REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2340** *(CTA Case No.9731)*
-*versus*-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
S&WOO CONSTRUCTION PHILIPPINES, INC., *Respondent.*	Promulgated: DEC 10 2021 4:10 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")**, filed last 25 September 2020,[1] with respondents' **COMMENT/OPPOSITION (to the Petition for Review filed by the Commissioner of Internal Revenue) ("Comment")**, filed on 16 November 2020.[2]

[1] Records, pp. 1-79.
[2] *Id.*, pp. 83-94.

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** is the head of the Bureau of Internal Revenue ("BIR") duly appointed to exercise the powers and perform the duties of his office including, *inter alia,* the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the ***National Internal Revenue Code, as amended, ("NIRC").*** He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent **S&WOO CONSTRUCTION PHILIPPINES, INC.** is a domestic corporation duly organized and existing under Philippine laws.

The Facts

On 13 July 2017, respondent filed an Application for Tax Credits/Refunds (BIR Form 1914) before petitioner, requesting a refund in the total amount of Php207,942,934.07 allegedly representing excess and/or unutilized input tax credits attributable to its zero-rated sales of services for the 2nd to the 4th quarters of Calendar Year ("CY") 2016, or from 1 April 2016 to 31 December 2016.

Due to petitioner's inaction on the administrative input Value Added Taxes ("VAT") refund claim, respondent filed a Petition for Review before the Court in Division on 11 December 2017.

On 1 June 2020, the Court in Division partially granted respondent's judicial claim for input VAT refund, as follows:[3]

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, respondent is ordered to refund or issue a tax credit certificate in favor of petitioner the amount of **P194,165,861.40,** representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the 2nd, 3rd, and 4th quarters of CY 2016.
>
> **SO ORDERED.**"

Petitioner then filed a Motion for Partial Reconsideration (Re: Decision promulgated 2 March 2020) against the Court in Division's Assailed Decision, which was denied by the Court in Division in a Resolution, dated 8 September 2020.[4]

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[3] Annex "A", Petition, *id.*, pp. 24-72.
[4] Annex "B", Petition, *id.*, pp. 73-79.

Thus, on 25 September 2020, petitioner filed the instant Petition.

In a Resolution, dated 9 October 2020, this Court *En Banc* directed respondent to comment on the Petition,[5] which was complied with when respondent filed the Comment on 16 November 2020.

On 12 January 2021, this Court *En Banc* issued a Resolution submitting the Petition for decision.[6]

Hence, this Decision.

The Assigned Errors

In the Petition, petitioner raised a lone assignment of error to be resolved by this Court *En Banc*, to wit:[7]

> **"THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND IN THE REDUCED AMOUNT OF P194,165,861.40."**

Arguments of the Parties

In the Petition, petitioner presents the following arguments:[8]

1. From the cross-examination conducted upon respondent's witness, it is clear that the entire bill for the contracting works for its lone client, Samsung Electro-Mechanics Philippines Corporation ("SEMPHIL"), also includes the fees that respondent paid to its sub-contractors, as well as the goods and services which it purchased. These fees paid to the sub-contractors as well as the purchases of goods and services (which were included in the bill sent to SEMPHIL) include the input VAT component in the cost of the goods and services which petitioner purchased and also in the fees to its sub-contractors. In totality, the entire cost, including the input VAT component on the purchases, were billed to SEMPHIL. To allow respondent to claim input VAT is tantamount to double recovery and unjust enrichment. *k*

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[5] Records, pp. 80-82.
[6] *Id.*, pp. 95-97.
[7] Petition, *id.*, p. 3.
[8] *Id.*, pp. 3-14.

2. The Court in Division erred in ruling that the subject input VAT is attributable to respondent's zero-rated sales. The law requires that only "creditable input taxes" that are "directly attributable" may be refunded. He cites the case of ***Commissioner of Internal Revenue v. Coral Bay Nickel Corporation and Coral Bay Nickel Corporation v. Commissioner of Internal Revenue ("Coral Bay Case")***,[9] which mandated that in order for input taxes to be refundable, the same must be directly attributable to its zero-rated sales. No attributability was established between the input tax on purchases vis-à-vis the zero-rated sales of respondent.

3. It should be mandatorily taken judicial notice of that the VAT system introduced in the Philippines in 1998 via ***Executive Order No. 273*** was adopted from Europe. As it works in Europe, only the VAT paid for supplies in the business is creditable as an input tax of a VAT registered person. Thus, purchases must in turn relate to the supplies (*i.e.*, goods and services) that a person makes. Not all input tax accumulated by such taxpayer may be claimed. For example, purchases by the business such as for personal activities, business entertainment, corporate events, and outside office meetings cannot be claimed as an attributable and creditable input tax. This is the same in the Philippines. Under ***Section 112 (A) of the NIRC***, what is refundable are only "creditable input taxes". As shown by ***Section 110 of the NIRC***, what are "creditable" are those that are factors to the chain of production. To be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.

4. In addition, the law requires a second evaluation to determine which of the creditable input VAT are attributable. To be attributable, the connection between the purchases and the finished product must be concrete, not imaginary or remote. There is nothing in the Assailed Decision showing the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

5. A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. The taxpayer must present convincing evidence to substantiate a claim for refund.

In its Comment, respondent counter argues as follows:[10]

[9] C.T.A. *EB* Nos. 1735 and 1737, CTA Case No. 8905, 18 July 2019.
[10] Comment, Records, pp. 84-92.

1. A careful reading of the Petition would reveal that it contains merely a reiteration or rehash of its arguments in the various pleadings submitted to the Court in Division which have already been adequately passed upon by such Court and found to be without merit.

2. Petitioner's allegation that to allow respondent to claim input VAT by questioning the computation of respondent's zero-rated sales from services fees is tantamount to double recovery and unjust enrichment is without basis in fact and in law. The computation of the service fees that is being charged by respondent to SEMPHIL is a business decision that must be left to the sound judgment of the respondent. It is noteworthy to mention that the service fees being charged were previously agreed upon by respondent and SEMPHIL, as embodied in their Construction Contract Agreement. If there are questions as to the propriety of the service fees, it is SEMPHIL which is the proper party to raise them and not petitioner. More importantly, all charges and fees paid by SEMPHIL to respondent are properly reported in its tax returns, particularly its quarterly VAT returns for the 2nd, 3rd, and 4th quarters of CY 2016.

3. Respondent only had VAT zero-rated sales transactions, and in the VAT system, all input VAT will necessarily be attributable to such VAT zero-rated sales transactions. All of respondent's purchases are directly related to its export sales to SEMPHIL, a Philippine Economic Zone Authority ("PEZA") registered entity and respondent's sole client. In ***Toshiba Information Equipment (Phils.) Inc. v. Commissioner of Internal Revenue***,[11] the Supreme Court had the occasion to affirm the findings of this Court that the input VAT incurred was directly attributable to export sales since the taxpayer in said case did not have any other sales except for export sales during the taxable year of 1997. The attribution of input VAT is necessary only if a taxpayer engages in mixed sale activities (*i.e.,* VATable, VAT zero-rated and VAT exempt activities). In such cases, attribution is needed considering that only those input VAT which are attributable to zero-rated transactions may be claimed for refund.

4. Reliance by petitioner on the ruling of this Court in the ***Coral Bay Case*** is misplaced. This is because the factual milieu of said case is different from the present case. The party involved in the ***Coral Bay Case*** is a PEZA registered entity which should not be subjected to input VAT. On the other hand, respondent is not exempt from input VAT, hence, input VAT may be passed on to it.

[11] G.R. No. 157594, 9 March 2010.

by its suppliers. Thus, once respondent engages in zero-rated sales, the input VAT it incurs which is attributable to such zero-rated sales may be refunded.

The Ruling of the Court En Banc

Following a studied review of the arguments, we **DENY** the Petition for lack of merit.

It does not escape the attention of the Court that the arguments alleged in the Petition have already been adequately and judiciously passed upon by the Court in Division in its Decision, dated 1 June 2020, and Resolution, dated 8 September 2020. The Petition posits no cogent reason for the Court *En Banc* to reverse, modify, or, at the very least, revisit the dispositions made by the Court in Division of the present case. On this note alone, this Petition deserves scant consideration. As such, this Court *En Banc* has no other recourse but to deny the same.

However, to finally resolve any doubt existing in the mind of petitioner, we shall discuss once more these same issues.

Petitioner has no standing to question the propriety of the service fees being charged by respondent to SEMPHIL.

In the Petition, petitioner claims that to allow respondent to claim input VAT is tantamount to double recovery and unjust enrichment. While petitioner admits that Courts are barred under the *business judgment rule* from interfering with the business judgments, policies, and decision-making by an entity or its officers when the same are made in good faith, he nonetheless insists that the same is not applicable when the exercise thereof would unduly prejudice the interest of the government. As such, for petitioner, considering that the input VAT component of respondent's purchases of goods and services, and those paid to its sub-contractors, have been billed and passed on to SEMPHIL, the said input VAT should no longer be subjected to a refund claim before petitioner.

This argument is terribly misplaced.

Neither this Court nor petitioner has a right to interfere with how respondent bills its sales of services to its lone client, SEMPHIL. This is the very essence of the *business judgment rule.* As long as a business decision or policy was made by a corporation or its corporate officers in good faith, neither this Court nor any other unrelated person is at liberty to question its appropriateness.

As early as the case of ***Alfredo Montelibano, et al. v. Bacolod-Murcia Milling Co., Inc.***,[12] the Supreme Court had already been emphasizing the importance of respecting a "business judgment", to wit:

> **"As the resolution in question was passed in good faith by the board of directors, it is valid and binding, and whether or not it will cause losses or decrease the profits of the central, the court has no authority to review them.**
>
> > **They hold such office charged with the duty to act for the corporation according to their best judgment, and in so doing they cannot be controlled in the reasonable exercise and performance of such duty.** Whether the business of a corporation should be operated at a loss during depression, or close down at a smaller loss, is a purely business and economic problem to be determined by the directors of the corporation and not by the court. **It is a well-known rule of law that questions of policy or of management are left solely to the honest decision of officers and directors of a corporation, and the court is without authority to substitute its judgment of the board of directors; the board is the business manager of the corporation, and so long as it acts in good faith its orders are not reviewable by the courts.** (Fletcher on Corporations, Vol. 2, p. 390).
>
> (Emphasis and underscoring, Ours)

Thus, the determination of the amount to be billed as a service fee for the services rendered by respondent to SEMPHIL rests solely with respondent. Accordingly, respondent was acting within its authority in including in the bill to SEMPHIL an amount corresponding to the input VAT it paid for its purchases of goods and services which were necessary to render services to SEMPHIL. To stress, neither this Court nor any other person not related to the transaction can question such business discretion employed by respondent regardless of respondent's reason for including such input VAT in the billed amount to SEMPHIL (which may be solely for the purpose of increasing its profit margin and/or to ensure reimbursement of the input VAT it paid on its purchases), provided, of course, that such business judgment was employed without bad faith.

Here, we find no bad faith on the part of respondent in adding the input VAT component in the amount billed as service fees to SEMPHIL. In fact, SEMPHIL consented to such manner of billing when it entered into a Construction Contract Agreement[13] with respondent. If at all, it should be

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[12] G.R. No. L-15092, 18 May 1962.
[13] Exhibits "P-14", "P-15", and "P-16".

SEMPHIL which should be questioning respondent's manner of billing service fees because it is the one directly affected by the propriety and amount of such fees.

Neither does the Court *En Banc* find logic behind petitioner's allegation that respondent's act (of including the input VAT component of its purchases in the amount billed as service fees to SEMPHIL and at the same time claiming a refund for such input VAT) is detrimental to the government's interest.

First, if there is a party which is affected by the method of billing employed by respondent, it is SEMPHIL because it is in effect paying an amount which it is technically exempt from paying.

Second, the government's interest was in no way prejudiced by the method of billing employed by respondent considering that it had declared the entire amount it billed to SEMPHIL in its VAT and Income Tax returns.

In fact, through the Philippine VAT system, the government has benefitted from respondent's pre-payment of input VAT on its purchases of goods and services that are related to its zero-rated services to SEMPHIL. It should be noted that it is only respondent's sale of services which is declared as VAT zero-rated while its purchases of goods and services are not. Under the Philippine VAT system, respondent is still required to pay the input VAT on its purchases and later on file a claim for refund on such excess and/or unutilized input VAT. Considering that the government immediately took possession of the amount equal to the excess and/or unutilized input VAT, it had already enjoyed the use of the same. And it has enjoyed the use of the same without paying any form of interest as there is no law specifically mandating the payment of interest in refunds of internal revenue taxes. Indeed, contrary to its claim that its interest was prejudiced by respondent's act of refunding the subject input VAT, the corresponding amount of which was also included in the amount billed to SEMPHIL, the government has actually enjoyed the use of money without any cost (*i.e.*, the payment of interest).

Section 112 of the NIRC does not require that input taxes subject of a refund/TCC claim be directly attributable to zero-rated sales.

Petitioner's main and sole contention for the allowance of his Petition is that respondent failed to prove that the input taxes sought to be refunded are directly attributable to its alleged zero-rated sales. He argues that this failure on the part of respondent should result in the denial of its claim for input VAT refund. Again, this argument is terribly misplaced.

As to whether an input VAT subject of refund should be directly attributable to zero-rated sales, this issue has already long been settled. ***Section 112 of the NIRC*** does not require absolute direct attribution of the purchases (the input VAT of which is subject of a refund/TCC claim) to zero-rated sales. In fact, the said provision allows the allocation of input VAT that cannot be directly attributed to any of the taxpayer's sales (*i.e.*, zero-rated sales, taxable sales or exempt sales):

> **"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 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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.** Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."
> (Emphasis and Underscoring, Ours)

Erasing any doubt on the matter is the case of in ***Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.***,[14] where this Court *En Banc* ruled on a similar issue, as follows:

> **"The Court in Division correctly ruled that an input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable.**
>
> The petitioner's claim that the assailed Decision and Resolution of the Court in Division are erroneous for having failed to establish the direct attributability between respondent's input tax on purchases and its zero-rated sales is bereft of merit.

[14] C.T.A. EB No. 2082, CTA Case No. 9496, 21 July 2020.

Section 112(A) of the Tax Code provides for the grounds when input tax may be refunded or claimed as tax credit in cases of zero-rated sales, to wit:

> '**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 106(A)(2)(a)(1), (2) and (b) and Section 108(8)(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 sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales:***Provided, finally,* That for a person making sales that are zero-rated under Section 108(8)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.'

Contrary to the argument of the petitioner, there is nothing in the provision which states that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale in order for it to be creditable or refundable. In fact, the aforementioned provision allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales.

Further, ***Section 110(A) of the Tax Code,*** which enumerates the transactions upon which creditable input tax may be claimed, only requires that the transaction was incurred or paid in connection with the taxpayer's trade or business whether directly or indirectly and that it is evidenced by a VAT invoice or official receipt, to wit:

> 'SEC. 110. Tax Credits.-
>
> A. Creditable Input Tax. –
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions **shall be creditable against the output tax:**

> **(a) Purchase or importation of goods:**
>
> **(i) For sale; or**
>
> **(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or**
>
> **<u>(iii) For use as supplies in the course of business;</u> or**
>
> **(iv) For use as materials supplied in the sale of service; or**
>
> **(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.**
>
> **(b) Purchase of services on which a value-added tax has been actually paid.**
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> XXX XXX XXX
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> **<u>The term "input tax" means the value-added tax due from or paid by a VAT -registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT -registered person.</u>** It shall also include the transitional input tax determined in accordance with Section 111 of this Code.'

Clearly, based on the foregoing provisions, the Tax Code does not require the input tax to be directly attributable to zero-rated sales to be refundable or creditable.

In fact, this is not the first time the Court En Banc resolved the issue raised by the petitioner. In ***Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue***, this Court ruled, to wit:

> 'The CIR's insistence that 'to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production' is not entirely consistent with the above-quoted Section 110. **<u>This is so because the said provision, as clearly stated, did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes, inter alia, purchases or importation of goods for use as supplies in the course of</u>**

> **business, or for use in trade or business for which deduction for depreciation or amortization is allowed; as well as purchase of services for which VAT has been actually paid.**
>
> **Accordingly, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, the same may be creditable against the output VAT.**
>
> We likewise do not find merit in the CIR's allegation that for an input tax to be attributable to zero-rated sales, it must be shown that 'the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'.
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> XXX XXX XXX
>
> Based from the foregoing, creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero- rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionally on the basis of the volume of sales. Evidently. contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct.
>
> Moreover, the word 'attribute', the adjective form of which is 'attributable', is defined as 'to explain as to cause or origin', or simply, to 'ascribe'. Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. Accordingly, We sustain the Court in Division's ruling that is it not required that the claimed input tax be directly attributable to zero- rated sales in order to be creditable.'

Moreover, we find that petitioner's reliance in the ***Atlas Cases*** is misplaced. In the said cases, the Supreme Court decided the same under the defunct Revenue Regulations ('RR') No. 5-87 dated 1 September 1987, as amended by RR No. 3-88 dated 15 February 1988, Section 16 of which provides, to wit:

> 'In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund.'

> However, the requirement that the input tax being claimed for tax credit or refund should be directly and entirely attributable to the zero-rated sales, has not been retained in RR No. 14-2005 and in its amendments, which is the applicable VAT regulation in the present case.
>
> Given the foregoing, we affirm the assailed Decision and Resolution and find that the input tax need not be directly attributable to the zero-rated sales in order for it to be refunded or claimed as tax credit."

Clearly, then, it is not necessary for input taxes to be directly attributable to zero-rated sales so that it can be validly refunded.

Mere allegations cannot overturn a ruling by the Court in Division which is duly supported by evidence on record.

Basic is the rule that allegations without corresponding proof cannot overturn a judgment which has been rendered painstakingly through the thorough examination of the pieces of evidence adduced during trial. Thus, in ***Republic of the Philippines v. Team (Phils.) Energy Corporation (formerly, Mirant (Phils.) Energy Corporation),***[15] the High Court ruled that "the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

In the Petition, petitioner simply alleged principles regarding the VAT system as basis for its grant and the corresponding reversal of the input VAT refund allowed by the Court in Division. He did not specifically raise any particular error committed by the Court in Division which shows a misappreciation of the evidence presented and offered during trial. Petitioner simply generally alleged that respondent failed to prove direct attributability of the input VAT it seeks to refund with its zero-rated sales of services, and that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. These bare allegations were not supported by reference to particular errors for the Court *En Banc* to review.

As it stands, the Court *En Banc* cannot overturn the findings by the Court in Division in the Decision, dated 1 June 2020, which was made through circumspect examination of the pieces of evidence adduced during trial.

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[15] G.R. No. 188016, 14 January 2015.

WHEREFORE, the instant Petition is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 1 June 2020, and Resolution, dated 8 September 2020, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(Took no part.)
LANEE S. CUI-DAVID
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