REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1495** (CTA Case No. 8665)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
DOLE PHILIPPINES, INCORPORATED, *Respondent.*	Promulgated:
	APR 25 2017 11:41 a.m.

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review* [1] filed by the Commissioner of Internal Revenue (CIR) on August 19, 2016 thru registered mail, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503[2], which seeks the reversal and setting aside of the March 18, 2016 *Decision*[3] and July 18, 2016 *Resolution*[4], enunciated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8665, entitled "*Dole Philippines, Inc. vs. Commissioner of Internal Revenue*".

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[1] *Rollo*, CTA EB No. 1495, pp. 5-23.
[2] Otherwise known as "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 of Republic Act No. 1125, as amended, Otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes".
[3] *Rollo*, pp. 25-51.
[4] *Rollo*, pp. 53-58.

The dispositive portions of the assailed Decision and Resolution read:

Decision[5] dated March 18, 2016:

> "**WHEREFORE**, premises considered, the Petition for review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of **SIX HUNDRED TWENTY FIVE MILLION TWO HUNDRED SEVENTY NINE THOUSAND ONE HUNDRED SEVENTY FIVE PESOS AND FOURTEEN CENTAVOS (PHP625,279,175.14)**, representing the unutilized input taxes, for taxable year 2011."

Resolution[6] dated July 18, 2016:

> "**WHEREFORE**, premises considered, Petitioner's [now, respondent] "Motion for Partial Reconsideration" and Respondent's [now, petitioner] "Motion for Partial Reconsideration" are hereby **DENIED** for lack of merit. Consequently, the Decision dated May 18, 2016 is hereby **UPHELD** and **AFFIRMED**."

The Facts

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR), vested by law in general to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws, and in particular, to decide claims for refund or internal revenue taxes. He holds office at the Bureau of Internal Revenue, National Office Building, BIR Road, Diliman, Quezon City[7].

Respondent is a Value-Added Tax (VAT) registered entity with TIN 000-428-573 and Certificate of Registration OCN 2004-111-000390 dated May 28, 2004, issued by petitioner. It is also registered as a large taxpayer under the Large Taxpayer Service (LTS) and was issued Certificate of Registration OCN 8Rc0000019984, dated November 14, 1997, by petitioner through Large Taxpayer District Office ("LTDO") 122-Makati City[8].

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] *Rollo*, Petition for Review, p. 6.
[8] *Rollo*, Decision, p. 26.

Respondent filed its Monthly Value-Added Tax Declaration (BIR Form No. 2550-M) and Quarterly Value-Added Tax return (BIR Form No. 2550-Q) for taxable year 2011, as follows[9]:

Month	Date Filed	BIR Form
January	February 18, 2011	2550-M
February	March 17, 2011	2550-M
1st Quarter	April 20, 2011	2550-Q
April	May 20, 2011	2550-M
	May 20, 2011 (amended)	2550-M
May	June 17, 2011	2550-M
2nd Quarter	July 25, 2011	2550-Q
July	August 19, 2011	2550-M
August	September 20, 2011	2550-M
3rd Quarter	October 20, 2011	2550-Q
October	November 23, 2011	2550-M
November	December 22, 2011	2550-M
4th Quarter	January 19, 2012	2550-Q

Respondent likewise filed its Quarterly Income Tax Return (BIR Form No. 1702Q) for the 1st, 2nd, and 3rd Quarters on May 25, 2011, August 8, 2011, and November 29, 2011, respectively. Respondent filed its Amended Annual Income Tax Return on May 18, 2012[10].

On January 30, 2013, respondent filed its administrative claim for refund of its excess input VAT (BIR Form No. 1914) on its purchase of goods and services attributable to zero-rated sales for the period January to December 2011 in the amount of Seven Hundred Seventy Eight Million Seven Hundred Eighty Six Thousand Eight Hundred Thirty One Pesos and Thirty Four Centavos (Php778,786,831.34)[11].

On June 28, 2013, respondent filed its judicial claim for tax credit or refund before the CTA. Since no decision was made by the petitioner within 120 days from the filing of the administrative claim for refund, respondent had to file a Petition for Review.[12]

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[9] *Rollo*, Decision, p. 27.
[10] *Id.*
[11] *Id.* at 28.
[12] *Id.*

In the assailed *Decision*[13] dated March 18, 2016, the Court in Division partially granted the claim for input VAT refund of respondent Dole Philippines, Inc. (DOLE). Accordingly, petitioner CIR was ordered to refund in favor of DOLE the reduced amount of Php625,279,175.14, representing DOLE's unutilized input taxes for taxable year 2011.

On April 6, 2016, the respondent filed a "Motion for Partial Reconsideration" while the petitioner filed its own motion for partial reconsideration by registered mail on April 21, 2016[14]. It is only the respondent that submitted its comment or opposition to the said motion.

On July 18, 2016, the assailed *Resolution*[15] denied both motions for lack of merit and affirmed the assailed decision.

Hence, after receiving said resolution on July 21, 2016, petitioner elevated the case to the CTA *En Banc* by filing a "Motion for Extension of Time to file Petition for Review"[16]. The court granted said motion and the petitioner was given a final and non-extendible period of fifteen (15) days from August 5, 2016, or until August 20, 2016[17].

On August 19, 2016, the petitioner, by registered mail, filed said petition and was received by the Court *En Banc* on August 24, 2016[18]. Respondent was ordered to file its comment to the said petition under CTA *En Banc*'s Resolution dated September 8, 2016[19]. After receiving said resolution on September 28, 2016, respondent filed its comment/opposition on October 7, 2017[20].

On December 21, 2016, the respondent filed its Memorandum[21] while the petitioner did not submit any[22] in compliance with CTA *En Banc*'s resolution dated October 21, 2016[23].

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[13] *Supra*, Note 3.
[14] *Rollo*, Resolution, p. 53.
[15] *Supra*, Note 4.
[16] *Rollo*, p. 1.
[17] *Rollo*, p. 4.
[18] *Rollo*, p. 5.
[19] *Rollo*, p. 97.
[20] *Rollo*, pp. 99-115.
[21] Rollo, pp. 119-143.
[22] *Rollo*, p. 144.
[23] *Rollo*, p. 117.

Hence, the instant case was deemed submitted for decision in the CTA *En Banc*'s Resolution dated February 13, 2017.[24]

The Issue

Whether the Third Division of this Honorable Court erred in holding that respondent is partially entitled to its claim for tax refund/tax credit in the reduced amount of Php625,279,175.14, representing its unutilized input VAT attributable to its zero-rated sales for taxable year 2011.

Arguments of Petitioner CIR[25]

In the instant *Petition for Review*, the CIR interposed that: DOLE's invoices and official receipts in support of its claimed unutilized input VAT of Php625,279,175.14 allegedly attributable to its zero-rated sales for taxable year 2011 failed to comply with the mandatory invoicing requirements under Sections 110(A), 113(A)(B), and 237 of the 1997 Tax Code, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations (RR) No. 16-05 and Revenue Memorandum Circular (RMC) No. 42-2003; DOLE's documentary exhibits (i.e. purchase invoices, official receipts, Airway bills, Bills of Lading, Bank Credit advice and Certificate of Bank Remittances) which were presented in court as evidence to support its judicial claim for input VAT refund are hearsay evidence, hence, inadmissible as evidence in this case; and that the claim for refund is strictly construed against it for the same partakes the nature of tax exemption.

Arguments of Respondent DOLE[26]

In response to the allegations in the subject petition, Respondent DOLE argues that its invoices and official receipts in support of its claimed unutilized input VAT of Php625,279,175.14 attributable to its zero-rated sales had fully complied with the mandatory invoicing requirements under Sections 110(A), 113(A)(B), and 237 of the 1997 Tax Code, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of RR No. 16-05 and RMC No. 42-2003 and its documentary exhibits (i.e. purchase invoices, official receipts, Airway bills,

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[24] *Rollo*, p. 146.
[25] *Rollo*, Petition for Review, pp. 8-17.
[26] *Rollo*, Comment of Respondent, pp. 100-113.

Bills of Lading, Bank Credit advice and Certificate of Bank Remittances) which were presented in court as evidence to support its judicial claim for input VAT refund are not hearsay evidence, hence, admissible as evidence.

DOLE also argues that its claim for tax refund was fully substantiated in full compliance with existing rules and jurisprudence, and the same has been exhaustively discussed and judiciously passed upon by the honorable CTA Third Division.

Ruling of the Court *En Banc*

The Court observes that the points and arguments in the present Petition for Review had already been painstakingly discussed and substantially resolved by the CTA Third Division in its March 18, 2016 *Decision*[27] and July 18, 2016 *Resolution*[28].

Respondent has sufficiently proven its entitlement to a refund or issuance of tax credit certificate

As discussed in the assailed decision, in order for a taxpayer engaged in zero-rated or effectively zero-rated sales to be entitled to a refund or tax credit of unutilized input VAT attributable to such zero-rated or effectively zero-rated sales, the following requisites must be complied, *viz*:[29]

1. that there must be zero-rated or effectively zero rated sales;

2. that input taxes were incurred or paid;

3. that such input taxes were attributable to zero-rated or effectively zero-rated sales;

4. that input taxes were not applied against any output VAT liability; and

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[27] *Supra*, Note 3.
[28] *Supra*, Note 4.
[29] Section 112(A), 1997 National Internal Revenue Code; *Commissioner of Internal Revenue v. Team Sual Corporation*, G.R. No. 205055, July 18, 2014.

5. that the claim for refund was filed within the two-year prescriptive period.

Also, the applicant must not only prove its entitlement to such claim but must comply with all the documentary and evidentiary requirements, and other rules and regulations pertaining to tax refunds[30].

Thus, to prove respondent's claim for refund amounting to Php778,786,831.34[31], it submitted its Sales Invoices pre-printed/stamped with the words "Zero-rated", Airway Bills/Seaway Bills/Bills of Lading and Bank Inward Remittances and Credit Advises.[32] As to its claim for refund of input tax on importation of goods other than capital goods, it submitted its Import Entry Internal Revenue Declaration, Bureau of Customs Official Receipts, and Statement of Duties and Taxes.[33]

Anent the first and second requisites, the CTA Third Division found that the respondent had filed its Quarterly VAT Return for the four quarters of CY 2011 with the BIR. Among those declared was zero-rated sales amounting to Php26,459,566,147.85. On the other hand, scrutiny of records showed that the amount of zero-rated sales was Php25,694,903,197.59[34].

However, the invoices amounting to Php259,959,852.27 were disallowed and deducted from the above amount because there were alterations, entries which were not readable, or counter signature different from authorized signatory[35]. Hence, the substantiated zero-rated sales for taxable year 2011 amounts to P25,434,943,34.32, which was determined to be 96.1276% of the declared zero-rated sales for taxable year 2011[36].

As to third requisite, the CTA Third Division found that there were transactions included in the said claim that were not supported by evidence or disallowed by Independent

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[30] J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 171307, August 28, 2013; Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 159471, January 26, 2011.
[31] Rollo, Decision, p. 28.
[32] *Id.* at 40.
[33] *Id.* at 47.
[34] *Id.* at 38.
[35] *Id.* at 40-44.
[36] *Id.* at 45.

Certified Public Accountant (ICPA). Hence, they were deducted from the said claim, *viz*:[37]

Claim Amount		Php778,786,831.34
Less:		
Amortization of Input Tax on Goods Exceeding 1 Million	6,709,167.05	
Disallowed Input Tax on Amortization[38]	459,974.55	
ICPA Exception	68,557,328.88	
Additional Exception (This Court)	52,592,467.00	128,318,937.38
Total		Php650,467,893.86

However, since the court found that only 96.1276% of the declared zero-rated sales was attributable for taxable year 2011, the substantiated Input VAT to be refunded should amount only to Php625,279,175.14.[39]

Anent the fourth requisite, although respondent carried-over the claimed input VAT in its succeeding Quarterly VAT Returns from the first quarter of 2012 to the first quarter of 2013, it was substantially proven that the same remained unutilized since it was deducted only in its Quarterly VAT Return for the first quarter of 2013 as "VAT Refund/TCC claimed" from the total available input tax.[40]

Anent the fifth requisite, as shown in the facts of the case, respondent paid its 1st, 2nd, 3rd, and 4th quarters VAT liability on April 20, 2011, July 25, 2011, October 20, 2011, and January 19, 2012, respectively.

Thus, as correctly pointed out by the CTA Third Division in applying the provision of Section 112(A) of the 1997 NIRC, as amended, where the two-year prescriptive period should be reckoned with from the close of the taxable quarter when the sales were made[41], respondent had until March 31, June 30, September 30, and December 31, 2013 to file its administrative claim for the 1st, 2nd, 3rd, and 4th quarters of 2011. Respondent filed its administrative claim for all the said quarters on January 30, 2013 which was within the required two-year prescriptive period.

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[37] *Rollo*, Decision, p. 50.
[38] Should be "Disallowed Input Tax on Importation of Goods other than Capital Goods.
[39] *Rollo*, Decision, p. 50.
[40] *Id.*
[41] Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014.

Thus, as succinctly summarized by the CTA Third Division in its *Decision*:

> "In fine, petitioner [now, respondent] has sufficiently proven its entitlement to a refund or issuance of tax credit certificate in the reduced amount of Php625,279,175.14, representing unutilized excess input taxes attributable to its zero-rated sales for the taxable year 2011."[42]

Hearsay Evidence Rule does not apply when the issue is the content of or entries in a document

In the instant petition, petitioner argued that the witnesses presented by the respondent had no personal knowledge on the issuance of the documentary exhibits, which were prepared by other persons. Hence, the respondent should have presented those who had personal hand in its preparation because "any other attempt on the part of respondent to pass as absolute truth the contents of the said records are considered as hearsay evidence".[43] It only shows that what was being questioned by the petitioner is not really the testimony of the witnesses but the veracity of the contents or entries in said documents.

It should be noted that the exhibits (purchase invoices, official receipts, airway bills, bills of lading, bank credit advice, and certificate of bank remittances) being assailed by the petitioner are all documentary evidence and when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself[44]. This is known as the Best Evidence Rule.

As shown in the records of the case, petitioner did not assail or impugn the authenticity of said documents. In fact, petitioner gave credence to such by acknowledging that the respondent was entitled to refund to a reduced amount of Php747,577,710.82 since such amount was substantiated by said documents[45].

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[42] *Rollo*, Decision, p. 50.
[43] *Rollo*, Petition for Review, p. 15.
[44] Section 3, Rule 130, Rules of Court.
[45] Docket, CTA Case No. 8665, Vol. 5, Joint Judicial Affidavit of Revenue Officer Cherryl Anne M. Adapon & Group Supervisor Frances E. Leonida, p. 2799.

Thus, hearsay evidence rule does not apply in the instant case because the issue being raised is not about authenticity of the document but the veracity of the content or the entries of said documents.

Admission made in the pleadings is conclusive

The CTA Third Division also correctly pointed out that the right of the respondent to refund its unutilized input taxes was not only acknowledged but also admitted.

In the Joint Judicial Affidavit of Revenue Officer Cherryl Anne M. Adapon & Group Supervisor Frances E. Leonida[46], both affiants attested that the respondent had submitted documents and voluminous records in support of its claim. They also attested that that the respondent was entitled to refund to a reduced amount of Php747,577,710.82.

Further, in the Manifestation with Supplemental to Joint Stipulation of Facts and Issues[47], both counsels for the petitioner and the respondent manifested that, as per examination and evaluation by Revenue Officer Cherryl Anne M. Adapon & Group Supervisor Frances E. Leonida of pertinent supporting documents submitted by the respondent, the latter is entitled to a tax refund in the aggregate sum of Seven Hundred Forty Seven Million Five Hundred Seventy Seven Thousand Seven Hundred ten Pesos and 82/100 (Php747,577,710.82). It also manifested that both BIR officers had recommended to the higher approving authorities of BIR the grant of respondent's application for VAT refund in the total aggregate amount of Php747,577,710.82.

The foregoing statements constitute judicial admissions as they were made by the party in the course of the proceedings in the instant case, hence, it does not require proof and such admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made[48].

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[46] *Id.*, pp. 2795-2802.
[47] *Id.*, pp. 2838-2841.
[48] Section 4, Rule 129, Rules of Court.

In *Ofelia Herrera-Felix, represented by Jovita Herrera-Seña v. Court of Appeals, and St. Joseph Resources Development, Inc.*[49], the Supreme Court ruled that admissions made in pleadings are binding to the party who made them, *viz*:

> The court acquires jurisdiction over the person of the defendant by service of the complaint and summons on him, either by personal service or by substituted service or by extra-territorial service thereof or by his voluntary personal appearance before the court or through counsel. In this case, *the petitioner appeared before the court, through counsel, and filed a motion for extension of time to file her answer to the complaint which the trial court granted.* She even admitted in the said motion that she was served with a copy of the complaint as well as the summons. The **admissions made in a motion** are judicial admissions which **are binding on the party who made them**. Such party is precluded from denying the same unless there is proof of palpable mistake or that no such admission was made. (Emphasis supplied)

Thus, when petitioner gave credence to the said documents by admitting that the claim for refund was substantiated, petitioner also admitted the authenticity of those documents. In *Spouses Fernando and Ma. Elena Santos v. Lolita Alcazar*[50], the Supreme Court ruled that when the adverse party failed to impugn in its pleadings the due execution of documents being introduced by other party as its evidence, the authenticity of said documents is also deemed admitted, *viz*:

> More to the point is the fact that petitioners failed to deny specifically under oath the genuineness and due execution of the Acknowledgment in their Answer. The effect of this is that the genuineness and due execution of the Acknowledgment is deemed admitted. "By the admission of the genuineness and due execution [of such document] is meant that the party whose signature it bears admits that he signed it or that it was signed by another for him with his authority; that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formal requisites required by law, such as a seal, an acknowledgment, or revenue stamp, which it lacks, are waived by him. Hence, such defenses as that the signature is a forgery x x x; or that it was unauthorized x x x; or that the party charged signed the instrument in some other capacity than that alleged in the pleading setting it out x x x;

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[49] G.R. No. 143736, August 11, 2004.
[50] G.R. No. 183034, March 12, 2014.

or that it was never delivered x x x, are cut off by the admission of its genuineness and due execution."

"**There is no need for proof of execution and authenticity with respect to documents the genuineness and due execution of which are admitted by the adverse party**." With the consequent admission engendered by petitioners' failure to properly deny the Acknowledgment in their Answer, coupled with its proper authentication, identification and offer by the respondent, not to mention petitioners' admissions in paragraphs 4 to 6 of their Answer that they are indeed indebted to respondent, the Court believes that judgment may be had solely on the document, and there is no need to present receipts and other documents to prove the claimed indebtedness. The Acknowledgment, just as an ordinary acknowledgment receipt, is "valid and binding between the parties who executed it, as a document evidencing the loan agreement they had entered into." The absence of rebutting evidence occasioned by petitioners' waiver of their right to present evidence renders the Acknowledgment as the best evidence of the transactions between the parties and the consequential indebtedness incurred. Indeed, the effect of the admission is such that "a prima facie case is made for the plaintiff which dispenses with the necessity of evidence on his part and entitles him to a judgment on the pleadings unless a special defense of new matter, such as payment, is interposed by the defendant. (Emphasis supplied)

More so, as shown by the facts in the instant case, the petitioner even admitted that because of said documents, the claim for refund was substantiated and there was no denial on the part of the petitioner even in its succeeding pleadings. As succinctly summarized by the CTA Third Division in its *Resolution:*

"In this case, the right of petitioner [now, respondent] to a tax refund/tax credit certificate was admitted by respondent's [now, petitioner] witnesses, and since the respondent has not proven that they were made through palpable mistake, the admissions are conclusive as to the respondent. xxx."[51]

It is true that the claim for refund by the respondent should be strictly construed against it, hence, it had the burden to prove such claim, which in this case it did. It was not only substantiated but even admitted by the witnesses of the petitioner. Thus, the petition must fail.

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[51] *Rollo*, p. 58.

In light of the foregoing, the Court *En Banc* finds no compelling reason to deviate from the conclusions arrived at by the Court in Division in partially granting refund as the same is supported by pieces of evidence, which substantiate DOLE's compliance with the requirements for refund of its claimed input tax attributable to zero-rated sales for the period January to December 2011.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The March 18, 2016 *Decision*[52] and July 18, 2016 *Resolution*[53], of the CTA Third Division in CTA Case No. 8665, are hereby **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

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[52] *Supra*, Note 3.
[53] *Supra*, Note 4.

Ma. Belen S L

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice