



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-13-CRM-0739 to 0771**

Plaintiff,

For: Violation of Section 52(g)
In relation to Section 6(b)
of R.A. No. 8291
(GSIS Act of 1997)

Present

- versus -

FERNANDEZ, SJ, J.,

Chairperson

MIRANDA, J. and

ROMEO V. BORJA, SR., ET AL.

VIVERO, J.

Accused.

Promulgated:

MAR 09 2021 

X-----X

RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Motion for Reconsideration (For Accused Yang and Palacio)*,¹ and the prosecution's *Comment/Opposition (Re: Accused Rosita A. Yang and Jorja B. Palacio's Motion for Reconsideration dated 09 February 2021)*.²

In their *Motion for Reconsideration*, accused Rosita A. Yang and Jorja B. Palacio pray that the Court reconsider the Decision dated January 29, 2021, and issue a new one acquitting them of the crime charged. They aver:

1. In rendering its judgment, the Court failed to consider Sec. 41(w) of R.A. No. 8291, which mandates the GSIS to demand payment or settle obligations within thirty (30) days from the date the obligation becomes due. Said provision reads:

¹ Dated February 9, 2021 and filed by electronic mail on February 10, 2021

² Dated February 23, 2021 and filed by electronic mail on even date

RESOLUTION

People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 2 of 12

X-----X

(w) to ensure the collection or recovery of all indebtedness, liabilities and/or accountabilities, including unpaid premiums or contributions in favor of the GSIS arising from any cause or source whatsoever, due from all obligors, whether public or private. The Board shall demand payment or settlement of the obligations referred to herein within thirty (30) days from the date the obligation becomes due, and in the event of failure or refusal of the obligor or debtor to comply with the demand, to initiate or institute the necessary or proper actions or suits, criminal, civil or administrative or otherwise, before the courts, tribunals, commissions, boards, or bodies of proper jurisdiction within thirty (30) days reckoned from the expiry date of the period fixed in the demand within which to pay or settle the account;

2. In *People v. Nasser Manali Imam, et al.*,³ the Sandiganbayan Second Division acquitted therein accused Municipal Mayor for failure of the prosecution to establish compliance with Sec. 41(w) of R.A. No. 8291. Therein Municipal Accountant was also acquitted because under the Local Government Code, the collection and remittance of GSIS contributions are not specifically included in the duties of the Accountant.
3. Herein accused did not violate Sec. 52(g) of R.A. No. 8291 because one of the essential elements of the offense is that there must be a demand made by the GSIS.
 - a. One of the modes of violating said provision is through "delay."
 - b. Art. 1169 of the Civil Code provides that "[t]hose obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. x x x"
 - c. In *SSS v. Moonwalk Development*,⁴ it was held that for penalty to arise, there must be a breach of the obligation either by total or partial non-fulfillment, or that there is non-fulfillment in point of time called *mora* or delay.
 - d. There is no *mora* or delay unless there is a demand.
 - e. The prosecution failed to show that the GSIS judicially or extrajudicially demanded payment from them. There is evidence to show that the LGU of Pantabangan, at the instance of Mayor Borja, worked with the GSIS to reconcile the records and to come to an agreement on the exact amounts to be paid by said LGU.

³ SB-16-CRM-0667 to 0684, January 24, 2020

⁴ G.R. No. 73345, April 7, 1993



RESOLUTION

People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 3 of 12

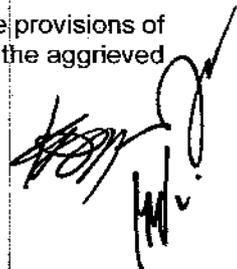
x-----x

4. In the recent case of *People v. Talaue*, the Supreme Court affirmed the decision of the Sandiganbayan Second Division finding therein accused Talaue guilty beyond reasonable doubt of violation of Sec. 52(g) of R.A. No. 8291. There, it was found that said accused failed to take drastic measures to rectify the non-remittance of GSIS Premiums and demand accountability despite the pendency of a civil case filed by the GSIS against him.
5. In contrast, the GSIS made no demand for payment from herein accused. The prosecution only presented the letters sent by Mr. Gerardo O. Sator. The prosecution did not even show accused Yang's actual receipt of said letters.
6. The alleged delay or non-remittance of GSIS premiums was not done intentionally.
 - a. In *Talaue*, the Supreme Court held that although the violation of the GSIS Law is *malum prohibitum*, it must nevertheless be shown that there was an intent to perpetrate the act.
 - b. They performed their respective duties and responsibilities as Accountant and Treasurer of the Municipality of Pantabangan, Nueva Ecija.
 - c. The prosecution's witnesses testified that the Municipal Treasurer and Accountant prepared all the necessary documents and checks for the remittance of GSIS premiums, and that the same were duly transmitted to the Office of the Mayor. However, the Mayor refused to sign the checks.
 - d. The non-remittance of said premiums was solely caused by Mayor Borja's refusal to sign the checks.

In its *Comment/Opposition*, the prosecution counters:

1. The demand required under Sec. 41(w) of R.A. No. 8291 applies only to actions commenced by the GSIS, and not to criminal actions instituted by an aggrieved member thereof.
 - a. Sec. 52(k) of R.A. No. 8291 provides that criminal actions arising from violations of the provisions of said Act may be commenced either by the GSIS or by any aggrieved member thereof. To wit:

(k) Criminal actions arising from violations of the provisions of this Act may be commenced by the GSIS or by the aggrieved



RESOLUTION

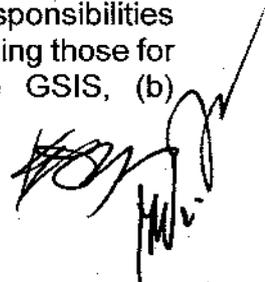
People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 4 of 12

X-----X

member, either under this Act or, in appropriate cases, under the Revised Penal Code.

- b. Sec. 41(w) of R.A. No. 8291 applies to actions initiated or instituted by the GSIS. There is no similar requirement of a demand for payment or settlement of obligations before an aggrieved member of the GSIS could institute an action arising from a violation of the provisions of R.A. No. 8291. Had the legislature intended otherwise, it would have been expressly provided in the law.
 - c. Subscribing to accused Yang and Palacio's contention would leave aggrieved members of the GSIS without recourse, and place them at the mercy of the Board. It would render Sec. 52(k) of R.A. No. 8291 nugatory with respect to the redress available to an aggrieved member of the GSIS.
2. Assuming that demand is also required from an aggrieved member of the GSIS, such requirement had been complied with because Mr. Sator, in fact, demanded accused Yang and Palacio to remit his GSIS premium contributions.
 3. Accused Yang and Palacio were charged and convicted for their failure to remit to the GSIS the premium contributions of Mr. Sator within the time prescribed, and not merely for the delay in remitting the same.
 4. The ruling in *People v. Nasser Imam, et al.* does not squarely apply in the present cases.
 - a. In that case, it was not shown that Mayor Imam was aware of the municipality's outstanding obligations with the GSIS. The COA-ARMM did not require Mayor Imam to explain the unpaid remittances to the GSIS, while the private complainant's letter seeking an explanation for the unpaid remittances was addressed only to the Municipal Accountant and Treasurer.
 - b. Here, Mr. Sator's letters were addressed to accused Yang and Palacio. They cannot feign ignorance of the unpaid GSIS premium contributions.
 5. The Municipal Accountant is involved in the collection of GSIS premium contributions.
 - a. The Court aptly found that under R.A. No. 7160, the Municipal Accountant's duties and responsibilities include (a) processing disbursements, including those for the payrolls and for remittances to the GSIS, (b)



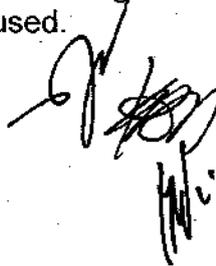
RESOLUTION

People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 5 of 12

x-----x

- reviewing supporting documents before the preparation of vouchers to determine the completeness thereof, and (c) maintaining individual ledgers pertaining to payrolls and deductions for officials and employees of the local government unit.
- b. The *Flow Chart on Payroll Preparation of Sangguniang Bayan Office, Flow Chart on Preparation and Payment of Remittances for Sangguniang Bayan Office, and Steps in Deducting and Remitting GSIS Premiums* show that the Municipal Accountant is responsible for (a) the preparation of payrolls, wherein the mandatory deductions, including those for the GSIS, are indicated; and (b) the issuance of the corresponding disbursement vouchers and certifying therein the completeness of the supporting documents.
6. Accused Yang and Palacio's failure to duly perform their duties and responsibilities in the remittance of Mr. Sator's premium contributions, coupled with their failure to remit the same despite notice, clearly shows their intent to perpetrate the act prohibited and punished under Sec. 52(g) of R.A. No. 8291.
- a. There is no evidence to show that accused Yang and Palacio performed their responsibilities in the remittance of Mr. Sator's GSIS premium contributions.
- b. Prosecution witnesses Barcelo and Gonzales did not categorically testify that accused Yang and Palacio performed their duties relative to the remittance of Mr. Sator's GSIS premium contributions.
- c. The non-remittance of GSIS premium contributions is *malum prohibitum*. It is the commission of the act as defined by law, not the character or effect thereof, that determines whether or not the provisions have been violated. Criminal intent is immaterial. It is enough that the prohibited act was done freely and consciously.
- d. When Mr. Sator raised the matter of non-remittance of his GSIS premium contributions in his letter dated August 13, 2009 to accused Palacio, the latter merely pointed to the Office of the Municipal Accountant headed by accused Yang. Accused Yang, in turn, shifted the responsibility back to accused Palacio's office. Even after Mr. Sator endorsed the GSIS letter dated October 13, 2009 to accused Yang and Palacio, no action was taken by said accused.



RESOLUTION

People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 6 of 12

X-----X

7. There is no evidence to show that accused Yang and Palacio timely prepared the necessary documents for the remittance of the GSIS premiums, and that the non-remittance thereof was caused solely by accused Borja's failure to sign the checks.
8. There is no evidence showing that there was an on-going negotiation between the LGU of Pantabangan and the GSIS during Mr. Sator's tenure.
9. The subsequent remittance of Mr. Sator's GSIS premium does not exculpate accused Yang and Palacio from criminal liability, considering that such remittance was made long after they became due and demandable.
10. The Court did not err in finding accused Yang and Palacio guilty beyond reasonable doubt of Violation of Sec. 52(g) of R.A. No. 8291 after the prosecution established all elements thereof.

THE COURT'S RULING

The Court resolves to deny the *Motion for Reconsideration* of accused Yang and Palacio.

Demand is not an essential element of Violation of Sec. 52(g) of Republic Act No. 8291 (R.A. No. 8291).

There is no ambiguity in Sec. 52(g) of R.A. No. 8291, even when read together with Sec. 41(w) of the same law. Sec. 52(g) provides:

(g) The heads of the offices of the national government, its political subdivisions, branches, agencies and instrumentalities, including government-owned or controlled corporations and government financial institutions, and the personnel of such offices who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS who shall fail, refuse or delay the payment, turnover, remittance or delivery of such accounts to the GSIS within thirty (30) days from the time that the same shall have been due and demandable shall, upon conviction by final judgment, suffer the penalties of imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than Ten thousand pesos (P10,000.00) nor more than Twenty thousand pesos (P20,000.00), and in addition shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government.



RESOLUTION

People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 7 of 12

X-----X

(underscoring supplied)

The aforequoted provision is violated when the concerned public officers fail, refuse or delay the payment, turnover, remittance or delivery of the accounts due the GSIS within the prescribed period, *i.e.*, thirty (30) days from the time said accounts due the GSIS shall have been due and demandable.

In *People v. Talaue*,⁵ cited by accused Yang and Palacio, the Supreme Court defined the terms "failure," "refusal," and "delay" as contemplated in Sec. 52(g) of R.A. No. 8291. To wit:

What the law punishes is *failure, refusal, or delay* without lawful or justifiable cause in remitting or paying the required contributions or accounts. Black's Law Dictionary defines *failure* as deficiency, lack, or want. It is an omission of an expected action, occurrence or performance. *Refusal*, on the other hand, is the denial or rejection of something offered or demanded. *Delay* is defined as the act of postponing or slowing.

As seen in the aforecited ruling, the word "delay" must be used in its plain and ordinary meaning. It is not the "delay" contemplated in Art. 1169 of the Civil Code, contrary to accused Yang and Palacio's claim.

The thirty (30) day period in Sec. 52(g) starts from the time the accounts due the GSIS shall have been "due and demandable." Sec. 6(b) of R.A. No. 8291 provides for when the employees' and employers' contributions must be remitted to the GSIS. To wit:

(b) Each employer shall remit directly to the GSIS the employees' and employers' contributions within the first ten (10) days of the calendar month following the month to which the contributions apply. The remittance by the employer of the contributions to the GSIS shall take priority over and above the payment of any and all obligations, except salaries and wages of its employees.

(underscoring supplied)

Under Sec. 6(b), the employer must remit said contributions to the GSIS within the first ten (10) days of the calendar month following the month to which the contributions apply. This means that the

⁵ G.R. No. 248652, January 12, 2021

RESOLUTION

People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 8 of 12

x -----x

employer must remit the contributions on the tenth (10th) day, but the employer may also choose to remit the same earlier, or from the first (1st) to the ninth (9th) day. The tenth (10th) day is when the remittance of the contributions "shall have been due."

On the other hand, Sec. 41(w) of R.A. No. 8291, on the powers and functions of the GSIS, provides:

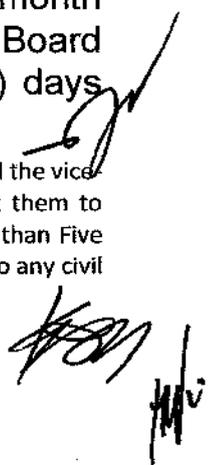
(w) to ensure the collection or recovery of all indebtedness, liabilities and/or accountabilities, including unpaid premiums or contributions in favor of the GSIS arising from any cause or source whatsoever, due from all obligors, whether public or private. The Board shall demand payment or settlement of obligations referred to herein within thirty (30) days from the date the obligation becomes due, and in the event of failure or refusal of the obligor or debtor to comply with the demand, to initiate or institute the necessary or proper actions or suits, criminal, civil or administrative or otherwise, before the courts, tribunals, commissions, boards, or bodies of proper jurisdiction within thirty (30) days reckoned from the expiry date of the period fixed in the demand within which to pay or settle the account;

(underscoring supplied)

Sec. 41(w) mandates the Board to make an actual demand for payment or settlement of obligations within thirty (30) days from the date the obligation becomes due, and thereafter, to initiate or institute the necessary or proper action for the obligor's failure or refusal to comply with such demand. As can be gleaned from the provision, such powers and functions were granted and imposed upon the Board "to ensure the collection or recovery of all indebtedness, liabilities and/or accountabilities, including unpaid premiums or contributions in favor of the GSIS." In fact, Sec. 52(j)⁶ of R.A. No. 8291 penalizes the members of the GSIS Board for failure to comply with Sec. 41(w) of R.A. No. 8291. Clearly, the exercise of such powers and functions is not intended to be an element of Violation of Sec. 52(g) of R.A. No. 8291.

More, as previously discussed, the employees' and employers' contributions become due on the tenth (10th) day of the calendar month following the month to which the contributions apply. Thus, the Board must demand payment or settlement of obligations thirty (30) days

⁶ Sec. 52. Penalty. - x x x (j) Failure of the Members of the GSIS Board, including the chairman and the vice-chairman, to comply with the provisions of paragraph (w) of Section 41 hereof, shall subject them to imprisonment of not less than six (6) months nor more than one (1) year or a fine of not less than Five thousand pesos (P5,000.00) nor more than Ten thousand pesos (P10,000.00) without prejudice to any civil or administrative liability which may also arise therefrom.



RESOLUTION

People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 9 of 12

X-----X

from said date. However, the Board may choose to make such demand earlier, or on the date the contributions became due, until the twenty-ninth (29th) day. Since the Board may make such demand as early as the date when such contributions have become due, then the contributions are "demandable" on the date said contributions became "due."

Reading the foregoing provisions together, the employees' and employers' contributions are due and demandable on the tenth (10th) day of the calendar month following the month to which the contributions apply, and must be remitted directly to the GSIS on or before said date. In case of non-payment, Sec. 41(w) mandates the Board to demand the concerned public officers to remit such contributions within thirty (30) days from the date they became due, and if said concerned public officers still fail or refuse to pay, turnover, remit or deliver such contributions after the demand, the Board shall initiate the necessary action against them within thirty (30) days from the expiry date of the period fixed in such demand. However, regardless of any demand or action taken by the Board, the concerned public officers who fail, refuse or delay the payment, turnover, remittance or delivery of such contributions after the thirtieth (30th) day from the time said contributions shall have been due and demandable, without providing any lawful or justifiable cause for such failure, refusal or delay, shall have violated Sec. 52(g) of R.A. No. 8291.

There is nothing in the aforesaid provisions that would support accused Yang and Palacio's contention that actual demand from the GSIS is an essential element of the offense.

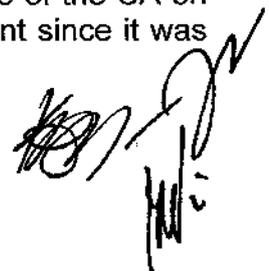
The Decision of the Sandiganbayan (Second Division) in People v. Nasser Manali Imam, et al.⁷ does not bind this Court.

Said Decision of the Sandiganbayan (Second Division) cannot bind this Court because only the decisions of the Supreme Court become binding precedents. In *United Coconut Planters Bank v. Spouses Uy*,⁸ the Supreme Court held:

As above-mentioned, respondents bewail the reliance of the CA on *O'Halloran* arguing that it was not a binding precedent since it was

⁷ SB-16-CRM-0667 to 0684, January 24, 2020

⁸ G.R. No. 204039, January 10, 2018



RESOLUTION

People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 10 of 12

X-----X

not issued by this Court. In *De Mesa v. Pepsi-Cola Products Phils. Inc.*, the Court explained that the doctrine of *stare decisis* deems decisions of this Court binding on the lower courts, to wit:

The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:

X X X X

It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.

In other words, the doctrine of *stare decisis* becomes operative only when judicial precedents are set by pronouncement of this Court to the exclusion of lower courts. It is true regardless whether the decision of the lower courts are logically or legally sound as only decisions issued by this Court become part of the legal system. At the most, decisions of lower courts only have a persuasive effect. Thus, respondents are correct in contesting the application of the doctrine of *stare decisis* when the CA relied on decisions it had issued.

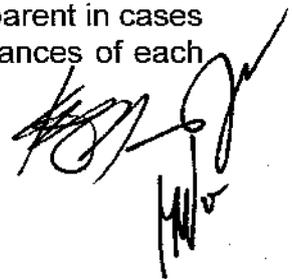
The prosecution proved accused Yang and Palacio's guilt of Violation of Sec. 52(g) of R.A. No. 8291 beyond reasonable doubt.

In *Matalam v. People*,⁹ the Supreme Court held that the gravamen of Violation of Sec. 52(g) of R.A. No. 8291 is the failure, refusal, or delay without lawful or justifiable cause in remitting or paying the required contributions or accounts. Such non-remittance of GSIS premiums is *malum prohibitum*.

In *Talaue*, it was held that violation of Sec. 52(g) being *malum prohibitum*, proof of criminal intent is not necessary. It is enough to show that the prohibited act was done freely and consciously. In cases of *failure*, such intent must be determined from the circumstances peculiar to each case. *Viz.:*

While intent to perpetrate the act may be more easily discernible in cases of *refusal* or *delay*, considering that these usually involve a positive act, such intention is not readily apparent in cases of *failure* and must be determined from the circumstances of each

⁹ G.R. Nos. 221849-50, April 4, 2016



RESOLUTION

People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 11 of 12

X-----X

case, for the intent to fail cannot be immediately inferred from the mere occurrence of a failure to remit or pay.

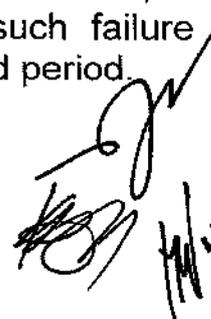
In their *Motion for Reconsideration*, accused Yang and Palacio insist that they performed their responsibilities as Municipal Accountant and Treasurer, respectively, and that the failure to remit Mr. Sator's premium contributions to the GSIS was caused solely by accused Borja's refusal to sign the checks. This is a mere reiteration or rehash of their previous arguments. In *Mendoza-Ong v. Sandiganbayan*,¹⁰ it was held:

Concerning the first ground abovesited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.

This Court already considered accused Yang and Palacio's arguments in the assailed Decision, and found them to be without merit. It already discussed at length how it arrived at the conclusion that accused Yang and Palacio, the heads of offices responsible for the collection and remittance of premium contributions to the GSIS, failed to remit such premium contributions within the prescribed period. It is unnecessary to discuss the same anew.

To summarize the discussion in the assailed Decision, the prosecution proved that accused Yang and Palacio were the Municipal Accountant and Treasurer, respectively; and that the offices they headed were responsible for collecting and remitting the premium contributions to the GSIS. During the period material to these cases, the Municipality of Pantabangan, Nueva Ecija failed to remit the employees' premium contributions to the GSIS, and accused Yang and Palacio fully knew about such failure. They argued that they had no participation in such failure, claiming that they faithfully performed their official functions, and that it was accused Borja who was solely at fault. However, accused Yang and Palacio failed to present convincing evidence to support their bare assertions, or to otherwise show any lawful or justifiable cause for such failure to remit the premium contributions within the prescribed period.

¹⁰ G.R. Nos. 146368-69, October 18, 2004



RESOLUTION

People vs. Borja, et al.
SB-13-CRM-0739 to 0771

Page 12 of 12

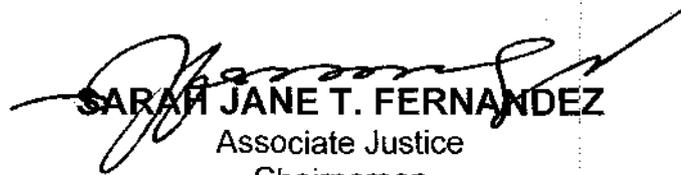
X-----X

To be sure, Mr. Sator's premium contributions were eventually remitted to the GSIS on July 4, 2014,¹¹ but as this Court found in the assailed Decision, said remittance was made way beyond the thirty (30)-day period provided in Sec. 52(g) of R.A. No. 8291.¹² By then, the offense was already consummated.

In fine, accused Yang and Palacio failed to convince this Court that the reversal of the assailed Decision is warranted.

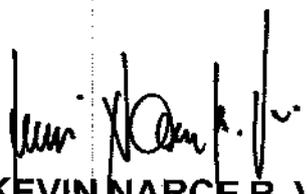
WHEREFORE, the *Motion for Reconsideration* of accused Yang and Palacio is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹¹ Exhibit Y shows only the date of payment of the amounts pertaining to the personal share and government share. There is nothing in the evidence on record that would show the corresponding surcharges and interests.

¹² Decision dated January 29, 2021, p. 41