REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1815** (CTA Case No. 8065)
-versus-	
DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD., *Respondent.*	

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DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD., *Petitioner,*	**CTA *EB* NO. 1816** (CTA Case No. 8065)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 03 2020 11:41 a.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* are Petitions for Review filed by the Commissioner of Internal Revenue (CIR) on April 5, 2018, and by Deutsche Knowledge Services, Pte. Ltd. (DKS) on April 4, 2018, docketed as CTA EB Case Nos. 1815 and 1816, respectively, assailing the partial grant of DKS' claim for refund/issuance of a tax credit certificate, amounting to Php3,956,213.61, representing unutilized excess input VAT attributable to zero-rated sales for the first quarter of calendar year 2008.

The Facts

The facts as found by the Division are as follows:

> Petitioner [DKS] 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 Investments Code of 1987, as amended, 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. Petitioner [DKS] is a VAT-registered taxpayer under Certificate of Registration No. OCN9RC0000270209 with Taxpayer Identification No. (TIN) 238-763-115-000.
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> On the other hand, respondent [CIR] is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
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> Petitioner [DKS] filed its 1st Quarterly VAT Return for CY 2008 on April 17, 2008, and amended the same on May 19, 2008. Also, petitioner's 2nd, 3rd, and 4th Quarterly VAT Returns for CY 2008 were filed on July 18, 2008, October 14, 2008, and January 19, 2009, respectively.
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> On March 29, 2010, petitioner [DKS] submitted with respondent [CIR] its administrative claim for refund or issuance of a TCC in the amount of P34,310,264.27, representing alleged unutilized input VAT attributable to zero-rated sales for the 1st quarter of CY 2008.

> Due to the inaction of respondent [CIR] on petitioner's claim for refund, petitioner [DKS] filed the instant Petition for Review before this Court on March 31, 2010.
>
> Respondent [CIR] then submitted his Answer on June 10, 2010.[1]

The case proceeded with the presentation of DKS' evidence. However, on January 26, 2012, the CIR moved for the dismissal of DKS' appeal on the ground of lack of jurisdiction, which was granted by the Court in Division.[2] The dismissal was appealed to the CTA *En Banc*, which ruled that DKS' may be excused from complying with the 120+30-day periods as its refund claim was filed within the period from December 10, 2003 until October 6, 2010, and pursuant to the BIR Ruling No. DA-489-03.[3] The CIR's appeal to the Supreme Court was denied[4] and the case was remanded to the Court in Division.

After trial, the Court in Division rendered the assailed Decision dated September 20, 2017, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of P3,956,213.61, representing petitioner's unutilized excess input VAT attributable to zero-rated sales for the first quarter of CY 2008.
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> **SO ORDERED.**[5]

Both parties filed their respective Motions for Partial Reconsideration, which were both denied in the Court in Division's Resolution dated March 1, 2018, *to wit*:

> **WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 20 September 2017)** and petitioner's **Motion for Partial Reconsideration (Re: Decision**

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[1] *Rollo*, Decision dated September 20, 2017, pp. 30-31.
[2] *Rollo*, Decision dated September 20, 2017, p. 36.
[3] *Rollo*, Decision dated September 20, 2017, pp. 36-37.
[4] *Rollo*, Decision dated September 20, 2017, p. 37.
[5] *Rollo*, Decision dated September 20, 2017, p. 58.

> **dated September 20, 2017)** are **DENIED** for lack of merit.
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> **SO ORDERED.**[6]

Aggrieved, the CIR filed his appeal to the Court *En Banc* on April 5, 2018, docketed as CTA EB No. 1815, while DKS filed its appeal on April 4, 2018, docketed as CTA EB No. 1816. The cases were later consolidated considering that they are appeals from the Decision dated September 20, 2017.[7]

On April 19, 2018, the parties were ordered to file their respective comments, which DKS complied on May 17, 2018,[8] while the CIR failed to file his comment.[9]

In compliance with the Resolution[10] dated June 28, 2018, the CIR filed his Memorandum[11] on August 6, 2018, while DKS filed its Memorandum[12] via registered mail on October 30, 2018, and which was received by the Court on November 14, 2018. Thus, on January 11, 2019, the case was deemed submitted for decision.[13]

Issue

In CTA EB No. 1815, the CIR submits the following grounds:

> I. The Honorable Court Second Division erred in ruling that respondent [DKS] has valid zero-rated sales.
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> II. The Honorable Court Second Division erred in ruling that respondent's input tax in the amount of Php3,956,213.61 is attributable to its zero-rated sales.

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[6] *Rollo*, Resolution dated March 1, 2018, p. 78.
[7] *Rollo*, Minute Resolution dated April 6, 2018, p. 79.
[8] *Rollo*, *Comment (Re: Petition for Review dated April 4, 2018)*, pp. 83-99.
[9] *Rollo*, Records Verification dated May 21, 2018, p. 100.
[10] *Rollo*, Resolution dated June 28, 2018, pp. 102-104.
[11] *Rollo*, pp. 105-120.
[12] *Rollo*, pp. 125-151.
[13] *Rollo*, pp. 154-155.

III. The Honorable Court Second Division erred in ruling that the claimed input VAT subject of the instant case remained unutilized.[14]

In CTA EB No. 1816, DKS submits the Court in Division erred on the basis of the following grounds:

I. DKS proved, by preponderant evidence, that all of its zero-rated sales for the first quarter of CY 2008 were made to non-resident foreign corporations doing business outside the Philippines; and

II. DKS' sales in the amount of Php76,446,360.96 must be declared as VAT zero-rated sales and unutilized input VAT in the amount of Php30,354,050.66 must be allowed to be refunded.[15]

Ruling of the Court

The petitions lack merit.

The Petitions for Review were timely filed.

The Court in Division issued the Resolution denying the parties' respective motions for partial reconsideration, on March 1, 2018. DKS received the Resolution on March 5, 2018, while the CIR received his copy of the Resolution on March 6, 2018.

DKS and the CIR had fifteen (15) days from the date of receipt of the resolution, or until March 20, 2018 for DKS, and March 21, 2018 for the CIR, within which to file their respective petitions for review before the Court *En Banc*, pursuant to Rule 4, Section 2(a)(1),[16] in relation to Rule 8,

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[14] *Rollo*, CIR's *Memorandum*, p. 110.
[15] *Rollo*, DKS' *Memorandum*, p. 133.
[16] Rule 4 Jurisdiction of the Court
Sec. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, xxx

Section 3(b)[17] of the Revised Rules of the Court of Tax Appeals (RRCTA).

On March 20, 2018, the parties filed their respective *Motions For Extension of Time to File Petition for Review*, which were granted, giving DKS until April 4, 2018 to file its petition, and the CIR until April 5, 2018 to file his petition.

On April 4, 2018, DKS filed its Petition for Review, docketed as CTA EB No. 1816, while the CIR filed his Petition for Review, docketed as CTA EB No. 1815, on April 5, 2018.

Considering the foregoing, both parties timely filed their petitions for review.

There is no compelling reason to reverse or modify the Court in Division's findings.

CIR's Petition for Review

The CIR alleges that there must be both an SEC Certificate of Non-Registration of Corporation/ Partnership and proof of foreign incorporation/association/ business registration and that there is no other indication that the recipient of the services is doing business in the Philippines. Based on this, the CIR argues that DKS has no valid zero-rated sales for its failure to prove that its clients for the subject sales were non-resident foreign corporations doing business outside the Philippines, and that the whole amount of Php517,369,339.93 should not be considered as zero-rated sales.

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[17] Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*
xxx xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

The CIR also argues that the Court in Division erred in ruling that DKS' input tax in the amount of Php3,956,213.61 is entirely attributable to DKS' zero-rated sales. The CIR argues that for input tax to be creditable, it must come from purchases of goods that form part of the finished product/ services of the taxpayer or it must be directly used in the chain of production.

Finally, the CIR urges the Court to take a second look and reconsider the findings that DKS' claimed input VAT remained unutilized despite being carried over to the succeeding periods.

The CIR's argument that DKS does not have valid zero-rated sales is being raised for the first time on appeal. Further, the CIR does not provide any evidence to support his allegations that all of DKS' sales are not valid zero-rated sales.

Apart from the foregoing, the CIR's arguments raised herein are a mere rehash of issues which have already been exhaustively discussed and resolved by the Court in Division.

Section 112(A) of the 1997 National Internal Revenue Code, as amended (NIRC) provides:

> 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, 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 ratable between his zero-rated and non-zero-rated sales.

Section 112(A) only requires that the input tax paid or incurred is attributable to the taxpayer's zero-rated or effectively zero-rated sales. When a taxpayer has zero-rated sales and has no taxable or exempt sales, the input tax due or paid will be directly and entirely attributable to such zero-rated sales. Thus, We reiterate the findings[18] of the Court in Division:

> Since petitioner [DKS] had no taxable sales subject to 12% VAT nor exempt sales for the first quarter of CY 2008, the net substantiated input VAT of P4,642,134.16 is entirely attributable to the zero-rated sales/receipts declared by petitioner [DKS] for the same quarter amounting to P517,369,339.93. However, only the input VAT of P3,956,213.61 is attributable to the valid zero-rated sales/receipts of P440,922,979.00, computed as follows:

Net Substantiated Input VAT	P 4,642,134.16
Multiply by Valid Zero-Rated Receipts	x 440,922,979.00
Divide by Total Zero-Rated Receipts Declared Per Return	÷ 517,369,339.93
Excess Input VAT Attributable to Valid Zero-Rated Receipts	P 3,956,213.61

As to the argument that the claimed input VAT has been utilized and carried over, the Court in Division's findings are unrebutted:

> Petitioner [DKS] had no output tax liability for the first quarter of 2008 against which the subject input VAT claim may be applied or credited. Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed in its Quarterly VAT Return for the first quarter of CY 2010, thus, preventing the carry over or application of the claimed input VAT in the next taxable quarters.[19]

Thus, based on the foregoing, the CIR's Petition for Review is without merit.

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[18] *Rollo*, Decision dated September 20, 2017, p. 57.
[19] *Rollo*, Decision dated September 20, 2017, pp. 57-58.

DKS' Petition for Review

A review of DKS' arguments clearly shows that the same have been addressed and resolved in the Court in Division's Decision and Resolution.

DKS argues that it has proved by preponderant evidence that all of its zero-rated sales were made to non-resident foreign corporations doing business outside the Philippines. DKS states that the IntraGroup Service Agreements with its clients, and information retrieved from DKS' AMINET Database are sufficient to prove that its clients are non-resident foreign corporations doing business outside the Philippines.

We disagree. In order 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 Corporation/Partnership **and** proof of foreign incorporation/association/business registration and that there is no other indication that the recipient of the service is doing business in the Philippines.

> The said basic documents are necessary because the Philippine SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines; while the said certificate/articles of incorporation/association will prove that the said recipient of the service is indeed foreign. Furthermore, the former document will tend to satisfy the requirement that the service-recipient is not engaged in trade or business within the Philippines; while the latter document will indicate whether the same service-recipient is engaged in business at all (*i.e.*, a showing of continuity of conduct and intention to establish a continuous business). In this connection, it must be remembered that the aforequoted Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337, requires, *inter alia*, that the service-recipient is "*a person engaged in business outside the Philippines*" for the transaction to be treated as subject to the 0% VAT rate.
>
> Correspondingly, the IntraGroup Service Agreements cannot be a substitute to either of the said two (2) required documents, since the said Agreements do not establish that such service recipients are non-resident foreign corporations doing business outside the

> Philippines, because the said Agreements only show the names of Deutsche Knowledge's customers to whom it rendered services. Specifically, these IntraGroup Service Agreements do not, in any way, establish that the service-recipients are engaged in business outside the Philippines; nor do they show that the same service-recipients are not engaged in business in the Philippines.
>
> Moreover, there can be no merit in Deutsche Knowledge's insistence that foreign business registration print-outs retrieved from the AMINET database, which is a database maintained by Deutsche Knowledge's Head Office in Germany, are sufficient to establish the fact that the service recipients are non-resident foreign corporations doing business outside the Philippines. This is so because the said print-outs are self-serving, and lack credibility, which can be easily manipulated to favor Deutsche Knowledge in view of its affinity with the entity that maintains or keeps the said database.[20]

Thus, the Court in Division correctly found that only the sales to clients with both SEC Certificate of Non-Registration of Corporation/Partnership and authenticated proof of foreign incorporation/registration qualified for VAT zero-rating, in the peso amount of Php440,922,979.00.[21]

DKS argues that it is not required to present or prove the issuance of official receipts before a transaction may be considered zero-rated. The Court in Division justly reasoned against this argument, as follows:

> Section 113(A) and (B) of the NIRC of 1997, as amended, states the invoicing requirements for VAT taxpayers and the information that shall be indicated therein, thus:
>
>> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>>
>> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:

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[20] *Deutsche Knowledge Services, Pte. Ltd. v. Commissioner of Internal Revenue,* CTA EB Nos. 1374 & 1383, December 15, 2017.
[21] *Rollo,* Decision dated September 20, 2017, p. 49.

> (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 of 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 tax shall be shown as a separate item in the invoice or receipt;
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> xxx
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> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
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> (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 (TIN) of the purchaser, customer or client. (*Emphasis supplied*)

The aforestated provisions of Section 113(A)(1) and (2) explicitly require that the sale of goods or properties must be supported by VAT invoice while the sale of services must be supported by VAT official receipt (OR). Xxx

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Petitioner [DKS] is engaged in the sale of services, thus, it must present appropriate VAT official receipts.

> Proofs of inward remittances like bank credit advices cannot be used in lieu of VAT official receipts to demonstrate petitioner's zero-rated transactions.[22]

Thus, the disallowed zero-rated sales of Php278,273.18 is affirmed.

DKS also states that out-of-period claims are specifically allowed under Revenue Memorandum Circular No. (RMC) 42-03.[23]

We disagree. We have previously ruled that even when RMC No. 42-03 allows out-of-period claims, the same cannot be adhered to, because it contravenes Section 110(2) in relation to Section 114(A) of the NIRC, as amended by RA No. 9337.[24]

> The law is clear. Thus, as to the purchaser of goods or properties, the input VAT is creditable against the output VAT, **<u>upon</u> consummation of the sale**; as to the importer, **<u>upon</u> payment of the VAT**; and as to the purchaser of services, lease or use of properties, the input VAT therefore is creditable **<u>upon</u> payment of the compensation, rental, royalty or fee**. With the use of the word "upon," it can be easily discerned from the said provisions that the creditability of the pertinent input VAT against the output VAT must be made as it happens, and not to be made at any other time. Xxx
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> Xxx
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> Correspondingly, since the filing of the Quarterly VAT Return, which reports the gross sales or receipts, and the payment of the VAT would come at a later date than the actual crediting of the input VAT, such crediting can be made only upon such filing and payment. However, considering that the said Section 110(2) is clear as to when should the pertinent input VAT be creditable, it should not go beyond the month or quarter during which the input VAT was incurred or paid, as the case may be. Xxx

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[22] *Rollo*, Resolution dated March 1, 2018, pp. 69-70.

[23] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters, July 15, 2003.

[24] *Deutsche Knowledge Services, Pte. Ltd., v. Commissioner of Internal Revenue*, CTA EB Nos. 1374 and 1383, December 15, 2017.

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>
> Based on the foregoing provisions, to arrive at the VAT payable on the Monthly VAT Declaration and the Quarterly VAT Return, the input VAT allowed to be deducted or credited from the output VAT are those that are creditable during the corresponding month and quarter.
>
> Thus, even when RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, because it contravenes the above-quoted Section 110(2) in relation to Section 114(A) of the NIRC of 1997, as amended by RA No. 9337, and clearly supplants Sections 4.110-2, 4.110-4, 4.110-5, 4.110-6, and 4.114-1 of RR No. 16-2005.[25]

Thus, the disallowance of DKS' zero-rated sales in the amount of P47,058,000.23 and input VAT in the amount of Php1,621,983.13 is affirmed.

DKS further argues that it has no control over and should not be penalized for its suppliers' errors in its invoices and official receipts such as the amount of VAT not separately indicated or undated official receipts. While it may be true that the said VAT invoices or official receipts were issued without DKS' participation and control, DKS must be vigilant to require its suppliers of goods and services to issue pertinent VAT invoices or official receipts which bear all the information required by law and revenue regulations. DKS, having been charged with the burden of proof in proving its claim for refund, must be watchful in ensuring that its every purchase of goods and services is supported by a legally compliant VAT official receipt or invoice, as the case may be.[26]

As stated, the CIR's and DKS' respective Petitions for Review are mere rehash of the facts, issues and arguments raised and resolved by the Court in Division. The Court *En Banc* finds no compelling reason to reverse nor modify such findings.

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[25] *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA EB Nos. 1374 & 1383, December 15, 2017.
[26] *Rollo*, Resolution dated March 1, 2018, p. 76.

WHEREFORE, the Petitions for Review filed by the CIR, docketed as CTA EB No. 1815, and filed by DKS, docketed as CTA EB No. 1816, are both **DENIED** for lack of merit.

Accordingly, the Decision dated September 20, 2017 and Resolution dated March 1, 2018, rendered in CTA Case No. 8065 are **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice