REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIP MORRIS PHILIPPINES MANUFACTURING INC., *Petitioner,*	**CTA EB NO. 1929** (CTA CASE NO. 8791)
-versus-	**Present:** **Del Rosario,** *P.J.,* **Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena,** *and* **Modesto-San Pedro,** *JJ*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAR 0 9 2020 3:48 p.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review[1] seeking nullification of the Decision dated May 9, 2018[2] (Assailed Decision) and Resolution[3] dated August 22, 2018 (Assailed Resolution), all promulgated by the First Division of this Court (Court in Division) in CTA Case No. 8791 entitled "*Philip Morris Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue*" which dismissed for lack of jurisdiction the petitioner's claim for refund or issuance of a tax credit certificate in the amount of P10,851,411.00, allegedly representing the excise tax advanced or deposited by petitioner on cigarette products it exported for the period 3 April 2008 until 31 December 2008, for having prescribed

[1] Rollo, CTA EB No. 1929, pp. 78-112, with annexes.
[2] Ibid., pp. 116-131.
[3] Ibid., pp. 132-133.

pursuant to Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

The dispositive portions of the assailed Decision and Resolution are as follows:

Decision:

> "**WHEREFORE**, premises considered, the Petition for Review filed by Philip Morris Philippines Manufacturing, Inc. is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

Resolution:

> "**WHEREFORE**, premises considered, petitioner's "**Motion for Reconsideration (of the Decision dated May 9, 2018)**" filed on May 29, 2018 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner Philip Morris Philippines Manufacturing Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at 2/F Allied Bank Center, 6754 Ayala Avenue, Makati City.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), with office address at the Office of the Commissioner of Internal Revenue, Bureau of Internal Revenue, National Office Buiding, Agham Road. Diliman, Quezon City, Metro Manila.

THE FACTS

The facts as culled from the Assailed Decision[4] and the records of the case are as follows:

[4] Citations omitted.

> "On January 22, 2008, respondent issued RR 03-08 (Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removals of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Products Replenishment).
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> Petitioner claims that from 3 April 2008 to 31 December 2008, in compliance with Revenue Regulations No. 03-08, it advanced the excise tax on tobacco and cigarette products it exported. As of December 31, 2008, the advanced excise tax which remains unreplenished or unrefunded under RR 03-08 amounts to P10,851,411.00.
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> On February 25, 2014, petitioner filed with the Bureau of Internal Revenue (BIR) Large Taxpayers Excise Audit Division II an administrative claim for refund or issuance of a tax credit certificate in the total amount of P10,851,411.00 representing excise tax advanced in 2008 by petitioner on its exported tobacco, pursuant to RR 03-08.
>
> Claiming inaction on its administrative claim, and that the six-year prescriptive period under Article 1145 (2) of the Civil Code is about to expire, petitioner filed the present Petition for Review on March 28, 2014 based on Section 130(D) of the NIRC of 1997, as amended."

In the Answer filed by the CIR on July 2, 2014,[5] the CIR raised the following as his Special and Affirmative Defenses: (1) the nullification of RR 03-08 does not fall under the special jurisdiction granted by statute to the Court of Tax Appeals (CTA), thus, the Petition for Review should not be given due course for lack of jurisdiction; (2) a collateral attack on presumably valid administrative issuance is not allowed; (3) the administrative claim for refund are construed strictly against the taxpayer and in favor of the government.

In the Joint Stipulation of Facts and Issues,[6] the parties agreed that the main issue to be resolved by the Court in Division is:

> "Whether Petitioner is entitled to a refund or issuance of a tax credit certificate for the total amount of P10,851,411.00 allegedly corresponding to the excise tax advanced or deposited

[5] Docket, CTA Case No. 8791 pp. 94-113.
[6] Ibid., p. 290-299

> by Petitioner on tobacco and cigarette products it exported for the period of 3 April 2008 to 31 December 2008."

The parties also agreed that the resolution of the main issue will also resolve the resolution of the following sub-issues:

> "1. Whether the amounts corresponding to the excise tax advanced or deposited by Petitioner under RR 03-08 should be returned to Petitioner in accordance with Section 130(D) of the Tax Code and/or the principle of *solutio indebiti.*
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> 2. A. Whether the Honorable Court has jurisdiction to rule on the validity of the provisions of RR 03-08.
> B. Assuming that this Honorable Court has jurisdiction to rule on the validity of the provisions of RR 03-08, whether the provisions of RR 03-08 should be declared null and void.
>
> 3. Whether Petitioner's right to claim for refund in the amount of Php10,851,411.00 allegedly representing excise tax advanced or deposited by Petitioner on tobacco and cigarette products it exported for the period of 3 April 2008 to 31 December 2008 has already prescribed."

After trial on the merits, and upon submission of the parties' respective memoranda, the case was submitted for decision on January 9, 2018.[7]

On February 27, 2018, the Court in Division rendered the questioned Decision.[8]

On May 29, 2018, petitioner filed a "Motion for Reconsideration (of the Decision dated 9 May 2018)."[9]

On June 25, 2018, respondent filed his Opposition (re: Petitioner's Motion for Reconsideration)."[10]

On August 22, 2018, the Court in Division issued a Resolution[11] on the Motion for Reconsideration.

[7] Ibid. p. 920.
[8] Ibid. pp. 925-940.
[9] Ibid. pp. 941-961.
[10] Ibid. pp. 401-412.
[11] Ibid., pp. 599-615.

On September 17, 2018, petitioner filed a "Manifestation"[12] stating that on September 14, 2018, it was constrained to file its Petition for Review before this Court by registered mail, in lieu of personal filing, due to the suspension of work of the CTA offices because of heavy rains caused by Typhoon Ompong.

On September 18, 2018, the Court *En Banc* received petitioner's Petition for Review filed through registered mail on September 14, 0218.

On September 20, 2018, the Court *En Banc* issued a Minute Resolution[13] which noted the "Manifestation" filed by petitioner.

On October 4, 2018, the Court *En Banc* issued a Resolution[14] ordering the respondent to file a Comment on the Petition for Review within ten (10) days from notice.

On February 6, 2019, the Court *En Banc* issued a Resolution stating that respondent failed to file his Comment. Hence, the parties were ordered to file their respective memoranda within thirty (30) days from receipt of the said Resolution.[15]

On March 13, 2019, respondent filed a "Motion for Extension of Time to File Memorandum"[16] praying that it be given an additional period of fifteen (15) days from March 13, 2019 or until March 28, 2019, within which to file his Memorandum.

On March 18, 2019, the Court *En Banc* issued a Minute Resolution[17] which granted respondent's "Motion for Extension of Time to File Memorandum."

On March 18, 2019, petitioner filed its "Memorandum for Petitioner"[18] dated March 18, 2018.

On March 28, 2019, respondent filed his "Memorandum"[19] dated March 28, 2019.

On April 11, 2019, the Court *En Banc* issued a Resolution[20] submitting the case for decision.

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[12] Rollo, CTA EB No. 1929, pp. 1-3, with Annexes.
[13] Ibid., p. 153.
[14] Ibid., pp. 155-156.
[15] Ibid., pp. 159-160.
[16] Ibid., pp. 161-164.
[17] Ibid., p. 165.
[18] Ibid., pp. 166-200.
[19] Ibid., pp. 202-211.
[20] Ibid., pp. 170-171.

ASSIGNED ERRORS

The petitioner assigns the following errors:

A. The First Division erred in failing to rule on the issue of whether RR 03-08 is void for being in conflict with the provisions of Sections 129 and 130 (D) of the Tax Code;

B. The First Division erred in denying Petitioner's claim for refund on the ground that the same was filed beyond the two-year prescriptive period for filing administrative and judicial claims for refund as provided under Sections 204(C) and 229 of the Tax Code; and

C. The First Division erred in denying Petitioner's claim for refund on the ground that the principle of *solutio indebiti* is not applicable in this case.

THE ISSUE

The principal issue to be resolved by the Court *En Banc* is whether or not the Court in Division erred in dismissing the Petition for Review for lack of jurisdiction.

THE RULING OF THE COURT *EN BANC*

After a careful review of the parties' respective arguments, and the records of the case, the Court *En Banc* finds no reason to reverse the assailed Decision and Resolution of the Court in Division. The Court *En Banc* notes that the arguments presented herein are basically the same arguments offered by petitioner in its Motion for Reconsideration before the Court in Division which were exhaustively resolved by the Court in Division in the assailed Decision. Nonetheless, the Court *En Banc* shall discuss the issues raised by the parties to stress the salient points in the assailed Decision and Resolution.

Whether the Court in Division erred when it dismissed the Petition for Review for lack of jurisdiction

Petitioner maintains that the two-year prescriptive period provided under Sections 204(C)[21] and 229[22] of the NIRC of 1997, as amended is not

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[21] "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may –

applicable in this case because the amount sought to be recovered is excise tax paid in advance for goods that are actually exported; that the specific provision of law applicable to the instant claim for refund is Section 130(D)[23] of the NIRC of 1997, as amended and that the amounts paid pursuant to RR 03-08 are in the nature of advance or deposited taxes, which should be returned to petitioner under the principle of *solutio indebiti.*

On the other hand, respondent avers that Section 130 (D) of the NIRC of 1997, as amended does not apply in this case; that petitioner should have filed its claim in accordance with RR 03-08's terms instead of erroneously concluding that its case is covered by the six-year prescriptive period; and that petitioner's reliance on the principle of *solutio indebiti* to support the application of the six-year prescriptive period has no leg to stand on.

After consideration, the Court *En Banc* finds petitioner's arguments without merit. The Court *En Banc* agrees with the finding of the Court in Division that petitioner failed to timely file its administrative and judicial claims for refund within the two (2)-year prescriptive period under Sections 204 and 229 of the NIRC of 1997, as amended.

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(C) Credit or refund taxes erroneously or illegally receive or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund."

[22] "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No Suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner, may even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

[23] "SEC. 130 Filing of Return and Payment of Excise Tax on Domestic Products. –
xxx xxx xxx

(D) Credit for Excise Tax on Goods Actually Exported. –

When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of proof of actual exportation and upon receipt of the corresponding foreign exchange payment: *Provided,* That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported."

In claiming refund of excise taxes paid in advance for locally manufactured products which were subsequently exported, the two (2)-year period to file administrative and judicial claims applies. In this case, the excise taxes that petitioner paid in advance became illegally paid or erroneously collected upon petitioner's exportation of its locally manufactured products. The petitioner's exportation of locally manufactured products allegedly took place during April 3, 2008 to December 31, 2008. Thus, petitioner should have filed its administrative and judicial claims for refund within two (2) years therefrom. However, petitioner's administrative claim for refund was filed only on February 25, 2014,[24] while the judicial claim for refund was filed on March 28, 2014.[25] Hence, the Court was divested of jurisdiction to review the merits of petitioner's claim for refund.

In the assailed Decision, the Court in Division ruled as follows:

> "Petitioner justifies the filing of its administrative and judicial claims for refund of the aforesaid excise taxes beyond the two (2)-year prescriptive period by arguing that Section 130(D) of the NIRC of 1997, as amended, does not prescribe a time limit for filing a claim for refund of excise taxes paid in advance, and that the amounts paid under RR 03-08 are in the nature of advance or deposited taxes and not erroneously paid taxes.
>
> Citing *Commissioner of Internal Revenue vs. Philippine National Bank (PNB)*, involving a claim for refund of advance income tax payment, petitioner insists that under the principle of *solutio indebiti*, it has a period of six (6) years from the time of payment within which to seek refund of the excise taxes paid in advance.
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> Petitioner's invocation of *PNB* to justify the non-applicability of the two (2)-year period provided under Sections 204 and 229 of the NIRC of 1997, as amended, is misplaced.
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> A reading of *PNB* reveals that the subject of the recovery is the advance income tax payment of PNB for the bank's 1991 operations which was remitted in response to then President Corazon C. Aquino's call to generate more revenues for national development. In holding that the advance income tax payment made by the Philippine National Bank is not in the nature of erroneously or illegally paid tax, the Supreme Court opined:
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> xxx xxx xxx

[24] Exhibit "P-5", Letter Request for Return/Refund or Issuance of a Tax Credit Certificate dated February 25, 2014.
[25] Docket, CTA Case No. 8791, pp. 14-35, with Annexes.

When the Philippine National Bank made the advance income tax payment, it was not pursuant to any law or regulation requiring such advance payment, but simply out of its own volition to heed to the call of then President Aquino. Hence, such voluntary payment was not construed as erroneous, illegal or wrongful so as to apply the two (2)-year prescriptive period provided in Sections 204 and 229 of the NIRC of 1997, as amended.

In contrast, petitioner in the present case paid the excise taxes in accordance with the provisions of the NIRC and its implementing regulations. Petitioner's payment of excise taxes through advance deposit is specifically provided under RR 03-08, which requires among others, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, to pay the excise tax on every removal thereof from the place of production even if intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies, *subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment.*

Relatedly, the authority of the Secretary of Finance in issuing aforestated RR 03-08 clearly emanates form 130(A)(4)(b) of the NIRC of 1997, as amended, *viz:*

"SECTION 130. *Filing of Return and Payment of Excise Tax on Domestic Products.-*

(A) Persons Liable to File a Return, Filing of Return on Removal and payment of Tax.-

x x x

(2) Time for Filing and Payment of the Tax. –

Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production: xxx.

xxx

(4) Exceptions. – **The Secretary of Finance, upon recommendations of the Commissioner, may, by rules and regulations, prescribe**:

(a) The time for filing the return at intervals other than the time prescribed in the preceding paragraphs for a particular class or classes of taxpayers after considering factors such as volume of removals, adequate measures of security and such other relevant information required to be submitted under the pertinent provisions of this Code; and

> (b) **The manner and time of payment of excise taxes other than as herein prescribed, under a tax prepayment, advance deposit of similar schemes.** In the case of locally produced or extracted minerals and mineral products or quarry resources where the mine site or place of extraction is not the same as the place of processing or production, the return shall be filed with and the tax paid to the Revenue District Office having jurisdiction over the locality where the same are mined, extracted or quarried: Provided, however, That for metallic minerals processed abroad, the return shall be filed and the tax due thereon paid to the Revenue District Office having jurisdiction over the locality where the same are mined, extracted or quarried." (Boldfacing supplied)

Considering the patent disparity of the factual premises that triggered the advance payment of income tax by Philippine National Bank as contrasted to that of petitioner, the applicability of the doctrine laid down in PNB cannot be justified.

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xxx, **the excise taxes paid in advance by petitioner were collected legally on the basis of Section 130(A) of the NIRC of 1997, as amended. When petitioner allegedly exported the goods it locally manufactures, said advance payment became erroneously collected and as such, petitioner is entitled to claim a refund or credit of the excise taxes paid in advance, subject to petitioner's compliance with the condition set forth in Section 130(D) of the NIRC of 1997**, which provides: xxx

While the afore-quoted provision is silent on the period within which a claim for refund may be filed, the Court finds as applicable Section 204 and 229 of the NIRC of 1997, as amended, to refund of excise taxes that were paid in advance on locally manufactured products which were eventually exported. These provisions of the NIRC confined, as they are to erroneously collected taxes, necessarily include excise tax.

In Chevron Philippines, Inc. vs. Commissioner of Internal Revenue, the Supreme Court, applying Section 204 of the NIRC of 1997, as amended, in relation to Section 135(c), to Chevron Philippines, Inc.'s claim for refund or credit to the excise taxes erroneously paid on the importation of the petroleum products sold to Clark Development Corporation (CDC), ratiocinated:

> "Inasmuch as its liability for the payment of the excise taxes accrued immediately upon the importation and prior to the removal of the petroleum products from the customs house, Chevron was

> bound to pay, and actually paid such taxes. **But the status of the petroleum products as exempt from the excise taxes would be confirmed only upon their sale to CDC in 2007** (or, for that matter, to any of the other entities or agencies listed in Section 135 of the NIRC). **Before then, Chevron did not have any legal basis to claim the tax refund or the tax credit as to the petroleum products.**
>
> Consequently, **the payment of the excise taxes by Chevron upon its importation of petroleum products was deemed illegal and erroneous upon the sale of the petroleum products to CDC. Section 204 of the NIRC explicitly allowed Chevron as the statutory taxpayer to claim the refund or credit of the excise taxes thereby paid.** xxx" *(Boldfacing supplied)*

Otherwise stated, **in claiming a refund of excise taxes paid in advance for locally manufactured products which were subsequently exported, the two (2)-year period to file the administrative and judicial claims as provided in Sections 204 and 229 of the NIRC of 1997, as amended applies – the excise taxes paid in advance having become illegally paid or erroneously collected upon exportation of the locally manufactured products.**

Respondent's obligation to refund erroneously collected excise taxes is an obligation created by law, specifically Section 130(D) of the NIRC of 1997, as amended. Article 1138, 1144 and 1148 of the New Civil Code of the Philippines state:

> "Art. 1139. Actions prescribe by the mere lapse of time fixed by law."
>
> x x x
>
> Art. 1144. The following actions must be brought within ten years from the time right of action accrues:
>
> (1) xxx;
> (2) **Upon an obligation created by law;**"
>
> "Article 1148. **The limitations of action mentioned in Articles 1140 to 1142, and 1144 to 1147 are without prejudice to those specified in other parts of this Code, in the Code of Commerce, and in special laws.**"

Since the two-year prescriptive period is found in Sections 204 and 229 of the NIRC of 1997, as amended, which is a special law, the same should accordingly prevail over the prescriptive period provided under the New Civil Code of the Philippines."

Likewise, the Court *En Banc* rules that petitioner's reliance on the principle of *solutio indebiti* to support the application of the six-year prescriptive period is without merit.

Article 2154 of the Civil Code of the Philippines explains the principle of *solutio indebiti*. Said provision provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In such a case, a creditor-debtor relationship is created under a quasi-contract whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive such payment becomes obligated to return the same. The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another. The principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.[26]

The elements of *solutio indebiti* are not present in the instant case because petitioner is obligated to pay excise taxes on its locally manufactured products, and the advance payment of said excise taxes was not made through mistake but was based on the provisions of the NIRC of 1997, as amended, and RR 03-08.

The excise taxes paid in advance by petitioner was collected legally. However, such advance payment became erroneously collected when the locally manufactured products were eventually exported. Therefore, petitioner's remedy was to file a claim for refund within the periods provided in Sections 204 and 229 of the NIRC of 1997, as amended. However, petitioner failed to do so. Accordingly, the present claim for refund or tax credit certificate has already prescribed.

In view of the foregoing discussions, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution.

The findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[27]

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[26] *Sebastian Siga-an vs. Alicia Villanueva,* G.R. No. 173227, January 20, 2009.

[27] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

WHEREFORE, premises considered, the Petition for Review dated September 14, 2018 is **DENIED for lack of merit.** Accordingly, the assailed Decision dated May 9, 2018 and Resolution dated August 22, 2018 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice