REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MANULIFE DATA SERVICES, INC.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA CASE NO. 10138

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

AUG 10 2023

x- 4:27 p.m. - - - - -x

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed on March 29, 2019 by petitioner Manulife Data Services, Inc.[1] ("**Petitioner**"), against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), under Section 3(a), Rule 8,[2] in relation to Section 3(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"). Petitioner assails the alleged denial of its claim for refund/tax credit of its excess and unutilized input value-added tax ("**VAT**") attributable to zero-rated sales based on respondent's *Letter* served on May 29, 2019.

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[1] Docket – Vol. I, pp. 10 to 25.

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

[3] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue

[4] A.M. No. 05-11-07-CTA.

THE PARTIES

Petitioner Manulife Data Services, Inc. is a foreign corporation duly registered with and authorized by the Philippine Securities and Exchange Commission ("**SEC**") to establish a Regional Operating Headquarters ("**ROHQ**") in the Philippines.[5] It is registered with the Bureau of Internal Revenue ("**BIR**") under Tax Identification Number 244-027-271-00000, with address at Manulife Building, UP Technopark, Commonwealth Avenue, Barangay U.P. Campus, Quezon City.[6]

Respondent is the Commissioner of the BIR, who holds office on the 5th Floor, BIR National Office Building, BIR Road, Agham Road, Diliman, Quezon City, and is vested with the power to decide tax cases, including claims for refunds and/or tax credits under Section 14 of the National Internal Revenue Code ("**NIRC**") of 1997, as amended.[7]

THE FACTS

On March 29, 2019, petitioner, through counsel, filed with respondent, through the BIR Regular LT-Audit Division III, an administrative application for refund/tax credit of its excess and unutilized input VAT for the whole period of calendar year ("**CY**") 2017, together with its supporting documents in accordance with Annex "A" of Revenue Memorandum Circular ("**RMC**") No. 17-2018.[8]

Subsequently, on May 29, 2019, respondent served on petitioner, not on its counsel, a letter informing it that its claim for refund has been denied.[9]

THE PROCEEDINGS BEFORE THE COURT

The present *Petition of Review* was filed on July 26, 2019.[10]

On December 5, 2019, respondent filed a *Motion for Extension of Time to File Answer*,[11] which the Court granted in

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[5] Exhibits "P-1" to "P-2", Docket – Vol. IV, pp. 1738 to 1785.
[6] Exhibit "P-3", Docket – Vol. IV, p. 1786.
[7] Par. 1(b), Stipulation of Facts, JSFI, Docket – Vol. III, p. 1423.
[8] Par. 1(d), Stipulation of Facts, JSFI, Docket – Vol. III, p. 1424.
[9] Par. 6, *Petition for Review*, vis-à-vis par. 1, *Answer (to the Petition for Review dated 15 April 2019)*, Docket – Vol. I, pp. 12 and 302, respectively.
[10] Docket – Vol. I, pp. 10 to 25.
[11] Docket – Vol. I, pp. 295 to 298.

a *Resolution* dated December 10, 2019.[12] Respondent filed his *Answer (to the Petition for Review dated 15 April 2019)* on January 4, 2020.[13]

Respondent transmitted the *BIR Records* for this case on February 6, 2020.[14]

The Pre-Trial Conference was set on March 31, 2020,[15] but was reset to and held on September 3, 2020.[16] Prior thereto, petitioner filed its *Pre-Trial Brief* on March 12, 2020,[17] while *Respondent's Pre-Trial Brief* was submitted on June 9, 2020.[18]

On September 22, 2020, the parties filed their *Joint Stipulation of Facts and Issues*,[19] which the Court admitted and approved in its *Resolution* dated October 13, 2020,[20] thereby deeming the termination of the pre-trial. The *Pre-Trial Order*, dated November 18, 2020, was then issued.[21]

Trial ensued.

During the trial, the parties presented their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Iñigo P. Garcia,[22] petitioner's Finance Director; (2) Ms. Clarissa L. Magarao,[23] petitioner's Accounting Specialist; and (3) Mr. Michael L. Aguirre,[24] the Court-commissioned Independent Certified Public Accountant (**"ICPA"**).[25]

The ICPA's *Report* was submitted on January 18, 2021.[26]

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[12] Docket – Vol. I, p. 301.
[13] Docket – Vol. I, pp. 302 to 312.
[14] Docket – Vol. I, pp. 323 to 325.
[15] *Notice of Pre-Trial Conference* dated January 6, 2020, Docket – Vol. I, pp. 314 to 315.
[16] *Notice of Resetting* dated June 4, 2020, Docket – Vol. I, pp. 354; Minutes of the hearing held on, and Order dated, September 3, 2020, Docket – Vol. III, pp. 1413 to 1416.
[17] Docket – Vol. I, pp. 329 to 351.
[18] Docket – Vol. I, pp. 355 to 358.
[19] Docket – Vol. III, pp. 1423 to 1434.
[20] Docket – Vol. III, pp. 1465 to 1466.
[21] Docket – Vol. III, pp. 1475 to 1488.
[22] Exhibit "P-104", Docket – Vol. I, pp. 382 to 404; Minutes of the hearing held on, and Order dated, January 26, 2021, Docket – Vol. IV, pp. 1639 to 1641.
[23] Exhibit "P-105", Docket – Vol. III, pp. 1191 to 1204; Minutes of the hearing held on February 23, 2021, Docket – Vol. IV, p. 1654.
[24] Exhibit "P-107", Docket – Vol. IV, pp. 1660 to 1665; Minutes of the hearing held on, and Order dated, June 22, 2021, Docket – Vol. IV, pp. 1702 to 1704.
[25] *Oath of Commission* dated December 3, 2020, Docket – Vol. III, p. 1504; Minutes of the hearing held on, and Order dated, December 3, 2020, Docket – Vol. III, p. 1503.
[26] Exhibit "P-108", Docket – Vol. IV, pp. 1513 to 1637.

On July 22, 2021, petitioner filed its *Formal Offer of Exhibits*,[27] to which respondent filed his *Comment [Re: Formal Offer of Evidence]* on October 25, 2021.[28] In the *Resolution* dated December 16, 2021,[29] the Court admitted all of petitioner's offered exhibits except the following:

1. Exhibits "P-3", "P-10", "P-11", "P-11-a", "P-11-b", "P-15", "P-39", "P-40", "P-41", "P-42", "P-73", "P-74", "P-75", and "P-76", for failure to present the originals for comparison; and

2. Exhibits "P-12-H.2-ICPA" to "P-12-H.3-ICPA", "P-12-H.24-ICPA", and "P-14-D.2-10-ICPA" to "P-14-D.2-13-ICPA", for not being found in the records.

For his part, respondent offered the testimony of Revenue Officer Mariano C. Boliche.[30]

Respondent filed his *Formal Offer of Evidence* on April 29, 2022.[31] Petitioner posted a *Manifestation (Re: Formal Offer of Evidence)* on May 18, 2022,[32] stating that it has no objection to the admission of respondent's offered documentary evidence without prejudice to the Court's appreciation of their evidentiary weight. In the *Resolution* dated July 19, 2022,[33] the Court admitted all respondent's offered evidence.

Respondent filed his *Memorandum* on August 9, 2022,[34] while petitioner's *Memorandum* was posted on September 9, 2022.[35]

This case was submitted for decision on September 21, 2022.[36]

Hence, this *Decision*.

[27] Docket – Vol. IV, pp. 1709 to 1737.
[28] Docket – Vol. V, pp. 2703 to 2705.
[29] Docket – Vol. V, pp. 2710 to 2713.
[30] Exhibit "R-6", Docket – Vol I, pp. 363 to 368; Minutes of the hearing held on, and Order dated, April 28, 2022, Docket – Vol. V, pp. 2714 to 2716.
[31] Docket – Vol. V, pp. 2717 to 2720.
[32] Docket – Vol. V, pp. 2723 to 2725.
[33] Docket – Vol. V, pp. 2729 to 2730.
[34] Docket – Vol. V, pp. 2731 to 2737.
[35] Docket – Vol. V, pp. 2745 to 2756.
[36] Resolution dated September 21, 2022, Docket – Vol. V, p. 2760.

THE ISSUES

The parties stipulated the following issues for this Court's resolution, *viz.*:

> "a. Whether the BIR, through the Regular Large Taxpayers Audit Division III (RLTAD-3), validly served the denial of the administrative claim to petitioner itself rather than its counsel.
>
> b. Whether petitioner has complied with all the legal requirements for it to be entitled to a refund/tax credit of excess or unutilized input VAT payments for the Calendar Year 2017 in the amount of PHP 98,836,105.58."[37]

PETITIONER'S ARGUMENTS

Petitioner argues that the BIR improperly served the notice of denial on petitioner; hence, the petition was timely filed.

It further claims that it is entitled to a refund/tax credit and holds that:

1. Petitioner is VAT-registered;
2. Petitioner is engaged in zero-ratable sales paid by inward remittances of foreign currency;
3. Petitioner paid input VAT in CY 2017, arising from its domestic purchases of goods and services;
4. Petitioner's excess and unutilized input VAT is directly attributable to its zero-rated sales for CY 2017 and not applied against output tax in the same or succeeding quarters; and
5. Petitioner has complied with the complete documentation in support of its claim for refund.

RESPONDENT'S ARGUMENTS

Respondent contends that the petition must be dismissed for failure of petitioner to substantiate its claim for refund at the administrative level and that petitioner is not entitled to a refund in the amount of ₱98,836,105.58.

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[37] Stipulation of Issues, JSFI, Docket – Vol. III, p. 1424.

THE RULING OF THE COURT

The *Petition* should be dismissed for lack of jurisdiction.

The Court has no jurisdiction over the instant Petition.

Before the Court delves into the merits of the case, We shall first determine whether the instant *Petition* was timely filed and whether the Court has jurisdiction to take cognizance of this case.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. For the court or an adjudicative body to have the authority to dispose of the case on its merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all the parties or by the erroneous belief of the court that it exists. Thus, **when a court has no jurisdiction over the subject matter, its only power is to dismiss the action.**[38]

Section 7(a)(1) and (2), and 11 of Republic Act ("**RA**") No. 1125,[39] as amended by RA No. 9282,[40] confers jurisdiction to this Court relative to decisions and inactions of respondent and states the manner of appealing the same, to wit:

> "SEC. 7. *Jurisdiction*. – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) ***Decisions* of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

[38] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[39] AN ACT CREATING THE COURT OF TAX APPEALS.
[40] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

(2) ***Inaction* by the <u>Commissioner of Internal Revenue</u> in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis added)*

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any <u>party adversely affected</u> by a decision, ruling, or inaction of the Commissioner of Internal Revenue...**may file an **appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ... *[Emphases supplied.]*

Relatedly, Section 112 of the NIRC of 1997, as amended, 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: ...

... ...

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes **within ninety (90) days from the date of submission of the official receipts or invoices and other documents** in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the <u>taxpayer affected</u> may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code." *[Emphases supplied.]*

AWK

Based on the foregoing provisions, this Court exercises appellate jurisdiction over decisions, rulings, or inactions of respondent. The *taxpayer affected* must file the appeal, or as worded by RA No. 9282, the *party adversely affected,* within thirty (30) days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

In this case, it is not disputed that on **May 29, 2019**, respondent served on petitioner, not on its counsel, a letter informing it that its claim for refund has been denied.[41] Hence, petitioner, as the *taxpayer affected* or *party adversely affected* by the denial, had thirty (30) days or until **June 28, 2019**, to file its appeal with this Court. However, petitioner only filed the said appeal, via the present *Petition for Review*, on **July 26, 2019**,[42] which is twenty-eight (28) days beyond the 30-day reglementary period. Clearly, the instant *Petition for Review* was filed out of time.

Petitioner posits that respondent's service of the denial letter to it, rather than to its counsel or duly authorized agent, renders the denial ineffectual.[43] Petitioner submits that the period for the filing of its judicial claim should be counted, not from the date it received the denial letter from the BIR, on May 29, 2019,[44] but from the expiration of the 90-day period within which the BIR should act on its claim as if there was "no denial" of the claim, but "inaction" on the part of the BIR. In its *Petition for Review*,[45] petitioner anchors this argument in Section 2 of Rule 13 of the Rules of Court, which reads in part as follows:

> "SEC. 2. *Filing and service, defined.* – Filing is the act of submitting the pleading or other paper to the court.
>
> **Service** is the act of providing a party with a copy of the pleading or any other **court submission**. <u>If a party has appeared by counsel, service upon such party shall be made upon his or her counsel, unless service upon the party and the party's counsel is ordered by the court.</u> xxx" [*Emphases and underscoring supplied.*]

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[41] Par. 6, *Petition for Review*, vis-à-vis par. 1, *Answer (to the Petition for Review dated 15 April 2019)*, Docket – Vol. I, pp. 12 and 302, respectively.
[42] Docket – Vol. I, pp. 10 to 25.
[43] Par. 22, Petitioner's *Memorandum*, Docket – Vol. V, p. 2748.
[44] Exhibit "P-16-a", Docket – Vol. IV, p. 1859.
[45] Par. 20, *Petition for Review*, Docket – Vol. I, pp. 17 to 18.

For his part, respondent submits that the proceedings in the BIR are administrative and not judicial. Thus, what should be observed are the laws, rules, and regulations affecting the discharge of the BIR's functions and that neither the Tax Code nor the BIR's issuances provide an express provision that whenever a taxpayer is represented by counsel, all communications must be directed by the BIR to the latter.[46]

We agree with respondent.

As plainly worded, the term "service" under Section 2, Rule 13 of the Rules of Court refers explicitly to pleadings or other court submissions. As a corollary, it bears stressing that the proceeding involved in the present case is administrative in nature, involving the BIR, an administrative body.

Relative thereto, it must be emphasized that administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to observance of fundamental and essential requirements of due process in justiciable cases presented before them. In administrative proceedings, technical rules of procedure and evidence are not strictly applied, and administrative due process cannot be fully equated with due process in its judicial sense.[47] Moreover, technical rules applicable to judicial proceedings are not exact replicas of those of administrative investigations.[48] Correspondingly, Section 2, Rule 13 of the Rules of Court cannot be made to apply to the service of decisions denying refund claims under Section 112 of the NIRC of 1997, as amended.

Petitioner's claim that the service of the denial letter is ineffectual because it was served directly to it rather than to its authorized representative is baseless. Petitioner failed to show any provision of law or rule that when a taxpayer has appointed a tax agent or counsel, service of BIR notices or any other communication must be made *only* to the latter, and the periods to act or respond to BIR decisions or communications, should

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[46] Pars. 15 to 16, *Answer*, Docket – Vol. I, p. 305.
[47] *Samalio v. Court of Appeals*, 494 Phil. 456, 464 (2005) [Per J. Corona, *En Banc*], citing *Bantolino, et al. v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 846 (2003) [Per J. Bellosillo, Second Division]; *De los Santos v. National Labor Relations Commission, et al.*, 423 Phil. 1020, 1034 (2001) [Per J. Bellosillo, Second Division]; and *Emin v. De Leon, et al.*, 428 Phil. 172, 186-187 (2002) [Per J. Quisumbing, *En Banc*].
[48] *Sibayan v. Alda*, G.R. No. 233395, January 17, 2018.

be reckoned *only* from the latter's receipt of such decision or communication.

Moreover, the Court finds the following allegation of petitioner as specious, to wit:

> "19. The petitioner appointed the firm because of the complexities of the tax-refund process and timelines. In bypassing the firm, the BIR effectively deprived the petitioner of the benefits of counsel."[49]

As the Court sees it, this case involves plain negligence on the part of petitioner. Upon its receipt, petitioner could have simply and immediately furnished the BIR's letter to its counsel informing it that its refund/tax credit claim has been denied. There is nothing complex in handing over or forwarding the denial letter to its counsel as soon as it receives the same for the latter to act on it. After all, as the *taxpayer affected,* petitioner cannot claim ignorance of the 30-day prescriptive period of appeal under Section 112(C) of the NIRC of 1997, as amended, since that cannot be considered an excuse in observing the same.[50] By not immediately furnishing its counsel, petitioner is clearly at fault. It is also noted that petitioner offered no explanation or reason in failing to immediately furnish its counsel with the denial letter after receipt thereof. Thus, if indeed petitioner was deprived of the benefits of counsel, it was not the BIR's fault. Instead, petitioner's inept inaction or lack of assiduousness is why the present *Petition for Review* was not filed on time.

It has long been settled that the thirty (30)-day period prescribed by Section 11 of RA No. 1125, as amended, within which a *party adversely affected* by a decision of respondent should file his appeal with this Court, is a jurisdictional requirement, and the failure of a taxpayer to lodge his or her appeal within the prescribed period bars his or her appeal and renders the questioned decision *final and executory.*[51]

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[49] Par. 19, *Petition for Review*, Docket – Vol. I, p. 17.
[50] Article 3 of the Civil Code of the Philippines provides that "[i]gnorance of the law excuses no one from compliance therewith."
[51] *Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals, et al.*, G.R. No. L-25289, June 28, 1974.

Indeed, Section 112(C) of the NIRC of 1997, as amended, and Section 11 of RA No. 1125, as amended, clearly provide that the appeal to the CTA must be filed by the *taxpayer affected* or *party adversely affected* within 30 days from receipt of such decision or ruling.

It is fundamental that where the law is clear and free from ambiguity, "there is no room for interpretation or construction. There is only room for application." [52] When the provisions of law are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without any interpretation.[53]

Correspondingly, given petitioner's failure to appeal respondent's denial of its administrative claim within the prescribed period, this Court is bereft of jurisdiction to entertain the present *Petition for Review.*

In fine, it bears emphasis that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[54]

While We commiserate with petitioner, We cannot grant the refund or tax credit it prays as the court has no jurisdiction to decide the case on the merits.

To reiterate, if the court has no jurisdiction over the nature of an action, its only jurisdiction is to *dismiss* the case.[55]

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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[52] *Dubongco v. Commission on Audit*, G.R. No. 237813, March 05, 2019.
[53] *Id.*
[54] *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.
[55] *Id.*

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

hr

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice