REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HALLIBURTON WORLDWIDE LIMITED PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9449

Members:

CASTAÑEDA, JR.,
Chairperson,
MANAHAN, *JJ.*

Promulgated:

OCT 18 2018

4:00 p.m.

x- -x

DECISION

MANAHAN, *J.*:

This is a Petition for Review filed by Halliburton Worldwide Limited Philippine Branch, praying for the refund of or the issuance of a tax credit certificate (TCC) in the total amount of FIVE MILLION TWO HUNDRED FOUR THOUSAND FIVE HUNDRED AND THIRTY THREE PESOS AND SEVEN CENTAVOS (Php5,204,533.07) allegedly representing excess and unutilized input value-added tax (VAT) directly attributable to its zero-rated sales for the four quarters of calendar year (CY) 2014.

THE FACTS

Petitioner is a foreign corporation organized and existing under and by virtue of the laws of Cayman Islands. It is duly licensed to do business in the Philippines thru its Philippine Branch by virtue of a License to Do Business issued by the Securities and Exchange Commission (SEC) on August 8, 2013.

As a Philippine Branch, it is authorized to engage in the business of providing oilfield services and products, such as well completion, drilling, cementing, logging, well testing, perforating, production testing and workover, stimulation services and licensing of software and consulting services and providing oilfield equipment and technology to the oil and gas industries, among others.[1]

The office of the petitioner is located at the Pearlbank Center, 146 Valero Street, Salcedo Village, Makati City. Petitioner is also a VAT-registered entity as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 9RC0000274116.[2]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

For CY 2014, petitioner filed its original and amended quarterly VAT Returns through the BIR's Electronic Filing and Payment System (eFPS) on the following dates:

Return	**Date filed**
Original VAT Return for the First Quarter	April 24, 2014
Original VAT Return for the Second Quarter	July 25, 2014
Original VAT Return for the Third Quarter	October 27, 2014
Amended VAT Return for the Third Quarter	January 26, 2015

Petitioner claims that for the first to fourth quarters of CY 2014, it rendered sales of services to duly registered renewable

[1] Exhibit "P-1" , Court Docket, Volume I, page 473.
[2] Exhibit P-2", Court Docket, Volume I, page 483.

energy (RE) developers and sold goods to its non-resident affiliates doing business outside the Philippines. It also allegedly incurred input VAT in the aggregate amount of Php12,541,359.18 for the four (4) quarters of CY 2014, out of which amount, the amount of Php5,204,533.07 is attributable to its zero-rated sales to duly registered renewable energy developers and export sales to its non-resident affiliates.

Petitioner additionally alleges that the said input taxes for CY 2014 in the amount of Php5,204,533.07 were not applied against any output tax liability for the same and succeeding quarters.

On March 30, 2016, petitioner filed with the Bureau of Internal Revenue (BIR) an Application for Tax Refunds (BIR Form No. 1914) requesting for the refund or issuance of unutilized input VAT for CY 2014 in the total amount of Php5,204,533.07.[3]

Petitioner alleges that respondent did not act on its administrative application for refund or tax credit, and with the expiration of the 120-day period under Section 112 (C) of the 1997 National Internal Revenue Code (NIRC), as amended, on July 28, 2016, petitioner filed the instant Petition for Review on August 26, 2016 which is within thirty (30) days from July 28, 2016.

On October 13, 2016, respondent filed his Answer to the Petition for Review.

The Court scheduled the case for pre-trial on November 24, 2016.[4]

The parties filed their Consolidated Joint Stipulation of Facts and Issues[5] (JSFI)on December 9, 2016.

On January 12, 2017, a Pre-Trial Order[6] was issued by the Court, approving and adopting the JSFI and terminating the pre-trial proceedings.

[3] Exhibit "P-28.1", Court Docket, Volume I ,pp. 219-226.
[4] Notice of Pre-Trial Conference dated October 17, 2016, Court Docket, Volume I, pp. 74-75.
[5] Joint Stipulation of Facts and Issues, Court Docket, Volume I, pp. 250-264.
[6] Court Docket, Volume I, pp. 277-283.

On February 8, 2017, the Court granted the commissioning of Mr. Neil Sison, as the Independent Certified Public Accountant (ICPA) for the case.[7]

Petitioner presented Ms. Kris de Vera, petitioner's Finance Accountant and Mr. Neil Sison, the Court-commissioned ICPA, as its witnesses.

Subsequently, petitioner filed its Formal Offer of Evidence[8] on June 28, 2017, consisting of Exhibits "P-1" to "P-36.1", inclusive of sub-markings.

On August 2, 2017, the Court issued a Resolution[9] admitting all the formally offered exhibits of petitioner, *except* for Exhibits "P-30-AB-21" to "P-30-AB-23" for the reason that these documents could not be found in the records of the case.

During the hearing held on August 23, 2017, counsel for respondent manifested that this case has no report of investigation, hence, she has no witnesses to present. As a consequence, respondent did not file his Formal Offer of Evidence.

On October 3, 2017, respondent filed his Memorandum[10] followed by the submission of petitioner's Memorandum on October 30, 2017.

The Court declared the case submitted for decision via Resolution[11] issued on November 16, 2017.

THE ISSUE

The parties submitted the following issue for this Court's resolution:

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[7] Order dated February 8, 2017, Court Docket, Volume I.
[8] Court Docket, Volume I, pp. 446-472.
[9] Court Docket, Volume II, pp. 614-615.
[10] Court Docket, Volume II, pp. 632- 63.
[11] Court Docket, Volume II, Page 672.

> "Whether or not petitioner is entitled to the refund/issuance of a tax credit certificate for its input VAT payments for the whole period of CY 2014 in the amount of Php5,204,533.07 representing its excess or unutilized input VAT attributable to zero-rated sales."

Petitioner's Arguments

Petitioner bases its claim for refund on Section 15 (g) of the "Renewable Energy Act" or Republic Act (RA) No. 9513 in relation to Sections 110 (b) and 112 (A) (C) of the 1997 NIRC and Section 106 (A) (2) (a) (1) in relation to Sections 110 (B) and Section 112 (A) (C) of the same Code.

Petitioner submits that the Renewable Energy Act provides that sales by suppliers of goods and service to renewable energy (RE) developers are subject to VAT at the rate of zero percent (0%) and alleges that its sales to Energy Development Corporation and Malbarra Geothermal, Inc. are zero-rated, hence, entitling it to the refund of input VAT attributable to said sales.

With respect to its exportations of goods to its non-resident affiliates, petitioner likewise claim that these are all zero-rated sales as it was paid for in acceptable foreign currencies and accounted for in accordance with Revenue Memorandum Circular (RMC) No. 42-2003.

Citing the Supreme Court case of *San Roque Power Corporation vs. CIR*[12], petitioner cites the following requirements in order for a claim for refund of input VAT (attributable to zero-rated sales), to prosper, thus:

1. The taxpayer is VAT registered;
2. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
3. The input taxes are due or paid;
4. The input taxes are not transitional input taxes;
5. The input taxes have not been applied against output taxes during and in the succeeding quarters;
6. The input taxes are attributable to zero-rated or effectively zero-rated sales;

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[12] G.R. No. 180345, November 25, 2009.

7. For zero-rated sales under Section 106 (A) (2) (1) and (2); 106 (B) and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
8. If there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
9. The claim is filed within two years after the close of the taxable quarter when such sales were made.

Petitioner claims that it complied with all the aforementioned conditions as shown by the evidence and testimonies of its witnesses.

Petitioner also alleges that the administrative and judicial claims for refund have been timely filed. It asserts that the administrative claims for refund were filed within the two-year period pursuant to Section 112 (A) of the 1997 NIRC. We quote the relevant portion of the statements of petitioner in its Memorandum:

> "80. Since petitioner filed its administrative claim for refund on March 30, 2016, respondent had until July 28, 2016 within which to act on it. Since there was no action on respondent's part within the 120-day period, petitioner had thirty (30) days from the expiry thereof, or until August 27, 2017, to file its judicial claim for refund. Considering that petitioner filed its judicial claim for refund on August 26, 2016, petitioner complied with the prescriptive periods provided by the Tax Code."

Respondent's Counter-Arguments

In his Answer to the Petition for Review, respondent mainly avers that the claim for refund or issuance of TCC has not been fully substantiated by proper documents such as sales invoices, official receipts etc. Respondent further asserts that in an action for tax refund/credit, the claimant must also show full satisfaction of all documentary and evidentiary requirements necessary to warrant a grant of the claim in the administrative level. Further, respondent points out that claims for refund are construed strictly against the taxpayer since the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

In his Memorandum, respondent merely reiterates the above arguments/objections to the claim for refund.

RULING OF THE COURT

Petitioner anchors its claim on Sections 110(B), 112(A) and (C) of the 1997 NIRC, as amended, which are all quoted hereunder:

"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: *Provided,* That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

"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."

xxx xxx xxx

(C) *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 Subsection (A) 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 affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision."

Pursuant to the above-quoted provisions and as laid down by the Supreme Court in a number of cases[13], a taxpayer engaged in zero-rated or effectively zero-rated transactions may claim a refund/tax credit certificate for input taxes attributable to such sales upon compliance with the following requisites:

1) the taxpayer is VAT-registered;
2) there must be zero-rated or effectively zero-rated sales;
3) input taxes were incurred or paid;
4) such input taxes are attributable to zero-rated or effectively zero-rated sales;
5) said input taxes were not applied against any output VAT liability; and
6) the claim was filed within the prescribed periods both in the administrative and judicial levels.

[13] *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013;*Southern Phil. Power Corp. vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communication Services Phil., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

Before disposition of the issues relative to the first aforementioned five (5) requisites, the Court finds it appropriate to first determine petitioner's compliance with the last requisite, which is the timeliness of the filing of the instant claim, considering that claims filed beyond the reglementary period will not prosper and that compliance with the prescriptive period in filing claims for refund is determinative of this Court's jurisdiction to take cognizance of the instant petition.

Petitioner's Administrative and Judicial Claims were seasonably filed

In accordance with the above-quoted Section 112(A), the administrative claim for the issuance of a tax credit certificate or refund of excess input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The instant claim for refund/TCC covers the first to fourth quarters of CY 2014; thus, petitioner's last day for filing of its administrative claim for the four taxable quarters of CY 2014 fell on the following dates:

Quarter	End of the Quarter	End of the 2-Year Period
1st	3/31/2014	3/31/2016
2nd	6/30/2014	6/30/2016
3rd	9/30/2014	9/30/2016
4th	12/31/2014	12/31/2016

Clearly, petitioner's administrative claim for refund/TCC, together with the supporting documents, was seasonably filed with the Bureau of Internal Revenue, Revenue District Office (RDO) No. 050, Makati City, on March 30, 2016.[14]

On the other hand, Section 112(C) of the 1997 NIRC, as amended, states the prescriptive period for filing a judicial claim for the refund or tax credit of alleged excess/unutilized input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR

[14] Exhibits "P-28.1" and "P-28.2", BIR Records, Folders 10 and 11, pp. 1628-1636 and 1563, respectively.

to act on the administrative claim for a refund or credit; and the period of 30 days, which refers to the period for filing a judicial claim with the CTA.[15]

Significant to the reckoning of the 120-day period is the declaration of the Supreme Court that the application for VAT refund/TCC must be accompanied by complete supporting documents with a statement under oath, attesting to the completeness of said supporting documents pursuant to Revenue Memorandum Circular (RMC) No. 54-2014. The affidavit shall also state that these documents are sufficient to support the claim, and no other documents shall be accepted from the taxpayer in order for the CIR to render his decision. Below is the pertinent portion of the Supreme Court's ruling in the case of *Pilipinas Total Gas, Inc. vs Commissioner of Internal Revenue*[16]:

> "As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:
>
> The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex 'A' hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

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[15] Rohm Apollo Semiconductor Philippines vs. CIR, G.R. No. 168950, January 14, 2015.
[16] G.R. No. 207112, December 8, 2015.

> Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim."

Since RMC No. 54-2014 took effect on June 11, 2014, the same applies to the instant administrative claim for refund which was filed on March 30, 2016.

The 120-day period shall be reckoned from March 30, 2016 on which date petitioner was already obliged to submit complete supporting documents.

The records show that petitioner submitted supporting documents per the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund labeled as Annex "A"[17] upon the filing of its administrative claim on March 30, 2016 and executed an Affidavit of Completeness[18] attesting to the completeness of the submitted documents.

Accordingly, respondent had 120 days from March 30, 2016, or until July 28, 2016 to decide on petitioner's claim. However, respondent failed to act on the claim within the allowable period of 120 days. Thus, petitioner had 30 days or until August 27, 2016, to appeal such inaction to the Court. Evidently, petitioner's judicial claim for refund/TCC was timely filed on August 26, 2016.

Petitioner is a VAT-registered entity and had zero-rated sales during the subject period

Petitioner complied with the first requisite considering that it is a VAT-registered entity, as evidenced by its BIR Certificate of Registration No. OCN 9RC0000274116 dated October 23, 2008[19].

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[17] BIR Records, Folder 11, p. 1637.
[18] BIR Records, Folder 10, p. 1456.
[19] Exhibit "P-2", Court Docket, Vol. I, p. 483

On the second requisite, petitioner reflected an amount of ₱142,756,779.47 zero-rated sales/receipts in its Quarterly VAT Returns for the four quarters of taxable year 2014, broken down as follows:

Exhibit No.	CY 2014	Zero-Rated Sales/Receipts
"P-3"/"P-30-F-1"	1st Quarter	₱ 90,247,892.50
"P-4"/"P-30-F-2"	2nd Quarter	34,069,437.56
"P-5.2"/"P-30-F-3"	3rd Quarter	4,173,970.84
"P-6"/"P-30-F-4"	4th Quarter	14,265,478.57
	Total	₱142,756,779.47

The amount of ₱142,756,779.47 treated by petitioner as zero-rated sales/receipts allegedly consisted of sales of services to duly registered renewable energy developers and export sales to non-resident foreign affiliates, detailed as follows:[20]

CY 2014	Sales of Services to RE Developers		Export sales to non-resident foreign affiliates	
	Energy Development Corporation (EDC)	*Maibarra Geothermal, Inc.*	*Halliburton Energy Services (Malaysia)*	*Halliburton GMB*
First Quarter	₱ 90,008,608.38	-	-	₱ 239,284.12
Second Quarter	33,605,430.20	-	₱ 464,007.36	-
Third Quarter	-	-	4,149,189.57	24,781.27
Fourth Quarter	-	₱ 14,257,580.18	7,898.39	
Total	**₱ 123,614,038.58**	**₱ 14,257,580.18**	**₱ 4,621,095.32**	**₱ 264,065.39**

With regard to its declared zero-rated sales of services to RE developers, petitioner invokes Section 15(g), Chapter VII of RA No. 9513 or the Renewable Energy Act of 2008, which was approved on December 16, 2008. Among the incentives provided under the law is that all renewable energy (RE)

[20] Petition for Review, Court Docket, Volume I, pp. 6,8, 17 and 19.

developers are entitled to zero-rated value-added tax on their purchases of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power, to wit:

"CHAPTER VII

GENERAL INCENTIVES

Section 15. ***Incentives for Renewable Energy Projects and Activities.*** - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

xxx xxx xxx

(g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services <u>needed for the development, construction and installation of its plant facilities.</u>

This provision shall **also apply to the <u>whole process of exploring and developing renewable energy sources up to its conversion into power</u>,** including but not limited to the services performed by subcontractors and/or contractors." (*Emphasis and underscoring supplied*)

The same is being implemented by Part III, Rule 5, Section 13(G)(b) of Department Circular (DC) No. DC2009-05-0008 issued by the

Department of Energy (DOE) on May 25, 2009, which provides as follows:

"PART III. INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES

RULE 5. GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT

SEC. 13. Fiscal Incentives for Renewable Energy Projects and Activities

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

xxx xxx xxx

(b) Purchase of local goods, properties and services **needed for the development, construction, and installation of the plant facilities** of RE Developers;

(c) **Whole process of exploration and development of RE sources up to its conversion into power**, including, but not limited to, the services performed by subcontractors and/or contractors." (Emphasis supplied)

Chapter VII, Section 25 of RA No. 9513, as implemented by Part VII, Rule 13, Section 39 of DC No. DC2009-05-008, further provides that RE developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the DOE, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of its entitlement to incentives provided under Chapter VII of RA No. 9513.

Clearly, from the foregoing, to qualify for VAT zero-rating as contemplated in RA No. 9513 and DOE Circular No. DC2009-05-008, petitioner must prove by sufficient evidence that it has complied with the following conditions, thus:

1.) it is engaged in the sale of goods and services to RE developers; and,
2.) the goods and services sold: a.) are needed for the development, construction, and installation of the RE developers' plant facilities; and, b.) pertain to the whole process of exploration and development of RE sources up to its conversion into power.

But as far as the supply of renewable energy equipment is concerned, petitioner must additionally show that it is also registered with the DOE, in order to qualify the sale of said equipment to VAT zero-rating.

Records disclose that petitioner is registered with the Securities and Exchange Commission (SEC) and was granted a license to do business in the Philippines to provide oilfield services and products, such as completion, drilling, cementing, logging, well testing, perforating, production testing and workover, stimulation services and licensing of software and consulting services, and importation and provision of oilfield equipment and technology to the oil and gas industries[21]

Among petitioner's clients during the taxable year 2014 were RE developers of geothermal energy resources, namely, Energy Development Corporation (EDC) and Maibarara Geothermal Incorporated (Maibarara), which are registered with the DOE, hence, are entitled to the incentives granted under RA No. 9513, as evidenced by the following:

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[21] Exhibit "P-1", Court Docket, Vol. I, p. 473.

	DOE Certificate of Registration No.	Date of Issuance	Exhibit No.
Energy Development Corporation:			
1) Tonongan, Leyte	GRESC 2009-10-001	October 23, 2009	"P-14"
2) Palinpinon, Negros Occidental	GRESC 2009-10-002	October 23, 2009	"P-15"
3) Bacon-Manito, Sorsogon/Albay	GRESC 2009-10-003	October 23, 2009	"P-16"
4) Kidapawan City, North Cotabato	GRESC 2009-10-004	October 23, 2009	"P-17"
5) Northern Negros, Negros Occidental	GRESC 2009-10-005	October 23, 2009	"P-18"
Maibarara Geothermal Incorporated	GRESC 2011-01-025	January 05, 2011	"P-19"

As such, all their purchases of goods and services from petitioner which are needed for the development, construction, and installation of plant facilities and those pertaining to the whole process of exploration and development of RE sources up to its conversion into power are entitled to VAT zero-rating, with the exception of RE equipment purchases from the latter, if any, since petitioner failed to show that it is registered with the DOE.

A perusal of the Contract for Directional Drilling Works[22] entered into by petitioner with EDC shows that petitioner undertook to provide the latter with directional drilling services in connection with the implementation of EDC's Drilling Operations Program (i.e., a program for the drilling or workover of geothermal wells) in the Philippines. Similarly, petitioner's Contract Agreement[23] with Maibarara indicates that petitioner agreed to provide directional drilling services to Maibarara. Considering that such directional drilling services were necessary in the production of geothermal energy by EDC and Maibarara, petitioner's sales/receipts derived therefrom in 2014 in the respective amounts of ₱123,614,038.58 and ₱14,257,580.18 totalling **₱137,871,618.76** which are duly

[22] Exhibit "P-24", Court Docket, Vol. I, pp. 148-202.
[23] Exhibit "P-25", Court Docket, Vol. I, p. 593

covered by VAT zero-rated official receipts[24] qualify for VAT zero-rating under RA No. 9513 and DOE Circular No. DC2009-05-008.

With reference to its reported zero-rated export sales to non-resident foreign affiliates, petitioner relies on Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which provides that:

> "SEC.106. *Value-Added Tax on Sale of Goods or Properties.*—
>
> (A) *Rate and Base of Tax.*— xxx
>
> xxx xxx xxx
>
> (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 (BSP)."

Based on the aforequoted provisions of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in order for an export sale to qualify as zero-rated, the following conditions 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 BSP.

Corollary to the first requisite, Section 113(A)(1), (B)(1), (2)(c) and (3) of the 1997 NIRC, as amended, as implemented by

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[24] Exhibits "P-30-R-1" to "P-30-R-12" as summarized in Exhibits "P-30-J" and "P-30-R".

Section 4.113-1(A)(1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, provides that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> > (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
> >
> > (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
> >
> > xxx xxx xxx
> >
> > (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
> >
> > (1) A statement that the seller is a **VAT-registered person, followed by his Taxpayer's Identification Number (TIN)**;
> >
> > (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
> >
> > xxx xxx xxx
> >
> > (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;
> >
> > (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx (*Emphasis and underscoring supplied*)
> >
> > SEC. 4.113-1. *Invoicing Requirements.* —
> >
> > (A) A VAT-registered person shall issue: —
> >
> > (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
> >
> > xxx xxx xxx

Only VAT-registered persons are required to print their **TIN followed by the word "VAT" in their invoice** or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

(c) If the sale is subject to zero percent (0%) VAT, the term **"zero-rated sale"** shall be written or printed prominently on the invoice or receipt;" (emphasis and underscoring supplied)

In addition to the above requirements, the invoices must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended, to wit:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices*. — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction,

> quantity, unit cost and description of merchandise or nature of service ."xxx.
>
> SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Pursuant to the foregoing provisions of Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended, in relation to Section 113(A)(1), (B)(1), (2)(c) and (3) of the same Code and Sections 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-05, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: a) the sales invoice as proof of sale of goods; b) bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

In support of its export sales to Halliburton Worldwide GmbH (Switzerland) and Halliburton Energy Services (Malaysia), petitioner submitted before this Court documents such as commercial invoices[25], Schedule of Offsetting of intercompany accounts[26], In House Cash and Intercompany

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[25] Exhibits "P-30-S-1" to "P-30-S-12".
[26] Exhibit "P-30-N". *cu*

Settlement Agreement[27] and Audited Financial Statements for CY 2014[28].

However, the Court finds that the commercial invoices submitted by petitioner are not compliant with the invoicing requirements under the law and regulations as there is no proof that the same are duly registered with the BIR and do not contain the information required to be indicated therein such as petitioner's TIN followed by the word "VAT" and the term "zero-rated sale". Also, petitioner failed to submit bills of lading or airway bills to prove actual shipment of the goods from the Philippines to a foreign country. Thus, petitioner's reported export sales to Halliburton Worldwide GmbH and Halliburton Energy Services in the respective amounts of ₱4,621,095.32 and ₱ 264,065.39 totalling ₱4,885,160.71 for CY 2014 cannot qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Therefore, of the ₱142,756,779.47 reported zero-rated sales/receipts, only the sales/receipts derived by petitioner from services rendered to RE Developers amounting to ₱137,871,618.76 qualify for VAT zero-rating, computed as follows:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**CY 2014**
Zero-Rated Sales/Receipts per VAT Returns	₱ 90,247,892.50	₱34,069,437.56	₱4,173,970.84	₱14,265,478.57	₱142,756,779.47
Less: Disallowed Export Sales to Halliburton Worldwide GmbH and Halliburton Energy Services	239,284.12	464,007.36	4,173,970.84	7,898.39	4,885,160.71
Valid Zero-Rated Sales/Receipts	**₱90,008,608.38**	**₱33,605,430.2**	**₱ -**	**₱14,257,580.18**	**₱137,871,618.76**

[27] Exhibit "P-26", Court Docket. Volume I, pp. 595-603.
[28] Exhibit "P-30-E".

Petitioner incurred/paid input taxes attributable to zero-rated sales/receipts and said input taxes were not applied against any output VAT liability

Having resolved that petitioner had valid zero-rated sales/receipts for CY 2014 in the amount of ₱137,871,618.76, we proceed to the determination of whether petitioner incurred input taxes in connection therewith and if said input taxes were not applied against any output VAT liability of petitioner.

In its 2014 Quarterly VAT Returns, petitioner reported the following input taxes totaling ₱12,541,358.97 arising from its amortization of input VAT on purchases of capital goods exceeding ₱1Million, domestic purchase and importation of goods other than capital goods, domestic purchase of services and services rendered by non-residents, broken down as follows:

	1st Quarter *Exh. "P-30-F-1"*	**2nd Quarter** *Exh. "P-30-F-2"*	**3rd Quarter** *Exh. "P-30-F-3"*	**4th Quarter** *Exh. "P-30-F-4"*	**CY 2014**
Input Tax Deferred on Capital Goods exceeding ₱1Million from Previous Quarter	₱136,800.00	₱125,400.00	267,505.36	248,300.00	778,005.36
Add: Input Tax on Capital Goods exceeding ₱1Million Purchased this Quarter	0.00	156,107.14	0.00	0.00	156,107.14
Total Unamortized Input Tax on Capital Goods exceeding ₱1Million	₱136,800.00	₱281,507.14	267,505.36	248,300.00	934,112.50
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	125,400.00	267,505.35	248,300.00	229,094.64	870,299.99
Amortization of Input Tax on Capital Goods exceeding ₱1Million	₱11,400.00	₱14,001.79	19,205.36	19,205.36	63,812.51
Add: Input Tax on -					0.00
Domestic Purchase of Goods other than Capital Goods	20,562.15	3,676.53	3,778.93	2,623.10	30,640.71
Importation of Goods other than Capital Goods	0.00	7,576.00	0.00	0.00	7,576.00

Domestic Purchase of Services	470,078.23	484,509.65	511,415.04	1,305,151.75	2,771,154.67
Services Rendered by Non-residents	4,163,827.62	731,691.26	2,486,469.11	2,286,187.10	9,668,175.09
Total Allowable Input Tax	**₱4,665,868.00**	**₱1,241,455.23**	**3,020,868.44**	**3,613,167.31**	**12,541,358.98**

In support of these input taxes, petitioner presented among others, its Schedule of Purchases[29], Schedule of Importations[30], Schedule of Input Tax Pertaining to Purchases of Capital Goods Exceeding ₱1Million,[31] and the related suppliers' official receipts, sales invoices, importation documents[32] which were all examined by the Court-commissioned Independent Certified Public Accountant (ICPA).

The ICPA's report together with petitioner's supporting documents reveals that the following input VAT in the amount of ₱295,460.95 must be disallowed from petitioner's claim for not being properly substantiated by VAT invoices or receipts as prescribed under Sections 110 (A), 113 (A) and (B), 237, and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of RR No. 16-05, as amended:

Findings	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	CY 2014	Exh. No.
Domestic purchase of service not properly supported by VAT ORs	₱ 1,373.68	₱2,993.31	₱ 6,416.73	₱1,758.26	₱ 12,541.98	"P-30-AB"
Domestic purchase of service supported by VAT ORs with name, TIN and VAT was separately disclosed but without address of the petitioner	871.20			12,202.29	13,073.49	"P-30-AC"

[29] Exhibits "P-30-K-1" to "P-30-K-4".

[30] Exhibit "P-30-L".

[31] Exhibit "P-30-M".

[32] Exhibits "P-30-T-1" to "P-30-T-9"; "P-30-U-1" to "P-30-U-475"; "P-30-V-1" to "P-30-V-2"; "P-30-W-1" to "P-30-W-7"; "P-30-X-1" to "P-30-X-9"; "P-30-Y-1" to "P-30-Y-21"; "P-30-Z-1" to "P-30-Z-10"; and "P-30-AA-1" to "P-30-AA-14", "P-30-AB-1" to "P-30-AB-20", "P-30-AC-1" to "P-30-AC-10", "P-30-AD-1" to "P-30-AD-5", "P-30-AE-1" to "P-30-AE-8", "P-30-AF-1", "P-30-AG" and "P-30-AH", "P-30-AI-1" to "P-30-AI-12", "P-30-AJ-1" to "P-30-AJ-2".

Domestic purchase of service supported by VAT ORs with name and VAT was separately disclosed but without TIN of the petitioner	32,265.20			3,886.80	36,152.00	"P-30-AD"
Domestic purchase of service supported by VAT ORs with the name of petiitoner wherein VAT was not separately disclosed	11,880.57			36.00	11,916.57	"P-30-AE"
Domestic purchase of services claimed twice in the taxable year	11,437.88				11,437.88	"P-30-AF"
Domestic purchase of goods and services without supporting VAT invoices and ORs	15,642.14	133,554.10	1,603.29	59,539.50	210,339.03	"P-30-AG"
Total	**₱73,470.67**	**₱136,547.41**	**₱8,020.02**	**₱77,422.85**	**₱295,460.95**	

Aside from the ICPA recommended disallowance of ₱295,460.95, the following input VAT in the amount of ₱10,337,850.09 should likewise be disallowed for failure to meet the substantiation requirements prescribed under the aforementioned VAT law and regulations:

Findings	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	CY 2014	Exh. No.
Services by non-residents supported by BIR Forms No. 1600 but without payment confirmation receipts	₱4,163,827.62	₱731,691.26	₱2,486,469.11	₱2,286,187.10	P9,668,175.09	"P-30-AI"
Date of Issue of the Authority to Print (ATP) is later than the date of the OR:					-	
Supplier					-	
Panalpina World Transport			2,700.75		2,700.75	"P-30-U-262"

Panalpina World Transport			324.87		324.87	"P-30-U-263"
Technology Exports Services				600,552.00	600,552.00	"P-30-U-467"
Panalpina World Transport				1,145.71	1,145.71	"P-30-U-375"
Panalpina World Transport				1,139.16	1,139.16	"P-30-U-376"
Amortization of input VAT on capital goods exceeding ₱1Million:					-	
Not supported by a VAT registered sales invoice but with Vehicle Sales Proposal, Collection Receipt and an e-mail correspondence		2,601.79	7,805.36	7,805.36	18,212.51	"P-30-AJ-1", "P-30-M"
Supported by a sales invoice without ATP, petitioner's TIN and address and the VAT component was not separately indicated	11,400.00	11,400.00	11,400.00	11,400.00	45,600.00	"P-30-AJ-2", "P-30-M"
Total	**₱4,175,227.62**	**₱745,693.05**	**₱2,508,700.09**	**₱2,908,229.33**	**₱10,337,850.09**	

Therefore, out of petitioner's reported allowable input VAT for the four quarters of CY 2014 in the total amount of ₱12,541,358.98, only the amount of ₱1,908,047.94 represents valid input VAT, as computed below:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**CY 2014**
Total Allowable Input VAT per Returns	₱4,665,868.00	₱1,241,455.23	₱3,020,868.44	₱ 3,613,167.31	₱ 12,541,358.98
Less: Disallowances					

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Per ICPA's findings	₱ 73,470.67	₱ 136,547.41	₱ 8,020.02	₱ 77,422.85	₱ 295,460.95
Per this Court's further verification	4,175,227.62	745,693.05	2,508,700.09	2,908,229.33	10,337,850.09
Total Disallowances	₱4,248,698.29	₱ 882,240.46	₱2,516,720.11	₱ 2,985,652.18	₱ 10,633,311.04
Valid Input VAT	**₱417,169.71**	**₱359,214.77**	**₱504,148.33**	**₱ 627,515.13**	**₱1,908,047.94**

However, considering that petitioner had other kinds of sales, *i.e.*, VATable sales/receipts to private entities and exempt sales and its input VAT cannot be directly identified with specific sales, we shall allocate the valid input VAT proportionately on the basis of the volume of petitioner's sales, as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Sales per VAT return					
Vatable Sales/ Receipts	₱ 139,339.59				₱ 139,339.59
Zero-Rated Sales/Receipts	90,247,892.50	₱34,069,437.56	₱ 4,173,970.84	₱14,265,478.57	142,756,779.47
Exempt Sales/ Receipts	26,874,917.42	-	77,740,930.02	33,876,887.17	138,492,734.61
Total	₱117,262,149.51	₱34,069,437.56	₱81,914,900.86	₱48,142,365.74	₱281,388,853.67
Allocation Factor (Percentage of each type of sales to total sales):					
Vatable Sales/ Receipts	0.1188274%	0.0000000%	0.0000000%	0.0000000%	
Zero-Rated Sales/Receipts	76.9625091%	100.0000000%	5.0954964%	29.6318603%	
Exempt Sales/ Receipts	22.9186635%	0.0000000%	94.9045036%	70.3681397%	
Total	100.00%	100.00%	100.00%	100.00%	
Valid Input VAT	₱ 417,169.71	₱ 359,214.77	₱ 504,148.33	₱ 627,515.13	₱ 1,908,047.94
Input VAT Allocation Per Each Type of Sales (Allocation Factor multiplied by Valid Input VAT):					
Vatable Sales/ Receipts – Private	**₱ 495.71**	-	-	-	**₱ 495.71**

Zero-Rated Sales/Receipts	**321,064.28**	**₱ 359,214.77**	**₱ 25,688.86**	**₱ 185,944.41**	**891,912.31**
Exempt Sales/ Receipts	95,609.72	-	478,459.47	441,570.72	1,015,639.92
Total	₱ 417,169.71	₱ 359,214.77	₱ 504,148.33	₱ 627,515.13	₱ 1,908,047.94

Since the input VAT allocated to VATable sales/receipts-private entities is not enough to cover petitioner's output tax due, the input VAT allocated to zero-rated sales/receipts shall be utilized to pay for the remaining output tax, as shown below:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**CY 2014**
Output VAT Due	₱ 16,720.75	-	-	-	₱ 16,720.75
Less: Input VAT allocated to VATable sales/receipts	495.71	-	-	-	495.71
Balance of Output VAT Due	₱ 16,225.04				₱ 16,225.04
Less: Input VAT allocated to Zero-Rated Sales/Receipts	321,064.28	₱ 359,214.77	₱ 25,688.86	₱ 185,944.41	891,912.31
Excess Input VAT Allocated to Zero-Rated Sales/Receipts	**₱304,839.24**	**₱359,214.77**	**₱25,688.86**	**₱185,944.41**	**₱875,687.27**

Based on the foregoing, petitioner had excess input VAT for the CY 2014 in the amount of ₱875,687.27, which can be attributed to its entire declared zero-rated sales/receipts in the amount of ₱142,756,779.47.

However, as stated earlier, petitioner was able to properly substantiate only the amount of ₱137,871,618.76 out of its total declared zero-rated sales/receipts of ₱142,756,779.47. Thus, the input VAT attributable to petitioner's valid zero-rated sales/receipts of ₱137,871,618.76 amounts only to ₱844,194.90, as computed below:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**CY 2014**
Excess Input VAT	₱ 304,839.24	₱ 359,214.77	₱ 25,688.86	₱ 185,944.41	₱ 875,687.27

Attributable to Declared Zero-Rated Sales/Receipts					
Divided by Declared Zero-Rated Sales/Receipts	90,247,892.50	34,069,437.56	4,173,970.84	14,265,478.57	142,756,779.47
Multiplied by Valid Zero-Rated Sales/Receipts	90,008,608.38	33,605,430.20	-	14,257,580.18	137,871,618.76
Excess Input VAT Attributable to Valid Zero-Rated Sales/Receipts	**₱304,030.98**	**₱354,322.46**	-	**₱185,841.46**	**₱ 844,194.90**

Although the claimed input VAT was carried-over by petitioner in its succeeding Quarterly VAT Returns[33], the same remained unutilized until it was deducted in its Quarterly VAT Return for the first quarter of 2016, as "VAT Refund/TCC claimed"[34] from the total available input tax of ₱25,004,942.51[35], thus, preventing the carry-over or application of the claimed input VAT in the next taxable periods[36].

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of TCC in the amount of ₱844,194.90. representing its unutilized excess input VAT for the four taxable quarters of CY 2014 which is attributable to its zero-rated sales/receipts for the same period.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT HUNDRED FORTY FOUR THOUSAND ONE HUNDRED NINETY FOUR and 90/100 PESOS** (Php844,194.90),

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[33] Exhibits "P-7" to "P-11", Court Docket, Vol. I, pp. 495-504.
[34] Exhibit "P-11-1", line 23D, Court Docket, Vol. I, p. 504.
[35] Exhibit "P-11", line 22,Court Docket, Vol. I, p. 504.
[36] Exhibits "P-12" and "P-13", Court Docket, Vol. I, pp. 505-508.

representing its unutilized excess input VAT for the four taxable quarters of CY 2014 which is attributable to its zero rated sales/receipts for the same period.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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