REPUBLIC OF THE PHILIPPINES
*Court Of Tax Appeals*
QUEZON CITY

## ***SECOND DIVISION***

TAGANITO MINING CORPORATION,
*Petitioner,*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
*Respondent.*

**C.T.A. CASE NO. 7157**

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

**Promulgated:**

OCT 2 2 2007

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# DECISION

**PALANCA-ENRIQUEZ, J.:**

When a VAT-registered person export sales qualify as zero-rated sales pursuant to the requisites provided by law, the VAT-registered person is not liable to pay output tax thereon. Accordingly, the VAT-registered person may claim tax refund or credit of its duly substantiated unutilized input VAT paid on its domestic purchases of taxable goods and services and importation of capital goods that are directly attributable to such zero-rated sales. However, absence of clear and convincing proof

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that the VAT on such purchases was shifted to the VAT-registered person, the VAT-registered person cannot claim refund or tax credit on such purchases.

## THE CASE

This is a Petition For Review filed on February 24, 2005 by Taganito Mining Corporation (hereafter "petitioner"), which seeks the refund or issuance of a tax credit certificate in the amount of P11,564,034.65, representing the alleged unutilized input VAT for the period covering January 1, 2003 to December 31, 2003.

## THE FACTS

The facts, as stipulated by the parties, are as follows:

"1) Petitioner is a corporation duly organized and existing under the laws of the Philippines with address at 4th Floor, Solid Mills Building, De La Rosa St., Legaspi Village, Makati City;

2) Petitioner is duly registered with the Securities and Exchange Commission with SEC Registration No. 138682 dated March 4, 1987 with the following primary purpose.

'To carry on the business, for itself and for others, of mining lode and/or placer mining, developing, exploiting, extracting, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging,

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shipping, transporting, and otherwise producing and dealing in nickel, chromite, cobalt, gold, silver, copper, lead, zinc, brass, iron, steel, limestone, and all kings of ores, metals and the products and which by-products thereof of every kind and description and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, locate, exchange, lease, acquire and deal in lands, mines, and mineral rights and claims, and to conduct all business appertaining thereto; to purchase, locate, lease or otherwise acquire, mining claims and rights, timber rights, water rights, concessions and mines, buildings, dwellings, plants machinery, spare parts, tools and other properties whatsoever which this corporation may from time to time find to be to its advantage, to mine lands, and to explore, work, exercise, develop or turn to account the same; and to acquire, develop and utilize water rights in such manner as may be authorized or permitted by law; to purchase, hire, make, construct or otherwise, acquire, provide, maintain, equip, alter, erect, improve, repair, manage, work and operate private roads, barges, vessels, aircraft and vehicles, private telegraph and telephone lines, and other communication media, as may be needed by the corporation for its own purpose, and to purchase, import, construct, machine, fabricate, or otherwise acquire, and maintain and operate bridges, piers, wharves, wells, reservoirs, plumes, watercourses, waterworks, aqueducts, shafts, tunnels, furnaces, coke ovens, crushing works, gasworks, electric lights and power plants and compressed air plants, chemical works of all kinds, concentrators, smelters, smelting plants, and refineries, matting plants, warehouses, workshops, factories, dwelling houses, stores, hotels or other buildings, engines, machinery, spare parts, tools, implements and other works, conveniences and properties of any description in connection with or which may be directly or indirectly conducive to any of the objects of the corporation, and to contribute to, subsidize or otherwise aid or take part in any operations;'

3) That petitioner is a duly registered VAT entity with Certificate of Registration No. 94-470-000373 issued by the Respondent dated June 15, 1994;

4) That Petitioner is registered with the Board of Investments (BOI) as an exporter of beneficiated nickel silicate ores and chromite ores with BOI Certificate of Registration No. EP-88-306;

5) That the nature of the instant petition is a petition for review of the petitioner's claim for refund;

6) That the Respondent has granted no refund of the amount claimed by Petitioner from the time Petitioner filed its claim for refund up to the present."

In his Answer, respondent alleged by way of special and affirmative defenses that:

"4) Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;

5) To support its claim, it is imperative for petitioner to prove the following, viz:

a) The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations 6-97, in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

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b) The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;

c) Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim** in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112(D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d) That the input taxes of P11,564,034.65 allegedly paid by the petitioner on its purchases of goods and services for the period covering January 1 to December 31, 2003 were attributable to its zero-rated sales, and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e) That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f) That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and in pursuance to Section 4.104-5 (a) & (b) of

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Revenue Regulations 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g) The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credit)."

Petitioner presented Reynaldo R. Virgilia, its Vice President of Finance, and Emmanuel M. Silva, its Chief Accountant, as witnesses, and documentary evidence, marked as *Exhibits "A" to "BB"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated April 24, 2006.

On the other hand, respondent did not present any evidence and submitted the case for decision.

Thereafter, both parties were granted thirty (30) days from August 31, 2005 within which to file their simultaneous memoranda.

Only petitioner filed its memorandum on October 9, 2006, and the case was deemed submitted for decision.

## THE ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are:

I

WHETHER OR NOT PETITIONER'S SALES ARE EXPORT SALES.

II

WHETHER OR NOT PETITIONER'S EXPORT SALES WERE PAID FOR IN ACCEPTABLE FOREIGN CURRENCY AND ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BANGKO SENTRAL NG PILIPINAS (BSP).

III

WHETHER OR NOT PETITIONER'S INPUT TAXES ARE ATTRIBUTABLE TO ITS ZERO-RATED TRANSACTIONS.

IV

WHETHER OR NOT PETITIONER'S INPUT TAXES ARE SUFFICIENTLY SUBSTANTIATED WITH VAT INVOICES OR OFFICIAL RECEIPTS.

V

WHETHER OR NOT THE VAT INPUT TAXES BEING CLAIMED FOR REFUND/TAX CREDIT BY PETITIONER HAS BEEN CREDITED AGAINST ANY OUTPUT TAXES OR HAS BEEN CARRIED FORWARD TO THE SUCCEEDING QUARTER OR QUARTERS. oal

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VI

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OF VAT INPUT TAXES IT PAID FROM JANUARY 1, 2003 TO DECEMBER 31, 2003 AMOUNTING TO ELEVEN MILLION FIVE HUNDRED SIXTY FOUR THOUSAND THIRTY FOUR AND 65/100 (P11,564,034.65).

**THE COURT'S RULING**

The petition is partly meritorious.

*First and Second Issues*

Being interrelated, the first and second issues shall be discussed jointly.

Petitioner claims that it is primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores which are 100% exported and/or shipped to foreign countries, specifically to Japan and Australia, as certified to by the BOI in accordance with *Revenue Memorandum Order No. 9-00.* Petitioner further contends that since these export sales were paid for in acceptable foreign currency, specifically, in US Dollars, which were inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the BSP, the same are subject to zero percent (0%)

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VAT, pursuant to *Section 106(A)(2)(a)(1) of the National Internal Revenue Code (*hereafter *NIRC of 1997), as amended*, which states:

> "**SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* -**
>
> (A) *Rate and Base of Tax.* – x x x
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
> (a) *Export Sales.* – The term 'export sales' means:
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;
> xxx xxx."

Under the aforecited provision, in order for an export sale to qualify as zero-rated, the following requisites must be present:

1) there was a sale and actual shipment of goods from the Philippines to a foreign country;

2) the sale was made by a VAT registered person;

3) the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and

4) the payment was accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

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After a careful examination of the evidence on record, the Court finds that petitioner has complied with all the above requirements.

The fact that petitioner is a VAT registered entity is not disputed (*Joint Stipulation of Facts and Issues, par. 3*). For the period January 1, 2003 to December 31, 2003, petitioner actually shipped its products abroad to foreign buyers and generated export sales in the amount of US$10,542,771.66, with the peso equivalent of P567,193,182.63, as shown in petitioner's Schedule of Export Sales (*Annex T-II of Exhibit "T"*) and various export documents, such as export sales invoices, export declarations/permits, bills of lading, ore transport permits and outward foreign manifest (*Exhibits "T-6-A-1" to "T-6-L-22"*). Likewise, the foreign currency proceeds of US$10,542,771.66 derived from said export sales were inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, as evidenced by the Security Bank Client Advices *(Exhibits "T-6-A-1" to "T-6-L-22")*.

Considering, therefore, that petitioner's export sales qualify as zero-rated sales, it is not liable to pay output VAT thereon. Accordingly, petitioner can claim tax credit/refund of the unutilized input VAT paid on its domestic purchases of taxable goods/services and importation of

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capital goods, which are directly attributable to such zero-rated sales, pursuant to *Section 112(A) of the NIRC of 1997, as amended.*

*Third and Fourth Issues*

We now proceed to the determination of whether or not petitioner incurred input taxes in connection with its zero-rated export sales for the four quarters of 2003.

In its report dated August 30, 2005, the commissioned auditing firm, Punongbayan & Araullo, noted the following findings with respect to petitioner's claimed input VAT:

1) The amount of input taxes which the Company applied for refund for the period January 1 to December 31, 2003 is lower by P20,710.38 than the total input taxes paid/incurred for the same period, as indicated in Exhibit T-1. The amount is computed as follows:

| | |
|---|---|
| Amount applied for refund | P11,564,034.65 |
| Amount of input taxes paid/incurred | 11,584,745.03 |
| | P 20,710.38 |

2) Of the total input taxes paid/incurred, we noted exceptions totalling P88,190.93. These are summarized in *Exhibit "T-III"*. Such amount has been considered in the Amended VAT returns filed on August 23, 2005.

3) Of the total input taxes paid/incurred of P11,584,745.03 per Exhibit T-1, we noted that the

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> input VAT paid/incurred totalling P11,496,554.10 are properly recorded in the books of accounts of the Company and supported by original suppliers' invoices and/or official receipts. (*Exhibit "T", p. 4*)

A careful examination and scrutiny of petitioner's 2003 monthly Schedules of Purchases and Corresponding Input VAT [both for Head Office and Minesite] (*Exhibits "T-1-A" and "T-1-B" of Exhibit "T"*) and the related supporting documents reveals that the input taxes/incurred of P11,496,554.10, as found by the independent CPA, consisted of input taxes on domestic purchases of goods/services in the amount of P1,326,115.22 and input taxes on importation of capital goods in the amount of P10,170,438.88, broken down as follows:

| | Annexed to Exhibit T as | | | INPUT VAT | | |
|---|---|---|---|---|---|---|
| 2003 | Exh T-1-A | Exh T-1-B | Exh T-III-A | On Domestic Purchases of Goods/Services | On Importation of Capital Goods | Total |
| Jan. | pp. 1-2 | | p. 3 | P 27,313.09 | | P 27,313.09 |
| Feb. | pp. 3-4 | p. 1 | p. 1 | 117,765.33 | | 117,765.33 |
| Mar. | pp. 5-6 | pp. 2-3 | p. 1 | 206,915.06 | P 203,510.43 | 410,425.49 |
| April | pp. 7-8 | pp. 4-5 | p. 1 | 213,995.49 | | 213,995.49 |
| May | pp. 9-11 | pp. 6-7 | p. 1 | 236,071.72 | | 236,071.72 |
| June | p. 12 | | pp. 1, 3 | 100,119.94 | 7,533,486.24 | 7,633,606.18 |
| July | pp. 13-14 | | | 78,539.57 | | 78,539.57 |
| Aug. | pp. 15-16 | | pp. 2,4 | 28,008.85 | | 28,008.85 |
| Sept. | p. 17 | | pp. 2,3 | 23,580.04 | 2,433,442.21 | 2,457,022.25 |
| Oct. | pp. 18-19 | | p. 3 | 101,950.89 | | 101,950.89 |
| Nov. | pp. 20-21 | | pp. 3,4 | 69,241.54 | | 69,241.54 |
| Dec. | p. 22 | | p. 3 | 122,613.70 | - | 122,613.70 |
| | | | Total: | P 1,326,115.22 | P10,170,438.88 | P11,496,554.10 |

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While petitioner was able to substantiate its domestic purchases of goods and services with VAT invoices/official receipts, however, We find that the amount of P1,326,115.22 is not entirely allowable as input tax credit.

Pursuant to *Revenue Memorandum Order No. 9-00*, sales of goods, properties or services made by a VAT-registered supplier to a BOI registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements, prescribed under *Section 3 of Revenue Memorandum Order No. 9-00*:

> "SEC. 3. ***Sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered exporter shall be accorded automatic zero-rating,*** *i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions*:
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec. 4.108-1(5) of Revenue Regulations No. 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

In the case at bench, record shows that petitioner was issued a Certification by the BOI attesting to the fact that petitioner is a BOI registered entity with 100% exports. The Certification was valid for the period May 21, 2003 to December 31, 2003. Under *Section 3.4* of *said RMO 9-00*, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner covering the period May 21, 2003 to December 31, 2003. On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner.

Hence, in the absence of clear and convincing proof that petitioner's local suppliers passed on or shifted the VAT on such domestic purchases to petitioner, it cannot claim the amount of

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P597,272.04, as input tax credits on its domestic purchases for the period May 21, 2003 to December 31, 2003, broken down as follows:

| | Annexed to Exhibit T as | | | Input VAT Claim | |
|---|---|---|---|---|---|
| **Year 2003** | **Exhibit T-1-A** | **Exhibit T-III-A** | **Exhibit** | **Amount** | **Total** |
| May 21-31 | | | T-4-E-40 | P 162.27 | |
| | | | T-4-E-42 | 496.58 | |
| | | | T-4-E-43 | 1,359.01 | |
| | | | T-4-E-45 | 410.07 | |
| | | | T-4-E-49 | 911.82 | |
| | | | T-4-E-51 | 3,107.64 | |
| | | | T-4-E-53 | 309.09 | |
| | | | T-4-E-57 | 1,090.91 | |
| | | | T-4-E-68 | 263.64 | |
| | | | T-4-E-69 | 181.64 | |
| | | | T-4-E-67 | 319.09 | |
| | | | T-4-E-71 | 229.09 | |
| | | | T-4-E-73 | 1,351.06 | |
| | | | T-4-E-72 | 1,478.18 | |
| | | | T-4-E-92 | 674.12 | |
| | | | T-4-E-93 | 1,925.41 | |
| | | | T-4-E-94 | 3,851.51 | |
| | | | T-4-E-95 | 4,933.24 | |
| | | | T-4-E-96 | 2,341.99 | |
| | | | T-4-E-97 | 8,163.80 | |
| | | | T-4-E-98 | 1,889.16 | |
| | | | T-4-E-99 | 2,025.98 | |
| | | | T-4-E-100 | 2,442.75 | |
| | | | T-4-E-101 | 1,447.26 | |
| | | | T-4-E-102 | 986.21 | |
| | | | T-4-E-103 | 793.65 | |
| | | | T-4-E-104 | 2,420.92 | |
| | | | T-4-E-105 | 1,328.80 | |
| | | | T-4-E-106 | 4,513.28 | |
| | | | T-4-E-107 | 1,206.98 | |
| | | | T-4-E-108 | 12,331.00 | |
| | | | T-4-E-109 | 2,420.27 | |
| | | | T-4-E-110 | 1,858.49 | |
| | | | T-4-E-111 | 1,738.65 | |
| | | | T-4-E-112 | 2,253.96 | P 73,217.51 |
| June | Page 12 | Pages 1, 3 | | | 100,119.94 |
| July | Pages 13-14 | | | | 78,539.57 |
| August | Pages 15-16 | Pages 2,4 | | | 28,008.85 |
| September | Page 17 | Pages 2,3 | | | 23,580.04 |

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|---|---|---|---|---|
| October | Pages 18-19 | Page 3 | | 101,950.89 |
| November | Pages 20-21 | Pages 3,4 | | 69,241.54 |
| December | Page 22 | Page 3 | | 122,613.70 |
| | | | **Total:** | **P 597,272.04** |

Petitioner, therefore, may claim the amount of P728,843.18 only as input tax credits on its domestic purchases of goods/services for the period January 1, 2003 to May 20, 2003, to wit:

| | **Annexed to Exhibit T as** | | | |
|---|---|---|---|---|
| **Year 2003** | **Exhibit T-1-A** | **Exhibit T-1-B** | **Exhibit T-III-A** | **Input VAT Claim** |
| January | Pages 1-2 | | Page 3 | P 27,313.09 |
| February | Pages 3-4 | Page 1 | Page 1 | 117,765.33 |
| March | Pages 5-6 | Pages 2-3 | Page 1 | 206,915.06 |
| April | Pages 7-8 | Pages 4-5 | Page 1 | 213,995.49 |
| May 1-20 | Pages 9-11 | Pages 6-7 | Page 1 | 162,854.21 |
| | | | **Total:** | **P 728,843.18** |

As regards the input VAT payment of P10,170,438.88 on petitioner's importations, We find the same a valid claim considering that it was directly paid to the Bureau of Customs and is duly covered by machine validated BOC import entry declarations and official receipts, in accordance with the substantiation requirements prescribed under *Section 4.104-5(b) of Revenue Regulations No. 7-95.*

In sum, petitioner's valid input tax credits amounts to P10,899,282.06, which represents the sum of the input VAT of P728,843.18 on its domestic purchases of goods/services for the period

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May 1-20, 2003 and input VAT payment of P10,170,438.88 on importations made for the year 2003.

*Fifth Issue*

As regards the fifth issue of whether or not the input VAT of P10,899,282.06 has been credited against any output tax or has been carried forward to the succeeding quarter or quarters, records show that the same was already net of output tax and was not carried over to the succeeding quarters. The input VAT claim of P11,564,034.65 (which includes the amount of P10,899,282.06 found by this Court as a valid claim) is already net of the output VAT liability of petitioner for taxable year 2003 in the amount of P136.36. Furthermore, in its VAT return for the fourth quarter of 2004, petitioner deducted the total claim of P11,564,034.65 as "Any VAT Refund/TCC Claimed" from the "Total Available Input Tax" as of the fourth quarter of 2003 (*Exhibit "Y"*). It is clear, therefore, that the input VAT claim of P11,564,034.65 was not carried over to the succeeding quarter/s.

For all the foregoing, this Court finds that petitioner has sufficiently proven its entitlement to a refund or issuance of a tax credit certificate, but in the reduced amount of P10,899,282.06, representing

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unutilized input taxes attributable to its zero-rated sales for the four quarters of 2003.

**WHEREFORE**, premises considered, the instant Petition For Review is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED to REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **TEN MILLION EIGHT HUNDRED NINETY NINE THOUSAND TWO HUNDRED EIGHTY TWO AND 06/100 PESOS (P10,899,282.06)**, representing unutilized input taxes attributable to zero-rated export sales for the four quarters of 2003.

**SO ORDERED.**

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**WE CONCUR:**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

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# A T T E S T A T I O N

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.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairperson, Second Division

# C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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.

**ERNESTO D. ACOSTA**
Presiding Justice

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