REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION
****

PROCTER & GAMBLE ASIA PTE. LTD., Petitioner,	**CTA Case Nos. 7581 & 7639**
	Members:
- **versus** -	**CASTAÑEDA,** *Chairperson* and **UY,** <u>*JJ.*</u>
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** NOV 29 2019 2:40 p.m.

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DECISION

UY, <u>J</u>.:

Before this Court are consolidated cases remanded by the Court of Tax Appeals *En Banc* in its Resolution dated September 25, 2018,[1] pursuant to the Supreme Court's Decision dated September 6, 2017[2] in G.R. No. 205652, entitled *"Procter and Gamble Asia Pte Ltd., Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant petition for review is hereby **GRANTED**. The Decision dated September 21, 2012 and the Resolution dated January 30, 2013 of the CTA En Banc in C.T.A. EB Case No. 742 are hereby **REVERSED AND SET ASIDE**. Accordingly, CTA Case Nos. 7581 and 7639 are **REINSTATED** and **REMANDED** to the CTA Special Second Division for the proper determination of the refundable amount due to petitioner Procter & Gamble Asia Pte Ltd., if any.

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[1] Division Docket (CTA Case No. 7581) – Vol. IV, pp. 2574 to 2575.
[2] Division Docket (CTA Case No. 7581) – Vol. IV, pp. 2549 to 2557.

SO ORDERED."

These consolidated cases, involve petitioner's claim for refund or issuance of tax credit certificate (TCC) in the aggregate amount of ₱42,097,482.75 allegedly representing its unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to zero-rated sales for the periods of January 2005 to March 2005 in **CTA Case No. 7581** and April 2005 to June 2005 in **CTA Case No. 7639**, detailed as follows:

CTA Case No.	Taxable Quarters (Fiscal Year ended June 30, 2005)	Amount of Claim
7581	3rd Quarter (January 2005 to March 2005)	₱ 23,090,729.17
7639	4th Quarter (April 2005 to June 2005)	19,006,753.58
		₱ 42,097,482.75

THE FACTS

We adopt pertinent facts relative to these consolidated cases, as narrated in Our Decision dated November 17, 2010[3], which remain undisturbed. We quote:

> **"THE FACTS**
>
> "Culled from the parties' pleadings, evidence on record, and as stipulated by the parties, these are the facts of the case.
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> Petitioner, Procter and Gamble Asia, Pte., Ltd., is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarter in the Philippines, with office address at the 18/F Petron Megaplaza, 358 Sen. Gil Puyat Ave., Makati City. It provides management, marketing, technical and financial advisory, and other qualified services to related companies as specified by its Certificate of Registration and License issued by the Securities and Exchange Commission.[4] It is a VAT-registered taxpayer and is covered by Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.[5]
>
> Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the duty to act upon and approve claims for refunds or tax credits as provided by law. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

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[3] Dision Docket (CTA Case No. 7581) - Vol. III, pp. 1427 to 1443.
[4] Exhibit "A"; Paragraph 1, Admitted Facts by Petitioner and Respondent, Consolidated Joint Stipulation of Facts and Issues (CJSFI), Docket, p. 239.
[5] Exhibit "B".

Petitioner filed its Monthly VAT Declarations and Quarterly VAT Returns on the following dates:[6]

VAT RETURN/ DECLARATION	DATE FILED (ORIGINAL)	DATE FILED (AMENDED)	EXHIBIT
January (Monthly)	February 21, 2005		E
February (Monthly)	March 18, 2005		F
Ending March (Quarterly)	April 25, 2005	March 19, 2007	I and J
April (Monthly)	May 20, 2005		G
May (Monthly)	June 21, 2005		H
Ending June (Quarterly)	July 26, 2006	March 20, 2007	K and L

On March 22, 2007 and May 2, 2007, petitioner filed applications and letters addressed to the BIR Revenue District Office (RDO) No. 49, requesting the refund or issuance of tax credit certificates of its input VAT attributable to its zero-rated sales covering the taxable periods of January 2005 to March 2005, and April 2005 to June 2005, respectively.[7]

Considering that petitioner's claims for refund or tax credit remain unresolved by the Commissioner of Internal Revenue, petitioner filed two separate Petitions for Review before this Court, as follows:

1) ***CTA Case No. 7581*** was filed on March 28, 2007 seeking the refund or the issuance of a tax credit certificate in the amount of ₱ 23,090,729.17, representing petitioner's input VAT paid on goods or services attributable to its zero-rated sales for the taxable period covering January 2005 to March 2005;

2) ***CTA Case No. 7639*** was filed on June 8, 2007 seeking the refund or the issuance of tax credit certificate in its favor in the amount of ₱ 19,006,753.58 representing petitioner's unutilized input VAT paid on goods and services attributable to its zero-rated sales for the taxable period from April 2005 to June 2005.

In the separate Answers filed on May 28, 2007 for C.T.A. Case No. 7581[8] and on August 30, 2007 for C.T.A. Case No. 7639[9], respondent similarly interposes the following Special and Affirmative Defenses, summarized as follows:

1. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent Bureau;

2. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

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[6] Paragraphs 4-11, Admitted Facts by Petitioner and Respondent, CJSFI, Docket, p. 240.
[7] Exhibits "V", "V-1", "W", and "W-1"; Paragraph 12, Admitted Facts by Petitioner and Respondent, CJSFI, Docket, p. 240.
[8] CTA Case No. 7581, Docket, Vol. I, pp. 179-180.
[9] CTA Case No. 7639, Docket, pp. 164-167.

3. Petitioner's claim for refund or issuance of tax credit certificate in the amounts of : **P23,090,729.17 in C.T.A. Case No. 7581,** and **P19,006,753.58** in **C.T.A. Case No. 7639,** as its alleged unutilized input VAT attributable to its zero-rated sales of goods and services for the taxable periods from January to March 2005, and from April to June 2005, respectively, were not fully substantiated by proper documents;

4. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

5. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT;

6. The amount subject of the claim for refund do not pertains in full to its input VAT attributable to its zero-rated sales of goods and services for the period covering January to March 2005;

7. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the Tax Code;

8. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund;

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue 124 SCRA 1211)***.

On July 30, 2007, this Court granted petitioner's Motion to Consolidate CTA Case No. 7581 with 7639, inasmuch as the two cases involve the same parties and common questions of law and/or facts.[10]

After pre-trial held on October 18, 2007[11], the parties filed their Consolidated Joint Stipulation of Facts and Issues on October 31, 2007[12], which was subsequently approved in the Resolution dated November 14, 2007.[13]

During trial, petitioner presented testimonial and voluminous documentary evidence primarily aimed at proving its supposed entitlement to the refund or issuance of a tax credit certificate

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[10] Resolution dated July 30, 2007, CTA Case No. 7639, Vol. 1, p.207.
[11] Minutes of Pre-trial held on October 18, 2007, Docket, Vol. 1, p. 238
[12] Docket, C.T.A. Case No. 7581, Vol. I, pp. 239-242.
[13] Docket, C.T.A. Case No. 7581, Vol. I, p. 256.

representing petitioner's alleged unutilized input taxes for the period covering January 2005 to June 2005. On the other hand, respondent submitted the case for decision based on the pleadings for lack of investigation report, as the claim for refund of petitioner was still pending before the BIR Revenue District Office No. 40.[14]

In the Resolution dated December 2, 2009[15],, these cases were submitted for decision taking into consideration petitioner's Memorandum filed on November 6, 2009 only as respondent failed to file her Memorandum.

Hence, this Decision."

In the said Decision, this Court dismissed the instant consolidated *Petitions for Review* for having been prematurely filed. The dispositive portion thereof reads:

> "**WHEREFORE**, in view of the foregoing considerations, the instant Petitions for Review docketed as CTA Case Nos. 7581 and 7639 are hereby **DISMISSED** for having being prematurely filed.
>
> **SO ORDERED**."

Aggrieved, petitioner filed a *Motion for Reconsideration*[16] on December 2, 2010. However, the said motion was denied by the Court for lack of merit in the Resolution[17] dated March 9, 2011.

On March 23, 2011, petitioner filed a *Petition for Review*[18] with the Court *En Banc,* docketed as CTA EB No. 742. On September 21, 2012, the Court *En Banc* rendered a Decision[19] dismissing petitioner's *Petition for Review* for lack of merit, thus, affirming *in toto* the Court in Division's Decision dated November 17, 2010 and Resolution dated March 9, 2011.

Petitioner's *Motion for Reconsideration* was likewise denied in the Resolution[20] dated January 30, 2013 for lack of merit.

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[14] Minutes of the hearing held on October 7, 2009, C.T.A. Case No. 7581, Vol. II, Docket, p. 1408.
[15] CTA Case No. 7581, Vol. II, Docket, p. 1426.
[16] Division Docket (CTA Case No. 7581) - Vol. III, pp. 1445 to 1463.
[17] Division Docket (CTA Case No. 7581) - Vol. III, pp. 1467 to 1471.
[18] Division Docket (CTA Case No. 7581) - Vol. III, pp. 1472 to 1497.
[19] Division Docket (CTA Case No. 7581) - Vol. III, pp. 1971 to 1986.
[20] Division Docket (CTA Case No. 7581) - Vol. III, pp. 2014 to 2018.

Petitioner then filed a *Petition for Review on Certiorari*[21] with the Supreme Court on March 27, 2013, entitled *"Procter and Gamble Asia Pte Ltd., Petitioner, versus Commissioner of Internal Revenue, Respondent"*, docketed as G.R. No. 205652.

Petitioner raises the following assignment of errors[22] to wit:

"**ASSIGNMENT OF ERRORS**

With due respect, Petitioner assigns the following errors in the assailed Decision and Resolution of the court *a quo:*

1. The court a quo gravely erred in holding that Petitioner's judicial claims for tax refund or credit of input VAT were prematurely filed.

    a. The court a quo gravely erred in failing to consider BIR Ruling No. DA-489-03 dated 10 December 2003, which expressly ruled that the *"taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review".*

    b. The court a quo gravely erred in disregarding Article 8 in relation to Article 4 of the Civil Code to the effect that the new interpretation of the 120-30 day period enunciated by the Supreme Court in the Aichi case like laws passed by Congress should be applied prospectively.

    c. The court a quo gravely erred in failing to consider that the retroactive application of Aichi doctrine amounts to a denial of Petitioner's constitutional right to due process and to unjust enrichment of Respondent.7

2. Assuming, without conceding, that Petitioner's judicial claims were prematurely filed, the court a quo gravely erred in failing to consider that the premature filing thereof was not jurisdictional but mere failure of Petitioner to exhaust administrative remedies which amounts to lack of cause of action that was deemed waived when Respondent did not file a motion to dismiss but opted to actively participate at the trial."

On September 6, 2017, the Supreme Court rendered a Decision[23] granting the petition. Hence, the Decision dated September 21, 2012 and the Resolution dated January 30, 2013 of

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[21] Division Docket (CTA Case No. 7581) - Vol. IV, pp. 2052 to 2079.
[22] Division Docket (CTA Case No. 7581) – Vol. IV, pp. 2057 to 2058.
[23] Division Docket (CTA Case No. 7581) - Vol. IV, pp. 2549 to 2557.

the CTA *En Banc* in CTA EB No. 742 were reversed and set aside and CTA Case Nos. 7581 and 7639 were reinstated and remanded to the CTA Special Second Division for the proper determination of the refundable amount due to petitioner. In said Decision, the Supreme Court held that petitioner's judicial claims were timely filed and should be given due course and consideration by CTA.

Respondent's *Motion for Reconsideration* was denied with finality by the Supreme Court in the Resolution[24] dated March 5, 2018.

An Entry of Judgment[25] was issued by the Supreme Court, stating that the Decision dated September 6, 2017 rendered in G.R. No. 205652 has become final and executory on March 5, 2018.

Thereafter, the CTA *En Banc* issued the Resolution[26] dated September 25, 2018, remanding CTA Case Nos. 7581 and 7639 to the Special Second Division for proper determination of the refundable amount due to petitioner.

Proceedings after the remand of the case to this Court

This Court issued the Resolution[27] dated October 25, 2018, directing both parties to file a written manifestation alleging any supervening event that may have transpired in this case which the parties would want to present before this Court for its consideration.

Petitioner filed a *Manifestation*[28], stating that there was no material or relevant supervening event that transpired in relation to this case, while respondent failed to file his manifestation as per Records Verification dated November 29, 2018. Thus, in the Resolution[29] dated December 17, 2018, these consolidated cases were submitted anew for decision, pursuant to the Supreme Court Decision dated September 6, 2017 rendered in G.R. No. 205652 and CTA *En Banc* Resolution dated September 25, 2018.

Hence, this Decision.

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[24] Division Docket (CTA Case No. 7581) - Vol. IV, p. 2569.
[25] Division Docket (CTA Case No. 7581) - Vol. IV, p. 2577.
[26] Division Docket (CTA Case No. 7581) - Vol. IV, pp. 2574 to 2575.
[27] Division Docket (CTA Case No. 7581) - Vol. IV, pp. 2579 to 2581.
[28] Division Docket (CTA Case No. 7581) - Vol. IV, pp. 2582-2583.
[29] Division Docket (CTA Case No. 7581), Vol. IV, p. 2585.

THE ISSUES

The issues[30] stipulated by the parties are as follows:

1. Whether or not petitioner's sales of services are zero-rated for VAT purposes under Section 108(B)(2) of the 1997 Tax Code.

2. Whether or not petitioner has carried-over to the succeeding taxable quarter or quarters the alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales for the periods covering January 2005 to March 2005 and April 2005 to June 2005.

3. Whether or not the amounts of ₱23,090,729.17 and ₱19,006,753.58 being claimed by petitioner as unutilized input VAT for the period covering January 2005 to March 2005 and April 2005 to June 2005, respectively, pertain in full to its zero-rated sales of services.

4. Whether or not petitioner's sales of services to non-resident foreign corporations qualify as zero-rated sales.

5. Whether or not petitioner complied with the substantiation requirements prescribed under Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code.

6. Whether or not petitioner is entitled to its claimed refund or tax credit in the amounts of ₱23,090,729.17 and ₱19,006,753.58, as alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales, for the periods covering January 2005 to March 2005 and April 2005 to June 2005, respectively.

The foregoing issues may be consolidated into one main issue, as follows:

> Whether or not petitioner is entitled to the refund or issuance of TCC in the amount of ₱23,090,729.17 in CTA

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[30] Issues to be Resolved, *Consolidated Joint Stipulation of Facts and Issues* (CJSFI), Division Docket (CTA Case No. 7581) - Vol. I, p. 241.

Case No. 7581 and ₱19,006,753.58 in CTA Case No. 7639, allegedly representing unutilized input VAT paid on goods and services attributable to its zero-rated sales, for the periods covering January 2005 to March 2005 and April 2005 to June 2005, respectively.

Petitioner's arguments:

Petitioner argues that it is entitled to the refund or issuance of TCC of its unutilized input VAT paid on goods and attributable to its zero-rated sales for the periods covering January 2005 to March 2005 and April 2005 to June 2005.

Allegedly, its sales of services to its client-affiliates abroad are correctly classified as zero-rated sales on the ground that its affiliates abroad are non-resident foreign corporations doing business outside the Philippines and that the considerations for the said services were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Plipinas (BSP).

Moreover, petitioner claims that its claimed input VAT was not carried-over to the succeeding taxable quarters/months; and that the same pertains in full to its zero-rated sale of services for the subject periods.

Petitioner further submits that it has complied with the substantiation requirements provided under the law.

Respondent's counter-arguments:

In his Answers[31], respondent argues that petitioner's claim for refund or issuance of TCC was not fully substantiated by proper documents.

In an action for refund/credit, the burden of proof is allegedly on the petitioner to establish its right to claim refund and that failure to adduce sufficient proof is fatal to the said claim.

As regards petitioner's sales of services to its clients-affiliates, respondent claims that the same do not qualify for VAT zero-rating; and that its claimed input VAT does not pertain in full to its zero-rated sales.

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[31] Division Docket (CTA Case No. 7639), pp. 166 to 167; Division Docket (CTA Case No. 7581) – Vol. I, pp. 179 to 181.

Finally, respondent contends that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation, and as such, they are looked upon with disfavor.

THE COURT'S RULING

After careful and thorough evaluation of the applicable laws, rules and regulations in the instant case, and the evidence presented by petitioner, the Court finds that the instant *Petition for Review* must be denied for insufficiency of evidence.

Requisites for the grant of the refund or issuance of a TCC under the law.

Section112 of the NIRC of 1997[32], reads as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

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[32] In this case, the applicable Tax Code is the NIRC of 1997, prior to its amendment by Republic Act No. 9337 which became effective on July 1, 2005.

xxx xxx xxx

(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

In accordance with the foregoing provisions, the Supreme Court has jurisprudentially established certain requirements which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, and said requisites may be classified into certain categories, to wit:

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

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[33]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner of Internal Revenue (CIR) to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[34]

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[33] *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.*, G.R. No. 182364, August 3, 2010.

[34] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

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

3. the taxpayer is a VAT registered person;[35]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[36]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[37]

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

6. the input taxes are due or paid;[38]

7. the input taxes are not transitional input taxes;[39]

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;[40] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[41]

Petitioner timely filed its administrative and judicial claims

The *first* and *second* requisites pertain to the timeliness of the filing of the administrative and judicial claims.

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[35] *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.*, supra.

[36] *Ibid.*

[37] *Ibid.*

[38] *Ibid.*

[39] *Ibid.*

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

[41] *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.*, supra.

With respect to petitioner's administrative claim, We adopt Our findings in the Decision dated November 25, 2010, that the administrative claims for refund filed on March 22, 2007 and May 2, 2007, covering the taxable quarters from January 2005 to March 2005, and from April 2005 to June 2005, respectively, were filed with the CIR within the two-year prescriptive period provided by law. We quote:

> "Clearly therefore, the two-year prescriptive period applies to administrative claims filed before the Commissioner of Internal Revenue for the issuance of a tax credit certificate or refund of input VAT reckoned from the close of the taxable quarter when the relevant zero-rated sales were made.
>
> Counting the two-year prescriptive period from the close of the taxable quarters when the relevant sales or purchases were made in the instant cases, specifically on : March 31, 2005 for CTA Case No. 7581 and June 30, 2005 for CTA Case No. 7639, petitioner had until March 31, 2007 and June 30, 2007, respectively, within which to file its administrative claim for refund. Evidently, the administrative claims for refund in the instant cases filed on March 22, 2007, covering the taxable quarter from January 2005 until March 2005 and May 2, 2007, covering the taxable quarter from April 2005 until June 2005, were filed with the Commissioner of Internal Revenue within the two-year prescriptive period provided by law."

As regards petitioner's judicial claims filed on March 28, 2007 (CTA Case No. 7581) and June 8, 2007 (CTA Case No. 7639), the Supreme Court in the Decision dated September 7, 2017 in G.R. No. G.R. No. 205652, ruled that said judicial claims were timey filed.

According to the Supreme Court, petitioner filed its judicial claims for refund after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003, but before the date when the case of "*Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*"[42] was promulgated on October 6, 2010. Thus, although petitioner filed its judicial claim without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in "*Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue*, and *Philex Mining Corporation vs. Commissioner of Internal Revenue*".[43]

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[42] GR No. 184823, October 6, 2010.
[43] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

Thus, petitioner has complied with the *first and second requisites*.

Petitioner is a VAT-registered person.

The parties jointly stipulated that petitioner is VAT-registered.[44] Further, petitioner presented its BIR Certificate of Registration No. 9RC0000071787 with Tax Identification No. 203-684-973-000[45] to prove its VAT registration.

Clearly, the *third requisite* has also been complied with.

Petitioner failed to sufficiently establish that it was engaged in zero-rated sales during the subject periods.

In its Amended Quarterly VAT Returns for the periods January 1, 2005 to March 31, 2005 and April 1, 2005 to June 30, 2005, petitioner declared total sales of ₱448,027,069.60 and ₱647,768,169.74, respectively, of which the amounts of ₱399,547,952.30 and ₱575,117,751.74 pertain to zero-rated receipts, respectively, to wit:

Particulars	**Exhibit "J" Jan. 1, 2005 to March 31, 2005 (3rd Qtr FY '05)**	**Exhibit "L" April 1, 2005 to June 30, 2005 (4th Qtr FY '05)**	**Total**
Sales subject to 10% VAT	₱ 48,479,117.30	₱ 72,650,418.00	₱ 121,129,535.30
Zero-rated Receipts	399,547,952.30	575,117,751.74	974,665,704.04
Total Sales	**₱448,027,069.60**	**₱ 647,768,169.74**	**₱ 1,095,795,239.34**

Petitioner claims that the services it rendered to its affiliates abroad, which were paid for in foreign currency and accounted for in accordance with the rules and regulations of the BSP, are transactions subject to zero-percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997.

[44] Par. 3, Admitted Facts by Petitioner and Respondent, *CJSFI*, Division Docket (CTA Case No. 7581) - Vol. I, p. 240; Exhibit "B".
[45] Exhibit "B".

We are not convinced.

A perusal of the records and evidence presented by petitioner failed to sufficiently establish that petitioner was engaged in zero-rated sales for the subject periods.

Section 108(B)(1) and (2) of the NIRC of 1997[46], is instructive as to when the rendition of services is considered as zero-rated, to wit:

> 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, 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)**;" (*Emphasis and underscoring supplied*)

Based on the foregoing provision, the following essential elements must be present in order that a sale or supply of services may be subject to VAT rate of zero percent (0%), under Section 108(B)(2) of the NIRC of 1997, to wit:

1) The recipient of the services is doing business *outside* the Philippines;[47]

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[46] In this case, the applicable Tax Code is the National Internal Revenue Code of 1997, prior to its amendment by Republic Act No. 9337 which became effective on July 1, 2005.

[47] *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.

2) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;[48]

3) The services fall under any of the categories under Section 108(B)(2),[49] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[50] and

4) The services must be performed in the Philippines[51] by a VAT-registered person.

Relative to the ***first essential element***, the Supreme Court in the case of *"Accenture, Inc. vs. Commissioner of Internal Revenue"*[52], ruled that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation".

Further, in *"Commissioner of Internal Revenue vs. Burmeister" and "Wain Scandinavian Contractor Mindanao, Inc."*[53], the Supreme Court emphasized that the service-recipient must **not** be doing business in the Philippines.

Hence, to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported **at the very least** by **both** *SEC certificate of Non-Registration of Corporation/ Partnership* **and** proof of incorporation, association or registration in a foreign country *(e.g.,certificate/articles of foreign incorporation/ association/ registration).*

As a corollary, notwithstanding the presentation of the said documents, there must be no indication that any of the recipients of petitioner's services is doing business in the Philippines, consistent with the ruling in the *Burmeister case.*

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[48] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch., G.R. No. 152609, June 29, 2005.*

[49] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

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

[51] *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.

[52] G.R. No. 190102, July 11, 2012.

[53] G.R. No. 153205, January 22, 2007.

In this case, to prove that its clients are non-resident foreign corporations doing business outside the Philippines, petitioner presented proof of foreign incorporation/association/business registration and SEC Certifications of Non-Registration of its customers listed as follows:

Registered Name	**SEC Certificate of Non-Registration (Exhibit No.)**	**Proof of Incorporation in Foreign Country (Exhibit No.)**
Max Factor Kabushi Kaisha	S-6	VVV/WWW
P.T. Procter & Gamble Home Products Indonesia	S-15	KKK
Procter & Gamble Australia PTY LTD	S-3	AAA
Procter & Gamble Distributing New Zealand	S-8	BBB
Procter & Gamble Far East Inc	S-2	RRR/SSS
Procter & Gamble Home Products LTD	S-14	OOO
Procter & Gamble Hong Kong LTD	S-4	TTT/UUU
Procter & Gamble Hygiene & Health Care LTD	S-5	PPP
Procter & Gamble Indochina	S-17	***-None-***
Procter & Gamble International Operations AG (Home Division)	S-19	***-None-***
Procter & Gamble International Operations PTE LTD	S-24	FFF
Procter & Gamble Kabushi Kaisha	S-21	MMM
Procter & Gamble Korea IE Co	S-23	JJJ
Procter & Gamble Korea Inc	S-13	III
Procter & Gamble Korea S&D Co	S-22	HHH
Procter & Gamble Malaysia SDN BHD	S-7	GGG/QQQ
Procter & Gamble Manufacturing (Thailand) LTD	S-11	***-None-***
Procter & Gamble Manufacturing PTY LTD	S-25	***-None-***
Procter & Gamble Northeast Asia PTE LTD	S-20	XX/YY
Procter & Gamble Singapore PTE LTD	S-9	EEE
Procter & Gamble Taiwan LTD	S-10	WW
Procter & Gamble Technical Centers LTD	***-None-***	XXX
Procter & Gamble Trading (Thailand) LTD	S-12	CCC/DDD
Procter & Gamble Vietnam LTD	S-16	***-None-***
Ssangyong Paper Company Limited	S-18	***-None-***
The Procter & Gamble Company	S-1	ZZ

From the above table, it shows that petitioner failed to fully establish that the following entities are non-resident foreign corporations doing business outside the Philippines:

1	Procter & Gamble Indochina
2	Procter & Gamble International Operations AG (Home Division)
3	Procter & Gamble Manufacturing (Thailand) LTD
4	Procter & Gamble Manufacturing PTY LTD
5	Procter & Gamble Technical Centers LTD

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6	Procter & Gamble Vietnam LTD
7	Ssangyong Paper Company Limited

Consequently, petitioner's declared zero-rated receipts from the aforementioned entities for the period January 1, 2005 to March 31, 2005 in the amount of ₱104,540,116.68 and for the period April 1, 2005 to June 30, 2005 in the amount of ₱101,374,082.14, totalling ₱205,914,198.82, detailed below, shall not be considered as valid zero-rated receipts, to wit:

Exhibit No.	OR No.	Registered Name	Amount in USD	Amount in Php
3rd Quarter (January 1, 2005 to March 31, 2005)				
N-10	1583	Procter & Gamble Manufacturing (Thailand) LTD	$ 90,615.11	₱ 5,085,023.00
N-14	1587	Procter & Gamble (Vietnam) LTD	79,380.14	4,454,553.32
N-15	1588	Procter & Gamble Indochina Vietnam	88,092.27	4,943,449.49
N-16	1589	Ssangyong Paper Company Limited	66,448.20	3,728,754.69
N-17	1590	Procter & Gamble Int. Operations AG (Home Division)	444,648.10	24,952,194.17
N-23	1595	Procter & Gamble Manufacturing PTY LTD	22,262.46	1,249,296.30
N-34	1611	Procter & Gamble Manufacturing (Thailand) LTD	67,996.22	3,826,461.46
N-39	1616	Procter & Gamble (Vietnam) LTD	161,814.08	9,106,025.90
N-40	1617	Procter & Gamble Indochina Vietnam	4,526.65	254,735.50
N-41	1618	Ssangyong Paper Company Limited	43,028.96	2,421,438.39
N-42	1619	Procter & Gamble Int. Operations AG (Home Division)	455,217.27	25,617,178.95
N-49	1625	Procter & Gamble Manufacturing PTY LTD	54,704.96	3,078,500.84
N-60	1638	Procter & Gamble Manufacturing (Thailand) LTD	26,175.83	1,442,989.52
N-65	1643	Procter & Gamble (Vietnam) LTD	40,012.67	2,205,770.12
N-66	1644	Procter & Gamble Technical Centers LTD	73,715.67	4,063,708.38
N-67	1645	Ssangyong Paper Company Limited	22,546.30	1,245,183.82
N-68	1646	Procter & Gamble Int. Operations AG (Home Division)	113,915.80	6,279,812.60
N-75	1652	Procter & Gamble Manufacturing PTY LTD	10,612.63	585,040.23
Subtotal-3rd Quarter (January 1, 2005 to March 31, 2005)			***$ 1,865,713.32***	***₱ 104,540,116.68***
4th Quarter (April 1, 2005 to June 30, 2005)				
N-86	1666	Procter & Gamble Manufacturing (Thailand) LTD	$ 59,963.88	₱ 3,280,299.80
N-91	1671	Procter & Gamble (Vietnam) LTD	66,336.33	3,628,902.09
N-92	1672	Procter & Gamble Indochina Vietnam	909.80	49,770.24
N-93	1673	Ssangyong Paper Company Limited	41,650.94	2,278,497.83
N-94	1674	Procter & Gamble Int. Operations AG (Home Division)	304,191.28	16,640,660.84
N-101	1681	Procter & Gamble Manufacturing PTY LTD	20,827.39	1,139,353.94
N-111	1700	Procter & Gamble Manufacturing (Thailand) LTD	115,181.50	6,307,858.73
N-117	1706	Procter & Gamble (Vietnam) LTD	119,244.31	6,530,356.52
N-118	1707	Procter & Gamble Indochina Vietnam	5,964.57	326,646.79
N-119	1708	Ssangyong Paper Company Limited	67,053.39	3,672,146.22
N-120	1709	Procter & Gamble Int. Operations AG (Home Division)	395,063.32	21,635,450.16
N-127	1716	Procter & Gamble Manufacturing PTY LTD	44,761.08	2,451,318.73
N-137	1731	Procter & Gamble Manufacturing (Thailand) LTD	65,957.44	3,590,497.57
N-141	1735	Procter & Gamble (Vietnam) LTD	72,671.97	3,913,011.30
N-142	1736	Procter & Gamble Indochina Vietnam	1,202.21	65,444.20
N-143	1737	Ssangyong Paper Company Limited	52,520.21	2,859,020.68
N-144	1738	Procter & Gamble Int. Operations AG (Home Division)	376,949.07	20,519,818.73
N-151	1745	Procter & Gamble Manufacturing PTY LTD	45,649.96	2,485,027.77
Subtotal-4th Quarter (April 1, 2005 to June 30, 2005)			***$ 1,856,098.65***	***₱ 101,374,082.14***
TOTAL			**$ 3,721,811.97**	**₱ 205,914,198.82**

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Accordingly, with the exception of the foregoing transactions, petitioner was able to prove compliance with the *first essential element* for VAT zero-rating.

With respect to the ***second essential element***, petitioner presented the *Certifications of Inward Remittances* dated March 23, 2007[54] and August 30, 2007[55] issued by Citibank N.A, Philippine Branch and attested to by Teresita O. Sugay, Citibank's representative, through her Judicial Affidavit[56], and the related official receipts[57], as proof that petitioner received US dollar payments for services rendered to its affiliates abroad that were accounted for in accordance with the BSP rules and regulations. Considering that the certifications of inward remittances attest to the fact of payment *"in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP"*,[58] We find that these certificates are sufficient proof to establish compliance with the second element.

The Court, however, finds that that there are foreign currency proceeds amounting to ₱421,853,558.25, which cannot be traced to the said Certifications, the breakdown of which are as follows:

Exhibit No.	OR No.	Registered Name	Amount in USD	Amount in Php
3rd Quarter (January 1, 2005 to March 31, 2005)				
N-2	1575	Procter & Gamble Far East Inc - Japan	$ 189,673.18	₱ 10,643,837.26
N-9	1582	Procter & Gamble Taiwan LTD	92,958.19	5,209,939.72
N-18	1591	Procter & Gamble Northeast Asia PTE LTD	227,676.60	12,776,464.66
N-19	1761	Procter & Gamble Northeast Asia PTE LTD	250,057.06	14,032,382.72
N-22	1594	Procter & Gamble Korea IE Co	165,088.37	9,255,090.71
N-25	1602	Procter & Gamble Far East Inc - Japan	222,776.76	12,536,677.54
N-28	1605	Procter & Gamble Hygiene & Health Care LTD	88,402.89	4,960,880.48
N-33	1610	Procter & Gamble Taiwan LTD	37,111.03	2,088,409.12
N-43	1620	Procter & Gamble Northeast Asia PTE LTD	256,078.93	14,410,744.52
N-44	1762	Procter & Gamble Northeast Asia PTE LTD	371,531.11	20,907,772.09
N-46	1622	Procter & Gamble Korea S&D Co	118,075.27	6,644,640.97
N-50	1628	The Procter & Gamble Company	107,948.24	5,950,840.14

[54] Exhibit "P".
[55] Exhibit "P-1".
[56] Exhibit "OO".
[57] Exhibit "N-1" to "N-151"
[58] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

N-54	1632	Procter & Gamble Hygiene & Health Care LTD	170,826.31	9,560,642.04
N-59	1637	Procter & Gamble Taiwan LTD	53,567.70	2,952,033.95
N-69	1647	Procter & Gamble Northeast Asia PTE LTD	193,537.32	10,669,091.51
N-70	1769	Procter & Gamble Northeast Asia PTE LTD	189,146.09	10,427,017.09
N-74	1651	Procter & Gamble International Operations PTE LTD	144,037.45	7,940,322.50
Subtotal-3rd Quarter (January 1, 2005 to March 31, 2005)			***$ 2,878,492.50***	***₱ 160,966,787.02***
4th Quarter (April 1, 2005 to June 30, 2005)				
N-76	1655	The Procter & Gamble Company	$ 70,765.26	₱ 3,871,184.90
N-77	1656	Procter & Gamble Far East Inc - Japan	166,747.32	9,121,844.63
N-80	1659	Procter & Gamble Hygiene & Health Care LTD	65,609.44	3,589,137.86
N-85	1665	Procter & Gamble Taiwan LTD	107,121.14	5,860,018.61
N-95	1675	Procter & Gamble Northeast Asia PTE LTD	231,289.03	12,652,572.76
N-96	1776	Procter & Gamble Northeast Asia PTE LTD	268,353.74	14,680,182.71
N-103	1691	Procter & Gamble Far East Inc - Japan	256,711.06	14,058,656.10
N-106	1694	Procter & Gamble Hygiene & Health Care LTD	170,152.09	9,318,296.28
N-108	1696	Procter & Gamble (Malaysia) SDN BHD	66,939.56	3,665,912.38
N-112	1701	Procter & Gamble Taiwan LTD	230,271.06	12,610,682.38
N-121	1710	Procter & Gamble Northeast Asia PTE LTD	588,130.89	32,208,701.53
N-122	1711	Procter & Gamble Northeast Asia PTE LTD	401,912.73	22,010,554.79
N-126	1715	Procter & Gamble International Operations PTE LTD	532,407.45	29,157,034.49
N-129	1723	Procter & Gamble Far East Inc - Japan	242,824.04	13,218,510.62
N-136	1730	Procter & Gamble Taiwan LTD	158,331.40	8,619,020.16
N-145	1739	Procter & Gamble Northeast Asia PTE LTD	469,876.48	25,578,469.24
N-146	1740	Procter & Gamble Northeast Asia PTE LTD	427,114.11	23,250,632.02
N-150	1744	Procter & Gamble International Operations PTE LTD	282,233.40	17,415,359.77
Subtotal-4th Quarter (April 1, 2005 to June 30, 2005)			***$ 4,736,790.20***	***₱ 260,886,771.23***
TOTAL			**$ 7,615,282.70**	**₱ 421,853,558.25**

Accordingly, in the absence of proof of inward remittance and proof that the same was paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP, the above enumerated transactions amounting to ₱421,853,558.25, should not be considered as zero-rated sales.

Relative to the ***third essential element*** (i.e., *that the services rendered should be other than "processing, manufacturing or repacking goods"*), petitioner presented its Business Services Agreements[59] entered into between petitioner and its client-affiliates, which provides that the services to be rendered by petitioner to its client-affiliates include *accounting and financial reporting services, employee services, customer logistics financial services, purchases, business intelligence services, information technology business solution, workplace and other services.*

Clearly, these services fall under the category of *"services other than processing, manufacturing or repacking of goods"* as contemplated under Section 108(B)(2), in relation to Section 108(B)(1), both of the NIRC of 1997. Hence, the *third essential element* was complied with.

With regard to the **fourth essential element**, however, *i.e.*, that the subject services were performed in the Philippines, the same has not been established by petitioner.

In this case, a perusal of the records and evidence presented failed to show that the place where the services rendered by petitioner to its client-affiliates abroad were performed in the Philippines. In fact, petitioner did not present any evidence for the purpose of proving the same. A cursory reading of petitioner's *Formal Offer of Evidence* filed on July 3, 2009[60], shows that petitioner did not offer any specific evidence to establish that the subject services were performed in the Philippines.

It bears emphasis that as cases filed before the Court are litigated de novo, party-litigants should prove every minute aspect of their cases.[61] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[62]

Further, in the case of "*Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*"[63], the Supreme Court ruled that actions for tax refund are in the nature of a claim for exemption and the law is not only construed in

[59] Exhibits "C-1", "C-2", "C-4", "C-5", "C-6", "C-7", "C-8", "C-9", "C-11", "C-12", "C-13", "C-14", "C-15", "C-17", "C-18", "C-20", "C-22", "C-23" and "C-24", inclusive of submarkings.
[60] Division Docket (CTA Case No. 7581) - Vol. II, pp. 1355 to 1389.
[61] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[62] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[63] G.R. No. 159490, February 18, 2008.

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.

Applying the foregoing, considering that petitioner failed to prove that the place of performance of the subject services is in the Philippines, the subject services rendered by petitioner to its client-affiliates abroad cannot qualify as subject to the zero percent (0%) VAT under Section 108(B) of the NIRC of 1997.

Such being the case, the subject refund claim on petitioner's alleged excess and unutilized input VAT must perforce fail for failure of petitioner to show that its sales of services for the periods covering January 2005 to March 2005 and April 2005 to June 2005, qualify for VAT zero-rating.

Correspondingly, it becomes unnecessary to determine whether petitioner fulfilled the remaining requisites for granting a credit/refund of input VAT for the subject periods.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for insufficiency of evidence.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson, Special 2nd Division

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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice