REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CALAMBA PREMIER REALTY CORPORATION, Petitioner,	CTA CASE NO. 9541
	Members:
-versus-	DEL ROSARIO, *P.J., Chairperson* FABON-VICTORINO, *and* MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 07 2019 : 2:27 pm

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DECISION

***Fabon-Victorino, J.*:**

In this *Petition for Review*[1] filed February 24, 2017, petitioner Calamba Premier Realty Corporation prays for the refund of the amount of One Million Five Hundred Seventy-Nine Thousand Two Hundred Sixteen and 87/100 Pesos (₱1,579,216.87), allegedly representing its unutilized input value-added tax (VAT) attributable to zero-rated sales for the 3rd and 4th quarters of calendar year (CY) 2014.

The facts as established during the trial are the following:

Petitioner is a domestic corporation, with principal place of business at Calamba Premier International Park, Prinza, Calamba, Laguna.[2] It is primarily engaged in the business of owning, using, improving, developing, subdividing, selling, exchanging, leasing, and holding for investment or

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[1] Docket, pp. 10-19.
[2] Exhibit "P-11".

otherwise, real estate of all kinds, including buildings, houses, apartments and other structures.[3]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) with the power and authority to act upon and approve claims for refund or tax credit as provided by law. He may be served with summons, notices and other court processes at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

On June 19, 2001, petitioner, via a Loan Agreement,[4] borrowed from Samsung Electro-Mechanics Philippines Corporation (SEMPHIL) the amount of ₱267,586,926.00 payable within fifty (50) years with interest of five percent (5%) per annum to acquire a parcel of land within the Calamba Premiere International Park in Calamba, Laguna.

SEMPHIL is a domestic corporation primarily engaged in the business of design, development, manufacture and sale of goods such as electric and electronic products, components and parts for the domestic wholesale and export markets.[5] It is a Philippine Economic Zone (PEZA) registered entity with Certificate of Registration No. 97-074[6] dated October 16, 1997.

During the effectivity of the Loan Agreement, petitioner paid SEMPHIL the following amounts, broken down as follows with interests and their VAT composition:

Exhibit No.	Date of Payment	Month Covered	Interest Paid	VAT Paid
"P-5"	July 28, 2014	July 2014	2,032,003.13	265,043.88
"P-6"	August 27, 2014	August 2014	2,032,003.13	265,043.88
"P-7"	September 29, 2014	September 2014	1,966,454,.65	256,494.08
"P-8"	October 30, 2014	October 2014	2,032,003.13	265,043.89
"P-9"	November 28, 2014	November 2014	1,966,454,.65	256,494.08
"P-10"	December 29, 2014	December 2014	2,021,845.32	263,718.95

On September 27, 2016, petitioner simultaneously filed its Amended Quarterly VAT Return (BIR Form No. 2550-Q)

[3] *Ibid.*
[4] Exhibit "P-3".
[5] Exhibit "P-2".
[6] Exhibit "P-1".

for the third[7] (3rd) and fourth[8] (4th) quarters of calendar year (CY) 2014, declaring input VAT of ₱787,978.54 and ₱791,238.33, respectively.

Three (3) days thereafter or on September 30, 2016, petitioner filed a Letter[9] with Application for Tax Credit Refund (BIR Form No. 1914) with the BIR Revenue District Office (RDO) No. 56 - Calamba, Laguna, of its alleged unutilized input VAT attributable to zero-rated sales in the total amount of ₱1,579,216.87.

Alleging inaction on the part of respondent CIR, petitioner filed the instant Petition for Review before the Court on February 24, 2017.

In his Answer[10], respondent rejects petitioner's claim for refund, arguing that under Section 112 of the NIRC of 1997, as amended, only input taxes directly attributable to zero-rated transactions subject to compliance with certain conditions may be refunded. For respondent, the claim for refund is based on a contract of loan with interest payable on installment basis which is not in any way related to its primary business of leasing of real estate properties.

Respondent further argues that petitioner must prove its entitlement to the refund sought as a claim for refund is not *ipso facto* granted upon filing of the claim. Petitioner is allegedly charged with the burden of proving that it has complied with and satisfied all the statutory and administrative requirements to be entitled to the prayed for tax refund. Petitioner however failed in this regard.

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues[11] (JSFI) on the basis of which a Pre-Trial Order[12] was issued on September 5, 2017.

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[7] Exhibit "P-12".
[8] Exhibit "P-13".
[9] Exhibit "P-16".
[10] *Id.*, pp. 121-128.
[11] *Id.*, pp. 281-286.
[12] *Id.*, pp. 291-295.

To substantiate its allegations, petitioner presented as witnesses SEMPHIL's Accounting Manager, Analyn Puyo and its Corporate Treasurer, Ma. Luzvilla R. Opulencia.

In her Judicial Affidavit[13], **Analyn Puyo** declared that she is the Accounting Manager of SEMPHIL, a PEZA-registered entity engaged wholly in the manufacture for export of micro chips used in cellular and other electronic devices.

SEMPHIL extended to petitioner a single, isolated loan transaction with payment of interests. The loan transaction in the amount of ₱267,586,926.00 is covered by a Loan Agreement dated June 19, 2001, with amendments thereto executed by the parties on December 14, 2004. It was agreed that petitioner would pay interest of 6.5% per annum from 2004 to 2020 and 7% per annum from 2021 onwards.

The interest payments on the loan was subjected to VAT as indicated in the Official Receipts (ORs)[14] issued to petitioner for the months of July to December 2014.

Witness Ma. Luzvilla P. Opulencia, petitioner's Corporate Treasurer corroborated the foregoing testimony. In addition, she declared that petitioner initiated the filing of an administrative claim for refund as its accountants noticed that there were unutilized input VAT for the 3rd and 4th quarters of CY year 2014.

Since respondent failed to decide on petitioner's application for VAT refund filed on September 30, 2016, petitioner was constrained to file the instant Petition for Review on February 24, 2017.

After its Formal Offer of Evidence[15], petitioner rested as shown in the Resolution[16] dated July 5, 2018.

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[13] Exhibit "P-18".
[14] Exhibits "P-5" to "P-10".
[15] Docket, pp. 359-369.
[16] *Id.*, pp. 438-439.

After respondent manifested his intention not to present any evidence in support of his defense, the parties were granted a period of thirty (30) days, or until September 5, 2018, within which to submit their respective memoranda.

In compliance with the Court's directive, petitioner filed its Memorandum[17] on September 5, 2017, while respondent filed his own[18] on September 27, 2018. Accordingly, the instant case was deemed submitted for decision on October 8, 2018.[19]

THE ISSUE

The sole issue submitted by the parties for the Court's resolution is as follows:

> WHETHER PETITIONER IS ENTITLED TO A TAX REFUND OR CREDIT OF ITS ALLEGED INPUT VALUE-ADDED TAX FOR THE 3RD AND 4TH QUARTERS OF CY 2014.

THE COURT'S RULING

Paragraphs (A) and (C) of Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, pertinently provide 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

[17] *Id.*, pp. 451-466.
[18] *Id.*, pp. 474-481.
[19] Resolution dated October 8, 2018, *id.*, p. 485.

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extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. - In proper cases, the Commissioner shall grant a refund 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 Subsection (A) 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."

Thus, to be entitled to refund or issuance of tax credit certificate (TCC) of unutilized/excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied, to wit:

1. the taxpayer is VAT-registered;
2. the claim for refund was filed within the prescriptive period;
3. there must be zero-rated or effectively zero-rated sales;
4. input taxes were incurred or paid;
5. such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. the input taxes were not applied against any output VAT liability.

Petitioner is a VAT-registered taxpayer.

It is undisputed that petitioner is a VAT-registered entity with BIR Certificate of Registration No. OCN-1RC000034631[20] dated on October 23, 1997 and Tax Identification No. 005-303-970-000 which it utilizes in filing its quarterly VAT returns.

The claim for refund was timely filed.

Respondent claims that petitioner failed to comply with Revenue Memorandum Circular (RMC) No. 54-2014[21] which requires submission of complete documents and a sworn certification attesting to the completeness of the submitted documents. Non-compliance with the said requirement will be deemed as insufficient compliance for the purpose of reckoning the 120-day audit period, which is a condition *sine qua non* prior to the filing of judicial claim per Section 112 of the NIRC of 1997, as amended.

The Court is not convinced.

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[20] Annex "A" of the Petition for Review, docket, p. 24.
[21] Clarifying Issues Relative To The Application For Value Added Tax (VAT) Refund/Credit Under Section 112 Of The Tax Code, As Amended.

As explicitly stated in Section 112(A) of the NIRC of 1997, as amended, the application for tax credit certificate/refund of unutilized excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the third (3rd) and fourth (4th) quarters of CY 2014 which closed on September 30, 2014 and December 31, 2014, respectively. Counting two (2) years from the said two dates, petitioner had until September 30, 2016 and December 31, 2016 within which to file its administrative claim for refund/tax credit for the 3rd and 4th quarters of CY 2014, respectively. Evidently, petitioner's administrative claim for refund filed on September 30, 2016 was well within the two-year prescriptive period.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides that the CIR has 120 days from the date of submission of complete documents in support of the application for refund/tax credit, within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before this Court in Division within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for refund/tax credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days.

While the Court is not unaware of the mandatory application of RMC No. 54-2014, as held in the recent case of *Hedcor Sibulan, Inc. vs. Commissioner of Internal Revenue,*[22] citing the Supreme Court ruling in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[23], a review of the record invalidates respondent's contentions. In fact, petitioner haS already complied with RMC No. 54-2014 when it filed its Letter[24] with Application for Tax Credit Refund (BIR Form No. 1914) on September 30, 2016 with BIR RDO No. 56 – Calamba, Laguna, *viz.*:

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[22] CTA Case No. 9080, February 20, 2018.
[23] G.R. No. 207112 December 8, 2015.
[24] Exhibit "P-16".

> "*Documentary support*
>
> In line with the requirements of Revenue Memorandum Circular No. 54-2014, we enclose the following documents in support of our request:
>
> xxx xxx xxx
>
> 17. Affidavit executed by Mr. Lim attesting to the completeness of the documents submitted in support of the present claim for refund ('Annex N'); [25]

Evidently, the date of petitioner's filing of its administrative claim with the BIR was also the date of its submission of *complete* documents to the BIR for purposes of reckoning the 120-day period.

Thus, respondent had one hundred twenty (120) days from September 30, 2016 or until January 28, 2017 within which to act on the petitioner's claim. There being no action taken by respondent, petitioner had thirty (30) days or until February 27, 2017 within which to appeal such inaction to this Court. In other words, the instant Petition for Review[26] was seasonably filed on February 24, 2017.

Input taxes were incurred or paid since the subject transaction is subject to VAT.

Petitioner claims that the contracted loan with interest extended to it by SEMPHIL, should not be subject to VAT it being a single isolated transaction. According to petitioner, its Articles of Incorporation[27], and that of SEMPHIL[28] reveal that their primary and secondary purposes do not include the business of lending loan. Thus, petitioner submits that the sale of service **not** made in the regular course of trade or business or incidental thereto is not subject to VAT.

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[25] *Id.*, pp. 3-4.
[26] *Supra* no. 9.
[27] Exhibit "P-11".
[28] Exhibit "P-2".

The Court does not agree.

Section 105 of the NIRC of 1997, as amended, identifies the persons liable to VAT, to wit:

> **SEC. 105.** *Persons Liable.* – Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> **The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto,** by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business. *(Emphasis supplied)*

Perusal of SEMPHIL's Articles of Incorporation shows that one of its secondary purposes, specifically in paragraph number four (4) thereof, allows it to extend aid in any manner to any corporation by means of, among others, evidence of indebtedness, *viz.*:

> 4. To **aid in any manner any corporation**, association, or trust estate, domestic or foreign, or any firm or individual, any shares of stock in which or any bonds, debentures, notes, securities, **evidences of indebtedness, contracts or obligations** of which are held by or for the corporation, directly or indirectly or through other corporations or otherwise. *(Emphasis supplied)*

It appears that SEMPHIL's act of extending interest bearing loan to petitioner is a way or means of extending an aid by way of financial assistance to a corporation through evidence of indebtedness, which is well within SEMPHIL's secondary purpose. Hence, the interests which accrued on the loan and, subsequently, paid by petitioner undoubtedly constitutes income incidental to SEMPHIL's regular course of trade or business.

Significantly, petitioner's witness Analyn P. Puyo, the Accounting Manager of SEMPHIL, clarified that petitioner and SEMPHIL are affiliated companies and the two are under the group of *Samsung Electro-Mechanics Company Limited*, thus:

> "JUSTICE VICTORINO
>
> Calamba Premier is the lessor of the land being used by Samsung *[SEMPHIL]*?
>
> MS. PUYO
>
> A: Yes, ma'am.
>
> JUSTICE VICTORINO
>
> So Calamba is the owner of the property?
>
> MS. PUYO

A: Yes, ma'am.

JUSTICE VICTORINO

And the property is being leased to Samsung *[SEMPHIL]*?

MS. PUYO

A: Yes, ma'am.

JUSTICE VICTORINO

And Samsung *[SEMPHIL]* extended a loan to petitioner?

MS. PUYO

A: Yes, ma'am.

JUSTICE VICTORINO

Why?

MS. PUYO

A: For capital ma'am.

JUSTICE VICTORINO

For capitalization?

JUSTICE LIBAN

Why do you know that?

MS. PUYO

A: Because, ma'am, Samsung *[SEMPHIL]* and Calamba Premier are affiliated companies

JUSTICE VICTORINO

They are affiliated company?

MS. PUYO

A: Yes.

JUSTICE LIBAN

Why do you say that they are affiliated companies?

MS. PUYO

A: Ma'am, I prepared the consolidation report and the consolidation report of Samsung *[SEMPHIL]* company.

x x x

JUSTICE LIBAN

What do you mean by affiliated?

MS. PUYO

A: We are under one group, ma'am.

JUSTICE LIBAN

You are under one group?

MS. PUYO

A: Yes, ma'am.

JUSTICE LIBAN

And this group is what?

MS. PUYO

A: The Samsung Electro-Mechanics Company Limited."[29] *(Emphasis supplied)*

Relevantly, in the case of *Lapanday Foods Corporation vs. Commissioner of Internal Revenue*[30], the Court of Tax Appeals (CTA) *En Banc* had the occasion to rule that interest income from loans extended to affiliates shall be subject to

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[29] Transcript of Stenographic Notes dated February 12, 2018, pp. 23-25.
[30] CTA EB No. 367 (CTA Case No. 7097), January 29, 2009.

VAT, whether the parent corporation realized profit or not is insignificant, as long as the parent corporation has provided financial assistance or services for a fee, remuneration or consideration, such service rendered is subject to VAT.

Also, in the case of *CS Garments vs. Commissioner of Internal Revenue*[31], the CTA *En Banc* elaborated that VAT is imposed on a sale or transaction entered into by a person in the course of any trade or business. A transaction will be characterized as having been entered into by a person in the course of trade or business if it is: (1) regularly conducted; and (2) undertaken in pursuit of a commercial or economic activity. Likewise, transactions that are made incidental to the pursuit of a commercial or economic activity are considered as entered into in the course of trade or business. *"Incidental"* means something else as primary; something necessary, appertaining to, or depending upon another, which is termed the principal. **Hence, an isolated transaction is not necessarily disqualified from being made incidentally in the course of trade or business**.

In fine, the loan agreement between petitioner and SEMPHIL is subject to VAT.

Petitioner failed to prove and substantiate that its loan transaction to SEMPHIL is subject to zero-rated or effectively zero-rated.

Petitioner claims that assuming *arguendo* the subject loan agreement is within the coverage of Section 105 of the NIRC of 1997, as amended, still, it is entitled to a refund of input tax considering that its lessee, SEMPHIL, is a PEZA-registered enterprise thereby subjecting its lease transaction thereto as zero-rated.

Section 108(B)(3) of the NIRC of 1997, as amended, provides that services rendered to persons or entities exempted under special laws, such as those registered

[31] CTA EB No. 287 (CTA Case No. 6520), January 14, 2008.

k/

under Republic Act (RA) No. 7916[32], otherwise known as *"The Special Economic Zone Act of 1995"*, shall be subject to zero percent (0%) rate, to wit:

> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –
>
> *(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:
>
> xxx xxx xxx
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such services to zero percent (0%) rate;

Relative thereto, Section 4.108-5 of Revenue Regulations (RR) No. 16-2005, as amended, further states that:

> **SEC. 4.108-5.** *Zero-Rated Sale of Services. – xxx*
>
> *(b) Transactions Subject to Zero Percent (0%) VAT Rate.* - The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate: *xxx*
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate; *xxx*

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[32] An Act Providing For The Legal Framework And Mechanisms For The Creation, Operation, Administration, And Coordination Of Special Economic Zones In The Philippines, Creating For This Purpose, The Philippine Economic Zone Authority (PEZA), And For Other Purposes.

To prove that SEMPHIL is an entity duly registered with PEZA, petitioner submitted SEMPHIL's PEZA Certificate of Registration No. 97-074[33] issued on October 16, 1997.

However, the said document is insufficient for the purpose of qualifying its lease transaction to SEMPHIL for VAT zero-rating. Indeed, while the Certificate of Registration establishes that SEMPHIL was registered with PEZA on October 16, 1997, there is no showing that SEMPHIL was still registered with the PEZA during the relevant CY 2014, which is the subject period of the present claim.

Likewise, petitioner failed to substantiate its alleged lease/sales of services to SEMPHIL, which purportedly pertain to the zero-rated sales/receipts of ₱17,250,000.00 reflected in its amended quarterly VAT Returns for the third and fourth quarters of CY 2014, as detailed below:

Exhibit No.	Period Covered	Zero-Rated Sales/Receipts
P-12	3rd Quarter	₱ 8,625,000.00
P-13	4th Quarter	8,625,000.00
Total		**₱17,250,000.00**

Since petitioner was unable to adduce sufficient evidence to prove that it had sales of services to a PEZA-registered entity during the 3rd and fourth 4th quarters of CY 2014, petitioner's reported zero-rated sales/receipts of ₱17,250,000.00 failed to qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997, as amended. Consequently, the third and fifth requisites for claiming refund or issuance of tax credit certificate for unutilized input VAT under Section 112(A) of the NIRC of 1997, as amended, were not properly met.

Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[34] A claimant has the burden of proof to establish the factual basis of his or her

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[33] Exhibit "P-1".

[34] *Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005.

claim for tax credit or refund.[35] The pieces of evidence presented entitling a taxpayer to an exemption is also *strictissimi* scrutinized and must be duly proven.[36] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[37] It is petitioner's ultimate responsibility to make sure that every piece of evidence is presented, duly marked and formally offered in evidence.

Hence, for having failed to sustain the burden placed upon it by presenting proof that it had zero-rated sales for calendar year 2014, the instant claim for refund of the alleged input VAT attributable thereto, in the amount of ₱1,579,216.87, must necessarily fail.

WHEREFORE, the instant Petition for Review filed by Calamba Premier Realty Corporation is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

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[35] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue,* G.R. No. 107434, October 10, 1997.

[36] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011.

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

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice