REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PPD PHARMACEUTICAL DEVELOPMENT PHILIPPINES CORP., *Petitioner,*	**CTA Case No. 10375**
	Members:
-*versus*-	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 06 2024 1:02 p.m.

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DECISION

MANAHAN, *J.*:

This is a *Petition for Review* filed by petitioner PPD Pharmaceutical Development Philippines Corp. (PPD Pharma) against respondent on October 15, 2020, praying that judgment be rendered ordering respondent Commissioner of Internal Revenue (CIR) to refund its excess and unutilized input value-added tax (VAT) credits in the amount of Php9,308,363.46 for the second quarter of calendar year (CY) 2018.[1]

THE PARTIES

Petitioner PPD Pharma is a corporation duly organized under Philippine laws and registered with the Securities and Exchange Commission, with principal office address at 22nd Floor Seven/NEO Building (formerly Net Park Building), 5th Avenue E-square, Crescent Park West, Bonifacio Global City, Taguig City. Petitioner may be served with pleadings, orders, and other court processes through counsels on record, Angara Abello Concepcion Regala and Cruz, with office address at 22nd

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[1] Docket, CTA Case No. 10375, Vol. I, Prayer, Petition for Review, p. 29; Docket, Vol. III, Statement of the Case, Pre-Trial Order dated March 30, 2022, p. 1337.

Floor ACCRALAW Tower, Second Avenue corner 30th Street, Crescent Park West Bonifacio Global City. 1635 Taguig City.[2]

Respondent CIR heads the Bureau of Internal Revenue (BIR) with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City. Respondent may be served with summons, pleadings and other court processes at the Litigation Division, Room 703 BIR National Office, Quezon City.[3]

THE FACTS

On July 2, 2020, petitioner filed an administrative claim for refund of its excess and unutilized input VAT for the second quarter of CY 2018 in the amount of Php9,308,363.46.[4]

On September 15, 2020, petitioner received the Letter dated August 25, 2020 where respondent denied its application for administrative claim for refund.[5]

Thus, petitioner filed the instant petition on October 15, 2020.

On October 22, 2020, this Court ordered respondent to file an Answer on the said petition.[6]

After the Court granted[7] his *Motion for Extension of Time to File Answer*,[8] respondent filed his *Answer*[9] on December 23, 2020 with the following special and affirmative defenses:

1. Petitioner is not entitled to refund its excess and/or unutilized input VAT in the amount of Php9,308,363.46 allegedly allocable and directly attributable to its VAT zero-rated sales covering the period April 1 to June 30, 2018 because it failed to substantiate its claim for refund at the administrative level; and

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[2] Docket, Vol. III, Joint Stipulation of Facts and Issue (JSFI), p. 1294.
[3] *Id.*, Vol. III, JSFI, pp. 1294-1295.
[4] *Id.*, Vol. II, Exhibit "P-4", p. 488.
[5] *Id.*, Vol. IV, Exhibit "P-34", pp. 1683-1684; Docket, Vol. I, Paragraph 4.10, Petition for Review, p. 12.
[6] *Id.*, Vol. I, Summons dated October 22, 2020, p. 361.
[7] *Id.*, Vol. I, Resolution dated December 7, 2020, p. 369.
[8] *Id.*, Vol. I, pp. 362-365.
[9] *Id.*, Vol. I, pp. 370-379.

2. The claim for refund should be denied for failure to comply with the mandatory invoicing requirements pursuant to Section 113 in relation to Section 110 and Section 114(C) of the 1997 National Internal Revenue Code (NIRC), as amended.

On January 5, 2021, the *Notice of Pre-Trial Conference* was issued by the Court setting the pre-trial conference of the case.[10]

On February 2, 2021, petitioner filed a *Reply*[11] which was duly noted under *Resolution* dated February 8, 2021.[12]

On May 19, 2021, petitioner filed a *Submission*[13] with its *Pre-Trial Brief*[14] attached to it and its exhibits.

On September 9, 2021, petitioner posted a *Submission*[15] filing and attaching its *Amended Pre-Trial Brief*[16] which the Court received on October 5, 2021. Respondent on the other hand, filed his *Pre-Trial Brief*[17] on February 7, 2022.

After the Pre-Trial Conference on February 3, 2022,[18] The Court issued the *Pre-Trial Order* on March 30, 2022.

Then, trial ensued. Petitioner presented its witnesses and evidence on May 10, 2022[19] and on September 28, 2022.[20] After said presentation, petitioner filed its *Formal Offer of Documentary Evidence*[21] on October 18, 2022.

Except for Exhibits "P-8-1 to 8-2", "9", "P-12", and Independent Certified Public Accountant (ICPA) Exhibits "7", "11", "22-1 to 22-2", "30", "31", "32", "33", "34-2", "34-4", "34-5", "44", "48", "49", and "50", all other exhibits offered were

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[10] Docket, Vol. I, pp. 381-382.
[11] *Id.*, Vol. I, pp. 387-394.
[12] *Id.*, Vol. I, p. 396.
[13] *Id.*, Vol. II, pp. 402-404.
[14] *Id.*, Vol. II, pp. 405-422.
[15] *Id.*, Vol. II, pp. 728-730.
[16] *Id.*, Vol. II, pp. 732-750.
[17] *Id.*, Vol. III, pp. 1281-1284.
[18] *Id.*, Vol. III, Minutes of the Pre-Trial Conference dated February 3, 2022, p. 1278.
[19] *Id.*, Vol. III, Minutes of the Hearing dated May 10, 2022, p. 1361.
[20] *Id.*, Vol. IV, Minutes of the Hearing dated September 28, 2022, p. 1465.
[21] *Id.*, Vol. IV, pp. 1470-1498.

admitted by the Court under Resolution dated January 4, 2023.[22]

On January 18, 2023, respondent presented his witnesses and evidence.[23]

On January 26, 2023, petitioner filed a *Motion for Partial Reconsideration (Re: Resolution dated 04 January 2023)*[24] seeking reconsideration of the evidence denied admission by the Court. Respondent filed its *Comment/Opposition (Re: Motion for Partial Reconsideration)*[25] on February 21, 2023.

On January 30, 3023, respondent filed his *Formal Offer of Evidence.*[26] Petitioner, on the other hand, filed his *Comment/Opposition (To the Respondent's Formal Offer of Evidence)*[27] on February 10, 2023.

In *Resolution* dated March 24, 2023,[28] the Court partially granted petitioner's motion and admitted its Exhibits P-9", "P-12", ICPA Exhibits "7", "11", "22-1 to 22-2", "30", "31", "32", "33", "44", "48", "49", and "50". However, ICPA Exhibits "8-1 to 8-2", "34-2", "34-4", and "34-5" were still denied.

In the same Resolution, the Court admitted all the evidence offered by respondent. The parties were also given a period of thirty (30) days from receipt of notice to file their respective memoranda.[29]

On May 2, 2023, petitioner filed its *Memorandum*[30] while respondent filed a *Manifestation*[31] on June 20, 2023 stating that he adopts the arguments raised in his *Answer.*[32] Thus, in the *Resolution* dated June 26, 2023,[33] the case was submitted for decision.

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[22] *Id.*, Vol. IV, pp. 1710-1714.
[23] Docket, Vol. IV, Minutes of the Hearing dated January 18, 2023, p. 1733.
[24] *Id.*, Vol. IV, pp. 1739-1756.
[25] *Id.*, Vol. IV, pp. 1786-1789.
[26] *Id.*, Vol. IV, pp. 1769-1772.
[27] *Id.*, Vol. IV, pp. 1776-1783.
[28] *Id.*, Vol. IV, pp. 1799-1812.
[29] *Id.*
[30] *Id.*, Vol. IV, pp. 1819-1849.
[31] *Id.*, Vol. IV, pp. 1853-1855.
[32] *Supra*, Note 9.
[33] *Id.*, Vol. IV, p. 1857.

ISSUE

The issue to be resolved by the Court is as follows:

> "Whether or not petitioner is entitled to a tax refund or to the issuance of a tax credit certificate in the amount of Php9,308,363.46 representing its excess and/or unutilized input VAT credits attributable to its zero-rated sales of services for the second quarter of CY 2018."[34]

Petitioner's Arguments[35]

Petitioner argues that it is a VAT-registered taxpayer, and that its sale of services for the second quarter of CY 2018 are VAT zero-rated pursuant to Section 108(B)(2) of the 1997 NIRC, as amended.

Petitioner contends that the input VAT it paid were duly substantiated and directly attributable to its zero-rated sales in the second quarter of CY 2018, and such input VAT were not transitional input taxes nor applied to any output VAT liability for the second quarter of CY 2018 and for any subsequent quarter. Petitioner insists that its administrative claim for refund was filed within the two (2)-year prescriptive period and its judicial claim for refund was timely filed.

Petitioner avers that it was deprived of due process in its administrative claim for refund since the denial letter and its "vital observation" are misplaced and failed to state its factual and legal basis.

Respondent's Arguments[36]

Respondent argues that petitioner is not entitled to refund because it failed to substantiate its claim for refund at the administrative level, and for its failure to comply with the mandatory invoicing requirements pursuant to Section 113 in relation to Section 110 and Section 114(C) of the 1997 NIRC, as amended.

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[34] *Id.*, Vol. III, Stipulation of Issue, Pre-Trial Order, p. 1338.
[35] *Supra*, Note 30.
[36] *Supra*, Note 9.

RULING OF THE COURT

This Court shall determine first whether the appeal was timely filed, thus, acquiring jurisdiction over the instant petition. Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125[37], as amended by RA No. 9282[38], provide as follows:

> "SEC. 7. ***Jurisdiction.*** **– The CTA shall exercise**:
>
> **(a) Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> > **(1) Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> xxx xxx xxx
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA **within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law_for actions as referred to in Section 7(a)(2) herein.
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> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx." *(Emphasis supplied)*

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37 AN ACT CREATING THE COURT OF TAX APPEALS.

38 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

Similarly, Section 112(A) and (C) of the 1997 NIRC, as last amended by RA No. 10963,[39] provides:

> "SEC. 112. *Refunds of Input Tax.*
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> (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 of 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 non-zero-rated sales.
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> (B) 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 for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed** in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety

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[39] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES. *an*

(90)-day period shall be punishable under Section 269 of this Code...." (*Emphases supplied*)

Based on the foregoing provisions, this Court has exclusive appellate jurisdiction, *inter alia,* to take cognizance of decisions involving refunds of internal revenue taxes and the concerned taxpayer or party adversely affected by a decision of respondent may file an appeal with this Court within thirty (30) days after the receipt of such decision.

In the instant case, petitioner grounded its appeal on respondent's denial letter dated August 25, 2020 which it received on September 15, 2020, which was respondent's decision on its administrative claim for refund.

Applying the abovementioned provisions, petitioner had two (2) years from the close of the second quarter of CY 2018 or June 30, 2018 until June 30, 2020 to file the administrative claim for refund.

However, in Section 4(z) of Republic Act No.11469,[40] it provided the "moving of the statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine."

The BIR, on its part, issued Revenue Regulations (RR) No. 16-2020,[41] wherein the filing of VAT claims for refund, among others, for the calendar quarter ending June 30, 2018 was moved or extended until August 31, 2020. Hence, the filing of such administrative claim for refund on July 2, 2020 was within the two (2)-year prescriptive period.

The respondent then had ninety (90) days from July 2, 2020 or until September 30, 2020 within which to act on the said claim. Petitioner received respondent's Letter dated August

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[40] AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECIDED NATIONAL POLICY AND FOR OTHER PURPOSES

[41] Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to Section 112 of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963 (TRAIN Law) For Taxable Quarters Affected by the Declaration of the National State of Emergency.

25, 2020 on September 15, 2020. Hence, it had thirty (30) days or until October 30, 2020 to file an appeal before this Court. The filing of the instant Petition for Review on October 15, 2020 was on time.

Requisites for the grant of the refund or issuance of tax credit certificate under the law.

Based on the above-cited provision of Section 112 of the 1997 NIRC, as amended, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites may be classified into certain categories as follows:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[42]

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[43]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[44]

<u>In relation to the taxpayer's output VAT</u>:

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[42] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[43] *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

[44] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, *supra*; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, *supra*; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, *supra*.

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[45]

5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[46] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[47]

<u>As regards the taxpayer's input VAT being refunded</u>:

6. the input taxes are not transitional input taxes;[48]

7. the input taxes are due or paid;[49]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, 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;[50] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[51]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[52] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to successfully file

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[45] *Id.*

[46] Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the 1997 NIRC, as amended.

[47] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra; San Roque Power Corporation vs. Commissioner of Internal Revenue,* supra; and *AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue, supra.*

[48] *Id.*

[49] *Id.*

[50] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*

[51] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, supra.*

[52] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.,* G.R. Nos. 197663 and 197770, March 14, 2018.

a claim for input taxes attributable to zero-rated sales.[53] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[54] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[55]

Strict compliance with substantiation and invoicing requirements is necessary considering the nature of VAT and its tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[56]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[57] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Considering that the *first* and *second* requisites have been resolved above, the Court shall proceed to discuss the *third* to the *ninth* requisites.

Petitioner is a VAT-registered person/entity.

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[53] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

[54] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

[55] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[56] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq., supra.*

[57] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

Anent the *third* requisite, it is also undisputed that petitioner is a VAT-registered person/entity, with Tax Identification Number (TIN) 009-270-744-000.[58] Thus, petitioner showed compliance with the said requisite.

Petitioner failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the 2nd quarter of CY 2018.

The *fourth* and *fifth* requisites respectively require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the 1997 NIRC, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.

Section 108(B)(2) of the 1997 NIRC, as amended, reads as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
>
> **(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)**;" *(Emphases added)*

[58] Docket, Vol. IV, Exhibit "P-3", p. 1527.

Based on the foregoing provision, certain *essential elements* must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), under Section 108(B)(2) of the 1997 NIRC, as amended, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services were performed;[59]

2. The services fall under any of the categories under Section 108(B)(2),[60] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[61]

3. The services must be performed in the Philippines[62] by a VAT-registered person; and

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[63]

Anent the *first* essential element, in order to be considered as a non-resident foreign corporation doing business *outside* the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine Security and Exchange Commission (SEC), **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient

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[59] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

[60] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[61] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra.*

[62] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*

[63] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*

of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the latter proves that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element. In fact, in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[64] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> "**For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines**.
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> xxx xxx xxx
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> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.
>
> The Court upholds these findings.
>
> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in**

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[64] G.R. No. 234445, July 15, 2020.

> **trade or business in the Philippines**." *(Emphasis and underscoring added)*

In the present case, petitioner satisfied the *first* essential element as it was able to prove that its sole client, PPD Global Limited, for the subject period, is a non-resident foreign corporation doing business outside the Philippines, by virtue of the following documents:

1. *Certifications of Non-Registration of Company* dated December 17, 2019 and October 18, 2021 issued by the SEC,[65] to the effect that the records of the SEC "*do not show the registration of **PPD Global Limited** as a corporation, partnership or One Person Corporation (OPC)*";

2. *Apostilled Articles of Association* of PPD Global Limited;[66] and

3. *Apostilled Certificate of UK Residence* dated October 21, 2020, issued by the HM Revenue and Customs of the United Kingdom in favor of PPD Global Ltd., stating that "xxx the above company was a resident of the Kingdom from 1 January 2018 to 31 December 2018 xxx."[67]

As to the *second* essential element, petitioner entered into the *Affiliate Services Agreement* dated April 13, 2016[68] with PPD Global Limited, wherein in the *Services Addendum* (Exhibit A) attached thereto, the services to be provided by petitioner are enumerated (*i.e.*, Clinical Trial Co-ordination and Support Services, Global Clinical Data Management Services, Global Biostatistics and Programming Services, Clinical Shared Services, Administrative Shared Services, and Local Contracting with Sponsors). Upon a cursory examination of the said Exhibit A vis-à-vis the said *Affiliate Service Agreement*, it reveals that the said services fall within the scope of *"services other than processing, manufacturing or repacking of goods"* as

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[65] Docket, Vol. IV, Exhibits "P-12" and "P-12-1", pp. 1545 to 1546.
[66] Exhibit "ICPA-10", USB marked as Exhibit "P-45".
[67] Docket, Vol. II, Exhibits "P-19", pp. 552 to 556, and "ICPA-34-16" to "ICPA-34-20", USB marked as Exhibit "P-45".
[68] *Id.*, Vol. IV, Exhibits "P-9" and "P-10", pp. 1534 to 1542 and 1543 to 1544, respectively. *dn*

contemplated by the afore-mentioned provision. Thus, compliance to the *second* essential element is shown.

Relative to the *third* essential element, while the *Affiliate Services Agreement*, including the *Services Addendum* (Exhibit A) thereof, does not show that the subject services were to be performed by petitioner only in the Philippines, petitioner's witness, Mr. Rustom Jay A. Ruiz, nevertheless, testified, in part, that petitioner's "sales for the second quarter of CY 2018 were zero-rated because they consisted of *sale of services rendered in the Philippines* in favor of PPD Global Limited xxx."[69]

Moreover, the Court-commissioned ICPA, Atty. Mark Darwin A. Camara, likewise testified that the subject services were rendered by petitioner in the Philippines, to wit:[70]

> "**14. Q: You said that you identified sources of PPD's revenues subject to VAT and ascertained that such revenues were properly reported for VAT purposes. What are your findings, if any, upon performing this procedure?**
>
> **A:** I conducted a verification of the SLS (Exhibit P-8 as marked by counsel of petitioner) and the VAT-registered O.R.s issued by PPD (Exhibit P-37 to P-39 marked by counsel of petitioner) to support the receipts collected for the covered period.
>
> I found that these O.R.s showed that the **transactions were considered as sales subject to VAT at zero percent (0%) because these pertain to fees collected <u>for services rendered by PPD in the Philippines</u> to its customer, PPD Global Limited, an entity incorporated under the laws of United Kingdom and is not registered as a corporation, partnership or a one-person corporation in the Philippines**.
>
> xxx xxx xxx." *(Emphasis and underscoring added)*

In view thereof, petitioner has shown compliance with the *third* essential element.

The *fourth* and *fifth* requisites require that the taxpayer be engaged in zero-rated or effectively zero-rated sales and for zero-

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[69] Docket, Vol. III, Exhibit "P-41" (Q&A No. 42), p. 1006.
[70] *Id.*, Vol. IV, Exhibit "P-46" (Q&A No. 14), p. 1385. *ay*

rated sales under Section 108(B)(2) of the Tax Code, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

Petitioner filed VAT Returns for the 2nd Quarter of 2018 consisting of the Monthly VAT Declarations (BIR Form No. 2551M) for the months of April and May of 2018, and the Quarterly VAT Return (BIR Form No. 2551Q) for the second quarter of 2018. The following 2018 VAT returns were filed through Electronic Filing and Payment System:[71]

Period	**Filing Date**	**Exhibit Number**
April *(Amended)*	August 24, 2018	"ICPA-6-A"
May *(Amended)*	August 1, 2018,	"ICPA-6-B"
2nd Quarter *(Amended)*	September 19, 2018	"ICPA-6"

Petitioner also submitted the Summary List of Sales and Purchases to the BIR through e-filing/e-submission for the Second Quarter of 2018.[72]

Petitioner's total reported zero-rated sales for the 2nd quarter of taxable year 2018 amounts to ₱191,663,032.88, broken down as follows:[73]

Date[74]	**Customer**	**Amount**
04/30/2018	PPD Global Limited	₱ 57,377,523.47
05/31/2018	PPD Global Limited	55,022,448.13
06/30/2018	PPD Global Limited	79,263,061.28
	Total	**₱191,663,032.88**

Of equal importance is the requirement that the foreign currency remittances of the foregoing referred to under Section 108(B)(2) of the Tax Code must not only be duly accounted for in accordance with the rules and regulations of the BSP but are also supported by VAT zero-rated official receipts in accordance with the pertinent invoicing requirements, containing all the

[71] USB marked as Exhibit "P-45".
[72] Email Confirmations from eSubmission@bir.gov.ph for Submission of Summary List of Sales and Summary List of Purchases applicable/for the 3rd Quarter of 2016, until the 2nd Quarter of 2018, Exhibit "ICPA No. 38", USB marked as Exhibit "P-45".
[73] Docket, Vol. IV, Exhibit "P-8", p. 1533.
[74] Expressed as MM/DD/YYYY (Month/Day/Year).

required information under Section 113(A) and (B) of the Tax Code, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (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: *Provided*, That:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client."

These provisions of the Tax Code, are further implemented by Section 4.113-1(A) and (B) of RR No. 16-05, as amended, to wit:

"SEC. 4.113-1. *Invoicing Requirements.* —

(A) A VAT-registered person shall issue: —

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt; *am*

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above requirements, the sales invoices (SIs) and official receipts (ORs) must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the 1997 NIRC, as amended, to wit:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —

(A) *Issuance.* – All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx

xxx xxx xxx

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner." *an*

Since petitioner's reported sales are in the nature of sales of services under Section 108(B)(2) of the Tax Code, petitioner is required to issue BIR-registered VAT ORs for the foreign currency proceeds of each sales transaction, the information contained therein must be in compliance with the applicable provisions previously cited, such as the word "zero-rated", and the taxpayer's TIN-VAT number.

Here, petitioner submitted the following ORs to support its reported zero-rated sales for the 2nd quarter of CY 2018:[75]

OR No.	Date	Amount in USD	Per VAT return	Per General Ledger[76]	Exhibit[77]
0000018	30-Apr-18	$ 94,007.24	₱ -	₱ 4,888,837.81	"ICPA-36-1"
0000019	30-Apr-18	1,000,000.00	57,377,523.47	51,999,376.01	"ICPA-36-2"
0000021	31-May-18	1,000,000.00	55,022,448.13	52,509,976.90	"ICPA-36-3"
0000022	30-Jun-18	1,500,000.00	79,263,061.28	79,927,532.37	"ICPA-36-4"
Total		**$3,594,007.24**	**₱191,663,032.88**	**₱189,325,723.09**	

From the foregoing findings of the ICPA, the Court notes that there are discrepancies between the amounts of zero-rated sales declared by petitioner in its 2nd quarter VAT return and the peso equivalents of the ORs it issued to its non-resident client, to wit:

Exhibit[78]	OR No.	Date	Per General Ledger[79]	Per VAT return	Difference
"ICPA-36-1"	0000018	30-Apr-18	₱ 4,888,837.81	₱ -	₱ (4,888,837.81)
"ICPA-36-2"	0000019	30-Apr-18	51,999,376.01	57,377,523.47	5,378,147.46
"ICPA-36-3"	0000021	31-May-18	52,509,976.90	55,022,448.13	2,512,471.23
"ICPA-36-4"	0000022	30-Jun-18	79,927,532.37	79,263,061.28	(664,471.09)
Total			**₱189,325,723.09**	**₱191,663,032.88**	**₱ 2,337,309.79**

With regard to OR No. 0000018 dated April 30, 2018 in the amount of $94,007.24 issued to "*PPD Global Limited*", the ICPA found that this was not reported neither in the VAT Return nor in the Summary List of Sales (SLS) for the 2nd Quarter of 2018. Similarly, the amount of $94,007.24 was not reflected in the petitioner's HSBC US Dollar bank account. However, this transaction was included in the 2018 general ledger shown as a USD cash entry of $94,017.24 (₱4,888,837.81 in Philippine

[75] Docket, Vol. IV, see also paragraph 3.5, Exhibit "P-42", p. 1418.
[76] Exhibit "ICPA-39", USB marked as Exhibit "P-45".
[77] USB marked as Exhibit "P-45".
[78] USB marked as Exhibit "P-45".
[79] Exhibit "ICPA-39", USB marked as Exhibit "P-45". an

Local Currency). The ICPA purported the difference of $10.00 as flat fee bank charges.[80]

The Court likewise notes that petitioner's declared zero-rated sales for the months of April and May 2018 are not fully substantiated with the VAT ORs submitted. On the other hand, the OR for the month of May 2018 exceeded the amount declared by petitioner in its quarterly VAT return. Even so, the Court cannot be certain that the subject OR indeed pertains to the zero-rated sales declared by petitioner in its quarterly VAT return.

It bears stressing that petitioner only has one client and three (3) sales transactions for the second quarter of 2018.[81] However, based on the foregoing, the amounts declared per petitioner's quarterly VAT return for the 2nd quarter of 2018 do not tally with the ORs issued by petitioner.

Scrutiny of the ORs submitted by petitioner shows that the same were in payment for certain billing statements. Considering that there are unexplained differences, it is imperative for the Court to examine the nature of the service rendered and payments received by petitioner. Pursuant to the previously quoted Section 113(B)(3) of the 1997 NIRC, as amended, the following information, among others, are required to be indicated in the VAT invoice or VAT official receipt:

a. Date of transaction;
b. Quantity;
c. Unit cost; **and**
d. Description of the goods or **nature of the service**.

In this case, petitioner indicated only the corresponding billing statement number in the official receipt, however, petitioner did not submit the subject billing statements. Consequently, the Court cannot ascertain whether the payments received are indeed for the agreed-upon services rendered by petitioner or for something else. The billing statements could also help to shed some light on the discrepancies between the amounts per VAT returns and ORs.

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80 Docket, Vol. IV, Paragraph 3.6, Exhibit "P-42", p. 1419.
81 *Id.*, Vol. IV, Paragraph 3.4, Exhibit "P-42", p. 1418.

The importance of complying with the invoicing requirements of the law is hereby reiterated. It bears stressing that in *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court said:[82]

> "On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also **the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit.** Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. xxx" *(Emphasis added)*

Considering the foregoing, petitioner's claim for refund or issuance of a Tax Credit Certificate in the amount of ₱9,308,363.46 representing the unutilized input VAT attributable to its zero-rated sales for the 2nd quarter of CY 2018 must fail. It is unnecessary therefore to discuss petitioner's compliance with the other requisites for a credit/refund of input tax.

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

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

[82] G.R. No. 222428, February 19, 2018.

ATTESTATION

I attest 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.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice