REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

COLT COMMERCIAL, INC., Petitioner,	CTA CASE NO. 9356
	Members:
-versus-	FABON-VICTORINO, *Acting Chairperson* and RINGPIS LIBAN, *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	DEC 18 2018 11:30 a.m.

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DECISION

Fabon-Victorino, J.:

In the instant Petition for Review filed on May 23, 2016[1], petitioner Colt Commercial, Inc., prays for the refund of its alleged unutilized input Value-Added Tax (VAT) in the amounts of ₱2,000,256.32 and ₱1,445,784.19, attributable to its zero-rated sales for the first (1st) and second (2nd) quarters of taxable year (TY) 2014.

Petitioner is a domestic corporation, with office address at Suite 508 Padilla Delos Reyes Bldg., 232 Juan Luna St., Brgy. 289, Zone 027, Binondo, Manila.[2] It is principally engaged in the business of selling cutting tools and hardware.[3] It is a VAT-registered taxpayer with Taxpayer Identification No. (TIN) 008-327-264-000.[4]

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[1] Docket, vol. 1, pp. 10-21.
[2] Exhibit "P-1".
[3] Exhibit "P-2".
[4] Exhibit "P-5".

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), authorized to act on claims for refund or issuance of tax credit certificate in accordance with the law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner states that it incurred unutilized input tax payments attributable to its zero-rated sales for the 1st and 2nd quarters of TY 2014 in the amounts of ₱2,000,256.32 and ₱1,445,784.19, respectively.

On March 30, 2016, petitioner filed with BIR Revenue District Office (RDO) No. 30, an administrative claim for refund of the cited excess input VAT for the 1st and 2nd quarters of TY 2014 in the sum of ₱3,446,040.51.[5]

The said claim for refund was however denied through the Letter dated April 21, 2016 of Revenue District Officer Leonora R. Ruizol[6], hence, this Petition for Review filed on May 23, 2016.

On July 12, 2016, respondent filed his Answer[7] arguing that the present claim for refund is premature since its case is still pending investigation with Revenue Region No. 6, BIR Manila. Besides, per record, petitioner has already applied the entire amount of input tax, subject of the claim for refund, against its output tax by carrying over the same to succeeding taxable quarters, specifically from taxable quarters ending March 31, 2013 up to March 31, 2015. Verification of petitioner's VAT Returns revealed that the input taxes amounting to ₱2,000,256.32 and ₱1,445,784.19 were not deducted from available input tax corresponding to the period of claim.

Respondent also argues that pursuant to Section 112 of the NIRC of 1997, as amended, the remedies of tax refund and input tax carry-over are alternative in nature and the choice of one precludes the other. Finally, respondent invokes the principle that claims for refund are construed strictly

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[5] Exhibit "P-13".
[6] Exhibit "P-23".
[7] Docket, vol. 1, pp. 196-201.

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against the claimant since they are in the nature of tax exemptions.

After the Pre-trial Conference on October 11, 2016[8], the parties filed their Joint Stipulation of Facts and Issues on October 26, 2016[9], on the basis of which a Pre-Trial Order was issued on November 23, 2016[10].

To substantiate its case, petitioner presented as its witnesses, Cyrus S. Chung Jr., Cherilyn R. Chung, Jennifer S. Mañago and the Court-commissioned Independent Certified Public Accountant (ICPA) Sonny S. Bonilla.

Petitioner's President, **Cyrus S. Chung** testified[11] that petitioner was established on July 17, 2012. It is engaged in the business of selling cutting tools and hardware. It supplies business enterprises in need of cutting tools and other hardware, most of which are within the ecozone and are PEZA[12] and SBMA-registered entities. Petitioner is a VAT-registered entity registered with BIR-RDO No. 30 in Binondo, Manila, as evidenced by its BIR Certificate of Registration dated August 31, 2012[13].

Petitioner filed an administrative claim for refund[14] of its unutilized input tax payments attributable to zero-rated sales to its clients for the 1st and 2nd quarters of TY 2014 in the respective amounts of ₱2,000,256.32 and ₱1,445,784.19. It was however denied in a Decision dated April 21, 2016 issued by BIR RDO No. 30 and received by petitioner on April 22, 2016[15]. Upon consultation with its legal counsel, petitioner authorized[16] him to file the instant Petition for Review.

Petitioner's Corporate Secretary and Treasurer, **Cherilyn R. Chung** corroborated[17] the foregoing testimony and added that their counsel advised them to file an

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[8] Docket, vol. 2, p. 646.
[9] Docket, vol. 2, pp. 662-669.
[10] Docket, vol. 2, pp. 674-679.
[11] See Cyrus S. Chung Jr.'s Judicial Affidavit, Exhibits "P-24" and "P-24-a".
[12] Exhibit "P-6".
[13] Exhibit "P-5".
[14] Exhibits "P-13" and "P-14".
[15] Exhibit "P-23".
[16] Exhibit "P-4".
[17] See Cherilyn R. Chung's Judicial Affidavit, Exhibits "P-25" and "P-25-a".

administrative claim for refund so that they can utilize their excess input VAT. Hence, they prepared the documents necessary and filed an administrative claim for refund on March 30, 2016 with RDO No. 30. On April 22, 2016, petitioner received a Letter from BIR RDO No. 30 signed by Revenue District Officer, Ms. Leonora Ruizol, denying petitioner's administrative claim for refund[18] prompting them to file the instant case with the Court on May 23, 2016.

Witness **Jennifer S. Mañago** testified[19] that as petitioner's accounting head, she was responsible for the preparation, timely filing, payment and submission of tax returns and other reports to the BIR, Securities and Exchange Commission (SEC) and other government agencies.

She also corroborated the testimonies of the previous two witnesses and further declared that for the 1st Quarter of TY 2014, petitioner's sales allocation consisted of ₱10,362,386.09 vatable sales and ₱23,532,943.34 zero-rated sales with corresponding output tax of ₱1,243,486.33 and input tax of ₱3,243,742.65. For the 2nd Quarter of TY 2014, petitioner had ₱10,190,257.41 vatable sales and ₱22,615,049.31 zero-rated sales, with an output tax of ₱1,222,830.89 and input tax of ₱2,668,615.08[20]. Thus, petitioner incurred an excess input VAT in the amounts of ₱2,000,256.32 for the 1st Quarter of TY 2014[21] and ₱1,445,784.19 for the 2nd Quarter of TY 2014[22]. To avoid double recovery, petitioner deducted the amount corresponding to the unutilized and excess input VAT from the total available input VAT item in the Quarterly VAT Return for the 3rd Quarter of TY 2014[23]. Petitioner likewise incurred unutilized input VAT in TY 2013 as evidenced by petitioner's VAT Returns for the 1st to 4th Quarters of TY 2013[24].

The witness admitted that while she prepared most of the documents she identified and is familiar with their contents, she did not have personal knowledge about the

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[18] Exhibit "P-23".
[19] See Jennifer S. Mañago's Judicial Affidavit, Exhibits "P-26" and "P-26-a".
[20] Exhibits "P-8", "P-9", "P-10", "P-11", "P-19", "P-20", "P-21" and "P-22", inclusive of sub-markings.
[21] Exhibit "P-17-a".
[22] Exhibit "P-17-b".
[23] Exhibit "P-17-c".
[24] Exhibits "P-16-a" to "P-16-d".

transactions involving the said documents as some were either issued by the BIR or prepared by petitioner's counsel or other employees.

On petitioner's application to use pre-numbered loose-leaf forms, she explained that she had no participation in the said application but aware that it was granted. Further, the use of pre-numbered loose-leaf invoices was necessary as petitioner printed sales invoices through the computer. However, for collection purposes, petitioner still used hard bound collection receipts.

The Court-commissioned ICPA, **Sonny S. Bonilla** testified[25] that based on his findings as stated in his ICPA Report dated March 9, 2017[26], petitioner is entitled to input VAT refund for the 1st and 2nd quarters of TY 2014 but in the reduced amount of ₱3,427,018.36.

He further testified that for the Quarterly VAT Returns for the 1st and 2nd quarter of TY 2014, petitioner did not indicate the amount subject for VAT refund. In any event, in its Amended 3rd Quarter VAT Return, petitioner indicated its intention to claim for VAT refund. He also learned from his audit that in its 4th Quarter VAT Return, petitioner carried over the excess input VAT from the 3rd quarter of TY 2014.

After its last witness, petitioner rested its case per Resolution dated July 5, 2017.[27]

On October 2, 2017[28], respondent manifested that he would no longer present any evidence.

After respondent filed his Memorandum on November 17, 2017[29], the case was submitted for decision on December 27, 2017[30] *sans* any from petitioner[31].

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[25] See Sonny S. Bonilla's Judicial Affidavit, Exhibits "P-27" and "P-27-a".
[26] Exhibits "P-28" and "P-28-a".
[27] Docket, vol. 2, p. 852.
[28] Docket, vol. 2, p. 854.
[29] Docket, vol. 2, pp. 862-866.
[30] Docket, vol. 2, p. 870.
[31] Records Verification Report dated December 12, 2017, docket, vol. 2, p. 868.

THE ISSUE

The parties submitted the following issue[32] for the Court's resolution:

> Whether petitioner is entitled to a tax refund in the amount of Two Million Two Hundred Fifty-Six Pesos and Thirty Centavos (Php2,000,256.32) for the first quarter of TY 2014 and One Million Four Hundred Forty-Five Thousand Seven Hundred Eighty-Four Pesos and Nineteen Centavos (Php1,445,784.19) for the second quarter of TY 2014, despite its failure to allege in the petition its total sales for the covered period and the total unutilized input tax directly attributable to zero-rated sales.

THE COURT'S RULING

Sections 112(A) and (C) of the NIRC of 1997, as amended, pertinently provides:

> 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

[32] Joint Stipulation of Facts and Issues, docket, vol. 2, p. 662.

> 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 or the unacted claim with the Court of Tax Appeals.

Thus, to be entitled to refund/TCC of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. the taxpayer is VAT-registered;
2. both the administrative and judicial claims were filed within the prescriptive periods;
3. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
4. the input taxes were incurred or paid;

5. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; and
6. the input taxes have not been applied against any output VAT liability.

Petitioner is a VAT-registered taxpayer.

It is undisputed that petitioner is a VAT-registered entity as evidenced by its BIR Certificate of Registration No. OCNC0000579258 and Taxpayer's Identification No. 008-327-264-000.[33]

Petitioner's administrative and judicial claims were seasonably filed.

The second requisite was likewise satisfied. Pursuant to Section 112(A) of the NIRC of 1997, as amended, petitioner had two (2) years to file a claim for refund/TCC of input VAT attributable to zero-rated or effectively zero-rated sales reckoned from the close of the taxable quarter when the relevant sales were made. Shown below are the relevant dates showing that petitioner's administrative claim for refund was timely filed on March 30, 2016[34], thus:

Period Covered (TY 2014)	End of Taxable Quarter	End of the Two-year Prescriptive Period
1st Quarter	March 31, 2014	March 31, 2016
2nd Quarter	June 30, 2014	June 30, 2016

As to the timeliness of petitioner's judicial claim for refund, Section 112(C) of the NIRC of 1997, as amended speaks of two periods for filing judicial claim for refund, to wit: (1) the period of 120 days for respondent to act on the administrative claim for refund/TCC; and (2) the 30-day period from notice of respondent's adverse ruling or the lapse of the 120 period without any action from respondent, within which to file a judicial claim with this Court.[35]

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[33] Exhibit "P-5".
[34] Exhibits "P-13" and "P-14".
[35] *ROHM Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

In the landmark case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[36], the Supreme Court held that the taxpayer can seek judicial review of its claim for refund/TCC in either of the following ways: (1) file the judicial claim within 30 days after the respondent denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period, if respondent does not act within that period.[37]

Accordingly, from the filing of petitioner's administrative claim, together with the supporting documents, on March 30, 2016, respondent had one hundred twenty (120) days or until July 28, 2016 to act on the said claim. Considering that respondent issued a letter denying the claim on April 21, 2016[38], petitioner had thirty (30) days or until May 23, 2016[39], within which to file a judicial claim before this Court. Clearly, the instant Petition for Review was also timely filed on May 23, 2016.

Petitioner is engaged in zero-rated or effectively zero-rated sales

Petitioner's Articles of Incorporation expressly states that it is primarily incorporated for the following purposes:

> 1. To engage in the business of merchandising, distributing and marketing, whether as principal, agent, indenter or manufacturer's representative, wholesale or retail, such as but not limited to industrial, agricultural, manufacturing tools and equipment, engineering products, hardware items, construction materials and electrical supplies, and or any all kinds of goods, wares and merchandise.

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[36] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[37] *Supra*, Note 37.
[38] Exhibit "P-23".
[39] May 21, 2016 fell on a Saturday, See Section 1, Rule 22 of Rules of Court.

w/

2. To engage in the business of import and export as principals, factors, representatives, agents or commissioned merchants with respect to buying, selling, trading or dealing in any and all kind of goods, wares, products of all classes and description, distribution, import and export business.[40]

Evidence shows that the majority of petitioner's clients were entities doing business within the economic zone and registered with PEZA and SBMA, whose transactions were classified as zero-rated transactions pursuant to Section 106(A)(2)(c) of the NIRC of 1997, as amended, to wit:

> SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

Corollarily, Regulations (RR) No. 16-2005, as amended, states:

> SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties.* – xxxx

[40] Exhibit "P-2".

> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (c) '*Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement'*. - Sales of goods or property to persons or entities who are tax-exempt under special laws, *e.g.* sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA) or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., shall be effectively subject to VAT at zero-rate.

Based on the cited provisions, sales of goods to entities registered with PEZA and SBMA are subject to VAT at zero percent (0%) rate.

To prove that its clients are duly-registered with the PEZA and SBMA, petitioner submitted various PEZA Certificates of Registration, BIR Certificates of Registration, and PEZA-ERD Forms No. 97-01[41]. Petitioner likewise submitted the letter dated July 5, 2016[42] of PEZA Deputy Director General for Operations, Mary Harriet O. Abordo, to petitioner's President, Cyrus S. Chung, Jr., confirming the issuance of VAT zero-rating certifications to the following entities:

	Name of Enterprise	**Zone Location**	**VAT Cert. No.**	**VAT Cert. Date**
1	ALPHA TECHNO PRECISION TOOLINGS INC.	Cavite Economic Zone	2014-1122	24 January 2014
2	APPLIED MACHINING CORPORATION	Laguna Technopark-SEZ	2014-0172	10 December 2013
3	ASIAN TRANSMISSION CORPORATION	Carmelray Industrial Park I-SEZ	2014-1661	01 April 2014
4	CITIZEN MACHINERY PHILIPPINES, INC. FORMERLY: MIYANO PHILIPPINES, INC	First Philippine Industrial Park-SEZ	2014-0023	09 December 2013

[41] Exhibit "P-7".
[42] Exhibits "P-6"; "ICPA PEZA-1" to "ICPA PEZA-1.4".

5	CLAYMOUNT ASSEMBLIES PHILIPPINES, INC.	Calamba Premiere International Park-SEZ	2014-0668	09 January 2014
6	DAITOH PRECISIONS, INC	Mactan Economic Zone	2014-1079	23 January 2014
7	DAIWA SEIKO PHILIPPINES CORPORATION	Laguna International Industrial Park-SEZ	2014-0552	02 January 2014
8	DELFINGEN PH-FILIPINAS, INC FORMERLY: SOFANOU (PHILIPPINES), INC	Mactan Economic Zone II-SEZ	2014-1665	02 April 2014
9	DELTA DESIGN PHILIPPINES LLC	Carmelray Industrial Park II-SEZ	2014-0854	16 January 2014
10	E N CORPORATION	Cavite Economic Zone	2014-0708	13 January 2014
11	EXAS PHILIPPINES, INC	Mactan Economic Zone	2014-1752	13 May 2014
12	FAMOUS SECRET PRECISION MACHINING INC	Daiichi Industrial Park-SEZ	2014-0536	02 January 2014
13	FATEC CORPORATION	First Cavite Industrial Estate-SEZ	2014-1251	29 January 2014
14	FERUSCHE STAINLESS, INC.	Filinvest Technology Park Calamba-SEZ	2014-0573	03 January 2014
15	FIRSTEC METALLICS, INC.	Light Industry & Science Park I-SEZ	2014-0534	27 December 2013
16	FUJITSU DIE-TECH CORPORATION OF THE PHILIPPINES	Laguna Technopark Inc.-SEZ	2014-0334	17 December 2013
17	GUNMA GOHKIN PHILIPPINES CORPORATION	Light Industry & Science Park I-SEZ	2014-0679	09 January 2014
18	HARADA AUTOMOTIVE ANTENNA (PHILIPPINES), INC. FORMERLY: NIPPON ANTENNA (PHILIPPINES) INC	First Cavite Industrial Estate-SEZ	2014-0146	10 December 2013
19	HISTOTECH PRECISION (PH) INC	Light Industry & Science Park I-SEZ	2014-2017	08 October 2014
20	HITACHI INDUSTRIAL MACHINERY PHILIPPINES CORP.	First Cavite Industrial Estate-SEZ	2014-0185	11 December 2013
21	HONDA PARTS MANUFACTURING CORPORATION	Laguna Technopark Inc.-SEZ	2014-0331	17 December 2013
22	IMASEN PHILIPPINE MANUFACTURING CORPORATION	Laguna Technopark Inc.-SEZ	2014-0346	17 December 2013
23	INA MICRO OPTO CORPORATION	Mactan Economic Zone II-SEZ	2014-1476	24 February 2014
24	JFS PRECISION TECHNOLOGY CORP.	Golden Mile Business Park-SEZ Baguio City Economic Zone	2014-1023	22 January 2014
25	KNOWLES ELECTRONICS (PHILIPPINES) CORPORATION	Cebu Light Industrial Park-SEZ	2014-0747	13 January 2014
26	KODACHI SEIKI PHILIPPINES, INC	Cavite Economic Zone	2014-1376	10 February 2014
27	LAGUNA AUTO-PARTS MANUFACTURING CORPORATION	Laguna Technopark Inc.-SEZ	2014-0028	09 December 2013
28	LAGUNA METTS CORPORATION	Laguna Technopark Inc.-SEZ	2014-0607	07 January 2014
29	MAKOTO METAL TECHNOLOGY, INC	Mactan Economic Zone II-SEZ	2014-0638	08 January 2014
30	MANUFACTURING AUTOMATION SOLUTIONS INTERNATIONAL, INC	Calamba Premiere International Park-SEZ	2014-0460	26 December 2013
31	MEINAN PHILIPPINES, INC	Laguna Technopark Inc.-SEZ	2014-1252	29 January 2014
32	MENIMA CASTING PRODUCTS INC	First Cavite Industrial Estate-SEZ	2014-1007	21 January 2014
33	MICRO-MECHANICS TECHNOLOGY INTERNATIONAL INC	Carmelray Industrial Park II-SEZ	2014-0751	13 January 2014
34	MICRON PRECISION PHILIPPINES, INC	Calamba Premiere International Park-SEZ	2014-1419	13 February 2014
35	MKP, INC	Cavite Economic Zone	2014-0905	17 January 2014
36	MTE TECHNOLOGY, INC	Carmelray Industrial Park II-SEZ	2014-0256	13 December 2013
37	NAKASHIMA PHILIPPINES CORPORATION (NPC) FORMERLY: MIKADO PHILIPPINES CORPORATION	Cavite Economic Zone	2014-0614	07 January 2014

38	NEW ELECTRONICS SYSTEM CO., INC	Cavite Economic Zone	2014-0141	10 December 2013
39	NIDEC PHILIPPINES CORPORATION	Laguna Technopark Inc.-SEZ	2014-0226	11 December 2013
40	NIDEC PRECISION PHILIPPINES CORPORATION	Laguna Technopark Inc.-SEZ	2014-0680	09 January 2014
41	NIDEC SANKYO PHILIPPINES CORPORATION	Laguna Technopark Inc.-SEZ	2014-1756	16 May 2014
42	NUVALI STEEL PROCESSING CENTER, INC	Laguna Technopark Annex-SEZ	2014-1505	28 February 2014
43	ORBIS PRECISION TECH. INC.	Laguna International Industrial Park-SEZ	2014-0946	20 January 2014
44	PARTS PHILIPPINES, INC.	Cavite Economic Zone	2014-0787	15 January 2014
45	PENTA TECHNOLOGICAL PRODUCTS INC.	Laguna Technopark Inc.-SEZ	2014-0444	26 December 2013
46	PHILIPPINE KENKO CORPORATION	Mactan Economic Zone	2014-1744	13 May 2014
47	PHILIPPINE NAGANO SEIKO, INC	People's Technology Complex-SEZ	2014-0541	02 January 2014
48	PHILIPPINE PRECISION TECHNOLOGY, INC	Carmelray Industrial Park I-SEZ	2014-1663	02 April 2014
49	PHILIPPINE SANITARY FITTINGS, INC	Light Industry & Science Park III-SEZ First Cavite Industrial Estate-SEZ	2014-1750	13 May 2014
50	PHILIPPINES TRC, INC	Lima Technology Center-SEZ	2014-1480	24 February 2014
51	PRECISE TECHNO INCORPORATED	Cavite Economic Zone	2014-1694	11 April 2014
52	PROPHILE SOUND INDUSTRIES, INC	Cavite Economic Zone	2014-0725	13 January 2014
53	RAMCAR TECHNOLOGY, INC	Sta. Maria Industrial Park	2014-1604	17 March 2014
54	SEO JIN TRONICS, INC	First Cavite Industrial Estate-SEZ	2014-1296	03 February 2014
55	SINAG PRECISION MANUFACTURING LAGUNA, INC	Laguna Technopark Inc.-SEZ	2014-1831	23 June 2014
56	SHIMANO (PHILIPPINES) INC	First Philippine Industrial Park-SEZ	2014-0389	18 December 2013
57	SONION PHILIPPINES INC	First Philippine Industrial Park-SEZ	2014-0519	27 December 2013
58	SUMINAC PHILIPPINES INC	First Cavite Industrial Estate-SEZ	2014-0073	09 December 2013
59	SUNNELIT PHILIPPINES CORPORATION	Laguna Technopark Inc.-SEZ	2014-1124	24 January 2014
60	T&S LASER SOLUTIONS, INC.	First Philippine Industrial Park-SEZ	2014-0433	20 December 2013
61	TAMIYA (PHILIPPINES), INC.	Mactan Economic Zone II-SEZ	2014-0980	21 January 2014
62	TMX PHILIPPINES, INC.	Mactan Economic Zone	2014-1035	22 January 2014
63	TSUKUBA PHILIPPINE DIECASTING CORPORATION	Cavite Economic Zone	2014-0050	09 December 2013
64	URE-SHII TECHNOLOGIES INC.	Golden Mile Business Park-SEZ	2014-2039	28 October 2014
65	VITALO PACKAGING INTERNATIONAL, INC.	Laguna Technopark-SEZ	2014-0671	09 January 2014
66	WACKER NEUSON MANILA, INC. FORMERLY: WACKER MACHINERY PHILIPPINES, INC	First Cavite Industrial Estate-SEZ	2014-0678	09 January 2014
67	YUTAKA MANUFACTURING (PHILS.) INC.	Laguna Technopark Inc.-SEZ	2014-0082	09 December 2013

Accordingly, only the sales made to the above-enumerated entities, as well as to the SBMA-registered entities, *i.e., Hitachi Terminals Mechatronics Philippines Corporation* and *Polarmarine, Inc.*, during the 1st and 2nd quarters of TY 2014 shall qualify for VAT zero-rating.

In addition, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, and as implemented by Sections 4.113-1(A)(2), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, in relation to Sections 237 and 238 of the same Code, provide that a VAT taxpayer, like petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt 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;
>
> xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service;xxxx *(Emphasis 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:

xxx xxx xxx

> (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;" *(Emphases supplied)*
>
> SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* – All persons subject to an internal revenue tax shall, for each sale and 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. xxxx" *(Emphases supplied)*
>
> 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.

In its Quarterly VAT Returns[43] for the 1st and 2nd quarters of TY 2014, petitioner reported a total sale of ₱66,700,636.15, as computed below:

	VATable Sales	**Zero-rated Sales**	**Total Sales**
1st Quarter	₱ 10,362,386.09	₱ 23,532,943.34	₱ 33,895,329.43
2nd Quarter	10,190,257.41	22,615,049.31	32,805,306.72
Total	**₱20,552,643.50**	**₱46,147,992.65**	**₱66,700,636.15**

[43] Exhibits "P-17-A" and "P-17-B".

In support of its zero-rated sales and to prove compliance with the VAT invoicing requirements as provided by the afore-quoted laws and regulations, petitioner submitted various certified true copies of its sales invoices[44] issued to its customers, all were examined by the ICPA.

Per the ICPA Report, petitioner's zero-rated sales were supported by sales invoices with a total amount of ₱46,626,058.73, which is greater than the amount reported per VAT Returns by ₱478,066.08, as shown below:[45]

	Zero-Rated Sales per VAT Returns	**Zero-Rated Sales per ICPA**	**Difference**
1st Quarter	₱ 23,532,943.34	₱ 23,648,761.07	₱ (115,817.73)
2nd Quarter	22,615,049.31	22,977,297.66	(362,248.35)
Total	**₱46,147,992.65**	**₱46,626,058.73**	**₱(478,066.08)**

The above noted difference of ₱478,066.08 is attributable to the following:

Out of period sale	₱ (13,110.00)
Sold to PEZA but treated as VATable sale	10,050.00
Unsupported difference between the actual schedule vis-à-vis VAT return-1st Quarter	118,877.73
Unsupported difference between the actual schedule vis-à-vis VAT return-2nd Quarter	362,248.35
Total	**₱ 478,066.08**

Out of the ₱478,066.08 difference accounted by the ICPA, the amounts of ₱13,110.00[46] and ₱10,050.00[47] shall be considered for the purpose of determining the amount of zero-rated sales to which the valid input VAT may be attributed. However, the unsupported differences of ₱118,877.73 and ₱362,248.35, which apparently pertain to amounts not actually reported in petitioner's VAT Returns for the subject period, shall be disregarded. Moreover, the following reported zero-rated sales in the amount of ₱2,559,249.20, shall be disallowed as they were made to entities without proof of

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[44] Exhibit "P-9" (labeled as Exhibits "ICPA ZSQ1-1" to "ICPA ZSQ1-762" and "ICPA ZSQ2-1" to "ICPA ZSQ2-773" in the ICPA Report [Exhibit "P-28"]).
[45] Exhibit "P-28" (ICPA Report).
[46] Annex D of ICPA Report (Exhibit "P-28"); Exhibit "P-8".
[47] Exhibit "ICPA ZSQ1-490" of ICPA Report; Exhibit "P-8".

PEZA/SBMA registration, thus, cannot qualify for VAT zero-rating, to wit:

Invoice No.	Invoice Date	Client	Amount	Exhibit No.
First Quarter				
5728	1/6/2014	SILAN TECHNOLOGIES CORPORATION	₱ 7,200.00	ICPA ZSQ1-9
5800	1/8/2014	TURU SANTECHNO CORPORATION	20,140.00	ICPA ZSQ1-41
5803	1/8/2014	PREMTOOL E.K.	108,521.91	ICPA ZSQ1-42
5804	1/8/2014	PREMTOOL E.K.	333,151.28	ICPA ZSQ1-43
5805	1/8/2014	PREMTOOL E.K.	304,273.31	ICPA ZSQ1-44
5920	1/15/2014	DELFINGEN WEST INC	129,000.00	ICPA ZSQ1-102
5941	1/16/2014	TURU SANTECHNO CORPORATION	18,540.00	ICPA ZSQ1-115
5942	1/16/2014	TURU SANTECHNO CORPORATION	16,390.00	ICPA ZSQ1-116
6143	1/28/2014	TURU SANTECHNO CORPORATION	940	ICPA ZSQ1-194
6270	2/5/2014	TURU SANTECHNO CORPORATION	3,900.00	ICPA ZSQ1-265
6271	2/5/2014	HILLMEC ENGINEERING SDN BHD	225,270.52	ICPA ZSQ1-266
6356	2/11/2014	SILAN TECHNOLOGIES CORPORATION	4,490.00	ICPA ZSQ1-306
6357	2/11/2014	SILAN TECHNOLOGIES CORPORATION	2,090.00	ICPA ZSQ1-307
6572	2/22/2014	TURU SANTECHNO CORPORATION	12,900.00	ICPA ZSQ1-418
6574	2/22/2014	PREMTOOL E.K.	152,081.46	ICPA ZSQ1-420
6632	2/26/2014	CEBU AOI DEVELOPMENT TECHNOLOGIES CORP	7,875.00	ICPA ZSQ1-453
6664	2/26/2014	DELFINGEN WEST INC	43,000.00	ICPA ZSQ1-469
6687	2/27/2014	SILAN TECHNOLOGIES CORPORATION	3,600.00	ICPA ZSQ1-485
6781	3/6/2014	TURU SANTECHNO CORPORATION	6,500.00	ICPA ZSQ1-540
6901	3/12/2014	EUROASIA TECHNICS SDN BHD	58,718.88	ICPA ZSQ1-611
7033	3/19/2014	PREMTOOL E.K.	109,834.08	ICPA ZSQ1-679
7034	3/19/2014	TURU SANTECHNO CORPORATION	6,500.00	ICPA ZSQ1-680
7085	3/24/2014	TURU SANTECHNO CORPORATION	5,300.00	ICPA ZSQ1-701
7201	3/28/2014	PREMTOOL E.K.	252,568.41	ICPA ZSQ1-753
		subtotal	***₱ 1,832,784.85***	
Second Quarter				
7376	4/8/2014	SILAN TECHNOLOGIES CORPORATION	₱ 2,400.00	ICPA ZSQ2-75
7378	4/10/2014	TURU SANTECHNO CORPORATION	3,900.00	ICPA ZSQ2-77
7541	4/22/2014	PREMTOOL E.K.	109,236.30	ICPA ZSQ2-162
7543	4/22/2014	DELFINGEN WEST INC	13,200.00	ICPA ZSQ2-164
7699	4/29/2014	TURU SANTECHNO CORPORATION	1,000.00	ICPA ZSQ2-244
7880	5/9/2014	TURU SANTECHNO CORPORATION	3,900.00	ICPA ZSQ2-345
8030	5/7/2014	TURU SANTECHNO CORPORATION	5,000.00	ICPA ZSQ2-411
8103	5/22/2014	TURU SANTECHNO CORPORATION	5,000.00	ICPA ZSQ2-445
8125	5/24/2014	SILAN TECHNOLOGIES CORPORATION	5,840.00	ICPA ZSQ2-454
8126	5/24/2014	SILAN TECHNOLOGIES CORPORATION	4,800.00	ICPA ZSQ2-455
8127	5/24/2014	SILAN TECHNOLOGIES CORPORATION	4,800.00	ICPA ZSQ2-456
8128	5/24/2014	SILAN TECHNOLOGIES CORPORATION	7,220.00	ICPA ZSQ2-457

8147	5/26/2014	PREMTOOL E.K.	90,642.36	ICPA ZSQ2-468
8285	6/2/2014	PREMTOOL E.K.	205,396.75	ICPA ZSQ2-530
8671	6/25/2014	SILAN TECHNOLOGIES CORPORATION	5,230.00	ICPA ZSQ2-735
8672	6/25/2014	SILAN TECHNOLOGIES CORPORATION	5,550.00	ICPA ZSQ2-736
8673	6/25/2014	SILAN TECHNOLOGIES CORPORATION	2,400.00	ICPA ZSQ2-737
8674	6/25/2014	SILAN TECHNOLOGIES CORPORATION	6,140.00	ICPA ZSQ2-738
8677	6/25/2014	SILAN TECHNOLOGIES CORPORATION	3,000.00	ICPA ZSQ2-739
8680	6/25/2014	EUROASIA TECHNICS SDN BHD	238,148.94	ICPA ZSQ2-740
8750	6/30/2014	PRECISE PARTS COOPERATION INC	3,660.00	ICPA ZSQ2-773
		subtotal	***₱ 726,464.35***	
		Total	**₱ 2,559,249.20**	

Based on the foregoing, only the amount of ₱43,585,683.45 represents petitioner's valid zero-rated sales, computed as follows:

	1st Quarter	**2nd Quarter**	**Total**
Total Reported Zero-Rated Sales	₱ 23,532,943.34	₱ 22,615,049.31	₱ 46,147,992.65
Add(Less): Adjustments			
Out of period sale	(13,110.00)		(13,110.00)
Sale to PEZA but treated as vatable sale	10,050.00		10,050.00
Disallowed by this Court	(1,832,784.85)	(726,464.35)	(2,559,249.20)
Total Valid Zero-Rated Sales	**₱21,697,098.49**	**₱21,888,584.96**	**₱43,585,683.45**

Petitioner incurred and paid input taxes which are attributable to its zero-rated sales *and the same were not applied against any output VAT liability*

For the 1st and 2nd quarters of TY 2014, petitioner incurred input taxes on its local purchases and importations of goods other than capital goods in the total amount of ₱5,912,357.73, of which the amount of ₱3,446,040.51, net of output tax due, is the subject of petitioner's claim for refund, to wit:

	1st Quarter (Exh. "P-17-A")	**2nd Quarter (Exh. "P-17-B")**	**Total**

Input Tax on Purchases of Goods Other than Capital Goods (Line 21F)	₱ 407,105.65	₱ 386,548.08	₱ 793,653.73
Input Tax on Importation of Goods Other than Capital Goods (Line 21H)	2,836,637.00	2,282,067.00	5,118,704.00
Total Input Taxes	**₱ 3,243,742.65**	**₱ 2,668,615.08**	**₱ 5,912,357.73**
Less: Output Tax (Line 15B)	1,243,486.33	1,222,830.89	2,466,317.22
Excess input tax claimed	**₱ 2,000,256.32**	**₱ 1,445,784.19**	**₱ 3,446,040.51**

In support of its total input taxes of ₱5,912,357.73, petitioner submitted the certified true copies of sales invoices[48] for its local purchases of goods, and Import Entry and Internal Revenue Declarations (IEIRDs), and Bureau of Customs (BOC) receipts/Confirmation receipts[49] evidencing payment of VAT for imported goods.

Upon examination of the said documents, the ICPA noted exceptions on local purchases in the total amount of ₱28,172.39, summarized as follows:[50]

	Description	1st Quarter	2nd Quarter	Total
1.	Incorrect TIN of petitioner	₱ 9,016.39	₱ 3,040.07	₱ 12,056.46
2.	VAT not indicated separately in the invoice	86.06	227.14	313.20
3.	Supported by Point of Sale (POS) receipts only	43.93	25.18	69.11
4.	Not validated due to unavailability of the supporting documents	-	6,120.00	6,120.00
5.	VAT erroneously written on VAT exempt sale invoice	-	28.06	28.06
6.	Unsupported difference between the actual schedule vis-à-vis VAT return	9,702.28	(116.72)	9,585.56
	Total	**₱18,848.66**	**₱9,323.73**	**₱28,172.39**

From the above findings, Item Nos. 1 to 5, in the aggregate amount of ₱18,586.83 shall be disallowed for petitioner's failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) 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 to the unsupported difference of ₱9,585.56 (Item No. 6), further review reveals that the difference actually amounts to only ₱9,295.24 for the 1st quarter, which shall be disallowed for being unsupported, and ₱116.73[51] for the 2nd quarter, which shall be disregarded as it does not form part of the

[48] Exhibit "P-11".
[49] Exhibit "P-20".
[50] ICPA Report (Exhibit "P-28"); Annexes G to G.3 of ICPA Report (Exhibit "P-28").
[51] With a difference of 0.01 due to rounding off.

instant claim. The details of the said amounts are presented below:

	Input Tax per Return	Input Tax Per Schedule[52]	Difference
1st Quarter	₱ 407,105.65	₱ 397,810.41	₱ 9,295.24
2nd Quarter	386,548.08	386,664.81	(116.73)
Total	**₱793,653.73**	**₱784,475.22**	**₱9,178.51**

In addition, the input VAT on local purchases in the amount of ₱66,515.66 shall likewise be disallowed for the following reasons:

Supplier's Name	Invoice No.	Amount	Exhibit No.	Reason for disallowance
First Quarter				
Avenue Hardware Corp.	92014	₱ 806.79	ICPA P-91	Supported by VAT invoice with unreadable date
Limhuaco Metal industrial Inc.	11149	15,642.86	ICPA P-99	Supported by VAT invoice without petitioner's TIN
Handyman Do It Best home Ctr	656684	210.00	ICPA P-123	Supported by tape receipt only
True Value	694	130.50	ICPA P-127	Supported by tape receipt only
Grindtech Abrasives Corp.	2955	315.00	ICPA P-208	Supported by VAT invoice with alteration on date but without countersignature
Sanyoseiki Stainless Steel Corp.	143253	15,857.14	ICPA P-275	Supported by VAT invoice without petitioner's TIN
Kimika Industrial Corporation	128394	5,614.29	ICPA P-389	Supported by VAT invoice without petitioner's TIN
subtotal		***₱38,576.58***		
Second Quarter				
Em-o Industrial Manufacturing Corporation	9634	₱ 1,923.75	ICPA P-675	Supported by VAT invoice without petitioner's TIN
Union Hardware	30376	210.00	ICPA P-764	Supported by VAT invoice without petitioner's TIN
Union Hardware	30375	182.90	ICPA P-765	Supported by VAT invoice without petitioner's TIN
Union Hardware	30435	208.80	ICPA P-797	Supported by VAT invoice without petitioner's TIN
Union Hardware	30469	1,456.38	ICPA P-798	Supported by VAT invoice without petitioner's TIN
Em-o Industrial Manufacturing Corporation	9931	15,321.80	ICPA P-893	Supported by VAT invoice without petitioner's TIN
Kimika Industrial Corporation	129929	1,301.79	ICPA P-973	Supported by VAT invoice without petitioner's TIN
Em-o Industrial Manufacturing Corporation	10222	7,333.66	ICPA P-1006	Supported by VAT invoice without petitioner's TIN
subtotal		***₱ 27,939.08***		
Total		**₱ 66,515.66**		

Further, upon examination of the documents supporting the input VAT on importation of ₱5,118,704.00,[53] the Court

[52] Exhibit "P-10".
[53] Annex H to H.1 of ICPA Report (Exhibit "P-28").

finds the same compliant with the invoicing and substantiation requirements prescribed under the law and regulations.

In sum, petitioner's valid input VAT for the 1st and 2nd quarters of TY 2014 amounts to ₱5,817,960.00, as follows:

	1st Qtr	2nd Qtr	Total
Input VAT per Returns	₱ 3,243,742.65	₱ 2,668,615.08	₱ 5,912,357.73
Less: Disallowances			
Per ICPA findings	₱ 9,146.38	₱ 9,440.45	₱ 18,586.83
Unsupported difference	9,295.24	-	9,295.24
Additional disallowances by this Court	38,576.58	27,939.08	66,515.66
Total Disallowances	₱ 57,018.20	₱ 37,379.53	₱ 94,397.73
Total Valid Input VAT	**₱3,186,724.45**	**₱2,631,235.55**	**₱5,817,960.00**

Proceeding therefrom, a portion of petitioner's valid input VAT shall be applied against the output VAT liability for the 1st and 2nd quarters of TY 2014 in the aggregate amount of ₱2,465,240.43. Consequently, only the remaining input VAT of ₱3,352,719.57 can be attributed to the declared zero-rated sales of ₱46,158,042.65 and only the input VAT of ₱3,155,032.77 is attributable to the valid zero-rated sales of ₱43,585,683.45, computed as follows:

	First Quarter	Second Quarter	Total
Valid Input VAT	₱ 3,186,724.45	₱ 2,631,235.55	₱ 5,817,960.00
Less: Output VAT liability			
Output VAT per returns	1,243,486.33	1,222,830.89	2,466,317.22
Less: Output tax on Sale to PEZA but treated as vatable sale (₱10,050.00 ÷ 1.12% x 12%)	1,076.79		1,076.79
Total	*1,242,409.54*	*1,222,830.89*	*2,465,240.43*
Excess Input VAT	**₱1,944,314.91**	**₱1,408,404.66**	**₱3,352,719.57**
Divide by Declared Zero-Rated Sales	23,542,993.34	22,615,049.31	46,158,042.65
Multiply by Valid Zero-Rated Sales	21,697,098.49	21,888,584.96	43,585,683.45
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱1,791,870.37**	**₱1,363,162.41**	**₱3,155,032.77**

Further, although the claimed input VAT, which includes the refundable amount of ₱3,155,032.77, was carried over to the succeeding 3rd quarter of TY 2014, the same remained unutilized as it was deducted as "VAT Refund/TCC claimed"[54] in its Amended Quarterly VAT Return for the 3rd quarter of TY 2014.[55] Therefore, the subject claim no longer formed part of the excess input VAT of ₱7,298,577.24[56] as of the end of the 3rd quarter of TY 2014 that was to be carried over or applied to the succeeding quarters. As such, it eliminates the possibility that the present claim would be applied to future output VAT liability.

WHEREFORE, the instant Petition for Review filed by petitioner Colt Commercial, Inc., on May 23, 2016, is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱3,155,032.77**, representing its unutilized and excess input VAT attributable to its zero-rated sales for the 1st and 2nd quarters of TY 2014.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[54] Line 23D of Exhibit "P-17-C".
[55] Exhibit "P-17-C".
[56] Line 29 of Exhibit "P-17-C".

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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution and the Acting 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