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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE
Petitioner,

- versus -

VISAYAS GEOTHERMAL POWER COMPANY,
Respondent.

EB Case No. 561
(CTA Case No. 7559)

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VISAYAS GEOTHERMAL POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB Case No. 562
(CTA Case No. 7559)

Members:

ACOSTA, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

FEB 07 2011
3:45pm

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petitions for Review, filed by both parties seeking the reversal of the *CTA Former Second Division* Decision[1] (the "Assailed Decision") dated April 17, 2009 and the Resolution[2] (the "Assailed Resolution") dated October 29, 2009, denying both parties' Motions for Partial Reconsideration.

The facts of the case, as found by the *CTA Former Second Division*, are as follows:

> "Petitioner Visayas Geothermal Power Company is a special purpose limited partnership duly organized and existing under Philippines laws, with Taxpayer Identification No. (TIN) 003-832-538-VAT[3] and principal office at Milagro, Ormoc City, Province of Leyte.[4] It is principally engaged in the business of power generation through geothermal energy and the subsequent sale of generated power to the Philippine National Oil Company–Energy Development Corporation (PNOC-EDC), pursuant to an Energy Conversion Agreement.[5]
>
> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of the said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[6]

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[1] Division Docket, pp. 607-625.
[2] Division Docket, pp. 754-759.
[3] Certificate of Registration, Exhibit "C", Division Docket, p. 461.
[4] Par. 1, Petition for Review, Division Docket, p. 1.
[5] Par. 3, Petition for Review, Division Docket, p.2; Annex "B", Petition for Review, Division Docket, pp. 18-76.
[6] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 163.

Petitioner filed with the BIR its Original Quarterly VAT Returns for the first to fourth quarters of taxable year 2005 on the following dates:[7]

Taxable Quarter	Date of Filing of Original Return
1st	April 25, 2005
2nd	July 25, 2005
3rd	October 25, 2005
4th	January 20, 2006

However, petitioner amended its Quarterly VAT Returns and reflected therein an excess or unutilized VAT credits, arising from its domestic purchases of non-capital goods and services, services rendered by non-residents, and importation of non-capital goods, detailed as follows:[8]

Taxable Quarter	Date of Filing of Amended Return	Excess/Unutilized VAT Credits				Total
		Domestic Purchases - Goods other than Capital Goods	Domestic Purchases - Services	Services Rendered by Non-Residents	Importation - Goods other than Capital Goods	
1st	11/18/05	318,985.97	5,484,269.71	-	15,830.00	5,819,085.68
2nd	11/18/05	402,569.87	1,770,122.20	-	306,305.00	2,478,997.07
3rd	11/18/05	584,207.59	1,544,120.96	104,032.71	113,526.00	2,345,887.26
4th	07/14/06	1,018,936.20	1,919,888.09	395,763.65	182,250.00	3,516,837.94
Total		**2,324,699.63**	10,718,400.96	**499,796.36**	**617,911.00**	**14,160,807.95**

On December 6, 2006, petitioner filed an administrative claim for refund of the amount of P14,160,807.95[9] with the BIR District Office No. 89, Ormoc City, on the belief that it is entitled to recover excess and

7 Par. 2, Admitted Facts, JSFI, Division Docket, pp. 163-164.
8 Par. 3, Admitted Facts, JSFI, Division Docket, p. 164.
9 Par. 4, Admitted Facts, JSFI, Ibid.; Exhibit "L", Division Docket, pp. 495-496.

unutilized input VAT payments for the four quarters of taxable year 2005, pursuant to Republic Act (R.A.) No. 9136, and its Implementing Rules and Regulations, which treat sales of generated power subject to VAT at zero (0%) percent rate starting June 26, 2001.

The BIR's inaction on its claim for refund prompted petitioner to seek recourse before this Court on January 3, 2007, praying for the refund or the issuance of tax credit certificate in the amount of P14,160,807.95 covering the four quarters of taxable year 2005.

In the Answer filed on March 1, 2007,[10] respondent raises the following Special and Affirmative Defenses:

> '4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P14,160,807.95 being claimed by petitioner as alleged unutilized input VAT from its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of taxable year 2005 was not properly documented;
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. 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 No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

[10] Division Docket, pp. 102-107.

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 NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim 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 NIRC of 1997. It is worthy of emphasis that Section 112(D) of the NIRC of 1997 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 P20,546,004.87 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of taxable year 2005 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 NIRC of 1997;

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 NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 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 Credits).

8. The Petition for Review is premature. Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period starts to run on 6 December 2006, the date when it filed its administrative claim for refund. The said period is yet to expire on 5 April 2007. Hence, the 30-day period within which to file the petition for review before this Honorable Court is yet to expire on 5 May 2007. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*).'

During trial, only petitioner presented its evidence while respondent's counsel, Atty. Clarissa Virtudes-Babaran, manifested that she will not be presenting evidence on behalf of respondent and this case was deemed submitted for decision in the Resolution dated July 24, 2008,[11] taking into consideration both parties' respective Memorandum.[12]"

The parties, in their Joint Stipulation of Facts and Issues To Be Resolved[13], filed on June 4, 2007, submitted the following issues[14] for this Court's resolution, to wit:

> "1. Whether or not Petitioner is entitled to the refund in the amount of Fourteen Million One Hundred Sixty Thousand Eight Hundred Seven and 95/100 Pesos (P14,160,807.95) representing its alleged unutilized input Value Added Tax ("VAT") for the 1st to 4th quarters of 2005;
>
> 2. Whether or not the input VAT amount of Fourteen Million One Hundred Sixty Thousand Eight Hundred Seven and 95/100 Pesos (P14,160,807.95) allegedly paid by Petitioner from its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods was attributable to its zero-rated sales and such input VAT has not been applied against any output tax;
>
> 3. Whether or not the administrative claims for refund were filed within the period allowed under the law; and
>
> 4. Whether or not Petitioner's domestic purchases of goods and services during the 1st to 4th quarters of 2005 were made in the course of its trade or business."

On April 17, 2009, the *CTA Former Second Division* promulgated the Assailed Decision, the dispositive portion of which reads as follows:

[11] Ibid., at p. 582.
[12] Petitioner filed its Memorandum on June 19, 2008 and Reply Memorandum on August 29, 2008 (admitted on September 4, 2008), while respondent filed his Memorandum on July 21, 2008, Division Docket, pp. 547-564, 586-603, 565-579, respectively.
[13] JSFI, Division Docket, pp. 163-167.
[14] Ibid, p. 166.

> "**WHEREFORE**, in view of the foregoing considerations, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or, in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **SEVEN MILLION SIX HUNDRED NINETY NINE THOUSAND THREE HUNDRED SIXTY SIX PESOS AND 37/100** (P7,699,366.37) representing unutilized input VAT paid on domestic purchases of non-capital goods and services, services rendered by non-residents, and importations of non-capital goods for the first to fourth quarters of taxable year 2005.
>
> **SO ORDERED.**"

Not satisfied with the said Decision, petitioner-VISAYAS GEOTHERMAL filed its Motion for Partial Reconsideration (Re: Decision Dated 17 April 2009)[15] on May 6, 2009, while respondent-CIR filed its Motion for Partial Reconsideration[16] on May 7, 2009.

In a Resolution[17] promulgated on October 29, 2009, the *CTA Former Second Division* denied both parties' respective Motion.

Hence, the instant Petitions for Review filed by both parties, viz:

a. CTA EB No. 561 - Commissioner of Internal Revenue vs. Visayas Geothermal Power Company

b. CTA EB No. 562 - Visayas Geothermal Power Company vs. Commissioner of Internal Revenue

On February 12, 2010, the Court *En Banc* issued a Resolution[18] consolidating CTA EB No. 562 with CTA EB No. 561, the case bearing the lower docket number; and ordering both parties to submit their respective consolidated memorandum within thirty (30) days from receipt of the resolution after which the case shall be deemed submitted

[15] Division Docket, pp. 626-655.
[16] Division Docket, pp. 672-690.
[17] Division Docket, pp. 754-759.
[18] En Banc Rollo, pp. 98-99.

for decision. In compliance with the said Resolution, VISAYAS GEOTHERMAL filed its Consolidated Memorandum[19] on March 22, 2010. On the other hand, CIR filed his Memoranda[20] (in CTA Case Nos. 561 & 562) both on February 18, 2010.

In support of their respective Petition for Review, the CIR and VISAYAS GEOTHERMAL presented their respective issues/discussions, to wit:

CTA EB Case No. 561 (CIR, petitioner)[21]

"I

WHETHER OR NOT THE HONORABLE COURT ERRED IN PARTIALLY GRANTING RESPONDENT'S CLAIM FOR REFUND IN THE REDUCED AMOUNT OF P7,699,366.37 ALLEGEDLY REPRESENTING UNUTILIZED INPUT VAT PAID ON DOMESTIC PURCHASES OF NON-CAPITAL GOODS AND SERVICES, SERVICES RENDERED BY NON-RESIDENTS AND IMPORTATIONS OF NON-CAPITAL GOODS FOR THE FIRST TO FOURTH QUARTERS OF TAXABLE YEAR 2005 BECAUSE RESPONDENT HAS NOT SUFFICIENTLY PROVEN ITS ENTITLEMENT TO REFUND.

II.

THE CLAIM WAS NOT FILED IN ACCORDANCE WITH THE PROCEDURE PRESCRIBED BY LAW. THUS THE SECOND DIVISION HAS NO JURISDICTION TO ACT ON THE PETITION FOR REVIEW."

CTA EB Case No. 562 (VISAYAS GEOTHERMAL, petitioner)

"A.

PETITIONER'S OFFICIAL RECEIPTS AND INVOICES SUPPORTING ITS CLAIMED INPUT VAT CONTAINED ALL THE INFORMATION REQUIRED BY THE TAX CODE AND THE RELEVANT RULES AND REGULATIONS. THE

[19] En Banc Rollo (EB 561), pp. 125-215.
[20] Ibid, p. 100-118; En Banc Rollo (EB 562) p. 109-114.
[21] Petition for Review, En Banc Rollo (CTA EB No. 561), p. 7.

INNOCUOUS CORRECTIONS IN THE OFFICIAL RECEIPTS AND INVOICES DO NOT JUSTIFY DISALLOWANCE OF INPUT VAT.[22]

B.

PETITIONER'S OFFICIAL RECEIPTS AND INVOICES SUPPORTING ITS UNUTILIZED INPUT VAT COMPLY WITH THE INVOICING REQUIREMENTS OF THE LAW.[23]

C.

RESPONDENT WAIVED OR ABANDONED ANY OBJECTION REGARDING THE INVOICING REQUIREMENTS WHEN HE FAILED TO RAISE THE SAME DURING TRIAL.[24]

D.

IN CIVIL CASES, ONLY A PREPONDERANCE OF EVIDENCE IS REQUIRED.[25]"

After a careful and thorough evaluation and consideration of the records of the cases, the Court *En Banc* finds merit in CIR's Petition for Review (CTA EB Case No. 561).

VISAYAS GEOTHERMAL anchors its claim under Sections 110 (B), and 112(A) of the NIRC of 1997, which, respectively, provides:

> **"SEC. 110. Tax Credits. -**
> **xxx xxx xxx**
>
> **(B) Excess Output or Input Tax.** - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered

[22] Petition for Review, En Banc Rollo (CTA EB No. 562), p. 19.
[23] Ibid, p. 27.
[24] Ibid, p. 47.
[25] Ibid, p. 49.

> person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

xxx xxx xxx"

"**<u>SEC. 112. Refunds or Tax Credits of Input Tax</u>**. -

> **(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 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."

Pursuant to the afore-quoted Section 112 (A) of the 1997 NIRC, in order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with:

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 attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability;
5. that the administrative claim for refund was filed within the two-year prescriptive period.

The Court *En Banc* deems it proper to resolve first VISAYAS GEOTHERMAL's conformity or non-compliance with the fifth requisite before determining whether or not VISAYAS GEOTHERMAL is entitled to its claim for refund/credit.

In the case of ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), G.R. No. 172129, September 12, 2008***, the Highest Tribunal held, and *We* quote:

> "The claim for refund or tax credit for the creditable input VAT payment by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Section 112 (A) of the NIRC pertinently reads:
>
> > '(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: xxx '
>
> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** xxx" (Emphasis supplied)

Applying the afore-quoted ruling in the case at bar, the Court *En Banc* finds that the administrative claim of VISAYAS GEOTHERMAL was filed within the two-year prescriptive period pursuant to Section 112 (A) of the NIRC of 1997.

The present claim pertains to VISAYAS GEOTHERMAL's alleged unutilized input VAT in the amount of P14,160,807.95, from its domestic purchases of non-capital goods and services, services rendered by non-residents, and importations of non-capital goods for the first to fourth quarters of taxable year 2005. Counting from March 31, 2005 (end of 1st quarter of 2005), June 30, 2005 (end of 2nd quarter of 2005), September 30, 2005 (end of 3rd quarter of 2005) and December 31, 2005 (end of 4th quarter of 2005), petitioner had until March 31, 2007, June 30, 2007, September 30, 2007 and December 31, 2007, respectively, within which to file its claim for refund in the administrative level. Having filed a claim for refund or issuance of a tax credit certificate with the BIR, District Office No. 89 of Ormoc City on December 6, 2006, the said administrative claim was seasonably filed within the two-year prescriptive period.

Notwithstanding such finding of fact, *We* are constrained to grant CIR's Petition for Review due to the premature filing of VISAYAS GEOTHERMAL's judicial claim for refund/credit with this Court provided under Section 112 (D) of the NIRC, which is hereunder quoted for easy reference:

> "**SECTION 112**. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer may, **within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.**" (Emphasis supplied)

The Supreme Court, in the recent case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010***, interpreted the above provision, to wit:

> "Section 112 (D) of the NIRC clearly provides that the CIR has '120 days, from the date of submission of the complete documents in support of the application [for tax refund/tax credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> In this case, the administrative and judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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.' The phrase 'within two (2) years xxx apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to

the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period: and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

xxx xxx xxx

In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."

As shown by the records of this case, the administrative claim was filed on December 6, 2006. Hence, the CIR has 120 days or until April 5, 2007 within which to decide on the said claim. After the lapse of the said 120-day period without any action on the part of the CIR, petitioner may appeal with the CTA the unacted administrative claim within thirty (30) days or until May 5, 2007. However, considering that the present Petition for Review was filed on January 3, 2007, or 28 days after petitioner filed its administrative claim without waiting for the expiration of the 120-day period, such judicial claim was filed prematurely. Thus, the Court acquires no jurisdiction to act on the said judicial claim.

With the above discussion, the Court *En Banc* deems it proper to deny VISAYAS GEOTHERMAL's Petition for Review (CTA EB Case No. 562).

WHEREFORE, premises considered:

i. As regards **CTA EB Case No. 562**, the Petition for Review is hereby **DISMISSED**; and

ii. As regards **CTA EB case No. 561**, the Petition for Review is hereby **GRANTED.**

Accordingly, the Decision dated April 17, 2009 and the Resolution dated October 29, 2009 of the CTA Former Second Division are hereby **REVERSED** and **SET ASIDE**, and another one is hereby entered **DISMISSING** the Petition for Review filed in **CTA Case No. 7559** for having been filed prematurely.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTANEDA, JR.
Associate Justice

(w/ Separate Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
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 above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice