REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CALAMBA PREMIER REALTY CORPORATION, Petitioner,	**CTA EB NO. 2312 (CTA CASE NO. 9541)**
	Present:
-versus-	DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, *and* CUI-DAVID, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 03 2022 1:50pm

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by Calamba Premier Realty Corporation under Section 4(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court, which seeks to reverse the following:

1. October 7, 2019 Decision[1] of the CTA First Division[2] the dispositive portion of the decision reads:

> "Hence, for having failed to sustain the burden placed upon it by presenting proof that it had zero-rated sales for calendar year 2014, the instant claim for refund of the alleged input VAT attributable thereto, in the amount of ₱1,579,216.87, must necessarily fail.

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[1] *Rollo*, pp. 47-64.

[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan concurring.

WHEREFORE, the instant Petition for Review filed by Calamba Premier Realty Corporation is hereby **DENIED**, for lack of merit.

SO ORDERED."

2. June 5, 2020 Resolution[3] denying the taxpayer's Motion for Reconsideration (To the Decision dated October 7, 2019) for lack of merit.

THE FACTS

The facts, lifted from the assailed decision and from the records, are as follows:

Antecedents

Petitioner is a domestic corporation, with principal place of business at Calamba Premier International Park, Prinza, Calamba, Laguna. It is primarily engaged in the business of owning, using, improving, developing, subdividing, selling, exchanging, leasing, and holding for investment or otherwise, real estate of all kinds, including buildings, houses, apartments and other structures.[4]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) with the power and authority to act upon and approve claims for refund or tax credit as provided by law. He may be served with summons, notices and other court processes at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[5]

On June 19, 2001, petitioner, via a Loan Agreement, borrowed from Samsung Electro-Mechanics Philippines Corporation (SEMPHIL) the amount of ₱267,586,926.00 payable within fifty (50) years with interest of five percent (5%) per annum to acquire a parcel of land within the Calamba Premiere International Park in Calamba, Laguna.[6]

SEMPHIL is a domestic corporation primarily engaged in the business of design, development, manufacture and sale of goods such as electric and electronic products, components and parts for the domestic wholesale and export markets. It is a Philippine Economic Zone (PEZA) registered entity with Certificate of Registration No. 97-074 dated October 16, 1997.[7]

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[3] Annex A, Petition for Review, *Rollo*, pp. 31-33.
[4] October 7, 2019 Decision, *Rollo*, p. 47-48.
[5] *Id.*, p. 48.
[6] *Id.*
[7] *Id.*

Pursuant to the Loan Agreement, petitioner paid SEMPHIL the following amounts, broken down into interest payments and their Value-Added Tax (VAT) components:[8]

Exhibit No.	Date of Payment	Month Covered	Interest Paid	VAT Paid
"P-5"	July 28, 2014	July 2014	₱ 2,032,003.13	₱ 265,043.88
"P-6"	August 27, 2014	August 2014	2,032,003.13	265,043.88
"P-7"	September 29, 2014	September 2014	1,966,454.65	256,494.08
"P-8"	October 30, 2014	October 2014	2,032,003.13	265,043.89
"P-9"	November 28, 2014	November 2014	1,966,454.65	256,494.08
"P-10"	December 29, 2014	December 2014	2,021,845.32	263,718.95
				₱ 1,571,838.76[9]

On September 27, 2016, petitioner simultaneously filed its Amended Quarterly VAT Return (BIR Form No. 2550-Q) for the third (3rd) and fourth (4th) quarters of calendar year (CY) 2014, declaring input VAT of ₱787,978.54 and ₱791,238.33, respectively.[10]

Three (3) days thereafter, on September 30, 2016, petitioner filed a Letter with Application for Tax Credit Refund (BIR Form No. 1914) with the BIR Revenue District Office (RDO) No. 56-Calamba, Laguna, covering its alleged unutilized input VAT attributable to zero-rated sales in the total amount of ₱1,579,216.87.[11]

Proceedings Before the Court A Quo

Alleging inaction on the part of respondent CIR, petitioner filed a Petition for Review before the court *a quo* on February 24, 2017.[12]

In his Answer, respondent rejected petitioner's claim for refund, arguing that under Section 112 of the National Internal Revenue Code of 1997 (NIRC), as amended, only input taxes directly attributable to zero-rated transactions subject to compliance with certain conditions may be refunded. For the respondent, the claim for refund was based on a contract of loan with interest payable on installment basis which is not in any way related to its primary business of leasing of real estate properties.[13]

Respondent further argued that petitioner must prove its entitlement to the refund sought as a claim for refund is not *ipso facto* granted upon filing of the claim. Petitioner was, allegedly, charged with the burden of proving that it had complied with and satisfied all the statutory and administrative requirements to be entitled to the prayed for tax refund. Petitioner, however, failed in this regard.[14]

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[8] *Id.*
[9] The input VAT claim is ₱1,579,216.87.
[10] *Id.*, pp. 48-49.
[11] *Id.*, p. 49.
[12] *Id.*
[13] *Id.*
[14] *Id.*

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues (JSFI) on the basis of which a Pre-Trial Order was issued on September 5, 2017.[15]

To substantiate its allegations, petitioner presented as witnesses SEMPHIL's Accounting Manager, Analyn Puyo, and its Corporate Treasurer, Ma. Luzvilla P. Opulencia.[16]

Through her Judicial Affidavit, Analyn Puyo, the Accounting Manager of SEMPHIL, testified that:

- SEMPHIL is a PEZA-registered entity engaged wholly in the manufacture for export of micro chips used in cellular and other electronic devices.[17]

- SEMPHIL, through a Loan Agreement dated June 19, 2001 with amendments executed on December 14, 2004, extended a loan of ₱267,586,926.00 to petitioner with payment of interests. It was agreed that petitioner would pay interest of 6.5% per annum from 2004 to 2020 and 7% per annum from 2021 onwards.[18]

- As indicated in the Official Receipts (ORs) issued to petitioner for the months of July to December 2014, VAT was imposed on the interest payments on the loan.[19]

Witness Ma. Luzvilla P. Opulencia, petitioner's Corporate Treasurer, corroborated the foregoing testimony. In addition, she declared that petitioner initiated the filing of an administrative claim for refund as its accountants noticed that there were unutilized input VAT for the 3rd and 4th quarters of CY 2014.[20]

Since respondent failed to decide on petitioner's application for VAT refund filed on September 30, 2016, petitioner was constrained to file its judicial claim before the court *a quo* on February 24, 2017.[21]

After its Formal Offer of Evidence, petitioner rested as shown in the Resolution dated July 5, 2018.[22]

After respondent manifested his intention not to present any evidence in support of his defense, the parties were granted a period of thirty (30) days,

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[15] *Id.*
[16] *Id.*, p. 50.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

or until September 5, 2018, within which to submit their respective memoranda.[23]

Petitioner filed its Memorandum on September 5, 2018, while respondent filed his own on September 27, 2018. Accordingly, the case was deemed submitted for decision on October 8, 2018.[24]

On October 7, 2019, the trial court promulgated its decision, which denied the petitioner's claim for lack of merit.

On November 4, 2019, petitioner then filed, a Motion for Reconsideration (To the Decision dated October 7, 2019), which the First Division denied for lack of merit in its June 5, 2020 Resolution.[25]

CTA En Banc

Aggrieved, petitioner filed a Petition for Review on August 3, 2020 before the Court *En Banc* and prayed that the June 5, 2020 Resolution be reversed and set aside and that an order be issued granting its input VAT refund claim.[26]

On November 20, 2020, respondent filed his Comment (Re: Petition for Review).[27]

In a Resolution dated January 6, 2021, the case was submitted for decision.[28]

THE ISSUE

For the Court's resolution is a lone assignment of error raised by the petitioner:

> "The respondent erroneously denied petitioner's claim for refund of unutilized input VAT despite the glaring evidence that petitioner is entitled to it."[29]

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[23] *Id.*, p. 51.
[24] *Id.*
[25] *Rollo*, pp. 31-33.
[26] *Rollo*, pp. 18-26.
[27] *Rollo*, pp. 70-74.
[28] *Rollo*, pp. 77-78.
[29] Petition for Review, *Rollo*, p. 22.

THIS COURT'S RULING

The Court resolves to *deny* the petition.

First, the Court notes that petitioner anchors its input VAT claim on Section 112(A) of the 1997 NIRC, as amended.[30] Specifically, in its administrative claim for refund filed with the BIR, petitioner invoked this provision to establish that the input VAT on its interest payments to SEMPHIL are attributable to its zero-rated sales of leasing services to the latter, as a PEZA-registered enterprise under Section 108(B)(3) of the 1997 NIRC, as amended.[31]

However, it will be recalled that the court *a quo* concluded that petitioner failed to substantiate its alleged zero-rated sales to SEMPHIL, thus:

> "*Petitioner failed to prove and substantiate that its loan transaction to SEMPHIL is subject to zero-rated or effectively zero-rated.*

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[30] **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)(l), (2) and (b) and Section 108(B)(l) 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 he allocated ratably between his zero-rated and non-zero-rated sales.

[31] Exhibit P-16, Administrative claim for refund filed with the BIR, Division Docket, pp. 429-431; *See also* Memorandum, Division Docket, pp. 461-463.

Section 108 (B) (3) of the NIRC of 1997, as amended, provides that services rendered to persons or entities exempted under special laws, such as those registered under Republic Act (RA) No. 7916, 32 otherwise known as "The Special Economic Zone Act of 1995," shall be subject to zero percent (0%) rate, to wit:

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:

xxx xxx xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such services to zero percent (0%) rate;

Petitioner claims that assuming *arguendo* the subject loan agreement is within the coverage of Section 105 of the NIRC of 1997, as amended, still, it is entitled to a refund of input tax considering that its lessee, SEMPHIL, is a PEZA-registered enterprise thereby subjecting its lease transaction thereto as zero-rated.

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Likewise, petitioner failed to substantiate its alleged lease/sales of services to SEMPHIL, which purportedly pertain to the zero-rated sales/receipts of P17,250,000.00 reflected in its amended quarterly VAT Returns for the third and fourth quarters of CY 2014, as detailed below:

Exhibit No.	Period Covered	Zero-Rated Sales/Receipts
P-12	3rd Quarter	₱ 8,625,000.00
P-13	4th Quarter	8,625,000.00
Total		**₱ 17,250,000.00**

Since petitioner was unable to adduce sufficient evidence to prove that it had sales of services to a PEZA-registered entity during the 3rd and 4th quarters of CY 2014, petitioner's reported zero-rated sales/receipts of ₱17,250,000.00 failed to qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997, as amended. Consequently, the third and fifth requisites for claiming refund or issuance of tax credit certificate for unutilized input VAT under Section 112(A) of the NIRC of 1997, as amended, were not properly met." (*Citations omitted and underscoring supplied*)

A review of the evidence formally offered by petitioner confirms this finding of the court *a quo*.

Indeed, petitioner totally failed to substantiate that it had zero-rated sales to SEMPHIL to which it attributes the refundable input VAT. To prove its alleged zero-rated sales to SEMPHIL for the 3rd and 4th quarters of CY 2014, petitioner *only* offered in evidence its corresponding quarterly VAT returns.[32] Without any explanation, it did not offer as evidence the lease agreement much less the VAT official receipts to document the zero-rated lease payments of SEMPHIL.

Second, Section 113(A)(2) of the 1997 NIRC as amended, clearly provides for the *mandatory* invoicing requirements for lease of properties as in this case where petitioner leased its land to SEMPHIL:[33]

[32] Petitioner's Formal Offer of Evidence, Division Docket, pp. 359-368. See Exhibits P-12 and P-13, Division Docket, pp. 419-423.
[33] October 7, 2019 Decision, *Rollo*, pp. 57-58.

"**Sec. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

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

(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:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(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;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: "*Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client" (*Underscoring supplied*)

Section 237 of the 1997 NIRC, as amended, reiterates the requirement stated in Section 110 and also decrees that VAT official receipts should be issued for rental payments:

> "Sec. 237. *Issuance of Receipts or Sales or Commercial Invoices.* - All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.
>
> The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.
>
> The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section." (*Underscoring supplied*)

Third, for a judicial claim for VAT refund to prosper, the claim must not only be filed within the mandatory 120+30-day periods. The taxpayer must also prove the factual basis of its claim and comply with the 1997 NIRC invoicing requirements and other appropriate revenue regulations.[34]

In *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*,[35] the Supreme Court affirmed the denial of the refund claim covering input VAT attributable to zero-rated sales based on Section 112 (A) on the ground that the taxpayer failed to substantiate its zero-rated and exempt sales, thus:

> "*ETPI failed to substantiate its claim for refund or tax credit.*
>
> ETPI argues that its quarterly returns for the year 2008 substantiate the amounts of its taxable and exempt sales which show the amounts of its taxable sales, zero-rated sales and exempt sales. Moreover, the submission of its invoices and receipts including the verification of its independent CPA are all sufficient to support its claim.

[34] *Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 197663, March 14, 2018.
[35] G.R. No. 183531, March 25, 2015.

The Court is not persuaded.

ETPI failed to discharge its burden to prove its claim. Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit. Considering that ETPI is engaged in mixed transactions that cover its zero-rated sales, taxable and exempt sales, it is only appropriate and reasonable for it to present competent evidence to validate all entries in its returns in order to properly determine which transactions are zero-rated and which are taxable. Clearly, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory. A claim for unutilized input taxes attributable to zero-rated sales will be given due course; otherwise, the claim should be struck off for failure to do so, such as what ETPI did in the present case.

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Lastly, the old CTA and the CTA *en banc*, including PJ Acosta in his Concurring and Dissenting Opinion, both found that ETPI failed to sufficiently substantiate the existence of its effectively zero-rated sales for taxable year 1998. It is noteworthy to state that the CTA is a highly specialized court dedicated exclusively to the study and consideration of revenue-related problems, in which it has necessarily developed an expertise. Hence, its factual findings, when supported by substantial evidence, will not be disturbed on appeal. Verily, this Court finds no sufficient reason to rule otherwise." (*Underscoring supplied*)

In another case, *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*,[36] the Supreme Court also affirmed the decision of this court, which denied a refund claim of input VAT attributable to a taxpayer's zero-rated export sales because the taxpayer failed to establish the fact that its 1999 export sales were zero-rated for VAT purposes as it failed to comply with the substantiation requirements under Section 113(A) in relation to Section 238 of the NIRC, as well as Section 4.108-1 of RR 7-95:

"The Issue Before the Court

The sole issue in this case is whether or not the CTA erred in denying petitioner's claim for tax refund.

The Court's Ruling

The petition lacks merit.

Case law dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor. Section

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[36] G.R. No. 171307, August 28, 2013.

> 110(A)(1) of the NIRC provides that creditable input taxes must be evidenced by a VAT invoice or official receipt, which must, in turn, comply with Sections 237 and 238 of the same law, as well as Section 4.108.1 of RR 7-95. The foregoing provisions require, inter alia, that an invoice must reflect, as required by law: (a) the BIR Permit to Print; (b) the TIN-V of the purchaser; and (c) the word 'zero-rated' imprinted thereon. In this relation, failure to comply with the said invoicing requirements provides sufficient ground to deny a claim for tax refund or tax credit.
>
> In this case, records show that all of the export sales invoices presented by petitioner not only lack the word 'zero-rated' but also failed to reflect its BIR Permit to Print as well as its TIN-V. Thus, it cannot be gainsaid that it failed to comply with the above-stated invoicing requirements, thereby rendering improper its claim for tax refund. Clearly, compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales. xxx." (*Underscoring supplied*)

As discussed, records show that by failing to present the VAT official receipts on SEMPHIL's alleged zero-rated rental payments petitioner also failed to prove the factual basis of its claim and to comply with the invoicing requirements in the law and its implementing regulations.

Fourth, the VAT law provides for a mechanism that would allow VAT-registered persons to recover the excess input taxes over the output taxes they had paid in relation to their sales. Under the VAT method of taxation, which is *invoice-based*, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports. For zero-rated or effectively zero-rated sales, although the sellers in these transactions charge no output tax, they can claim a refund of the VAT that their suppliers charged them.[37]

Accordingly, strict compliance with *substantiation* and *invoicing* requirements is necessary considering the VAT's nature and the VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[38]

Finally, the rule is that the exempting provision is to be construed liberally in favor of the taxing authority and strictly against exemption from tax liability, the result being that statutory provisions for the refund of taxes are strictly construed in favor of the State and against the taxpayer.[39]

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[37] *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 184266, November 11, 2013.
[38] *Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 197663, March 14, 2018.
[39] *La Carlota Sugar Central v. Pedro Jimenez*, G.R. No. L-12436, May 31, 1961, Supreme Court *En Banc*.

In view of the foregoing, the Court finds nothing in the instant case that merits a reversal of the ruling of the court *a quo*.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the October 7, 2019 Decision and the June 5, 2020 Resolution are **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice