Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. Nos. 255470-71**
	Present:
	CAGUIOA, *J., Chairperson,* INTING, GAERLAN,
- versus -	DIMAAMPAO, and SINGH, *JJ.*
	Promulgated:
CARGILL PHILIPPINES, INC., Respondent.	January 30, 2023

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DECISION

DIMAAMPAO, *J.:*

Impugned in this Petition for Review on *Certiorari*[1] are the Decision[2] and the Resolution[3] of the Court of Tax Appeals (CTA) sitting *En Banc*, which both denied the Petition for Review filed by the Commissioner of Internal Revenue (petitioner) and the Motion for Reconsideration[4] thereof, respectively, in the consolidated cases docketed as CTA EB Nos. 1986 and 2001.

Cargill Philippines, Inc. (respondent), a value-added tax (VAT)-registered entity with Tax Identification No./VAT Registration No. 000-110-

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1 *Rollo*, pp. 10-28 & 103-121.

2 *Id.* at 34-53 & 127-146. The Decision dated June 30, 2020 was penned by Associate Justice Esperanza R. Fabon-Victorino, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena and Maria Rowena G. Modesto-San Pedro.

3 *Id.* at 55-58 & 148-151. The Resolution dated January 28, 2021, was penned by Associate Justice Jean Marie A. Bacorro-Villena, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, and Maria Rowena G. Modesto-San Pedro.

4 *Id.* at 152-162.

659-000, is a domestic corporation whose primary purpose is "to own, operate, run and manage plants and facilities for the production, crushing, extracting or otherwise manufacturing and refining of coconut oil, coconut meal, vegetable oil, lard, margarine, edible oil, and other articles of similar nature and their by-products; to engage in research, breeding, developments, production, culture, processing, importation and exportation, and sale by wholesale of agricultural seeds/products of all kinds whatsoever and the rendition of technical assistance and services related thereto; to engage in the import and export business and to deal in all the goods produced and manufactured by it and the by-products thereof at wholesale; to engage in the buy and/or sell, export and/or import, acquisition, exchange, or otherwise dealing in sugar and other related products by way of wholesale in the domestic as well as export markets and to engage in all activities, including the purchase or lease of machineries and equipment, necessary for the operation thereof."[5]

For the period April 1, 2001 to August 31, 2004, respondent filed its quarterly VAT returns[6] reflecting overpayments, as follows:

1. PHP 44,920,350.92 for the second quarter of calendar year (CY) 2001 to the third quarter of fiscal year (FY) 2003, or from April 1, 2001 to February 28, 2003; and
2. PHP 31,915,642.26 for the fourth quarter of FY 2003 to the first quarter of FY 2005, or from March 1, 2003 to August 31, 2004.[7]

The overpayments were purportedly the result of its export sales of coconut oil, which proceeds were paid for in acceptable foreign currency and accounted for pursuant to *Bangko Sentral ng Pilipinas* rules and regulations. And such, these were zero-rated for VAT purposes.[8]

Consequently, on June 27, 2003, respondent filed its *first* administrative claim for refund of its unutilized input VAT in the amount of PHP 26,122,965.81 for the period covering April 1, 2001 to February 28, 2003 before the Bureau of Internal Revenue (BIR).[9]

Professing the BIR's inaction on its administrative claim, respondent filed a judicial claim for refund on June 30, 2003, by way of a petition for review before the CTA, docketed as CTA Case No. 6714. Subsequently, on September 29, 2003, respondent filed a supplemental application with the BIR

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5 *Id.* at 36.
6 *Id.*
7 *Id* at 37.
8 *Id.*
9 *Id.*

increasing its claim for refund of unutilized input VAT to PHP 27,847,897.72 for the same period.[10]

On May 31, 2005, respondent filed with the BIR a *second* administrative claim for refund of its unutilized input VAT in the amount of PHP 22,194,446.67 for the period of March 1, 2003 to August 31, 2004. On even date, a petition for review was lodged before the CTA, docketed as CTA Case No. 7262.[11]

Petitioner, for its part, asserted that the amounts which respondent was claiming as unutilized input VAT in its *first* and *second* refund claims were not properly documented, hence, should be denied.[12]

Ruling of the CTA Division

The two petitions were consolidated for having common questions of law and facts.[13] Thereafter, the CTA Special First Division (CTA Division) rendered a Decision[14] partially granting respondent's claim for refund of unutilized input VAT and ordering petitioner to issue a tax credit certificate in the *reduced* amount of PHP 3,053,469.99.[15] While respondent timely filed its administrative and judicial claims within the two-year prescriptive period, it, however, failed to substantiate the remainder of its claims for refund of unutilized input VAT, resulting in the partial denial thereof.[16]

Petitioner and respondent both filed their respective motions for reconsideration, with petitioner avouching that respondent's petitions were prematurely filed since it failed to exhaust administrative remedies; and respondent, on the other hand, standing firm that it was entitled to the entire amount being claimed for refund.[17]

In an Amended Decision, the CTA Division denied the parties' individual motions for reconsideration.[18] Additionally, it *reversed* its earlier Decision granting in part respondent's claim for refund of unutilized input VAT. Citing the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*,[19] it held that the 120-day period provided under

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10 *Id.*
11 *Id.* at 38.
12 *Id.*
13 *Id.*
14 *Id.* at 276-317. The Decision dated August 24, 2010 was penned by Associate Justice Caesar A. Casanova, with the concurrence of Associate Justice Lovell R. Bautista. Then Presiding Justice Ernesto D. Acosta rendered a Concurring and Dissenting Opinion.
15 *Id.* at 38, 79 & 175.
16 *Id.* at 79, 107.
17 *Id.* at 39.
18 *Id.*, dated April 20, 2011.
19 646 Phil. 710 (2010) [Per J. Del Castillo, First Division].

Section 112(D)[20] of the National Internal Revenue Code (NIRC) must be observed prior to the filing of a judicial claim for tax refund.[21] Considering respondent's failure to comply therewith, the CTA Division, without ruling on the merits, dismissed the consolidated cases for being prematurely filed.[22]

Disgruntled, respondent filed a Petition for Review before the CTA *En Banc*,[23] docketed as CTA EB Case No. 779.

The CTA *En Banc* Ruling

On June 18, 2012, the CTA *En Banc* affirmed the CTA Division's decision amending its August 24, 2010 Decision, and reiterated that respondent's premature filing of its claims divested the CTA of jurisdiction, and perforce, warranted the dismissal of its petitions.[24]

Ruling of the Court to Remand

With its subsequent motion for reconsideration having been denied by the CTA *En Banc*,[25] respondent sought recourse before this Court *via* a Petition for Review on *Certiorari*, docketed as G.R. No. 203774 and raffled off to the First Division.[26]

In partially granting respondent's petition remanding the case to the CTA Division,[27] the Court ratiocinated in this wise:

> In the landmark case of *Aichi*, it was held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. As such, its non-observance would

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20 Section 112. *Refunds or Tax Credits of Input Tax.* —

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(D) 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. [Emphasis supplied]

21 *Id.* at 731.

22 *Rollo*, p. 39.

23 *Id.*

24 *Cargill Philippines, Inc. v. Commissioner of Internal Revenue*, CTA EB Case No. 779, June 18, 2012 (Court of Tax Appeals, *En Banc*). This Decision was penned by Retired Associate Justice Cielito N. Mindaro-Grulla with the concurrence of then Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista rendered a Dissenting Opinion.

25 See Decision in *Cargill Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 203744, March 11, 2015, 755 Phil. 820, 826 (2015) [Per J. Perlas-Bernabe, First Division].

26 *Id.*

27 *Id.* at 831.

warrant the dismissal of the judicial claim for lack of jurisdiction. It was, withal, delineated in *Aichi* that the two (2)-year prescriptive period would only apply to administrative claims, and not to judicial claims. Accordingly, once the administrative claim is filed within the two (2)-year prescriptive period, the taxpayer-claimant must wait for the lapse of the 120-day period and, thereafter, he has a 30-day period within which to file his judicial claim before the CTA, even if said 120-day and 30-day periods would exceed the aforementioned two (2)-year prescriptive period.

Nevertheless, the Court, in the case of *CIR v. San Roque Power Corporation (San Roque)*, recognized an **exception to the mandatory and jurisdictional nature of the 120-day period**. *San Roque* enunciated that **BIR Ruling No. DA-489-03 dated December 10, 2003**, which expressly declared that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of petition for review," provided a valid claim for equitable *estoppel* under Section 246 of the NIRC.

In the more recent case of *Taganito Mining Corporation v. CIR*, the Court reconciled the pronouncements in *Aichi* and *San Roque*, holding that from **December 10, 2003 to October 6, 2010** which refers to the interregnum when BIR Ruling No. DA-489-03 was issued until the date of promulgation of *Aichi*, **taxpayer-claimants need not observe the stringent 120-day period**; but before and after said window period, the mandatory and jurisdictional nature of the 120-day period remained in force[.] x x x

x x x

In this case, records disclose that anent [respondent's] first refund claim, it filed its administrative claim with the BIR on June 27, 2003, and its judicial claim before the CTA on June 30, 2003, or **before the period when BIR Ruling No. DA-489-03 was in effect**, *i.e.*, from December 10, 2003 to October 6, 2010. As such, it was incumbent upon [respondent] to wait for the lapse of the 120-day period before seeking relief with the CTA, and considering that its judicial claim was filed only after three (3) days later, the CTA *En Banc*, thus, **correctly dismissed** [respondent's] petition in CTA Case No. 6714 for being prematurely filed.

In contrast, records show that with respect to [respndent's] second refund claim, its administrative and judicial claims were both filed on May 31, 2005, or **during the period of effectivity of BIR Ruling No. DA-489-03**, and, thus, fell **within the exemption window period** contemplated in *San Roque, i.e.*, when taxpayer-claimants need not wait for the expiration of the 120-day period before seeking judicial relief. Verily, the CTA *En Banc* erred when it outrightly dismissed CTA Case No. 7262 on the ground of prematurity.

This notwithstanding, the Court finds that [respondent's] second refund claim in the amount of PHP 22,194,446.67 which allegedly represented unutilized input VAT covering the period March 1, 2003 to August 31, 2004 should not be instantly granted. This is because **the determination of [respondent's] entitlement to such claim, if any, would**

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> **necessarily involve factual issues and, thus, are evidentiary in nature** which are beyond the pale of judicial review under a Rule 45 petition where only pure questions of law, not of fact, may be resolved. Accordingly, the prudent course of action is to **remand CTA Case No. 7262 to the CTA Division for resolution on the merits**, consistent with the Court's ruling in *Panay Power Corporation v. CIR*.[28] [Emphasis supplied]

Displeased, respondent moved for a reconsideration of the foregoing adjudication, but its plea was denied in the Resolution dated July 8, 2015.[29] Accordingly, the CTA *En Banc* remanded CTA Case No. 7262 to the CTA Division for resolution on the merits.[30]

Amended Decision of the CTA Division and Assailed Rulings of the CTA *En Banc*

The CTA Division thereafter rendered an Amended Decision[31] partially granting respondent's petition and ordering petitioner to refund/issue a tax credit certificate in its favor in the reduced amount of PHP 1,779,377.16. This amount represents the unutilized excess input VAT for the period covering March 1, 2003 to August 31, 2004. Both parties' ensuing motions to reconsider the Amended Decision were denied.[32]

Unflinching, petitioner and respondent filed their respective petitions for review, docketed as CTA EB No. 1986 and CTA EB No. 2001, respectively.[33] The CTA *En Banc* ordered the consolidation of these two cases pursuant to Section 1, Rule 31 of the Rules of Court.[34]

In CTA EB No. 1986, petitioner contended that only creditable input taxes incurred from purchases of goods that *form part of the finished product of the taxpayer* or *directly used in the chain of production* are refundable. Consequently, respondent had the burden of establishing the *direct connection* of the purchase or input tax *to the finished product*, failing which the claim for refund must be denied.[35]

Respondent, on the other hand, in CTA EB Case No. 2001, avouched that the CTA Division erroneously excluded its input VAT carried forward from the previous quarter in the amount of PHP 1,274,092.82.[36]

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28 *Id.* at 828-831.
29 *Rollo*, p. 40.
30 *Id.*
31 *Id.* at 170-182. The Amended Decision dated July 13, 2018 was penned by Associate Justice Caesar A. Casanova, with the concurrence of Associate Justice Lovell R. Bautista.
32 Id. at 184-189. The Resolution dated December 12, 2018 was penned by Presiding Justice Roman G. Del Rosario, with the concurrence of Associate Justices Esperanza R. Fabon-Victorino and Catherine T. Manahan.
33 *Id.* at 41.
34 *Id.* at 190-191.
35 *Id.* at 42.
36 *Id.* at 135.

As it happened, the CTA *En Banc* rendered the June 30, 2020 impugned Decision[37] denying both petitions and affirming the July 13, 2018 Amended Decision of the CTA Division. Petitioner's plea for reconsideration thereof likewise proved futile as it was denied.[38]

Taking the CTA *En Banc*'s ruling with a grain of salt, petitioner now turns to this Court for relief through the instant Petition,[39] posing this solitary issue for resolution:

> **Did the CTA *En Banc* err in finding that respondent is entitled to its claim for refund notwithstanding the provision of the NIRC which requires that input VAT subject of the claim be *directly* attributable to zero-rated sales**?[40]

Contrastingly, with respect to CTA EB No. 2001, respondent no longer filed an appeal of the CTA *En Banc* Decision.[41] Meanwhile, in its Comment,[42] respondent asseverates that petitioner's stance involves a purely factual issue[43] requiring a recalibration of evidence which is not within the scope of a Rule 45 petition. Furthermore, it postulates that as early as August 24, 2010, the CTA Division had already explained how the input VAT subject of the claim for refund was attributable to respondent's zero-rated sales.

RULING OF THE COURT

The Petition deserves short shrift.

The jugular legal issue cast in this instant Petition is whether or not respondent, in its claim for refund of excess/unutilized input VAT, is required by law to prove *direct* attributability of its purchases or the input VAT to its zero-rated sales.

Petitioner posits that input VAT must be *directly* attributable to the zero-rated sales of the respondent in order to be refundable. Along this grain, it argues that the input VAT must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.

Petitioner is clutching at straws.

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37 *Id.* at 34-53 & 127-146.
38 *Id.* at 57.
39 *Id.* at 10-32.
40 *Id.* at 18-23.
41 *Id.* at 323-327.
42 *Id.* at 264-274.
43 *Id.* at 265-266.

Section 112(A) of the Tax Code elucidates:

> 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**: x x x *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. [Emphasis supplied]

Evidently, contrary to petitioner's contention, **the law does *not* require *direct* attributability** of the input VAT from the purchase of goods to the finished product whose sale is zero-rated, in order for such input VAT to be refundable. *Ubi lex non distinguit nec nos distinguere debemos*. When the law has made no distinction, the courts ought not to recognize any distinction.

Thence, it suffices that the purchase of goods, properties, or services upon which the input VAT is based, **can be attributed to the zero-rated sales**. This conclusion is further bolstered by Section 110(A)(1) of the Tax Code, which explicitly sets forth the sources of creditable input VAT:

> SECTION 110. *Tax Credits.*—
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> (A) *Creditable Input Tax.*—
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> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
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> (a) Purchase or importation of goods:
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> (i) For sale; or
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
> (iii) For use as supplies in the course of business; or
> (iv) For use as materials supplied in the sale of service; or
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.
>
> (b) Purchase of services on which a value-added tax has been actually paid.

Verily, the law does not limit itself to purchases of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production.

In a last-ditch effort to convince this Court to rule in its favor, petitioner zeroes in on its previous pronouncements in the 2007[44] and 2011[45] cases of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*—

> The formal offer of evidence of the petitioner failed to include photocopy of its export documents, as required. There is no way therefore, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax credit must be shown to be ***entirely*** attributable to the zero-rated transaction, in this case, export sales of goods. Without the export documents, the purchase invoice/receipts submitted by the petitioner as proof of its input taxes cannot be verified as being ***directly*** attributable to the goods so exported.[46] [Emphasis supplied]

The foregoing cases, however, were decided on the basis of **Revenue Regulations No. 5-87, as amended by RR No. 3-88**, which *limited* the amount of refund or tax credit to the amount of VAT paid *directly and entirely* attributable to the zero-rated transaction during the period covered by the application for credit or refund.

Nevertheless, the Secretary of Finance, upon the recommendation of herein petitioner, issued **Revenue Regulations No. 14-2005**[47] on June 22, 2005, which was later superseded by **Revenue Regulations No. 16-2005.**[48] This latter BIR issuance has undergone a series of amendments, the most recent of which is **Revenue Regulations No. 21-2021**.[49]

A meticulous study of these latter-day revenue regulations reveals that **the requirement for input VAT being claimed for refund to be *directly and entirely* attributable to the zero-rated sales was <u>not</u> retained**. The pertinent portion of the relevant regulation, **Revenue Regulations No. 16-2005**, is plain as day—

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44 G.R. Nos. 141104 & 148763, 551 Phil. 519 (2007) [Per J. Chico-Nazario, Third Division].

45 G.R. No. 159471, 655 Phil. 499-512 (2011) [Per J. Peralta, Second Division].

46 *Supra* note 50 at 549; *id.* at 508.

47 Subject: Implements Title IV of the Tax Code by prescribing the Consolidated Value-Added Tax Regulations of 2005, effective on July 1, 2005.

48 Subject: Prescribes the Consolidated Value-Added Tax Regulations of 2005 superseding RR No. 14-2005, effective on November 1, 2005.

49 Subject: Amends certain provisions of RR No. 16-2005, as amended by RR Nos. 4-2007, 13-2018, 26-2018 and 9-2021 to implement Sections 294 (E) and 295 (D), Title XIII of the NIRC of 1997, as amended by RA No. 11534 (CREATE Act), and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations, issued on December 7, 2021.

> SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* — A zero rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties, or services, **related to such zero-rated sale**, shall be available as tax credit or refund in accordance with these Regulations.
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> x x x
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> SEC. 4.108-5. *Zero-Rated Sale of Services.* —
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> (a) *In general.* — A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services **related to such zero-rated sale** shall be available as tax credit or refund in accordance with these Regulations.[50] [Emphasis supplied]

This Court **cannot** be bound by Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, requiring *direct* attributability of input VAT *vis-à-vis* zero-rated sales.

All told, the CTA *En Banc* committed no reversible error in affirming the CTA Division's findings that respondent is entitled to the amount of PHP 1,779,377.16 representing its unutilized excess input VAT for the period covering March 1, 2003 to August 31, 2004 *attributable to its zero-rated sales* for the same period.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated June 30, 2020 and the Resolution dated January 28, 2021 of the Court of Tax Appeals *En Banc*, in the consolidated cases CTA EB Nos. 1986 and 2001, are **AFFIRMED**.

SO ORDERED.

JAPAR B. DIMAAMPAO
Associate Justice

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[50] Subject: Prescribes the Consolidated Value-Added Tax Regulations of 2005 superseding RR No. 14-2005, effective on November 1, 2005.

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

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

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of this Court.

ALEXANDER G. GESMUNDO
Chief Justice