REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

GST PHILIPPINES, INC., Petitioner,	**C.T.A. CASE NO. 7016**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 07 2007

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DECISION

CASTAÑEDA, JR., *J.*:

Before Us is a Petition for Review seeking a refund or issuance of a tax credit certificate in the amount of ₱19,565,975.69 representing unutilized input value-added taxes paid on petitioner's domestic purchases and importations of good attributable to zero-rated sales of goods for the second quarter of 2002 to the fourth quarter of 2003.

Petitioner, is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office located at the 2/F, ALPAPI Bldg., 140 L.P. Leviste Street, Salcedo Village,

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Makati City.[1] It is organized to principally engage in the business of manufacturing, processing, selling and dealing in all kinds of iron, steel or other metals, and all or any products or articles consisting or partly consisting of iron, steel or other metals, such as but not limited to grinding balls, rods, structural steel, any and all kinds of industrial machineries and equipment and any and all processes and products and any and all other analogous or related objects.[2]

Respondent, on the other hand, is empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit of overpaid internal revenue taxes as provided by law, with office at the Bureau of Internal Revenue (BIR) National Office Bldg., Diliman, Quezon City.[3]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer in accordance with the requirements of Section 107 of the 1985 Tax Code [now Section 236 of the National Internal Revenue Code of 1997, as amended], with BIR Certificate of Registration bearing RDO Control No. 94-500-000023-V and Taxpayer Identification No. (TIN) 000-155-645-000.[4]

Petitioner's Amended Quarterly VAT Return for the second quarter of 2002 and its Quarterly VAT Returns for the third and fourth quarter of 2002 were filed through Electronic Filing and Payment System ("EFPS") on

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[1] Par. 1, Joint Stipulation of Facts; docket, p. 164,
[2] Par. 8, Joint Stipulation of Facts; docket, p. 165.
[3] Par. 2, Joint Stipulation of Facts; *Ibid.*
[4] Par. 9, Joint Stipulation of Facts; *Ibid.*

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February 12, 2003, October 24, 2002 and January 21, 2003, respectively, showing, among others the following:

	2nd Quarter-Amended (Exhibit D)	3rd Quarter (Exhibit E)	4th Quarter (Exhibit F)
Taxable Sales	P 4,423,424.20	P 4,058,466.51	P 562,398.50
Zero Rated Sales	30,409,953.69	33,675,372.68	40,753,398.56
Total Sales	P34,833,377.89	P 37,733,839.19	P 41,315,797.06
Output Tax	P 442,342.42	P 405,846.65	P 56,239.85
Less: Input Tax			
Carried Over from Previous Quarter	P 7,192,026.29		
Domestic Purchases-Goods/Services	4,140,039.61	P 1,106,914.43	P 285,459.89
Total Available Input Tax	P11,332,065.90	P 1,106,914.43	P 285,459.89
Less: Any VAT Refund/TCC Claimed	7,192,026.29	-	-
Net Creditable Input Tax	P 4,140,039.61	P 1,106,914.43	P 285,459.89
Excess Input Tax	P 3,697,697.19	P 701,067.78	P 229,220.04
Excess payment in previous return		3,697,697.19	4,398,764.97
Tax Overpayment	P 3,697,697.19	P 4,398,764.97	P 4,627,985.01

Petitioner, likewise, filed through EPFS its Quarterly VAT Returns for the four (4) quarters of taxable year 2003 on April 23, 2003, July 11, 2003, October 20, 2003 and January 29, 2004, respectively, declaring among others the following:

	1st Quarter (Exh. G)	2nd Quarter (Exh. H)	3rd Quarter (Exh. I)	4th Quarter (Exh. J)
Taxable Sales	P 3,947,529.60	P 112,278.12	P 3,904,524.26	P 86,013.60
Zero Rated Sales	17,053,028.11	35,803,955.04	68,727,735.32	37,506,616.64
Total Sales	P21,000,557.71	P35,916,233.16	P 72,632,259.58	P 37,592,630.24
Output Tax	P 394,752.96	P 11,227.81	P 390,452.43	P 8,601.36
Less: Input Tax				
Carried Over from Previous Qtr	P 4,627,985.01	P 3,375,911.07	P 2,300,699.98	P 2,654,730.10
On Domestic Purchases-Goods/Services	3,770,664.03	2,311,927.79	3,045,182.53	6,615,250.89
Total Available Input Tax	P 8,398,649.04	P 5,687,838.86	P 5,345,882.51	P 9,269,980.99
Less: Any VAT Refund/TCC Claimed	4,627,985.01	3,375,911.07	2,300,699.98	2,654,730.10
Net Creditable Input Tax	P 3,770,664.03	P 2,311,927.79	P 3,045,182.53	P 6,615,250.89
Excess Input Tax	3,375,911.07	2,300,699.98	P 2,654,730.10	6,606,649.53
Excess payment in previous return	-	-	-	-
Tax Overpayment	P 3,375,911.07	P 2,300,699.98	P 2,654,730.10	P 6,606,649.53

On February 14, 2003, petitioner filed an administrative claim for refund of unutilized VAT input taxes for the period covering April 1, 2002 to December 31, 2002 in the amount of ₱4,627,985.01 with the Large Taxpayers Assessment Division of the BIR.[5]

On May 20, 2003, petitioner again filed an administrative claim for refund of unutilized VAT input taxes for the period covering January 1, 2003 to march 31, 2003 in the amount of ₱3,375,911.07 with the Large Taxpayers Assessment Division of the BIR. [6]

On July 25, 2003, petitioner filed an administrative claim for refund of unutilized input taxes for the period covering April 1, 2003 to June 30, 2003 in the amount of ₱2,300,699.98 with the Large Taxpayers Assessment Division of the BIR.[7]

On October 27, 2003 petitioner filed an administrative claim for refund of unutilized VAT input taxes for the period covering July 1, 2003 to September 30, 2003 in the amount of P2,654,730.10 with the Large Taxpayers Assessment Division of the BIR.[8]

On February 12, 2004, petitioner filed an administrative claim for refund of unutilized VAT input taxes for the period covering October 1, 2003 to December 31, 2003 in the amount of ₱6,606,649.53 with the Large Taxpayers Assessment Division of the BIR.[9]

On June 29, 2004, petitioner filed with this Court a Petition for Review for the refund or issuance of a tax credit certificate in the amount of

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[5] Par. 11, Joint Stipulation of Facts; docket, p. 165.
[6] Par. 12, Joint Stipulation of Facts; *Ibid.*
[7] Par. 13, Joint Stipulation of Facts; *Ibid.*
[8] Par. 14, Joint Stipulation of Facts; *Ibid.*
[9] Par. 15, Joint Stipulation of Facts; *Ibid.*

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₱19,565,975.69 representing unutilized input taxes on its domestic purchases and importation attributable to zero-rated sales for the second quarter of 2002 to the fourth quarter of 2003.

In his Answer filed on August 23, 2004, respondent interposed the following Special and Affirmative Defenses:

> "7. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.
>
> 8. Petitioner's claim for refund is subject to administrative investigation/ examination by the respondent.
>
> 9. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 10. To support its claim, it is imperative for petitioner to prove the following, viz:
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> a. The registration requirement of a value-added taxpayer in compliance with Section 6(a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of the Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
>
> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;
>
> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112(D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-state requirements warrants immediate dismissal of the petition for review.
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> d. That the input taxes of P19,565,975.69 allegedly paid by the petitioner on its domestic purchases and importation of goods for the period covering April 1, 2002 to December 31,

2003 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters.

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112(A) and (D) and Section 229 of the Tax Code, as amended.

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts an other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the Tax Code, as amended, and in pursuance to Section 4. 104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credit)

11. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted exist upon vague implications (Asiatic Petroleum Co. {P.I.} v. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670);

12. Finally, claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation"[10]

On March 28, 2006, petitioner manifested that respondent has issued Tax Credit Certificate No. SN024318 dated August 25, 2005 in its favor in the amount of P3,135,619.26 representing unutilized input taxes for April 1, 2002 to December 31, 2002.

On October 10, 2006, petitioner again filed a manifestation informing this Court that respondent has issued Tax Credit Certificate No. SN 024351

[10] Docket, pp. 126-129

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dated July 17, 2006 in the amount of P6,540,460.41 representing unutilized input taxes for the 4th quarter of 2003.

After petitioner filed its Memorandum, *sans* respondent's Memorandum, the case was submitted for decision on December 11, 2006.

The parties stipulated on the following issues for this Court's resolution:[11]

> 1. Whether or not the sales made by petitioner to Philex Mining Corporation, Philex Gold Philippines, and Lepanto Consolidated Mining Company are subject to zero percent (0%) VAT pursuant to Revenue Memorandum Order No. 9-00;
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> 2. Whether or not the export sales made by petitioner to Malex Industrial Products SDN BHD, CSR Building Material SDN BHD, Hume Cemboard Berhad, and UAC Berhad, all located in Malaysia, Padaeng Industry Public Co., Ltd. In Thailand, Preminco Ltd. in South Africa, Boroo Gold Co., Ltd. in Mongolia, and JNJ Company, Pte., Ltd. in Singapore are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the Tax Code of 1997;
>
> 3. Whether or not the sales made by petitioner to PASAR are subject to zero percent (0%) VAT pursuant to Revenue Memorandum Circular No. 74-99;
>
> 4. Whether or not petitioner has unapplied or unutilized creditable input VAT for the 2nd, 3rd, and 4th quarters of taxable year 2002; 1st, 2nd, 3rd and 4th quarters of 2003, arising from its domestic purchases of goods and services during the period covering April 1, 2002 to December 31, 2003 in the total amount of ₱19,565,975.69 that can be the proper subject of a claim for refund pursuant to Section 110(B) and Section 112(A) of the Tax Code, as amended;
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> 5. Whether or not the unutilized creditable input taxes for the 2nd, 3rd and 4th quarters of taxable year 2002 and the four (4) quarters of 2003 are substantiated by proper invoices and official receipts;
>
> 6. Whether or not the said unutilized creditable input VAT for the 2nd, 3rd and 4th quarters of taxable year 2002 and the four (4) quarters of 2003 were carried over to the succeeding taxable quarter(s) and applied against any of the output VAT liability of the petitioner for the said period; and
>
> 7. Whether or not petitioner's administrative claims for refund/tax credit were filed within the two-year prescriptive period to file said claims as provided under Section 4.106-1 of RR No. 7-95, as amended.

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[11] Stipulation of Issues; docket, p. 166.

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On the issue of Prescription

The Court finds that petitioner's claims for refund were seasonably filed. Records show that petitioner's administrative claim filed on February 14, 2003, May 20, 2003, July 25, 2003, October 27, 2003 and February 12, 2004 and the Petition for Review filed with this Court on June 29, 2004 fell within the two-year prescriptive period reckoned from July 25, 2002, October 24, 2002, January 21, 2003, April 23, 2003, July 11, 2003, October 20, 2003 and January 29, 2004, the respective dates when petitioner filed its Quarterly VAT Returns for the taxable periods from the second quarter of 2002 to the fourth quarter of 2003.[12] The reckoning of the two (2) year prescriptive period of petitioner's claim for the second quarter of 2002 is the last date (which is July 25, 2002) required by Section 114(A) of the Tax Reform Act of 1997, as amended, ("Tax Code") within which the quarterly VAT return must be filed, considering that petitioner did not present its original VAT return for the said quarter.

First, Second and Third Issues

Issues nos. 1, 2 & 3 shall be discussed jointly as they all relate to the determination of whether or not petitioner generated zero-rated sales for the second quarter of 2002 up to the fourth quarter of 2003.

In its VAT returns for the quarters covered by the instant claim, petitioner reported an aggregate amount of ₱263,930,060.04 zero-rated sales, broken down as follows: *ge*

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[12] *JIDECO Manufacturing Phil. Incorporated vs. Commissioner of Internal Revenue*, CTA Case No. 6552, September 16, 2004. See Exhibits "E," "F," "G," "H," "I" and "J."

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Exhibit	**Period Covered**	**Zero-rated Sales Per Returns**
	2002	
D	2nd quarter	P 30,409,953.69
E	3rd quarter	33,675,372.68
F	4th quarter	40,753,398.56
	subtotal	P104,838,724.93
	2003	
G	1st quarter	P 17,053,028.11
H	2nd quarter	35,803,955.04
I	3rd quarter	68,727,735.32
J	4th quarter	37,506,616.64
	subtotal	P159,091,335.11
	Total	**P263,930,060.04**

Per the quarterly Summary of Zero Rated Sales submitted by petitioner, the reported zero-rated sales consisted of domestic sales in the amount of ₱104,838,724.93 and export sales in the amount of ₱158,871,267.11 totalling to ₱263,709,992.04, detailed as follows:

Period Covered	Exhibit	ZERO-RATED SALES Domestic	Exhibit	Export	Total
2002					
2nd quarter	II, II-1	P 27,108,554.02	KK	P 3,301,399.67	P 30,409,953.69
3rd quarter	II-2, II-3	30,738,703.59	KK	2,936,669.09	33,675,372.68
4th quarter	II-4, II-5	36,764,441.70	KK	3,988,956.86	40,753,398.56
subtotal		P 94,611,699.31		P10,227,025.62	P104,838,724.93
2003					
1st quarter	II-6	P 12,932,213.96	KK	P 4,120,814.15	P 17,053,028.11
2nd quarter	II-7, II-8	34,420,939.02	KK	1,162,948.02	35,583,887.04
3rd quarter	II-9, II-10	40,911,244.50	KK	28,304,467.97	69,215,712.47
4th quarter	II-11	35,442,835.50	KK	1,575,803.99	37,018,639.49
subtotal		P123,707,232.98		P35,164,034.13	P158,871,267.11
Total		**P218,318,932.29**		**P45,391,059.75**	**P263,709,992.04**

A comparison of the amount of zero-rated sales declared in the quarterly VAT returns against the amount in the Summary of Zero-Rated Sales prepared by petitioner disclosed a discrepancy of ₱220,068.00, as shown below:

	Zero-rates Sales Per Returns	Zero-rated Sales Per Summaries Domestic	Export	Total	Difference
2002					
2nd quarter	P 30,409,953.69	P 27,108,554.02	P 3,301,399.67	P 30,409,953.69	-
3rd quarter	33,675,372.68	30,738,703.59	2,936,669.09	33,675,372.68	-
4th quarter	40,753,398.56	36,764,441.70	3,988,956.86	40,753,398.56	-
Subtotal	P104,838,724.93	P 94,611,699.31	P10,227,025.62	P104,838,724.93	-
2003					
1st quarter	P 17,053,028.11	P 12,932,213.96	P 4,120,814.15	P 17,053,028.11	-
2nd quarter	35,803,955.04	34,420,939.02	1,162,948.02	35,583,887.04	P 220,068.00
3rd quarter	68,727,735.32	40,911,244.50	28,304,467.97	69,215,712.47	(487,977.15)
4th quarter	37,506,616.64	35,442,835.50	1,575,803.99	37,018,639.49	487,977.15
Subtotal	P159,091,335.11	P123,707,232.98	P35,164,034.13	P158,871,267.11	P 220,068.00
Total	**P263,930,060.04**	**P218,318,932.29**	**P45,391,059.75**	**P263,709,992.04**	**P 220,068.00**

The Value Added Tax (VAT) law is clear. Only transactions evidenced by VAT official receipts/sales invoices shall be considered as VAT transactions for purposes of input/output VAT. Thus, for petitioner's failure to submit any supporting document as regards the difference of ₱220,068.00, the same shall be denied zero-rating.

Basic is the rule that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[13]

To substantiate its export sales of ₱158,871,267.11 and the foreign currency proceeds therefrom, petitioner presented various sales invoices, official receipts, export declarations, bills of lading and credit advices/memos.[14] A perusal of these documents proved that petitioner actually shipped and sold its products abroad to the following entities: Malex

[13] *Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005.
[14] Exhibits "KK-1" to "KK-129."

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Industrial Products SDN BHD, CSR Building Materials SDN BHD, Hume Cemboard Berhad, and UAC Berhad, all located in Malaysia, Padaeng Industry Public Co., Ltd. in Thailand, Preminco Ltd. in South Africa, Boroo Gold Co., Ltd. in Mongolia, and JNJ Company, Pte., Ltd. in Singapore. In consideration thereof, petitioner received foreign currency payments, which were inwardly remitted in accordance with the BSP rules and regulations. These export sales may fall within the export sales transactions subject to zero percent (0%) VAT referred to under Section 106(A)(2)(a)(1) of the Tax Code, which states:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* –There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
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> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. – The term 'export sales" means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).
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> xxx xxx xxx"

However, Section 106(A)(2)(a)(1) of the Tax Code should not be read in isolation but in conjunction with Section 113 of the same Code and Revenue Regulations No. 7-95. Even the Supreme Court recognized that apart from the mandatory compliance of invoicing requirement provided in

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Section 113 of the Tax Code there are other provisions which likewise require the compliance of proper invoicing, such as that provided in Revenue Regulations No. 7-95, an implementing rule which was issued pursuant to respondent's duty of implementing the 1997 NIRC, as amended. Thus, in *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue,*[15] the Supreme Court ruled that it is the duty of the seller to comply with the invoicing and accounting requirements laid down in, among others, Section 108 of the Tax Code (now Section 113 of the Tax Code). Section 113 of the Tax Code reads:

> "**SEC. 113.** ***Invoicing and Accounting Requirements for VAT Registered Persons. —***
>
> (A) Invoicing Requirements. — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
>
> xxx xxx xxx."

Corollary thereto, Section 4.108-1 of Revenue Regulations No. 7-95, provides as follows:

> "**SEC. 4.108-1.** ***Invoicing Requirements***. — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
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> 1. the name, TIN, and address of seller;
> 2. date of transaction;

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[15] G.R. No. 134467, November 17, 1999.

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3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales**; and
6. the invoice value or consideration." (Emphasis supplied)

An examination of the sales invoices covering petitioner's export sales for the subject period of claim reveals that the same do not bear the imprinted word "zero-rated" in clear violation of Section 4.108-1 of Revenue Regulations No. 7-95. It is explicit from the provisions of Section 113, in relation to Section 237, of the Tax Code and Section 4.108-1 of Revenue Regulations No. 7-95 that a VAT registered person like herein petitioner must issue a duly registered VAT invoice or receipt **for every sale transaction**. Such VAT invoice or receipt must show the taxpayer's identification number (TIN) followed by the word VAT, printer's BIR permit number and **the word "zero rated" imprinted on the invoice** or receipt **covering a zero-rated sale**. Considering so, the export sales referred to under Section 106(A)(2)(1)(a) of the Tax Code as subject to zero percent (0%) VAT are those covered by duly registered VAT invoices bearing all the required information. Since the word 'zero-rated" was not imprinted on its sales invoices, petitioner's reported export sales for the second quarter of 2002 up to the fourth quarter of 2003 in the amount of ₱158,871,267.11 cannot qualify for VAT zero-rating. Consequently, the claimed unutilized input VAT attributable thereto cannot be granted. It is clear from the provisions of Section 112(A) of the Tax Code that there must be zero-rated or effectively zero-rated sales in order that a refund of input VAT could prosper, to wit:

"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). Xxx."

The law and regulations are explicit in emphasizing strict compliance with the invoicing requirements because for the same transactions, the output VAT of the seller becomes the input VAT of the purchaser. Pursuant to Sections 106(D)(1) and 108(C), in relation to Section 110 of the Tax Code, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the invoice, while the output or input tax on the sale or purchase of services is determined by the total amount indicated in the official receipt. In the case of zero-rated sales transactions, the regulations further require that the words "zero-rated" be imprinted on the face of the covering invoices or official receipts. The rationale for the imprinting of the word "zero-rated" on the face of the covering invoice or official receipt of the seller is for the buyer or purchaser not to claim any input VAT from such purchase.[16] In ***J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue***, this Court elucidated:[17]

> "Furthermore, Section 110 of the NIRC of 1997, as amended, provides that: 'Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: . . . .' **If the**

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[16] *American Express International, Inc., Philippine Branch vs. Commissioner of Internal Revenue*, CTA EB No. 103, March 3, 2006.
[17] C.T.A. Case No. 6454, June 30, 2005.

invoice or official receipt was not imprinted with 'zero-rated', there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated. This is the rationale for the mandatory requirement in Revenue Regulations No. 7-95 that the words "zero-rated" be imprinted in the invoice or receipt, as the case may be. **The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with the invoicing requirements under the regulations. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer**. (Emphasis supplied)

In the case of ***Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,*** **CTA EB No. 11 (CTA Case No. 6255), April 19, 2005**, this Court En Banc discussed the importance of a mandatory compliance with the requirements of invoicing, as well as, the consequences of failing to do so, to quote:

"xxx [W]e disagree with petitioners allegations of the Division's erroneous denial of its claim for tax refund on the ground that petitioner's invoices do not bear the imprint "zero-rated".

xxx xxx xxx

Sections 113(A) and 237 of the NIRC lay down the invoicing requirements for VAT registered persons. More specifically, *Section 4.108-1 of Revenue Regulation No. 7-95* enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons. The pertinent portion is quoted hereunder:

xxx xxx xxx

The afore-quoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirement is mandatory as the word "shall" is used. It is a settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect (*Republic Planters Bank vs. Agana, Sr., 269 SCRA 1).* The word "shall" is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning (*Pimentel vs. Aguirre, Jr. citing Ruben A. Agpalo, Statutory Construction, 1990 Ed., p. 239)*. Indeed, it is the duty of a

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seller-taxpayer to comply with the invoicing requirements laid down in the said memorandum circular.

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In conjunction thereto, *Revenue Memorandum Circular No. 42-2003* has clarified the issue relative to the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements. The pertinent portion of the said circular provides:

> A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing officer to the concerned BIR office for verification of other tax liabilities for the taxpayer."

Under said memorandum, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant. Thus, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer, but fails to comply with the invoicing requirements in the issuance of sales invoices, such as the failure of a claimant-taxpayer to imprint the word "zero-rated" on the sales invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied."

As to the domestic sales of ₱218,318,932.29, records show that the same pertained to sales made by petitioner to Philex Mining Corporation, Philex Gold Philippines, Inc., and Lepanto Consolidated Mining Co., all VAT taxpayers and BOI registered entities whose products are 100% exported and

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to Philippine Associated Smelting and Refining Corp. (PASAR), a PEZA registered entity.[18] The said sales to BOI companies are covered by VAT invoices and official receipts duly stamped with the word "zero-rated", the name of the BOI company/buyer and the corresponding BOI registry number and registration date.[19] Likewise, the sales to PASAR are supported by proper VAT invoices and official receipts.[20]

Petitioner's domestic sales to the aforementioned BOI companies and PEZA entity qualify for VAT zero-rating pursuant to Section 106(A)(2)(a)(5) of the Tax Code, which provides:

> "**SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties.*** -
>
> "(A) *Rate and Base of Tax.* – x x x
>
> "(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> "(a) *Export Sales.* – The term 'export sales' means:
>
> xxx xxx xxx
>
> "(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

The VAT zero-rating of sales made by a VAT taxpayer like petitioner to a PEZA entity was further clarified in Revenue Memorandum Circular (RMC) No. 74-99, the pertinent provisions of which read as follows:

> "SECTION 3. **Tax Treatment of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise.-**
>
> "(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> xxx xxx xxx

[18] Exhibits "K" to "Q," "R," "V," "W" and "X."
[19] Exhibits "II-13" to "II-618", "II-621" to "II-688", "II-691" to "II 760", and "II-763" to "II-807."
[20] Exhibits "II-619", "II-620", "II-689", "II-690", "II-761", "II-762", "II-414", and "II-516."

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(b) **Sale of service**. – This shall be treated subject to zero percent (0%) VAT under the **"cross border doctrine"** of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

xxx xxx xxx

(b) **Sale of Service**. – This shall be treated subject to zero percent (0%) VAT under the **"cross border doctrine"** of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

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

"This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulatiosn No. 7-95 effective as of the date of issuance of this Circular.

In the case of ***Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.***,[21] the Supreme Court held that "[The] Sales of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%). In zero-rated transactions, the VAT-

[21] G.R. No. 150154, August 9, 2005.

registered supplier shall not pass on any output VAT to the ECOZONE enterprise, and at the same time, shall be entitled to claim tax credit/refund of its input VAT attributable to such sales. Zero-rating of export sales primarily intends to benefit the exporter (i.e., the supplier from the Customs Territory), who is directly and legally liable for the VAT, making it internationally competitive by allowing it to credit/refund the input VAT attributable to its export sales."

Likewise, in Revenue Memorandum Order No. 9-00 dated February 2, 2000, the BIR enumerated the requirements for the zero-rating of sales by a VAT taxpayer to a BOI entity, thus:

> "SECTION 3. *Sales of goods, properties or services made by a VAT-registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions*:
>
> (1) The supplier must be VAT-registered,
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
>
> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly-registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec. 4.108-1(5) of RR 7-95. The supplier must likewise indicate in the VAT invoice the name and BOI-registry number of the buyer."

Fourth, Fifth and Sixth Issues

Having resolved that out of the total reported zero-rated sales of ₱263,709,992.04 for the subject period of claim, only the amount of ₱104,838,724.93 pertaining to petitioner's domestic sales to BOI and PEZA entities is subject to zero percent VAT, We proceed to the determination of the amount of unutilized input VAT attributable thereto.

Petitioner's declared input VAT payments from domestic purchases of goods and services for the second quarter of 2002 to the fourth quarter of 2003 amounted to ₱21,275,439.17, broken down as follows:

Exhibit	Period Covered	Input VAT
	2002	
D	2nd quarter	P 4,140,039.61
E	3rd quarter	1,106,914.43
F	4th quarter	285,459.89
	subtotal	P 5,532,413.93
	2003	
G	1st quarter	P 3,770,664.03
H	2nd quarter	2,311,927.79
I	3rd quarter	3,045,182.53
J	4th quarter	6,615,250.89
	subtotal	P 15,743,025.24
	Total	P 21,275,439.17

Based on the review and validation of the commissioned CPA, out of the total input VAT of ₱21,275,439.17, only the amount of ₱21,223,026.27 represents petitioner's valid claim,[22] computed as follows:

Total input taxes based on the Summary List of Purchases Per Schedule 2	₱ 21,275,439.17
Add/(Deduct) Adjustments:	
1. Input Taxes supported by documents not in the name of the Company	(17,486.26)
2. Understatement of input tax claimed	3,243.05

[22] Page 6 of Exhibit "AA-4."

3. Input taxes claimed supported by non-vat invoices or official receipts	(17,680.51)
4. Input taxes not supported by documents	(20,343.88)
5. Input taxes supported by invoices/official receipts with unreadable or faded amounts	(145.30)
Total Input Taxes Claimed as Audited	₱ 21,223,026.27

Upon examination, this Court found that the amount of ₱21,223,026.27 recommended by the commissioned CPA should be further reduced to ₱20,646,776.99 for petitioner's failure to meet the invoicing requirements mandated by Sections 113, 237 and 238 of the Tax Code as well as Section 4.108-1 of Revenue Regulations No. 7-95 as regards the amount of P576,249.28. Thus:

	Additional Disallowances	**Amount**
1.	Purchases of service not supported by official receipts	P 94,814.07
2.	Purchases of Goods not supported by invoice	8,690.34
3.	Claimed Input VAT Supported by documents other than the required official receipts and invoices (such as Bank's Settlement Advice and Debit Memos)	112,918.47
4.	Purchases of Service Supported by Provisional Receipts	7,649.79
5.	Purchase of services supported with an undated official receipt	927.27
6.	Purchase of service supported with Non-VAT official receipt	221.73
7.	Purchases supported by invoice or official receipt without the word VAT; TIN-V or TIN-VAT	9,014.62
8.	Purchase of service supported with official receipt but without the required BIR Permit to print and the word VAT	158,269.72
9.	Purchases Without Supporting Documents	183,743.27
	TOTAL	**P 576,249.28**

Therefore, the claimed input VAT of ₱20,646,776.99 which was properly substantiated by VAT invoices or official receipts, is summarized below on a per quarter basis.

INPUT VAT

	Per ITR	**Disallowances**			**Substantiated**
		Per ICPA	**Per CTA**	**Total**	
2002					
2nd Qtr	P 4,140,039.61	P 18,065.36	P 108,305.95	P 126,371.31	P 4,013,668.30
3rd Qtr	1,106,914.43	6,250.71	91,807.52	98,058.23	1,008,856.20
4th Qtr	285,459.89	419.66	209,735.46	210,155.12	75,304.77

Subtotal	**P 5,532,413.93**	**P 24,735.73**	**P 409,848.93**	**P 434,584.66**	**P 5,097,829.27**
2003					
1st Qtr	P 3,770,664.03	P 11,883.74	P 20,345.72	P 32,229.46	P 3,738,434.57
2nd Qtr	2,311,927.79	4,743.45	76,525.09	81,268.54	2,230,659.25
3rd Qtr	3,045,182.53	8,915.55	41,552.30	50,467.85	2,994,714.68
4th Qtr	6,615,250.89	2,134.43	27,977.24	30,111.67	6,585,139.22
Subtotal	**P 15,743,025.24**	**P 27,677.17**	**P 166,400.35**	**P 194,077.52**	**P 15,548,947.72**
TOTAL	**P21,275,439.17**	**P 52,412.90**	**P 576,249.28**	**P 628,662.18**	**P20,646,776.99**

Regarding the issue of whether or not the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarter(s), petitioner's quarterly VAT returns for the subject period of claim showed that petitioner had taxable sales in the amount of ₱17,094,634.79 with the related output tax liability in the total amount of ₱1,709,463.48, broken down as follows:

Exhibit	**Period Covered**	**Taxable Sales**	**Output VAT**
	2002		
D	2nd qtr	P 4,423,424.20	P 442,342.42
E	3rd qtr	4,058,466.51	405,846.65
F	4th qtr	562,398.50	56,239.85
	Subtotal	P 9,044,289.21	P 904,428.92
	2003		
G	1st qtr	P 3,947,529.60	P 394,752.96
H	2nd qtr	112,278.12	11,227.81
I	3rd qtr	3,904,524.26	390,452.43
J	4th qtr	86,013.60	8,601.36
	Subtotal	P 8,050,345.58	P 805,034.56
	Total	**P17,094,634.79**	**P1,709,463.48**

After having removed such output tax of ₱1,709,463.48 from the substantiated input VAT of ₱20,646,776.99, there still remained an excess amount of ₱18,937,313.51 representing input VAT attributable to petitioner's reported zero-rated sales (domestic and exports) of ₱263,930,060.04. Consequently, only the input VAT of ₱16,185,520.20 can be attributed to

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petitioner's zero-rated domestic sales of ₱218,318,931.79, as computed below:

	SALES		
	Zero-rated per ITR	**Qualified zero-rated**	**Ratio of qualified zero-rated to zero-rated per ITR**
2002			
2nd Qtr	P 30,409,953.69	P 27,108,554.02	89.14%
3rd Qtr	33,675,372.68	30,738,703.59	91.28%
4th Qtr	40,753,398.56	36,764,441.70	90.21%
Subtotal	**P 104,838,724.93**	**P 94,611,699.31**	**90.24%**
2003			
1st Qtr	P 17,053,028.11	P 12,932,213.96	75.84%
2nd Qtr	35,803,955.04	34,420,939.02	96.14%
3rd Qtr	68,727,735.32	40,911,244.50	59.53%
4th Qtr	37,506,616.64	35,442,835.50	94.50%
Subtotal	**P 159,091,335.11**	**P 123,707,232.98**	**77.76%**
TOTAL	**P 263,930,060.04**	**P 218,318,932.29**	**82.72%**

	Substantiated Input VAT	**Output VAT**	**Input VAT attributable to declared zero-rated sales**	**Input VAT attributable to qualified zero-rated sales**
2002				
2nd Qtr	P 4,013,668.30	P 442,342.42	P 3,571,325.88	P 3,183,611.57
3rd Qtr	1,008,856.20	405,846.65	603,009.55	550,423.96
4th Qtr	75,304.77	56,239.85	19,064.92	17,198.84
Subtotal	**P 5,097,829.27**	**P 904,428.92**	**P 4,193,400.35**	**P 3,751,234.37**
2003				
1st Qtr	P 3,738,434.57	P 394,752.96	P 3,343,681.61	P 2,535,690.77
2nd Qtr	2,230,659.25	11,227.81	2,219,431.44	2,133,700.43
3rd Qtr	2,994,714.68	390,452.43	2,604,262.25	1,550,227.27
4th Qtr	6,585,139.22	8,601.36	6,576,537.86	6,214,667.36
Subtotal	**P 15,548,947.72**	**P 805,034.56**	**P 14,743,913.16**	**P 12,434,285.83**
TOTAL	**P20,646,776.99**	**P 1,709,463.48**	**P18,937,313.51**	**P 16,185,520.20**

From the above, it was established that the input VAT of ₱16,185,520.20 was not applied against any output VAT nor carried-over in the succeeding quarters.[23] However, in 2005 and 2006, respondent issued

[23] Exhibits "D," "E," "F," "G," "H," "I," "J" and "Z."

Tax Credit Certificates in favor of petitioner in the total amount of ₱9,676,079.67. Breakdown of the amount is shown below:

Reference	Date Issued	TCC	Applicable Period	Amount
Petitioner's Manifestation dated Mar. 28, 2006 – Annex A, CTA Records, page 267	Aug. 25, 2005	SN 024318	Apr. 1, 2002 to Dec. 31, 2002	P 3,135,619.26
Petitioner's Manifestation dated Oct. 10, 2006 – Annex A, CTA Records, page 448	July 17, 2006	SN 024351	Fourth quarter of 2003	6,540,460.41
TOTAL				**P 9,676,079.67**

Hence, after deducting the TCCs issued from the input VAT attributable to zero-rated sales and therefore refundable, there is a remaining balance of ₱6,509,440.53 that should be refunded to Petitioner, as computed below:

	Input VAT attributable to qualified zero-rated sales	TCC Issued by BIR	Difference
2002			
2nd Qtr	P 3,183,611.57		
3rd Qtr	550,423.96		
4th Qtr	17,198.84		
Subtotal	**P 3,751,234.37**	**P 3,135,619.26**	**P 615,615.11**
2003			
1st Qtr	P 2,535,690.77	-	P 2,535,690.77
2nd Qtr	2,133,700.43	-	2,133,700.43
3rd Qtr	1,550,227.27	-	1,550,227.27
4th Qtr	6,214,667.36	P 6,540,460.41	(325,793.05)
Subtotal	**P 12,434,285.83**	**P 6,540,460.41**	**P 5,893,825.42**
TOTAL	**P 16,185,520.20**	**P 9,676,079.67**	**P 6,509,440.53**

WHEREFORE, based on the above findings, this Court **GRANTS** petitioner's Petition for Review. Respondent is ordered to refund or issue a tax credit certificate in the reduced amount of ₱6,509,440.53 representing

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unutilized excess input VAT attributable to its zero-rated sales to BOI and PEZA entities for the first to the third quarters of the taxable year 2003.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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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.

ERNESTO D. ACOSTA
Presiding Justice

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