REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

CARMEN COPPER CORPORATION, Petitioner,	**CTA EB No. 1651** (CTA Case No. 8873)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** OCT 19 2018 3:10 p.m.

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DECISION

UY, *J.*:

The instant *Petition for Review*[1] filed on May 11, 2017 by Carmen Copper Corporation against the Commissioner of Internal Revenue, seeks to set aside the Decision dated December 16, 2016[2] and the Resolution dated April 20, 2017[3], promulgated by the Second Division and Special Second Division of this Court (Court in Division), respectively, in CTA Case No. 8873, entitled *"Carmen Copper Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read as follows:

Decision dated December 16, 2016:

"**WHEREFORE,** premises considered, the instant

[1] EB Docket, pp. 1 to 13.
[2] EB Docket, pp. 15 to 35.
[3] EB Docket, pp. 37 to 42.

Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED."

Resolution dated April 20, 2017:

"**WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner Carmen Copper Corporation is a corporation duly organized and existing under the laws of the Philippines with Securities and Exchange Commission (SEC) Registration No. CS200414509, and with office address at the 9th Floor, Quad Alpha Centrum Building, 125 Pioneer Street, Mandaluyong City. It is engaged in the business of mining ores and other mineral resources, and is also a duly registered value-added tax (VAT) enterprise with Certificate of Registration No. 8RC0000048993 dated April 4, 2014. Petitioner is likewise registered with the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1997, as a new producer of copper concentrate with non-pioneer status.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of the said office, including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for taxable year 2011 on the following dates:

Quarter (Taxable Year [TY] 2011)	Date of Filing of Original Return	Date of Filing of Amended Return
First	May 4, 2011	April 20, 2012
Second	July 25, 2011	May 3, 2012
Third	October 25, 2011	May 4, 2012
Fourth	January 25, 2012	May 7, 2012

Thereafter, petitioner filed with the BIR Large Taxpayers Service – Excise Tax Division administrative claims for refund of its excess and unutilized input VAT payments for the first to fourth quarters of TY 2011, as follows:

Period (TY 2011)	**Date of Filing of Administrative Claim for Refund**	**Amount of Claim**
First Quarter	November 19, 2012	₱ 43,195,247.76
Second Quarter	December 5, 2012	₱ 51,958,347.12
Third Quarter	December 13, 2012	₱ 42,784,743.40
Fourth Quarter	December 13, 2012	₱ 49,408,165.66
	Total	**₱187,346,503.94**

On May 23, 2013, petitioner received the letter dated April 1, 2013 from respondent partially denying its claim for refund of its VAT payments for TY 2011. In the said letter, respondent, through OIC-Assistant Commissioner of BIR Large Taxpayers Service Alfredo V. Misajon, informed petitioner that only the amount of ₱114,709,091.64 was recommended for the issuance of tax credit certificate, computed as follows:

Unutilized input tax per VAT return		₱191,048,446.00
Less input tax applied to output tax		(3,701,942.02)
Claim for TCC		187,346,503.98
Less disallowed input tax		
-Non-compliance with invoicing requirements	₱ 1,836,165.30	
-No supporting documents	128,698.60	
-Current portion of amortized/deferred input tax on Capital Goods	70,673,548.44	72,637,412.34
Net allowable for Tax Credit Certificate		**₱114,709,091.64**

In view of the partial denial of its administrative claims for refund, petitioner filed a letter-request with the BIR Large Taxpayers Service on May 30, 2013, requesting for reconsideration of the disallowance of the input VAT amounting to ₱72,637,412.34.

On July 18, 2014, respondent issued a letter denying petitioner's letter-request for reconsideration for lack of legal basis.

Petitioner then filed a *Petition for Review* before the Court in Division on August 18, 2014 docketed as CTA Case No. 8873.

In his *Answer* filed on September 11, 2014 in CTA Case No. 8873, respondent raised certain Special and Affirmative Defenses.

After the pre-trial conference held on October 23, 2014 in said case, the parties filed their *Joint Stipulation of Facts and Issues* on November 12, 2014. The Court in Division subsequently issued the Pre-Trial Order on November 17, 2014, which terminated the pre-trial.

On December 1, 2014, upon motion of petitioner, the Court in Division commissioned Joseph Cedric V. Calica, as the Independent Certified Public Accountant (ICPA) for CTA Case No. 8873.

In support of its claim, petitioner presented the following witnesses: Jesus Caparida, petitioner's Comptroller; Joseph Cedric V. Calica, the Court-commissioned ICPA; and Adrian Paulino S. Ramos, petitioner's Executive Vice President. Thereafter, petitioner filed its *Formal Offer of Evidence* on March 16, 2015.

In the Resolution dated June 24, 2015, the Court in Division admitted petitioner's Exhibits, with the exception of those denied for: 1) failure of the actual exhibits to correspond to the description in the *Formal Offer of Evidence*; and 2) for not being found in the records.

Petitioner filed a *Motion for Reconsideration (Re: Resolution dated 24 June 2015)* on July 14, 2015, requesting the admission of Exhibits "P-61-1" to "P-61-10" with sub-markings and "P-75."

On the other hand, respondent filed a *Request for Admission* on July 20, 2015, requesting petitioner to admit, by sworn statement, the receipt on August 13, 2014 of the attached letter of the BIR denying its motion for reconsideration of the disallowed portion of its claim for refund.

In the Resolution dated September 28, 2015, the Court in Division granted petitioner's *Motion for Reconsideration* and admitted Exhibits "P-61-1" to "P-61-10" with sub-markings and "P-75". In the same Resolution, the Court in Division denied respondent's *Request for Admission*.

During the hearing on November 16, 2015, counsel for respondent manifested that she has no witness to present. Thus, the parties were ordered to file their memoranda.

Respondent filed his *Memorandum* on December 7, 2015; while petitioner filed its *Memorandum* on January 15, 2016. CTA Case No. 8873 was submitted for decision in the Resolution dated January 21, 2016.

In the assailed Decision dated December 16, 2016, the Court in Division dismissed the *Petition for Review* in CTA Case No. 8873 for lack of jurisdiction.[4]

Aggrieved, petitioner filed its *Motion for Reconsideration* on January 6, 2017,[5] to which respondent filed his *Comment/Opposition (Re: Motion for Reconsideration)* filed on February 1, 2017.[6] In the assailed Resolution dated April 20, 2017,[7] the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

Undaunted, petitioner filed the instant *Petition for Review* on May 11, 2017[8] docketed as CTA EB 1651.

As directed by the Court *En Banc* in the Resolution dated June 2, 2017,[9] respondent filed his *Comment (Re: Petition for Review)* on June 21, 2017.[10]

In the Resolution dated July 7, 2017,[11] the parties were ordered to submit their respective memorandum within a period of thirty (30) days from receipt thereof. Pursuant thereto, respondent filed his *Memorandum* on August 31, 2017,[12] while petitioner filed its *Memorandum* on September 19, 2017.[13]

Thereafter, the instant case was deemed submitted for decision on October 25, 2017.[14]

Hence, this Decision.

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[4] EB Docket, pp. 15 to 35; Division Docket (CTA Case No. 8873) – Vol. II, pp. 947 to 966.
[5] Division Docket (CTA Case No. 8873) – Vol. II, pp. 967 to 972.
[6] Division Docket (CTA Case No. 8873) – Vol. II, pp. 977 to 981.
[7] EB Docket, pp. 37 to 42; Division Docket (CTA Case No. 8873) – Vol. II, pp. 984 to 989.
[8] EB Docket, pp. 1 to 13.
[9] EB Docket, pp. 45 to 46.
[10] EB Docket, pp. 47 to 49.
[11] EB Docket, pp. 52 to 53.
[12] EB Docket, pp. 63 to 68.
[13] EB Docket, pp. 71 to 82.
[14] Resolution dated October 25, 2017, EB Docket, pp. 86 to 87.

THE ISSUE

Petitioner raises the following issue for resolution, to wit:

> "WHETHER OR NOT THE COURT IN DIVISION HAS JURISDICTION TO ACT ON PETITIONER'S JUDICIAL CLAIM FOR REFUND IN CTA CASE NO. 8873."

In determining said issue, the Court *En Banc* shall look into the following sub-issue:

> "WHETHER OR NOT PETITIONER TIMELY FILED ITS JUDICIAL CLAIM WITH THIS HONORABLE COURT IN ACCORDANCE WITH SECTION 112(C) OF THE TAX CODE."[15]

Petitioner's arguments:

Petitioner contends that it had thirty (30) days from the denial of its request for reconsideration to file its judicial claim.

Allegedly, Section 112(C) of the Tax Code specifically provides that petitioner has a period of thirty (30) days from the decision of respondent within which to file its judicial claim with the Court in Division.

According to petitioner, it filed with the BIR Large Taxpayers Service on May 30, 2013 its request for reconsideration, which was subsequently denied on July 18, 2014. Petitioner submits that it is this decision of respondent, acting through Nestor S. Valeroso, OIC – Assistant Commissioner, that is appealable to the Court in Division, pursuant to the doctrine on exhaustion of administrative remedies. The thirty (30) day period in Section 112 (C) of the Tax Code must therefore be reckoned from the receipt of said decision of respondent.

Under the doctrine of exhaustion of administrative remedies, administrative agencies must be allowed to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. Guided by this principle, it filed its *Request* with respondent owing to their familiarity with the

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[15] Petitioner's *Memorandum*, EB Docket, p. 76.

administrative claim, and the fact that respondent already had custody of the various documentary requirements previously submitted by petitioner.

Allegedly, the *Request* filed with respondent, acting through Nestor S. Valeroso, OIC – Assistant Commissioner, was necessary because under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he should have availed himself of all the means of administrative processes afforded him. Hence, if a resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.

In the case at bar, the *Request* was filed with respondent's alter-ego, Nestor S. Valeroso, OIC – Assistant Commissioner, who had the delegated power to decide refunds of internal revenue taxes, for the purpose of deciding on the reconsideration sought by the petitioner on the portion of the administrative claim that was partially denied.

Moreover, according to petitioner, it raised new matters to respondent in support of its *Request* and in relation to the appeal of the partial denial of its administrative claim. In its *Request*, petitioner argued that respondent's partial denial of its administrative claim for refund representing the current portion of amortized/deferred input VAT on capital goods is erroneous.

Allegedly, respondent must first be allowed to resolve relevant matters coming within his jurisdiction, pursuant to the doctrine of administrative remedies. Otherwise, the alternative would be to effectively require the petitioner to immediately appeal its partial denial to the Court in Division in a trial *de novo* without allowing respondent a chance to discharge its responsibilities within the specialized areas of their respective competence.

In fact, respondent took cognizance of the *Request* and even ruled on the new issues raised by petitioner in relation to the partial denial of its administrative claim. Thus, petitioner points out that it would be contrary to the sound administration of the laws and inconsistent with the elementary principles of right dealing and good faith if its judicial claim is dismissed only because both parties complied with the doctrine of exhaustion of administrative remedies with respect to the resolution of the *Request*.

The necessity for exhausting all administrative remedies allegedly demands that a motion for reconsideration should first be filed, before resort to the courts is made. This gives the administrative officer every opportunity to decide on a matter that comes within his jurisdiction.

Given the foregoing, petitioner submits that it timely filed its judicial claim for refund on August 18, 2014 with this Court, which is well within the thirty (30) days from July 21, 2014 or the date of petitioner's receipt of the decision denying its administrative claim, in accordance with Section 112 (C) of the Tax Code.

Respondent's counter-arguments:

In his Comment filed on June 21, 2017, respondent points out that the Petition for Review should have been dismissed outright for lack of the requisite affidavit of service, pursuant to Section 13, Rule 13 of the 1997 Rules on Civil Procedure.

In his Memorandum filed on August 31, 2017, respondent counter-argues that petitioner's contention that the instant petition for review was filed on time within thirty (30) days from denial of its administrative claim is untenable. Allegedly, on May 23, 2013, petitioner received the letter dated April 1, 2013 from respondent, partially denying its administrative claim for refund. However, it was only on August 18, 2014 when petitioner filed its judicial claim before the Court in Division.

As categorically ruled by the Second Division in its Decision, counting 30 days from April 1, 2013 within which to appeal the partial denial of its administrative claim before the Court of Tax Appeals. Since June 22, 2013 fell on a Saturday, petitioner had until June 24, 2013, the next working day, within which to file its judicial claim.

However, instead of filing its judicial claim with this Court, petitioner opted to file a letter-request with the BIR Large Taxpayers Service on May 30, 2013, requesting reconsideration of the disallowance of the input VAT amounting to P72,637,412.34.

Allegedly, petitioner only filed the present Petition for Review on August 18, 2014, after it received a letter from respondent on July 18, 2014, denying his letter-request for reconsideration for lack of legal basis. Thus, petitioner's judicial claim was belatedly filed as it was filed 242 days after the lapse of the 30-day period to appeal.

Moreover, respondent stresses that tax refunds are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

At the outset, this Court would like to address respondent's argument that the instant Petition for Review should be dismissed due to petitioner's failure to file an Affidavit of Service.

A perusal of the records in this case show that in addition to Registry Receipt No. RD 755 957 722 ZZ,[16] an Affidavit of Service dated May 11, 2017,[17] executed by Teofilo L. Salido, Jr., was attached to the subject Petition for Review. Thus, this Court finds that petitioner has sufficiently complied with Section 13, Rule 13 of the 1997 Rules on Civil Procedure.

Anent the determination of whether or not petitioner's judicial claim was timely filed before the Court in Division, reference must be made to Section 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which governs the filing of administrative and judicial claims for refund or tax credit of excess and unutilized input tax attributable to zero-rated or effectively zero-rated sales. The said provision reads:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — 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

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[16] EB Docket, p. 9.
[17] EB Docket, p. 43.

> 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 of 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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (C) *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 Subsection (A) hereof.
>
> 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."

Based on the foregoing provision, an administrative claim for refund must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Thereafter, the taxpayer is given a 30-day period, either from the receipt of the adverse decision of respondent or from the lapse of the 120-day period for respondent to act on the claim,

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within which to file its judicial claim, through a *Petition for Review* with this Court in Division.

In this case, petitioner's claim includes the four quarters of taxable year 2011, which closed on March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011, respectively.

Applying Section 112(A) of the NIRC of 1997, as amended, petitioner had two (2) years from the said dates or until March 31, 2013, June 30, 2013, September 30, 2013 and December 31, 2013, respectively, within which to file its administrative claim for tax refund or tax credit for the quarter concerned. Thus, as correctly found by the Court in Division, the filing of the administrative claims for refund for the four (4) quarters of TY 2011, are well within the respective two-year prescriptive period, as shown below:

Quarter (TY 2011)	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim
First	March 31, 2011	March 31, 2013	November 19, 2012
Second	June 30, 2011	June 30, 2013	December 5, 2012
Third	September 30, 2011	September 30, 2013	December 13, 2012
Fourth	December 31, 2011	December 31, 2013	December 13, 2012

Anent petitioner's judicial claim, however, this Court finds that it was not filed within the reglementary period prescribed by Section 112(C) of the NIRC of 1997, as amended. The said provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for respondent to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with this Court.[18]

It bears stressing that the 120+30-day prescriptive periods are both *jurisdictional* and *mandatory*. In fact, it was emphasized in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*,[19] that strict compliance with the 120+30-day periods is necessary for a claim for refund or tax credit to prosper, to wit:

> "To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the

[18] *ROHM Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[19] G.R. No. 187485, 196113, 197156, February 12, 2013.

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taxpayer. **One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30-day mandatory and jurisdictional periods. Thus, <u>strict compliance with the 120+30-day periods is necessary for such a claim to prosper</u>**, whether before, during or after the effectivity of the Atlas doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30-day periods as mandatory and jurisdictional." *(Emphases and underscoring supplied.)*

Based on the foregoing, it is clear that for a claim for tax refund of input VAT to prosper, the 120+30-day periods should have been strictly complied with.

In this case, the determination of the 120+30-day periods are shown as follows:

Quarter (TY 2011)	Date of Filing of Administrative Claim	End of the 120-day period	End of the 30-day period
First	November 19, 2012	March 19, 2013	April 18, 2013
Second	December 5, 2012	April 4, 2013	May 4, 2013
Third	December 13, 2012	April 12, 2013	May 12, 2013
Fourth	December 13, 2012	April 12, 2013	May 12, 2013

A review of the records of this case, however, shows that petitioner's *Petition for Review* in CTA Case No. 8873 covering the said four (4) quarters of TY 2011 was filed only on **<u>August 18, 2014</u>**.[20] Correspondingly, petitioner's judicial claim was **<u>not</u>** timely filed.

The issuance of respondent's letter dated April 1, 2013, which was received by petitioner only on May 23, 2013,[21] and the subsequent denial of petitioner's request for reconsideration of the said letter as embodied in the letter dated July 18, 2014,[22] are of no moment. This is so because the 30-day period cannot be reckoned from any of the said dates.

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[20] Docket (CTA Case No. 8837) – Vol. I, pp. 6 to 21.
[21] Exhibit "P-29".
[22] Exhibit "P-31".

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,*[23] the Supreme Court said:

> "**The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, <u>whichever is sooner</u>.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law,[24] **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.**" *(Emphases and underscoring supplied)*

Based on the foregoing, the 30-day period provided by law can only be reckoned from receipt of respondent's decision/ruling or after the expiration of the 120-day period, **<u>whichever is sooner</u>**. Furthermore, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day period is outside the jurisdiction of this Court.

As already intimated herein, the expiration of the 120-day period in this case, came sooner than the date of receipt of respondent's decision/ruling. Thus, the 30-day period should have been reckoned from the expiration of the said 120-day period, not on any other date. Since the filing of petitioner's judicial claim was filed beyond the 120+30-day period, the same is outside the jurisdiction of the Court in Division.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated December 16, 2016 and the Resolution dated April 20, 2017 rendered by the Court in Division in CTA Case No. 8873 are hereby **AFFIRMED**.

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[23] G.R. No. 182737, March 2, 2016.

[24] In *CIR vs. San Roque Power Corporation, etseq.* (G.R. Nos. 187485, 196113 & 197156, February 12, 2013, the Supreme Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal in *CIR vs. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823) on October 6, 2010 need not wait for the lapse of the 120+30-day period.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen S.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice