



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 17 February 2021 which reads as follows:

“G.R. No. 231638 (*Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs*). — This resolves the Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court seeking the reversal of the Court of Tax Appeals (CTA) *En Banc*’s Decision² dated October 3, 2016 and Resolution³ dated April 27, 2017 in CTA EB No. 1299. The CTA *En Banc* upheld the CTA Third Division’s Decision dated December 1, 2014 and Resolution dated March 20, 2015 in CTA Case No. 8130, which denied Philippine Airlines, Inc.’s (PAL) claim for refund of allegedly erroneously paid excise taxes in the amount of ₱6,941,490.21 for failure to prove that the imported liquors, wines, and cigarettes were not locally available in reasonable quantity, quality, or price.

ANTECEDENTS

From March to November 2007, PAL imported commissary and catering supplies such as assorted liquors, wines, and cigarettes for its international flights. The articles were covered by various Informal Import Declarations and Entries, Air Waybills/Bills of Lading, and Authorities to Release Imported Goods.

On February 8, 2007, and June 11, 2008, PAL received deficiency excise tax assessments of ₱4,121,453.10 and ₱2,820,037.11. PAL paid under protest the assessed deficiency taxes on July 7 and 18, 2008, and

¹ *Rollo*, pp. 44-53.

² *Id.* at 61-84; penned by Associate Justice Erlinda P. Uy, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban; Presiding Justice Roman G. Del Rosario dissented.

³ *Id.* at 86-92; penned by Associate Justice Erlinda P. Uy, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan; Presiding Justice Roman G. Del Rosario and Associate Justice Caesar A. Casanova dissented.

formally protested the assessments in its letters dated July 18 and 25, 2008. On March 5, 2009, PAL filed an administrative claim for a refund with the Commissioner of Internal Revenue (CIR) on the excise taxes paid. The CIR failed to act on its claim; hence, PAL filed a Petition for Review with the CTA Division on July 7, 2010.

On December 1, 2014, the CTA Division rendered its Decision denying PAL's petition for lack of merit.⁴ The CTA Division observed that PAL merely compared the prices of its imported wines and liquors with the quotation of a single supplier, Philippine Wine Merchants. As regards imported cigarettes, PAL's witness admitted that no comparison against the price in the local market was made and that PAL merely assumed that the local prices of the same products would be more expensive. The CTA Division concluded that PAL failed to comply with the condition for excise tax exemption under Section 13 (b)(2)⁵ of Presidential Decree (PD) No. 1590⁶ that the imported liquors, wines, and cigarettes must not be locally available in reasonable quantity, quality, or price.

Failing at a reconsideration,⁷ PAL appealed to the CTA *En Banc*. After the filing of the CIR and the Commissioner of Customs (COC) of their respective comments to the petition, the CTA *En Banc* rendered its Decision⁸ on October 3, 2016, denying PAL's petition for lack of merit.

⁴ CTA EB *rollo*, pp. 30-56. The dispositive portion of the Decision reads:

WHEREFORE, the Petition for Review dated July 5, 2010 filed by Philippine Airlines, Inc. is hereby **DENIED**, for lack of merit.

SO ORDERED. *Id.* at 55-56. (Emphases in the original.)

⁵ SEC. 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

X X X X

(b) A franchise tax of two percent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

X X X X

2. **All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;** x x x. (Emphasis supplied.)

⁶ AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES; approved on June 11, 1978.

⁷ CTA EB *rollo*, pp. 67-71. The CTA Division disposed:

WHEREFORE, the Motion for Partial Reconsideration dated December 19, 2014 filed by petitioner Philippine Airlines, Inc., is hereby **DENIED**, for lack of merit.

SO ORDERED. *Id.* at 71. (Emphasis in the original.)

⁸ *Rollo*, pp. 60-75.

The CTA *En Banc* did not consider PAL's witness Cheryl V. Capinpin's (Ms. Capinpin) sworn testimony, the 2007 Price List from Philippine Wine Merchants (Philippine Wine Merchants Price List), and the Table of Comparison between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies (Table of Comparison) as sufficient proofs that the imported liquor, wines, and cigarettes were not locally available in reasonable quantity, quality, or price. Thus:

A careful review of the foregoing evidence presented by [PAL] shows that it is inadequate to prove that the imported liquors, wines, and cigarettes were not locally available in reasonable quantity, quality or price, and is insufficient to establish its claim for a tax refund. A sweeping conclusion that there is no local supplier for cigarettes can cope with [PAL]'s demand, or provide a reasonable price therefor is not the type of evidence that can successfully support a claim for tax refund. Likewise, non-specific and undocumented allegations that it made efforts to secure price lists from local suppliers to determine whether the imported articles were in fact, locally unavailable in reasonable quantity, quality or price, cannot convince this Court to act favorably on [PAL]'s claims.

X X X X

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated December 1, 2014 and the assailed Resolution dated March 20, 2015 are hereby **AFFIRMED**.

SO ORDERED.

On reconsideration, PAL insisted that it presented sufficient evidence to prove compliance with Section 13 (b)(2). However, the CTA *En Banc* dismissed PAL's argument and reiterated:⁹

Unfortunately for [PAL], the inadequacy of the evidence it presented in this case fails to advance its cause. As previously discussed, aside from one price list from a single supplier; non-specific and undocumented allegations that it made efforts to secure price lists from other suppliers; and a sweeping conclusion that no local supplier can cope with its demand or provide a reasonable price therefore, [PAL] failed to present any other evidence to support its cause.

X X X X

Thus, the Court finds no justifiable ground to set aside the assailed Decision.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

⁹ *Id.* at 90-91.

SO ORDERED.

Discontented, PAL filed the instant petition before this Court raising as a sole issue:

WHETHER OR NOT THE CTA EN BANC COMMITTED AN ERROR WHEN IT AFFIRMED THE DECISION OF THE CTA DIVISION DESPITE PAL'S CLEAR COMPLIANCE WITH THE CONDITIONS OF PD NO. 1590.¹⁰

PAL asseverates that the CTA *En Banc* has consistently ruled in a long line of PAL cases¹¹ that the Table of Comparison with local prices reflected in the Price List and/or Duty-Free Philippines Retail Prices was sufficient proof that the cost of importing the subject articles is lower than purchasing them locally. In the instant case, PAL presented the same pieces of evidence.

In compliance with this Court's Resolution¹² dated December 13, 2017, the CIR and the COC, through the Office of the Solicitor General (OSG), filed their Comment¹³ on April 4, 2018.

The OSG counters that the petition should be dismissed outright for failure to comply with the mandatory requirement of attaching relevant documents to the petition under Section 4, Rule 45 of the Rules of Court. At any rate, the OSG posits that the CTA *En Banc* did not err in denying PAL's claim for a refund because PAL failed to prove by sufficient evidence that its imported liquors, wines, and cigarettes were not locally available in reasonable quantity, quality, or price. Ms. Capinpin's testimony that imported wine and liquors are cheaper than those locally purchased and that there are no local suppliers or dealers big enough to supply the various foreign brands of cigarettes it is importing is self-serving and unsubstantiated. PAL failed to prove that it requested Duty-Free Philippines or other local merchants for the prices of wine. Further, the Table of Comparison does not reflect an exact comparison between the wine and liquors imported by PAL with those provided in the Philippine Wine Merchants Price List, nor does it show that the prices of cigarettes it imported would be lower than those purchased locally.

PAL filed its Reply¹⁴ to the OSG's comment on December 13, 2018, claiming that it attached the material portions of the records in its petition and it sufficiently proved that its imported liquors, wines, and

¹⁰ *Id.* at 49.

¹¹ *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, CTA EB No. 1216, 1217 and 1221 (CTA No. 8184) dated May 27, 2016, citing CTA EB Case Nos. 954 & 1046, October 14, 2014; CTA EB Case Nos. 920 & 922, September 9, 2013 (G.R. Nos. 209353-54, 211733-34, July 6, 2015); CTA EB Case Nos. 1029, 1031 & 1032, April 30, 2014; CTA Case No. 8236, December 18, 2013; *see rollo*, p. 50.

¹² *Rollo*, p. 145.

¹³ *Id.* at 157-182.

¹⁴ *Rollo*, pp. 204-215.

cigarettes were not locally available in reasonable quantity, quality, or price.

RULING

Beforehand, we find that PAL attached to the petition material portions of the records in compliance with Section 4,¹⁵ Rule 45 of the Rules of Court. To be sure, PAL questions the CTA's alleged non-appreciation of the Table of Comparison and the Philippine Wine Merchants Price List as proof that its imported liquors, wines, and cigarettes were not locally available in reasonable quantity, quality, or price, as compared to previous decisions of the CTA on the same evidence. PAL then attached to the petition certified true copies of the assailed decisions and resolutions of the CTA *En Banc*,¹⁶ the Formal Offer of Evidence in CTA Case No. 8130,¹⁷ the Resolution of the CTA Division on the admissibility of some of PAL's exhibits,¹⁸ and the decision of the CTA *En Banc* on a similar case.¹⁹ Verily, the documents attached to the petition are those that are material for the resolution of the issue raised in the petition.

As regards PAL's alleged non-compliance with the conditions set by Section 13 (b)(2) of PD No 1590 for its imported liquors, wines, and cigarettes to be exempt from excise tax, we reiterate that these are factual determinations that are best left to the CTA and cannot be reviewed by this Court under Rule 45.²⁰ This Court is not a trier of facts; it is not its function to review, examine and evaluate or weigh the probative value of the evidence presented.²¹ Further, the CTA is a highly specialized body that reviews tax cases and conducts trials *de novo*. Thus, without any showing that the findings of the CTA are unsupported by substantial evidence, its findings are binding on this Court. This rule, however, admits of exceptions. The findings of fact of the lower court will not bind

¹⁵ SEC. 4. Contents of petition. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a *statement* of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.

¹⁶ *Rollo*, pp. 60-75, 85-92.

¹⁷ *Id.* at 93-108.

¹⁸ *Id.* at 109-110.

¹⁹ *Id.* at 111-127.

²⁰ See *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, 806 Phil. 358, 372 (2017); *Republic v. Philippine Airlines, Inc. (PAL)* (Resolution), 763 Phil. 108, 118 (2015); *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, 742 Phil. 84, 96 (2014).

²¹ *Atlas Consolidated Mining and Dev't Corp. v. Commissioner of Internal Revenue*, 551 Phil. 519, 558 (2007).

this Court in cases where the inference made on the evidence is mistaken or where there is grave abuse of discretion, as in this case.

Section 13 (b)(2) of PD No. 1590 provides for the conditions that must be complied with for the imported commissary and catering supplies to be exempt from excise tax, namely: (1) the supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities; and (2) they are not locally available in reasonable quantity, quality or price.²² It is settled that the imported liquors, wines, and cigarettes were “inflight materials” used in PAL’s transport/flight operations.²³ As regards second condition, jurisprudence instructs what constitutes sufficient evidence to establish that the imported articles are not locally available in reasonable quantity, quality, or price.

In *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,²⁴ PAL presented the affidavit of Mr. Victor Santos (Mr. Santos), stating that importing the subject supplies is much cheaper for PAL than purchasing them locally and various price lists. We affirmed the CTA’s conclusion that the evidence PAL presented satisfactorily proved that the commissary supplies were not locally available in reasonable quantity, quality, or price. The Court similarly affirmed the CTA in *Republic v. Philippine Airlines, Inc.*,²⁵ where PAL presented the following pieces of evidence: (1) Mr. Andy Li’s affidavit stating that importation of the subject articles was cheaper for PAL than if it purchased locally; (2) a tabulation of comparison of the cost of importing the subject articles and the cost of buying them locally; (3) letter that Duty-Free Philippines does not have wines that meet PAL’s price budget and required quality and that the average price difference of the cost of imported wines, liquors, and cigarettes as against the local purchase of said articles is about 63% for all items in favor of importation directly by PAL; (4) invoices issued to PAL for its acquisition of the subject articles; and (5) Price List for 2005 of Duty-Free Philippines corresponding to the same articles subject of the claim for refund.

In the 2017 case of *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,²⁶ PAL submitted Mr. Santos’ testimony together with the Table of Comparison Between Cost of Importing and Cost of Locally Purchasing Commissary and Catering Supplies, Philippine Wine Merchant’s January 11, 2007 Price List, and Monthly PDS rates for the year 2007-2008, 2008-2009, and 2009-2010. The Court affirmed the CTA’s conclusion that PAL made out a *prima facie* case that the cost of importing the alcohol products was indeed reasonably cheaper than

²² *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, 742 Phil. 84, 96 (2014).

²³ CTA EB rollo, pp. 45-47.

²⁴ 742 Phil. 84 (2014).

²⁵ (Resolution), 763 Phil. 108 (2015).

²⁶ 806 Phil. 358 (2017).

purchasing them locally. Likewise, in the 2018 case of *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,²⁷ the Court maintained the CTA's decision that PAL has sufficiently established that the alcohol products it imported on various dates from 2007 to 2010 were not available in reasonable quantity, quality or price in the local market through the following evidence: (1) Ms. Capinpin's affidavits; (2) Tables of Comparison, Comparison of the Cost of Importation of Wine, Liquor and Cigarettes with and without Excise Tax and the Cost of Domestic Purchases of Locally Available Wine, Liquor and Cigarettes Based on Price List Sent by Philippine Wine Merchants; (3) Philippine Wine Merchants' and Future Trade International's Price Lists for various years; (4) Duty-Free Philippines 2009 Retail Prices; (5) Monthly PDS rates for different years; (6) Booking Rates for various years; (7) various *Bangko Sentral ng Pilipinas* Reference Exchange Rate Bulletin; (8) importation documents; and (9) invoices.

In this case, PAL submitted Ms. Capinpin's sworn testimony that importing alcohol products is cheaper than buying them locally, the Philippine Wine Merchants Price List and Table of Comparison to establish the non-availability of imported liquors and wines in reasonable quantity, quality, or price. Following prevailing jurisprudence, we are convinced that PAL sufficiently proved compliance with the second condition for excise tax exemption under Section 13 (b)(2). The CTA committed a severe departure from settled jurisprudence amounting to abuse or improvident exercise of authority when it ruled that the pieces of evidence PAL presented are "inadequate" to show compliance with Section 13 (b)(2).²⁸ While we have generally deferred and respected the tax court's factual findings,²⁹ the Court will not hesitate to reverse its factual findings when there is a showing of gross error or abuse on the part of the CTA.³⁰ Thus, a remand of the case to the CTA to determine the amount of excise taxes paid on importation of liquors and wines that will be refunded to PAL is proper.

We deny, however, PAL's claim for a refund on the excise tax it paid on cigarettes. PAL fell short of proving the non-availability of the imported cigarettes at reasonable quantity, quality, or price. Records show that PAL did not compare the price of imported cigarettes against

²⁷ G.R. No. 238672 (Notice), July 9, 2018.

²⁸ See *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.*, 788 Phil. 385 (2016). In that case, the Court observed that the controversy regarding the characterization of the relationship between route-helpers and Coca-Cola is no longer a novel one. The Court applied the doctrine of *stare decisis* and adopted the ruling made in previous cases that Interserve was a labor-only contractor and that Coca-Cola should be held liable as the real employer of the employees. Similarly, in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, 780 Phil. 623 (2016), the Court upheld Pilipinas Shell's entitlement to a refund of excise taxes under the doctrine of *stare decisis*. The *Pilipinas Shell* rulings apply especially since the facts, issues, and even the parties involved are exactly identical.

²⁹ See *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 212699, March 13, 2019; *Sitel Philippines Corp. v. Commissioner of Internal Revenue*, 805 Phil. 464, 480 (2017).

³⁰ See *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, 529 Phil. 785, 795 (2006); *Commissioner of Internal Revenue v. Mitsubishi Metal Corp.*, 260 Phil. 224, 231 (1990).

the price in the local market and merely assumed that local prices of the same products would be more expensive.³¹ More, the Table of Comparison does not include any local prices for cigarettes.³² Indeed, PAL failed to prove that there are no locally available cigarettes in reasonable quantity, quality, or price to justify importing the items. We reiterate that tax refunds partake the nature of exemption from taxation and must be looked upon with disfavor. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund. In this case, PAL miserably failed to substantiate its claim for refund of erroneously paid excise taxes on imported cigarettes.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The case is **REMANDED** to the Court of Tax Appeals to determine Philippine Airlines, Inc.'s entitlement to a refund of

³¹ CTA Division *rollo*, p. 676. Relevant portion of Ms. Capinpin's Judicial Affidavit reads:

21. Q. How about the local costs of the imported cigarettes involved?

21. A. **I did not put a column regarding the local costs of the imported cigarettes involved because there are no local suppliers of the same brand of imported cigarettes who could regularly supply PAL with the quantity it regularly needs for its commissary supplies for sale in its international flights. Furthermore, if ever there are local suppliers of the said cigarettes, their selling price would definitely be higher than the importation cost of PAL.**

22. Q. Why do you say that if ever there are local suppliers of the cigarettes involved, their selling price would definitely be higher than the importation cost of PAL?

22. A. **Their selling price would definitely be higher because, unlike PAL, the said local suppliers, if they themselves import the cigarettes they are selling, will have to pay excise taxes and customs duties on said cigarettes and add the same to the selling prices of the cigarettes. Similarly, if said suppliers buy the same cigarettes from local manufacturers thereof, if there are any, the excise taxes and other costs incurred by said manufacturer of said cigarettes will be added and passed on to the local supplier, who will in turn add the same to its selling price to PAL.**

On the other hand, because of its franchise, P.D. No. 1590 PAL does not have to pay any excise tax and customs duties on the imported products involved. (Emphases supplied.)

See also TSN, May 7, 2012, pp. 14-17.

Q In your affidavit, you stated that with respect to cigarettes, I quote: their selling price would definitely be higher in your answer to no. 22 of page 4 of your affidavit, am I correct?

A Yes.

Q **You arrived at the conclusion but you did not include a column showing the local price of cigarette available in the Philippines?**

A **Yes, Ma'am because we already have an idea or we have done market research also of how are the prices locally of those imported cigarettes in the local market.**

Q With respect to the period material in the instant case between March 2007 to November 2007, you made that research with respect to the prices of cigarette?

A Yes, Ma'am.

Q But you did not personally or formally obtain data from the local supplier of cigarette in the Philippines, in the same manner that you tried to obtain the prices from the Duty Free Philippines and as well as Philippine Wine Merchant?

A It was only Duty Free Philippines that we visited to look at the prices on the racks to see if their prices are effective versus our prices that we got from our importer.

Q You did not formally ask then in the same manner that you asked Philippine Wine Merchant in a letter which is attached to your Affidavit?

A We did, Ma'am but they ignored the request.

Q Aside from the Duty Free Philippines, you did not try to obtain from other local suppliers with respect to the cigarette?

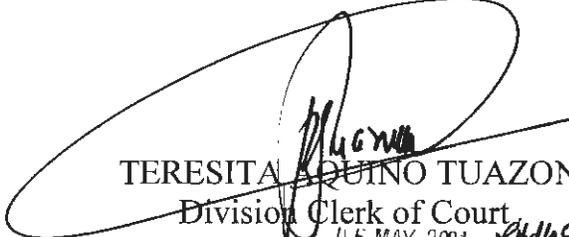
A Yes.

³² See CTA Division *rollo*, p. 676.

excise taxes paid on importation of liquors and wines. The Court of Tax Appeals is directed to dispose of the case with dispatch.

SO ORDERED.”

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court
06 MAY 2021 *Apdo 46*

PAL LEGAL AFFAIRS DEPARTMENT (reg)
Counsel for Petitioner
8th Floor, PNB Financial Center
Pres. Diosdado P. Macapagal Avenue
CCP Complex, 1307 Pasay City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

LITIGATION DIVISION (reg)
Bureau of Internal Revenue, BIR
Room 703, BIR NOB, Agham Road
Diliman, 1101 Quezon City

COMMISSIONER OF CUSTOMS (reg)
Bureau of Customs
Port Area, Manila

COURT OF TAX APPEALS (reg)
National Government Center
Agham Road, 1104 Diliman
Quezon City
CTA EB No. 1299
C.T.A Case No. 8130

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

Please notify the Court of any change in your address.
GR231638. 02/17/2021(196)URES