Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FORTUNE TOBACCO CORPORATION, Petitioner,	**G.R. No. 192024** Present:
- versus -	BERSAMIN,* *J.*, DEL CASTILLO, *Acting Chairperson,* VILLARAMA, JR.,** MENDOZA, and LEONEN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: 01 JUL 2015

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DECISION

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Fortune Tobacco Corporation *(petitioner),* assailing the March 12, 2010 Decision[1] of the Court of Tax Appeals *En Banc (CTA En Banc)* and its April 26, 2010 Resolution[2] in CTA EB Case No. 533, which affirmed *in toto* the April 30, 2009 Decision[3] and the August 18, 2009 Resolution[4] of the Former First Division of the Court of Tax Appeals *(CTA Division)* in CTA Case No. 7367.

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* Per Special Order No. 2079 dated June 29, 2015.

** Per Special Order No. 2086 dated June 29, 2015.

[1] Docketed therein as CTA EB No. 533; penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castaneda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas, concurring; *rollo*, pp. 32-43.

[2] Id. at 44-45.

[3] Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta, and Associate Justice Lovell R. Bautista, concurring; Records, pp. 389-404.

[4] Id. at 468-471.

The facts of this case are akin to those obtaining in G.R. Nos. 167274-275 and G.R. No. 180006. In G.R. No. 167274-275, the Court eventually sustained petitioner's claim for refund of overpaid excise taxes for the period covering January 1, 2002 to December 31, 2002. In G.R. No. 180006, the Court likewise sustained petitioner's claim for refund of overpaid excise tax paid during in 2003 and the period covering January 1 to May 31, 2004. The subject claim for refund involves the amount of excise taxes allegedly overpaid during the period beginning June 1, 2004 up to December 31, 2004.

For a better understanding of the controversy, a recapitulation of the factual and procedural antecedents is in order. Thus, as stated in the following portions of the CTA *En Banc* decision:

> Petitioner is the manufacturer/producer of, among others, the following cigarette brands, with tax rate classification based on net retail price prescribed by Annex "D" to Republic Act (R.A.) No. 4280, to wit:
>
> | Brand | Tax Rate |
> |---|---|
> | Champion M 100 | ₱1.00 |
> | Camel F King | ₱1.00 |
> | Camel Lights Box 20's | ₱1.00 |
> | Camel Filters Box 20's | ₱1.00 |
> | Winston F King | ₱5.00 |
> | Winston Lights | ₱5.00 |
>
> Immediately prior to January 1, 1997, the above-mentioned cigarette brands were subject to ad valorem tax pursuant to then Section 142 of the Tax Code of 1977, as amended. However, on January 1, 1997, R.A. No. 8240 took effect causing a shift from the ad valorem tax (AVT) system to the specific tax system. As a result of such shift, the aforesaid cigarette brands were subjected to specific tax under Section 142 thereof, now renumbered as Section 145 of the Tax Code of 1997. Section 145 is quoted thus:
>
> > 'Section 145. Cigars and Cigarettes- (A) Cigars. - There shall be levied, assessed and collected on cigars a tax of One peso (P 1.00) per cigar.
> >
> > (B) Cigarettes Packed by Hand. -There shall be levied, assessed and collected on cigarettes packed by hand a tax of Forty centavos (₱0.40) per pack.
> >
> > (C) Cigarettes Packed by Machine. - There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:
> >
> > > [1] If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱ 10.00) per pack, the tax shall be Twelve (₱12.00) per pack:

> [2] If the net retail price (excluding the excise tax and the value added tax) exceeds Six pesos and Fifty centavos (₱6.50) but does not exceed Ten pesos (₱10.00) per pack, the tax shall be Eight Pesos (₱8.00) per pack.
>
> [3] If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) but does not exceed Six Pesos and fifty centavos (₱6.50) per pack, the tax shall be Five pesos (₱5.00) per pack;
>
> [4] If the net retail price (excluding the excise tax and the value-added tax] is below Five pesos (₱5.00) per pack, the tax shall be One peso (₱1.00) per pack;

Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of R.A. No. 8240 shall be taxed under the highest classification of any variant of that brand.

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. *Provided, however,* that in cases where the excise tax rate imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.

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.

New brands shall be classified according to their current net retail price.

For the above purpose, '*net retail price*' shall mean the price at which the cigarette is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax

> and value-added tax. For brands which are marketed only outside Metro Manila, the '*net retail price*' shall mean the price at which the cigarette is sold in five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.
>
> The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex "D," shall remain in force until revised by Congress.
>
> '*Variant of a brand*' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.

To implement the provisions for a twelve percent (12%) increase of excise tax on cigars and cigarettes packed by machines by January 1, 2000, the Secretary of Finance, upon recommendation of the respondent Commissioner of Internal Revenue, issued Revenue Regulations No. 17-99, dated December 16, 1999, xxx

RR No. 17-99 likewise provides in the last paragraph of Section 1 thereof, "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."

On 31 March 2005, petitioner filed a claim for tax credit or refund under Section 229 of the National Internal Revenue Code of 1997 (1997 NIRC) for erroneously or illegally collected specific taxes covering the period June to December 31, 2004 in the total amount of Php219,566,450.00.

On November 14, 2005, petitioner filed a Petition for Review which was raffled to the Former First Division of this Court.

Respondent in his Answer raised among others, as a Special and Affirmative Defense, that the amount of TWO HUNDRED NINETEEN MILLION FIVE HUNDRED SIXTY SIX THOUSAND FOUR HUNDRED FIFTY PESOS (Php219,566,450.00) being claimed by petitioner as alleged overpaid excise tax for the period covering 1 June to 31 December 2004, is not properly documented.

After trial on the merits, the Former First Division of this Court rendered the assailed Decision, dated April 30, 2009, which consistently ruled that RR 17-99 is contrary to law and that there is insufficiency of evidence on the claim for refund.

Petitioner filed its motion for reconsideration therefrom, and which was denied by the Former First Division on August 18, 2009.

Petitioner elevated its claim to the CTA *En Banc*, but was rebuffed after the tax tribunal found no cause to reverse the findings and conclusions of the CTA Division.

Hence, this petition.

Essentially, petitioner claims that it paid a total amount of ₱219,566,450.00 in overpaid excise taxes. For petitioner, considering that the CTA found Revenue Regulation No. 17-99 *(RR 17-99)* to be contrary to law, there should be no obstacle to the refund of the total amount excess excise taxes it had paid. [5]

In a nutshell, the sole issue for the resolution of the Court is: whether or not there is sufficient evidence to warrant the grant of petitioner's claim for tax refund.

The petition lacks merit.

The question of sufficiency of petitioner's evidence to support its claim for tax refund is a question of fact

Unlike in the proceeding had in G.R. Nos. 167274-275 and G.R. No. 180006, the denial of petitioner's claim for tax refund in this case is based on the ground that petitioner failed to provide sufficient evidence to prove its claim and the amount thereof. As a result, petitioner seeks that the Court re-examine the probative value of its evidence and determine whether it should be refunded the amount of excise taxes it allegedly overpaid.

This cannot be done.

The settled rule is that only questions of law may be raised in a petition under Rule 45 of the Rules of Court. It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. A question of law which the Court may pass upon must not involve an examination of the probative

[5] *Rollo*, pp. 17-19.

value of the evidence presented by the litigants.[6] This is in accordance with Section 1, Rule 45 of the Rules of Court, as amended, which reads:

> **Section 1.** ***Filing of petition with Supreme Court*****.** – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition** may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth.** The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.
>
> [Emphasis and Underlining Supplied]

In fact, the rule finds greater significance with respect to the findings of specialized courts such as the CTA, the conclusions of which are not lightly set aside because of the very nature of its functions which is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[7]

Moreover, it has been said that the proper interpretation of the provisions on tax refund that *does not* call for an examination of the probative value of the evidence presented by the parties-litigants is a *question of law*.[8] Conversely, it may be said that if the appeal essentially calls for the re-examination of the probative value of the evidence presented by the appellant, the same raises a *question of fact*. Often repeated is the distinction that there is a question of law in a given case when doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when doubt or difference arises as to the truth or falsehood of alleged facts.[9]

Verily, the sufficiency of a claimant's evidence and the determination of the amount of refund, as called for in this case, are *questions of fact*,[10] which are for the judicious determination by the CTA of the evidence on record.

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[6] *Vallacar Transit, Inc. v. Catubig*, 664 Phil. 529, 542 (2011), citing *Land Bank of the Philippines, v. Monet's Export and Manufacturing Corporation*, 493 Phil. 327, 338 (2005).
[7] *Toshiba Information Equipment (Phils), Inc. v. Commissioner of Internal Revenue*, 628 Phil. 430, 467 (2010).
[8] *Crisolo v. CA*, 160-A Phil. 1085, 1091-1092 (1975).
[9] *Atlas Consolidated Mining and Development Corporation v. CIR*, 551 Phil. 519, 559 (2007).
[10] *Commissioner of Internal Revenue v. Manila Electric Company*, 561 Phil. 500, 511 (2007).

Significantly, it bears noting that Section 5, Rule 45 of the Rules of Court provides that the failure of petitioner to comply with the requirements on the contents of the petition shall be sufficient ground for its dismissal. While jurisprudence provides exceptions to these rules, the subject petition does not fall under any of those so excepted. Thus, for this reason alone, the petition must fail.

The CTA committed no reversible error in denying petitioner's claim for tax refund for insufficient evidence.

A. Petitioner relied heavily on photocopied documents to prove its claim.

Granting that the Court could take a second look and review petitioner's evidence, the result would be the same.

The claim for refund hinges on the admissibility and the probative value of the following photocopied documents that allegedly contain a recording of petitioner's excise payments for the period covering June 1, 2004 up to December 31, 2004:

(1) Production, Removals and Payments for All FTC Brands;[11] and

(2) Excise Tax Refund Computation Summary.[12]

Although both the CTA Division and the CTA *En Banc* provisionally admitted petitioner's Exhibit "C,"[13] the above-mentioned documents, as well as the other documentary evidence submitted by petitioner were refused admission for being merely photocopies.[14]

Section 3 of Administrative Matter *(A.M.)* No. 05-11-07 CTA, the Revised Rules of the Court of Tax Appeals, provides that the Rules of Court shall apply suppletorily in the proceeding before the tax tribunal.

In this connection, Section 3 of Rule 130 of the Rules of Court lays down the Best Evidence Rule with respect to the presentation of documentary evidence. Thus:

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[11] Referred to by petitioner, the CTA Division and the CTA *en banc* as Annex "G," "G-1" to "G-7."
[12] Referred to by petitioner, the CTA Division and the CTA *en banc* as Annex "H."
[13] Letter Claim for Refund, dated March 31, 2005; See Records, pp. 286-287.
[14] Decision, CTA *En Banc*, p. 6.

> **Section 3.** *Original document must be produced*; *exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
>
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
>
> (d) When the original is a public record in the custody of a public officer or is recorded in a public office. (2a)

In this case, petitioner did not even attempt to provide a plausible reason as to why the original copies of the documents presented could not be produced before the CTA or any reason that the application of any of the foregoing exceptions could be justified. Although petitioner presented one (1) witness to prove its claim, it appears that this witness was not even a signatory to any of the disputed documentary evidence.

As correctly pointed out by the CTA Division, petitioner knew all along that it had committed the foregoing procedural lapses when it filed its Formal Offer of Evidence. Although petitioner orally manifested that it was going to seek reconsideration of the CTA Division order excluding its evidence, in the end, *petitioner did not even bother to file any such motion for reconsideration at all.*

B. Petitioner failed to offer any proof or tender of excluded evidence.

At any rate, even if the Court should find fault in the ruling of the CTA Division in denying the admission of petitioner's evidence, the result would be the same because petitioner failed to offer any proof or tender of excluded evidence. As aptly discussed by the CTA *En Banc*:

> Petitioner posits that if their exhibits, specifically Exhibits "G", "G-1" to "G-7" and Exhibit "H", are admitted together with the testimony of their witness, the same would sufficiently prove their claim. A closer scrutiny of the records shows that petitioner did not file any offer of proof or tender of excluded evidence.

Section 40, Rule 132 of the Rules of Court provides:

> Sec. 40. Tender of excluded evidence. – If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral. the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

The rule is that evidence formally offered by a party may be admitted or excluded by the court. If a party's offered documentary or object evidence is excluded, he may move or request that it be attached to form part of the records of the case. If the excluded evidence is oral, he may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. These procedures are known as offer of proof or tender of excluded evidence and are made for purposes of appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence.

It is of record that the denial of the excluded evidence was never assigned as an error in this appeal. Thus, this Court cannot pass upon nor consider the propriety of their denial. Moreover, this Court cannot and should not consider the documentary and oral evidence presented which are not considered to be part of the records in the first place. Thus, Exhibits "G", "G- 1" to "G-7" and Exhibit "H", together with the testimony of petitioner's witness thereon, cannot be admitted and be given probative value.[15]

It has been repeatedly ruled that where documentary evidence was rejected by the lower court and the offeror did not move that the same be attached to the record, the same cannot be considered by the appellate court,[16] as documents forming no part of proofs before the appellate court cannot be considered in disposing the case.[17] For the appellate court to consider as evidence, which was not offered by one party at all during the proceedings below, would infringe the constitutional right of the adverse party – in this case, the CIR, to due process of law.

It also bears pointing out that at no point during the proceedings before the CTA *En Banc* and before this Court has petitioner offered any plausible explanation as to why it failed to properly make an offer of proof or tender of excluded evidence. Instead, petitioner harps on the fact that respondent CIR simply refused its claim for refund on the ground that RR 17-99 was a valid issuance. Thus, for its failure to seasonably avail of the

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[15] *Rollo*, pp. 37-39.
[16] *Banez v. Court of Appeals*, 158 Phil. 16, 32 (1974).
[17] *De Castro v. Court of Appeals*, 75 Phil. 824, 835 (1945).

proper remedy provided under Section 40, Rule 132 of the Rules of Court, petitioner is precluded from doing so at this late stage of the case. Clearly, estoppel has already stepped in.

Although it may be suggested that the CTA should have been more liberal in the application of technical rules of evidence, it should be stressed that a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice. As pointed out in *Marohomsalic v. Cole*,[18]

> While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. **The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity**. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[19]
>
> [Emphases Supplied]

And, as stressed in the case of *Daikoku Electronics Phils., Inc. v. Raza*:[20]

> To be sure, **the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it**. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice. x x x The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse. x x x
>
> We must stress that **the bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel this Court to suspend procedural rules**. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.[21]
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> [Emphases Supplied]

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[18] 570 Phil. 420 (2008).
[19] Id. at 429.
[20] 606 Phil. 796 (2009).
[21] Id. at 803-804.

In this case, as explained above, petitioner utterly failed to not only comply with the basic procedural requirement of presenting only the original copies of its documentary evidence, but also to adhere to the requirement to properly make its offer of proof or tender of excluded evidence for the proper consideration of the appellate tribunal.

Indeed, to apply technical rules strictly against the CIR because it simply relied on the validity of RR 17-99 – but not be strict with respect to petitioner's shortcomings, would be unfair. For this would go against the principle that taxation is the rule, exemption/refund, the exception.

C. Petitioner's evidence, even if considered, fails to prove that it is entitled to its claim for refund.

Finally, as correctly held by the CTA *En Banc*, even if the Court would consider petitioner's otherwise excluded evidence, the same would still fail to sufficiently prove the petitioner's entitlement to its claim for refund. The disquisition of the CTA Division, as quoted in the CTA *En Banc* decision, is hereby reiterated with approval:

> xxx, the documentary exhibits are not sufficient to prove the amounts being claimed by petitioner as refund. Looking at Exhibit 'G,' the same is a mere summary of excise taxes paid by petitioner **for ALL of its cigarette brands**. This Court cannot verify the amounts of excise taxes paid for the brands in issue which are Champion M-100s, Camel Filter Kings, Winston Filter Kings, and Winston Lights.
>
> This Court cannot likewise rely solely on petitioner's Excise Tax Refund Computation Summary. **The figures therein must be verified** through other documentary evidence which this Court must look into and which petitioner failed to properly provide.[22]
>
> [Emphases Supplied]

Clearly, it is petitioner's burden to prove the allegations made in its claim for refund. For a claim for refund to be granted, the manner in proving it must be in accordance with the prescribed rules of evidence. It would have been erroneous had the CTA *En Banc* relied on petitioner's own Excise Tax Refund Computation Summary or the unsatisfactory explanation of its lone witness to justify its claim for tax refund.

Indeed, while it is true that litigation is not a game of technicalities – it is equally true, however, that every case must be established in accordance with the prescribed procedure to ensure an orderly and speedy

[22] *Rollo*, p. 41.

administration of justice. In all, the Court finds that the failure of petitioner to prove its claim in accordance with the settled evidentiary rules merits its dismissal.

Lest it be misunderstood, this Court is not reversing, directly or indirectly, its pronouncements in G.R. Nos. 167274-75 and G.R. No. 180006 that RR 17-99 is invalid. This Court is simply pointing to the rule that claims for refunds are the exception, rather than the rule, and that each claim for refund, in order to be granted, must be clearly set forth and established in accordance with the rules of evidence.

As it has been said, time and again, that claims for tax refunds are in the nature of tax exemptions which result in loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted; it is never presumed nor be allowed solely on the ground of equity.[23] In addition, one who claims that he is entitled to a tax refund must not only claim that the transaction subject of tax is clearly and unequivocally not subject to tax – the amount of the claim must still be proven in the normal course,[24] in accordance with the prescribed rules on evidence.

After all, taxes are the lifeblood of the nation.[25]

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[23] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, 671 SCRA 241, 263-264.
[24] *Calamba Steel Center v. CIR*, 497 Phil. 23, 27 (2005).
[25] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012, 679 SCRA 305, 316.

WE CONCUR:

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

MARVIC M.V.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.

MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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