REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

LEPANTO CONSOLIDATED MINING COMPANY, Petitioner,	**CTA Case No. 9426**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 30 2020 10:00 a.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Review* filed on August 12, 2016 by petitioner Lepanto Consolidated Mining Company against respondent Commissioner of Internal Revenue (CIR), seeking the issuance of a tax credit certificate in the amount of ₱25,501,862.20, allegedly representing input value-added tax (VAT) claims for the year 2014.

THE FACTS

As culled from the records of the case and evidence presented in Court, the facts are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Lepanto Building, 8747 Paseo de Roxas, Barangay Bel-Air, Makati City.[1] It is registered with the Bureau of Internal

[1] Exhibit "P-1", *Amended Articles of Incorporation*, Docket – Vol. 1, p. 339.

Revenue (BIR) under *Certificate of Registration* (COR) No. 8RC00000017236 with Tax Identification No. (TIN) 000-160-247-000[2], and with the Board of Investments (BOI) as a new producer of copper concentrate, gold and silver under R.A. 7942 with COR Nos. EP 96-334,[3] EP 2004-001[4] and 2006-144.[5]

On the other hand, respondent is the Commissioner of BIR who has the authority to grant tax credit/refund under the law and may be served with summons, notices and other court processes at the BIR National Office Bldg., BIR Road, Diliman, Quezon City.[6]

Petitioner filed its VAT returns for the year 2014 on the following dates:

Period (2014)	VAT Return	Date of Filing	Exhibit
1st Quarter	Original Quarterly VAT Return	April 23, 2014	"P-11"
	Amended Quarterly VAT Return	October 17, 2014	"P-11"
2nd Quarter	Original Quarterly VAT Return	July 22, 2014	"P-12"
	Amended Quarterly VAT Return	October 21, 2014	"P-12"
3rd Quarter	Original Quarterly VAT Return	October 22, 2014	"P-13"
	Amended Quarterly VAT Return	July 10, 2015	"P-13"
4th Quarter	Original Quarterly VAT Return	January 22, 2015	"P-14"
	Amended Quarterly VAT Return	July 10, 2015	"P-14"

On March 16, 2016, petitioner filed an *Application for Tax Credits/Refunds* (BIR Form No. 1914)[7], together with the *Checklist of Mandatory Requirement for Claims for VAT Credit/Refund*[8], for its alleged input VAT in the total amount ₱25,501,862.20, broken down as follows:

Period (2014)	Amount of Claim
1st Quarter	₱ 9,957,169.00
2nd Quarter	4,069,498.96
3rd Quarter	7,383,741.98
4th Quarter	4,091,452.26
TOTAL	**₱ 25,501,862.20**

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[2] Exhibit "P-6", Docket – Vol.1, p. 368.
[3] Exhibit "P-3", Docket – Vol. 1, pp. 350 to 354.
[4] Exhibit "P-4", Docket – Vol. 1, pp. 355 to 361.
[5] Exhibit "P-5", Docket – Vol. 1, pp. 362 to 367.
[6] Stipulation of Facts, par. 1, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 226.
[7] Exhibit "P-7", Docket – Vol. 1, p. 369.
[8] Exhibit "P-8", Docket – Vol. 1, p. 370.

Alleging inaction on the part of respondent CIR, petitioner filed the instant *Petition for Review*[9] before the Court on August 12, 2016, praying that the Court grant petitioner's claim for tax credit of input VAT and to direct respondent to issue a TCC in the amount of ₱25,501,862.20.

Respondent filed his *Answer*[10] on December 12, 2016, interposing special and affirmative defense, which include among others, the following: petitioner's claim for refund was filed beyond the 2-year prescriptive period prescribed by Section 112 of the Tax Code, hence, the claim for refund for the first and second quarters of 2014 was filed out of time. Petitioner's claim for refund is allegedly deemed denied; and that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of claim. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the government. To claim for refund or tax credit under Section 112(A), petitioner must comply with the following criteria:

1. The taxpayer is VAT registered;
2. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
3. The input taxes are due or paid;
4. The input taxes are not transitional input taxes;
5. The input taxes have not been applied against output taxes during and in the succeeding quarters;
6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
7. For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B)(1) and (2), the acceptable foreign currency exchange proceeds have been accounted for in accordance with BSP rules and regulations;
8. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
9. The claim is filed within two years after the close of the taxable quarter when such sales were made.

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[9] Docket – Vol. 1, pp. 10 to 21.
[10] Docket – Vol. 1, pp. 94 to 103.

Respondent further argues that in order to prove compliance with the above requisites, it is essential for petitioner to substantiate its VAT claim for refund/tax credit in accordance with law and regulations; and that claims for refund are construed strictly against the taxpayer and in favor of the government.

The Pre-Trial Conference was set on June 8, 2017[11]. Both parties filed their respective *Pre-Trial Brief*[12] on March 13, 2017. Respondent stated in *his Pre-trial Brief* that he will not present documentary and testimonial evidence. Thereafter, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on June 23, 2017[13] which was approved by the Court in the Resolution dated July 3, 2017. Pre-Trial was terminated with the issuance of the *Pre-Trial Order* dated September 28, 2017.[14]

During trial, petitioner presented the following witnesses: (1) Mary Josephine D. Tesalona, the Court-commissioned Independent Certified Public Accountant (ICPA)[15]; (2) Cherry H. Tan, its Assistant Vice President for Purchasing[16]; and (3) Teofilo C. Sacpa, its Chief Accountant[17].

Petitioner filed its *Formal Offer of Evidence*[18] on February 23, 2018. In the *Resolution* dated May 23, 2018,[19] the Court admitted most of petitioner's documentary evidence.

On June 18, 2018, petitioner filed an *Omnibus Motion for Reconsideration*[20] praying that Exhibits "P-9-1", "P-96", "P-97", "P-98" and "P-115" be admitted, and that in the alternative, that petitioner be allowed to submit the original or certified true copy of Exhibit "P-99-1". Petitioner further moved for leave to file an Amended Formal Offer of Evidence. In the Resolution dated September 18, 2018[21], the Court

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[11] Docket – Vol. 1, pp. 222 to224.
[12] Respondent's *Pre-Trial Brief*, Docket – Vol. 1, pp. 119 to 121; Petitioner's *Pre-trial Brief*, Docket – Vol. 1, pp. 124 to 136.
[13] Docket – Vol. 1, pp. 226 to 235.
[14] Docket - Vol. 1, pp. 286 to 301.
[15] Exhibit "P-135", Docket – Vol. 1, pp. 471 to 478; Exhibit "P-133", Docket – Vol. 1, pp. 267 to 277.
[16] Exhibit "P-134", Docket – Vol. 1, pp. 173 to 179.
[17] Exhibit "P-132", Docket – Vol. 1, pp. 305 to 308; Exhibit "P-112", Docket – Vol. 1, pp. 147 to 155.
[18] Docket – Vol. 1, pp. 323 to 337.
[19] Docket – Vol. 1, pp. 399 to 401.
[20] Docket – Vol. 1, pp. 402 to 406.
[21] Docket – Vol. 1, pp. 429 to 433.

directed petitioner to submit the original or certified true copy of Exhibit "P-99-1"; and recalled the Court-commissioned ICPA in order to confirm or verify whether Exhibits "P-96", "P-97", "P-98" and "P-115", were original or amended returns.

On December 11, 2018, petitioner filed a *Supplemental Formal Offer of Evidence*[22]. In the *Resolution*[23] dated March 27, 2019, the Court admitted Exhibits "P-96", "P-97", "P-98" and "P-115".

In the *Resolution* dated May 29, 2019,[24] this case was submitted for decision, taking into consideration the *Memorandum* of petitioner filed on May 22, 2019[25] and respondent's *Memorandum* on June 26, 2018.[26]

Hence, this Decision.

THE ISSUE

The parties stipulated a sole issue[27] for this Court's resolution, to wit:

> "Whether petitioner is entitled to tax credit/refund of its 2014 input VAT arising from its importations of capital and consumable goods amounting to Twenty-Five Million Five Hundred One Thousand Eight Hundred Sixty-Two and 20/100 Pesos (₱25,501,862.20)."

Petitioner's arguments:

Petitioner submits that it is entitled to tax credit/refund of its 2014 input VAT as it has satisfied all the requirements for the grant of tax credit/refund under the law and jurisprudence.

Allegedly, it has presented sufficient evidence to prove that it has accumulated input VAT in 2014 from importations, capital

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[22] Docket – Vol. 1, pp. 468 to 470.
[23] Docket – Vol. 1, pp. 502 to 503.
[24] Docket – Vol. 2, p. 541.
[25] Docket – Vol. 2, pp. 509 to 539.
[26] Docket – Vol. 1, pp. 407 to 418.
[27] Issue, *JSFI*, Docket – Vol. 1, pp. 226 to 227.

amortization, and services rendered by non-residents, which were used directly in the production of gold and other metals.

Petitioner likewise asserts that it has presented clear and convincing evidence proving that it exported one hundred percent (100%) of its metal production in 2014 to a foreign country, the payments for which were remitted in US Dollars and in accordance with rules and regulations of the BSP.

While it has accumulated output VAT in 2014 due to its incidental transactions, such as the sale of scraps, its input VAT for the said period is considerably more than the output VAT, rendering it entitled to a credit or refund for its net input VAT.

As regards the timeliness of its claim, petitioner avers that its administrative and judicial claims were timely filed.

Respondent's counter-arguments:

Respondent counter-argues that the instant petition should be dismissed for failure of petitioner to file its judicial claim within the two (2)-year prescriptive period under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Further, it is respondent's position that petitioner's claim for refund is considered deemed denied.

Allegedly, it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim. According to respondent, petitioner failed to prove that its alleged input taxes are directly attributable to zero-rated sales.

Finally, claims for refund are construed strictly against the taxpayer and in favor of the government.

THE COURT'S RULING

The instant Petition for Review is partly meritorious.

Requisites for the grant of refund or issuance of tax credit certificate under the law.

In an action claiming for the refund or issuance of tax credit certificate for input taxes such as the instant petition, Section 112 of the NIRC of 1997, as amended, provides:

> "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 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: xxx.
>
> 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

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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."

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

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

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[28]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner of Internal Revenue (CIR) to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[29]

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

3. the taxpayer is a VAT registered person;[30]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[31]

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[28] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

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

[30] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[31] *Ibid.*

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5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[32]

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

6. the input taxes are due or paid;[33]
7. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[34] and
8. the input taxes have not been applied against output taxes during and in the succeeding quarters.[35]

First and second requisites: Petitioner timely filed its administrative and judicial claims.

The *first requisite* pertains to the filing of the claim for tax credit and refund of input VAT before the BIR, within two years after the close of the taxable quarter when the sales were made.

The instant claim covers the four (4) quarters of 2014. Counting two (2) years from the close of each quarter, petitioner had until March 31, 2016, June 30, 2016, September 30, 2016, and December 31, 2016, respectively, within which to file its administrative claims for issuance of TCC for its input VAT, to wit:

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[32] *Ibid.*
[33] *Ibid.*
[34] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[35] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

Period (TY 2014)	Close of the Taxable Quarter	Last day to File Administrative Claim
1st Quarter	March 31, 2014	March 31, 2016
2nd Quarter	June 30, 2014	June 30, 2016
3rd Quarter	September 30, 2014	September 30, 2016
4th Quarter	December 31, 2014	December 31, 2016

Thus, petitioner's administrative claim [Application for Tax Credits/Refunds (BIR Form No. 1914)][36], covering the said four (4) quarters, filed with the BIR on March 16, 2016, was timely filed.

As regards the *second requisite*, the judicial claim must be filed within thirty (30) days from receipt of the CIR's decision or after the expiration of the one-hundred twenty (120)-day period in case of inaction, in accordance with the afore-quoted Section 112(C). Said provision enunciates the 120+30 mandatory and jurisdictional periods. Considering that there is no indication that respondent issued a decision relative to petitioner's administrative claim, the determination of the 120+30-day periods, as applied to this case, is shown as follows:

Date of Filing of Administrative Claim	End of 120 days for the CIR to decide the claim	End of 30 days from expiration of the 120 days
March 16, 2016	July 14, 2016	August 13, 2016

Accordingly, petitioner had until August 13, 2016 to file its judicial claim. It appearing that the instant *Petition for Review* was filed on August 12, 2016[37], the judicial claim was likewise filed on time.

Correspondingly, the *first* and *second* requisites are complied with.

Third requisite: Petitioner is VAT-registered.

As for its compliance with the *third requisite*, petitioner presented its *Certificate of Registration* issued by BIR with TIN 000-160-247-000, indicating that it is liable to VAT.[38]

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[36] Exhibit "P-7", Docket – Vol. 1, p. 369.
[37] Docket – Vol. 1, pp. 10 to 21.
[38] Exhibit "P-6", Docket – Vol. 1, p. 368.

Fourth and fifth requisites: Petitioner was engaged in zero-rated or effectively zero-rates sales.

The *fourth* and *fifth* conditions, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales; and that for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

In this case, petitioner claims that it sold and shipped all the gold and other metals it produced in 2014 to Heraeus, Ltd., a corporation, a foreign entity located in Hongkong; and that said export sales are zero-rated sales pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which reads:

> "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:
>
> (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);"

Corollary thereto, Section 113 (A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) (1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, require that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information: *mo*

"SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —

(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official 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: *Provided*, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and x x x"

"SEC. 4.113-1. *Invoicing Requirements.* —

(A) A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt; x x x."

In addition to the above requirements, the invoices must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended, to wit:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service...."

"SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Thus, pursuant to the afore-quoted provisions of Sections 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113 (A)(1), (B)(1), (2)(c) and (3) of the same Code and Sections 4.113-1(A) (1), B(1) and (2)(c) of RR No. 16-05, any VAT registered person claiming VAT zero-rated direct export sales must present at least three types of documents, to wit:

1. the sales invoice as proof of sale of goods;
2. bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106 (A) (2) (a) (1) of the NIRC of 1997, as amended. Further, the sales invoices representing export sales must be duly registered with the BIR and contain all the information required by law, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

As indicated in petitioner's Amended Quarterly VAT returns for the year 2014, petitioner declared zero-rated sales in the total amount of ₱1,431,486,712.92, detailed as follows:

Exhibit	Period Covered (2014)	Zero-Rated Sales
P-11	1st Quarter	₱ 494,082,873.60
P-12	2nd Quarter	310,782,977.44
P-13	3rd Quarter	346,425,175.39
P-14	4th Quarter	280,195,686.49
		₱1,431,486,712.92

To substantiate its export sales, petitioner presented the BOI Certification[39], its zero-rated provisional invoices[40] and zero-rated final invoices for 2014[41], Export Declarations[42], Air Waybills[43], Bank Credit Memos[44] and Certificate of Inward Remittances[45], which were examined by the Court-commissioned ICPA, Mary Josephine D. Tesalona of Reyes Tacandong & Co.

Upon verification, the Court finds that out of the declared zero-rated sales of ₱1,431,486,712.92, only the amount of ₱1,414,068,311.34 is duly supported by documents as required by law, detailed as follows:

Ship-ment number	Zero-rated Final Invoice	Export Declaration	Air Waybill	Credit Memo	Total US$ Value	Total Amount in PESO
First Quarter						
1-14	P-28 page 1	P-34 p.1	P-38 p.1	P-42 pp.1-2	$472,126.55	₱21,232,475.21
2-14	P-28 p.2	P-34 p.2	P-38 p.2	P-42 pp.3-4	564,848.73	25,402,377.09
3-14	P-28 p.3	P-34 p.3	P-38 p.3	P-42 pp.5-6	634,257.80	28,523,841.78
4-14	P-28 p.4	P-34 p.4	P-38 p.4	P-42 pp.7-8	507,559.71	22,825,975.28
5-14	P-28 p.5	P-34 p.5	P-38 p.5	P-42 pp.9-10	815,316.07	36,666,394.30
6-14	P-28 p.6	P-34 p.6	P-38 p.6	P-42 pp.11-12	390,104.53	17,543,780.92
7-14	P-28 p.7	P-34 p.7	P-38 p.7	P-42 pp.13-14	505,505.46	22,733,591.55
8-14	P-28 p.8	P-34 p.8	P-38 p.8	P-42 pp.15-16	480,553.38	21,558,105.18
9-14	P-28 p.9	P-34 p.9	P-38 p.9	P-42 pp.17-18	653,396.52	29,312,021.28
10-14	P-28 p.10	P-34 p.10	P-38 p.10	P-42 pp.19-20	683,892.49	30,680,100.99
11-14	P-28 p.11	P-34 p.11	P-38 p.11	P-42 pp.21-22	392,457.92	17,606,054.75
12-14	P-28 p.12	P-34 p.12	P-38 p.12	P-42 pp.23-24	421,080.68	18,890,100.39
13-14	P-28 p.13	P-34 p.13	P-38 p.13	P-42 pp.25-26	708,364.91	31,777,958.23
14-14	P-28 p.14	P-34 p.14	P-38 p.14	P-42 pp.27-28	591,281.86	26,488,244.76
15-14	P-28 p.15	P-34 p.15	P-38 p.15	P-42 pp.29-30	497,905.07	22,305,151.33
16-14	P-28	P-34 p.16	P-38 p.16	P-42 pp.31-	686,812.79	

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[39] Exhibits "P-9" to "P-9-1'.
[40] Exhibits "P-24" to "P-27".
[41] Exhibits "P-28" to "P-31".
[42] Exhibits "P-34" to "P-37".
[43] Exhibits "P-38" to "P-41".
[44] Exhibits "P-42" to "P-45".
[45] Exhibit "P-46".

	p.16			33		30,767,839.37
17-14	P-28 p.17	P-34 p.17	P-38 p.17	P-42 pp.34-35	785,896.16	35,206,576.18
18-14	P-28 p.18	P-34 p.18	P-38 p.18	P-42 pp.36-37	526,634.51	23,592,172.78
19-14	P-28 p.19	P-34 p.19	P-38 p.19	P-42 pp.38-39	636,226.16	28,501,659.52
Subtotal - First Quarter					**10,954,221.30**	**491,614,420.89**
Second Quarter						
20-14	P-29 p.1	P-35 p.1	P-39 p.1	P-43 pp.1-2	470,239.75	20,985,389.32
21-14	P-29 p.2	P-35 p.2	P-39 p.2	P-43 pp.3-4	464,775.31	20,741,527.76
22-14	P-29 p.3	P-35 p.3	P-39 p.3	P-43 pp.5-6	458,615.67	20,466,641.51
23-14	P-29 p.4	P-35 p.4	P-39 p.4	P-43 pp.7-8	327,655.05	14,622,261.92
24-14	P-29 p.5	P-35 p.5	P-39 p.5	P-43 pp.9-10	461,537.28	20,597,024.19
25-14	P-29 p.6	P-35 p.6	P-39 p.6	P-43 pp.11-12	488,356.16	21,793,870.35
26-14	P-29 p.7	P-35 p.7	P-39 p.7	P-43 pp.13-14	585,584.52	25,701,304.58
27-14	P-29 p.8	P-35 p.8	P-39 p.8	P-43 pp.15-16	312,877.28	13,732,183.82
28-14	P-29 p.9	P-35 p.9	P-39 p.9	P-43 pp.17-18	427,988.92	18,784,433.70
29-14	P-29 p.10	P-35 p.10	P-39 p.10	P-43 pp.19-20	557,880.05	24,485,355.39
30-14	P-29 p.11	P-35 p.11	P-39 p.11	P-43 pp.21-22	400,628.48	17,583,583.99
31-14	P-29 p.12	P-35 p.12	P-39 p.12	P-43 pp.23-24	470,560.31	20,614,306.06
32-14	P-29 p.13	P-35 p.13	P-39 p.13	P-43 pp.25-26	499,362.33	21,876,064.95
33-14	P-29 p.14	P-35 p.14	P-39 p.14	P-43 pp.27-28	491,920.74	21,550,063.78
34-14	P-29 p.15	P-35 p.15	P-39 p.15	P-43 pp.29-30	635,229.34	27,828,126.93
Subtotal -Second Quarter					**$ 7,053,211.19**	**₱311,362,138.25**
Third Quarter						
35-14	P-30 p.1	P-36 p.1	P-40 p.1	P-44 pp.1-2	361,793.94	15,722,841.04
36-14	P-30 p.2	P-36 p.2	P-40 p.2	P-44 pp.3-4	500,072.23	21,732,138.97
37-14	P-30 p.3	P-36 p.3	P-40 p.3	P-44 pp.5-6	721,558.08	31,357,471.04
38-14	P-30 p.4	P-36 p.4	P-40 p.4	P-44 pp.7-8	585,961.37	25,464,709.22
39-14	P-30 p.5	P-36 p.5	P-40 p.5	P-44 pp.9-10	650,021.59	28,248,638.26
40-14	P-30 p.6	P-36 p.6	P-40 p.6	P-44 pp.11-12	580,396.38	25,408,592.72
41-14	P-30 p.7	P-36 p.7	P-40 p.7	P-44 pp.13-14	401,811.33	17,590,496.40
42-14	P-30 p.8	P-36 p.8	P-40 p.8	P-44 pp.15-16	778,774.60	34,093,194.44
43-14	P-30 p.9	P-36 p.9	P-40 p.9	P-44 pp.17-18	463,307.09	20,282,657.79
44-14	P-30	P-36 p.10	P-40 p.10	P-44 pp.19-	593,544.30	

	p.10			20		25,984,182.37
45-14	P-30 p.11	P-36 p.11	P-40 p.11	P-44 pp.21-22	525,329.17	23,199,586.81
46-14	P-30 p.12	P-36 p.12	P-40 p.12	P-44 pp.23-24	513,741.05	22,687,832.25
47-14	P-30 p.13	P-36 p.13	P-40 p.13	P-44 pp.25-26	666,158.89	29,418,908.90
48-14	P-30 p.14	P-36 p.14	P-40 p.14	P-44 pp.27-29	626,154.07	27,652,216.04
Subtotal -Third Quarter					**$7,968,624.09**	**₱348,843,466.25**
Fourth Quarter						
49-14	P-31 p.1	P-37 p.1	P-41 p.1	P-45 pp.1-2	$518,589.04	₱23,231,751.81
50-14	P-31 p.2	P-37 p.2	P-41 p.2	P-45 pp.3-4	696,236.91	31,190,021.09
51-14	P-31 p.3	P-37 p.3	P-41 p.3	P-45 pp.5-6	363,574.60	16,287,414.93
52-14	P-31 p.4	P-37 p.4	P-41 p.4	P-45 pp.7-8	428,047.20	19,175,658.47
53-14	P-31 p.5	P-37 p.5	P-41 p.5	P-45 pp.9-10	637,359.66	28,552,438.05
54-14	P-31 p.6	P-37 p.6	P-41 p.6	P-45 pp.11-12	431,497.22	19,397,094.53
55-14	P-31 p.7	P-37 p.7	P-41 p.7	P-45 pp.13-14	1,014,766.09	45,616,780.04
56-14	P-31 p.8	P-37 p.8	P-41 p.8	P-45 pp.15-16	209,656.93	9,424,707.97
57-14	P-31 p.9	P-37 p.9	P-41 p.9	P-45 pp.17-18	558,134.79	25,089,833.21
58-14	P-31 p.10	P-37 p.10	P-41 p.10	P-45 pp.19-20	382,285.61	17,079,756.48
59-14	P-31 p.11	P-37 p.11	P-41 p.11	P-45 pp.21-22	336,663.85	15,041,467.49
60-14	P-31 p.12	P-37 p.12	P-41 p.12	P-45 pp.23-24	272,200.23	12,161,361.88
Subtotal -Fourth Quarter					**$ 5,849,012.13**	**₱262,248,285.95**
TOTAL					**$31,825,068.71**	**₱1,414,068,311.34**

The remaining ₱17,418,401.58 shall not be considered as VAT zero-rated sale for the following reasons:

	Amount in USDollars	**Amount in Peso**
Shipments made outside the period of claim	$374,568.42	₱16,734,967.87
Zero-rated sales which were not inwardly remitted	1,558.83	68,841.05
Unsupported/unsubstantiated company adjustments to zero-rated sales	9,777.78	614,592.66
Total	**$385,905.03**	**₱17,418,401.58**

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Consequently, only the portion of input tax claim attributable to the substantiated zero-rated sales in the amount of **₱1,414,068,311.34** will be considered for refund.

Petitioner complied with the sixth, seventh and eight requisites.

After resolving that petitioner had valid VAT zero-rated sales for the year 2014 in the total amount of ₱1,414,068,311.34, the Court shall jointly determine whether petitioner complied with the following remaining requisites:

a. *sixth requisite*: the input taxes are due or paid;

b. *seventh requisite*: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

c. *eighth requisite*: the input taxes have not been applied against output taxes during and in the succeeding quarters.

In its Quarterly VAT Returns for the year 2014, petitioner declared excess and unutilized input VAT amounting to ₱28,334,195.14, arising from its purchases of capital goods exceeding ₱1 Million, importations of goods other than capital goods of goods, and services rendered by non-residents, of which the amount of **₱25,501,862.20**[46] is the subject of the present claim, detailed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
Input tax deferred on capital goods exceeding ₱1M form previous quarter	₱6,148,975.43	₱5,585,245.98	₱5,146,141.13	₱4,575,965.59	₱21,456,328.13

[46] With discrepancy of ₱0.01 (rounding off difference) as against the instant claim for refund which is ₱25,501,862.20.

Add: Input Tax on purchases of capital goods during the period of claim, exceeding ₱1M	-	128,922.00	-	-	128,922.00
Less: Input tax on purchases of capital goods exceeding ₱1M deferred for the succeeding period	5,585,245.98	5,146,141.13	4,575,965.58	4,005,790.04	19,313,142.73
Input Tax on Amortization of Capital Goods Exceeding ₱1M	563,729.45	568,026.85	570,175.55	570,175.55	2,272,107.40
Input Tax on Importations of Goods other than Capital Goods	9,902,141.00	4,140,897.00	7,630,715.00	3,939,132.00	25,612,885.00
Input Tax on Services Rendered by Non-Residents	-	-	-	449,202.74	449,202.74
Total Input Tax during the period (TY2014)	₱10,465,870.45	₱4,708,923.85	₱8,200,890.55	₱4,958,510.29	₱28,334,195.14
Less: Output Tax	508,701.44	639,424.89	817,148.57	867,058.03	2,832,332.93
Excess Input VAT	**₱9,957,169.01**	**₱4,069,498.96**	**₱7,383,741.98**	**₱4,091,452.26**	**₱25,501,862.21**

In support of its input VAT, petitioner presented its Single Administrative Document (SAD) and Statement of Settlement of Duties and Taxes (SSDT) with Certifications from Authorized Agent Bank (AAB)[47], and e-filed BIR Form No. 1600 and Payment Confirmation[48], which were examined by the Court-commissioned ICPA, Mary Josephine D. Tesalona of Reyes Tacandong & Co. The ICPA's findings on petitioner's input VAT are summarized as follows:

NATURE	REFERENCE	AMOUNT	TOTAL
I. PROPERLY SUBSTANTIATED INPUT VAT			
1. Input VAT on importation of goods declared under Electronic-to-Mobile or e2m Customs System (e2m Customs) supported by SADs, SSDTs dated within the 1st Quarter, 2nd Quarter, 3rd Quarter, and 4th Quarter of 2014,	*Annex 11-1Q pp. 25 to 27*	₱ 9,363,264.00	
	Annex 11-2Q pp 28 to 30	4,119,553.00	

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[47] Exhibits "P-66" to P-70".
[48] Exhibit "P-71".

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and Certifications from AAB. Printing of SADs and SSDTs from VASP verified.	*Annex 11-3Q pp. 31 to 33*	7,150,843.00	
	Annex 11-4Q pp. 34 to 35	3,474,321.00	₱24,107,981.00
2. Input VAT on importation of goods declared under e2m Customs supported by SADs, SSDTs dated within the 3rd Quarter of 2014 and Certifications from AAB but claimed by the Company during the 4th Quarter of 2014. Printing of SADs and SSDTs from VASP verified.	*Annex 12-4Q, p. 36*	404,279.00	404,279.00
3. Input VAT on importation of capital goods exceeding ₱1 million declared under e2m Customs duly amortized and supported by SADs, SSDTs dated within the 2nd Quarter of 2014, and Certifications from AAB. Printing of SADs and SSDTs from VASP verified.	*Annex 13-2Q, p. 37*	4,297.40	
	Annex 13-3Q, p. 38	6,446.10	
	Annex 13-4Q, p. 39	6,446.10	17,189.60
4. Input VAT on services rendered by non-residents duly supported by e-filed BIR Form No. 1600 and Payment Confirmation from the BIR during the 4th Quarter of 2014. Printing of Return and Payment Confirmation from EFPS verified.	*Annex 14-4Q, p. 40*	449,202.74	449,202.74
Subtotal			***₱24,978,652.34***
II. SUBSTANTIATED INPUT VAT WITH CERTAIN OBSERVATIONS			
1. Input VAT on importation of goods declared under e2m Customs supported by SADs, SSDTs, and Certifications from AAB claimed by the Company during the 1st Quarter and 4th Quarter of 2014 but SSDT date is not indicated. Payment date is supported by Certifications from AAB certifying final payment of duties and taxes during the 1st Quarter and 4th Quarter of 2014.	*Annex 15-1Q, p. 41*	₱438,659.00	
	Annex 15-4Q, p. 42	30,257.00	₱468,916.00
2. Input VAT on importation of goods declared under e2m Customs supported by Bureau of Customs (BOC) - verified SADs, photocopies of SSDTs, BOC Certification of Collection of Duties and Taxes, and Certifications from AAB claimed by the Company during the 1st Quarter and 4th Quarter of 2014.	*Annex 16-1Q, p. 43*	29,337.00	
	Annex 16-3Q, p. 44	465,006.00	494,343.00
Subtotal			***₱963,259.00***
III. INPUT VAT WITH NOTED EXCEPTIONS			
1. Input VAT on importation of goods **supported by photocopies of IEIRDs and SSDTs and Certifications from AAB** claimed by the Company during the 1st Quarter, 2nd Quarter, 3rd Quarter, and 4th Quarter of 2014.	*Annex 17-1Q, p. 45*	₱15,015.00	
	Annex 17-2Q, p. 46	6,208.00	
	Annex 17-3Q, p. 47	7,018.00	
	Annex 17-4Q, p. 48	22,198.00	₱50,439.00

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2. Input VAT on importation of goods **supported by photocopies of IEIRDs** and original BOC ORs claimed by the Company during the 4th Quarter of 2014.	*Annex 18-4Q, p. 49*	8,077.00	8,077.00
3. Input VAT on importation of goods made through informal entry **supported by photocopies of Informal Import Declaration and Entry** and/or original BOC ORs claimed by the Company during the 1st Quarter, 2nd Quarter, and 3rd Quarter of 2014.	*Annex 19-1Q, p. 50*	55,866.00	
	Annex 19-2Q, p. 51	15,136.00	
	Annex 19-3Q, p. 52	7,848.00	78,850.00
4. Amortization of prior years' input VAT on importation of capital goods exceeding ₱1M declared under e2m Customs supported by SADs and/or SSDTs. **Printing of SADs and/or SSDTs from VASP <u>not verified.</u>**	*Annex 20-1Q, pp. 53 to 56.*	531,485.65	
	Annex 20-2Q, pp. 57 to 60	531,485.65	
	Annex 20-3Q, pp. 61 to 64	531,485.65	
	Annex 20-4Q, pp. 65 to 68	531,485.64	2,125,942.59
5. Amortization of prior years' input VAT on importation of capital goods exceeding ₱1M supported by photocopy of IEIRD.	*Annex 21-1Q, p.69*	32,243.80	
	Annex 21-2Q, p.70	32,243.80	
	Annex 21-3Q, p.71	32,243.80	
	Annex 21-4Q, p.72	32,243.80	128,975.20
Subtotal			***₱2,392,283.79***
TOTAL			**₱28,334,195.13**

Upon careful scrutiny of the ICPA report together with the other submitted documentary evidence, this Court agrees with the findings of the ICPA that the amounts of ₱24,978,652.34 and ₱963,259.00, or in the total amount of ₱25,941,911.34, represent petitioner's substantiated input VAT.

As regards to ICPA's findings on "*INPUT VAT WITH NOTED EXCEPTIONS*", the Court finds that the following importation through informal entry amounting to ₱137,366.00 should be disallowed for not being properly supported by SADS and SSDT:

Input VAT on importation of goods supported by photocopies of IEIRDs and SSDTs and Certifications from AAB claimed by the Company during the 1st Quarter, 2nd Quarter, 3rd Quarter, and 4th Quarter of 2014.	₱50,439.00
Input VAT on importation of goods supported by photocopies of IEIRDs and original BOC ORs claimed by	8,077.00

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the Company during the 4th Quarter of 2014.	
Input VAT on importation of goods made through informal entry supported by photocopies of Informal Import Declaration and Entry and/or original BOC ORs claimed by the Company during the 1st Quarter, 2nd Quarter, and 3rd Quarter of 2014.	78,850.00
TOTAL	**₱137,366.00**

With respect to the "*Amortization of prior year's input VAT on importation of capital goods exceeding ₱1M*" under items no. 4 & 5, the Court notes that petitioner failed to present supporting documents to substantiate the claimed input VAT. Hence, the total amount of ₱2,254,917.79 cannot be validly claimed as input VAT.

Based on the foregoing, petitioner's valid input VAT for the four quarters of 2014 amounted to **₱25,941,911.34,** determined as follows:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**TOTAL**
Input Tax on Amortization of Capital Goods Exceeding P1M	-	₱4,297.40	₱6,446.10	₱6,446.10	₱17,189.60
Input Tax on Importations of Goods other than Capital Goods	₱9,831,260.00	4,119,553.00	7,615,849.00	3,908,857.00	25,475,519.00
Input Tax on Services Rendered by Non-resident	-	-	-	449,202.74	449,202.74
Total substantiated input VAT	**₱9,831,260.00**	**₱4,123,850.40**	**₱7,622,295.10**	**₱4,364,505.84**	**₱25,941,911.34**

A portion, however, of the substantiated input VAT of **₱25,941,911.34** shall be applied against petitioner's reported output VAT liability for the four quarters of 2014 amounting to ₱2,832,332.93, resulting to an excess input VAT due or paid amounting to **₱23,109,578.41**, computed as follows:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**TOTAL**
Total substantiated input VAT	₱9,831,260.00	₱4,123,850.40	₱7,622,295.10	₱4,364,505.84	₱25,941,911.34
Less: Output Tax	508,701.44	639,424.89	817,148.57	867,058.03	2,832,332.93
Excess Input VAT	**₱9,322,558.56**	**₱3,484,425.51**	**₱6,805,146.53**	**₱3,497,447.81**	**₱23,109,578.41**

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Consequently, only the remaining excess input VAT of **₱22,458,084.40** can be attributed to the substantiated zero-rated sales of ₱1,414,068,311.34, as determined as follows:

Valid Zero-Rated Sales/Receipts	₱1,414,068,311.34
Divided by Total Sales/Receipts[1] per Quarterly VAT Return [2]	1,455,089,487.37
Multiply by Valid Excess Input VAT	₱23,109,578.41
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	**₱22,458,084.40**

Although the claimed input VAT for the four quarters of 2014 was carried over by petitioner in its succeeding Quarterly VAT Returns,[49] the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[50] in its Amended Quarterly VAT Return for the 3rd quarter of 2015, preventing the carry-over or application of the claimed input VAT in the next taxable quarters.

Accordingly, the subject claim no longer formed part of the excess input VAT of ₱10,589,263.70[51] as of the 3rd quarter of 2015. Such being the case, the claimed input VAT could not have been carried over or utilized in the succeeding 4th quarter of 2015[52].

In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of TCC in the amount of **₱22,458,084.40**, representing unutilized excess input VAT attributable to its zero-rated sales for the four quarters of 2014.

WHEREFORE, in light of the foregoing considerations the *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱22,458,084.40** representing the latter's unutilized input VAT attributable to its zero-rated sales for the four quarters of the year 2014.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[49] Exhibits "P-92" and "P-94"
[50] Exhibit "P-94".
[51] Line 29, Exhibit "P-94".
[52] Line 20A, Exhibit "P-95".

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice