

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

PHILEX MINING CORPORATION,
Petitioner,

CTA CASES NOS. 6892 & 7014
Members:

-versus-

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

JAN 22 2010 ; 3:00 pm

x ----- x

AMENDED DECISION

CASANOVA, J.:

This is a Motion for Reconsideration/New Trial filed on July 24, 2008 assailing this Court's Decision dated July 9, 2008 which denied petitioner's claim for refund in the amounts of P2,880,805.37 and P4,238,224.13 for the 1st and 2nd quarters of 2002, respectively, allegedly representing excess input taxes on importations and domestic purchases attributable to zero-rated sales.

The aforesaid Motion for Reconsideration/New Trial was resolved by this Court in a Resolution promulgated on November 4, 2008 holding in abeyance the resolution of the second and third assigned errors until the presentation of petitioner of its newly discovered evidence. *de*

The second and third assigned errors are as follows: a) The Honorable Court erred in ruling that petitioner failed to substantiate its direct export sales of copper concentrates to Japan, simply because of supposed discrepancies in the amounts of gross sales reflected in the sales invoices that were submitted in evidence and in the amounts indicated in the independent CPA's report, and also because the invoices bear dates that are outside the period covered by the claims; b) The Honorable Court erred in ruling that petitioner's indirect export sales to PASAR do not qualify for zero-rating because the dates of the final invoices fall outside the period of the claims in the petition.

In this regard, petitioner requested for the presentation of additional evidence to substantiate its claim. On December 11, 2008, petitioner presented Exhibits "A" to "K". Based on these documents the Court ruled as follows:

Petitioner explains that in its direct exports of copper concentrates there are two periods when pricing or valuation of a shipment is made. First, a **provisional pricing or valuation** of the shipment is made by the petitioner **upon shipment** based on weight (dry and wet weight) and moisture as determined by petitioner and also based on petitioner's provisional assays showing copper, gold and silver content. Second, **upon arrival of the concentrates at the port of unloading**, the weight and the moisture content are determined. Assays are also made for copper, gold and silver content. After these are done and settled, **a final concentrate value is arrived at.** 

In view thereof, petitioner points out that the considered date of the sale transaction is at the time of the delivery of the shipment to the carrier. However, the sales contract with its buyer, Nippon Mining and Metals Co. Ltd of Tokyo, Japan¹ requires a provisional payment from the latter to petitioner of 90% of the estimated value of a shipment and a final payment based on final settlement of weights, assays and quotations. This is allegedly the reason why petitioner issues a provisional invoice for the 90% estimated value of a shipment and a final invoice for the payment of the final balance after final settlement of the weight, assays and quotations are completed. This also allegedly explains why the final invoices carry dates much later than the date when the sale or shipment was made.

In support of its motion, petitioner presented and formally offered in evidence Provisional Invoices² it issued to Nippon Mining and Metals Co. Ltd., for the 1st and 2nd quarters of 2002. With these said provisional invoices, petitioner proved that the final sales invoices³ supporting its export sales of copper concentrates to Nippon, Japan for the 1st and 2nd quarters of 2002 with the respective amount of US\$8,165,489.00 and US\$8,835,630.00, except for the amount of US\$4,708,958.00, the covering provisional invoice⁴, as well as the bill of lading⁵, which were dated outside the subject period of claim, are valid and 

¹ Exhibit "K"

² Exhibits "Y", "Z", "CC" and "DD"

³ Exhibits "O-1", "O-2", "P-1" and "P-2"

⁴ Exhibit "DD"

⁵ Exhibit "P-2b"

that the sales for the 1st and 2nd quarters with the peso equivalent of P417,718,397.34 and P206,992,869.41, respectively, as computed below, qualify for VAT zero rating under Section 106(A)(2)(a)(1) of the NIRC of 1997.

	<u>1st Qtr</u>	<u>2nd Qtr</u>
Declared Zero Rated Sales in Php	824,524,842.84 ⁶	868,807,891.03 ⁷
Divided by Declared Zero-Rated Sales in US\$ ⁸	<u>÷ 16,117,673.00</u>	<u>÷ 17,320,815.00</u>
Average peso to dollar rate	51.1565684972	50.1597581309
Multiplied by Substantiated Zero-rated Sales in US\$	<u>x 8,165,489.00</u>	<u>x 4,126,672.00</u>
Substantiated Zero-Rated Sales in Php	<u>417,718,397.34</u>	<u>206,992,869.41</u>

As to petitioner's indirect export sales to PASAR for the 1st and 2nd quarters of 2002 in the amount of US\$7,107,233.00 and US\$7,494,309.00, respectively, petitioner likewise presented the corresponding Provisional Invoices it issues to PASAR.⁹ These documents proved that petitioner actually made indirect exports to PASAR. Such indirect export sales with peso equivalent of P363,581,651.79 and P375,912,726.80, as computed below, are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(5) in relation to Articles 23 and 77(2) of the Omnibus Investments Code and as clarified under RMC No. 74-99.

	<u>1st Qtr</u>	<u>2nd Qtr</u>
Declared Zero-Rated Sales in Php	824,524,842.84	868,807,891.03
Divided by Declared Zero-Rated Sales in US\$	<u>16,117,673.00</u>	<u>17,320,815.00</u> <i>a</i>

⁶ Exhibit "B-1-a"

⁷ Exhibit "C-2"

⁸ Exhibit "N", page 3

⁹ Exhibits "AA", "BB", and "EE" to "JJ"

Average peso to dollar rate	51.1565684972	50.1597581309
Multiplied by Substantiated Zero-rated Sales in US\$	<u>7,107,233.00</u>	<u>7,494,309.00</u>
Substantiated Zero-Rated Sales in Php	<u>363,581,651.79</u>	<u>375,912,726.80</u>

As to the 1st and 2nd quarters catch up adjustments to petitioner's prior quarter's shipments amounting to US\$51,507.00 and US\$575,719.00, respectively, the same shall be denied VAT zero-rating for petitioner's failure to present supporting documents.

To recapitulate, out of the 1st quarter of 2002 reported zero-rated sales of US\$16,117,673.00, only the export sales in the total amount of US\$15,272,722.00 with peso equivalent of P781,300,049.13 qualify for VAT zero-rating. While for the 2nd quarter of 2002, out of the reported zero-rated sales of US\$17,320,815.00, only the export sales of US\$11,620,981.00 with peso equivalent of P582,905,596.21 qualify for VAT zero-rating, to wit:

	<u>1st Quarter</u>		<u>2nd Quarter</u>	
	<u>In US Dollar</u>	<u>In Phil. Peso</u>	<u>In US Dollars</u>	<u>In Phil. Peso</u>
Direct Exports of Copper to Japan	8,165,489.00	417,718,397.34	4,126,672.00	206,992,869.41
Indirect Exports of Copper to PASAR	<u>7,107,233.00</u>	<u>363,581,651.79</u>	<u>7,494,309.00</u>	<u>375,912,726.80</u>
Total	<u>15,272,722.00</u>	<u>781,300,049.13</u>	<u>11,620,981.00</u>	<u>582,905,596.21</u>

In order to have a complete resolution of the second and third assigned errors, it is important to proceed with the determination of whether petitioner's input taxes in connection with its zero-rated sales for the 1st and 2nd quarters of 2002 are duly substantiated. *a*

Petitioner reflected an input VAT of P250,036.37 on domestic purchases and an input VAT of P2,630,769.00 on importations totaling to P2,880,805.37 in its VAT return for the 1st quarter of 2002¹⁰, while for the 2nd quarter of 2002¹¹, petitioner reflected an input VAT of P182,048.13 and P4,056,176.00 on domestic purchases and importations, respectively, in the total amount of P4,238,224.13, as shown below:

	<u>1st QTR</u>		<u>2nd QTR</u>	
	<u>Purchases</u>	<u>Input Tax</u>	<u>Purchases</u>	<u>Input Tax</u>
Domestic Purchases-Capital Goods	P 2,500,363.70	P 250,036.37	P 1,820,481.30	P 182,048.13
Importations-Goods other than Capital Goods	<u>26,307,690.00</u>	<u>2,630,769.00</u>	<u>40,561,760.00</u>	<u>4,056,176.00</u>
Total	<u>P28,808,053.70</u>	<u>P2,880,805.37</u>	<u>P42,382,241.30</u>	<u>P4,238,224.13</u>

To determine the accuracy of petitioner's declaration, the Court commissioned an independent CPA to examine the voluminous documents of petitioner in support of its claim for refund.

With regard to the input taxes on domestic purchases, the Court-commissioned ICPA, in his Report dated July 20, 2006¹², noted the following findings:

<u>Particulars</u>	<u>1st Qtr</u>	<u>2nd Qtr</u>
	<u>Exhibit U</u>	<u>Exhibit V</u>
a. Original VAT official receipts that are in the name of Petitioner	P63,985.06	
1. Out of period receipts		P 5,658.04
2. Receipts dated in the current quarter		24,829.91
b. VAT official receipts that are not in the name of Petitioner	2,035.04	512.85
c. Non-VAT receipts	44,570.73	23,895.81

¹⁰ Exhibit "B-1-b"

¹¹ Exhibit "C-1"/W-2

¹² Exhibit "N", page 7

d. Receipts that are photocopies or no receipts were presented	139,171.18	8,517.12
e. Original VAT invoices that are in the name of Petitioner		
1. Out of Period invoices		68,908.25
2. Out of period invoices dated 1 st quarter of 1998		24,640.14
3. Invoices dated in the current quarter		340.08
f. VAT invoices that are not in the name of Petitioner		30,652.86
g. Non-VAT invoice	80.00	
h. Invoices that are photocopies or no invoices were presented	194.36	14,318.32
i. Negative input VAT		(20,225.25)
TOTAL	<u>P250,036.37</u>	<u>P182,048.13</u>

Based on the above findings, for the 1st quarter of 2002, only the input VAT of P63,985.06 (*item a*) represents petitioner's valid claim while the remaining amount of P186,051.31 should be denied for the above-stated reasons (*items b, c, d, g and h*). With regard to the 2nd quarter of 2002, only the input VAT of P25,169.99 (*items a.2 and e.3*) represents petitioner's valid claim while the remaining amount of P156,878.14 should be denied for the above-stated reasons (*items a.1, b, c, d, e.1, e.2, f, h and i*). However, even if petitioner was able to substantiate its domestic purchases of goods and services with VAT invoices and official receipts, nevertheless, the amount of P63,985.06 and P25,169.99, respectively, are not allowable as input tax credit.

Pursuant to Revenue Memorandum Order No. 9-00, sales of goods, properties or services made by a VAT-registered supplier to a BOI registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements, prescribed under Section 3 of Revenue Memorandum Order No. 9-00:

"SECTION 3. *Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing*

approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:

- (1) The supplier must be VAT-registered;
- (2) The BOI-registered buyer must likewise be VAT-registered;
- (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
- (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and
- (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec. 4.108(5) of Revenue Regulations No. 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

In the present case, records show that petitioner was issued a certification by the BOI attesting to the fact that petitioner is a BOI registered entity with 100% exports. The Certification was valid for the period January 1, 2002 to December 31, 2002 as attested in the case of ***GST Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6489, August 7, 2007***, to wit: 

"In compliance xxx, petitioner submitted Certifications issued by the BOI for Philex Mining, Philex Gold and Lepanto Mining attesting that these companies are registered with the Board of Investments. In the same manner, it can be gleaned from the Certifications that the BOI companies exported 100% of their products for taxable years 2001 and 2002. xxx."

In addition, petitioner presented the said BOI Certification as evidence of its zero-rated sales on its previous case entitled *Philex Mining Corporation vs. Commissioner of Internal Revenue*¹³. Under Section 3.4 of RMO 9-00, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner covering the period January 1, 2002 to December 31, 2002. On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner. Hence, on the absence of clear and convincing proof that petitioner's local suppliers passed on or shifted the VAT on such domestic purchases to petitioner, it cannot claim the amount of P63,985.06 and P25,169.99 respectively as input tax credits on its domestic purchases for the 1st and 2nd quarters of taxable year 2002.

As regards the input VAT payments of P2,630,769.00 and P4,056,176.00 on petitioner's importations for the 1st and 2nd quarters of 2002, the ICPA noted the following findings¹⁴:

<u>Particulars</u>	<u>1st Qtr</u>	<u>2nd Qtr</u>
a. Input taxes paid on importation of:		
1 Capital goods	P 1,703,609.00	P 2,761,244.00
2 Other than capital goods	194,414.00	649,526.00

¹³ CTA Case No. 6828, pages 183-184

¹⁴ Exhibit "N", page 6

b. No supporting documents	P 1,898,023.00	3,410,770.00
	732,746.00	645,406.00
TOTAL	P 2,630,769.00	P 4,056,176.00

The Court finds that for the 1st and 2nd quarters of 2002, only the respective amount of P434,265.00 and P1,912,268.00 are valid claims considering that these were directly paid to the Bureau of Customs and are duly covered by official receipts, computed as follows:

<u>Items Imported</u>	<u>Exhibit No.</u>	<u>Input VAT</u>	
		<u>1st Qtr</u>	<u>2nd Qtr</u>
Axial Fans	S-6	213,051.00	
Alvenius Pipes	S-10	38,143.00	
30 drums driwax	S-21	53,762.00	
DK Froth – BP3	S-22	129,309.00	
2 Belts and 1 Splicing Material	T-2		229,850.00
Fuse	T-10		9,620.00
Sodium Isobutyl Xanthate	T-15		136,656.00
Flatrack Container	T-16		743,038.00
Parts of Stone Crusher	T-26		321,066.00
Nasfroth 250 Flotation Frother	T-30		110,107.00
1 container of DK Froth	T-31		129,084.00
Dowfroth 250	T-37		107,782.00
DK Froth	T-38		125,065.00
Total		434,265.00	1,912,268.00

The remaining amount of P2,196,504.00 and P2,143,908.00 shall be disallowed for the following reasons:

			<u>Input VAT</u>	
	<u>Items Imported</u>	<u>Exhibit No.</u>	<u>1st Qtr</u>	<u>2nd Qtr</u>
a.	Supported by Bank Debit Advice, but IERD not admitted by the Court			
	1 Crate STC: Cupel No. 7a	S-1 S-1a	P 13,109.00	
	Exhaust Pulse Converters	S-2 S-2a	70,690.00	
	Filtration Equipment	S-3 S-3a	55,184.00	
	Pressure Control	S-4 S-4a	58,929.00	
	Power Fuses – 4.8KV	S-5 S-5a	102,499.00	
	Laboratory Furnace	S-7 S-7a	35,429.00	
	Conveyor Belt Part	S-8 S-8a	52,424.00	
	4 PLTS: Engines	S-9 S-9a	576,428.00	
	CTN: Bearings	S-11 S-11a	8,566.00	
	CTN: Heating Element	S-12 S-12a	17,396.00	
	Parts for Loader	S-13 S-13a	41,098.00	
	Gate Valve	S-14 S-14A	40,156.00	
	Wheel Rims	S-15 S-15a	49,671.00	

Spring	S-16	S-16a	48,177.00	
Pinch Valve	S-17	S-17a	50,257.00	
Screen Panel	S-18	S-18a	141,424.00	
Integrator	S-19	S-19a	27,131.00	
Parts for Fiat	S-20	S20a	63,847.00	
Backing Tape	S-23	S-23a	11,343.00	
1 CTN: Protector	T-1	T-1a		P 6,122.00
Parts for Compressor	T-3	T-3a		9,892.00
1 CTN: Parts for flotation machine	T-4	T-4a		9,843.00
2 wooden reels wire rope	T-5	T-5a		58,464.00
1 Case parts for loader	T-6	T-6a		21,232.00
1 pkg. Vibrator motor	T-7	T-7a		38,569.00
1 crate mining machinery	T-8	T-8a		44,541.00
1 crate mining machinery	T-9	T-9a		187,908.00
Grinding Machine Parts	T-11	T-11a		47,569.00
Mining Equipment	T-12	T-12a		39,044.00
Mining Equipment	T-13	T-13a		48,326.00
Covering Parts for Cyclone Krebs	T-14	T-14a		69,345.00
Parts for Conveyor	T-17	T-17a		34,873.00
Parts of Mixer	T-18	T-18a		141,916.00
Parts for Drilling	T-19	T-19a		19,481.00
1 CTN: Pump Seal Kit	T-20	T-20a		54,829.00
Parts of Drilling Machine	T-21	T-21a		49,237.00
Parts of Jameson Cell	T-22	T-22a		68,863.00
Parts of concentrator	T-23	T-23a		13,494.00
1 CTN: Valve	T-24	T-24a		19,034.00
Parts for Teledyne Rockbreaker	T-25	T-25a		79,609.00
Parts for Jaw Crusher	T-27	T-27a		19,266.00
Parts for Jameson Cell	T-28	T-28a		39,461.00
Crate Mining Machinery	T-29	T-29a		200,096.00
2 CTNS: Tape	T-32	T-32a		12,791.00
3 pkgs. Stc. Rubber Sheet Glue	T-33	T-33a		34,375.00
Filter Cloth	T-34	T-34a		48,542.00
2 PLTS (3,600 lbs. litharge)	T-35	T-35a		29,703.00
30 drums of Drimax	T-36	T-36a		52,077.00
			<u>P1,463,758.00</u>	<u>P1,498,502.00</u>

b. **No supporting documents presented**

Documents dated 1/18/2001	1,144.00
Documents dated 1/16/2002	332.00
Documents dated 1/16/2002	42,500.00
Documents dated 1/16/2002	20,797.00
Filtration Equipment	86,681.00
Documents dated 2/8/2002	351.00
Documents dated 2/22/2002	16.00
Documents dated 2/22/2002	1,746.00
Parts of Crusher	7,687.00
Dowfroth	111,643.00
Backing Tape	15,514.00
Crate Mining Equipment	136,885.00
Parts for Grader	6,579.00
Parts for Speed Reducer	239,473.00
Mine Lamp	19,561.00

Parts for Compressor	41,837.00	
Documents dated 4/9/2002		71,370.00
Documents dated 4/9/2002		40,937.00
3 Pallets Engine		450,050.00
1 pkg. parts for transmitter		14,803.00
Parts for Speed Reducer		31,496.00
3 Pallets Engine		16,674.00
Anomometer Omega		11.00
Parts of Jaw Crusher		13,678.00
	<u>732,746.00</u>	<u>143,908.00</u>
TOTAL	<u>P 2,196,504.00</u>	<u>P 2,143,908.00</u>

The remaining amount of **P1,463,758.00** and **P1,498,502.00** shall be disallowed considering that the Import Entry and Internal Revenue Declarations¹⁵ supporting such importations were not admitted by the Court¹⁶ for failure of the petitioner to present the originals, while the Bank Debit Advices¹⁷ do not depict the actual input VAT payments. Furthermore, no official receipts or other documents proving actual payment of VAT on the imported goods were presented to support such claim. To reiterate, as a general rule, input tax on importations should be supported with IEIRDs duly validated for actual payment of the input tax. Petitioner must prove the actual payment of VAT on the imported goods by submitting the documents specified in Section 4.104-5(b) of Revenue Regulations No. 7-95. The required evidence is the import entry or other equivalent document. Thus, without these documents, petitioner's claimed input VAT payments in the amount of P1,463,758.00 and P1,498,502.00 cannot be granted. 

¹⁵ Exhibits "S-1a" to "S-23a" and "T-1a" to "T-36a"

¹⁶ Resolution dated March 23, 2007, Rollo, pages 240 to 241

¹⁷ Exhibits "S-1" to "S-23" and "T-1" to "T-36"

Also, the input taxes of **P732,746.00** and **P645,406.00** shall likewise be disallowed for petitioner's failure to present before this Court any supporting documents proving the same.

To recapitulate, out of the total input tax on importations of P2,630,769.00 for the 1st quarter of 2002, only the amount of P434,265.00 was duly substantiated by valid supporting documents. While for the 2nd quarter of 2002, out of the total input tax on importations of P4,056,176.00, only the amount of P1,912,268.00 was duly substantiated by valid supporting documents.

However, a portion of the substantiated input VAT of P434,265.00 and P1,912,268.00 for the 1st and 2nd quarters of 2002, respectively, shall be applied against petitioner's respective reported output VAT liabilities of P63,884.28¹⁸ and P129,390.91.¹⁹ Hence, only the remaining input VAT of P370,380.72 and P1,782,877.09 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P1,045,848,710.49 and only the input VAT of P1,222,132.55 is attributable to the substantiated zero rated sales of P911,973,697.26, as computed below:

	<u>1st Qtr</u>	<u>2nd Qtr</u>
Substantiated input VAT	P 434,265.00	P 1,912,268.00
Less: Output Tax for 1 st	63,884.28	129,390.91
Excess input VA	<u>P 370,380.72</u>	<u>P 1,782,877.09</u>
	<u>1st Qtr</u>	<u>2nd Qtr</u>
Substantiated Zero-rated Sales	P781,300,049.13	P582,905,596.21
Divided by Total Reported Zero-Rated Sales	÷ 824,524,842.84	÷ 868,807,891.03
Multiplied by Substantiated Excess Input VAT	x 370,380.72	x 1,782,877.09
Excess Input Tax Attributable to Substantiated Zero-Rated Sales	<u>P 350,963.92</u>	<u>P 1,196,178.17</u>

¹⁸ Exhibit "B-1"/W-1

¹⁹ Exhibit "C"/W-2

As evidenced by its Quarterly VAT Returns from the 3rd quarter of 2002 to 2nd quarter of 2005²⁰, petitioner was able to prove that the input VAT of P350,963.92 and P1,196,178.17 were not applied against any output VAT in the succeeding quarters.

Finally, petitioner's claim for refund was timely filed within the two-year prescriptive period both in the administrative and judicial levels. The reckoning of the two-year prescriptive period for the filing of a claim for input VAT refunds starts from the date of filing of the corresponding quarterly VAT return. Counting from April 10, 2002, the date when petitioner filed its Quarterly VAT Return for the 1st quarter of 2002, both the administrative claim filed on November 20, 2002 and the Petition for Review filed on March 15, 2004, were well within the two year prescriptive period. With regard to the 2nd quarter of 2002, the administrative claim filed on March 1, 2004 and the Petition for Review filed on June 28, 2004, were also within the 2-year prescriptive period counting from July 2002, the date petitioner filed its Quarterly Vat Return for the said period.

In view of the above findings, petitioner's claim for refund of its unutilized input VAT for the 1st and 2nd quarters of taxable year 2002 shall be granted but in the reduced respective amount of P350,963.92 and P1,196,178.17 or in the aggregate amount of P1,547,142.09. 

²⁰ Exhibits W-3 to W-10

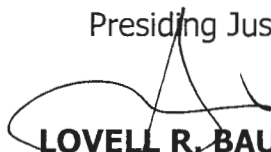
WHEREFORE, premises considered, petitioner's Motion for Reconsideration/New Trial is hereby **PARTIALLY GRANTED**. The Decision dated July 9, 2008 is **SET ASIDE**. Respondent is hereby **ORDERED** to **REFUND** the amount of **One Million Five Hundred Forty Seven Thousand One Hundred Forty and 9/100 Pesos (P1,547,142.09)** representing petitioner's unutilized input VAT for the 1st and 2nd quarters of taxable year 2002.

SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

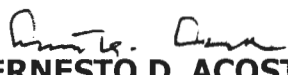
WE CONCUR:


(with Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
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's Division.


ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division