REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CE CASECNAN WATER AND ENERGY COMPANY, INC., *Petitioner,*	**CTA Case No. 8620**
	Members:
- versus -	**Del Rosario, Chairperson** **Uy**, and **Mindaro-Grulla,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 16 2014 , 4:03p.m.

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DECISION

DEL ROSARIO, *PJ*:

THE CASE

This is a Petition for Review[1] filed by CE Casecnan Water and Energy Company, Inc. (petitioner) which assails the inaction of the Commissioner of Internal Revenue (respondent) on petitioner's administrative claim for refund or issuance of a tax credit certificate (TCC) in the amount of ₱17,807,940.34, allegedly representing petitioner's unutilized input value added tax (VAT) attributed to its zero-rated sales of generated power to the National Irrigation Administration (NIA) for the year 2011.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at Pantabangan, Nueva Ecija.[2]

[1] Dated March 21, 2013; CTA Docket pp. 6-70.
[2] Joint Stipulation of Facts and Issues, CTA Docket, p.434.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR), empowered to perform the duties of said office, including among others, the power to decide, approve, and grant refunds and/or tax credits of erroneously paid taxes, as provided by law.[3]

THE FACTS OF THE CASE

Petitioner was incorporated on September 21, 1994, the primary purpose of which is "to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided by and under contract with the National Irrigation Administration and for the supply of water for agricultural purposes to the National Irrigation Administration (the "Project"); provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially owned by Filipino citizens."[4] It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification No. 004-500-931-000.[5]

Petitioner's multipurpose irrigation and power plant project, with an installed capacity of 140-150 MW hydropower generation plant component, has been duly accredited and certified as a Private Sector Generation Facility by the Department of Energy (DOE) as evidenced by its Certificate of Accreditation No. 95-07-12 issued by the DOE on July 20, 1995.[6] On June 21, 2010, petitioner was issued a Certificate of Compliance No. 10-06-GN8-10701 by the Energy Regulatory Commission (ERC) for its Hydroelectric Generation Facilities which is valid until June 20, 2015.[7]

Petitioner filed with the BIR its Original and Amended Quarterly VAT Returns for the 1st to 4th quarters of the year 2011 on the following dates:

Exhibit	Taxable Quarter	Date of Filing of Quarterly VAT Return and Reference No.
"P-8"	1st	April 25, 2011/101100004709121
"P-12"	1st (Amended)	November 15, 2012/101200006573724

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[3] Id., CTA Docket, p. 434.
[4] Id., CTA Docket, p. 435; Exhibit "P-1".
[5] Id., CTA Docket, p. 435; Exhibit "P-3".
[6] Id., CTA Docket, p. 435; Exhibit "P-2".
[7] Id., CTA Docket, p. 435; Exhibit "P-6".

"P-9"	2nd	July 25, 2011/101100004968255
"P-13"	2nd (Amended)	November 15, 2012/101200006574447
"P-10"	3rd	October 25, 2011/101100005233508
"P-14"	3rd (Amended)	November 15, 2012/101200006575354
"P-11"	4th	January 25, 2012/ 101200005545659
"P-15"	4th (Amended)	November 16, 2012/101200006577452

On November 16, 2012, petitioner filed with the Large Taxpayers Excise Audit Division I of the BIR (BIR-LTEAD I) an administrative claim for refund or tax credit of its unutilized input VAT for the period covering the 1st quarter to the 4th quarter of the year 2011.[8] Claiming inaction on the part of respondent, petitioner filed on March 21, 2013 the present Petition for Review invoking Section 112 (C) of the National Internal Revenue Code of 1997 (1997 NIRC), as amended. Petitioner prays for a refund or issuance of a TCC in the amount of ₱17,807,940.34 allegedly representing its unutilized input VAT for the four quarters of the year 2011.

On June 10, 2013, within the extended period allowed by this Court, respondent filed her Answer[9] interposing the following special and affirmative defenses: *i*) petitioner's claim for refund was not properly documented; *ii*) petitioner failed to prove that it submitted complete documents to support its administrative claim for refund; *iii*) considering that petitioner failed to comply with the duly mandated legal requirements for administrative claims for refund/TCC, the same is considered merely *pro forma*, thus, the 120-day period provided for by law within which the CIR has to act on petitioner's claim for refund has not yet commenced; *iv)* tax refunds are regarded as tax exemption which are to be construed in *strictissimi juris* against the person or entity claiming the exemption; and *v*) the petition for review is prematurely filed for failing to exhaust all available administrative remedies, hence, dismissible by this Court for lack of jurisdiction.

During pre-trial, the parties filed their Joint Stipulation of Facts and Issues[10] on October 1, 2013 which the Court approved in the Resolution dated October 8, 2013.[11] The same Resolution terminated the pre-trial and directed the parties to proceed with the trial, limiting the presentation of evidence only to relevant matters that have not been covered by their joint stipulation of facts and issues.

During trial, only petitioner presented its testimonial and documentary evidence while respondent manifested that she will no

[8] Id., CTA Docket p. 434; Exhibit "P-7".
[9] CTA Docket, pp. 78-91.
[10] CTA Docket, pp.434-441.
[11] CTA Docket, p 444.

longer present any evidence.[12] As prayed for, both parties were given thirty (30) days from May 13, 2014 to submit their respective memoranda.[13] On June 13, 2014 respondent manifested that she will adopt the arguments raised in her Answer as her Memorandum.[14] Meanwhile, petitioner filed its Memorandum[15] within the extended period allowed by this Court on July 2, 2014.

With the filing of the parties' respective memoranda, the petition was submitted for decision on July 11, 2014[16].

ISSUES

The parties agreed that the sole issue to be resolved in this case is:

> "Whether or not Petitioner is entitled to a refund of, and/or issuance of TCC for, its unutilized input VAT amounting to ₱17,807,940.34, which input VAT (i) arose from petitioner's domestic purchases of non-capital goods and services, services rendered by non-residents, importation of non-capital goods, and purchases of capital goods; and (ii) are all attributable to petitioner's zero-rated sales of generated power."[17]

THE COURTS'S RULING

Section 112(A) of the 1997 NIRC, as amended, outlines the requirements for refund or tax credit of input tax due or paid which are attributable to the taxpayer's zero-rated sales. The provision reads:

> "SEC. 112. Refunds or Tax Credits of Input Tax.-
>
> "(A) *Zero-rated or Effectively Zero-rated Sales*--Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section

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[12] CTA Docket, p. 797.
[13] Id.
[14] CTA Docket, pp.801-803.
[15] CTA Docket, pp.810-841.
[16] CTA Docket, p.843.
[17] Id., CTA Docket, p.436; Pre-Trial Order, CTA Docket, p.779.

> 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx "

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

1. There must be zero-rated or effectively zero-rated sales;
2. Input taxes were incurred or paid;
3. Such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. Such input taxes were not applied against any output VAT liability; and,
5. The claim for refund was filed within the two-year prescriptive period.

Timeliness of the filing of the administrative and judicial claims

The timeliness of the filing of petitioner's administrative and judicial claims will be determined first to ascertain if it is still necessary to resolve petitioner's compliance with the other requisites for input VAT refund or issuance of TCC.

As explicitly stated under Section 112(A) of the 1997 NIRC, as amended, the application for refund or TCC of unutilized excess input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the four taxable quarters of the year 2011 which closed on March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011. Records show that the petitioner's administrative claim was filed timely, *viz*:

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Period/Quarter Covered	Close of Taxable Quarter	Last Day for Filing Administrative Claim for Refund/Issuance of TCC	Date of Filing of Administrative Claim for Refund
1st Quarter of 2011	March 31, 2011	March 31, 2013	November 16, 2012
2nd Quarter of 2011	June 30, 2011	June 30, 2013	
3rd Quarter of 2011	September 30, 2011	September 30, 2013	
4th Quarter of 2011	December 31, 2011	December 31, 2013	

As to the timeliness of petitioner's judicial appeal, Section 112 (C) of the 1997 NIRC, as amended, provides that the CIR has 120 days from the date of submission of the complete documents in support of the application for tax refund/credit within which to grant or deny the claim, and in case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before this Court within 30 days from the receipt of the decision of the CIR. If after the 120-day period, the CIR fails to act on the application for refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days after the lapse of the 120-day period.

Respondent, in her Answer, which also served as her Memorandum, argues that the failure of petitioner to submit the required complete supporting documents renders the instant petition to have been prematurely filed. The "complete documents" required by law are allegedly those enumerated under Revenue Memorandum Order No. 53-98.

Records show, however, that petitioner, upon filing of its administrative claim on November 16, 2012, simultaneously submitted the documents in support of its claim. This is evident from petitioner's letter which stated:

> "In support of our request, we enclose the following documents for your perusal:
>
> 1. Duly accomplished Bureau of Internal Revenue (BIR) Form No. 1914 – "Application for VAT Credit/Refund"
> 2. Schedule/Summary list of domestic purchases of goods (capital and non-capital) and services, importations of goods (capital and non-capital) and services rendered by non-residents for first to fourth quarters of 2011 – print-out/soft copies
> 3. Invoices and official receipts issued by domestic suppliers of goods and services
> 4. Single administrative documents/Import entry internal revenue declarations and/or official receipts issued by the Bureau of Customs/Statements of settlement of duties and taxes/Bank certifications
> 5. BIR Forms 1600 – "Withholding VAT returns" and payment acknowledgment receipts for 2011

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6. BIR Forms 2550Q – "Quarterly VAT Returns" for first to fourth quarters of 2011 – original and amended
7. Schedule/Summary list of zero-rated and VATable sales for first to fourth quarters – print out/soft copies
8. Zero-rated sales invoices issued to NIA
9. Zero-rated official receipts issued to NIA
10. VAT sales invoices issued to NIA
11. VAT official receipts issued to NIA
12. VAT official receipts issued for miscellaneous collections
13. Certificate of registration issued by the BOI
14. Certificate of accreditation issued by the DOE
15. Certificate of compliance issued by the Energy Regulatory Commission – original and renewal
16. Project Agreement between CE Casecnan and NIA
17. Certificate of filing of amended articles of incorporation issued by the Securities and Exchange Commission (SEC)
18. General Information Sheet filed with the SEC
19. Certificate of registration issued by the BIR
20. Form 0605 – "Annual VAT registration fee" payment for the year 2011
21. BIR Form 1702 – "Annual income tax return" for taxable year ended December 31, 2011 together with the audited financial statements
22. BIR Forms 2306 – "Certificate of Final VAT" for January to December 2011
23. Authority to print official receipts/sales invoices and use of computerized accounting system issued by the BIR
24. Certification that CE Casecnan has not filed a similar claim for refund duly issued by the Department of Finance
25. Summary of allocation of actual input VAT attributable to energy, water delivery, and miscellaneous collections
26. Copy of Section 6, Chapter II of RA 9136 or the EPIRA Law
27. Copy of Section 108(B)(7) and Section 112 (A) of RA 9337 or the National Internal Revenue Code, as amended
28. Copy of Section 4.108-5 of RR 16-2005 or the Consolidated Value-Added Tax Regulations of 2005."[18]

The same letter informed the respondent that the books of accounts and accounting records of petitioner are already available for audit and verification of the BIR.

Based on the foregoing, the 120-day period is reckoned from November 16, 2012, the date when petitioner filed its administrative claim together with the supporting documents with the BIR LTEAD I.

[18] Exhibit P-7; CTA Docket, pp.657-658.

Thus, pursuant to Section 112(C) of the 1997 NIRC, as amended, petitioner timely filed its appeal by way of a Petition for Review on March 21, 2013, as the same was filed within the 30-day period after the 120-day period ended on March 16, 2013.

Existence of zero-rated sales

The issue of whether or not petitioner's sale of electricity to NIA is zero-rated for VAT purposes is not one of first impression as this Court had already ruled in the affirmative in previous cases[19] involving the same parties and issues but different taxable years. As in the previous cases, the governing law is Section 108(B)(7) of the 1997 NIRC, as amended by Republic Act (R.A.) No. 9337, and implemented by Section 4.108(b)(7) of Revenue Regulations (RR) No. 16-2005, which are all quoted below for easy reference:

> "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
>
> "(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."
>
> xxx xxx xxx
>
> **"SEC. 4.108-5. *Zero-Rated Sale of Services.-***
>
> xxx xxx xxx
>
> "(b) *Transaction Subject to Zero Percent (0%) VAT Rate.-* The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) VAT rate:
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> xxx xxx xxx

[19] CE Casecnan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 8041 and 8111, September 11, 2012; CE Casecnan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8245, May 10, 2013; CE Casecnan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8446, December 16, 2013.

> "(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels. *Provided, however,* That zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

Corollary to the above provisions, Section 4.108-3(f) of RR No. 16-2005 states:

> **"SEC. 4.108-3. *Definition and Specific Rates on Selected Services.-***
>
> xxx xxx xxx
>
> "(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts: *Provided,* That **sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT**.
>
> "*Generation companies*" refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the R.A. No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities."

Clearly, from the foregoing, the sale of power generated through renewable sources of energy is subject to zero percent (0%) VAT.

As in the previous cases,[20] petitioner proved that (*i*) its 140-megawatt hydro-electric power plant project has been accredited by the DOE as a Private Sector Generation Facility under the Implementing Rules and Regulations of Executive Order No. 215, as amended; *(ii)* the ERC issued Certificate of Compliance No. 05-07-GN8-10701 for its generation facility; and (iii) it generates power through its hydro-electric power plant and subsequently sells it only to NIA by presenting in evidence its Amended and Restated Casecnan Project Agreement by and between petitioner and NIA dated June 26,

[20] Id.

1995.[21] Clearly, petitioner has sufficiently established that it is in the business of power generation and sold corresponding generated power to NIA as VAT zero-rated sales.

For the four taxable quarters of the year 2011, petitioner derived receipts from sales of power generation services to NIA in the amount of ₱2,731,669,945.32,[22] as declared in petitioner's Quarterly VAT Returns for the same period and evidenced by sales invoices and official receipts[23] which were summarized in its Schedule of Revenues[24] and Amended Summary List of Sales,[25] as follows:

Exhibit	Quarterly VAT Returns Year 2011	Zero-Rated Sales/Receipts
P-12[26] / P-24	1st Quarter	₱ 547,794,559.42
P-13[27] / P-25	2nd Quarter	392,695,800.00
P-14[28] / P-26	3rd Quarter	746,782,658.70
P-15[29] / P-27	4th Quarter	1,044,396,927.20
Total		**₱ 2,731,669,945.32**

REFERENCE	ZERO-RATED INVOICE NUMBER	ZERO-RATED OR NUMBER	OR DATE	OR SALES AMOUNT GROSS OF EWT (USD)	EXCHANGE RATE *(Exhibit P-21, Annex B)*	OR SALES AMOUNT GROSS OF EWT CONVERTED TO PESOS
1ST QUARTER						
Exhibit P-36, Pages 1 - 3	0601	0614	27-Jan-11	$ 3,032,400.00	₱44.100	₱133,728,840.00
Exhibit P-36, Pages 4 - 5	0602	0615	27-Jan-11	$ 1,778,508.00	44.100	78,432,202.80
Exhibit P-36, Pages 6 - 8	0603	0616	25-Feb-11	$ 3,032,400.00	43.550	132,061,020.00
Exhibit P-36, Pages 9 - 10	0604	0617	25-Feb-11	$ 920,430.40	43.550	40,084,743.92
Exhibit P-36, Pages 11 - 13	0605	0618	30-Mar-11	$ 3,032,400.00	43.200	130,999,680.00
Exhibit P-36, Pages 14 - 15	0606	0619	30-Mar-11	$ 752,038.72	43.200	32,488,072.70
Subtotal – 1st Quarter						***₱ 547,794,559.42***
2ND QUARTER						
Exhibit P-37, Pages 1 - 3	0607	0620	27-Apr-11	$ 3,032,400.00	₱43.050	₱130,544,820.00
Exhibit P-37, Pages 4 - 6	0608	0621	26-May-11	$ 3,032,400.00	43.300	131,302,920.00
Exhibit P-37, Pages 7 - 9	0609	0622	27-Jun-11	$ 3,032,400.00	43.150	130,848,060.00

[21] Exhibit "P-4"; CTA Docket pp.565-647.
[22] Annex A, Exhibit P-21.
[23] Exhibits "P-36" to "P-39".
[24] Exhibits "P-32" to "P-35".
[25] Exhibits "P-28" to "P-31".
[26] Line 17, CTA Docket, p. 669.
[27] Line 17, CTA Docket, p. 676.
[28] Line 17, CTA Docket, p. 683.
[29] Line 17, CTA Docket, p. 690.

Subtotal – 2nd Quarter						***₱ 392,695,800.00***
3RD QUARTER						
Exhibit P-38, Pages 1 - 3	0610	0623	27-Jul-11	$ 3,032,400.00	₱41.950	₱127,209,180.00
Exhibit P-38, Pages 4 - 6	0611	0624	26-Aug-11	$ 3,032,400.00	42.250	128,118,900.00
Exhibit P-38, Pages 7 - 8	0612	0625	26-Aug-11	$ 3,384,229.17	42.250	142,983,682.43
Exhibit P-38, Pages 9 - 11	0613	0626	26-Sep-11	$ 3,032,400.00	43.350	131,454,540.00
Exhibit P-38, Pages 12 - 13	0614	0627	26-Sep-11	$ 5,006,144.32	43.350	217,016,356.27
Subtotal – 3rd Quarter						***₱ 746,782,658.70***
4TH QUARTER						
Exhibit P-39, Pages 1 - 3	0615	0628	28-Oct-11	$ 3,032,400.00	₱42.600	₱129,180,240.00
Exhibit P-39, Pages 4 - 5	0616	0629	28-Oct-11	$ 6,669,098.98	42.600	284,103,616.55
Exhibit P-39, Pages 6 - 8	0617	0630	25-Nov-11	$ 3,032,400.00	43.400	131,606,160.00
Exhibit P-39, Pages 9 - 10	0618	0631	25-Nov-11	$ 2,298,583.36	43.400	99,758,517.82
Exhibit P-39, Pages 11 - 13	0619	0632	28-Dec-11	$ 3,032,400.00	43.600	132,212,640.00
Exhibit P-39, Pages 14 - 15	0620	0633	28-Dec-11	$ 6,136,141.12	43.600	267,535,752.83
Subtotal – 4th Quarter						***₱ 1,044,396,927.20***
Total zero-rated sales per zero-rated VAT ORs						**₱2,731,669,945.32**

The receipts/collections tabulated above from petitioner's sales of electricity generated through a renewable source of energy, particularly, hydropower, qualify for VAT zero-rating as discussed above.

Input VAT paid or incurred which are attributable to zero-rated sales

Having resolved that petitioner had VAT zero-rated receipts for the four taxable quarters of the year 2011 in the amount of ₱2,731,669,945.32, the Court shall now determine the amount of unutilized excess input VAT attributable thereto.

For the four quarters of the year 2011, petitioner reported a total amount of ₱33,249,414.29 input VAT arising from its amortization of input VAT on capital goods exceeding ₱1 million, purchase of capital goods not exceeding ₱1 million, domestic purchases of non-capital goods, importation of non-capital goods, domestic purchases of services, and services rendered by non-residents, detailed as follows:

Year 2011	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Exhibit	**P-12[30] / P-24**	**P-13[31] / P-25**	**P-14[32] / P-26**	**P-15[33] / P-27**	
Input Tax Deferred on Capital Goods exceeding ₱1Million from Previous Quarter	₱1,513,220.32	₱ 2,036,791.05	₱ 2,161,947.62	₱ 2,118,902.16	₱ 1,513,220.32
Add: Input Tax on Capital Goods exceeding ₱1Million Purchased this Quarter	701,699.97	327,260.36	173,282.29	474,374.92	1,676,617.54
Total Unamortized Input Tax on Capital Goods exceeding ₱1Million	2,214,920.29	2,364,051.41	2,335,229.91	2,593,277.08	3,189,837.86
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	2,036,791.05	2,161,947.62	2,118,902.16	2,380,471.52	2,380,471.52
Amortization of Input Tax on Capital Goods exceeding ₱1Million	₱ 178,129.24	₱ 202,103.79	₱ 216,327.75	₱ 212,805.56	₱ 809,366.34
Add: Input Tax on					
Purchase of Capital Goods not exceeding ₱1Million	62,298.65	2,220.00	34,312.57	15,522.86	114,354.08
Domestic Purchases of Goods other than Capital Goods	812,959.40	611,063.54	646,066.96	1,411,881.58	3,481,971.48
Importation of Goods other than Capital Goods	48,491.00	51,022.00	356,969.00	78,492.00	534,974.00
Domestic Purchase of Services	5,389,912.25	5,814,065.34	10,918,004.81	6,046,002.63	28,167,985.03
Services rendered by non-residents	72,965.76	-	-	67,797.60	140,763.36
Total Input VAT	**₱6,564,756.30**	**₱6,680,474.67**	**₱12,171,681.09**	**₱7,832,502.23**	**₱33,249,414.29**

Out of the reported input VAT of ₱33,249,414.29, petitioner is claiming refund in the amount of ₱17,807,940.34,[34] computed as follows:

Year 2011	Total Input Tax	Ratio of Zero-rated Sales over Total Sales	Input Vat attributable to zero-rated sales
1st Quarter	₱ 6,564,756.30	49.30%	₱ 3,236,375.30
2nd Quarter	6,680,474.67	41.33%	2,760,738.17
3rd Quarter	12,171,681.09	57.60%	7,010,910.06
4th Quarter	7,832,502.23	62.54%	4,898,379.06
Total	**₱ 33,249,414.29**		**₱ 17,906,402.59**
Less: Input VAT applied to Miscellaneous Sales			(98,462.25)
Total Input VAT claimed for refund/TCC			**₱ 17,807,940.34**

Petitioner submitted various suppliers' sales invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal

[30] CTA Docket, p. 669.
[31] CTA Docket, p. 676.
[32] CTA Docket, p. 683.
[33] CTA Docket, p. 690.
[34] Exhibit "P-20", A27, CTA Docket, p. 711.

Revenue Declarations (IEIRDs), BOC official receipts, BIR Form No. 1600 with BIR EFPS filing acknowledgement and payment confirmation receipts, Single Administrative Documents, Statement of Settlement of Duties and Taxes, Certifications from Authorized Agent Bank, cash or collector's receipt, tape receipt and other documents[35] in support of the ₱33,249,414.29 input taxes reflected in its Quarterly VAT Returns for the four quarters of the year 2011. Upon verification of the aforesaid documents, the Court-commissioned independent CPA (ICPA), Mr. Protacio T. Tacandong of Reyes Tacandong & Co., found that out of petitioner's reported input VAT of ₱33,249,414.29, only the amount of ₱32,849,636.85 is properly substantiated, detailed as follows:[36]

	Nature	**Exhibit P-21**	**Amount**	**Total**
1.	Input VAT on domestic purchases of goods supported by original TIN VAT Invoices with BIR registration, dated within the period January to December 2011, issued in the name of the Company	*Annex E-1Q, Page 14*	₱ 863,498.37	
		Annex E-2Q, Page 22	605,519.69	
		Annex E-3Q, Page 30	670,641.33	
		Annex E -4Q, Page 40	1,403,039.02	₱ 3,542,698.41
2.	Input VAT on domestic purchases of services supported by original TIN VAT Official Receipts (ORs) with BIR registration, dated within the period January to December 2011, issued in the name of the Company	*Annex F-1Q, Page 57*	5,354,005.43	
		Annex F-2Q, Page 60	5,743,113.95	
		Annex F-3Q, Page 75	10,781,393.07	
		Annex F-4Q, Page 94	5,996,996.56	27,875,509.01
3.	Input VAT on domestic purchases of goods amounting to less than P1,000 supported by original TIN VAT Invoices with BIR registration, dated within the period January to December 2011, issued in the name of the Company	*Annex G-1Q, Page 98*	189.63	
		Annex G-2Q, Page 99	324.39	
		Annex G-3Q, Page 100	9.64	
		Annex G-4Q, Page 101	52.56	576.22
4.	Input VAT on domestic purchases of services amounting to less than P1,000 supported by original TIN VAT ORs with BIR registration, dated within the period January to December 2011, issued in the name of the Company	*Annex H-1Q, Page 102*	512.16	
		Annex H-2Q, Page 103	430.84	
		Annex H-3Q, Page 104	743.49	
		Annex H -4Q, Page 105	172.63	1,859.12
5.	Input VAT on purchase of capital goods exceeding P1 million supported by original TIN VAT Invoices with BIR registration issued in the name of the Company duly amortized	*Annex I-1Q, Page 106*	164,897.09	
		Annex I-2Q, Page 108	188,871.61	
		Annex I-3Q, Page 110	203,095.57	
		Annex I-4Q, Page 112	199,426.06	756,290.33
6.	Input VAT on importation of goods supported by original Import Entry Internal Revenue Declarations (IEIRDs) with	*Annex J-1Q, Page 113*	8,033.00	

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[35] Exhibits "P-71" to "P-101" and "P-104" to "P-172".

[36] Exhibit "P-21", pp. 10-12.

	Nature	Exhibit P-21	Amount	Total
	machine validation and/or original Bureau of Customs (BOC) ORs and/or original Bank ORs dated within the period January to December 2011and BOC Certifications	*Annex J-2Q, Page 114*	5,536.00	
		Annex J-3Q, Page 115	2,313.00	15,882.00
7.	Input VAT on importation of goods supported by Single Administrative Documents (SADs), Statement of Settlement of Duties and Taxes (SSDTs) and Certifications from Authorized Agent Bank (AAB) and the BOC. Printing of SADs and SSDTs from VASP verified.	*Annex K-1Q, Page 116*	7,973.00	
		Annex K-2Q, Page 117	42,964.00	
		Annex K-3Q, Page 118	346,980.00	
		Annex K-4Q, Page 119	72,320.00	470,237.00
8.	Input VAT on importation of goods supported by BOC-verified Single Administrative Document (SAD) and Certifications from AAB and the BOC	*Annex L-1Q, Page 120*	32,485.00	32,485.00
9.	Input VAT on importation of goods supported by BOC-verified photocopy of BOC ORs and certification from the BOC	*Annex M-3Q, Page 121*	3,429.00	
		Annex M-4Q, Page 122	3,088.00	6,517.00
10.	Input VAT on services rendered by non-residents supported by e-filed BIR Form No. 1600 and payment confirmation from the BIR	*Annex N-1Q, Page 123*	72,965.76	
		Annex N-4Q, Page 124	67,797.60	140,763.36
11.	Input VAT on domestic purchase of services supported by TIN VAT Cash or Collection Receipt with BIR registration, dated within the period January to December 2011, issued in the name of the Company and containing all the required information	*Annex O-1Q, Page 125*	2,560.92	
		Annex O-3Q, Page 126	2,404.34	
		Annex O-4Q, Page 127	1,854.14	6,819.40
Total Input VAT Properly Substantiated			**₱32,849,636.85**	**₱32,849,636.85**

As regards the remaining input VAT, the ICPA found the amount of ₱399,776.86 as input VAT with exceptions, as follows:[37]

	Nature	Reference	Amount	Total
1.	Input VAT on purchase of capital goods supported by TIN # Invoice with notarized certification from supplier that VAT paid by the Company was already remitted to the BIR	*Annex P-1Q, Page 128*	₱ 13,232.13	
		Annex P-2Q, Page 129	13,232.13	
		Annex P-3Q, Page 130	13,232.13	
		Annex P-4Q, Page 131	13,232.13	₱ 52,928.52
2.	Input VAT on domestic purchase of goods supported by documents other than a TIN VAT invoice	*Annex Q-1Q, Page 132*	1,595.42	
		Annex Q-2Q, Page 133	1,649.98	
		Annex Q-3Q, Page 134	4,186.37	
		Annex Q-4Q, Page 136	2,968.79	10,400.56
3.	Input VAT on domestic purchase of goods supported only by a photocopy of the TIN VAT invoice	*Annex R-3Q, Page 137*	490.18	490.18

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[37] Exhibit "P-21", pp. 12-16.

	Nature	Reference	Amount	Total
4.	Input tax on domestic purchase of goods supported by a VAT invoice not issued in the name of the Company or without the name of the Company	*Annex S-2Q, Page 138*	261.40	261.40
5.	Input VAT on domestic purchase of goods supported by a TIN VAT invoice with name of the Company written/stamped/altered without countersignature or with countersignature but without letter from supplier	*Annex T-1Q, Page 139*	526.48	
		Annex T-2Q, Page 140	214.29	
		Annex T-3Q, Page 141	425.79	
		Annex T-4Q, Page 142	1,236.48	2,403.04
6.	Input VAT on domestic purchases of goods supported by tape receipt with the name of the Company written/stamped/altered without countersignature or with countersignature but without letter from supplier	*Annex U-1Q, Page 154*	8,035.72	
		Annex U-2Q, Page 162	4,992.39	
		Annex U-3Q, Page 166	4,125.12	
		Annex U-4Q, Page 174	8,452.37	25,605.60
7.	Input VAT on domestic purchase of goods supported by a TIN VAT invoice that is not BIR-registered	*Annex V-4Q, Page 175*	49.29	49.29
8.	Input VAT on domestic purchase of goods supported by a TIN VAT Invoice issued in the name of the Company but without the Company's TIN and/or address	*Annex W-1Q, Page 176*	549.57	549.57
9.	Input VAT on domestic purchase of goods supported by a TIN VAT Invoice issued in the name of the Company but with the Company's TIN and/or address stamped/added/altered without countersignature or with countersignature but without letter from supplier	*Annex X-3Q, Page 177*	142.50	142.50
10.	Input VAT on domestic purchase of goods supported by a VAT invoice but not dated within the VAT taxable year (i.e., 2010 or 2012)	*Annex Y-1Q, Page 178*	792.36	792.36
11.	Input VAT on domestic purchase of goods supported by an invoice with TIN # only; TIN-V; Tan-V; Tan-VAT; TIN-NV/Non VAT; stamped/handwritten TIN-V/VAT; or no TIN invoice	*Annex Z-2Q, Page 179*	60.00	
		Annex Z-4Q, Page 180	12,214.29	12,274.29
12.	Input VAT on domestic purchase of goods supported by a TIN VAT invoice with alteration in date without countersignature or with countersignature but without letter from supplier	*Annex AA-4Q, Page 181*	10.80	10.80
13.	Input VAT on domestic purchase of goods supported by a VAT invoice with alteration in taxable and or gross amount without countersignature or with countersignature but without letter from supplier	*Annex BB-2Q, Page 182*	108.68	108.68
14.	Input VAT on domestic purchase of goods supported by a TIN VAT invoice issued in the name of the Company where VAT was not separately indicated	*Annex CC-1Q, Page 183*	15.00	
		Annex CC-3Q, Page 184	113.74	
		Annex CC-4Q, Page 185	302.92	431.66
15.	Input VAT on domestic purchases of services supported by documents other than a TIN VAT OR	*Annex DD-1Q, Page 187*	1,031.22	
		Annex DD-2Q, Page 189	397.44	
		Annex DD-3Q, Page 190	12,462.89	
		Annex DD-4Q, Page 191	5,813.59	19,705.14
16.	Input VAT on domestic purchase of services supported by a TIN VAT OR not issued in the	*Annex EE-1Q, Page 192*	63.00	

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	Nature	Reference	Amount	Total
	name of the Company or without name of the Company	*Annex EE-2Q, Page 193*	157.81	
		Annex EE-3Q, Page 194	5,027.14	
		Annex EE-4Q, Page 195	662.16	5,910.11
17.	Input VAT on domestic purchase of services supported by a TIN VAT OR with the name of the Company written/stamped/altered without countersignature or with countersignature but without letter from supplier	*Annex FF-2Q, Page 196*	198.96	
		Annex FF-3Q, Page 197	255.10	
		Annex FF-4Q, Page 198	238.29	692.35
18.	Input VAT on domestic purchase of services supported by a TIN VAT OR but the name of the Company was misspelled	*Annex GG-2Q, Page 199*	952.08	
		Annex GG-3Q, Page 200	1,092.00	2,044.08
19.	Input VAT on domestic purchases of services supported by an official receipt with TIN # only; TIN-V; Tan-V; Tan-VAT; or a TIN-NV/Non VAT OR	*Annex HH-1Q, Page 201*	53.68	
		Annex HH-2Q, Page 203	48,228.77	
		Annex HH-3Q, Page 206	60,202.91	
		Annex HH-4Q, Page 208	25,834.27	134,319.63
20.	Input VAT on domestic purchase of services supported by tape receipt without the Company's name or the Company's name is written/stamped/altered without countersignature or with countersignature but without letter from supplier	*Annex II-1Q, Page 217*	2,433.61	
		Annex II-2Q, Page 229	4,310.63	
		Annex II-3Q, Page 238	2,905.10	
		Annex II-4Q, Page 251	3,452.49	13,101.83
21.	Input VAT on domestic purchase of services supported by a TIN VAT OR issued in the name of the Company but without the Company's TIN and/or address	*AnnexJJ-1Q, Page 252*	1,066.25	1,066.25
22.	Input VAT on domestic purchase of services supported by a TIN VAT OR issued in the name of the Company but with the Company's TIN and/or address stamped/added/altered without countersignature or with countersignature but without letter from supplier	*Annex KK-2Q, Page 253*	857.08	857.08
23.	Input VAT on domestic purchase of services supported by a TIN VAT OR issued in the name of the Company but with misstatement in the Company's TIN and/or address	*Annex LL-2Q, Page 254*	447.41	
		Annex LL-3Q, Page 255	460.13	907.54
24.	Input VAT on domestic purchases of services supported by a TIN VAT OR but not dated within the VAT taxable year (i.e., dated 2010 or 2012)	*Annex MM-1Q, Page 256*	119.03	119.03
25.	Input VAT on domestic purchases of services supported by receipts with TIN # only; TIN-V; TIN-VAT/NV or no TIN OR	*Annex NN-4Q, Page 257*	6,268.80	6,268.80
26.	Input VAT on domestic purchase of services supported by a VAT OR printed with "not allowed for claiming Input VAT" (or similar wordings)	*Annex OO-1Q, Page 258*	428.57	
		Annex OO-2Q, Page 259	7,328.06	
		Annex OO-3Q, Page 260	663.22	
		Annex OO-4Q, Page 261	2,831.87	11,251.72
27.	Input VAT on domestic purchase of services supported by a VAT OR with alteration in taxable or gross amount without countersignature or with countersignature but without letter from supplier	*Annex PP-1Q, Page 262*	730.40	
		Annex PP-2Q, Page 263	112.51	

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	Nature	Reference	Amount	Total
		Annex PP-4Q, Page 264	106.00	948.91
28.	Input VAT on domestic purchase of services supported by a TIN VAT OR issued in the name of the Company where VAT was not separately indicated	*Annex QQ-1Q, Page 265*	699.99	
		Annex QQ-2Q, Page 266	42.86	
		Annex QQ-3Q, Page 267	50,101.12	
		Annex QQ-4Q, Page 268	133.63	50,977.60
29.	Input VAT on domestic purchase of services supported by a TIN VAT OR with alteration in the amount of VAT separately indicated without countersignature or with countersignature but without letter from supplier	*Annex RR-1Q, Page 269*	213.58	
		Annex RR-2Q, Page 270	75.54	289.12
30.	Input VAT on importation of goods supported by photocopies or scanned copies of BOC ORs only	*Annex SS-2Q, Page 271*	2,522.00	2,522.00
31.	Overclaimed portion of Input VAT arising from erroneous computation of amortized Input VAT on purchase of capital goods (e.g., arithmetical error, rounding differences)	*Annex TT-1Q, Page 272*	0.02	
		Annex TT-2Q, Page 273	0.05	
		Annex TT-3Q, Page 274	0.05	
		Annex TT-4Q, Page 275	0.05	0.17
32.	Overclaimed portion of Input VAT arising from erroneous computation of Input VAT on domestic purchases of goods(e.g., arithmetical error, rounding differences)	*Annex UU-1Q, Page 276*	6.53	
		Annex UU-2Q, Page 279	102.99	
		Annex UU-3Q, Page 283	16.65	
		Annex UU-4Q, Page 286	2.23	128.40
33.	Overclaimed portion of Input VAT arising from erroneous computation of Input VAT on domestic purchases of services (e.g., arithmetical error, rounding differences)	*Annex VV-1Q, Page 289*	663.76	
		Annex VV-2Q, Page 293	7,092.05	
		Annex VV-3Q, Page 296	13.11	
		Annex VV-4Q, Page 298	45.96	7,814.88
34.	Overclaimed portion of Input VAT arising from foreign exchange (forex) rate used in foreign currency denominated purchases of services	*Annex WW-1Q, Page 300*	0.09	
		Annex WW-2Q, Page 301	0.47	
		Annex WW-3Q, Page 302	54.03	
		Annex WW-4Q, Page 303	0.44	55.03
35.	Input VAT on domestic purchase of goods and services where supporting documents were not available for verification	*Annex XX-1Q, Page 304*	25,379.68	
		Annex XX-2Q, Page 305	368.59	
		Annex XX-3Q, Page 306	455.03	
		Annex XX-4Q, Page 307	667.12	26,870.42
36.	Input VAT on domestic purchase of capital goods where supporting documents were not available for verification	*Annex YY-4Q, Page 308*	147.32	147.32
37.	Input VAT on importation of goods where supporting documents were not available for verification	*Annex ZZ-3Q, Page 309*	4,247.00	
		Annex ZZ-4Q, Page 310	3,084.00	7,331.00
Total			₱ 399,776.86	₱ 399,776.86

Upon review and scrutiny, the Court finds the above findings of the ICPA in order. The input taxes of ₱399,776.86 should be disallowed because either the supporting invoices or official receipts did not meet the substantiation requirements under Sections 110(A), 113, 237 and 238 of the 1997 NIRC, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended, or it cannot be ascertained whether the alteration in the supporting invoice or official receipt was made by the authorized representative of the petitioner's supplier.

It is to be noted that there is a minor discrepancy of ₱0.58 between the ₱33,249,413.71[38] input VAT verified by the ICPA and the ₱33,249,414.29 input VAT declared by petitioner in its 2011 Quarterly VAT Returns due to rounding-off differences.[39]

Therefore, out of petitioner's claimed input VAT for taxable year 2011 in the amount of ₱33,249,414.29, only the amount of ₱32,849,636.85, as summarized by the ICPA in his report dated August 16, 2013,[40] represents petitioner's valid input VAT, broken down as follows:

Quarter	Total Input VAT
1st Quarter	₱ 6,507,120.36
2nd Quarter	6,586,760.48
3rd Quarter	12,011,009.44
4th Quarter	7,744,746.57
Total	**₱ 32,849,636.85**

Allocation of validly substantiated input VAT payments to petitioner's zero rated sales and sales subject to 12% VAT

Details of petitioner's sales for the four quarters of the year 2011 with corresponding percentage are shown below.

Year 2011	12% VATable Sales to Private	12% VATable Sales to Government	Zero-Rated Sales	Total
1st Quarter *(Exh P-12 / P-24)*	₱ -	563,367,605.17	547,794,559.42	1,111,162,164.59
% to Total Sales	0.0000000%	50.7007549%	49.2992451%	100.0000000%

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38 ₱32,849,636.85 plus ₱399,776.86.
39 Exhibit "P-21", p. 18 and Annex AAA.
40 Exhibit "P-21", pp. 10-12.

2nd Quarter *(Exh P-13 / P-25)*	₱ -	557,555,253.12	392,695,800.00	950,251,053.12
% to Total Sales	0.0000000%	58.6745209%	41.3254791%	100.0000000%
3rd Quarter *(Exh P-14 / P-26)*	₱ 551,356.34	549,159,633.47	746,782,658.70	1,296,493,648.51
% to Total Sales	0.0425267%	42.3572945%	57.6001787%	100.0000000%
4th Quarter *(Exh P-15 /P-27)*	₱ 325,000.00	625,267,505.69	1,044,396,927.20	1,669,989,432.89
% to Total Sales	0.0194612%	37.4414049%	62.5391339%	100.0000000%

The substantiated input VAT of ₱32,849,636.85 is not entirely attributable to petitioner's zero-rated sales since petitioner had sales to government and private entities for the year 2011 which were subject to 12% VAT. Allocating, therefore, the substantiated input VAT of ₱32,849,636.85 based on the percentage of each type of sales to total sales would show that only the amount of ₱17,691,831.87 is attributable to zero-rated sales while the rest of the input VAT pertains to sales subject to 12% VAT, *i.e.* input VAT attributable to sales to private entities in the amount of ₱6,615.11, and input VAT attributable to sales to government in the amount of ₱15,151,189.87, as shown below:

Year 2011	Input VAT Attributable to 12% VATable Sales to Private	Input VAT Attributable to 12% VATable Sales to Government	Input VAT Attributable to Zero-Rated Sales	Total
1st Quarter	₱ -	₱ 3,299,159.14	₱ 3,207,961.22	₱ 6,507,120.36
2nd Quarter	-	3,864,750.16	2,722,010.32	6,586,760.48
3rd Quarter	5,107.89	5,087,538.65	6,918,362.90	12,011,009.44
4th Quarter	1,507.22	2,899,741.92	4,843,497.43	7,744,746.57
Total	**₱ 6,615.11**	**₱ 15,151,189.87**	**₱ 17,691,831.87**	**₱ 32,849,636.85**

Substantiated input VAT's excess over output VAT

After deducting the input tax of ₱6,615.11 attributable to sales to private entities from its output VAT liability of ₱105,162.76,[41] petitioner still has a net amount of output VAT payable for the year 2011 in the amount of ₱98,547.65, computed as follows:

Output VAT Due	₱ 105,162.76
Less: Input VAT	6,615.11
Net Output VAT Payable	**₱ 98,547.65**

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[41] Sum of ₱66,162.76 (Line 15B, Exhibit "P-14", Docket, p. 683 and Exhibit "P-26") and ₱39,000.00 (Line 15B, Exhibit "P-15", Docket, p. 690 and Exhibit "P-27").

By deducting the net amount of output VAT payable of ₱98,547.65 from petitioner's total input VAT attributable to zero-rated sales of ₱17,691,831.87, a refundable amount of ₱17,593,284.22 is in order:

Input VAT Attributable to Zero-Rated Sales	₱ 17,691,831.87
Less: Net Output VAT Payable	98,547.65
Net Amount Refundable	**₱ 17,593,284.22**

Input VAT was not applied against any output VAT liability in the succeeding quarters

Although the claimed input VAT was carried-over by petitioner in its succeeding Quarterly VAT Returns for the year 2012,[42] the same remained unutilized until it was deducted as **"Any VAT Refund/TCC Claimed"**[43] in its Quarterly VAT Return for the fourth quarter of 2012. Thus, the excess input VAT of ₱24,285,282.50[44] as of the end of the fourth quarter of 2012, which was carried-over to the succeeding first quarter of 2013,[45] no longer included the subject claim.

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of a TCC in the amount of ₱17,593,284.22, representing its unutilized input VAT incurred for the four quarters of the year 2011 attributable to its zero-rated receipts for the same period.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent **COMMISSIONER OF INTERNAL REVENUE** is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner **CE CASECNAN WATER AND ENERGY COMPANY, INC.** in the reduced amount of **₱17,593,284.22**, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales of generated power to NIA for the four quarters of the year 2011.

[42] Exhibits "P-16" to "P-19", CTA Docket, pp. 698-704; Exhibits "P-62" to "P-65".
[43] Exhibit "P-19", line 23D, CTA Docket, p. 704 and Exhibit "P-65", line 23D.
[44] Exhibit "P-19", line 29, CTA Docket, p. 705 and Exhibit "P-65", line 29.
[45] Exhibit "P-70", line 20A.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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