, 2010. During the said period, a judicial claim for refund may be filed with the CTA even before the lapse of the 120-day period given to the BIR to decide on the administrative case.

In sum, based on the foregoing discussion, the rules for the filing of a claim for refund or tax credit of unutilized input credit VAT are as follows:

1. The taxpayer has two (2) years after the close of the taxable quarter when the relevant sales were made within which to file an administrative claim before the CIR for a refund of the

[31] Id.

creditable input tax or the issuance of a tax credit certificate, regardless of when the input VAT was paid, according to Section 112(A) of the NIRC and *Mirant.*

2. The CIR is given 120 days, from the date of the submission of the complete documents in support of the application for tax refund or tax credit, to act on the said application.

3. If the CIR fully or partially denies the application or fails to act on the same within the required 120-day period, the taxpayer is allowed to appeal the decision or inaction of the CIR to the CTA. For this reason, the taxpayer has 30 days from his receipt of the decision of the CIR or from the lapse of the 120-day period, within which to file a petition for review with the CTA. In no case shall a petition for review be filed with the CTA before the expiration of the 120-day period. The judicial claim need not be filed within the two-year prescriptive period referred to in Section 112(A), which only pertains to administrative claims.

4. The two-year period referred to in Section 229 of the NLRC does not apply to appeals filed before the CTA, in relation to claims for refund or issuance of tax credits made pursuant to Section 112. Consequently, an appeal may be maintained with the CTA for so long as it observes the abovementioned period for filing the appeal.

5. Following *San Roque*, the 120+30 day period is mandatory and jurisdictional from January 1, 1998 (the effectivity of the 1997 Tax Code). However, from December 10, 2003 (the date BIR Ruling No. DA 489-03 was issued) until October 6, 2010 (the promulgation of *Aichi*), judicial claims need not

follow the 120+30 day period. Thereafter, *Aichi* shall be the controlling rule for all claims filed with the CTA and the 120+30 day period must be observed.

Applying the abovementioned rules to the case at bench, the judicial claim filed on September 30, 2003 (CTA Case No. 6790) was prematurely filed and cannot be taken cognizance of because respondent failed to wait for the requisite 120 days after the filing of its claim for refund with the BIR before elevating the case to the CTA. However, the judicial claim filed on December 19, 2003 (CTA Case No. 6838), which was made after the issuance of BIR Ruling DA-489-03, can be considered by the CTA despite its hasty filing only one day after the application for refund was first lodged with the BIR.

WHEREFORE, the petition is partly **GRANTED**. The November 20, 2007 Decision and the January 9, 2008 Resolution of the Court of Tax Appeals En Banc are hereby **REVERSED** and **SET ASIDE** and the claim for refund with respect to CTA Case No. 6790 is DENIED. However, the claim pertaining to CTA Case No. 6838 is remanded to the CTA for the proper determination of the refundable amount due respondent.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

See Dissenting opinion

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P.A. SERENO
Chief Justice