Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7808

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, JJ.

Promulgated:
DEC 1 6 2014
1:35 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review[1] filed by petitioner Deutsche Knowledge Services, PTE Ltd. seeks the refund or issuance of tax credit certificate in the amount of Twenty Two Million Eighty Four Thousand Seven Hundred Eighteen and 84/100 Pesos (P22,084,718.84), representing its excess and unutilized Input Value-Added Tax attributable to zero-rated sales for the 2nd to 4th quarters of calendar year (CY) 2006.

Petitioner Deutsche Knowledge Services, PTE Ltd. is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with its registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048583.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties

[1] Docket, pp. 1-12.
[2] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 82.

of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

Petitioner is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines by the Securities and Exchange Commission (SEC) on April 25, 2005, pursuant to the Omnibus Investment Code of 1987, as amended by Republic Act No. 8756 and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[4]

Petitioner is registered with the Bureau of Internal Revenue (BIR) on June 16, 2005 as a Value-Added Tax (VAT) registered taxpayer with Taxpayer Identification No. (TIN) 238-763-115-000.[5]

Petitioner filed its original Quarterly VAT Returns for the 2nd, 3rd and 4th Quarters of CY 2006 on the following dates:

Quarter	**Date Filed**
2nd[6]	July 25, 2006
3rd[7]	October 25, 2006
4th[8]	January 25, 2007

On June 30, 2008, petitioner filed with the BIR Revenue District Office No. 47, Makati City, an application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the 2nd to 4th quarters of CY 2006 in the amount of P22,084,718.84.[9]

[3] Par. 1, Admitted Facts, JSFI, Docket, pp. 81-82.
[4] Par. 3, Admitted Facts, JSFI, Docket, p. 82.
[5] Par. 4, Admitted Facts, JSFI, Docket, p. 82.
[6] Exh. "C".
[7] Exh. "D".
[8] Exh. "E".
[9] Par. 6, Admitted Facts, JSFI, Docket, p. 83.

Due to the inaction of respondent on the its administrative claim, petitioner filed the instant Petition for Review on July 14, 2008.

On August 12, 2008, respondent filed her Answer[10] with the following Special and Affirmative Defenses:

> **"SPECIAL AND AFFIRMATIVE DEFENSES:**
>
> 5. Granting *arguendo* that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
>
> 6. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been or erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.
>
> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.
>
> 8. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.
>
> 9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206.)
>
> 10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and, as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

[10] Docket, pp. 46-50.

On August 27, 2008, the Court issued a Notice of Pre-Trial Conference[11]. Consequently, petitioner and respondent filed their Pre-Trial Briefs on September 30, 2008 and August 13, 2008, respectively,[12] and thereafter, their Joint Stipulation of Facts and Issues[13] on November 6, 2008.

In support of its Petition, petitioner presented the following witnesses: Mr. Michael Praxedes – Chief Financial Officer of petitioner;[14] Mr. Romeo A. De Jesus – Independent Certified Public Accountant (ICPA);[15] Ms. Andrea S. Peralta – former Legal Entity Controller of petitioner;[16] and Ms. Aileen Felix-Romano – Legal Entity Controlloer of petitioner.[17]

Likewise, petitioner filed its Formal Offer of Evidence[18] on May 7, 2010. In this Court's Resolution[19] dated August 13, 2010, the Court admitted as evidence the following Exhibits: "A" to "P", "AA" to "CC", "AAA" to "IIII", and "J^4" to "S^5", inclusive of submarkings.

In the October 6, 2010 hearing,[20] counsel for the respondent submitted the case for decision considering that there was no report of investigation on petitioner's claim for refund. Hence, the Court ordered the parties to submit their respective Memorandum. Petitioner filed its Memorandum[21] on December 6, 2010 while respondent failed to file the same. As such, in this Court's Resolution[22] dated December 23, 2010, the case was submitted for decision.

On June 1, 2011, the Court rendered a Decision,[23] the dispositive portion of which reads:

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[11] Docket, p. 52.
[12] Docket, pp. 59-70; pp. 53-57.
[13] Docket, pp. 81-84.
[14] Minutes of the Hearing dated December 3, 2008, Docket, p. 121.
[15] Minutes of the Hearing dated March 18, 2009, Docket, p. 186.
[16] Minutes of the Hearing dated March 6, 2009, July 15, 2009 and September 9, 2009, Docket, pp. 198, 209 and 225, respectively.
[17] Minutes of the Hearing, Docket, p. 248.
[18] Docket, pp. 257-278.
[19] Docket, pp. 280-281.
[20] Minutes of the Hearing dated October 6, 2010, Docket, p. 286.
[21] Docket, pp. 291-331.
[22] Docket, p. 333.
[23] Docket, pp. 335-347.

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** on the ground that it was prematurely filed.
>
> **SO ORDERED.**"

In the aforesaid Decision, the Court found that petitioner filed its administrative claim 106 days earlier prior to the expiration of the 120-day period within which respondent may act on the administrative claim. Thus, the Court dismissed the Petition on the ground that it was prematurely filed.

On June 17, 2011, petitioner filed its Motion for Reconsideration (Re: Decision dated June 1, 2011)[24] and subsequently, the Court issued its Resolution[25] dated September 7, 2011, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration (Re: Decision dated June 1, 2011)* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

On October 10, 2011, petitioner appealed[26] its case with the Court *En Banc*, docketed as CTA EB No. 834. In the Court *En Banc*'s Resolution[27] dated January 18, 2012, said appeal was given due course and the parties were ordered to file their respective Memorandum and after which, the case shall be deemed submitted for decision. Petitioner filed its Memorandum[28] on March 19, 2012 while respondent failed to file the same per Resolution dated April 26, 2012. Thus, on February 4, 2013, the Court *En Banc* rendered a Decision,[29] the dispositive portion of which reads:

> "**WHEREFORE**, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED**. The assailed Decision dated June 1, 2011 and Resolution dated September 7, 2011 are hereby

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[24] Docket, pp. 348-368.
[25] Docket, pp. 373-377.
[26] Petition for Review, Docket, pp. 386-421.
[27] Docket, pp. 452-453.
[28] Docket, pp. 458-498.
[29] Docket, pp. 504-516.

> **AFFIRMED**. Accordingly, petitioner's judicial claim for refund of P22,084,718.84 is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED.**"

On March 4, 2013, petitioner filed its Motion for Reconsideration (Re: Decision dated February 4, 2013)[30]. On June 25, 2013, the Court *En Banc* issued an Amended Decision,[31] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is **GRANTED**. The Court *En Banc*'s Decision promulgated on February 4, 2013 is hereby **REVERSED** and **SET ASIDE**. However, as regards the granting of refund on its full amount, CTA Case No. 7808 is **REMANDED** to the CTA Second Division for a complete determination of petitioner's compliance with other legal requirements in relation with its subject claim for refund or issuance of tax credit certificate of its alleged unutilized input VAT for the second, third, and fourth quarters of taxable year 2006.
>
> **SO ORDERED.**"

Thereafter, on March 12, 2014, the Court issued a Resolution[32] which reads:

> "Considering that the CTA En Banc issued an Amended Decision, granting petitioner's Motion for Reconsideration and remanding the case to the Special Second Division for a complete determination of petitioner's compliance with other legal requirements in relation with its subject claim for refund or issuance of tax credit certificate of its alleged unutilized input VAT for the second, third and fourth quarter of taxable year 2006, let this case be considered submitted for decision.
>
> **SO ORDERED.**"

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[30] Docket, pp. 547-560.
[31] Docket, pp. 566-572.
[32] Docket, p. 581.

Hence, this Decision.

The issue left for the Court to determine is whether petitioner complied with the other legal requirements in relation to its subject claim for refund or issuance of tax credit certificate of its alleged unutilized input VAT for the second, third and fourth quarters of taxable year 2006, apart from the timeliness of the filing of its administrative and judicial claims.

Section 112(A) of the NIRC of 1997, as amended, 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 (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 or 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"

Based from the foregoing, the following requisites must be complied with for petitioner to be entitled to its claim for refund or tax credit of its unutilized input VAT, to wit:

1. that there must be zero-rated or effectively zero-rated sales;

2. that input taxes were incurred or paid;

3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. that the input taxes were not applied against any output tax liability; and,

5. that the claim for refund was filed within the two-year prescriptive period.

Anent the fifth requisite, the Court *En Banc* resolved[33] that the present claim must, perforce, be given due course on the basis of BIR Ruling No. DA-489-03, which according to the High Court, is a general interpretative rule and is regarded as applicable to <u>all taxpayers</u>. Hence, the Court shall proceed to determine whether petitioner satisfied the above-remaining requisites.

Sections 108(B)(2) and 110(B) of the NIRC of 1997, as amended, respectively state:

> "**SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties.—***
>
> xxx xxx xxx
>
> **(B)** ***Transactions Subject to Zero Percent (0%) Rate.—*** The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines

[33] Amended Decision dated June 25, 2013, Docket, pp. 566-572.

which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

xxx"

"**SEC. 110.** ***Tax Credits.* –**

xxx xxx xxx.

(B) ***Excess Output or Input Tax.***- If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however*, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

xxx"

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[34], the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended *[then Section 102(b)(2) of the NIRC of 1977, as amended]*, the following requisites must be met:

[34] G.R. No.153205, January 22, 2007.

1) the services by a VAT registered person must be other than processing, manufacturing or repacking of goods;

2) payment for such services must be in acceptable foreign currency and accounted for in accordance with the BSP rules and regulations; and

3) the recipient of such services is doing business outside the Philippines.

Corollary to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, and as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05 provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:

> **"SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —**
>
> "(A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A <u>VAT official receipt</u> for every lease of goods or properties, and <u>for every sale, barter or exchange of services.</u>
>
> "(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> "(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> "(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, that:

xxx xxx xxx

"(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

xxx xxx xxx.

"(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx" (*underlining supplied*)

SEC. 4.113-1. ***Invoicing Requirements.*** —

(A) A VAT-registered person shall issue: —

xxx xxx xxx

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) ***Information contained in VAT invoice or VAT official receipt.*** — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

xxx xxx xxx.

(c) If the sale is subject to zero percent (0%) VAT, the term "**zero-rated sale**" shall be written or printed prominently on the invoice or receipt;" (*Emphasis supplied*)

Pursuant to the foregoing provisions, the foreign currency remittances referred to under Section 108(B)(2) of the NIRC of 1997, as amended, must likewise be supported by VAT zero-rated official receipts.

Records confirm that petitioner is duly registered with the BIR as a VAT taxpayer[35] and the services it performs in the Philippines through its regional operating headquarters (ROHQ), i.e., accounting, valuation and information systems maintenance and development services,[36] are not under the same category as "processing, manufacturing or repacking of goods."

In this regard, petitioner rendered services to the following entities for the 2nd to 4th quarters of CY 2006:[37]

1. Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office;
2. Deutsche Bank Aktiengesellschaft, Inlandsbank;
3. Deutsche Bank Aktiengesellschaft, Filiale New York;
4. Deutsche Bank Aktiengesellschaft, Filiale London;
5. Deutsche Asia Pacific Holdings Pte Ltd.;
6. Deutsche Group Services Pty Limited;
7. Deutsche Securities Inc.;
8. Deutsche Bank Aktiengesellschaft, Filiale Hongkong;
9. Deutsche Bank Aktiengesellschaft, Filiale Jakarta;
10. Deutsche Bank Aktiengesellschaft, Filiale Singapur;
11. Deutsche Bank (China) Co. Ltd, Shanghai Branch;
12. Deutsche Asset Management (Asia) Limited;
13. Deutsche Bank Real Estate (Japan) Y.K.;
14. DBOI Global Services Private Limited;
15. Deutsche Bank Aktiengesellschaft, Filiale Bangkok;
16. Deutsche Bank Aktiengesellschaft, Filiale Mumbai;

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[35] Exhibit "B"; Paragraph 4, Admitted Facts, JSFI, Docket, p. 82.
[36] Exhibit "JJJ-1 to JJJ-19", Notes to the Financial Statements, No 1, Reporting Entity.
[37] Exhibit "IIII", A6; U4, A3.

17. Deutsche Bank Aktiengesellschaft, Filiale Seoul;
18. Deutsche Bank Aktiengesellschaft, Filiale Taipei;
19. Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office
20. DB Finance Inc.; and
21 DB Trust Company Limited Japan.

To prove that its clients are non-resident foreign corporations doing business outside the Philippines, petitioner presented the following documents:

1. SEC Certifications of Non-Registration of Company;[38]
2. Certifications from different government agencies in the country of origin of petitioner's clients, all duly authenticated by the nearest consulate of the Philippines[39]
3. Intragroup Service Agreements;[40] and,
4. Duetsche Bank List of Shareholdings 2008[41]

However, the Court finds that the aforesaid documents *per se* do not constitute sufficient proof that petitioner's clients are non-resident foreign corporations doing business outside the Philippines.

While the SEC Certificates of Non-Registration show that the named entities therein are not registered corporations/partnerships in the Philippines, the same do not prove that such entities are non-resident foreign corporations doing business outside the Philippines. Likewise, the Intra-Group Service Agreements only show the names of petitioner's customers to whom it rendered services but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. Moreover, the Articles of Association and Certificates of Registration/Incorporation of Foreign Company only prove that the named entities therein were incorporated/organized abroad. However, they also do not establish that such entities are not doing business in the Philippines.

To be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of non-registration of

[38] Exhibits "NNN" to "HHHH".
[39] Exhibits J[4] to T[4].
[40] Exhibits "V[4]" to "P[5]".
[41] Exhibit "R[5]".

corporation/partnership and certificate/articles of foreign incorporation/association/registration. Thus, only the following clients of petitioner shall be considered as non-resident foreign corporations doing business outside the Philippines:

1 Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office;
2 Deutsche Bank Aktiengesellschaft, Inlandsbank;
3 Deutsche Bank Aktiengesellschaft, Filiale New York;
4 Deutsche Bank Aktiengesellschaft, Filiale London;
5 Deutsche Asia Pacific Holdings Pte Ltd.;
6 Deutsche Group Services Pty Limited;
7 Deutsche Securities Inc.;
8 Deutsche Bank Aktiengesellschaft, Filiale Hongkong;
9 Deutsche Bank Aktiengesellschaft, Filiale Jakarta;
10 Deutsche Bank Aktiengesellschaft, Filiale Singapur; and,
12 Deutsche Asset Management (Asia) Limited.

Petitioner's sales of services to the aforementioned entities for the second to fourth quarters of 2006 may qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. Furthermore, as can be gleaned from the records, petitioner had zero-rated sales in the total amount of US$1,121,739.25 with Philippine Peso equivalent of P74,692,030.73, covering the period from April 1 to December 31, 2006 as detailed in the "Schedule of Receipts/Collections from Zero-Rated Sales"[42] and supported by various official receipts[43].

Unfortunately, petitioner failed to comply with the equally significant second requisite, *i.e.,* payments for its services must be in acceptable foreign currency and accounted for in accordance with the BSP rules.

In addition, although petitioner submitted its Fund Transfer Credit Advices in support of its inward remittances, the Court cannot ascertain whether these remittances pertain to the company's zero-rated sales for that period. It is noteworthy that in its "Schedule of Receipts/Collections from Zero-Rated Sales", the amounts in the column "Collection Amount per Bank Advice" do not correspond to the amount receipted by petitioner under the column "OR Amount

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[42] Annex E of Exhibit MMM.
[43] Exhibits "EEE-1" to "EEE-13".

(Php)". Significantly, petitioner did not present any evidence to explain such discrepancies. On this score, it is worth stressing that petitioner as a claimant has the burden of proof to present all that is required for the successful prosecution of its claim. Hence, mere allegation is not evidence[44] and is not equivalent to proof[45].

WHEREFORE, in view thereof, the instant Petition for Review is hereby **DISMISSED** for insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

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[44] Martinez v. National Labor Relations Commission, G.R. No. 117495, May 29, 1997.
[45] Philippine National Bank v. Court of Appeals, G.R. No. 116181, April 17, 1996.

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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