REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GRID SOLUTIONS (U.S.) LLC., Petitioner,	**CTA CASE NO. 10146**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 2 8 2023 4:20 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed on 31 July 2019 by petitioner Grid Solutions (U.S.) LLC. (**petitioner/Grid**) pursuant to Section 3(a)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the refund of the allegedly erroneously paid capital gain tax (**CGT**) in the total amount of ₱8,683,100.00, arising from petitioner's sale of its shares of stock.

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1 Division Docket, Volume I, pp. 10-111, including annexes.

2 **SEC. 3.** *Who may appeal; period to file petition.* –
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America (**USA**), with registered office address at 4200 Wildwood Parkway Atlanta GA, USA. It is registered with the Bureau of Internal Revenue (**BIR**), Revenue District Office (**RDO**) No. 39 as a One-Time Taxpayer and was assigned with Taxpayer's Identification Number (**TIN**) 471-363-660-000.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) who is vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR.

FACTS OF THE CASE

As background, petitioner was then the legal and/or beneficial owner of 650,000 common shares[4] of General Electric Philippines Meter & Instrument Company, Inc. (**GEPMICI**).[5] GEPMICI is herein referred to as Aclara Meters Philippines, Inc. (**Aclara PH**).

On 29 June 2017, petitioner sold all of its Aclara PH's shares to Aclara Meters, LLC. (**Aclara US**) for $4,250,000.00[6] or ₱215,050,000.00.

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3 Paragraph (**Par.**) I(c), Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 256.

4 The composition of the 650,000 common shares was:

Grid Solutions (US) LLC	649,993
Waldo Darvin (Nominee of Grid Solutions US LLC)	1
Carlos Clement III (Nominee of Grid Solutions US LLC)	1
Jose Victor Emmanuel De Dios (Nominee of Grid Solutions US LLC)	1
Cris Vincent Del Mundo (Nominee of Grid Solutions US LLC)	1
Chao Lin (Nominee of Grid Solutions US LLC)	1
Jocelyn Karen Pacana (Nominee of Grid Solutions US LLC)	1
Renato Romero (Nominee of Grid Solutions US LLC)	1

See Line 18, Schedule 1 of Exhibit "P-10", Division Docket, p. 428.

5 See Exhibit "P-5", id., pp. 485-486.

6 See Exhibit "P-6", id., p. 374.

The sale transaction resulted in a net capital gain of ₱86,881,000.00, to which petitioner paid the CGT of ₱8,683,100.00 on 29 August 2017.[7]

On 08 November 2018, petitioner filed an "Application for Relief from Double Taxation on Capital Gains" (**tax treaty relief application**) before the International Tax Affairs Division (**ITAD**).[8] In the said application, it invoked as basis of the relief sought Article 14 of the Philippine Tax Convention with the United States of America (**RP-US Tax Treaty**)[9] in relation to Article 1 of its Reservation Clause.[10]

Without the ITAD's response and/or action, petitioner filed an "Application for Tax Credits/Refunds"[11] and a letter request for refund[12] on 24 June 2019 before BIR RDO No. 39. Later, or on 31 July 2019, petitioner filed the instant petition before this Court.[13] The petition was raffled to the Second Division and docketed as CTA Case No. 10146.

PROCEEDINGS BEFORE THE SECOND DIVISION

In the aforesaid petition, petitioner manifested that the authenticated copies of the verification and certification of non-forum shopping, and the secretary's certificate have yet to arrive in the Philippines. It then undertook to submit the said documents once they become available.[14] Later, or on 08 October 2019, petitioner submitted the Apostilled Verification and Certification of Non-Forum Shopping and Director's Certificate.[15]

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7 See Exhibit "P-10", supra at note 5; see Exhibit "P-11", id., pp. 430-431; see Exhibit "P-12", id., p. 432.
8 Par. I(d), JSFI, id., p. 256; see Exhibit "P-9", Division Docket, pp. 425-427.
9 INCOME TAX CONVENTION WITH THE REPUBLIC OF THE PHILIPPINES, AND AN EXCHANGE OF NOTES. GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 1983.
10 Id.
11 See Exhibit "P-14", Division Docket, p. 434.
12 See Exhibit "P-15", id., pp. 435-440.
13 Supra at note 1.
14 See Par. II(3)(4) of the Petition for Review, Division Docket, p. 11.
15 See Manifestation with Submission, id., pp. 138-148.

On 23 September 2019, respondent (after two [2] requests for extensions were granted[16]) filed a Motion to Admit Answer to Petition for Review.[17] The Court admitted the Answer on 09 October 2019.[18]

In the Answer, respondent counters that: (1) the case must be dismissed for petitioner's failure to attach the Verification and Certification of Non-Forum shopping to the copy of the petition filed with the Court; (2) petitioner failed to establish that it is entitled to a tax refund because of the non-submission of the additional documentary requirements that the BIR requested; and, (3) the Court has no jurisdiction over the instant case because petitioner did not observe the prescriptive period required under Section 112[19] of the NIRC of 1997, as amended.

On 10 October 2019, the Court issued a Notice of Pre-Trial Conference.[20] Petitioner filed its Pre-Trial Brief[21] on 04 November 2019 while respondent filed his or her Pre-Trial Brief[22] on 06 November 2019.

During the pre-trial proper conducted on 07 November 2019, the parties were granted a period of twenty (20) days to file their Joint Stipulation of Facts and Issues (**JSFI**).[23] On 22 November 2019, the parties submitted their JSFI.[24] On 06 January 2020, the Court issued a Pre-Trial Order adopting the parties' JSFI and setting the hearing dates.[25]

In the trial that ensued, petitioner presented three (3) witnesses, namely: (1) Atty. Carlos T. Carado II (**Atty. Carado**), a partner in the Tax Services Department of Isla Lipana and Co.; (2) Jocelyn Karen M. Pacana (**Pacana**), the Finance Director and Treasurer of Aclara PH;

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16 See Motion for Extension of Time to File Answer to Petition for Review filed on 27 August 2019, id., pp. 113-115; Order dated 29 August 2019, id., p. 117; Final Motion for Extension of Time to File Answer to Petition for Review filed on 06 September 2019, id., pp. 119-121; Order dated 24 September 2019, id., p. 123.

17 See Motion to Admit Answer to Petition for Review, id., pp. 124-132.

18 See Resolution, id., pp. 150-151.

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

20 Id., pp. 152-153.

21 Id., pp. 155-162.

22 Id., pp. 241-247.

23 See Order dated 07 November 2019, id., p. 249.

24 Id., pp. 255-258.

25 Id., pp. 263-267.

and, (3) Josephine B. Didulo (**Didulo**), the Company Treasurer/Site Operations Manager of General Electric Philippines, Inc. (**GEPI**).

Atty. Carado, by way of his Judicial Affidavit[26], testified that: (1) petitioner sold all of its Aclara PH shares to Aclara US which resulted in a net gain; (2) petitioner paid CGT in the amount of ₱8,683,100.00 on the resulting net gain for it to be issued with a Certificate Authorizing Registration (**CAR**); (3) since Aclara PH's assets did not principally consists of real property interest located in the Philippines, the transfer of company shares to Aclara US should have been considered exempt from CGT pursuant to Article 14[27] of the RP-US Tax Treaty in relation to Article 1 of the Reservation Clause; (4) petitioner filed a tax treaty relief application before the ITAD on 08 November 2018; (5) petitioner filed an administrative claim for refund for the allegedly erroneously paid taxes before BIR RDO No. 39 on 24 June 2019; and, (6) despite follow-ups, the BIR did not act on the said claim.

On cross-examination[28], Atty. Carado confirmed that petitioner had commissioned him to file the tax treaty relief application and administrative claim for refund before the BIR. Moreover, Aclara US was the named taxpayer in the PNB-BTR BIR Payment Slip[29] (**deposit slip**) despite the fact that the seller and the claimant of the refund is petitioner. No re-direct and re-cross examinations were conducted.

Pacana assumed the witness stand next. In her Judicial Affidavit[30], she testified that: (1) she is Aclara PH's Treasurer; (2) petitioner was then the previous owner of about 650,000 Aclara PH shares; and, (3) petitioner transferred the said shares to Aclara US and the latter is now the registered owner thereof. No cross-examination was conducted.

Didulo was the last to testify as petitioner's witness. Through her Judicial Affidavit[31], she testified that: (1) petitioner is a non-resident foreign company; (2) CGT was paid on the gain derived from the sale

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[26] See Exhibit "P-16", Judicial Affidavit of Carlos T. Carado II, id., pp. 163-172.
[27] *Capital Gains.*
[28] TSN dated 27 January 2020, pp. 5-8.
[29] See Exhibit "P-11", supra at note 7.
[30] Judicial Affidavit of Jocelyn Karen M. Pacana, Division Docket, pp. 286-292.
[31] Judicial Affidavit of Josephine B. Didulo, id., pp. 317-324.

of Aclara PH shares to Aclara US; (3) petitioner requested GEPI to advance the money to settle the tax liability; (4) GEPI paid the CGT on petitioner's behalf; and, (5) the taxpayer's name of "Aclara Meters, LLC." (Aclara US) as indicated in the deposit slip was a mistake on the part of GEPI's liaison officer who only copied the buyer's name.

During her cross-examination[32], Didulo stated that there was an email instruction from their Philippine Tax Leader to pay the CGT on petitioner's behalf. However, the copy of the said email was not attached to her judicial affidavit. In addition, Didulo confirmed that petitioner had already paid GEPI the CGT amount but the proof of payment was not attached to her judicial affidavit as well. As for the error appearing on the deposit slip, although she prepared the tax return, she admitted that she failed to check the deposit slip after the payment for the CGT was made. According to her, she only recently found out about the mistake.

In her re-direct examination[33], Didulo declared that she prepared the CGT return and properly identified petitioner and Aclara US as the seller and buyer, respectively. She added that only the deposit slip bears error as a result of the liaison's lapses. Moreover, Didulo stated that GEPI sent a billing invoice to petitioner to collect the advanced amount and petitioner already reimbursed GEPI for it. Unfortunately, as mentioned during her cross-examination, she failed to attach the proof of reimbursement to her judicial affidavit.

In the re-cross examination[34], Didulo clarified that although the liaison officer was familiar with filing tax transactions, it was his first time to file petitioner's CGT return. Also, she confirmed that it was Aclara US that was indicated as the taxpayer in the deposit slip.

Subsequently, on 24 September 2020, petitioner filed its "Formal Offer of Evidence with Manifestation and Motion for Leave of Court"[35] (**FOE**) wherein it offered Exhibits "**P-1**" to "**P-18**" (inclusive of sub-markings). Moreover, petitioner requested for another hearing to compare Exhibit "**P-6**" and to present Atty. Jericho D. Valencia (**Atty.**

32 TSN dated 09 September 2020.
33 Id.
34 Id.
35 Division Docket, pp. 345-352.

Valencia) to identify Exhibit "**P-13**" [36]. After partially granting the motion[37], the Court, on 18 November 2020, conducted a hearing wherein Atty. Valencia identified Exhibit "**P-13**" and respondent confirmed that Exhibit "**P-6**" is a faithful reproduction of the original. The Court then ordered respondent to file its comment to petitioner's FOE.[38]

In its Comment[39], respondent admitted the existence of the exhibits but interposed his or her objection to the purposes for which they were being offered. In the Resolution dated 15 January 2021[40], the Court admitted all of petitioner's exhibits except Exhibit "**P-4**"[41] for petitioner's failure to properly have it identified by its witness; and, Exhibit "**P-5**"[42] as the marked document did not correspond with the description in the FOE. Moreover, the Court noted that Exhibits "**P-7**" and "**P-8**" were offered with the mentions of "Aclara Meters Philippines, Inc.'s 2016 Audited Financial Statements" and "Aclara Meters Philippines, Inc.'s Interim Financial Statements as of 31 July 2017", respectively. However, the marked documents reflected "General Electric Philippines Meter & Instrument Company, Inc.". Thus, the Court admitted the marked documents as that of the latter to be consistent with what appeared on the exhibits' face.

Dissatisfied with the resolution, petitioner filed a "Motion for Reconsideration with Motion for Leave of Court for Admission of Evidence"[43] (**MR with Motion for Leave**) to request for another hearing to present, mark and submit the proper document. It also manifested that it acceded to the Court's observation for Exhibits "**P-4**", "**P-7**" and "**P-8**".

Without respondent's comment[44], in the interest of justice, the Court granted petitioner's MR with Motion for Leave and set a

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36 Id., pp. 345-352.
37 See Resolution date 16 November 2020, id., pp. 448-449.
38 See Order dated 18 November 2020, id., p. 451.
39 Filed on 27 November 2020, id., pp. 452-455.
40 Id., pp. 458-459.
41 Offered as Application for Registration (BIR Form No. 1904).
42 Offered as 2017 General Information Sheet of General Electric Philippines Meter & Instrument Company, Inc. (now Aclara Meters Philippines, Inc.). The marked documents was 2017 General Information Sheet of General Electric Philippines Meter & Instrument Company, Inc.
43 Division Docket, pp. 461-466.
44 See Records Verification dated 08 March 2021, id., p. 469.

commissioner's hearing on 23 June 2021.[45] After petitioner submitted the new document[46], the Court then admitted it as Exhibit "**P-5**".[47]

During the hearing conducted on 13 December 2021, respondent manifested that it will no longer present any evidence as the assigned Revenue Officer (**RO**) failed to submit a report of investigation on the refund claim. Thus, the parties were ordered to submit their memoranda within thirty (30) days therefrom.[48] Petitioner filed its Memorandum[49] on 12 January 2022 while respondent did not file any.[50] Thereafter, the case was submitted for decision.[51]

ISSUE

The main issue for this Court's determination is -

WHETHER PETITIONER GRID SOLUTIONS (U.S.) LLC. IS ENTITLED TO A REFUND OR THE ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) OF THE ALLEGEDLY ERRONEOUSLY PAID CAPITAL GAIN TAX (CGT) IN THE AMOUNT OF ₱8,683,100.00.

ARGUMENTS

In support of the instant petition, petitioner insists that it has sufficiently established all the elements and/or requisites that will entitle it to a refund or to the issuance of a TCC under Sections 204[52] and 229[53] of the NIRC of 1997, as amended. Aside from the fact it is registered with the BIR as a taxpayer, it also duly filed the administrative and judicial claims within the two (2)-year prescriptive period from its date of payment.

Petitioner also argues that pursuant to Article 14 of the RP-US Tax Treaty, in relation to Article 1 of its Reservation Clause, the

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45 See Resolution dated 20 May 2021, id., pp. 472-473.
46 See Compliance with Submission filed on 28 June 2021, id., pp. 478-479.
47 See Resolution dated 21 July 2021, id., pp. 492-493.
48 See Order dated 13 December 2021, id., p. 495.
49 Received by the Court on 01 March 2022, id., pp. 496-515.
50 See Records Verification dated 04 March 2022, id., p. 518.
51 See Resolution dated 11 March 2022, id., p. 519.
52 **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* –
53 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* –

Philippines may tax any gain from the disposition of an interest in a corporation if its assets consist *principally* of real property interests located in the Philippines. It claims that an evaluation of GEPMICI's 2016 Financial Statements would show that its property and equipment only comprised 0.70% and 0.45% of its total assets, respectively. Thus, GEPMICI's assets did not principally consist of real property interest located in the Philippines. Following the provisions of the tax treaty, petitioner contends that the transfer of Aclara PH shares to Aclara US should have been exempted from the CGT.

Petitioner adds that it only paid the CGT for the purpose of facilitating the CAR's release and the transfer of Aclara PH shares' ownership to Aclara US.

RULING OF THE COURT

Before the Court proceeds to resolve the assigned issue in the case at bar, it deems propitious to first determine the timeliness of petitioner's administrative and judicial appeals as this is determinative of the Court's jurisdiction.

PETITIONER'S CLAIM FOR REFUND WAS TIMELY FILED, THUS THE COURT HAS JURISDICTION.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the refund of **erroneously or illegally** collected taxes. Particularly, Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund.[54] Thus:

> ...
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> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> ...
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> (c) Credit or refund taxes **erroneously or illegally** received or penalties imposed without authority, refund the value of

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[54] *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, 14 January 2015; Emphasis supplied.

> internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> ...

Relative thereto, Section 229 of the NIRC of 1997, as amended, provides:

> ...
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> **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.
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> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause** that may arise after payment: *Provided, however,* That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[55]
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> ...

From the foregoing, it is clear that in cases of recovery of erroneously paid or illegally collected tax, *both* the claim for refund and the filing of the suit should be made before the expiration of 2 years from the *date of payment* regardless of any supervening cause that may arise after payment.

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[55] Emphasis supplied.

In the case at bar, the subject claim for refund was paid on 29 August 2017 as shown in the machine validation portion of the deposit slip.[56] Counting 2 years therefrom, petitioner's last day to file its administrative and judicial claims was on 29 August 2019. Thus, petitioner seasonably filed its claims for refund when it filed its administrative and judicial claims on 24 June 2019[57] and 31 July 2019[58], respectively.

PETITIONER COMPLIED SUBSTANTIALLY WITH THE VERIFICATION AND NON-FORUM SHOPPING CERTIFICATION REQUIREMENTS.

In the Answer, respondent contends that the instant petition should be dismissed because petitioner failed to file or submit the required Verification and Non-Forum Shopping Certification together with the Petition for Review and its belated filing could not cure the same.

We disagree with respondent.

Section 2, Rule 6 of the RRCTA states:

> ...
> SEC. 2. *Petition for review; contents.* – The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. **The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court.** A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition.[59]
> ...

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56 See Exhibit "P-11", supra at note 7.
57 See Exhibits "P-14" and "P-15", supra at notes 11 and 12.
58 Supra at note 1.
59 Emphasis supplied.

Corollarily, Section 3, Rule 46 of the Rules of Court, as amended, states:

> ...
> Sec. 3. *Contents and Filing of Petition; Effect of Non-compliance with Requirements.* — ...
> ...
>
> **The petitioner shall also submit together with the petition a sworn certification** that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.
> ...
>
> **The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.**[60]
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> ...

From the foregoing, it is clear that a petition filed before this Court shall be verified and shall contain a certification against forum shopping. Indeed, non-compliance with the latter shall be a sufficient ground for the dismissal of the petition. *However*, the rule is not absolute and admits exception.

In the case of *Nellie Vda. de Formoso, et al. v. Philippine National Bank, et al.*[61], the Court clarified that the non-compliance with or a defect in the verification does not necessarily render the pleading fatally defective and it may be submitted or corrected afterwards. On the other hand, the non-compliance or defect in the certification of non-forum shopping is generally not curable by its subsequent submission or a correction thereof, *unless* there is a need to relax the rule on the ground of "substantial compliance" or when "special

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60 Emphasis supplied.
61 G.R. No. 154704, 01 June 2011. Emphasis supplied.

circumstances or compelling reasons" are present. There, the Supreme Court held:

> ...
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> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
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> 2) **As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The Court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.**
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> ...
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> 4) **As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**
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> ...

The case records reveal that the authenticated documents were **executed and notarized on 30 July 2019**[62] or a day before the instant petition was filed. However, the **apostilles were made only on 02 October 2019**[63] or 64 days from the execution and notarization. Thereafter, the authenticated documents **arrived in the Philippines on 07 October 2019.** Thus, while petitioner was only able to submit its compliance 69 days after the instant petition was filed, no intention to delay or bad faith can be inferred from it since it submitted the apostilled documents to the Court the next day after their arrival from the US.

In the earlier case of *Heirs of the Deceased Spouses Arcilla, et al. v. Ma. Lourdes A. Teodoro*[64], the Supreme Court had the occasion to rule that the belated filing of a sworn certification of non-forum

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62 Supra at note 15.
63 Id.
64 G.R. No. 162886, 11 August 2008; Citations omitted, emphasis supplied, and italics in the original text.

shopping was substantial compliance with the procedural rules. In the said case, respondent Ma. Lourdes A. Teodoro filed an application for land registration with the Regional Trial Court (**RTC**) of Virac, Catanduanes on **19 December 1995**. The case was then transferred to the Municipal Trial Court (**MTC**) of Virac, Catanduanes on 07 February 1996. On **20 March 1998**, therein respondent filed a Motion for Admission contending that, through oversight and inadvertence, she failed to include in her application the verification and certificate against forum shopping required by Supreme Court (**SC**) Revised Circular No. 28-91[65], in relation to SC Administrative Circular No. 04-94.[66] Petitioner therein filed a "Motion to Dismiss Application" on the ground that respondent should have filed the certificate against forum shopping simultaneously with the petition for land registration (which is a mandatory requirement of SC Administrative Circular No. 04-94). In ruling for respondent, the Supreme Court said:

> ...
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> Under the attendant circumstances in the present case, **the Court cannot uphold petitioners' contention that respondent's delay of more than two years and three months in filing the required certificate of non-forum shopping may not be considered substantial compliance with the requirements of SC Administrative Circular No. 04-94 and Section 5, Rule 7 of the Rules of Court**; that respondent's reasons of oversight and inadvertence do not constitute a justifiable circumstance that could excuse her non-compliance with the mandatory requirements of the above-mentioned Circular and Rule; that subsequent compliance with the requirement does not serve as an excuse for a party's failure to comply in the first instance.
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> ...
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> The Court is fully aware that procedural rules are not to be belittled or simply disregarded, for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally settled that litigation is not merely a game of technicalities. Rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than

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65 ADDITIONAL REQUISITES FOR PETITIONS FILED WITH THE SUPREME COURT AND THE COURT OF APPEALS TO PREVENT FORUM SHOPPING OR APPEALS TO PREVENT FORUM SHOPPING OR MULTIPLE FILING OF PETITIONS AND COMPLAINTS.

66 ADDITIONAL REQUISITES FOR CIVIL COMPLAINTS, PETITIONS AND OTHER INITIATORY PLEADINGS FILED IN ALL COURTS AND AGENCIES, OTHER THAN THE SUPREME COURT AND THE COURT OF APPEALS, TO PREVENT FORUM SHOPPING OR MULTIPLE FILING OF SUCH PLEADINGS.

promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle.

Moreover, the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause free from the constraints of technicalities.

It must be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirement must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum shopping. In *Uy v. Land Bank of the Philippines,* the Court ruled, thus:

> The admission of the petition after the belated filing of the certification, therefore, is not unprecedented. In those cases where the Court excused non-compliance with the requirements, there were special circumstances or compelling reasons making the strict application of the rule clearly unjustified. In the case at bar, the apparent merits of the substantive aspects of the case should be deemed as a "special circumstance" or "compelling reason" for the reinstatement of the petition. ...

Citing *De Guia v. De Guia* the Court, in *Estribillo v. Department of Agrarian Reform,* held that even if there was complete non-compliance with the rule on certification against forum-shopping, the Court may still proceed to decide the case on the merits pursuant to its inherent power to suspend its own rules on grounds of substantial justice and apparent merit of the case.

In the instant case, the Court finds that the lower courts did not commit any error in proceeding to decide the case on the merits, as herein respondent was able to submit a certification of non-forum shopping. ...

...

In the case of *Mediserv, Inc. v. Court of Appeals, et al.*[67], the Supreme Court enumerated the various circumstances when it allowed the belated filing of the certification, *viz*:

[67] G.R. No. 161368, 05 April 2010; Emphasis, italics and underscoring in the original text.

...

In certain exceptional circumstances, however, the Court has allowed the belated filing of the certification. In *Loyola v. Court of Appeals, et al.* (245 SCRA 477 [1995]), the Court considered the filing of the certification one day after the filing of an election protest as substantial compliance with the requirement. In *Roadway Express, Inc. v. Court of Appeals, et al.* (264 SCRA 696 [1996]), the Court allowed the filing of the certification 14 days before the dismissal of the petition. In *Uy v. LandBank*, supra, the Court had dismissed Uy's petition for lack of verification and certification against non-forum shopping. However, it subsequently reinstated the petition after Uy submitted a motion to admit certification and non-forum shopping certification. In all these cases, there were **special circumstances or compelling reasons** that justified the relaxation of the rule requiring verification and certification on non-forum shopping.

In the instant case, the merits of petitioner's case should be considered special circumstances or compelling reasons that justify tempering the requirement in regard to the certificate of non-forum shopping. Moreover, in *Loyola, Roadway*, and *Uy*, the Court excused *non-compliance* with the requirement as to the certificate of non-forum shopping. With more reason should we allow the instant petition since petitioner herein *did submit a certification on non-forum shopping*, failing only to show proof that the signatory was authorized to do so. That petitioner subsequently submitted a secretary's certificate attesting that Balbin was authorized to file an action on behalf of petitioner likewise mitigates this oversight.

...

... Lastly, technical rules of procedure should be used to promote, not frustrate justice. While the swift unclogging of court dockets is a laudable objective, the granting of substantial justice is an even more urgent ideal.

...

Further, in the case of *SM Land, Inc (Formerly Shoemart, Inc.), et al. v. City of Manila, et al.*[68], the Supreme Court held that substantial justice and the apparent merits of the substantive aspect of the case are deemed special circumstances or compelling reasons to relax the said rule, to wit:

[68] G.R. No. 197151, 22 October 2012; Citations omitted and emphasis supplied.

> ...
>
> Time and again, this Court has held that rules of procedure are established to secure substantial justice. Being instruments for the speedy and efficient administration of justice, they must be used to achieve such end, not to derail it. In particular, when a strict and literal application of the rules on non-forum shopping and verification will result in a patent denial of substantial justice, these may be liberally construed.
>
> In the instant case, petitioner Watsons' procedural lapse was its belated submission of a Secretary's Certificate authorizing Atty. Cruz as its representative. On the other hand, **petitioner SM Land, Inc.'s infraction was not only its late submission of its Secretary's Certificate but also its failure to timely submit its verification and certification of non-forum shopping.**
>
> In a number of cases, **this Court has excused the belated filing of the required verification and certification of non-forum shopping, citing that special circumstances or compelling reasons make the strict application of the rule clearly unjustified. This Court ruled that substantial justice and the apparent merits of the substantive aspect of the case are deemed special circumstances or compelling reasons to relax the said rule.**
>
> **In fact, this Court has held that even if there was complete non-compliance with the rule on certification against forum shopping, the Court may still proceed to decide the case on the merits, pursuant to its inherent power to suspend its own rules on grounds, as stated above, of substantial justice and apparent merit of the case.**
>
> ...

With the foregoing, the Court finds that the subsequent or belated filing of petitioner's Verification and Certification of Non-Forum Shopping should not warrant the dismissal of its petition as respondent so insists.

PETITIONER IS ENTITLED TO A TAX REFUND.

The Court shall now determine whether petitioner is entitled to a tax refund or to the issuance of a TCC in the amount of ₱8,683,100.00, arising from its sale of Aclara PH shares to Aclara US (that is allegedly exempt from CGT under the RP-US Tax Treaty).

It is well-settled in our jurisprudence that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

(1) That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within 2 years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;[69]

(2) That, if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial AND within said 2-year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed;[70] and,

(3) The claim for refund must be a categorical demand for reimbursement.[71]

As previously stated, petitioner has faithfully complied with the first and second requisites.

As to the third and last requisite, a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR. With the principle that tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government, and as tax refunds involve a return of revenue from the government, the claimant must show indubitably the specific provision of law from which his or her right arises. It cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary

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69 See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

70 See *Allison J. Gibbs, et al. v. Collector of Internal Revenue, et al.*, G.R. No. L-13453, 29 February 1960.

71 *Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado*, G.R. No. 154068, 03 August 2007.

and reasonable intendment of the language actually used by the legislature in granting the refund.[72]

Here, petitioner asserts that its sale of Aclara PH shares to Aclara US should have been exempted from CGT under Article 14 of the RP-US Tax Treaty in relation to Article 1 of its Reservation Clause.

Respondent, on the other hand, claims that petitioner utterly failed to establish that it is entitled to a tax refund on two grounds: *first*, petitioner did not submit the Audited Financial Statements of Aclara PH to comply with one of the requisites of CGT exemption (*i.e.*, it is not consisted principally of real property interests located in the Philippines); and, *second*, petitioner failed to comply with Section 112 of the NIRC of 1997, as amended.

The Court finds for petitioner.

It bears noting that petitioner anchors[73] its claim for refund on Sections 204 and 229 of the NIRC of 1997, as amended, thus, the periods under Section 112 of the NIRC of 1997, as amended, are not material or relevant.

Section 28(B)(5)(c) of the NIRC of 1997, as amended (prior to Republic Act [**RA**] No. 11534 otherwise known as "Corporate Recovery and Tax Incentives for Enterprises Act" [**CREATE**]), capital gains realized during the taxable year from the sale or other disposition of shares of stock in a domestic corporation made outside the stock exchange and any gain derived from such dealings in property derived by a foreign corporation are subject to income tax as follows:

> ...
> **SEC. 28.** *Rates of Income Tax on Foreign Corporations.* —
> ...
>
> (B) *Tax on Nonresident Foreign Corporation.* —
>
> ...

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[72] Id.
[73] Petition for Review, par. 16, Division Docket, pp. 13-14; Exhibit "P-15", supra at note 12.

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* —

...

(c) *Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.* — A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange:

Not over P100,000 — 5%
On any amount in excess of P100,000 — 10%

...

However, under Section 32(B)(5) of the NIRC of 1997, as amended, such gains are exempt or partially exempt to the extent required by any treaty obligation on the Philippines, to wit:

...
SEC. 32. *Gross Income.* —
...

(B) *Exclusions from Gross Income.* — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

...

(5) *Income Exempt under Treaty.* — Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.

...

Petitioner presented its Duly Authenticated Certificates of Formation[74] and Tax Residence[75] issued by the US Department of Treasury - Internal Revenue Service to show that it is a corporation duly organized and existing under the laws of the US. In addition, it submitted the Philippine Securities and Exchange Commission Certificate of Non-Registration[76] to prove that it is not registered either as a corporation or as a partnership in the Philippines. Generally, any gain by petitioner from the sale of shares in Aclara PH should be

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74 Exhibit "P-1", id., pp. 353-356.
75 Exhibit "P-2", id., pp. 357-359.
76 Exhibit "P-3", id., p. 360.

subject to CGT. However, considering that the Philippines has a treaty with the US, the said income from the sale of shares may be exempted from income tax if the conditions set forth under the RP-US Tax Treaty are satisfied. The pertinent provision reads:

> ...
>
> ARTICLE 14
> Capital Gains
>
> 1. Gains from the alienation of tangible personal (movable) property forming part of the business property of a permanent establishment which a resident of a Contracting States has in the other Contracting State or of tangible personal (movable) property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers operated by such resident in international traffic shall be taxable only in that State, and gains described in Article 13 (Royalties) shall be taxable only in accordance with the provisions of Article 13.
>
> 2. **Gains from the alienation of any property other than those mentioned in paragraph 1 or in Article 7 (Income from Real Property) shall be taxable in the Contracting State of which the alienator is a resident.**[77]
>
> ...

However, Article 1 of the Reservation Clause of the RP-US Tax Treaty states in part:

> ...
>
> ARTICLE 1
>
> Notwithstanding the provisions of Article 14 of the Convention relating to capital gains, **both the Philippines and the United States may tax gains from the disposition of an interest in a corporation if its assets consist principally of a real property interest located in that country.** Likewise, both countries may tax gain from the disposition of an interest in a partnership, trust or estate to the extent the gain is attributable to a

77 Emphasis supplied.

real property interest in one of the countries. The term "real property interest" is to have the meaning it has under the law of the country in which the underlying real property is located.[78]

...

From the foregoing, under the RP-US Tax Treaty, capital gains from the sale of shares of stock shall be taxable in the state where the alienator is a resident. However, the Reservation Clause provides that such sale may be taxed both by the Philippines and the US if the interest being disposed is in a corporation whose assets consist principally of a real property interest located in that country. Simply stated, under the RP-US Tax Treaty, the subject capital gains may be exempt from Philippine tax if the interest being disposed of is in a corporation whose assets do not consist principally of a real property interest located in the Philippines.

Anent the phrase "principally of a real property interest," Section 2(A) and (b) and Section 4 of Revenue Regulations (**RR**) No. 4-86[79] define the terms as generally used in tax treaties as the ratio of such immovable property over the total assets of the domestic corporation in terms of value is more than fifty percent (50%), thus:

...

SEC. 2. *Definitions.* —For purposes of these regulations, the following terms and phrases shall be understood to mean —

a) "Real property interest" — interests on properties enumerated in Section 3 which are not, however, exclusive of others that are similarly situated. **As used in the treaties in these regulations, it shall be understood to include real properties as understood under Philippines laws;**

b) "Principally", "wholly or principally", "directly principally" or "attributable" — **more than fifty percent of the entire assets in terms of value**[.]

...

SEC. 4. *Basis.* — **The value of all the assets of the subject corporation both real and personal as appearing in its financial statement on the date of sale of the share or interest in such**

[78] Emphasis supplied.

[79] Determination of Whether the Assets of a Corporation Consist Principally of Real Property Interest under the Philippine Tax Treaties.

> **corporation**, as verified by the BIR, shall be used as the basis for determining the composition of its assets.
>
> In case the financial statement as of the date of the sale is not available, the most recent financial statement may be used, after the necessary adjustments are made to reflect transactions made during the period from the date of such **financial statement to the date of the sale.**[80]
>
> ...

In the instant case, it has been established that petitioner is a non-resident foreign corporation and the shares transferred are of Aclara PH, a domestic corporation. It then becomes necessary to determine whether Aclara PH's assets consist principally of real property interest in the Philippines. To prove the said claim, petitioner proffered as evidence the 2015 and 2016 Comparative Audited Financial Statements of GEPMICI[81] and GEPMICI's Summary of Operations for the period ended 31 July 2017.[82] Respondent, however, argues that petitioner failed to prove that Aclara PH and GEPMICI are one and the same entity and thus, GEPMICI's financial statements could not be used for the said purpose.

Respondent's contention is wrong.

Petitioner has established sufficiently that GEPMICI and Aclara PH are one and the same entity with its presentation of the documentary and testimonial evidence, as follows:

1) Certified True Copy of the 2017 General Information Sheet[83] of Aclara PH showing GEPMICI as its previous company name;

2) Consistent representation made by petitioner that Aclara PH is formerly GEPMICI in its:

   a) Application for Relief from Double Taxation on Capital Gains or BIR Form No. 0901-C[84];

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80 Emphasis supplied.
81 Exhibit "P-7", Division Docket, pp. 379-421.
82 Exhibit "P-8", id., pp. 422-424.
83 Exhibit "P-5", id., pp. 480-489.

b) Administrative Claim for Refund[85];
c) Petition for Review[86];
d) Memorandum[87]; and,

3) The undisputed testimony of Pacana, Aclara PH's Treasurer for almost 7 years, through a Judicial Affidavit[88], to wit:

...

QUESTIONS AND ANSWERS

1. Q: Please state your name, age, civil status, residential address and present occupation.

   A: I am Jocelyn Karen T. Pacana, of legal age, with residence at 1083 Musa Street, Sampaloc, Manila. I am currently the Finance Director and Treasurer of **Aclara Meters Philippines, Inc., previously *General Electric Philippines Meter and Instrument Co., Inc.*** (hereinafter referred to as "Aclara PH"' or the "Company")

2. Q: How long have you been holding the position of Aclara PH's Treasurer?

   A: I have been holding the position of **Aclara PH's Treasurer for almost seven (7) years.** I was elected as its Treasurer on 29 April 2013.[89]

...

The Deed of Absolute Sale of Shares[90] executed on 29 June 2017 also clearly shows that the shares being sold were the common shares of GEPMICI. Thus, logic and common sense dictate that for purposes of applying the aforecited treaty provisions, the audited financial statements of GEPMICI must be used.

An evaluation of the Statement of Financial Position for the taxable years (TYs) 2015, 2016 and 2017, including the unaudited

84 Exhibit "P-9", id., p. 427.
85 Exhibit "P-15", id., p. 435.
86 See Petition for Review, par. 7, id., p. 11.
87 See Memorandum, par. 5, id., p. 497.
88 See Judicial Affidavit of Jocelyn Karen M. Pacana, supra at note 30.
89 Emphasis supplied and italics in the original text.
90 Exhibit "P-6", Division Docket, p. 374.

Statement of Operations for the *interim* TY 2017 as of 31 July 2017 would show the following real property interest:

Assets	As of 31 December 2015[91]	As of 31 December 2016[92]	As of 31 July 2017[93]
Property and equipment	₱7,193,000	₱2,147,000	₱1,634,000
Total Assets	322,938,000	306,915,000	280,574,000
Percentage	**2.23%**	**0.70%**	**0.58%**

As computed, Aclara PH's real property interest (at the time of sale) did not exceed 50% hence, it could not be deemed to have possessed assets consisting principally of a real property interest in the Philippines. Resultantly, petitioner's capital gains derived from the sale of its shares of stock in Aclara PH should be exempt from CGT in the Philippines pursuant to the RP-US Tax Treaty.

Further, the Court finds no merit in respondent's argument that Aclara US is indicated as the taxpayer in the deposit slip and not petitioner who is claiming the refund.

The records of the case reveal that the BIR issued documents to prove that it is petitioner who paid the CGT, specifically the Certification dated 04 November 2019[94] and CAR with No. eCP201300149259/eCAR No: C-2018-039-037821-M.[95] The fact that Aclara US is the taxpayer in the deposit slip appears to be a minor error that could not wholly invalidate petitioner's claim for refund.

Substantial justice dictates that the government should not keep money that does not belong to it.[96] Taking all the above circumstances together, petitioner proved sufficiently that there was indeed an erroneous payment of CGT on the sale of its shares of stock in Aclara PH to Aclara US, by virtue of its exemption pursuant to the RP-US Tax Treaty.

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91 See Exhibit "P-7", id., p. 388.
92 Id.
93 See Exhibit "P-8", id., p. 424.
94 Exhibit "P-12", id., p. 432.
95 Exhibit "P-17", id., pp. 442-443.
96 *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*, G.R. No. 122480, 12 April 2000.

WHEREFORE, the foregoing premises considered, the instant Petition for Review filed on 31 July 2019 by petitioner Grid Solutions (U.S.) LLC. is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** to petitioner the total amount of **₱8,683,100.00**, representing petitioner's erroneously paid capital gain tax on its sale of Aclara PH shares to Aclara US, by virtue of its exemption pursuant to the RP-US Tax Treaty.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice