REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1116** *(CTA Case No. 8424)*
	Present: DEL ROSARIO, PJ CASTAÑEDA, JR., BAUTISTA,
-versus-	UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, RINGPIS-LIBAN, JJ.
PHILEX MINING CORPORATION, *Respondent.*	**Promulgated:** JAN 07 2015 11:35 a.m.

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DECISION

DEL ROSARIO, *P.J.*:

THE CASE

The Petition for Review filed by petitioner Commissioner of Internal Revenue seeks to reverse the Decision of the Court of Tax Appeals Second Division *(Court in Division)*[1] promulgated on November 12, 2013, which partially granted respondent Philex Mining Corporation's claim for refund in the amount of P18,610,658.32, representing excess and unutilized input tax attributable to zero-rated sales for the fourth quarter of taxable year 2009.

THE FACTS

As culled from the records, respondent is a domestic corporation organized under Philippine laws with principal office at 27 Brixton St. Pasig City. It is engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing

[1] Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.

of mine products. It is VAT-registered with VAT Registration Certificate No. 35-6-000731 effective October 29, 1987. Its corresponding Application for Zero-Rate pursuant to Section 4.100-3 of Revenue Regulations No. 7-95 was approved effective April 12, 1998.

Respondent filed an original Quarterly VAT Return for the fourth quarter of 2009 on January 21, 2010. Subsequently, it filed an amended Quarterly VAT Return on September 13, 2011, reflecting therein a total zero-rated sales of P2,680,497,020.60, an importation of goods of P93,018,475.00 with input tax of P11,162,217.00, and purchases of services of P132,944,084.17 with input tax of P15,953,290.10.

Respondent filed on September 28, 2011 its claim for refund/tax credit in the amount of P27,115,507.10 with the One Stop Shop (OSS) Center of the Department of Finance (DOF) per Claim Information Sheet No. 49813.

Petitioner, who is in charge of the administration and enforcement of national internal revenue laws, including the granting of refund or credit of taxes under the Tax Code, failed to act on the administrative claim, prompting respondent to file the petition for review before the Court in Division on February 3, 2012.

The Court in Division rendered the assailed Decision on November 12, 2013, the dispositive portion of which reads:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent[2] is hereby ORDERED to REFUND in favor of petitioner[3] the amount of P18,610,568.32, representing its unutilized and excess input VAT attributable to its zero-rated sales for the fourth quarter of 2009.
>
> SO ORDERED."

Petitioner filed a motion for reconsideration on November 26, 2013, which was denied by the Court in Division in the Resolution dated January 7, 2014, the dispositive part of which reads:

> "WHEREFORE, premises considered, the instant Motion for Partial Reconsideration is hereby DENIED for lack of merit.
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> SO ORDERED."

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[2] Petitioner herein
[3] Respondent herein

Unsatisfied, petitioner filed the present Petition for Review [4] on February 7, 2014, which is within the extended period allowed by the Court *En Banc* per Minute Resolution [5] dated January 29, 2014. Petitioner presented the following grounds in support of her petition for review:

> I.
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> The Second Division failed to consider that respondent failed to prove that it submitted with the One Stop Shop the complete documents in support of its administrative claim for refund, hence, the evidence is insufficient to justify the decision.
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> II.
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> The Second Division failed to take into account that respondent's judicial claim for refund was prematurely filed.
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> III.
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> The Second Division erred in considering as valid all the final invoices bearing dates later than the dates of sales of petitioner's products.
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> IV.
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> The Second Division failed to deny the claim for refund for failure of respondent to submit subsidiary sales journal and subsidiary purchase journal.
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> V.
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> The Second Division failed to strictly construe against the respondent claimant the determination of the sufficiency of evidence submitted in support of the claim for refund.

Initially, the petition was dismissed by the Court *En Banc* in its Resolution promulgated on April 11, 2014 in view of petitioner's failure to attach to the petition the requisite verification and certification against forum shopping, coupled with her failure to attach a duplicate original or certified true copy of the decision and resolution appealed from.[6]

With the filing of petitioner's Motion for Reconsideration[7] on May 23, 2014, attaching therewith the documents which she earlier failed to submit, the petition was subsequently reinstated in the Court *En Banc's* Resolution[8] promulgated on September 25, 2014.

After considering the Petition for Review as well as the Comment[9] thereon filed by respondent on October 27, 2014, the case was given due

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[4] Rollo, p. 5.
[5] Rollo, p. 4.
[6] Rollo, pp. 50-53.
[7] Rollo, p. 55.
[8] Rollo, pp. 103-106.
[9] Rollo, p. 107.

course and eventually submitted for decision in the Resolution dated November 6, 2014.

PETITIONER'S ARGUMENTS

Petitioner argues that respondent failed to prove that it submitted with the OSS Center of the DOF the complete documents in support of its administrative claim for refund as required under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. She then asserts that without the submission of complete documents, respondent's judicial claim for refund was prematurely filed since the 120-day period within which she should have acted on the claim did not start to run; as a consequence, the running of the 30-day period within which to appeal to the Court in Division has yet to commence.

Petitioner further avers that the Court in Division should have excluded in the computation of zero-rated sales the final invoices dated outside the period of claim, citing the rule regarding strict construction of tax refund against the taxpayer and liberally in favor of the government. She even notes that respondent failed to submit subsidiary sales journal and subsidiary purchase journal required under Section 113(C) of the NIRC and Section 4.113.3 of Revenue Regulations No. 16-2005.

RESPONDENT'S COUNTER-ARGUMENTS

Respondent counter-argues that the grounds presented in the case at bar were similarly raised by petitioner in G.R. No. 207049 entitled *"Commissioner of Internal Revenue v. Philex Mining Corporation"*, and the same were rejected in the Resolution of the Supreme Court dated November 11, 2013, which became final and executory on December 18, 2013.

Respondent contends that the BIR records submitted by petitioner to the Court belie her contention that respondent failed to submit complete documents to support the claim for refund. Allegedly, among the documents found in the BIR Records is a copy of its letter to the OSS Center of the DOF dated September 6, 2011 listing therein the general description of documents submitted in support of its claim for refund; and considering that the supporting documents were filed with the OSS Center of the DOF on September 28, 2011 together with the application for refund, the 120-day period started to run from said date. Accordingly, its judicial claim filed on February 3, 2012 was filed within the 30-day appeal period after the lapse of the 120-day period on January 26, 2012.

Respondent argues that the term "complete documents" in Section 112(C) of the NIRC means those documents necessary to support the application for refund as determined by the taxpayer.

It likewise asserts that the final invoices, though bearing later dates, actually covered the export sales in the fourth quarter of 2009 considering the related provisional invoice, bill of lading and export declaration of each final invoice.

Finally, respondent states that determination of sufficiency of evidence to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.

THE ISSUE

Whether or not it was proper for the Court in Division to grant respondent's claim for refund in the amount of P18,610,658.32, representing excess and unutilized input tax attributable to zero-rated sales for the fourth quarter of taxable year 2009.

THE RULING OF THE COURT *EN BANC*

Respondent's appeal before the Court in Division was seasonably filed.

Appeals in relation to claims for refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales is governed by Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> (A) Zero-Rated or Effectively Zero-Rated Sales. – xxx
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> xxx xxx xxx
>
> (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 Subsection (A) hereof.

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> 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**." *(Boldfacing supplied)*

The above-quoted provision is categorical in saying that a taxpayer may appeal the denial or the inaction of the Commissioner of Internal Revenue (CIR) within thirty (30) days from receipt of the decision denying the claim or the expiration of the 120-day period given to the CIR to decide the claim,[10] reckoned from the date of submission of complete documents.

As earlier stated, it is the contention of petitioner that respondent's judicial claim for refund was prematurely filed for failure to submit complete documents in the administrative level. Petitioner however failed to specify the documents which were allegedly not submitted by respondent before the administrative level.

In ***Applied Food Ingedients Company, Inc. vs. Commissioner of Internal Revenue***,[11] the Supreme Court clarified that:

> "The Commissioner of Internal Revenue (CIR) had one hundred twenty (120) days from the date of submission of complete documents in support of the application within which to decide on the administrative claim.
>
> In relation thereto, **absent any evidence to the contrary and bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application** filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively." *(Boldfacing supplied)*

Applying the above pronouncement, the 120-day period for the CIR to act on respondent's administrative claim for refund started to run on September 28, 2011, the date the latter filed its application for refund/tax credit with the OSS Center of the DOF, absent any evidence regarding subsequent submission of documents to further support the application for refund. The filing of the petition for review, therefore, with the Court in

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[10] Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 196907, March 13, 2013.
[11] G.R. No. 184266, November 11, 2013.

Division on February 3, 2012, was within the 30-day appeal period, reckoned from the lapse of the 120-day period on January 26, 2012.

Respondent is entitled to refund as correctly ruled by the Court in Division

Petitioner contends that the evidence is insufficient to justify the decision due to the alleged failure of respondent to prove submission of complete documents in the administrative level.

Foremost, if there is indeed truth to the allegation of non-submission of complete documents before the BIR, petitioner could have simply denied outright the administrative claim on that ground, and not allow the lapse of considerable length of time without action on respondent's claim.

Moreover, it is worth mentioning that cases filed before this Court, being a court of record, are litigated de novo and party litigants should prove every minute aspect of their cases.[12] Judicial claims are being decided based on what has been presented and formally offered by party litigants during trial. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound judgment of the Court.[13]

The Court *En Banc* sees no reason to deviate from the conclusion reached by the Court in Division in partially granting refund as the same is supported by pieces of evidence, which prove respondent's compliance with the requirements for refund of its claimed input tax attributable to zero-rated sales for the fourth quarter of taxable year 2009. In the language of the Court in Division:

> "The present claim covers the fourth quarter of 2009, which closed on December 31, 2009. Counting two years from this date, petitioner had until December 31, 2011 within which to file its administrative claim for refund. Clearly, **petitioner's administrative claim for refund** filed on September 28, 2011, with the OSS Center of the Department of Finance under Claim Information Sheet No. 49813 **is well within the two-year prescriptive period** prescribed under Section 112(A) of the NIRC of 1997, as amended.
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> xxx xxx xxx

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[12] Dizon vs. Court of Tax Appeals, G.R. No. 140944, April 30, 2008.
[13] Commissioner of Internal Revenue vs. Philippine Airlines, Inc., CTA EB Case No. 775, November 13, 2012.

The fact that **petitioner is a VAT-registered** is not disputed. Pursuant to its Long Term Gold and Copper Concentrate Sales Agreement with Pan Pacific Copper Co., Ltd. of Tokyo, Japan, for the period covering the fourth quarter of 2009, **petitioner actually shipped mineral products to Pan Pacific Copper Co., Ltd. of Tokyo, Japan and generated export sales** in the amount of US$57,254,096.00, **as shown in petitioner's Schedule of Export Sales, which are duly substantiated by provisional invoices, final invoices, bills of lading, export declarations**. Likewise, **the foreign currency proceeds derived from said export sales were inwardly remitted and accounted for in accordance with the rules and bank regulations of the Bangko Sentral ng Pilipinas as evidenced by the bank certifications and entries in petitioner's passbook in local banks of the payments received**.

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After having resolved that petitioner had VAT zero-rated sales for the fourth quarter of 2009 in the total amount of P2,680,497,020.60, the Court proceeds to determine whether petitioner complied with the second, third and fourth requisites to be entitled to a refund or tax credit of unutilized input VAT, *i.e.*, whether petitioner incurred or paid input taxes in connection with its zero-rated sales and if said input taxes were not applied against any output VAT liability of petitioner.

As stated earlier, petitioner's amended Quarterly VAT Return for the fourth quarter of 2009 reflected an input VAT of P11,162,217.00 on importations of goods other than capital goods and input VAT of P15,953,290.10 on domestic purchases of services or a total of P27,115,507.10, as shown below:

xxx xxx xxx

To determine the accuracy of petitioner's declaration, **the ICPA examined the voluminous documents of petitioner in support of its claim for refund**. In her Report, the ICPA noted the following findings:

xxx xxx xxx

Based on the above ICPA's findings, petitioner's claim in the amount of P7,225,052.63 shall be disallowed for the reasons stated below:

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In addition, petitioner's claimed input taxes on domestic purchase of services in the amount of P349,678.31 shall be disallowed because the VAT was not separately indicated in the supporting VAT official receipts which is in violation of Section 113(B)(2)(a) of the NIRC of 1997, as amended. xxx

Therefore, **out of petitioner's reported input VAT for the fourth quarter of 2009 in the amount of P27,115,507.10 only the amount of P19,540,776.16 represents petitioner's valid input** tax for the fourth quarter of 2009, tabulated herein below: xxx

> A portion, however, of the P19,540,776.16 input VAT shall be applied against petitioner's reported output VAT liability for the fourth quarter of 2009 in the amount of P930,207.84. Consequently, only the remaining **input VAT of P18,610,568.32 can be attributed to the entire zero-rated sales declared and substantiated by petitioner**, as computed below: xxx
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> Although **the claimed input VAT** was carried-over by petitioner in its succeeding Quarterly VAT Returns from the first quarter of 2010 to the second quarter of 2011, the same **remained unutilized since it was deducted in its Quarterly VAT Return for the second quarter of 2011, as 'VAT Refund/TCC claimed' from the total available input tax of P284,063,682.41. Thus, the claimed input taxes for the fourth quarter of 2009 could not have been carried-over/utilized in the succeeding third quarter of 2011**.
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> xxx xxx xxx
>
> In this case, records reveal that **petitioner submitted sufficient evidence to prove that it is entitled to the refund of its excess and unutilized input VAT attributable to its zero-rated sales for the fourth quarter of 2009**. Hence, non-submission of petitioner's subsidiary sales journal and subsidiary purchase journal is not sufficient to deprive petitioner of its right to said refund." *(Boldfacing supplied)*

The Court in Division did not err in considering the amount of zero-rated sales of petitioner which were likewise supported by final invoices dated outside the period of claim as the provisional invoices and bills of lading prove that sales were actually generated during the period of claim.

Petitioner faults the Court in Division in not excluding from the computation of zero-rated sales of petitioner the final invoices which were dated outside the period of claim.

Records disclose, however, that aside from the final invoices, respondent was able to present its provisional invoices, bills of lading and export declarations which prove zero-rated sales of respondent during the period of claim. The Court in Division correctly concluded that the shipment date indicated in the bills of lading and provisional invoices is the date of sale transaction. The presence of the final invoices (which bear dates later than the dates of shipment as indicated in the bills of lading and provisional invoices) does not remove the fact that **sales and actual shipment** of goods from the Philippines to a foreign country as contemplated under Section

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106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended,[14] had actually transpired during the period of claim.

The final invoices are additional evidence to further support respondent's claimed zero-rated sales since the same were issued by respondent in reference to the same sales transaction consummated during the period of claim. As stated in the assailed Decision, aside from the provisional invoice issued by respondent upon shipment, a final invoice was issued after the contracting parties reached an agreement regarding the final settlement of weighs, assays and quotations or final value of the shipment which is done after arrival of the shipment at the port of loading. Obviously, the final invoices dated outside the period of claim do not cover separate sales transactions for different taxable period but the same relates to the sales transactions of respondent during the period of claim as indicated in the provisional invoices, bills of lading and export declarations.

Presentation before the Court of the subsidiary sales journal and subsidiary purchase journal is not required for refund of input tax attributable to zero-rated sales

Section 112(A) of the NIRC of 1997, as amended, specifies the requirements for refund or issuance of tax credit certificate of input tax attributable to zero-rated or effectively zero-rated sales, to wit:

> "SEC. 112.*Refunds or Tax Credits of Input Tax.-*
>
> (A) *Zero-rated or Effectively Zero-rated Sales.-* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales

[14] SEC. 106. Value-Added Tax on Sale of Goods or Properties. - (A) Rate and Base of Tax. - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) Export Sales. - The term 'export sales' means:
(1) The **sale and actual shipment** of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"

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

There is nothing in the afore-quoted provision of the NIRC of 1997 which requires the presentation of the subsidiary sales journal and subsidiary purchase journal in order that a taxpayer may be entitled to refund, or issuance of tax credit certificate, of its claimed input tax attributable to zero-rated sales. Truth to tell, in order to be entitled to a refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales, only the following requisites must be complied with:

a) the taxpayer is VAT-registered;

b) the taxpayer is engaged in zero-rated or effectively zero-rated sales;

c) the input taxes are due or paid;

d) the input taxes are not transitional input taxes;

e) the input taxes have not been applied against output taxes during and in the succeeding quarters;

f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

g) 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 the rules and regulations of the Bangko Sentral ng Pilipinas;

h) 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; and

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i) the claim is filed within two years after the close of the taxable quarter when such sales were made.[15]

Verily, the Court in Division judiciously ruled that the non-submission of respondent's subsidiary sales journal and subsidiary purchase journal is not sufficient to deprive respondent of its right to refund as records disclose that respondent was able to prove its compliance with the afore-mentioned requirements for refund.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[15] Luzon Hydro Corporation vs. Commissioner of Internal Revenue, G.R. No. 188260, November 13, 2013.

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