REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner, **- versus -** **PHILEX MINING CORPORATION,** Respondent.	**CTA EB No. 1457** (CTA Case Nos. 8753 and 8762) ***Present:*** **DEL ROSARIO,** P.J., **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** and **MANAHAN,** JJ. ***Promulgated:*** JUN 07 2017 3:59 p.m.

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DECISION

UY, J.:

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue on May 17, 2016 against the Philex Mining Corporation,[1] praying for the reversal of the Decision dated February 17, 2016[2] and Resolution dated April 27, 2016[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case Nos. 8753 and 8762, entitled *"Philex Mining Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

[1] EB Docket, pp. 1 to 14.
[2] EB Docket, pp. 15 to 39; Penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred by Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban.
[3] EB Docket, pp. 40 to 44; *Supra.*

Decision dated February 17, 2016:

> "**WHEREFORE,** the consolidated Petitions for Review filed by Philex Mining Corporation on January 6, 2014 and January 30, 2014 are **PARTIALLY GRANTED**.
>
> Accordingly, respondent Commissioner of Internal Revenue is **DIRECTED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱34,174,775.19, representing petitioner's unutilized excess input VAT for the 3rd and 4th quarters of 2011 attributable to its zero-rated sales.
>
> **SO ORDERED.**"

Resolution dated April 27, 2016:

> "**WHEREFORE**, for lack of merit, respondent's Motion for Partial Reconsideration filed on March 8, 2016 is hereby **DENIED**.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), authorized to act on claims for refund or issuance of tax credit certificate in accordance with the law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Philex Mining Corporation is a domestic corporation with principal office address at 27 Brixton Street, Pasig City. It is engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. It is a VAT-registered company with VAT Registration Certificate No. 35-6-000731 effective October 29, 1997, and per BIR Form No. 2303, as of January 31, 1997. It also has an approved Application for Zero-Rate effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations (RR) No. 7-95.

During the 3rd and 4th quarters of 2011, respondent sold and actually shipped its mineral products to foreign buyers as direct exports or zero-rated sales in the amounts of ₱3,262,099,331.45 and ₱5,532,108,438.50, respectively.

On October 24, 2011 and January 20, 2012, respondent filed its original or tentative VAT returns for the 3rd and 4th quarters of 2011, respectively.

Respondent amended its VAT return for the 4th quarter of 2011 on September 20, 2012, reflecting a total zero-rated sales of ₱5,532,108,438.50 and vatable sales/receipts of ₱6,190,303.08, with corresponding output tax of ₱742,836.37. During the same quarter, respondent imported goods other than capital goods in the total amount of ₱355,855,916.87 and purchased domestic services in the amount of ₱16,216,319.67, all for use in its mining operations, production and sale of its mine products. For such importation of goods and purchases of services, respondent paid the respective amounts of ₱42,702,710.00 and ₱1,945,958.36, or a total input tax of ₱44,648,668.36.

On October 1, 2013, respondent amended its VAT return for the 3rd quarter of 2011, reflecting total zero-rated sales of ₱3,262,099,331.44 and vatable sales/receipts of ₱21,408,283.42, with corresponding output tax of ₱2,568,994.01. During the same quarter, respondent imported goods other than capital goods in the total amount of ₱157,632,391.37 and purchased domestic services in the amount of ₱4,534,045.05, also for the use in its mining operations, production and sale of its mine products. For such importation of goods and purchases of services, respondent paid input taxes in the respective amounts of ₱18,915,887.00 and ₱544,085.41, or a total input tax of ₱19,459,972.41

Thereafter, on September 5, 2013, respondent filed its administrative claims for refund for the 3rd and 4th quarters of 2011 with the One-Stop-Shop Center (OSS) of the Department of Finance (DOF), in the respective amounts of ₱16,890,978.40 and ₱43,905,831.81.

Due to petitioner's inaction on the said administrative claims for refund, respondent filed two (2) separate *Petitions for Review* on January 6, 2014 and January 30, 2014 docketed as CTA Case No. 8753 and CTA Case No. 8762, for the refund of its alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 3rd and 4th quarters of 2011, respectively.

On February 5, 2014 and March 31, 2014, petitioner filed his respective Answers to the said two (2) *Petitions for Review*, basically saying that respondent must first prove strict compliance with the pertinent laws, rules and regulations, since tax refunds are construed strictly against the taxpayer as they partake the nature of tax exemptions.

In the Resolution dated June 3, 2014, the two (2) *Petitions for Review* were consolidated at the instance of respondent.

A Pre-Trial Order was issued on August 27, 2014, considering the parties' *Joint Stipulation of Facts and Issues* filed on July 10, 2014.

During the trial, respondent presented its witnesses, Eileen C. Rodriguez and the Independent Certified Public Accountant (ICPA), Albert G. Alba.

Witness Eileen C. Rodriguez testified that as respondent's Accounting Manager, she supervised the preparation and filing of respondent's VAT Returns for the 3rd and 4th quarters of 2011 up to the filing of its claims for refund of excess input VAT for the same quarters with the OSS of the DOF, together with the supporting documents on September 5, 2013, as appearing in Claim Information Sheet Nos. 53168 and 53169. She further declared that respondent is engaged in the mining industry, producing mainly copper concentrates and partly gold bullions. During the 3rd and 4th quarters of 2011, respondent sold its copper concentrates to Pan Pacific Copper Co., Ltd., a Japanese company based in Tokyo, Japan under the Long Term Gold and Copper Concentrates Sales Agreement dated March 11, 2004, which is co-terminous with respondent's mining operation in Baguio. Respondent also sold copper concentrates to Louis Dreyfus Commodities Metals, a Swiss company acting as broker for other foreign buyers.

Respondent's other witness, ICPA Albert G. Alba testified that he examined, audited and evaluated respondent's documents in support of its claims for VAT refund of excess input taxes for the 3rd and 4th quarters of 2011. His audit revealed that out of respondent's total input taxes for the 3rd and 4th quarters of 2011 in the amounts of ₱19,459,972.41 and ₱44,648,668.63, respectively, the amounts of ₱2,568,994.01 and ₱740,836.37 were used to pay its tax liabilities for the same period leaving unutilized input VAT of ₱16,890,978.40 and ₱43,905,831.99 for the 3rd and 4th quarters of 2011, respectively. The total input tax for the 3rd and 4th quarters of 2011 in the amount of ₱64,108,640.77 was reflected in the VAT Return for the 2nd quarter of 2013 as *"VAT Refund/TCC Claimed"*, hence, it could no longer be carried over to the succeeding quarters, being already the subject of an administrative claim for refund to be filed within the prescribed period. The ICPA added that the word *"zero-rated"* was imprinted on respondent's final invoices in compliance with the BIR requirement.

After respondent rested its case, petitioner opted not to present any counter-evidence. Hence, the consolidated cases were deemed submitted for decision after the parties filed their respective Memorandum.

In the assailed Decision,[4] the Court in Division partially granted respondent's consolidated *Petitions for Review*, and directed petitioner to refund or to issue a tax credit certificate in favor of respondent in the reduced amount of ₱34,174,775.19, representing respondent's unutilized excess input VAT for the 3rd and 4th quarters of 2011 attributable to its zero-rated sales.

Petitioner filed his *Motion for Partial Reconsideration* on March 8, 2016.[5]

On April 27, 2016, the Court in Division rendered the assailed Resolution,[6] denying the said *Motion for Partial Reconsideration* purportedly for lack of merit.

Petitioner then filed before the Court *En Banc* the instant *Petition for Review* on May 17, 2016.[7]

Subsequently, in the Resolution dated June 15, 2016,[8] the Court *En Banc* ordered respondent to file its *Comment* to the instant *Petition for Review* within ten (10) days from receipt thereof.

On July 7, 2016, respondent filed its *Comment*.[9]

In the Resolution dated July 21, 2016,[10] the Court *En Banc* gave due course to the instant Petition for Review, and required the parties to submit their respective memorandum.

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[4] EB Docket, pp. 15 to 39; Division Docket (CTA Case No. 8753), pp. 340 to 365.
[5] Division Docket (CTA Case No. 8753), pp. 366 to 373.
[6] EB Docket, pp. 40 to 44; Division Docket (CTA Case No. 8753), pp. 385 to 389.
[7] EB Docket, pp. 1 to 14.
[8] EB Docket, pp. 49 to 50.
[9] EB Docket, pp. 56 to 61.
[10] EB Docket, pp. 63 to 64.

Instead of filing a *Memorandum*, respondent filed a *Manifestation* on August 18, 2016,[11] stating that to avoid duplication, respondent is adopting the arguments it has already advanced in its *Comment* filed on July 7, 2016 as its *Memorandum*, considering that it has already fully discussed therein all its arguments against the grounds raised by petitioner in his appeal. On the other hand, petitioner filed his *Memorandum* on September 6, 2016.[12]

On September 28, 2016, the instant case was deemed submitted for decision.[13]

Hence, this Decision.

ASSIGNMENT OF ERRORS

Petitioner assigns the following errors supposedly committed by the Court in Division, to wit:

> "1. The 3rd Division erred in ruling that Respondent was a VAT-registered taxpayer.
>
> 2. The 3rd Division erred of the Honorable Court erred in granting the claim for refund despite the absence of evidence that the input taxes paid by the Respondent were actually attributable to the alleged zero-rated sales of the Respondent.
>
> 3. The 3rd Division erred in ruling that Respondent was able to provide proof that it indeed seasonably filed its administrative claim as well as its supporting documents.
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> 4. The 3rd Division erred in ruling that Respondent was able to fully substantiate its claim for refund."[14]

Petitioner's arguments:

Petitioner argues that a perusal of the *Formal Offer of Evidence* of respondent would show that it failed to offer in evidence its

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[11] EB Docket, pp. 65 to 66.
[12] EB Docket, pp. 68 to 78.
[13] Resolution dated September 28, 2016, EB Docket, pp. 81 to 82.
[14] Petitioner's *Memorandum*, EB Docket, p. 69; Refer also to the instant *Petition for Review*, EB Docket, p. 3.

Certificate of Registration as a VAT-registered entity.

According to petitioner, it is not sufficient for the respondent to prove that it has zero-rated sales; it is also imperative for the respondent to prove that the unutilized input VAT are indeed attributable to its zero-rated sales. Allegedly, the Court in Division concluded that the respondent had VAT zero-rated sales for the 3rd and 4th quarters of 2011 in the total amount of US$162,293,346.60 without the respondent having submitted the documentary requirements provided in the case of *Atlas Consolidated Mining Corporation vs. Commissioner of Internal Revenue* (hereinafter referred to as the "*Atlas* case")[15].

Furthermore, petitioner avers that no evidence was presented by respondent that it filed its administrative claim for refund seasonably and that all supporting documents were indeed submitted upon the filing of the claim for refund which should include evidence of actual receipt of goods, BOI statements showing the amount and description of sales of goods, etc.. Although sales invoices were presented by respondent, it allegedly failed to produce evidence or proof of actual receipt of the goods and the BOI statement showing the amount and description of the goods delivered to the foreign buyer. It must allegedly be noted that even if sales invoices are produced, there is still a need to submit evidence that such goods were actually received by the buyer; and that failure of the respondent to produce in evidence the confirmation receipts would result in the failure of the Court to properly determine whether there were actual local and imported purchases of capital goods as well as domestic purchase of non-capital goods.

Petitioner also asserts that a perusal of the Formal Offer of Respondent's Evidence would show that it failed to offer in evidence its Application for Tax Credit of Value-Added Tax Paid (BIR Form 2552).

Finally, petitioner claims that well established is the rule that tax refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions.

Respondent's counter-arguments:

Respondent counter-argues that the court docket of the case

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[15] G.R. No. 141104, June 8, 2007.

shows that it filed its *Formal Offer of Evidence* on October 9, 2014, and among the documentary evidence offered were Exhibit "P-16-k" (Certificate of Registration – BIR Form No. 2303) and Exhibit "P-16-l" (Value-Added Tax Registration); and that in the Resolution dated November 14, 2014, the Court admitted all the documentary evidence that respondent offered, including the said Exhibits.

Moreover, the administrative claims for the 3rd and 4th quarters of 2011 were allegedly filed on September 5, 2013 as duly stamped separately on the face of Claimant Information Sheet Nos. 53168 and 53169, respectively, proving that respondent filed with the OSS of the DOF within the two-year period; and that these documents were duly marked as Exhibits "P-2" and "P-3", which were admitted by the Court in Division.

As regards its supporting documents, the same were allegedly filed on September 5, 2013 is evidenced by Exhibits "P-2-b" and "P-3-b" (respondent's letter to the OSS containing a summary or list of supporting documents that respondent filed together with the administrative claims).

Respondent points out that the proof of receipt of goods by the buyers was a requirement under Section 16(c)(3) of Revenue Regulations (RR) No. 3-88 dated April 7, 1988, specifically in the case of *"effectively zero-rated sale of goods and services"*, and this requirement was mentioned in the *Atlas* case. However, the said RR has long been superseded by several subsequent RRs that the DOF, upon recommendation of the BIR, had issued, among which are RR Nos. 7-95 and 16-2005, and this RRs did not carry over the provision of RR No. 3-88 that required proof of actual receipt of the goods by the buyer. According to respondent, RR No. 16-2005 is now the regulation that governs respondent's claims for refund for the 3rd and 4th quarters of 2011, and it does not contain any provision requiring proof of actual receipt by the buyer of the goods sold; that assuming the said requirement in RR No. 3-88 is still effective, it does not apply to the case of respondent; and that respondent has presented and submitted in evidence more than sufficient proof that its export sales of mineral products were received by the buyers.

Finally, respondent avers that it does not dispute that there was failure to fully substantiate the claim, and the Court in Division has already taken this into consideration in its decision. However, according to respondent, the ₱34,174,775.19 that the Court in Division ordered to be refunded is fully substantiated.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Respondent has offered in evidence, and the Court in Division has admitted, its BIR Certificate of Registration.

Contrary to the view of petitioner, and as correctly pointed out by respondent, its Certificate of Registration as a VAT registered entity has been offered in evidence in the proceedings *a quo*.

In its *Formal Offer Of Evidence* filed on October 9, 2014,[16] respondent offered, *inter alia*, Exhibit "P-16-k", representing its *"Certificate of Registration"*, and Exhibit "P-16-l", representing its *"VAT Certificate of Registration"*. In the Resolution dated November 14, 2014,[17] the Court in Division admitted, among others, the said Exhibits.

Thus, petitioner's argument that respondent failed to offer its Certificate of Registration, as a VAT-registered entity, does not hold water.

Respondent seasonably filed its administrative claim.

Petitioner avers that there is no evidence presented by respondent that it seasonably filed its administrative claim.

We disagree.

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997[18], as amended by Republic Act (RA) No. 9337,[19] provides:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* —

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[16] Division Docket (CTA Case No. 8753), pp. 248 to 252.
[17] Division Docket (CTA Case No. 8753), pp. 306 to 307.
[18] As embodied in Republic Act No. 8424.
[19] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made**, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against the output tax: xxx." *(Emphasis supplied)*

Based on the foregoing provision, the VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within a period of two-years, reckoned from the close of the taxable quarter when the sales were made,[20] apply for the issuance of tax credit certificate or refund unutilized input VAT.

Applying the said provision to the instant case, the said two-year period to file the administrative claim for the 3rd quarter of 2011 (*i.e.*, July 1 to September 30, 2011) expired on **September 30, 2013**, while for the 4th quarter of 2011 (*i.e.*, October 1 to December 31, 2011) ended on **December 31, 2013**.

In establishing the timeliness of the filing of its administrative claims for the said periods, respondent offered in evidence the following exhibits:[21]

Exhibit No.	***Description***	***Purpose***
"P-2"	Claimant Information Sheet No. 53168 that respondent filed on September 5, 2013 with the OSS of the DOF for the 3rd quarter of 2011	To prove filing of the claim with the OSS on September 5, 2013
"P-2-a"	Claim Stub for Exhibit "P-2"	
"P-3"	Claimant Information Sheet No. 53169 that respondent filed on September 5, 2013 with the OSS of the DOF for the 4th quarter of 2011	To prove filing of the 4th quarter of 2011 claim with the OSS on September 5, 2013.
"P-3-a"	Claim Stub for Exhibit "P-2"	

These exhibits were likewise admitted by the Court in Division in the Resolution dated November 14, 2014,[22] and have accordingly

[20] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

[21] Respondent's *Formal Offer of Evidence*, Division Docket (CTA Case No. 8753), p. 250.

proven that respondent's administrative claims for the subject periods were seasonably filed on September 5, 2013 or before the expiration of the two-year period under the aforequoted Section 112(A).

The* Atlas *case is not applicable to VAT refund cases which are no longer governed by RR Nos. 5-87 and 3-88.

In arguing its case, petitioner mainly and heavily relies on the ruling of the Supreme Court in the *Atlas* case, to the effect that the submission of certain documents under Section 16 of RR No. 5-87, as amended by RR No. 3-88, is necessary for a taxpayer-claimant to obtain the refund or issuance of a tax credit certificate of unutilized input VAT.

We disagree.

Section 23 of Republic Act No. 9337,[23] which took effect on July 1, 2005[24], introduced substantial amendments to the VAT law under the NIRC of 1997, provides as follows:

> "SEC. 23. *Implementing Rules and Regulations.* — The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary rules and regulations for the effective implementation of this Act. **Upon issuance of the said rules and regulations, all former rules and regulations pertaining to value-added tax shall be deemed revoked.**" *(Emphasis and underscoring supplied)*

Pursuant to the foregoing provision, rules and regulations pertaining to VAT issued before the effectivity of RA No. 9337, such as RR No. 5-87 and the amendments thereto, like RR No. 3-88, shall be deemed revoked upon the issuance of the rules and regulation implementing the said law, not later than June 30, 2005.

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[22] Division Docket (CTA Case No. 8753), pp. 306 to 307.

[23] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

[24] Section 26, RA No. 9337.

On June 22, 2005, the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue, issued RR No. 14-2005, also known as the *"Consolidated Value-Added Tax Regulations of 2005"*, which is to become effective on July 1, 2005[25]. Parenthetically, RR No. 14-2005 was later superseded by RR No. 16-2005 (having the same title as the former) on September 1, 2005, to take effect on November 1, 2005[26]. The latter RR, in turn, has undergone several amendments thereafter.

Correspondingly, all RR pertaining to VAT, including RR Nos. 5-87 and 3-88 were deemed revoked as of July 1, 2005. Thus, unless the provisions of Section 16 of RR No. 5-87, as amended by RR No. 3-88, which required the submission of specific documents to be entitled to VAT zero-rating and corresponding VAT refund, have been retained in the said RR No. 14-2005 and subsequent RR pertaining to VAT, such a requirement under the said Section 16 is deemed revoked.

A cursory examination, however, of RR No. 14-2005 and subsequent RR pertaining to VAT would reveal that the provisions of Section 16, as to the submission of specific documents, have not been retained. Such being the case, the specific documentary requirements laid down under Section 16 of RR No. 5-87, as amended by RR No. 3-88, vis-à-vis the *Atlas* case in connection with the claims for refund of input VAT, are no longer binding, upon the effectivity of RR No. 14-2005, *i.e.*, on July 1, 2005..

In this case, since the subject claim for refund of input VAT pertains to the 3rd and 4th quarters of 2011, petitioner must already comply with the provisions of RR No. 16-2005, as amended, in addition to the legal requirements of the pertinent provisions of the NIRC of 1997, as amended by RA No. 9337, and pertinent jurisprudence, but no longer in accordance with Section 16 of RR No. 5-87, as amended by RR No. 3-88, as enunciated in the *Atlas* case.

Thus, it is of no moment that respondent failed to produce or submit: (1) evidence or proof of actual receipt of the goods, (2) the BOI statement showing the amount and description of the goods delivered to the foreign buyer, (3) evidence that such goods were actually received by the buyer, (4) confirmation receipts, and (5) respondent's Application for Tax Credit of Value-Added Tax Paid (BIR Form 2552), which are all required under Section 16 of RR No. 5-87,

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[25] "EFFECTIVITY" clause of RR No. 14-2005.
[26] "EFFECTIVITY" clause of RR No. 16-2005.

as amended by RR No. 3-88, vis-a-vis the *Atlas* case.

However, it must be emphasized that respondent, like any other refund claimant, is still charged with the heavy burden of proving that it has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.[27]

Nonetheless, the Court in Division has found, based on the record of the case, including all the evidence presented, that respondent was able to substantiate its claim for VAT refund or issuance of tax credit certificate, albeit in the reduced amount of ₱34,174,775.19. In this connection, it must be stated that petitioner has not convincingly shown or argued in the instant *Petition for Review* that the Court in Division committed reversible error in granting the said amount. Thus, the said amount must be sustained.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated February 17, 2016 and Resolution dated April 27, 2016, both rendered by the Court in Division in CTA Case Nos. 8753 and 8762 are **AFFIRMED**.

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

LOVELL R. BAUTISTA
Associate Justice

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[27] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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