REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

"K" LINE MARITIME ACADEMY PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 10270**
	Present:
vs.	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 27 2024 2:05 p.m.

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DECISION

FERRER-FLORES, J.:

At bar is a *Petition for Review* praying for the Court to reverse and set aside the Decision of respondent **Commissioner of Internal Revenue (CIR)**, partially denying petitioner's application for refund of excess input value-added tax (VAT) in 2018, and award petitioner an additional refund of **₱4,374,186.54**, which is the difference between the input VAT attributable to petitioner's zero-rated sales in 2018 (₱5,174,883.02) and the amount already granted by the said respondent (₱800,696.48).[1]

THE PARTIES

Petitioner **"K" Line Maritime Academy Philippines, Inc**. is a duly organized and existing domestic corporation engaged in the business of providing formal and non-formal maritime training programs, seminars, workshops and practical hands-on training, with principal place of business

[1] Statement of the Case, Pre-Trial Order dated June 7, 2021, Docket – Vol. 2, p. 664.

at 2nd Floor, "K" Line Building, Coral Way Drive, Central Business Park 1, Bay City, Pasay City 1308.[2]

Respondent is the duly appointed CIR, vested with authority to issue/grant tax refund of input VAT arising from purchases attributable to zero-rated sales. He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On November 11, 2019, petitioner filed with the VAT Credit Audit Division (VCAD) of the BIR its application for tax refund of its input VAT in 2018 in the total amount of ₱6,369,533.40.[4]

On the following day, or on November 12, 2019, petitioner submitted the documents supporting its claim for refund.[5]

Thereafter, on February 14, 2020, petitioner received the *VAT Refund Notice* from VCAD, stating that the application for tax refund has been partially denied to the extent of ₱5,568,836.92, for the following reasons:[6]

Reasons for Denial	Amount	Details of the denial
Purchases not compliant with the invoicing requirements pursuant to Sec. 113 of the National Internal Revenue Code (NIRC), as amended	₱ 348,651.00	Annex "B"
Big-ticket purchases with no proof of payment as required under item 4.4.3 of Annex A-1 of Revenue Memorandum Circular (RMC) No. 47-2019	818,345.72	Annex "B"
Out-of-period	91,974.37	Annex "B"
Overclaimed input VAT	5,630.37	Annex "B" and "C"
Output VAT applied for the Taxable Year 2018	2,431,124.34	Annex "C"
Output VAT assessed on unsupported sales to various individuals	3,648.00	Annex "C"
Output VAT assessed on VATable sales	36,340.31	Annex "D"
Input tax attributable to export sales with insufficient documentations pursuant to RMC NO. 47-2019	1,833,122.81	Annex "E"
TOTAL	**₱ 5,538,836.92**	

PROCEEDINGS BEFORE THIS COURT

The present *Petition of Review* was filed on March 13, 2020.[7]

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2 Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, p. 610.
3 Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 610.
4 Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 2, pp. 610 to 611.
5 Par. 4, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 611.
6 Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 611.
7 Docket – Vol. 1, pp. 6-20.

Respondent posted a *Motion for Extension of Time to File Answer* on July 23, 2020,[8] which the Court granted in the Resolution dated September 2, 2020.[9] Thereafter, on August 20, 2020, respondent posted a *Second Motion for Extension of Time to File Answer*,[10] which the Court granted in the Resolution dated September 15, 2020,[11] with a warning that no further extensions shall be granted.

Thereafter, respondent posted his *Answer* on September 10, 2020,[12] and transmitted the *BIR Records* for this case on November 17, 2020.[13]

The Pre-Trial Conference was set and held on March 2, 2021.[14] Prior thereto, *Respondent's Pre-Trial Brief* was filed on February 23, 2021,[15] while the *Pre-Trial Brief (For Petitioner "K" Line Maritime Academy Philippines, Inc.)* was submitted on February 24, 2021.[16]

On March 22, 2021, the parties submitted via e-mail their *Joint Stipulation of Facts and Issues*.[17] The Court then issued the Pre-Trial Order dated June 7, 2021,[18] thereby deeming the termination of the Pre-Trial.

Trial then ensued, with the parties presenting their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Roan N. Almazan,[19] petitioner's Finance-OIC; (2) Ms. Joy G. Tesorero,[20] petitioner's Taxation Officer; and (3) Mr. Joseph Cedric V. Calica,[21] the Court-commissioned independent certified public accountant (ICPA).[22]

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8 *Id.,* at 98-101.
9 *Id.,* at 105.
10 *Id.,* at 106-109.
11 *Id.,* at 113-114.
12 *Id.,* at 115-123.
13 *Compliance* dated November 17, 2020, Docket – Vol. 1, pp. 133 to 134.
14 Notice of Pre-Trial Conference dated September 30, 2020, Docket – Vol. 1, pp. 127 to 128; Minutes of the hearing held on, and Order dated, March 2, 2021, Docket – Vol. 2, pp. 587, and 590 to 592, respectively.
15 Docket – Vol. 1, pp. 148 to 151.
16 Docket – Vol. 2, pp. 568 to 585.
17 Email printout with attached JSFI, Docket – Vol. 2, pp. 609 to 628.
18 Docket – Vol. 2, pp. 664 to 676.
19 Exhibit "P-100", Docket – Vol. 1, pp. 164 to 197; Minutes of the hearing held on, and Order dated, July 6, 2021, Docket – Vol. 3, pp. 1025 to 1026.
20 Exhibit "P-49", Docket – Vol. 3, pp. 1100 to 1105; Minutes of the hearing held on, and Order dated, March 23, 2022, Docket – Vol. 3, pp. 1127 to 1129.
21 Exhibit "P-48", Docket – Vol. 3, pp. 1027 to 1044; Minutes of the hearing held on, and Order dated, March 23, 2022, Docket – Vol. 3, pp. 1127 to 1129.
22 Refer to the Minutes of the hearing held on May 6, 2021, Docket – Vol. 2, p. 660.

The *Report* of the ICPA was submitted on June 21, 2021.[23]

Petitioner filed its *Formal Offer of Exhibits* on April 27, 2022.[24] Respondent failed to file his comment thereon.[25] In the Resolution dated September 19, 2022,[26] the Court admitted petitioner's exhibits, *except* for Exhibits "P-34-A-734", "P-34-A-783" to "P-34-A-792", "P-38-A-116", "P-38-A-117", "P-38-A-376", "P-38-A-893", and "P-38-B-148", which were denied admission for not being found in the records of the case.

For his part, respondent offered the testimony of Revenue Officer Marjorie C. Dioso.[27]

On January 30, 2023, respondent filed his *Formal Offer of Evidence*,[28] to which petitioner filed its *Comment (To Respondent's Formal Offer of Evidence dated January 27, 2023)* on February 8, 2023.[29] In the Resolution dated April 11, 2023,[30] the Court admitted all of respondent's offered evidence.

The *Memorandum (For Petitioner "K" Line Maritime Academy Philippines, Inc.)* was filed on May 17, 2023,[31] while respondent's *Memorandum* was submitted on May 29, 2023.[32]

This case was considered submitted for decision on June 27, 2023.[33]

THE STIPULATED ISSUES

The parties stipulated the following issues for this Court's resolution, to wit:

> Whether the petitioner is entitled to additional tax refund in the amount of ₱4,374,186.54 pertaining to the alleged excess input VAT covering the period January 1 to December 31, 2018.

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23 Exhibit "P-47", Docket – Vol. 2, pp. 678 to 702.
24 Docket – Vol. 3, pp. 1281 to 1313.
25 Records Verification Report dated July 8, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. 4, p. 1739.
26 Docket – Vol. 4, pp. 1752 to 1755.
27 Exhibit "R-5", Docket – Vol. I, pp. 141 to 147; Minutes of the hearing held on, and Order dated, January 19, 2023, Docket – Vol. 4, pp. 1766, and 1768 to 1769, respectively.
28 Docket – Vol. 4, pp. 1770 to 1774.
29 Docket – Vol. 4, pp. 1777 to 1787.
30 Docket – Vol. 4, pp. 1789 to 1790.
31 Docket – Vol. 4, pp. 1791 to 1823.
32 Docket – Vol. 4, pp. 1826 to 1841.
33 Resolution dated June 27, 2023, Docket – Vol. 4, p. 1844.

> Whether the BIR is correct in denying the claimed input tax in the amount of ₱5,568,836.92 thru the VAT Refund Notice dated January 08, 2020.[34]

Petitioner's arguments:

Petitioner argues that it was able to comply with the requirements of filing a claim for refund with the BIR within two (2) years after the close of the taxable quarter when the sales were made, as well as the filing of a judicial claim with the Court within thirty (30) days from receipt of the BIR's decision denying in full or in part the refund claim; that it was able to comply with the requirement that it should be VAT registered; that it has clearly shown that it is engaged in zero-rated sales, and the consideration for such services were paid for in acceptable foreign currency which have been accounted for in accordance with the BSP rules and regulations; that there is no indication that the input taxes being claimed in this case are transitional input taxes; that the results of the ICPA's examination of the VAT invoices and official receipts (ORs) which proves petitioner's payment of the input VAT being refunded in this case; that considering that petitioner's 2018 input tax of ₱6,369,533.39 cannot be directly or entirely be attributed to any of the above VATable sales, zero-rated sales, and VAT exempt sales, the total input tax shall be allocated proportionately on the basis of the volume of its total sales; and that 2018 input VAT being claimed was not carried forwarded to the 1st Quarter of 2019 up to the 3rd Quarter of 2020.

Respondent's counter-arguments:

Respondent contends that the instant judicial claim should be denied for petitioner's failure to substantiate the claim for refund at the administrative level; that it is an established fact that a decision by respondent has already been rendered and, in such case, the Supreme Court has held that the duty of the court is now limited in determining whether the decision is proper; that the claim for refund should be reduced for failure to comply with the mandatory invoicing requirements, pursuant to Section 113 in relation to Section 110 of the Tax Code, as amended; that refunds are strictly construed against the claimant; and that, considering petitioner failed to prove all the necessary elements to prove entitlement thereto, its claim should be denied.

THE COURT'S RULING

The instant *Petition for Review* must be dismissed for lack of jurisdiction.

34 Issues, JSFI, Docket – Vol. 2, p. 611.

Requisites under the law for the refund or issuance of tax credit certificate of input VAT

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by RA No. 10963,[35] provides, in part, as follows:

> 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.
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> xxx xxx xxx
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or

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[35] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Based on Section 112 of the NIRC of 1997, as amended, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites may be classified into certain categories as follows:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[36]

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[37]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[38]

<u>In relation to the taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[39]

5. for zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B);[40] and 108(B)(1) and (2), the acceptable foreign

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36 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 182364, August 3, 2010.

37 Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.,* G.R. No. 255085, March 29, 2023.

38 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

39 *Ibid.*

40 Section 106(B) cited in Section 112(A) of RA No. 8424 was later amended by RA No. 9337 to pertain to Section 106(A)(2)(b). Accordingly, Section 112(A), as amended by RA No. 9337, reads as follows:

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[41]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[42]

7. the input taxes are due or paid;[43]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where 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;[44] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[45]

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[46] Thus, it behooves upon petitioner to show compliance with each of

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(A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under **Section 106(A)(2)**(a)(1), (2) and **(b)** and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales. (*Emphasis supplied*)

However, in view of the amendments introduced by RA No. 10963, Section 106(A)(2)(b) is now deleted.

41 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

42 *Ibid.*

43 *Ibid.*

44 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*

45 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

46 *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R.

the foregoing requisites. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim *in toto*.

The Court shall discuss *in seriatim* the requisites for claiming credit/refund of input VAT vis-à-vis petitioner's compliance thereto.

The administrative claim was timely filed.

The *first* requisite pertains to the filing of a claim for tax refund or tax credit of input VAT before the BIR within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the period from January 1, 2018 to December 31, 2018. Counting two (2) years from the close of the said period, respectively, the following table indicates the pertinent last day for the filing of an administrative claim for the concerned quarter/period, to wit:

2018	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
1st quarter	January 1, 2018 to March 31, 2018	March 31, 2018	March 31, 2020
2nd quarter	April 1, 2018 to June 30, 2018	June 30, 2018	June 30, 2020
3rd quarter	July 1, 2018 to September 30, 2018	September 30, 2018	September 30, 2020
4th quarter	October 1, 2018 to December 31, 2018	December 31, 2018	December 31, 2020

In this case, there is no dispute that petitioner timely filed its administrative claim for refund, covering the above periods, on November 11, 2019.[47]

Petitioner's judicial claim was belatedly filed.

As regards the *second* requisite, Section 112 of the NIRC of 1997, as amended, necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 90-day period.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[48] the Supreme

No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[47] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 2, pp. 610 to 611.

Court held that a judicial claim shall be filed within a period of thirty (30) days after the receipt of respondent's decision or ruling or after the expiration of the 120-day [now 90-day] period, whichever is sooner. Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 [now 90+30] days provided by the NIRC is outside the jurisdiction of the CTA.

Applying the foregoing in the present case, from the filing of petitioner's administrative claim on November 11, 2019, respondent had ninety (90) days or until February 9, 2020, to act on the said claim. In case of inaction within the said 90-day period, petitioner had thirty (30) days from such expiration to file its judicial claim, or until March 10, 2020.

As earlier mentioned, the letter partially denying petitioner's claim for refund dated January 8, 2020[49] was only received by petitioner on February 14, 2020, which was beyond the ninety (90)-day period given the respondent to decide such claim.

Considering that no decision was communicated to the taxpayer within the ninety (90)-day period, there is no decision appealable to this Court to speak of. Any decision belatedly received by petitioner is not binding upon it. Petitioner, then, should have construed the non-receipt of the decision within the ninety (90)-day period as inaction on the part of respondent and reckoned the thirty (30)-day period to file its judicial claim from February 9, 2020, and not from the receipt of the letter on February 14, 2020.

Unfortunately, the filing of the Petition for Review on March 13, 2020 was beyond the thirty (30)-day mandatory and jurisdictional period. The Court, therefore, lacks jurisdiction to hear and decide petitioner's case.

WHEREFORE, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

[48] G.R. No. 182737, March 2, 2016.
[49] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 611.

WE CONCUR:

(On Official Business)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Division Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice