REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

COLT COMMERCIAL INC.,
Respondent.

CTA *EB* NO. 2163
(CTA Case No. 9340)

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COLT COMMERCIAL INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2164
(CTA Case No. 9340)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
FEB 22 2021 3:15pm

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DECISION

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* are the following consolidated Petitions for Review filed by the Commissioner of Internal Revenue (CIR) and Colt Commercial Inc. (Colt) on November 8, 2019 and November 11, 2019, docketed as CTA *EB* No. 2163 and CTA *EB* No. 2164, respectively.

Both Petitions for Review assail the Decision dated April 10, 2019 and the Resolution dated October 2, 2019 rendered by the Special First Division of this Court (Court in Division).

We quote dispositive portions of the assailed Decision and Resolution as follows:

Decision dated April 10, 2019

> "**WHEREFORE,** in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED to REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **P1,145,317.71,** representing unutilized input VAT attributable to its zero-rated sales for the 4th quarter of taxable year 2013.
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> **SO ORDERED."**

Resolution dated October 2, 2019

> "**WHEREFORE**, finding no cogent reason or overriding justification to disturb the assailed Decision, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 10 April 2019) and** petitioner's **Motion for Partial Reconsideration (of the decision dated April 10, 2019)** and **Supplemental Motion for Partial Reconsideration (of the Decision dated April 10, 2019)** are **DENIED** for lack of merit.
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> **SO ORDERED."**

FACTS

The antecedent facts leading up to the promulgation of the assailed Decision and Resolution on April 10, 2019 and October 2, 2019, respectively, are as follows:

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On December 28, 2015, petitioner Colt filed with the Bureau of Internal Revenue (BIR) Revenue District Office No. 30 an application for value-added tax (VAT) refund for the fourth (4th) quarter of taxable year (TY) 2013 for alleged unutilized input VAT.

In a letter dated March 28, 2016 and received by Colt on April 1, 2016, the aforesaid claim for refund was denied by the BIR on the ground that the entire amount of input tax, subject of the refund had already been applied against its output tax by carrying it over to the first (1st) quarter of the subsequent TY 2014.

Colt then filed a Petition for Review with the Court in Division on April 29, 2016 docketed as CTA Case No. 9340 praying for the refund or issuance of a tax credit certificate in the amount of Php2,082,376.41 representing input VAT attributable to zero-rated sales for the 4th quarter of TY 2013.

The Special First Division promulgated a Decision (assailed Decision) in CTA Case No. 9340 on April 10, 2019 partially granting Colt's claim for refund in the amount of Php1,145,317.71.

Aggrieved, the CIR filed a Motion for Partial Reconsideration (Re: Decision promulgated on 10 April 2019) on April 29, 2019. Colt likewise filed a Motion for Partial Reconsideration (of the Decision dated April 10, 2019) on May 17, 2019 and a Supplemental Motion for Partial Reconsideration (of the Decision dated April 10, 2019) on July 3, 2019.

A Resolution dated October 2, 2019 was issued by the Court in Division denying both Motions for Partial Reconsideration filed by Colt and the CIR.

The CIR appealed the aforesaid Decision and Resolution with the Court *En Banc* on November 8, 2019 and docketed as CTA *EB* No. 2163 entitled *CIR vs. Colt Commercial Inc.,* while Colt Commercial filed a Petition for Review with the Court *En Banc* on November 11, 2019 docketed as CTA *EB* No. 2164 entitled *Colt Commercial Inc. vs. CIR.*

On November 15, 2019, the Court issued a Minute Resolution consolidating both Petitions for Review considering that these cases are appeals from the Decision dated April 10, 2019 and Resolution dated October 2, 2019 rendered by the Special First Division.

On December 4, 2019, the Court issued a Resolution ordering both parties to file their respective Comments to the Petitions for Review, within ten (10) days from notice.

On December 18, 2010, the CIR filed his Comment (Re: Petition for Review dated 7 November 2019) to the Petition for Review filed by Colt, which in turn failed to file its Comment to the CIR's Petition for Review based on the Record Verification dated February 5, 2020.

On March 2, 2020, the consolidated cases were deemed submitted for decision.

ISSUES

The grounds raised by the CIR in his Petition for Review are quoted as follows:

> "I.
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> The Honorable Court Special First Division erred in ruling that respondent is entitled to refund of the alleged input tax attributable to its zero-rated sales for the fourth quarter of taxable year 2013. Respondent failed to prove that the same remain unutilized and were not carried over to the succeeding periods.
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> II.
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> The Honorable Court Special First Division erred in ruling that respondent is entitled to refund of the alleged input tax attributable to its zero-rated sales for the fourth quarter of taxable year 2013. Respondent failed to prove that its input tax in the amount of P2,083,376.41 is creditable and directly attributable to its zero-rated sales."

On the other hand, the issues raised by Colt in its Petition for Review are quoted as follows:

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> "a. Whether or not the unreadable airway bills are grounds to deny petitioner's VAT zero-rated sales when petitioner has in addition presented sales invoices, certifications of inward remittances, reconciliation of export sales and dollar remittances and Report of the Independent Certified Public Accountant ("ICPA Report"); and
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> b. Whether or not under existing rules, IERDs substantiate payment of input VAT on importations."

CIR's Arguments in his Petition for Review in CTA EB No. 2163

The CIR asserts that the Court in Division erred in partially granting the claim for refund of Colt on the ground the latter failed to prove that the alleged excess input VAT for the 4th quarter of TY 2013 was not carried over to the succeeding taxable periods. The CIR cites Section 110 (B) of the 1997 National Internal Revenue Code (NIRC), as amended, which gives a taxpayer the option either to carry over to the succeeding quarters any unutilized input VAT or to file a claim for refund and that in order to ensure that the subject VAT was not utilized in the succeeding taxable quarters, the claimant-taxpayer must prove that the same were not carried over to the succeeding taxable quarters of 2014 and 2015. The CIR maintains that Colt did not satisfactorily prove that the unutilized input VAT being claimed have not been applied against any output tax for the current and the succeeding quarters of the following taxable year. He further claims that the VAT returns of Colt reveal that it applied/carried over the entire amount of input VAT, subject of the refund, to the 1st quarter of TY 2014. In addition, the CIR asks the Court to look closely into the investigation records (which forms part of the records of the case) to see that Colt failed to prove that the amount claimed for refund remain unutilized.

The CIR concludes with the statement that taxes being the lifeblood of the government, the courts must apply a strict application of the laws and rules governing tax refunds and that a claim for refund, like a claim for tax exemption, is construed strictly against the taxpayer.

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Colt's Arguments in its Petition for Review in CTA EB Case No. 2164

Colt maintains that it sufficiently complied with all the requisites prescribed in Section 106 (2) (a) (1) of the 1997 NIRC,[1] as amended, for the refund of excess/unutilized input VAT attributable to zero-rated sales for the 4th quarter of TY 2013, hence there is no basis for the partial disallowance of its claim for refund.

It alleges that it was able to substantiate its actual export sales through its sales invoices, airway bills, certifications of inward remittances, reconciliation of export sales and dollar remittances and corroborated by the report of the Court-commissioned Independent Certified Public Accountant (ICPA).

Colt impugns the Court in Division's disallowance of the airway bills which were considered unreadable resulting to the denial of the VAT zero-rating status of its actual export sales. It submitted the enlarged copies of the said disallowed airway bills (AWBs) as part of its Petition for Review and asks the Court to reconsider and admit the existence of its actual export sales and actual shipments of the products covered by the re-submitted AWBs.

Colt further disagrees with the Court in Division when it rejected the Import Entry and Internal Revenue Declarations (IEIRDs) on the ground that these were not machine validated. Colt insists that the IEIRDs show the machine validations found on the left margin and/or lower portions of said documents. The

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[1] "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* –

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(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* – The term *'export sales'* means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

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IEIRDs are the primary documents to substantiate importation of goods and only in the absence thereof will there be a need to present an equivalent document pursuant to Section 4.110-8 of Revenue Regulations (RR) No. 16-2005. Finally, Colt argues that the Bureau of Customs (BOC) will not release the goods imported if the importer did not pay the VAT which, in the instant case, Colt proved with the copies of the Statements of Settlement of Duties and Taxes (SSDT) in its Motion for Reconsideration filed with this Court on May 17, 2019.

CIR's Counter-Arguments

In his Comment to Colt's Petition for Review, the CIR assents to the partial denial of the former's claim for refund of alleged unutilized input tax for the 4th quarter of TY 2013 for failure to present clear and "readable" copies of AWBs to support the zero-rated sales. Further, the disallowance by the Court of the IEIRDs and the other documents submitted by Colt is proper as the same did not meet the substantiation requirements under Section 110 (A) and 113 (A) and (B) of the 1997 NIRC, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-05.

The CIR goes on to cite the oft-repeated dictum that claims for refund are construed strictly against the claimant as the same partakes the nature of exemption from taxation, hence it is the taxpayer who is charged with the heavy burden of proving that it has complied with all the statutory and administrative requirements for entitlement to the claim for refund.

RULING OF THE COURT *EN BANC*

CIR's Petition for Review in CTA *EB* No. 2163

Records show that the CIR received the Court's Resolution denying his Motion for Partial Reconsideration on October 10, 2019. On October 25, 2019, he filed a Motion for Extension of Time to File Petition for Review which the Court granted in a Minute Resolution dated October 28, 2019 giving the CIR until November 9, 2019 to file his Petition for Review.

On November 8, 2019, the CIR filed its Petition for Review which is well-within the period granted by the Court, hence giving the Court *En Banc* the requisite jurisdiction to take cognizance of his Petition for Review.

The main argument of the CIR in his Petition for Review centers on Colt's failure to prove that the alleged excess input VAT for the 4th quarter of TY 2013 was not carried over to the succeeding taxable periods which is a ground for the disallowance of its entire claim for refund.

The Court finds petitioner's claim without merit. No new evidence was proferred and the same arguments were reiterated.

We find that the Court in Division has thoroughly considered and resolved the sole issue raised by the CIR in the assailed Decision and Resolution, and so we quote with approval the disquisitions of the assailed Decision on the matter, to wit:

> "All told, petitioner was able to prove that the claimed excess input VAT of Php2,082,376.41 for the 4th quarter of taxable year 2013 was not applied against any output VAT in the succeeding quarters. The said amount remain unutilized as it was deducted as "VAT Refund/TCC claimed" in its Amended Quarterly VAT Returns for the 3rd quarter of taxable year 2015. **Apparently, the subject claim no longer formed part of the excess input VAT of ₱278,416.77 at the end of the said quarter of taxable year 2015 which can be carried over/applied to the succeeding quarters. Henceforth, it eliminates the possibility that the present claim would be applied to future output VAT liability."** (emphasis supplied)

Colt's Petition for Review in CTA *EB* No. 2164

We shall first resolve the timeliness of the filing of the Petition for Review by petitioner Colt with the Court *En Banc*.

The records show that on October 10, 2019, petitioner Colt received a copy of the Resolution of the Court in Division dated October 2, 2019 denying its Motion for Partial Reconsideration.

On October 25, 2019, Colt filed a Motion for Extension of Time to file Petition for Review. This Motion was granted by the Court in a Minute Resolution dated October 28, 2019 and gave Colt until November 9, 2019 to file its Petition for Review.

On November 11, 2019, Colt filed its Petition for Review with the Court *En Banc* as November 9, 2019 fell on a Saturday which was the last day of the extended period granted by the Court, hence said Petition was timely filed.

The Court shall now tackle the substantive merits of Colt's Petition for Review.

Colt opposes the conclusion of the Court in Division that it is only entitled to the partial grant of its claim for refund of alleged excess/unutilized input VAT for the 4th quarter of TY 2013 due to the following reasons:

1. Some of the AWBs presented to prove the purported zero-rated sales pertaining to the declared "export sales" of Colt were unreadable;
2. The IEIRDs to prove Colt's importation of goods were not machine validated; and
3. The relevant documents that will prove payment of the claimed input VAT pertaining to Colt's importations were not submitted.

In its Petition for Review with the Court *En Banc,* petitioner attached enlarged copies of the AWBs in an effort to convince the Court to take a second look and reconsider the disallowance pertaining to the "unreadable" AWBs.

With regard to the insufficiency of the IEIRDs, petitioner also disagrees with the Court's ruling and maintains that the primary document to substantiate importation of goods are the IEIRDs and that it is only in the absence thereof will there be a need to present an equivalent document based on the wordings of Section 4.110-8 of RR No. 16-2005.

We deny the Petition for Review.

To put the evidentiary issues raised by petitioner in their proper perspective, this Court finds it appropriate to look into the nature of the instant claim for refund which refers to alleged excess input VAT attributable to zero-rated sales governed by Section 112 (A) and (C) of the 1997 NIRC, as amended, and we quote:

"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 (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 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.
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> xxx xxx xxx
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> (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.
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> 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."

Pursuant thereto, in order to be entitled to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. that the taxpayer is VAT-registered;
2. that the claim for refund was filed within the prescriptive period both in the administrative and judicial levels;
3. that there must be zero-rated or effectively zero-rated sales;

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4. that input taxes were incurred or paid;
5. that the input taxes due or paid were attributable to zero-rated sales or effectively zero-rated sales; and
6. that the input taxes were not applied against any output VAT liability.

After an assiduous analysis of the evidence presented by petitioner, the Court in Division arrived at the following conclusions:

1. That both the administrative and judicial claims were seasonably filed;
2. That it had zero-rated or effectively zero-rated sales; and
3. That it had input VAT attributable to its zero-rated sales and were not applied against any output VAT labilities.

However, the Court in Division could not ascertain whether or not some of the AWBs submitted by petitioner actually supported some of the zero-rated sales declared by the latter as these were unreadable, and we quote portions of the assailed Decision, to wit:

> "As noted by the court-commissioned ICPA in his ICPA Report, petitioner had actual export sales in the amount of ₱2,077,110.82 which were duly supported by (i) airway bills/bills of lading as proof of actual shipment of goods from the Philippines to a foreign country; (ii) certificate of inward remittances, and, (iii) reconciliation of export sales and dollar remittances, as proof of payment for the goods in acceptable foreign currency. Thus, the ICPA considered the said amount in the computation of petitioner's zero-rated sales.
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> **Nonetheless, this Court cannot ascertain whether the airway bills submitted by petitioner actually support the purported zero-rated sales declared by petitioner as the same were unreadable. As such, the claimed actual export sales shall also be denied VAT zero-rating."** (emphasis supplied)

Further, the Court in Division also disallowed a portion of the declared zero-rated sales in the amount of Php2,773,125.84 for lack of adequate substantiation based on Section 113(A) (1), (B) (1), (2) (c) and 3 of the 1997 NIRC, as amended, and as implemented by Sections 4.113-1(A) (1), (B (1) and (2) (c) of RR No. 16-05 in relation to Sections 237 and 238 of the 1997 NIRC, as amended. The disallowances pronounced by the Court in

Division resulted to a partial grant of petitioner's claim for refund.

As earlier mentioned, petitioner disagreed with the conclusion of partial denial and insists that a second look at the AWBs and its other documents will convince the Court to overturn its partial disallowance and grant instead the full amount claimed in its Petition for Review. Petitioner also reiterates that the importations were duly supported by sufficient evidence such as its IEIRDs and other equivalent documents which proved its payment of VAT on the imported goods.

A close scrutiny of the evidence presented and admitted during trial and the examination conducted by the Court in Division convinces this Court that there is no reason to overturn the conclusions embodied in the assailed Decision dated April 10, 2019 and Resolution dated October 2, 2019. The requirements to prove entitlement to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales have been repeatedly discussed and applied in jurisprudence [2] and using these guidelines, the Court in Division laid out its conclusions clearly, and we quote:

> "Proceeding therefrom, a portion of petitioner's valid input VAT shall be applied against the output VAT liability for the 4th quarter of taxable year 2013 in the amount of Php760,257.57. Consequently, only the remaining input VAT of Php1,296,874.75 can be attributed to the declared zero-rated sales of Php23,729,658.96, which means that only the input VAT of Php1,145,317.71 is actually attributable to the zero-rated sales of Php20,956,533.12., as seen below:

Valid input VAT	P2,057,132.32
Less: Output VAT	760,257.57
Excess valid input VAT	P1,296,874.75
Divide by declared zero-rated sales	P23,729,658.96
Multiply by valid zero-rated sales	P20,956,533.12

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[2] *San Roque Power Corp. vs. CIR,* G.R. No. 180345, November 25, 2009.

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Excess input VAT attributable to valid zero-rated sales	P1,145,317.71"

The documents submitted by petitioner to its Petition for Review such as the enlarged AWBs and DHL certifications cannot be admitted at this stage of the appeal because such documents were not marked, identified nor formally offered by petitioner during trial, hence were not properly compared to the originals thereof, leaving the question of whether or not these were faithful reproductions of the originals, largely unanswered. Also, a further review of the supposedly enlarged versions of the AWBs attached by petitioner to its Petition for Review[3] still remained unclear. Anent thereto, We quote the Court in Division's ruling on the matter in its Resolution dated October 2, 2019:

> "Section 34, Rule 132 of the Rules of Court provides that the Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight. Mere identification of documents and the markings thereof as exhibits do not confer any evidentiary weight on documents unless formally offered."

As to petitioner's insistence that the IEIRDs it presented to prove the importation of goods are sufficient, we find this likewise untenable. We concur with the conclusion of the Court in Division that the IEIRDs submitted to the Court had no machine validation. Also, the Court in Division found that aside from the lack of machine-validated IEIRDs, no other documents were provided by Colt to prove payment of the claimed input VAT.

The Court cannot simply grant the portion of the amount being claimed as refund which has not been properly substantiated by competent evidence. A taxpayer claiming a tax

[3] Found on paragraphs 43 of Colt Commercial's Petition for Review filed with the Court *En Banc*, *En Banc* Docket, pp. 24-30.

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credit or refund has the burden of proof to establish the factual basis of that claim.[4]

WHEREFORE, in light of the foregoing considerations, the Petitions for Review filed by Colt and the CIR are hereby **DENIED** for lack of merit. Accordingly, the Decision dated April 10, 2019 and the Resolution dated October 2, 2019, all promulgated by the Special First Division of the Court of Tax Appeals are hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[4] *Sitel Philippines Corp. vs. CIR*, G.R. No. 201326, February 8, 2017, quoting *Accenture, Inc. vs. CIR*, G.R. No. 190102, July 11, 2012.

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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice