REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAXIMA MACHINERIES, INC., *Petitioner,*	**CTA *EB* NO. 2590** (CTA Case No. 9453) *Present*: **DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 18 2023

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DECISION

***CUI-DAVID, J.*:**

Before the Court *En Banc* is a *Petition for Review* filed by Maxima Machineries, Inc. ("**Petitioner**"),[1] under Section 3(b), Rule 8,[2] in relation to Section 2(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals ("**RRCTA**").[4] It seeks the reversal of the *Decision* dated June 30, 2021 ("**assailed**

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[1] Dated April 11, 2022, received by the Court on April 12, 2022; *EB* Docket, pp. 1-24.

[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) 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.

[3] *Section 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:

(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

[4] A.M. No. 05-11-07-CTA.

Decision"),[5] and *Resolution* dated March 16, 2022 ("**assailed Resolution**"), [6] of the Court's First Division ("**Court in Division**") in CTA Case No. 9453 entitled *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue.*

THE PARTIES

Petitioner is a domestic corporation duly organized under and by virtue of the laws of the Philippines, with principal business address at 908 Quezon Avenue cor. Dr. Garcia St., Paligsahan, Quezon City, NCR, Second District, Philippines 1103.[7] It is duly registered with the Bureau of Internal Revenue ("**BIR**") with Taxpayer Identification Number ("**TIN**") 006-618-023-000 and is a VAT-registered taxpayer.[8]

Respondent, on the other hand, is the Commissioner of Internal Revenue ("**CIR**"), with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code ("**NIRC**"), or other laws or portions thereof administered by the BIR.[9] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

The facts, as found by the Court in Division, are as follows:

> Petitioner made an administrative claim on March 30, 2016, for the issuance of TCCs totaling P89,994,022.70, representing the excess input value-added taxes (VAT), which are allocable and directly attributable to its VAT zero-rated transactions, as declared in its Amended Quarterly VAT Return for the period January 1, 2014 to March 31, 2014, that is, for the 4th quarter of fiscal year (FY) ending March 31, 2014.
>
> On April 18, 2016, petitioner, through Ms. Marlene Manuel, received the Letter of Authority No. eLA201200042249 dated April 8, 2016, issued against petitioner by Mr. Nestor S. Valeroso, Assistant Commissioner — Large Taxpayers Service, Bureau of Internal Revenue (BIR),

[5] *Rollo*, pp. 22-94; penned by Associate Justice Catherine T. Manahan, with Presiding Justice Roman G. Del Rosario, concurring.
[6] *Id.*, pp. 969-974.
[7] Exhibits "P-1" and "P-2", Division Docket — Vol. 3, pp. 1205 to 1219.
[8] Exhibit "P-3", Division Docket — Vol. 3, p. 1220.
[9] Section 4, NIRC, as amended.

authorizing Revenue Officer Jan Andre Abellera, and Group Supervisor Gilquin Tolentino, to examine its books of accounts and other accounting records for VAT, for the period from January 1, 2014 to March 31, 2014, pursuant to the Mandatory Audit-Claim for VAT Refund.

On July 28, 2016, the 120-day period counted from the filing of the application for the issuance of TCCs on March 30, 2016, had lapsed without petitioner receiving the Decision of respondent.

The instant Petition for Review was filed on August 26, 2016. The instant case was originally raffled to this Court's Third Division.

On November 2, 2016, respondent filed his Answer (to the Petition for Review dated 26 August 2016), interposing his special and affirmative defenses.

On November 11, 2016, respondent submitted the BIR Records for the instant case.

The Pre-Trial Conference was set and held on February 21, 2017. Respondent's Pre-Trial Brief was filed on February 14, 2017; while the Pre-Trial Brief for the Petitioner was submitted on February 16, 2017.

On March 3, 2017, the parties submitted their Joint Stipulation of Facts and Issues (JSFI). Subsequently, the Pre-Trial Order dated March 15, 2017 was issued by the Court, recognizing the said JSFI and deeming the termination of the Pre-Trial Conference.

The trial of this case then proceeded.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Yusuke Yamada, petitioner's Chief Financial Officer; (2) Ms. Jenelyn Palayon-Tagao, petitioner's Chief for Government Compliance of the Finance Department; and (3) Ms. Alina Corillo-Sison, the Court-commissioned Independent Certified Public Accountant (ICPA).

On July 17, 2017, the Court received the Report of the ICPA.

Petitioner filed its Formal Offer of Evidence on March 19, 2018. Respondent submitted his Comment [Re: Petitioner's Formal Offer of Evidence dated March 15, 2018] on March 26, 2018.

In the Resolution dated May 18, 2018, the Court admitted petitioner's Exhibits, except for various exhibits for not being found in the records of the case or for failure to pre-mark (i.e., the exhibit number markings on the scanned copies were incomplete).

Consequently, petitioner filed its Motion for Reconsideration to the Resolution dated May 18, 2018 on June 8, 2018. Respondent failed to file his comment on petitioner's motion.

At the hearing held on August 14, 2018, counsel for respondent manifested that there is no report of investigation from the BIR. Thus, as prayed for, the parties were granted thirty (30) days from receipt of the resolution of petitioner's Motion for Reconsideration to the Resolution dated May 18, 2018, within which to submit their respective memoranda.

Pursuant to the Court's Order dated September 25, 2018, the instant case was transferred to this Court's First Division.

In the Resolution dated November 23, 2018, the Court partially granted the Motion for Reconsideration to the Resolution dated May 18, 2018 of petitioner, and admitted some of the exhibits under motion for reconsideration; but still denied Exhibits "P-45-L-2038" to "P-45-L-2410", "P-45-M-38" to "P-45-M-72", "P-45-S-64", "P-45-AI-1", and "P-45-AJ-2", for not being found in the record.

On January 15, 2019, petitioner filed a Motion to Admit Supplemental Formal Offer of Evidence. Respondent's Memorandum was filed on even date, while the Memorandum for the Petitioner was submitted on February 4, 2019.

On February 27, 2019, respondent filed his Comment (Re: Petitioner's Supplemental Formal Offer of Evidence).

In the Resolution dated April 4, 2019, the Court admitted petitioner's Exhibits "P-45-AQ-377", "P-45-BA-7" to "P-45-BA-51", "P-45-BC-4" to "P-45-BC-18", "P-45-BD-130" to "P-45-BD-261", "P-45-BF-19" to "P-45-BF-32", "P-45-BG-19" to "P-45-BG-337", "P-45-BH-19" to "P-45-BH-290", "P-45-BI-19" to "P-45-BI-28", "P-45-BJ-19" to "P-45-BJ-44", "P-45-BK-19" to "P-45-BK-53", "P-45-BL-19" to "P-45-BL-68", "P-45-BM-19" to "P-BM-310", "P-45-BN-19" to "P-45-BN-92", and "P-45-BO-19" to "P-45-BO-224". In the same Resolution, the Court deemed the instant case submitted for decision.

Thereafter, on April 8, 2019, petitioner filed a Motion to Allow the Continuance of the ICPA Audit and to Schedule the Presentation of the ICPA and Yusuke Yamada, praying that the Court allow the ICPA to continue her verification of the

documents pertaining to the prior period excess input tax carry-over, and to schedule the presentation of Ms. Sison, who will testify on the results of continuance of her audit, and of Mr. Yamada, who will testify on the results of the BIR assessments relative to the examination by the BIR of the prior period excess input VAT carry-over.

In the Resolution dated July 18, 2019, the Court granted petitioner's Motion to Allow the Continuance of the ICPA Audit and to Schedule the Presentation of the ICPA and Yusuke Yamada, directed the ICPA to submit her supplemental ICPA report within fifteen (15) days from notice; and set the case for hearing on September 3, 2019 for the presentation of petitioner's recalled witnesses, Ms. Sison and Mr. Yamada. Correspondingly, the Resolution dated April 4, 2019, insofar as it submitted the case for decision, was recalled and set aside.

During the hearing on September 3, 2019, petitioner presented its witness, Mr. Yamada, but there was no appearance on the part of respondent. Considering that counsel for respondent was duly notified of the hearing and the same has been indicated in this Court's Resolutions dated July 18, 2019 and August 22, 2019, the Court granted the prayer of petitioner's counsel that respondent's right to cross-examine be deemed waived.

Meanwhile, the ICPA failed to submit the supplemental ICPA report. Subsequently, on November 11, 2019, petitioner filed a Manifestation, stating that it will no longer recall the ICPA as witness on November 12, 2019, considering that she was not able to complete the audit and verification of the prior period excess credits because some of petitioner's documents can no longer be located or retrieved, notwithstanding the additional period provided by this Court.

In the Order dated November 12, 2019, the Court took note of petitioner's Manifestation.

On November 19, 2019, petitioner filed its Second Supplemental Formal Offer of Evidence. Respondent failed to file his comment on petitioner's Second Supplemental Formal Offer of Evidence.

In the Resolution dated May 27, 2020, the Court admitted petitioner's Exhibits, and gave the parties a period of thirty (30) days within which to file their respective supplemental memoranda.

Respondent's Manifestation that he is adopting the arguments he raised in his Memorandum, was posted on July 8, 2020; while the Supplemental Memorandum for the Petitioner was submitted on July 20, 2020.

> On August 26, 2020, the instant case was submitted for decision. [*Citations omitted.*]

On June 30, 2021, the Court in Division promulgated its *Decision* denying petitioner's *Petition for Review*, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED."**

On July 19, 2021, petitioner filed a *Motion for Reconsideration.*

On March 16, 2022, the *Motion for Reconsideration* was denied by the Court in Division. The dispositive portion of the *Resolution* reads:

> **WHEREFORE**, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Petitioner filed a *Petition for Review* on April 12, 2022.[10] Despite being ordered to comment in a *Resolution* dated May 5, 2022,[11] respondent failed to file his comment.[12] Accordingly, on July 19, 2022, the case was submitted for decision.[13]

THE ISSUES

Petitioner forwards the following issues in filing the present *Petition for Review* before the Court *En Banc, viz.*:

> A.
>
> Whether the CTA First Division erred in applying the Petitioner's input VAT directly and indirectly attributable to its zero-rated sales of ₱59,299,666.51 for the period from January 1, 2014 to March 31, 2014 (Fourth Quarter of Fiscal Year ending March 31, 2014) against its output VAT liability for the same period instead of applying the input VAT carried over from the previous periods.

[10] *EB* Docket, pp. 1-24.
[11] *Id.*, pp. 125-126.
[12] *Records Verification Report* dated June 29, 2022, *id.*, p. 107.
[13] *Id.*, pp. 109-110.

B.

Whether the Honorable Court's First Division erred in ruling that the Petitioner's export sales of services to Marubeni Corporation failed to qualify for zero percent (%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended, in the total amount of ₱2,496,680.49.

PETITIONER'S ARGUMENTS

Petitioner argues that the Court in Division was wrong in stating that it had insufficient input VAT, claiming that it had excess input VAT carried forward from previous periods, which can be applied against output VAT,[14] which respondent never disputed. [15] Citing the Rules of Court and jurisprudence regarding burdens of proof and presumptions, the amount of excess input VAT carried forward from previous periods should be maintained according to petitioner.[16] It adds that the validity of its input VAT carried over is already the subject of the regular investigation by the BIR examiners of the books of accounts and other accounting records[17] and that tax returns are presumed correct.[18]

Petitioner likewise posits that the services it rendered to Marubeni Corporation were clearly stated in the ICPA Report. It alleges that Marubeni Corporation is not a registered corporation in the Philippines, as evidenced by the Certificate of Non-Registration of Company issued by the Securities and Exchange Commission ("**SEC**"), and that the sales were paid for in acceptable foreign currency.[19] Petitioner cites the Supreme Court case of *Marubeni Corporation vs. Commissioner of Internal Revenue* [20] as support to its assertion that Marubeni Corporation is a non-resident foreign corporation ("**NRFC**");[21] thus, its sale of services to Marubeni Corporation qualifies for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

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[14] *Petition for Review*, par. 7.5.
[15] *Id.*, pars. 7.7 and 7.8.
[16] *Id.*, pars. 7.9 to 7.13.
[17] *Id.*, pars. 7.18 and 7.19.
[18] *Id.*, par. 7.20.
[19] *Id.*, par. 7.27.
[20] G.R. No. 76573, September 14, 1989, 258 SCRA 295-308.
[21] *Id.*, par. 7.29.

THE RULING OF THE COURT *EN BANC*

The instant *Petition for Review* is impressed with merit.

The Court En Banc has jurisdiction over the instant Petition.

Before proceeding to the merits of the case, We determine whether the present *Petition for Review* was timely filed.

On March 16, 2022, the Court in Division denied petitioner's *Motion for Reconsideration* through a Resolution, which petitioner received through counsel on March 29, 2022.

Under Section 3(b), Rule 8[22] of RRCTA, petitioner had fifteen (15) days from receipt of said *Resolution*, or until April 13, 2022, to file a *Petition for Review*.

On April 12, 2022, petitioner filed the instant *Petition for Review* on time.

Having settled that the *Petition for Review* was timely filed, We likewise rule that the Court *En Banc* has jurisdiction to take cognizance of this case under Section 2(a)(1), Rule 4[23] of RRCTA.

We now discuss the merits.

After carefully examining and considering petitioner's arguments in the instant *Petition for Review*, We find that the same are mere reiterations of matters already considered, weighed, and resolved in the assailed *Decision* and *Resolution*.

Nevertheless, the Court *En Banc* deems it necessary to recapitulate and further elucidate the salient points of the Court in Division's ruling.

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[22] *Supra* at note 2.
[23] *Section 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:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

Requisites for a valid claim for refund or tax credit of input VAT attributable to zero-rated sales.

Section 112(A) and (C) of the NIRC of 1997,[24] as amended, provides:

Section 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.

(B) ... ...

(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 Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer 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.

[24] Provision quoted is the wording prior to the amendment of the Tax Reform for Acceleration and Inclusion (TRAIN) Law, which is not yet effective and applicable on the instant claim for refund.

Comprehensively, as culled from the foregoing provision and existing jurisprudence, particularly the case of *Commissioner of Internal Revenue vs. Toledo Power Co.*,[25] the requisites for claiming a refund or tax credit of unutilized or excess input VAT under Section 112 of the NIRC of 1997, as amended, are as follows:

> As to the timeliness of the filing of the administrative and judicial claims:
>
> 1. The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[26]
>
> 2. In case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court within 30 days from receipt of the decision or after the expiration of the said 120-day period;[27]
>
> Concerning the taxpayer's registration with the BIR:
>
> 3. The taxpayer is a VAT-registered person;[28]
>
> In relation to the taxpayer's output VAT:
>
> 4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[29]
>
> 5. For zero-rated sales under Sections 106 (A) (2) (1) and (2); 106 (B); and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with Bangko Sentral ng Pilipinas ("**BSP**") rules and regulations;[30]
>
> As regards the taxpayer's input VAT being refunded:
>
> 6. The input taxes are not transitional;[31]
>
> 7. The input taxes are due or paid;[32]

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[25] G.R. Nos. 195175 & 199645, August 10, 2015, 766 SCRA 20-33.
[26] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, 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., G.R. No. 182364, August 3, 2010.
[27] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[28] *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., *supra*.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*

> 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;[33] and
>
> 9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[34]

Being uncontroverted, the findings of the Court in Division as to the *first*, *second*, *third,* and *sixth* requisites are adopted by this Court. Accordingly, We agree with the Court in Division that the administrative and judicial claims have been timely filed, that petitioner is a VAT-registered taxpayer, and that the input taxes involved are not transitional.

Fourth and fifth requisites: Petitioner had valid zero-rated or effectively zero-rated sales, but only in the reduced amount of ₱75,534,773.13.

Petitioner reported total sales of ₱2,348,474,841.52, which include VAT zero-rated sales amounting to ₱952,009,079.19 for the fourth quarter of the FY ending March 31, 2014, broken down as follows:

VATable sales/receipts	₱1,387,310,556.79
Sales to government	9,155,205.54
Zero-rated sales/receipts	**952,009,079.19**
Total sales/receipts	₱2,348,474,841.52

Petitioner claimed that its zero-rated sales include sales of goods and services to entities registered with the Philippine Economic Zone Authority ("**PEZA**"), Subic Bay Metropolitan Authority ("**SBMA**"), Clark Development Authority ("**CDA**"), Cagayan Economic Zone Authority ("**CEZA**"), Clark Development Corporation ("**CDC**"), and Board of Investments ("**BOI**"). It likewise claimed that part of its zero-rated sales pertains to indent commissions received from NRFCs subject to

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[33] *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., *supra.*
[34] *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., *supra.*

zero-rate under Section 108(B)(2) of the NIRC of 1997, as amended.

Of petitioner's claimed zero-rated sales, sales amounting to (1) **₱831,827,398.02** were denied by the Court in Division due to the absence of a BOI certification to the effect that the customers are BOI-registered manufacturers/ producers whose products are 100% exported for the period covering the 4th quarter of FY 2014 or January 1, 2014 to March 31, 2014; (2) **₱22,197,171.85** were denied by the ICPA for failure to comply with the invoicing requirements under Section 113(A)(1) and (2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Section 4.113-1 (A)(1) and (2), (B)(1) and (2)(c) of RR No. 16-2005; (3) **₱12,542,182.58** were denied by the Court in Division for being supported by charge sales invoices with unreadable details; (4) **₱2,496,680.49** were denied by the Court in Division for the failure of petitioner to substantiate that the sales to Marubeni Corporation fall under Section 108(B)(2) of the NIRC of 1997, as amended.

The fourth disallowance, which pertains to petitioner's sale to Marubeni Corporation, is being disputed by petitioner.

In the instant case, petitioner claims that Marubeni Corporation should be considered an NRFC, and its sale of services should be *allowed* VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

We are not convinced.

Under Section 108(B)(2) of the NIRC of 1997, as amended, the following essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), to wit:

> 1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[35]

[35] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017.

> 2. The payment for such services was made in acceptable foreign currency accounted for in accordance with the BSP rules;[36]
>
> 3. The services fall under any of the categories under Section 108(B)(2),[37] or simply, the services rendered should be other than "processing, manufacturing or repacking goods";[38] and,
>
> 4. The services must be performed in the Philippines by a VAT-registered person.[39]

To be considered as an NRFC doing business outside the Philippines, each entity must be supported, at the very least, by **both**: (1) an SEC Certification of Non-Registration of Corporation /Partnership; **and** (2) proof of registration/incorporation in a foreign country, *i.e.,* an Articles of Foreign Incorporation/Association.[40] The first document proves that the entity is not doing business in the Philippines, while the latter document shows that the entity is doing business outside the Philippines. Taken together, the said documents establish that the entity is an NRFC not engaged in business in the Philippines.[41]

In the case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[42] the Supreme Court said:

> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.

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[36] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
22 January 2007; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[37] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*
[38] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra.*
[39] Sec. 108 (B), NIRC of 1997, as amended.
[40] *Commissioner of Internal Revenue vs. CITCO International Support Services Limited-Philippines ROHQ*, CTA EB No. 2015, November 29, 2019.
[41] Resolution, *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9453, March 16, 2022.
[42] G.R. No. 234445, July 15, 2020.

> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court a quo's findings. To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates [clients] are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates [clients] are registered to operate in their respective home countries, outside the Philippines are prima facie evidence that their clients are not engaged in trade or business in the Philippines. [*Citations omitted.*]

In this case, records reveal that petitioner presented proof of registration/incorporation in a foreign country of Marubeni Corporation. [43] However, it failed to present Marubeni Corporation's SEC Certificate of Non-Registration of Company, attesting that the SEC records do not show the registration of Marubeni Corporation as a corporation or a partnership.

Further, anent the other requisites to qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner asks the Court to rely on the ICPA findings that the sales were paid for in acceptable foreign currency and that the sales were rendered to an NRFC.

We disagree.

Section 3, Rule 13 of the RRCTA provides:

> SECTION 3. Findings of Independent CPA. — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**. [*Emphasis and underscoring supplied.*]

As such, this Court ought to make its independent findings as to the compliance of petitioner's sales to the requisites provided for by law for zero-rating.

[43] Exhibit "P-16", Docket — Vol. 3, pp. 1235 to 1250.

Accordingly, **Marubeni Corporation** cannot be considered an NRFC doing business outside the Philippines. Thus, petitioner's alleged export sales of services to it in the amount of **₱2,496,680.49** failed to qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

As the Court in Division's ruling pertaining to other disallowed zero-rated sales is undisputed, this Court need not belabor to discuss them.

Thus, We agree with the conclusion reached by the Court in Division that out of the reported zero-rated sales of **₱952,009,079.19**, only the amount of **₱75,534,773.13** is considered valid zero-rated sales for the fourth quarter of the FY ending 31 March 2014, computed as follows:

Total reported zero-rated sales			₱952,009,079.19
Less: Sales to CM Pancho Construction Incorporation			(7,410,873.12)
Zero-rated sales per Petition before the Court in Division			₱944,598,206.07
Less: Sales denied VAT zero-rating			
Per ICPA report		₱22,197,171.85	
Per the Court's further verification			
Disallowance of sales to Marubeni Corporation	₱2,496,680.49		
Disallowance for the absence of a BOI certification	831,827,398.02		
Disallowance for being supported by charge sales invoices with unreadable details	12,542,182.58	846,866,261.09	(869,063,432.94)
Valid zero-rated sales			**₱75,534,773.13**

As such, for purposes of the *fourth requisite*, We find that petitioner had VAT zero-rated sales, but only in the amount of ₱75,534,773.13.

As for the *fifth requisite*, We quote with approval the finding of the Court in Division that "the instant case need not comply with the said *fifth* requisite," *viz.*:

As for the *fifth requisite*, petitioner must prove that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations, pursuant to Sections 106 (A) (2) (a) (1), (2) and (b), and 108 (B) (1) and (2), of the NIRC of 1997, as amended. However, **since the legal basis for petitioner's zero-rated sales of P75,534,773.13 is Section 106 (A) (2) (a) (3), (5), and (c) of the NIRC of 1997, as amended, the instant case need not comply with the said *fifth* requisite**. Moreover, while petitioner alleges that it has sales of services to a non-resident foreign corporation, the Court need **not** determine whether there was compliance with the same *fifth* requisite, since it was not duly proven, as above shown, that the said sales of services qualify for VAT zero-rating under Section 108 (B) (2) of the NIRC of 1997, as amended. [*Emphasis and underscoring supplied.*]

Seventh requisite: Not all input taxes claimed were due or paid.

Petitioner sought to claim input taxes amounting to ₱89,994,022.70, out of the declared input taxes for the 4th quarter of FY 2014 of ₱187,840,058.19, computed as follows:

Total current input tax for the 4th quarter of fiscal year 2014		₱187,840,058.19
Less:		
Input tax directly attributable to VATable sale of machineries from current purchases	₱13,394,928.92	
Input tax directly attributable to Zero-rated sale of machineries from current purchases	48,555,626.80	
Input tax directly attributable to government sales from current purchases	824,161.61	
Input tax directly attributable to current purchases not sold within the quarter	81,867,736.28	(144,642,453.61)
Current input tax available for allocation		₱ 43,197,604.58
Multiply by the percentage of zero-rated sales in relation to total sales, computed as follows:		
VAT zero-rated sales receipt for the 4th quarter of the fiscal year 2014	₱944,598,206.07	
Divide: Total sales/receipts for the 4th quarter of fiscal year 2014	2,341,063,968.40	40.35%

Input taxes from current purchases allocable to zero-rated sales during the quarter		₱ 17,429,844.01
Add:		
Input tax directly attributable to zero-rated sales of machineries from current purchases	48,555,626.80	
Input tax directly attributable to zero-rated sales of machineries and spare parts which were imported in prior years but sold during the quarter	24,008,551.89	72,564,178.69
Total		**₱ 89,994,022.70**

Being uncontroverted, We affirm the following: (1) disallowances made by the ICPA amounting to **₱11,776,427.69** for failure to meet the invoicing requirements under Sections 110(A), 113(A), and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005, and (2) disallowances made by the Court in Division amounting to **₱31,105,008.02** for failure to meet the substantiation and invoicing requirements under the aforementioned provisions and regulations.

Accordingly, only **₱316,168.86** of petitioner's input VAT is substantiated and available for allocation, to wit:

Input VAT available for allocation		₱43,197,604.58
Less: Disallowances		
Per ICPA findings	11,776,427.70[44]	
Per this Court's further verification	31,105,008.02	(42,881,435.72)
Substantiated input VAT available for allocation		₱ 316,168.86

Before the Court in Division, petitioner also declared input tax directly attributable to zero-rated sales of machineries from current purchases amounting to ₱48,555,626.80 and input tax directly attributable to zero-rated sales of machineries and spare parts which were imported in prior years but sold during the quarter amounting to ₱24,008,551.89.

We agree with the Court in Division in disallowing ₱562,020.80 considering that this pertains to input VAT on importations supported by BOC SAD/Assessment Notice without machine validation/SSDTs, and ₱12,830,657.31

[44] Discrepancy of ₱0.01.

considering that this pertains to input VAT on importations supported by IEIRDs without machine validation/SSDTs.

Accordingly, only ₱59,171,500.58 of petitioner's input VAT directly attributable to zero-rated sales of machineries may be claimed, as follows:

Input tax directly attributable to zero-rated sales of machineries from current purchases		₱48,555,626.80
Input tax directly attributable to zero-rated sales of machineries and spare parts which were imported in prior years but sold during the quarter		24,008,551.89
Total		₱72,564,178.69
Less: Disallowances made by the Court in Division		
Input VAT on importations supported by BOC SAD/Assessment Notice without machine validation/SSDTs	₱562,020.80	
Input VAT on importations supported by IEIRDs without machine validation/SSDTs	12,830,657.31	(13,392,678.11)
		₱59,171,500.58

Anent petitioner's Input Tax Carried Over from the Previous Period amounting to ₱369,111,554.05, the Court in Division has aptly observed:

> Although petitioner's Amended Quarterly VAT Return for the 4th quarter of FY 2014 reflected the amount of P369,111,554.05 as "Input Tax Carried Over from Previous Period," petitioner, however, failed to fully substantiate the same.
>
> **As ascertained by the ICPA, out of the reported input VAT from the 2nd quarter of FY 2013 up to the 3rd quarter of FY 2014 in the aggregate amount of P915,618,038.88, only the input VAT on importations in the amount of P758,489,926.43 were verified.** Even assuming that the amount of P758,489,926.43 were valid input VAT attributable to VATable sales to private entities and zero-rated sales, the same is still not enough to cover its reported output VAT on VATable sales to private entities for the same period in the aggregate amount of P776,092,538.96, thereby resulting in net output VAT payable of P17,602,612.53. Needless to say, petitioner failed to prove that it has excess input VAT carried over from the previous period.

> Accordingly, the input tax carry-over of P369,111,554.05, cannot be validly applied against petitioner's output tax pursuant to Section 110 (A) in relation to Section 110 (B) of the NIRC of 1997, as amended, which states:
>
> ... ...
>
> It is worthy to stress that in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess input tax over the output tax which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough excess input tax credits from prior years to cover its output tax liability for the current taxable year. ... [*Emphasis and underscoring supplied.*]

Clearly, the validity of petitioner's input tax carryover is an issue. We note that in other cases involving petitioner herein, We likewise disallowed its input VAT for the first quarter,[45] second quarter,[46] and third quarter[47] of FY 2014, all of which form part of the input tax carryover for the fourth quarter of FY 2014, for petitioner's failure to comply with substantiation requirements.

Considering the foregoing, We affirm the Court in Division's disallowance of petitioner's input tax carryover in the amount of ₱369,111,554.05 for failure to substantiate.

Eighth requisite: Only a portion of petitioner's valid input taxes due or paid is attributable to its zero-rated or effectively zero-rated sales.

Under Section 112 of the NIRC of 1997, as amended, only input VAT attributable to zero-rated sales may be the proper subject of refund. If the taxpayer is engaged in transactions subject to the regular and zero rates of VAT, Section 4.112-1 of RR No. 16-2005[48] provides guidance, to wit:

> Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and taxable (including sales subject to final withholding VAT) or exempt sales of goods, properties, or services, and the amount of creditable input tax

[45] *Maxima Machineries, Inc. v. Commissioner of Internal Revenue*, CTA *EB* Case No. 2054 (CTA Case No. 9210), February 11, 2020.
[46] *Maxima Machineries, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9268, June 1, 2020.
[47] *Maxima Machineries, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9358, March 11, 2019.
[48] *Id.*

> due or paid cannot be directly and entirely attributed to any one of the transactions, only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate.

This is a similar mechanism found in Section 4.110-4 of the same regulation, which provides that "if any input tax cannot be directly attributed to either a VAT taxable or VAT-exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to transactions subject to VAT may be recognized for the input tax credit."

As correctly ruled by the Court in Division in the assailed *Decision*, out of the reported zero-rated sales of ₱952,009,079.19, only the amount of ₱75,534,773.13 qualified for VAT zero-rating of sales for the 4th quarter of FY 2014.[49] Further, considering that petitioner is engaged in taxable sales subject to zero percent (0%) and twelve percent (12%) rates, and its common input VAT of ₱316,168.86 for the period of claim cannot be directly or entirely attributed to any of the transactions, the same shall be allocated proportionately based on the volume of its sales for the respective quarters in this wise:

Period	VAT Sales	Sales to Gov't	Zero-Rated Sales	Total Sales
	(a)	(b)	(c)	(d = a+b+c)
(FY 2014) 4th Quarter	P1,387,310,556.79	P9,155,205.54	P952,009,079.19	P2,348,474,841.52

4th Quarter of FY 2014 substantiated input VAT attributable to:	
VAT Sales (P1,387,310,556.79/P2,348,474,841.52 x P316,168.86)	P186,769.89
Sales to Gov't (P9,155,205.54/P2,348,474,841.52 x P316,168.86)	1,232.54
Zero-Rated Sales (P952,009,079.19/P2,348,474,841.52 x P316,168.86)	128,166.43
Total — 4th Quarter of FY 2014	**P316,168.86**

Given the foregoing, the Court in Division correctly ruled that petitioner's input VAT directly and indirectly attributable to its zero-rated sales amounted to ₱59,299,666.51 computed as follows:

[49] *EB* Docket, p. 71.

4th Quarter of FY 2014	Amount
Common input VAT due or paid allocable to zero-rated sales	₱ 128,166.43
Add: Input VAT directly attributable to zero-rated sales of machineries from current purchases	47,993,606.00
Input VAT directly attributable to zero-rated sales of machineries and spare parts which were imported in prior years but sold during the quarter	11,177,894.08
Total Input VAT attributable to zero-rated sales	**₱59,299,666.51**

Accordingly, petitioner is entitled to the issuance of a tax credit certificate of unutilized input VAT attributable to its *valid* zero-rated sales for the 4th quarter of FY 2014, in the total amount of ₱4,704,983.38, computed as follows:

Input VAT directly attributable to zero-rated sales	
Valid zero-rated sales	₱ 75,534,773.13
Divided by: Total reported zero-rated sales	952,009,079.19
Multiplied by: Valid input VAT directly attributable to zero-rated sales (₱47,993,606.00 + ₱11,177,894.08)	59,171,500.58
Input VAT **directly** attributable to *valid* zero-rated sales	₱ 4,694,814.34
Input VAT indirectly attributable to zero-rated sales	
Valid zero-rated sales	₱ 75,534,773.13
Divided by: Total reported zero-rated sales	952,009,079.19
Multiplied by: Common input VAT due or paid allocable to zero-rated sales	128,166.43
Input VAT **indirectly** attributable to *valid* zero-rated sales	₱ 10,169.04
Total input VAT attributable to *valid* zero-rated sales	**₱ 4,704,983.38**

Ninth requisite: Petitioner's input tax has not been applied against its output VAT.

Considering that petitioner declared an output VAT liability of ₱166,477,266.81, We find that petitioner has a net output VAT payable of ₱162,938,099.42 after deducting the input VAT attributable to VATable sales to private entities amounting to ₱3,539,167.39.

Anent this net output VAT payable, the Court in Division had the following disquisition:

> Considering that the input VAT attributable to VATable sales to private entities is not enough to cover its output VAT liability, the input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT liability. However, the input VAT attributable to zero-rated sales of P59,299,666.51 is way lower than the net output VAT payable

of P162,938,099.42. Consequently, petitioner still has net output VAT due of P103,638,432.91, computed as follows:

Particulars	Amount
Net output VAT Payable	162,938,099.42
Less: Input VAT attributable to zero-rated sales	(59,299,666.51)
Net Output VAT Still Due	103,638,432.91

There being no excess input VAT which may be the subject of a claim for refund or tax credit certificate, the instant claim must perforce be denied.

Consequently, petitioner failed to fulfill the ninth requisite, i.e., that the input taxes have not been applied against output taxes during and in the succeeding quarters. Accordingly, the instant claim for issuance of TCCs on petitioner's alleged unutilized input VAT must necessarily fail.

The Court *En Banc* differs.

In the recent case of *Chevron Holdings, Inc. (formerly: Caltex Asia Limited) vs. Commissioner of Internal Revenue,*[50] the Supreme Court ruled that the input tax attributable to zero-rated sales may, *at the option* of the VAT-registered taxpayer, be charged against output tax from regular 12% VAT-able sales, or claimed for refund or tax credit in its entirety, *viz.*:

> "*xxx*, the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) **charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, **the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.** The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence." [*Emphasis and underscoring supplied.*]

[50] G.R. No. 215159, July 5, 2022.

In fine, it is the VAT-registered taxpayer, like petitioner, and not the Court, that is given the option to either:

1. Charge its input taxes attributable to zero-rated sales to the output taxes, and any unutilized or "excess" input tax may be claimed for refund or tax credit; or

2. Claim for refund or tax credit for all input taxes attributable to zero-rated sales.

A perusal of petitioner's *Petition for Review* before the Court in Division reveals that petitioner chose the second option, *i.e.*, to refund or credit all the input taxes attributable to zero-rated sales,[51] *viz.*:

> In summary, the total refundable amount of ₱89,994,022.70 is computed as follows:
>
> | | |
> |---|---|
> | 1] Input taxes from current purchases allocable to zero-rated sales during the quarter | 17,429,844.01 |
> | 2] Input taxes directly attributable to zero-rated sales of machineries from current purchases | 48,555,626.80 |
> | 3] Input taxes directly attributable to zero-rated sales of machineries and spare parts which were imported in prior years but sold during the quarter | 24,008,551.89 |
> | TOTAL | 89,994,022.70 |
>
> The said amount of ₱89,994,022.70 had not been utilized and applied against output tax of the Petitioner in FY 2014.
>
> The subject excess input tax credits were also not applied by the Petitioner against its output tax in subsequent quarters as evidenced by a copy of its Amended Quarterly VAT Return for the 4th quarter of FY 2014 and the subsequent quarters up to the Amended Third Quarter VAT Return of FY ending March 31, 2016, which was filed on March 29, 2016 wherein the amount of tax credit claimed for refund in the amount of ₱89,994,022.70 was deducted from the total available input taxes during the quarter.
>
> Clearly, the Petitioner had unutilized input tax credits allocable and directly attributable to its VAT zero-rated sales for the period January 1, 2014 to March 31, 2014 in the total amount of ₱89,994,022.70.

[51] Petition for Review, pp. 28-29; Division Docket, Vol. I, pp. 37-38.

Moreover, one of the grounds relied upon by petitioner in its *Petition for Review* before the Court *En Banc* is that the input VAT attributable to its zero-rated sales in the amount of ₱59,299,666.51 should be refunded to it and should not be offset against the output VAT for the same period,[52] *viz.*:

> A.
> The input VAT directly and indirectly attributable to petitioner's zero-rated sales in the amount of ₱59,299,666.51 as determined by the Honorable CTA First Division **should be refunded to herein petitioner and should not be offset against the output VAT for the same period**. [*Emphasis and underscoring supplied.*]

Undoubtedly, petitioner has decided to take the second option, which is to claim a refund or tax credit for *all* input taxes attributable to zero-rated sales.

With this, We find petitioner entitled to the issuance of a tax credit certificate of ₱4,704,983.38 representing the unutilized input VAT attributable to its *valid* zero-rated sales for the 4th quarter of FY 2014. Applying *Chevron*, this amount need not be offset against petitioner's net output tax liability.

An applicant for a tax refund or tax credit must not only prove entitlement to the claim but also comply with all the documentary and evidentiary requirements, such as VAT invoicing requirements provided by tax laws and regulations.[53] Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[54]

However, once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to a refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, the respondent. It is then the turn of the latter to disprove the claim by presenting contrary evidence.[55]

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[52] *Petition for Review*, p. 8; *EB* Docket, p. 8.
[53] *Philippine Gold Processing and Refining Corp. vs. Commissioner of Internal Revenue*, G.R. No. 222904 (Notice), July 15, 2020.
[54] *Commissioner of Internal Revenue vs. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 703 SCRA 310-434
[55] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015, 752 SCRA 375-412.

WHEREFORE, premises considered, the instant *Petition for Review* is **partially GRANTED**. The *Decision* dated June 30, 2021, and the *Resolution* dated March 16, 2022, of the Court's First Division in CTA Case No. 9453 are **REVERSED** and **SET ASIDE**.

Accordingly, respondent is **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱4,704,983.38** representing the unutilized input VAT attributable to its valid zero-rated sales/receipts for the fourth quarter of FY 2014.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
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

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