REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

CTA EB No. 1111
(CTA Case No. 8099)

-versus-

Present:
Del Rosario, *PJ*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 1 2 2015
4:08 p.m.

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DECISION

CASTAÑEDA, JR., *J.* :

Before the CTA *En Banc* is a petition for review, which seeks to reverse and set aside the Decision[1] dated September 16, 2013 and Resolution[2] dated December 4, 2013 rendered by the CTA Special First Division ("CTA Division") in the case entitled *"Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue"* docketed as CTA Case No. 8099, which denied petitioner's claim for refund or issuance of tax credit certificate of alleged erroneous understatement of VAT overpayment for the quarter ended March 31, 2008 in the amount of ₱123,459,647.70.

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[1] *Rollo*, pp. 51 to 67; Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justice Erlinda P. Uy.
[2] *Id.*,pp. 35-37.

Petitioner also prays that the case be remanded to the CTA Division for the determination of petitioner's claim for refund or issuance of tax credit certificate.

The dispositive portion of the assailed Decision states:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED,** for lack of merit.
>
> **SO ORDERED.** [3]

The dispositive portion of the assailed Resolution reads:

> **WHEREFORE**, the Motion for Reconsideration dated October 18, 2013 filed by petitioner is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**[4]

THE FACTS

The pertinent facts of the case as summarized by the CTA Special First Division in the assailed Decision are as follows:

> Petitioner Coca-Cola Bottlers Philippines, Inc. is a domestic corporation with principal office at No. 1890 Paz Guazon Street, Paco, Manila. It is primarily engaged in the business of manufacturing and selling at wholesale of beverages such as Coca-Cola, Sprite, Royal True Orange, Minute Maid, etc. It is a VAT-registered entity with Certificate of Registration No. 00000190025 and Tax Identification No. 000-112-104-000.
>
> Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) with authority, among others, to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

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[3] *Rollo*, p. 66.
[4] *Rollo*, p. 37.

On April 24, 2008, petitioner filed its Quarterly VAT Return for the period of January 1, 2008 to March 31, 2008 [and amended it on May 20, 2008. Earlier or on February 25, 2008, petitioner filed its original monthly VAT Return for January 2008 and amended it on March 19, 2008. For the following month of February, its monthly VAT Return was filed on March 23, 2008.][5] However, it was not able to amend the said Quarterly VAT Return since a Letter of Authority (LOA) [dated May 27, 2009][6] was subsequently issued by the BIR.

On April 20, 2010, petitioner filed with the BIR's Large Taxpayers Service an administrative claim for refund or tax credit of its alleged over/erroneous payment of VAT for the quarter ended March 31, 2008 in the total amount of ₱123,459,647.70.

Three (3) days thereafter, or on April 23, 2010, petitioner filed with this Court a judicial claim for refund or issuance of tax credit certificate by way of a Petition for Review.

In her Answer, respondent basically claimed that the action before her is subject to BIR administrative routinary examination and it is incumbent upon petitioner to present evidence to substantiate its claim by proving compliance with all the requisites under the law and rules and regulations.

On September 2, 2010, a Pre-Trial Order was issued incorporating therein the parties' Joint Stipulation of Facts and Issues submitted on August 9, 2010.

To support its case, petitioner presented witnesses Gerardo E. Espiridion, Rosemarie M. Gamboa, Noel I. Anore, Camille Kate A. Doligosa, and Katherine O. Constantino.

Witness **Gerardo E. Espiridion**, petitioner's Tax Manager, identified his Judicial Affidavit dated August 6, 2010 declaring that petitioner is a VAT Registered Taxpayer with Tax Identification No. 000-112-104-000 and BIR Certificate of Registration No. OCN 8PC0000019025.

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[5] *Rollo*, p. 53; Assailed Decision, p. 3, based on judicial affidavit of petitioner's witness Gerardo E. Espiridion.
[6] Exhibit "B", Division Docket, p. 84.

For purchases of goods, petitioner credits its input VAT or the VAT billed by its suppliers against its output VAT liability for the taxable quarter.

For purchases of services paid immediately upon presentation of invoice, petitioner likewise directly credits the input VAT from said transactions against its output VAT for the quarter. However, for purchases of service on credit, petitioner credits the input VAT incurred therein against its output VAT only after payment and not at the time of the transaction. All these transactions were entered into petitioner's computerized accounting system.

However, for the quarter ended March 31, 2008, certain official receipts or transactions were not uploaded into the system resulting in the understatement of input VAT of ₱123,459,647.70 for that particular quarter. Since the BIR issued LOA for [taxable year 2008 which includes] the quarter ending March 31, 2008, petitioner was unable to effect amendment of its quarterly return for the quarter concerned to include the omitted transactions.

Thus on April 20, 2010, petitioner filed an application for refund of ₱123,459,647.70 with the BIR for the quarter ended March 31, 2008. The said amount has not been carried over or applied to the succeeding months or quarters.

The second witness **Rosemarie M. Gamboa** also executed a Judicial Affidavit dated September 1, 2010 in which she explained the procedure adopted in accrediting suppliers for petitioner. The group which she heads requires potential suppliers of petitioner to submit documents to prove that they are legitimate business entities and that they are compliant with the invoicing requirements under the National Internal Revenue Code (NIRC), as amended. It has been petitioner's policy not to avail the products or services of the prospective supplier who fails to meet its requirements. The details of the accepted suppliers are entered into a computer program which is integrated into petitioner's computerized tax system. However, they don't verify the information supplied by prospective suppliers.

Witness **Noel I. Anore**, petitioner's Plant Finance Manager for Cagayan De Oro Plant from September 2007 to February 2009, testified that the invoices and official receipts of petitioner in the Cagayan De Oro plant comply with the invoicing requirements under the Tax Code, as amended. However, all their records and documents, including the invoices and official receipts for the period January 1 to March 31, 2008 subject of the instant claim kept at the Cagayan De Oro plant as of January 11, 2009, were completely destroyed due to flashfloods caused by typhoons on June 29, 2008, October 20, 2008, and January 11, 2009. In any event, he was able to determine the amount of petitioner's input and output VAT reflected in the destroyed documents for the period pertaining to the instant claim through petitioner's computerized accounting system. He however admitted that he had no personal knowledge about the photos of the flooding at petitioner's plant in Cagayan De Oro for they were taken by the plant security guard.

Camille Kate A. Doligosa, the Plant Finance Manager of petitioner's Iloilo plant, likewise testified through her Judicial Affidavit dated October 15, 2010. She stated that all the invoices and official receipts of petitioner kept in its Iloilo plant complied with the invoicing requirements under the Tax Code, as amended. However, they were all destroyed, including the invoices and official receipts for the period January 1 to March 31, 2008 subject of the instant claim, due to flashfloods caused by the typhoon which ravaged the province on June 21, 2008. The computerized accounting system of petitioner in which the transactions for the relevant period were encoded saved the day for petitioner as she was able to determine the amount of petitioner's input and output VAT for the period subject of the instant claim for refund.

The cross-examinations of witnesses Noel I. Anore and Camille Kate A. Doligosa were deemed waived for failure of counsel for respondent to appear during hearing, despite due notice.

The Court[-]commissioned Independent Certified Public Accountant (ICPA) Katherine O. Constantino was last to take the witness stand for petitioner. Based on her Preliminary Independent CPA Report, the unclaimed input taxes paid on domestic purchases of services in the amount of ₱123,459,647.70, which is the amount sought for refund, were not reported as input tax credits to be applied and utilized against the output tax due for the quarterly VAT Return filed for the 1st quarter ended March 31, 2008.

Further, for the quarter ended March 31, 2008, petitioner declared output tax due in the amount of ₱1,269,933,934.95. Based on the accounting system and related records for the said quarter, petitioner's total reported input tax credits in its quarterly VAT Returns amounted to ₱1,454,376,636.28. However, input taxes in the amount of ₱123,459,647.70 were not included as input tax credits. This amount was also not carried over or applied against any output VAT liability. However, only ₱12,118,361.10 of the unclaimed refundable input VAT were properly substantiated.

On recall, the ICPA, based on her Final and Consolidated Independent CPA Report, declared that out of the ₱123,459,647.70 subject of the claim, only the amount of ₱32,800,230.39 were properly substantiated by the proper VAT invoices and/or official receipts, while ₱11,579,571.91 was disallowed for the invoices and/or official receipts pertinent thereto were either dated outside the period of the claim, not in the name of petitioner, without TIN, or due to non-compliance with the invoicing requirements under the pertinent law and rules. The amount of ₱79,079,845.40, also subject of the claim, has not been verified since petitioner was yet to provide her with the pertinent documents for her examination and verification.

Her Amended Final and Consolidated Independent CPA Report indicated that following: out of the ₱123,459,647.70 input VAT subject of the claim, only ₱42,866,711.71 was properly substantiated by VAT invoices and/or official receipts; the amount of ₱1,752,812.62 was substantiated by bank acknowledgement receipt or bank check voucher, ₱8,596,425.24 was disallowed, while ₱70,243,698.13 was left unverified since petitioner failed to provide her with the pertinent documents for examination.

Her Supplemental Report to the Amended Final and Consolidated Independent CPA Report showed that the total substantiated input VAT in relation to petitioner's claim for refund for the quarter ended March 31, 2008 amounted to ₱48,509,474.01.

After the Resolutions of December 15, 2011, February 8, 2012, and October 12, 2012, on its formal offer of evidence, petitioner rested its case.

On the other hand, respondent's right to present evidence was deemed waived.

Upon submission of the parties' respective memoranda, the case was submitted for decision on January 2, 2013.

On September 16, 2013, the CTA Division promulgated the assailed Decision denying petitioner's petition for lack of merit.

On October 18, 2013, petitioner filed its Motion for Reconsideration.

On December 4, 2013, CTA Division denied petitioner's motion for lack of merit.

On January 3, 2014, the CTA *En Banc* granted petitioner's "Motion for Extension of Time to File Petition for Review which was filed on December 27, 2013. Within the final and non-extendible period given, petitioner filed the Petition for Review with the Court *En Banc*.

On February 24, 2014, the CTA *En Banc* ordered respondent to file her Comment.

On March 17, 2014, the CTA *En Banc* granted respondent's "Motion for Extension of Time to File Comment" which was filed on March 11, 2014. Respondent filed her Comment (Re: Petition for Review) on March 21, 2014.

On April 22, 2014, the CTA *En Banc* required both parties to file their respective Memorandum.

On May 30, 2014, respondent filed a "Motion for Extension of Time to File Memorandum". The CTA *En Banc* granted the said motion on June 4, 2014.

On June 20, 2014, respondent filed a Manifestation stating that she is adopting the arguments raised in the Comment filed on March 21, 2014 and her Memorandum filed on December 14, 2012.

On June 23, 2014, petitioner filed its Memorandum.

On June 26, 2014, the CTA *en banc* noted respondent's Manifestation.

On September 24, 2014, this case was submitted for decision.

Hence, this decision.

ISSUES

The following are the issues and grounds relied upon for review by the petitioner:[7]

I. Whether Section 112[8] of the NIRC of 1997 as amended shall govern over petitioner's claim for refund/tax credit.

II. Whether the petitioner can amend its Quarterly VAT Return for the quarter ended March 31, 2008 to include the input tax inadvertently omitted in the said VAT Return despite the Letter of Authority issued by the Bureau of Internal Revenue.

III. Whether the undeclared input tax in the amount of ₱123,459,647.70 for the quarter ended March 31, 2008 is required to be reported in the Quarterly VAT Return as a requisite for petitioner to claim refund of tax under Section 204 (C)[9] in relation to Section 229[10] of the NIRC of 1997, as amended. *fr*

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[7] *Rollo*, p. 17.

[8] SEC. 112. *Refunds or Tax Credits of Input Tax.*

[9] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*—
The Commissioner may-

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and , in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

"A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code*: Provided*, That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided, further*, That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

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IV. Whether petitioner is entitled to tax refund or issuance of tax credit certificate in the amount of ₱123,459,647.70 representing erroneous understatement of VAT Overpayment for the quarter ended March 31, 2008.

V. Whether petitioner's claim for refund shall be construed in "strictissimi juris" against the petitioner.

VI. Whether the omitted input VAT amounting to ₱123,459,647.70 may be included in the current and available input VAT of the petitioner to remedy the enrichment unjustly obtained by the government to the detriment of herein petitioner.

Based on the foregoing, the core issue in this case is whether the CTA Special First Division correctly denied petitioner's claim for refund or issuance of tax credit certificate of alleged erroneous understatement of VAT Overpayment for the quarter ended March 31, 2008 in the amount of ₱123,459,647.70.

THIS COURT'S RULING

The petition is denied.

Undeclared input taxes in this case do not fall under Sections 204(C), 229, 110(B), and 112 of the 1997 NIRC, as amended

Petitioner alleges that Sections 204 (C) and 229 of the 1997 NIRC shall govern because the instant claim for refund is anchored on the erroneous understatement of VAT overpayment or excess allowable input VAT which was carried to the succeeding quarter resulting to unjust

[10] "SECTION 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

"In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

enrichment in favor of the government. Petitioner also argues that Section 112 of the same Code applies only in cases of refund of input taxes, whether attributable to zero-rated sales or upon cancellation of VAT registration due to retirement from, or cessation of, business.

On the other hand, respondent argues that the CTA Division correctly denied petitioner's claim for refund/credit because the instant case is only a case of unutilized input tax and not a tax payment contemplated in Section 204 (C) of the 1997 NIRC that would warrant tax refund or tax credit. Respondent states that Sections 204 and 229 of the 1997 NIRC cannot apply since these two provisions only apply to erroneous or illegally collected taxes citing the Supreme Court case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*[11].

Respondent argues that petitioner's claimed input VAT is not attributable to zero-rated sales, thus, petitioner is not entitled to a tax refund/credit. Respondent states that based on Section 110 (B) of the 1997 NIRC, as amended, only those VAT registered persons having zero-rated sales have the option to claim refund or tax credit of excess input VAT attributable to zero rated sales.

Respondent pointed out that a claim for refund or tax credit presupposes that a tax due was previously paid and the said previously paid tax is just being returned for being erroneously or excessively paid or collected, or in the case of input VAT, the same is excess or unutilized. Respondent alleges that erroneous recording of input tax resulting in the understatement of allowable input tax for the quarter and failure to utilize the same does not warrant tax refund or issuance of tax credit certificate.

We agree with respondent.

Sections 110 (B) and 112 of the 1997 NIRC, as amended, state:

> "SEC. 110. *Tax Credits.* —
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> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess **shall** be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess **shall** be carried over to the succeeding quarter or quarters: [*Provided*, That the input tax

[11] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT:][12] *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

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: *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.

(B) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate **for any unused input tax** which may be used in payment of his other internal revenue taxes. *(Emphasis Supplied)*

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[12] Bracketed proviso was deleted by RA 9361, which took effect on 13 December 2006.

It is elementary that the word "shall" underscores the mandatory character of the rule. It is a word of command, one which always has or must be given a compulsory meaning, and is generally imperative or mandatory.[13] It is also basic that "if the language of the law is clear, explicit and unequivocal, it admits no room for interpretation but merely application."[14]

Section 110 (B) of the 1997 NIRC, as amended, is clear that when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter/s. But when input tax, attributable to zero-rated sales, exceeds the output tax, it may be refunded or credited. Hence, for input tax attributable to zero-rated sales, it is only when input tax exceeds the output tax that a refund or credit is proper, subject to the provisions of Section 112.

Section 112 is also categorical that there are only two (2) instances when excess input taxes may be claimed for refund and/or issuance of tax credit certificate:

1. When the claimant is a VAT-registered person, whose sales are zero-rated or effectively zero-rated under Section 112(A); and

2. when the VAT registration of the claimant has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106 [under Section 112(B)].

We emphasize that the claimed ₱123,459,647.70 in the instant case essentially represents undeclared input taxes for the first quarter of 2008, not erroneously paid VAT or understatement of VAT overpayment.[15] This case, therefore, does not fall under the enumerated instances in Section 112 of the 1997 NIRC, as amended, which pertain to excess input taxes only.

In *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,*[16] the Supreme Court explicitly states that "both provisions [Sections 204 (C) and 229 of the NIRC] apply only to instances of erroneous payment or illegal collection of internal revenue taxes." Sections 204 (C) and 229 of the NIRC state:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*—The Commissioner may-
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[13] *SM Land, Inc. v. Bases Conversion and Development Authority et al.*, G.R. No. 203655, August 13, 2014 citing Regalado v. Go, G.R. No. 167988, February 6, 2007, 514 SCRA 616.
[14] *Miramar Fish Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 185432, June 4, 2014.
[15] *Rollo*, p. 66; Assailed Decision, p. 16.
[16] *Supra*, Note 11.

> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and , in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

In *Commissioner of Internal Revenue v. San Roque Power Corporation*[17] *(San Roque),* the Supreme Court reiterated the doctrine in *Mirant* that Section 229 should "apply only to instances of erroneous payment or illegal collection of internal revenue taxes." The Supreme Court also ruled that "[i]n a claim for refund or credit of 'excess' input VAT under Section 110 (B) and Section 112 (A), the input VAT is not 'excessively' collected as understood under Section 229." Pertinent portions of the *San Roque* case provide:

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[17] G.R. Nos. 187485, 196113 and 197156, February 12, 2013, 690 SCRA 336.

III. ***<u>"Excess" Input VAT and "Excessively" Collected Tax</u>***

The input VAT is **not** "excessively" collected as understood under Section 229 **because at the time the input VAT is collected the amount paid is correct and proper.** The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.

In a claim for refund or credit of "excess" input VAT under Section 110 (B) and Section 112 (A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.

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From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, x x x illegally, x x x excessively or **in any manner wrongfully** collected." In short, there must be a **wrongful** payment because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should **"apply only to instances of**

> **erroneous payment or illegal collection of internal revenue taxes."** Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.

Based on the foregoing case, it is clear that Section 229 "apply only to instances of erroneous payment or illegal collection of internal revenue taxes"; that the input VAT is not "excessively" collected as understood under Section 229; that the term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due; and that the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.[18] Applying the *San Roque* case in the instant case, which involves undeclared input VAT, this Court finds that Section 229 of the NIRC is, therefore, not applicable.

Amendment of the VAT return is allowed prior to the receipt of the letter of authority (LOA) under Section 6(A) of the 1997 NIRC, as amended

Petitioner stressed that the amount of the erroneous understatement of VAT overpayment was finally determined only last July 2009; and that the Large Taxpayer Service of the Bureau of Internal Revenue had already issued a Letter of Authority (LOA) dated May 2[7], 2009 to examine petitioner's books of accounts for all internal revenue taxes for the period January 1, 2008 to December 31, 2008. Petitioner alleges that pursuant to Sections 6 and 275 of the 1997 NIRC, petitioner can no longer amend its quarterly VAT return for the quarter ended March 31, 2008 to correct the error or omission of input tax in the computation of the output VAT without violating the said provisions of the Tax Code. Accordingly, petitioner states

[18] G.R. Nos. 187485, 196113 and 197156, February 12, 2013, 690 SCRA 336.

that it cannot be expected to declare in the VAT Return the omitted input VAT.

Petitioner's contention deserve scant consideration.

Section 6 (A) of the 1997 NIRC, as amended, states:

> SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.
>
> Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided*, **That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further*, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer**. *(Emphasis Ours)*

Based on the foregoing provision, the law allows amendment of the return within three (3) years from the date of filing provided that the LOA has not yet been served to the taxpayer. This is to prevent situations where the government is at the losing end in allowing refund or tax credit when eventually it is found that the taxpayer has an existing similar tax liability for the same covered period.[19]

In this case, petitioner is well-aware of this prohibition under the law and even amended its Monthly and Quarterly VAT Returns for January and and 1st Quarter of 2008, respectively. Unfortunately, petitioner is not prompt enough to include the alleged omissions in this case.

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[19] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue,* CTA EB 1178 (CTA Case No. 8218), May 19, 2015.

Passed-on VAT as part of the purchase price must be substantiated and reported

Petitioner argues that there is no provision in the 1997 Tax Code or in existing rules and regulations that input VAT should be declared in the VAT Return before the erroneous understatement of VAT overpayment or excess allowable input VAT may be refunded. Petitioner cited the case of *Fort Bonifacio Development Corporation v. CIR,*[20] in which the transitional input VAT was likewise not shown in the VAT return, yet the corresponding overpayment of output VAT was allowed to be refunded by the Supreme Court.

Petitioner's contention lacks merit.

After a careful perusal of the case of *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*[21] (*Fort Bonifacio* case), this Court finds that this case is not on all fours with the instant case.

The *Fort Bonifacio* case involves transitional input tax credit which was not applied in computing its output VAT for the first quarter of 1997.[22] The transitional input tax credit aims to avoid any inequity resulting from the change in status of a person who becomes liable to VAT for the first time or elects to be a VAT-registered person without recognizing the VAT paid on related inputs before becoming VAT-registered.[23] On the other hand, the instant case involves passed-on VAT as part of the purchase price it paid.

This Court reiterates with approval the CTA Division's ruling that "for input taxes to be available as tax credits, they must be substantiated and reported in the VAT returns of a taxpayer." This is based on the categorical statement in Section 4.110-8 of Revenue Regulations No. 16-2005, as amended, which states:

> SEC. 4.110-8. *Substantiation of Input Tax Credits.*—
> (a) **Input taxes for the importation of goods or the domestic purchase of goods, properties or services** is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT,

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[20] G.R. No. 173425, September 4, 2012, 679 SCRA 566.
[21] *Id.*
[22] *Id.*
[23] De Leon Hector S. And De Leon, Jr. Hector M., *The National Internal Revenue Code Annotated*, 2003 Edition, Vol. II, p. 131.

> **must be substantiated** by the following documents, **and must be reported in the information returns required to be submitted to the Bureau**: *(Emphasis supplied)*
>
> xxx xxx xxx

In this case, only ₱48,509,474.01 was properly supported by official receipts (ORs) out of the claimed ₱123,459,647.70.[24] The said amount was also recorded in petitioner's books of accounts but was not reported in its VAT Return due to alleged inadvertence.[25] In the assailed Decision, the CTA Division made a pronouncement that even if the substantiated input taxes were declared in the VAT Return for the First (1[st]) Quarter of 2008, still it would not be enough to offset the output taxes payable for the same taxable period. Pertinent portions of the assailed Decision are reiterated with approval, as follows:[26]

> Petitioner's Quarterly VAT Return for the first quarter of 2008 shows the following output taxes due in the amount of ₱1,269,933,934.95. Had Petitioner declared the substantiated input taxes of ₱48,509,474.01 in its Quarterly VAT Return for the first quarter of 2008, considering its output taxes and substantiated input taxes for the first quarter of 2008 per ICPA examination, it would not have had enough input taxes to offset against its output taxes for the same taxable periods. To illustrate, the computation is shown hereafter:

	1st Quarter 2008	
Output Tax		₱ 1,269,933,934.95
Less: Substantiated Input Taxes		
On domestic purchases and importation of goods and purchases of services		163,238,596.79
On capital goods exceeding ₱1M:		
Carried over from previous quarter	₱ 1,026,823.89	
Add: Purchases during the quarter	-	
Total input tax on capital goods	₱ 1,026,823.89	
Less: Deferred to succeeding quarter	244,984,132.38	
Amortized input tax allowable for the quarter	(243,957,308.49)	-
VAT Payable		**₱ 1,106,695,338.16**

In this case, We emphasize that "the substantiated amount is not even enough to offset petitioner's output tax liabilities for the same period leaving no balance that may be refunded."[27] Consequently, petitioner's claim for its alleged understatement of overpayment of VAT (excess input taxes) due to undeclared input taxes for the first quarter of 2008 is denied.

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[24] *Rollo*, p. 63;Assailed Decision, p. 13.
[25] *Rollo*, pp 63-64; Assailed Decision, pp. 13-14.
[26] *Rollo*, pp. 65-66; Assailed Decision, pp-15-16.
[27] *Rollo*, p. 37; Assailed Resolution, p. 3.

This Court reiterates that "[p]etitioner simply failed to discharge the burden of proving the factual and legal bases of its claim."[28]

Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[29] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[30]

With respect to the other allegations and grounds raised by petitioner, this Court sees no cogent reason to discuss the same for being moot.

WHEREFORE, premises considered, the petition for review is hereby **DENIED** for lack of merit. Accordingly, We **AFFIRM** the Decision and the Resolution of the CTA Special First Division dated September 16, 2013 and December 4, 2013, respectively.

SO ORDERED.

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

WE CONCUR:

(With Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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[28] *Id.*

[29] *Commissioner of Internal Revenue v. San Roque*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013, 690 SCRA 336, citing the cases of *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219; *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp.*, G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549; *La Carlota Sugar Central v. Jimenez*, 112 Phil. 232; 2 SCRA 295 (1961).

[30] *Commissioner of Internal Revenue v. San Roque*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013, 690 SCRA 336.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1111
(CTA Case No. 8099)

Present:

DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
AUG 12 2015
4:08 p.m.

x --- x

SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Juanito C. Castañeda, Jr. which affirms the denial of petitioner's claim for refund of alleged erroneously paid Value Added Tax (VAT) on the ground that based on evidence presented, output VAT exceeds input VAT. I also concur that for input tax attributable to zero-rated sales, it is only when input tax exceeds the output tax that a refund or credit is proper, subject to the provisions of Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

I am, however, of the opinion that: (1) Section 229 of the NIRC of 1997, as amended, applies to petitioner's claim for refund; and, (2) though the regulations require that input tax must be reflected in the tax returns, said rule is not absolute as long as the taxpayer is able to prove and substantiate its entitlement to the said deduction.

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Truth to tell, the issue involved in this case is not novel. In the earlier case of *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*,[1] involving the same parties but pertaining to a different taxable quarter, I had the occasion to expound on these very same points in my Separate Concurring Opinion therein, *viz*:

> "In this regard, Section 229 of the NIRC of 1997, as amended, gives a taxpayer a period of two (2) years from date of payment to file an administrative and judicial claim for refund of erroneously collected tax, to wit:
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> > "**SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*** –No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
> >
> > In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."
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> To be sure, the additional output taxes paid to the government (arising from the taxpayer's inadvertent failure to declare its input taxes) represents erroneously collected taxes. In applying Section 229 of the NIRC of 1997, as amended, the taxpayer is merely using the clear, plain and unconditional provision of Section 229 of the NIRC of 1997, as amended, which is the available remedy to pursue its claim for refund or tax credit of its alleged erroneously collected output taxes.
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> Section 6(A) of the NIRC of 1997, as amended, which prohibits a taxpayer from amending his tax return after the issuance of a Letter of Authority (LOA) is insignificant in pursuing the remedy under Section 229 of the NIRC of 1997, as amended. Besides, the amendment of the return is prohibited under Section 6(A) of the NIRC of 1997, as amended, to prevent a taxpayer from curing any fraud he has committed if a letter of authority for the examination of his return has already been served on him or such amendment has been made in the course of an investigation of his

[1] CTA EB Case No. 1044, February 12, 2015.

tax liability.[2] The prohibition is relevant in connection with the Commissioner of Internal Revenue's (CIR) power to make an assessment of a taxpayer's liability. In contrast, Section 229 of the NIRC of 1997, as amended, is confined to a determination of whether or not there was an erroneous payment of tax, irrespective of the entries in tax returns. Significantly, there is nothing in Section 229 of the NIRC of 1997, as amended, which expressly requires that the erroneously paid tax be reflected in the tax return. Said requirement is explicit only in cases where the CIR *motu propio* gives a refund or tax credit, even without a written claim, that is - - "where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

In the assailed Decision of the Special First Division, the Court denied the claim for refund as the substantiated input taxes were not reported in petitioner's VAT return due to the alleged inadvertence. As a general rule, input taxes must be substantiated and reported in the VAT returns of a taxpayer in order for said taxes to be available as tax credits.[3] But as earlier stated, this rule is not inflexible. In *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*,[4] **the transitional input VAT was likewise not shown in the VAT return, yet the Supreme Court granted the refund of the corresponding overpayment of output VAT**, *viz:*

> "In this case, when petitioner realized that its transitional input tax credit was not applied in computing its output VAT for the 1st quarter of 1997, **it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output tax it has paid.** Hence, it is merely availing of the tax credit incentive given by law to first time VAT taxpayers."

It must be stressed that the term 'input tax' includes transitional input tax determined in accordance with Section 111 of the NIRC of 1997, as amended.[5] In granting the claim for refund in the Fort Bonifacio Development Corporation case, the Supreme Court allowed input tax **not reported in the VAT returns** to be deducted against output tax.

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In applying the *Fort Bonifacio Development Corporation case* to the present case, what is actually being adopted is the principle that input taxes not reported in the VAT return may still be credited against the

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[2] De Leon Hector S. and De Leon, Jr. Hector M., The National Internal Revenue Code Annotated, Eight Edition 2003, p.34.

[3] Section 4.110.8 of Revenue Regulations No. 16-2005, as amended, October 19, 2005.

[4] G.R. No. 173425, September 4, 2012.

[5] SEC. 110. Tax Credits. –
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The term *"input tax"* means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business or importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. **It shall also include the transitional input tax determined in accordance with Section 11 of this Code.** (Emphasis supplied) output tax due. **Stated differently, although the input taxes were not reported in the VAT returns, the same may still be credited against the output tax liability of the taxpayer for as long as said input taxes were properly substantiated.** Hence, any output tax paid by the taxpayer, *on account of its failure to declare its correct and substantiated input taxes in its VAT returns and apply the same as credit against its output tax*, shall be available for refund as erroneously paid output tax. Petitioner is therefore allowed under Section 229 of the NIRC of 1997, as amended, to claim for refund or credit of its *alleged* erroneously paid output tax.

It is at this juncture that I quote the enlightening disquisition of the Honorable Associate Justice Amelia R. Cotangco-Manalastas as the *ponente* in **Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue,**[6] *viz.*:

> "Clearly then, any increase in the input tax shall lead to a decrease in the output tax, while a decrease in input tax leads to an increase in output tax. If there is an error in the computation of input taxes, such that less input tax is recognized, there is a higher output tax liability. Such error when corrected, i.e., a higher input tax is recognized, results to a lower output tax than that already paid and thus provides a justifiable claim for refund of erroneously paid output tax.
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> By analogy, the ruling of the Supreme Court in Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al., is instructive:
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> xxx xxx xxx
>
> In the instant case, petitioner failed to consider in its computation of output tax liability certain input taxes on some of its purchases of services on credit, thus leading to a payment of higher output taxes than it otherwise should have paid. When petitioner realized this and could no longer amend its VAT returns due to the issuance of the Letter of Authority, petitioner applied for refund of erroneously/excessively paid output tax. In filing for tax refund, petitioner is simply applying its input tax credit against the output VAT, hence, petitioner is merely availing of the creditable input tax mechanism provided for in Section 110." (*Emphases in the original*)

In this case, petitioner did not present proof that its input tax is attributable to its zero-rated sales precisely because its present claim is based on an alleged overpayment of VAT arising from inadvertent failure to declare its input taxes and not on its input tax attributable to zero-rated or effectively zero-rated sales. Hence, Section 229 of the

[6] CTA Case No. 8183, January 17, 2014; penned by Honorable Associate Justice Amelia R. Cotangco-Manalastas and concurred by Honorable Associate Justice Lovell R. Bautista.

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NIRC of 1997, as amended, and not Section 112 of the NIRC of 1997, as amended, applies.

Records show that petitioner's input VAT amounting to ₱123,459,647.70 incurred in the 1st quarter of 2008 was inadvertently not reported in the tax return and consequently was not deducted against the output tax. Pursuant to Section 110(A)(1) of the NIRC of 1997, as amended, input taxes from certain transactions that are evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, shall be creditable against the output tax resulting to the taxpayer's VAT liability, as follows:

Output tax	₱xxx,xxx.xx
Less: Input tax	xxx,xxx.xx
VAT Due	₱xxx,xxx.xx

Considering that the input tax amounting to ₱123,459,647.70 for the 1st quarter of 2008 was not deducted against the output tax, petitioner paid a higher VAT. **It is the alleged overpayment of VAT amounting to ₱123,459,647.70 arising from the taxpayer's inadvertent failure to declare its input taxes which is the subject matter of the present claim for refund**. The erroneous payment of higher VAT provides a justifiable claim for refund under Section 229 of the NIRC of 1997, as amended.

While petitioner's claim for refund is properly anchored on Section 229 of the NIRC of 1997, as amended, and the *Fort Bonifacio Development Corporation case*, such claim must still be denied. As found by the Independent CPA and the Court in Division, petitioner's substantiated input VAT is not enough to offset its output VAT liability, as follows:

	1st Quarter
Output Tax	Php1,269,933,934.95
Less: substantiated input taxes	163,238,596.79
VAT Payable	**Php1,106,695,338.16**

Considering that petitioner did not pay any VAT for the 1st quarter of 2008, petitioner did not overpay its taxes due for the 1st quarter of 2008. Thus, there is no basis for petitioner to ask for refund of erroneously paid output VAT.

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All told, I **VOTE** to **DENY** the Petition for Review filed by Coca-Cola Bottlers Philippines, Inc. in CTA EB Case No. 1111 but *solely* on the afore-stated reasons.

ROMAN G. DEL ROSARIO
Presiding Justice