Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION
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TBG DEVELOPMENT PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7593

Members:

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

Promulgated:
DEC 02 2008 ; 1:00 pm

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DECISION

CASANOVA, *J.*

Before Us is a Petition for Review seeking a refund or issuance of a tax credit certificate in the amount of P2,884,750.00 allegedly representing unutilized input value-added tax paid on the purchase of a parcel of land in the 1st quarter of taxable year 2005.

TBG Development Philippines, Inc. (petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at the 30th Floor, Citibank Tower, 8741 Paseo de

Roxas, Makati City[1]. It is engaged in the real estate business and was duly registered with the Securities and Exchange Commission as such[2]. Likewise, petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer[3].

The Commissioner of Internal Revenue (respondent), on the other hand, is tasked, among others, to act upon and approve claims for refund or tax credit certificate[4], with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

During the 1st quarter of 2005, petitioner purchased from the First Philippine Industrial Park, Inc. (FPIP) a parcel of land with Transfer Certificate of Title (TCT) No. T-91501 situated in the First Philippine Industrial Park in Barangay Sta. Anastacia, Sto. Tomas, Batangas. The purchase price of the property was P28,847,500.00 plus 10% Value Added Tax (VAT) of P2,884,750.00[5].

Petitioner alleged that the purchased property was leased to TANN Philippines, Inc. (TPI), an entity duly registered with the Philippine Economic Zone Authority (PEZA) as shown by its Certificate of Registration No. 02-016, dated April 16, 2002.[6] Pursuant to Revenue Memorandum Circular No. 74-99,

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[1] Joint Stipulation of Facts and Issues (JSFI), Par. 3, Rollo, p. 118.
[2] Ibid., Par. 5, ibid.
[3] Ibid, Par. 6, ibid.
[4] Ibid., Par. 4, ibid.
[5] Ibid, Par. 2, Rollo, p. 117; Exhibit "B", Rollo, pp. 182-187.
[6] Petition for Review, Par. 12, Rollo, p. 4; JSFI, Par. 11, Rollo, p. 119; Exhibit "J', Rollo, pp. 255-264.

petitioner alleged that its sale of service to TPI is subject to zero percent VAT.[7] Hence, the input VAT paid on the purchased land from FPIP may be refunded or claimed as tax credit. Petitioner further alleged that this conclusion is supported by the fact that such input VAT in the amount of P2,884,750.00 was never credited against petitioner's liability in the subsequent quarters.[8]

On October 3, 2005, petitioner filed a claim for refund with the BIR or the issuance of a tax credit certificate (TCC) for the amount of P2,884,750.00. From the time of filing up to the present, there was no final action on the part of the respondent on said claim for refund or issuance of TCC.[9]

The inaction of the respondent on petitioner's claim for refund prompted the latter to elevate the case before this Court on March 30, 2007.

In Answer to the Petition, respondent raised the following Special and Affirmative Defenses:[10]

> "4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
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> 5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
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> 6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;
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> 7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended as well as the

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[7] Ibid., Par. 13, ibid, p. 5.
[8] Ibid, Par. 31, ibid., p. 12.
[9] JSFI, Par. 10, Rollo, p. 119; Exhibit "X', Rollo, pp. 273-275.
[10] Answer, Rollo, pp. 90-91.

requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 and Revenue Regulations No. 7-95, as amended; and

8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**"

Petitioner presented both testimonial and documentary evidence mainly proving non-utilization of the corresponding input VAT paid on the purchase of land. Respondent submitted the case for decision without presenting any evidence.[11]

The parties jointly stipulated on the following issues to be resolved by this Court[12]:

"1. Whether or not petitioner has unutilized input VAT in the amount of P2,884,750.00 on its alleged purchases of capital goods for the [1st] quarter of 2005;

2. Whether or not petitioner's alleged unutilized input VAT on domestic purchases of capital goods for the first quarter of 2005 have been applied against its output taxes;

3. Whether or not the goods purchased on which the corresponding input VAT was paid are considered capital goods;

4. Whether or not the domestic purchases of capital goods on which the input VAT was paid are used by [p]etitioner in its VAT taxable business; and

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[11] Transcript of Stenographic Notes (TSN), May 13, 2008, p. 3.
[12] JSFI, Rollo, pp. 119-120.

5. Whether or not [p]etitioner's sale of services to TPI qualifies as zero-rated sale;

6. Whether or not [p]etitioner's claim for refund/tax credit of alleged unutilized input VAT allegedly attributable to its domestice purchases of capital goods for the [1st] quarter of 2005 in the amount of P2,884,750.00 is substantiated by documentary evidence."

The issues being inter-related shall be discussed concurrently.

Petitioner anchors its claim on Sections 110(B) and 112(A) of the 1997 NIRC, as amended, and on Section 3 of Revenue Memorandum Circular (RMC) No. 74-99, to wit:

"SEC. 110. Tax Credits. —

xxx xxx xxx

(B) Excess Output or Input Tax. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

"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 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 volume of sales."

"SECTION 3. Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise. —

xxx xxx xxx

3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the "Cross Border Doctrine" of the VAT system."

The above section cited by petitioner further states that RMC 74-99 "shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular.

Refund of input taxes on land shall be allowed to the extent that such land is used in VAT taxable business."

According to the foregoing provisions, a VAT-registered taxpayer may claim for refund or issuance of a tax credit certificate when it has input taxes attributable to zero-rated sales or effectively zero-rated sales.

Petitioner's VAT Return for the 1st quarter of 2005[13] shows zero-rated sales of P744,360.00. To prove its reported zero-rated sales, petitioner submitted its lease contract with TPI[14], and sales invoices it issued to TPI for the quarterly lease rentals due[15]. An examination of the said documents shows that the amount of P744,360.00 treated by petitioner as zero-rated sales consisted of lease rentals for the use or lease of the subject parcel of land for the first quarter of 2005. The fact that TPI is an "ecozone" enterprise duly-registered with the PEZA is undisputed as the parties so stipulated to this effect.[16] Thus, petitioner's sale of services to TPI qualifies as zero-rated sales and input tax on its purchase of land appears to be refundable upon compliance with other requisites.

Section 113 of the 1997 NIRC and Section 4.108-1 of Revenue Regulations (RR) No. 7-95 prescribe that a VAT-registered person like petitioner shall, for every sale, issue an invoice or receipt which must contain specifically required information. The afore-cited provisions are quoted hereunder for ready reference, to wit:

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[13] Exhibit "N", Rollo, p. 266.
[14] Exhibit "J", Rollo, pp. 255-264.
[15] Exhibits "WW", "XX", "YY", and "ZZ", Rollo, pp. 336-339.
[16] JSFI, Par. 11, Rollo, p. 119.

"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —

(A) Invoicing Requirements. — A VAT-registered person shall, for every sale, issue an invoice or **receipt**. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A **statement that the seller is a VAT-registered person, followed by his taxpayer's identification number** (TIN); and

(2) The **total amount which the purchaser pays** or is obligated to pay to the seller **with the indication that such amount includes the value-added tax.**" (Emphasis supplied)

"SECTION 4.108-1. Invoicing Requirements — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the **name, TIN and address of seller**;
2. **date of transaction**;
3. **quantity, unit cost and description of merchandise or nature of service**;
4. the **name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client**;
5. the **word 'zero rated'** imprinted on the invoice covering zero-rated sales; and
6. the **invoice value or consideration.**

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

> If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code." (Emphasis supplied)

The above laws and regulation appear to make no distinction as to the evidentiary value of an invoice or official receipt, however, the same must be taken together with Sections 106(A) and (D), as well as Sections 108(A) and (C) of the NIRC of 1997, which provide for the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively. The above-cited provisions are hereby quoted as follows:

> **"SEC. 106. Value-added Tax on Sale of Goods or Properties. —**
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> (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.
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> xxx xxx xxx
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> (D) Determination of the Tax. —
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> (1) **The tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11).**" (Emphasis supplied)

From the foregoing, in the case of sale of goods or properties, a ten percent (10%) VAT is imposed upon the **gross selling price**. This is defined under Section 106 (A) (1) 2nd paragraph of the NIRC of 1997, as follows:

"The term '*gross selling price*' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter, or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price."

In other words, the VAT on the sale of goods or properties accrues upon the **consummation of sale** regardless of whether or not the consideration thereof was actually received. It is for this reason that the afore-cited Section 106(D) of the 1997 NIRC provides that the tax shall be computed by multiplying the total amount indicated in the **invoice** by one-eleventh (1/11).

On the other hand, in the case of sale of services and use or lease of properties, the 10% VAT is computed based on **gross receipts** pursuant to Section 108(A) of the 1997 NIRC, as quoted hereunder:

"**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —**

(A) Rate and Base of Tax. — **There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services**, including the use or lease of properties." (Emphasis supplied)

The term "gross receipts" is defined under Section 108 (A) of the NIRC same Code reads as follows:

"The term '*gross receipts*' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

Plainly, the VAT on the sale of services accrues upon **actual or constructive receipt of the consideration** irrespective of whether or not the service has been rendered. In addition to this, Section 108(C) of the 1997 NIRC provides that the tax on the sale of services shall be computed by multiplying the total amount indicated in the **official receipt** by 1/11.

In other words, the VAT law and regulations require that **sales invoices** must support the **sale of goods or properties** whereas **official receipts** must substantiate the **sale of services**. It is further required that invoices and official receipts must contain all the necessary information such as the taxpayer's TIN-VAT, be duly registered with the BIR, and the imprinted word "zero-rated" in the case of zero-rated sales transactions.

In order to be entitled to the instant claim, petitioner must show proof of compliance with the substantiation requirements as mandated by law and regulations. Revenue Memorandum Circular (RMC) No. 42-2003 clarified the issue relative to the result of failure of a claimant to comply with certain invoicing requirements. Under said RMC, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input VAT by the purchaser-claimant. Thus, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer but said taxpayer fails to comply with the invoicing requirements in the issuance of sales invoice or official receipt the claim for tax credit/ refund of VAT on its purchases shall be denied.

Considering that the subject revenues pertain to gross receipts from the lease contract between petitioner and TPI, valid official receipts and not mere sales invoices should have been submitted in support thereof. Without proper VAT official receipts, the lease rentals it received from TPI for the first quarter of 2005 amounting to P744,360.00 cannot qualify for zero-rating for VAT purposes. Consequently, the claimed input VAT payments allegedly attributable thereto in the amount of P2,884,750.00 cannot be granted. It is clear from the provisions of Section 112(A) of the 1997 NIRC, as amended, that there must be zero-rated sales or effectively zero-rated sales in order for a refund claim of input VAT could prosper.

Subparagraph (B) of the same Section 112 of the 1997 NIRC provides for another instance when refunds or tax credits of unutilized input tax may be claimed, to wit:

> **"SEC. 112. Refunds or Tax Credits of Input Tax. —**
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> xxx xxx xxx
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> **(B) Capital goods. —** A VAT registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Section 4.106-1 (b) of Revenue Regulations (RR) No. 7-95 defines capital goods in the following manner:

> **"SECTION 4.106-1. Refunds or tax credits of input tax. —**

xxx xxx xxx

(b) Capital Goods – Only VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be ratable portion corresponding to the taxable operations.

"Capital goods or properties" refer to goods or properties with **estimated useful life greater than one year** and which are **treated as depreciable assets** under Section 29(f), **used directly or indirectly in the production or sale of taxable goods and services**. (Emphasis supplied)

With the above definition, land cannot be considered as capital goods since it is not subject to depreciation; on the contrary, the value of land appreciates over time. In effect, this likewise bars petitioner claim for refund under Section 112 of the 1997 NIRC.

Nonetheless, petitioner is not precluded from its refund claim. Section 4.106-1(c) of RR No. 7-95 states that:

"SEC. 4.106-1. Refunds or tax credits of input tax. —

xxx xxx xxx

(c) Land — Only a VAT registered person may apply for the issuance of a tax credit certificate or refund of input taxes on land purchased to the extent that such input has not been applied to output tax. The application should be made within two (2) years after the close of the taxable quarter when the purchase was made.

Refund of input taxes on land shall be allowed to the extent that such land is used in VAT taxable business."

From the foregoing, in order for the taxpayer to be entitled to refund, it has only to prove compliance with the following requisites:

1. That it is VAT-registered person;
2. That it purchased a parcel of land;
3. That the purchase of a land is substantiated by sufficient evidence;
4. That the input taxes have not been applied against the output taxes;
5. That the application for the refund of unutilized or excess creditable input VAT arising from the purchase of land has been made within two (2) years after the close of the taxable quarter when the purchase was made; and
6. That the land subject of the purchase was used by the taxpayer/applicant in his VAT taxable business.

Petitioner is a VAT-registered person and this fact is undisputed as the parties so stipulated to this effect.

As regards the second and third requirements, records reveal that petitioner purchased a parcel of land from First Philippine Industrial Park, Inc. on March 15, 2005 for a consideration of P28,847,500.00 and paid the related input VAT thereon in the amount of P2,884,750.00 as evidenced by a Deed of Absolute Sale[17], VAT Sales Invoice[18], VAT Official Receipts[19] and Transfer Certificate of Title [20].

[17] Exhibit "B", Rollo, pp. 182-187.
[18] Exhibit "H", Rollo, p. 250.
[19] Exhibit "D", Rollo, p. 246.
[20] Exhibit "I", Rollo, p. 251.

On the fourth requisite, this Court finds that petitioner has not applied its input tax against output taxes. While it is true that petitioner carried over its input tax for the first quarter of 2005 to the second and third quarters, the records show that it remained unutilized up to the third quarter of the same taxable year since petitioner reported no taxable sales subject to 10% VAT for 2005[21]. Moreover, in its VAT return for the said quarter, petitioner deducted the amount P2,884,750.00 as "Any VAT Refund/TCC Claimed" [22] from the "Total Available Input Tax" of P3,133,190.88. This means that the input VAT claim of P2,884,750.00 can no longer be used as credit against petitioner's future output VAT liability.

As regards the fifth requisite, petitioner complied with the same. The reckoning of the two (2)-year prescriptive period for the filing of a claim for input VAT refund commences from the date of filing of the corresponding quarterly VAT return. However, considering that petitioner's Quarterly VAT Return for the 1st quarter of 2005 was belatedly filed on September 21, 2005, the two (2)-year prescriptive period shall be reckoned from April 25, 2005, the last date prescribed by law and regulations for the filing thereof. Thus, the administrative claim[23] and the judicial action filed on October 3, 2005 and on March 30, 2007, respectively, were timely made.

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[21] Exhibits "N", "Q", "T" and "W', Rollo, pp. 266-272.
[22] Exhibit T, Line 25A, Rollo, p. 269.
[23] Exhibit "X", Rollo, pp. 273-275.

Going now to the final requisite, it is an admitted fact that petitioner is primarily engaged in the real estate business and is registered with the Securities and Exchange Commission [24]. Petitioner leased to TPI a parcel of land with a total area of 23,059 square meters covered by TCT Nos. T-91501 and T-114356[25]. Hence the subject land was used by petitioner in its VAT taxable business. This was attested to by Ms. Josephine S. Ramos, petitioner's accountant[26].

With the foregoing discussion, this Court concludes that petitioner has sufficiently proven its entitlement to the refund or issuance of a tax credit certificate in the amount of P2,884,750.00 representing unutilized input VAT on its purchase of land in the first quarter of 2005. Therefore, petitioner is entitled to the said input VAT paid on capital goods pursuant to Section 112 (B) of the 1997 NIRC.

WHEREFORE, the instant Petition for Review before Us is **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the total amount of **TWO MILLION EIGHT HUNDRED EIGHTY FOUR THOUSAND SEVEN HUNDRED FIFTY PESOS (P2,884,750.00)**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[24] JSFI, Pars.5 and 6, Rollo, p. 118; Exhibits TT and TT-1, Rollo, p. 314.
[25] Exhibit "J" and "J-1", Rollo, pp. 255-264.
[26] Exhibit "SS", Rollo, pp. 302-311.

WE CONCUR:

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