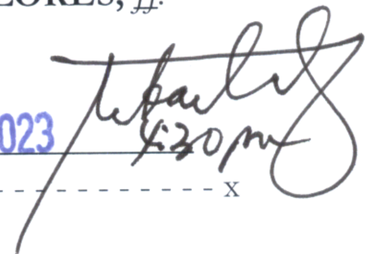
REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2579** (CTA Case No. 9763)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
PHILIPPINE MINING SERVICE CORPORATION, Respondent.	Promulgated: MAR 14 2023



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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] ("Assailed Decision") dated October 29, 2021 and Resolution[2] ("Assailed Resolution") dated February 22, 2022 of the Court of Tax Appeals Second Division ("Second Division"), granting Respondent's claim for refund or issuance of a Tax Credit Certificate ("TCC") amounting to Php19,802,406.57, representing part of Respondent's unutilized and/or unapplied and excess input value-added tax ("VAT") attributable to its zero-rated sales for the period covering the third and fourth quarters of 2016.

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1 Penned by Associate Justice Juanito C. Castañeda, Jr. and with Associate Justice Jean Marie A. Bacorro-Villena concurring. Docket, pp. 999-1023.

2 Penned by Associate Justice Juanito C. Castañeda, Jr. and with Associate Justices Jean Marie A. Bacorro-Villena and Lanee S. Cui-David concurring. *Id.*, pp. 1053-1056.

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR), with authority to, among others, decide, approve and grant claims for refund or tax credit of internal revenue taxes, and is holding office at the Bureau of Internal Revenue ("BIR") National Office Bldg., Agham Road, Diliman, Quezon City.[3]

Respondent Philippine Mining Service Corporation is a duly organized and existing corporation, registered with the Securities and Exchange Commission on June 16, 1980, with the primary purpose of entering "into a service contract with Dolomite Mining Corporation in accordance with law for financial, technical, management, and other forms of assistance relative to the exploration, development, exploitation or utilization of the dolomite mining claims of said corporation in the Province of Cebu, including the marketing of such dolomite and its products, and for this purpose to the extent permitted by law to import, purchase, install, construct and/or operate such mills, factories, building, machinery, equipment, structures and works of all kinds, facilities, tools, ships, vessels, lighters, submarine, docks, piers, warehouses, storage and shipping facilities, instruments and apparatus and other properties as may be necessary or convenient for carrying on the business of the corporation, and to pay or receive payment for the foregoing either on cash or in stock, bonds, debentures, or other securities."[4]

It is further organized to, among other secondary and incidental purposes and powers, "buy, process, refine, prepare for market, sell at wholesale, export, transport and otherwise deal in and with dolomite ore, limestone ore, and other minerals of whatever nature and their by-products." Its customers include entities registered with the Philippine Economic Zone Authority ("PEZA") and located within PEZA ecozones.[5]

Respondent is located within the jurisdiction of BIR Revenue District Office Number 81, Cebu City-North, where it is registered as a VAT taxpayer, with Tax Identification No. (TIN) 000-136-814-000 and BIR Certificate of Registration No. OCN 2RC0001045342 issued on October 27, 1991.[6]

The Facts

The facts as found by the Second Division are as follows:

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3 *Id.*, Decision, The Parties, p. 1000.
4 *Id.*, pp. 999-1000.
5 *Id.*, p. 1000.
6 *Id.*

"On September 7, 2017, [Respondent] filed with the VAT Credit Audit Division of the BIR (BIR-VCAD) its Application for Tax Credits/Refunds (BIR Form No. 1914), requesting for the issuance of a tax credit certificate, covering the period from July 1, 2016 to December 31, 2016, in the aggregate amount of [Php]49,711,611.60, in accordance with and pursuant to Section 112 (A) of the 1997 Tax Code and Revenue Memorandum Circular (RMC) No. 54-2014.

[Respondent] submitted the documents provided in Annex 'A' of RMC No. 54-2014, in support of its application for issuance of a tax credit certificate, including a sworn statement certifying the following: (a) amount of sales declared with breakdown as to amount of zero-rated, taxable, and exempt sales; (b) that the company did not file any and/or will not file any similar claim within the Board of Investments, Bureau of Customs, and BIR, and; (c) the ending inventory as of close of the period being claimed has been used directly/indirectly in the products exported; and an affidavit under oath attesting to the completeness of the documents submitted.

On January 4, 2018, or before the lapse of the 120-day period, [Petitioner] partially granted [Respondent's] claim by issuing a tax credit certificate in the amount of [Php]22,799,638.08. [Respondent] received the tax credit certificate on January 12, 2018. [Petitioner] disallowed the amount of [Php]26,911,973.52 from [Respondent's] claim, as determined below:

AMOUNT OF CLAIM		**[Php]49,711,611.60**
Add:	Output Tax	12,031,653.41
Total		[Php]61,734,265.01
DEDUCTIONS		
Disallowed input tax		
	Out of period	[Php]34,160.69
	TIN not indicated	1,071.55
	No OR/No documents	356,789.83
	Deferred input tax	4,915,207.39
Total disallowed input tax		**[Php]5,307,229.46**
Allowable input tax		[Php]56,436,035.55
Less:	Output tax per return	12,021,653.41
Net Allowable input tax		**[Php]44,404,382.14**
Less:	Other deductions	
	Additional output tax assessed per audit	[Php]273,459.03
Less:	Additional deductions per TARD	
	Additional disallowed input VAT pertaining to purchases of capital goods subject for deferment	985,053.33

	Ripened portion of deferred input VAT not reflected per [fourth] quarter VAT return	105,458.00
	Purchases from big-ticket supplier without proof of payment	28,140.00
	Additional output VAT assessment (interest; Related party transaction and retirement asset)	399,301.28
	Output VAT assessment (unaccounted miscellaneous VAT invoices)	10,925.85
	Allocated input VAT attributable to sales without approved application for zero-rating	**19,802,406.57**
Total other deductions and additional deduction per TARD		**[Php]21,604,744.06**
Total deduction from claim		**[Php]26,911,973.52**
Amount approved		**[Php]22,799,638.08**

xxx xxx xxx

[Respondent] filed [a] Petition for Review on February 2, 2018 [with the Court of Tax Appeals], assailing only the disallowance in the amount of [Php]19,802,406.57."[7]

The Ruling of the Second Division

On October 29, 2021, the Second Division promulgated the Assailed Decision granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE**, in favor of [Respondent], the amount of [Php]19,802,406.57, representing part of [Respondent's] unutilized and/or unapplied and excess input VAT attributable to its zero-rated sales for the period covering the [third] and [fourth] quarters of 2016.
>
> **SO ORDERED.**"[8]

Aggrieved, Petitioner filed a "Motion for Reconsideration (Re: Decision promulgated 29 October 2021)"[9] on November 12, 2021, which the Second Division denied in the Assailed Resolution on February 22, 2022, to wit:

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7 *Id.*, Decision dated October 29, 2021, Antecedents (Administrative Level) and Proceedings Before This Court, pp. 1001-1002.

8 *Id.*, pp. 1022-1023.

9 *Id.*, pp. 1024-1034.

"**WHEREFORE**, premises considered, [Petitioner's] Motion for Reconsideration (Re: Decision promulgated 29 October 2021) is **DENIED** for lack of merit.

SO ORDERED."[10]

The Proceedings in the Court of Tax Appeals En Banc

On March 14, 2022, Petitioner filed the present "Petition for Review"[11].

On March 31, 2022, the Court issued a Resolution[12] directing Respondent to comment on the Petition for Review within ten (10) days from receipt.

On July 27, 2020, Respondent filed its "Comment-Opposition (*to Petitioner's Petition for Review dated 02 March 2022*)"[13] ("Comment-Opposition"). Thus, on May 05, 2022, a Resolution[14] was issued noting the Comment-Opposition and submitting the instant case for decision.

Assignment of Error

Petitioner raises a single ground in support of his petition – the Second Division of the Honorable Court erred when it granted Respondent's claim for refund in the amount of Php19,802,406.57 allegedly representing unutilized and/or unapplied and excess input VAT attributable to zero-rated sales for the period covering the third and fourth quarters of 2016.[15]

The Arguments of Parties

First, citing the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[16], Petitioner asserts that since he rendered a Decision in the administrative level, the Second Division's jurisdiction becomes strictly appellate in nature. As an appellate tribunal, the Second Division should have confined itself to whether the findings of Petitioner are consistent with law, and to the same documents submitted at the administrative level.

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10 *Id.*, p. 856.
11 Rollo, pp. 1-19. Record shows that Petitioner received the Assailed Resolution on March 01, 2022; Docket, p. 1052.
12 *Id.*, pp. 50-51.
13 *Id.*, pp. 52-62.
14 *Id.*, pp. 63-64.
15 *Id.*, Petition for Review, Assignment of Error, p. 3.
16 G.R. No. 207112, December 08, 2015.

Petitioner also claims that the Second Division erred when it ruled that the BIR's disallowance of Php19,802,406.57 is inconsistent with law.

Moreover, Petitioner avers that assuming without conceding that BIR's disallowance of Php19,802,406.57 was incorrect, the Second Division should still not have granted the original Petition for Review for the claim for refund disclosed the following additional deductions:

1) Additional deferred input VAT of Php985,053.33 on the acquired capital goods in the amounts exceeding Php1,000,000 in a calendar month pursuant to Section 4.110-3 of Revenue Regulations ("RR") No. 16-2005;

2) Ripened portion of deferred input VAT not reflected per fourth quarter VAT return amounting to Php105,458.00;

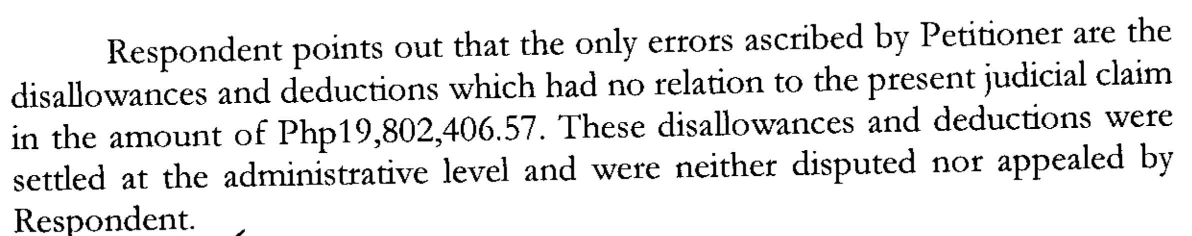
3) Disallowance in the amount of Php28,140.00 relative to purchases from big-ticket supplier without corresponding proof of payment pursuant to item V of Revenue Memorandum Circular No. 29-2009;

4) Additional output VAT in the aggregate amount of Php399,301.28 was assessed on the following items – interest, related party transaction and retirement asset; and

5) Output VAT of Php10,925.85 was assessed on the six (6) miscellaneous VAT invoices that were found missing in the series of sales invoices per Respondent's records and could no longer be accounted.

Lastly, Petitioner maintains that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.

On the other hand, Respondent in its Comment-Opposition, contends that Petitioner failed to ascribe or even state any reversible error committed by the Second Division, which correctly ruled that an approved application for VAT zero-rating is not a prerequisite to allocating input VAT attributable to zero-rated sales.



Respondent points out that the only errors ascribed by Petitioner are the disallowances and deductions which had no relation to the present judicial claim in the amount of Php19,802,406.57. These disallowances and deductions were settled at the administrative level and were neither disputed nor appealed by Respondent.

Respondent stresses that the present Petition for Review is a textbook example of a frivolous appeal because it fails to point any substantial or reversible error by the court or that the court's rulings are contrary to established law. It merely prolongs and delays the award of tax refund to Respondent. The present Petition for Review drains the precious time and resources of all parties involved: the courts, Respondent, and even the government itself.

Lastly, Respondent asseverates that taxpayers are not precluded from presenting evidence not submitted at the administrative level before the Court of Tax Appeals, which is also not precluded from considering said evidence.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration (Re: Decision promulgated 29 October 2021)", on February 22, 2022. Petitioner received said Resolution on March 01, 2022.[17] Pursuant to Rule 4, Section 2(a)(1)[18] in relation to Rule 8, Section 3(b)[19] of the Revised Rules of the Court of Tax Appeals[20] ("RRCTA"), Petitioner had fifteen (15) days from date of receipt of the resolution or until March 16, 2022 within which to file its petition for review.

On March 14, 2022, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

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[17] Docket, p. 1052.

[18] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
>
> xxx xxx xxx
>
> > (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[19] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[20] A.M. No. 05-11-07-CTA, November 22, 2005.

We now proceed to the merits of the case.

Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the instant Petition for Review is a reproduction of the "Motion for Reconsideration (Re: Decision promulgated 29 October 2021)"[21] filed by Petitioner on November 12, 2021 before the Second Division, the arguments of which had been fully and exhaustively resolved by the Court in Division in the in the Assailed Decision and Assailed Resolution. Nevertheless, for purposes of emphasis, the Court *En Banc* will discuss them anew.

The Second Division did not err in granting Respondent's claim for refund or issuance of a TCC in the amount of Php19,802,406.57

First and foremost, Petitioner's assertion that the Court should only consider evidence introduced in the administrative level and exclude those which have been newly submitted in the judicial level goes against the nature of the Court of Tax Appeals as a court of record pursuant to Republic Act ("R.A.") No. 1125[22], as amended by R.A. No. 9282[23]. Section 8 provides:

> "**Section 8.** *Court of record; seal; proceedings.* – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence."

As explained in *Commissioner of Internal Revenue v. Manila Mining Corporation*[24], as a "court of record", the Court of Tax Appeals "is required to conduct a formal trial (*trial de novo*) where the parties must present their evidence accordingly, if they desire the Court to take such evidence into consideration."

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21 Docket, pp. 1024-1034.
22 An Act Creating the Court of Tax Appeals, June 16, 1954.
23 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30, 2004.
24 G.R. No. 153204, August 31, 2005.

In *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*[25], one of the main issues answered by the Supreme Court is that the Court of Tax Appeals is not limited by the evidence presented in the administrative claim in the BIR. Simply put, the claimant may present new and additional evidence to the Court of Tax Appeals to support its case for tax refund.

This doctrine was reiterated recently in the 2022 case of *Commissioner of Internal Revenue v. Philippine Bank of Communications*[26], where it was held that whenever "the claim for tax refund/credit was litigated anew before the Court of Tax Appeals, the latter's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR."

Be that as it may, Petitioner's argument on the matter of additional evidence to be presented in the judicial level and trial *de novo* in the Court of Tax Appeals is irrelevant to the resolution of the instant case.

To recall, the sole issue stipulated by the parties during the proceedings with the court *a quo* is whether Respondent is entitled to the issuance of a tax credit certificate in the amount of Php19,802,406.57 representing excess and unutilized input VAT attributable to its zero-rated sales.[27] This means the Court of Tax Appeals is tasked to review or check whether the disallowance (and consequently the denial of refund) by Respondent of Php19,802,406.57 representing "Allocated input VAT attributable to sales without approved application for zero-rating" was improper.

By the same reasoning, the itemized disallowances and deductions being disputed by Petitioner have no bearing in the case at bar. The said items have no relation to the denial of the Php19,802,406.57 and as a matter of fact, Respondent did not include their denial (in the administrative claim) with the appeal it lodged with the Second Division.

Having settled Petitioner's first and third arguments, We now go to his second and fourth arguments which will be jointly discussed.

The main query of the case is this – whether Respondent is required to secure an approved application for zero-rating of its sales to its customers registered with the Philippine Economic Zone Authority ("PEZA") for the same to be considered zero-rated, which is turn necessary in order to claim a VAT refund or credit.

We answer in the negative.

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25 G.R. Nos. 206079-80 and 206309, January 17, 2018.

26 G.R. No. 211348, February 23, 2022.

27 Docket, Decision dated October 29, 2021, The Issue Raised by the Parties, p. 1006.

The Second Division in the Decision dated October 29, 2021 pronounced that a prior application for zero-rating is not necessary. According to Petitioner however, the court erred. And yet other than a general allegation that the disallowance was proper, Petitioner failed to provide a legal basis for its action.

The Court *En Banc* echoes the Second Division's declaration on the matter. Nowhere in the National Internal Revenue (NIRC) of 1997, as amended, mandates that a taxpayer must obtain a prior application for zero rating for a transaction with PEZA-registered entities to be considered as zero-rated.

Verily, jurisprudence is clear that BIR regulations additionally requiring an approved prior application for zero rating cannot prevail over the clear VAT nature of transactions with PEZA-registered entities. *In Commissioner of Internal Revenue v. Seagate Technology (Philippines)*[28], the High Court declared:

> "The BIR regulations additionally requiring an approved prior application for effective zero rating cannot prevail over the clear VAT nature of respondent's transactions. The scope of such regulations is not within the statutory authority x x x granted by the legislature.
>
> ...a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than interpret the latter. The courts will not countenance one that overrides the statute it seeks to apply and implement.
>
> **Other than the general registration of a taxpayer the VAT status of which is aptly determined, no provision under our VAT law requires an additional application to be made for such taxpayer's transactions to be considered effectively zero-rated.** An effectively zero-rated transaction does not and cannot become exempt simply because an application therefor was not made or, if made, was denied. To allow the additional requirement is to give unfettered discretion to those officials or agents who, without fluid consideration, are bent on denying a valid application. Moreover, the State can never be estopped by the omissions, mistakes or errors of its officials or agents."[29]

[28] G.R. No. 153866, February 11, 2005.

[29] *Emphasis and underscoring supplied.*

Additionally, Sections 4.106.6[30] and 4.108.6[31] of RR No. 16-2005[32], insofar as it requires that "an approved application" must be obtained before a particular transaction may be subject to the zero percent (0%) VAT rate, has in fact already been repealed. The provisions were deleted with the enactment of RR No. 04-2007[33], which amended RR No. 16-2005. The repeal of the basis for Respondent's disallowance of the Php19,802,406.57 only highlights the incorrect position of the BIR.

Considering all these pronouncements, We find no cogent reason to reverse or modify the Assailed Decision and Assailed Resolution of the Court *a quo*.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated October 29, 2021 and the Resolution dated February 22, 2022 of the Second Division in the case docketed as CTA Case No. 9763 are **AFFIRMED**.

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30 SECTION 4.106-6. *Meaning of the Term "Effectively Zero-rated Sale of Goods and Properties".* — The term "effectively zero-rated sale of goods and properties" shall refer to the local sale of goods and properties by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement. Under these Regulations, transactions which, although not involving actual export, are considered as "constructive export" shall be entitled to the benefit of zero-rating, such as local sales of goods and properties to persons or entities covered under pars. (a) no. (3) — (sale to export-oriented enterprises), (a) no. (6) — (sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations), (b) (Foreign Currency Denominated Sale) and (c) (Sales to Tax-Exempt Persons or Entities) of the preceding section.

Except for Export Sale under Sec. 4.106-5(a) and Foreign Currency Denominated Sale under Sec. 4.106-5(b), **other cases of zero-rated sales shall require prior application with the appropriate BIR office for effective zero-rating. Without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt.** The foregoing rule notwithstanding, the Commissioner may prescribe such rules to effectively implement the processing of applications for effective zero-rating. *(Emphasis supplied)*

31 SECTION 4.108-6. Effectively Zero-Rated Sale of Services. The term "effectively zero-rated sales of services" shall refer to the local sale of services by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement. Under these Regulations, effectively zero-rated sale of services shall be limited to local sales to persons or entities that enjoy exemptions from indirect taxes under subparagraph (b) nos. (3), (4) and (5) of this Section. **The concerned taxpayer must seek prior approval or prior confirmation from the appropriate offices of the BIR so that a transaction is qualified for effective zero-rating. Without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt.** The foregoing rule notwithstanding, the Commissioner may prescribe such rules to effectively implement the processing of applications for effective zero-rating. *(Emphasis supplied)*

32 Consolidated Value-Added Tax Regulations of 2005, September 01, 2005.

33 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005, February 07, 2007.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

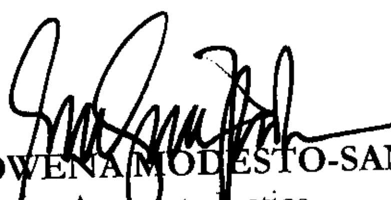
WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

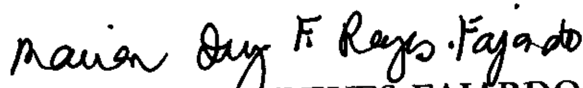
ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice