REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

PHILEX MINING CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7391
Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
MAR 24 2009 ;10:35 am

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AMENDED DECISION

CASANOVA, ***J.*:**

On June 3, 2008, petitioner filed a "**Motion for Reconsideration/New Trial"**, of Our Decision promulgated on May 21, 2008.

In its Motion for Reconsideration/New Trial, petitioner presented the following arguments:

"I

THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S DIRECT EXPORT SALE OF GOLD TO ENGLAND IS NOT ZERO-RATED BECAUSE THE SALES INVOICE THAT COVERED THE SAME WAS NOT REGISTERED WITH THE BIR, AND THE WORD 'VAT' WAS NOT PRINTED AFTER PETITIONER'S TIN NUMBER, SUPPOSEDLY IN VIOLATION OF SECTIONS 113, 237 AND 238 OF THE TAX CODE, AND SECTION 4.108-1 OF REVENUE REGULATIONS (RR) NO. 7-95.

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II

THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S DIRECT EXPORT SALE OF COPPER CONCENTRATE TO JAPAN DOES NOT QUALIFY FOR VAT ZERO-RATING BECAUSE THE SALES INVOICE THAT COVERED THE SAME PERTAINS TO THE FIRST QUARTER OF 2004 AND FALLS OUTSIDE THE PERIOD OF THE CLAIM IN THE PETITION. THE FACT IS THAT SAID SALES INVOICE PERTAINS TO THE PERIOD OF THE CLAIM.

III

THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S INDIRECT EXPORT SALES TO PASAR ALSO DO NOT QUALIFY FOR VAT ZERO-RATING BECAUSE THE SALES INVOICES THAT COVERED THE SALES FALL OUTSIDE THE PERIOD OF THE CLAIM IN THE PETITION. THE FACT IS THAT SAID SALE INVOICES ALSO PERTAIN TO THE PERIOD OF THE CLAIM."

On September 3, 2008, We issued a Resolution with the following dispositive portion:

"**WHEREFORE**, petitioner's '**Motion for Reconsideration/New Trial'** is **PARTIALLY GRANTED**. This Court **DENIES** petitioner's prayer for the reconsideration of its sales to Johnson Matthey as zero-rated but otherwise **GRANTS** the prayer for the presentation of additional documents with respect to its sales to Nippon Mining and Metals Co., Ltd. and Philippine Associated Smelting and Refining Corporation.

Let this case be set for hearing on September 18, 2008 at 9:00 AM for the presentation of the originals or certified true copies of the provisional invoices for consideration and evaluation without prejudice to the final determination of petitioner's right to the additional tax refund.

SO ORDERED."

The case was reset for hearing on October 16, 2008 and on such date, petitioner presented an additional witness plus documentary exhibits and rested

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its case[1]. Petitioner filed its Supplemental Formal Offer of Evidence[2] on October 27, 2008 which this Court resolved[3] on January 15, 2009 by admitting all its additional documentary evidence. In the same Resolution, this Court issued the following dispositive portion:

> "**ACCORDINGLY**, petitioner's '**Motion for Reconsideration/New Trial'** as regards its sales to Nippon Mining and Metals Co., Ltd., and Philippine Associated Smelting and Refining Corporation is hereby submitted [for] resolution.
>
> **SO ORDERED.**"

In the assailed Decision[4], We ruled that under Section 112(A) of the National Internal Revenue Code (1997 NIRC) to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with[5]:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

With respect to the first requirement, We ruled that petitioner's sales to Pan-Pacific Copper Co., Ltd. of Tokyo, Japan (JAPAN), as the assignee of Nippon Mining and Metals Co. Ltd., is entitled to VAT zero-rating under Section 106(A)(2)(a)(1) of the 1997 NIRC, while the sales to Philippine Associated Smelting and Refining Corporation (PASAR) is zero-rated under Section

[1] *Rollo*, p. 338.
[2] *Rollo*, pp. 346-348.
[3] *Rollo*, pp. 392-393.
[4] *Rollo*, pp. 225-241.
[5] *Rollo*, pp. 231-232.

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106(A)(2)(a)(1) of the 1997 NIRC in relation to Articles 23 and 77(2) of the Omnibus Investments Code and as clarified under RMC No. 74-99. However, We further said that petitioner must first substantiate its sales by proper VAT sales invoices, among others, to be qualified for a refund. Evidence then forwarded to this Court showed that the sales invoices covering petitioner's indirect export sales to PASAR, in the amount of US$16,656,503.00, and to JAPAN, in the amount of US$4,941,848.00, fell outside the subject period of claim, thus, petitioner's reported sales cannot qualify for VAT zero-rating.

Upon review of the additional documents presented, this Court resolves to partially grant petitioner's claim for refund of unutilized input Value Added Tax (VAT) arising from its indirect export sales to PASAR and direct export sales to JAPAN.

In its Motion for Reconsideration/New Trial, petitioner explained that the sales invoices presented for consideration are not actually out of period of claim considering that the same invoices pertained to transactions occurring within the 4th quarter of 2003. In support of its motion, petitioner presented and formally offered in evidence the provisional invoices it issued to JAPAN and PASAR for the first quarter of 2003. The details of the invoices are as follows:

Provisional Invoice No.	Date	Exhibit No.	Estimated Value	90% Provisional Payment	Exh. No.
JAPAN					
2318	10/13/03	"M"	$3,910,154.10	$3,519,138.69	"M-1"
PASAR					
2319	10/17/03	"N"	$1,028,217.15	$925,395.44	"N-1"
2321	10/28/03	"O"	$1,057,485.80	$951,737.22	"O-1"
2324	11/07/03	"P"	$1,105,104.62	$994,594.16	"P-1"
2325	11/10/03	"Q"	$1,085,891.13	$977,302.02	"Q-1"

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2329	11/19/03	"R"	$1,093,559.85	$984,203.86	"R-1"
2330	11/21/03	"S"	$1,116,792.07	$1,005,112.86	"S-1"
2333	12/02/03	"T"	$1,132,172.06	$1,018,954.85	"T-1"
2334	12/02/03	"U"	$1,117,161.34	$1,005,445.21	"U-1"
2335	12/08/03	"V"	$1,109,595.74	$998,636.17	"V-1"
2339	12/18/03	"W"	$1,192,763.17	$1,073,486.85	"W-1"
2340	12/19/03	"X"	$1,147,355.51	$1,032,619.96	"X-1"
2341	12/29/03	"Y"	$1,130,698.28	$1,017,628.45	"Y-1"
2342	01/05/04	"Z"	$1,147,254.63	$1,147,254.63	"Z-1"

With the provisional invoices, petitioner proved that the final sales invoices supporting its export sales of copper concentrates to Japan and PASAR are valid and within the period of the claim.

The sales to JAPAN has a peso equivalent of P273,150,645.87 computed as follows:

Declared Zero-Rated Sales in Php[6]	1,209,176,550.97
Divided by Declared Zero-Rated Sales in US$[7]	÷ 21,876,451.00
Average peso to dollar rate	55.2729759946
Multiplied by Substantiated Zero-rated Sales in US$	x 4,941,848.00
Substantiated Zero-Rated Sales in Php	**273,150,645.87**

The sales to PASAR, on the other hand, has a peso equivalent of P920,654,490.47, as computed below:

Declared Zero-Rated Sales in Php	1,209,176,550.97
Divided by Declared Zero-Rated Sales in US$	÷ 21,876,451.00
Average peso to dollar rate	55.2729759946
Multiplied by Substantiated Zero-rated Sales in US$	x 16,656,503.00
Substantiated Zero-Rated Sales in Php	**920,654,490.47**

[6] Exhibit J-8.
[7] Exhibit "K", p. 2.

As reported in petitioner's amended VAT return for the 4th quarter of 2003,[8] petitioner's zero-rated sales amount to US$21,876,451.00 which is broken down below:

Particulars	**Amount**
Current Quarter's Shipments:	
Direct export of Copper to Japan	US$ 4,941,848.00
Indirect exports of copper to England	33,296.00
Direct export of gold to PASAR	16,656,503.00
	US$ 21,631,647.00
Previous Quarters' Shipments	
Adjustment to correct previous billings	244,804.00
Total Zero-Rated Sales	**US$ 21,876,451.00**

Petitioner's computation of catch-up adjustments amounting to US$244,804.00 cannot be considered for VAT zero-rating for petitioner's failure to present supporting documents. Likewise, the sales to England shall be excluded. In sum, out of the reported zero-rated sales of US$21,876,451.00 for the 4th quarter of 2003, only the following export sales in the total amount of US$21,598,351.00, with peso equivalent of P1,193,805,136.34, qualify for VAT zero-rating:

	In US Dollars	**In Phil Peso**
Direct Exports of Copper to Japan	4,941,848.00	273,150,645.87
Indirect Exports of Copper to PASAR	16,656,503.00	920,654,490.47
Total	**21,598,351.00**	**1,193,805,136.34**

Going now to the second requirement, We proceed to the determination of whether petitioner's input taxes in connection with its zero-rated sales for the 4th quarter of 2003 were duly incurred or duly substantiated.

[8] Exhibit "K"; Decision, *Rollo*, p. 232.

In its VAT return for the 4th quarter of 2003 [9], petitioner reflected an input VAT of P66,949.61 on domestic purchases and an input VAT of P7,527,708.00 on importations totaling to P7,594,657.61, as shown below:

		Purchases		Input Tax
Domestic Purchases - Capital Goods	P	669,496.10	P	66,949.61
Importations - Goods other than Capital Goods		75,277,080.00		7,527,708.00
Total	**P**	**75,946,576.10**	**P**	**7,594,657.61**

The Court commissioned an independent CPA to examine the voluminous documents of petitioner in support of its claim for refund. The ICPA noted that, with regard to the input taxes on domestic purchases, records reveal that petitioner was not able to present sales invoices/official receipts to support its claim of input VAT on domestic purchases. Consequently, the input VAT on the said purchases from its claim for the petitioner's failure to substantiate its claim by clear and convincing proof should be disallowed.

	Particulars		Amount
a.	Original VAT official receipts that are in the name of Petitioner	P	21,564.17
b.	No supporting VAT official receipts presented		1,415.65
c	No supporting VAT invoices presented		838,026.79
d.	Negative input VAT		(794,057.00)
	TOTAL	**P**	**66,949.61**

Based on the above findings, only the input VAT of P21,564.17 *(item a)* represents petitioner's valid claim while the remaining amount of P45,385.44 should be denied for the above-stated reasons *(items b, c, and d)*.

[9] Exhibit J-8.

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However, 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:

> "**SECTION.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."

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In the case ***GST Philippines, Inc. vs. Commissioner of Internal Revenue***,[10] GST Philippines, Inc. sold its products partly to herein petitioner and claimed that sales to petitioner are zero-rated because petitioner is a BOI-registered enterprise whose products are 100% exported. A BOI certification was submitted to prove the said claim. Under Section 3.4 of 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 January 1, 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, on 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 P21,564.17 as input tax credits on its domestic purchases for the 4th quarter of taxable year 2003.

As regards the input VAT payment of P7,527,708.00 on petitioner's importations, the ICPA noted the following findings[11]:

Particulars		Amount
Input taxes paid on importation of:		
a. Capital goods	P	4,610,941.00
b. Other than capital goods		1,636,850.00
c. No supporting documents		1,279,917.00
TOTAL	**P**	**7,527,708.00**

[10] CTA Case No. 7016, September 7, 2007.
[11] Exhibit "K", p. 4.

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Upon verification, this Court finds that only the amount of P3,461,525.00 is duly substantiated by the required evidence under Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5 & 4.108-1 of Revenue Regulations No.7-95 and can be a proper subject of a claim for refund or tax credit, while the remaining amount of P4,066,183.00, detailed below, should be denied due to the following reasons:

	Items Imported	**Exhibit No.**		**Input VAT**	**Total**
a.	**Supported by Bureau of Customs OR dated outside the period of claim.**				
	Atlas copco spare parts	H-1		P 18,012.00	
	Heating element U-shaped	H-2		22,793.00	
	parts for motor	H-3		21,421.00	
	spare parts for boomer	H-4		12,140.00	
	Spare parts for screen machinery	H-5		16,219.00	
	tile herth for furnace	H-6	H-6-a	7,731.00	
	1 ctn parts for crusher	H-7	H-7-a	7,718.00	
	1 ctn switch temperature	H-8	H-8-a	10,414.00	
	3M tape and fluorocarbon	H-9		19,848.00	
	part for furukawa rock drill	H-10		10,061.00	
	Bulbs	H-11	H-11-a	17,963.00	
	1 ctn parts for rock drill	H-12	H-12-a	15,321.00	
	parts for electrical apparatus	H-13		15,798.00	
	parts for loader	H-14		140,927.00	
	parts for spiral classifier	H-15		14,513.00	
	pressure switch	H-16		8,226.00	
	element coupling	H-17		19,795.00	
	1 cse stc part for furukawa rock drill	H-18	H-18-a	27,438.00	
	parts for dewatering screen	H-19		11,059.00	
	1 crt parts for drill machine	H-60	H-60-a	121,363.00	
	1 crt anti-vibration rubber	H-61	H-61-a	9,820.00	
	1 crt parts for drill machine	H-62	H-62-a	169,751.00	
	1 ctn heating element	H-63	H-63-a	21,628.00	
	6 ctns parts for radiator	H-64	H-64-a	9,820.00	
	9 units positioner	H-65	H-65-a	76,309.00	
	Entry No. & Series 46541616	H-66		263,763.00	
	Entry No. & Series 45395296	H-67		18,394.00	

	Entry No. & Series 45395305	H-68		84,503.00	
	Entry No. & Series 45395314	H-69	H-69-a	7,668.00	
	Entry No. & Series 45395323	H-70		215,024.00	
	Entry No. & Series 48091355	H-71		10,119.00	
	Entry No. & Series 48091337	H-72		45,787.00	
	Entry No. & Series 48091346	H-73		66,856.00	
	Entry No. & Series 48139734	H-74		25,296.00	
	Entry No. & Series 48139716	H-75		27,512.00	
	Entry No. & Series 48139725	H-76		64,829.00	
	Entry No. & Series 48139752	H-77		93,912.00	
	Entry No. & Series 48139743	H-78		177,830.00	**P 1,927,581.00**
b.	**Supported by Bank Debit Advice, but IERD not admitted by the Court**				
	1 ctn hydraulic pump	H-20	H-20-a	39,443.00	
	1 pkg cylinder head	H-22	H-22-a	82,102.00	
	1 plt parts for crusher	H-30	H-30-a	67,515.00	
	2 pcs stc lead compounds	H-36	H-36-a	29,043.00	
	2 crates rubber sheet	H-52	H-52-a	40,857.00	
	parts for krebs cyclone	H-53	H-53-a	224,235.00	
	steel pipes	H-54	H-54-a	31,403.00	
	cap lamp bulb	H-55	H-55-a	88,018.00	
	lamp battery	H-56	H-56-a	89,300.00	
	rock crushing machinery cover	H-57	H-57-a	41,802.00	
	Rubber sheet	H-58	H-58-a	44,935.00	
	1 package cloth filter	H-79	H-79-a	42,343.00	
	1 pallet cupels	H-88	H-88-a	8,991.00	
	2 bundles screen woven wire	H-89	H-89-a	28,698.00	**858,685.00**
c	**No supporting documents presented**				
	IEIRD No. 47712576			7,400.00	
	IEIRD No. 47713197			37,825.00	
	IEIRD No. 47713346			10,301.00	
	IEIRD No. 47713373			18,822.00	
	IEIRD No. 1.07E+08			2,173.00	
	IEIRD No. 24027735			4,652.00	
	IEIRD No. 46179892			1,941.00	
	IEIRD No. 48047404			7,836.00	
	IEIRD No. 46179935			1,177,265.00	
	IEIRD No. 45205860			1,834.00	
	IEIRD No. 50112921			8,250.00	
	IEIRD No. 47158255			552.00	
	IEIRD No. 50112921			1,066.00	**1,279,917.00**
	TOTAL				**P 4,066,183.00**

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The input VAT amounting to **P1,927,581.00** on importation supported by Bureau of Customs official receipts which are dated outside the period of claim should be disallowed, consistent with the ruling of this Court that input VAT supported by VAT invoices and official receipts dated earlier than the period of claims can no longer be claimed for refund.

The amount of **P858,685.00** shall likewise be disallowed considering that the Import Entry and Internal Revenue Declarations (IEIRDs)[12] supporting such importations were not admitted by the Honorable Court for failure of the petitioner to present the originals[13]. Likewise, the Bank Debit Advices[14] are inadmissible since these do not indicate the actual input VAT payments. Furthermore, no official receipts or other documents proving actual payment of VAT on the imported goods were presented to support such claim.

To reiterate, as a general rule, input tax on importations should be supported with IEIRDs duly validated for actual payment of the input tax. Petitioner must prove the actual payment of VAT on the imported goods by submitting the documents specified in Section 4.104-5(b) of Revenue Regulations No.7-95. The required evidence is the import entry or other equivalent document. Thus, without these documents, petitioner's claimed input VAT payment in the amount of P858,685.00 cannot be granted.

The input taxes of **P1,279,917.00** shall also be disallowed for petitioner's failure to present before this Court any supporting documents proving the same.

[12] Exhibits "H-6-a" to "H-91-a".
[13] Resolution dated July 30, 2007, *Rollo*, p. 182-183.
[14] Exhibits "H-6" to "H-91".

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In sum, out of the total input tax on importations of P7,527,708.00, only the amount of P3,461,525.00 is duly substantiated by valid supporting documents.

With respect to the third requisite, petitioner has likewise complied with the same considering that its export sales and sales to PEZA-registered entities are zero-rated under Sections 106 (A)(2)(a)(1) and 106 (A)(2)(a)(5).

However, a portion of the substantiated input VAT of P3,461,525.00 shall be applied against petitioner's reported output VAT liability of P35,228.90.[15] Hence, only the remaining input VAT of P3,426,296.10 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P1,209,176,550.97 and only the input VAT of P3,382,740.00 is attributable to the substantiated zero-rated sales of P1,193,805,136.34, as computed below:

Substantiated input VAT	P 3,461,525.00
Less: Output Tax	35,228.90
Excess input VAT	**P 3,426,296.10**

Substantiated Zero-rated Sales	P1,193,805,136.34
Divided by Total Reported Zero-Rated Sales	÷1,209,176,550.97
Subtotal	P 0.99
Multiplied by Excess Input VAT	x 3,426,296.10
Excess Input VAT attributable to Substantiated Zero-Rated Sales	**P 3,382,740.00**

As evidenced by its Quarterly VAT Returns[16] from the 1st quarter of 2004 to 2nd quarter of 2005, petitioner was able to prove that the input VAT of P3,382,740.00 was not applied against any output VAT in the succeeding

[15] Exhibit J-8.
[16] Exhibits J-9 to J-14.

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quarters. Although petitioner carried over the claimed unutilized input VAT for the 4th quarter of taxable year of 2003 to the succeeding 1st quarter of 2004 until the 2nd quarter of 2005, the same was deducted as "Any VAT Refund/TCC Claimed"[17] from the total available input tax of P69,903,758.37 in the 2nd quarter of 2005. In other words, the subject claim no longer formed part of the excess input VAT of P18,495,294.37[18] as of the 2nd quarter of 2005 which was to be carried over/applied to the succeeding 3rd quarter of 2005.

Finally, petitioner's claim for refund was timely filed within the two-year prescriptive period both in the administrative and judicial levels.

In the recent case entitled ***COMMISSIONER OF INTERNAL REVENUE vs. MIRANT PAGBILAO CORPORATION (Formerly SOUTHERN ENERGY QUEZON, INC.), G.R. No. 172129, September 12, 2008***, the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.

The present claim pertains to input VAT incurred for the fourth quarter of 2003. Counting from December 31, 2003, the end of the fourth quarter of 2003, petitioner had until December 31, 2005 within which to file its claim both in the administrative and judicial levels. Hence, the original administrative claim filed

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[17] Exhibit J-14, Line 25A.
[18] Exhibit J-14, Line 31.

on June 22, 2005[19] as well as the Petition for Review filed on December 28, 2005 fall within the two-year prescriptive period.

WHEREFORE, in view of the foregoing, petitioner's claim for refund of its unutilized input VAT for the 4th quarter of taxable year 2003 is **PARTIALLY GRANTED**. Respondent is hereby ordered **TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **P3,382,740.00**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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

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's Division.

ERNESTO D. ACOSTA
Presiding Justice

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[19] Petition for Review, Annex "C" and Annex "D".