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not proved.[31] Therefore, we sustain the award of the trial court of PhP 25,000 for temperate damages.

Finally, interest at the rate of six (6) percent should likewise be added to the damages awarded.[32]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 00575-MIN finding accused-appellant Rogelio Dolorido *y* Estrada guilty of the crime charged is *AFFIRMED* with *MODIFICATION*. In addition to the sum of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 25,000 as temperate damages, accused-appellant is likewise sentenced to pay the heirs of the victim the amount of PhP 30,000 as exemplary damages. Interest at the rate of six percent (6%) per annum on the civil indemnity and moral, temperate, and exemplary damages from the finality of this decision until fully paid shall likewise be paid by accused-appellant to the heirs of Daniel Estose.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-10-2255. January 17, 2011]
(Formerly OCA IPI No. 10-3335-RTJ)

SPOUSES DEMOCRITO and OLIVIA LAGO, *complainants, vs.* **JUDGE GODOFREDO B. ABUL, JR., REGIONAL TRIAL COURT, BRANCH 43, GINGOOG CITY,** *respondent*.

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[31] *People v. Surongon*, G.R. No. 173478, July 12, 2007, 527 SCRA 577, 588.

[32] See *People v. Tabongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727.

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SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; *EX PARTE* 72-HOUR TEMPORARY RESTRAINING ORDER (TRO), WHEN MAY BE ISSUED; REQUIREMENTS.— [O]n the matter of the issuance of an *ex parte* 72-hour TRO, an executive judge of a multiple-sala court (applicable to respondent judge), or the presiding judge of a single-sala court, is empowered to issue the same in matters of extreme emergency, in order to prevent grave injustice and irreparable injury to the applicant. However, it is also an unequivocal provision that, after the issuance of the 72-hour TRO, the executive judge of a multiple-sala court is bound to comply with Section 4(c) of the same rule with respect to the service of summons and the documents to be served therewith.

2. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; COMMITTED IN CASE AT BAR.— The records of this case clearly show that respondent judge failed to cause the raffle of Civil Case No. 2009-905, since RTC, Gingoog City, is a multiple-sala court, or to cause the notification and service of summons to complainants after he issued the 72-hour TRO. Respondent judge's July 7, 2009 Order was explicit when the civil case was set for summary hearing on July 14, 2009, purportedly to determine whether or not the TRO issued could be extended for another period. Thus, it is manifest that respondent judge had directly assumed jurisdiction over the civil action and all together disregarded the mandatory requirements of Section 4(c), Rule 58, relative to the raffle in the presence of the parties, and service of summons. This is gross error. x x x What is more appalling is that respondent judge extended the 72-hour TRO, which had already and obviously expired, into a full 20-day TRO. An already expired TRO can no longer be extended. x x x Moreover, respondent judge committed another blunder when he ordered the issuance of a writ of preliminary injunction without the required hearing and without prior notice to the defendants, herein complainants. Again, Rule 58, as amended, mandates a full and comprehensive hearing for the determination of the propriety of the issuance of a writ of preliminary injunction, separate from the summary hearing for the extension of the 72-hour TRO. x x x Verily, the absence of the hearing required by the Rules of Court is

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downright reprehensible and, thus, should not be countenanced. The requirement of a hearing is so fundamental that failure to comply with it not only amounts to gross ignorance of rules and procedure, but also to an outright denial of due process to the party denied such a hearing. Undoubtedly, the acts and omissions of respondent judge warrant sanction from this Court.

3. ID.; ID.; ID.; ELUCIDATED.— Though not every judicial error bespeaks ignorance of the law or of the rules, and that, when committed in good faith, does not warrant administrative sanction, the rule applies only in cases within the parameters of tolerable misjudgment. When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court proficiency in the law, and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice. In the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action. However, the assailed judicial acts must not be in gross violation of clearly established law or procedure, which every judge must be familiar with. Every magistrate presiding over a court of law must have the basic rules at the palm of his hands and maintain professional competence at all times.

4. ID.; ID.; ID.; CLASSIFIED AS A SERIOUS OFFENSE; PENALTY IN CASE AT BAR.— Section 8, Rule 140 of the Rules of Court classifies gross ignorance of the law or procedure as a serious offense for which the imposable sanction ranges from dismissal from the service to suspension from office, and a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Under the premises, this Court finds it appropriate to impose on respondent judge the penalty of a fine in the amount of ₱25,000.00.

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D E C I S I O N

NACHURA, *J.*:

The case arose from an amended complaint[1] dated December 29, 2009, filed by Spouses Democrito C. Lago and Olivia R. Lago (complainants), charging Judge Godofredo B. Abul, Jr. (respondent judge) of the Regional Trial Court (RTC), Branch 43, Gingoog City, with acts and omissions violative of the Standards of Conduct Prescribed for Judges by Law, the Rules of Court, and the Code of Judicial Conduct.

Complainants were the defendants in a civil action for Preliminary Injunction, Easement of Road Right of Way, and Attorney's Fees, with prayer for a Temporary Restraining Order (TRO), filed on July 2, 2009 by Christina M. Obico (Obico) before the RTC, Gingoog City, Misamis Oriental, and docketed as Civil Case No. 2009-905. The action was spawned by the alleged threats of complainants to close the access road leading to Obico's property, where the latter's milkfish (*bangus*) farm is located. Obico claimed that, if the access road leading to her property was closed, she would be prevented from harvesting her milkfish, causing massive fish kills, and leading to heavy financial losses on her part.

Complainants assert that the civil complaint was never raffled, and that no notice of raffle was ever served upon them, yet the case went directly to Branch 43, where respondent judge is the acting presiding judge. He is also the acting executive judge of RTC, Gingoog City. Complainants claim that this is violative of Section 4(c), Rule 58 of the Rules of Court.

On July 7, 2009, respondent judge issued an Order[2] directing the issuance of a TRO "effective seventy two (72) hours from date of issue," without requiring Obico to put up a bond. Complainants allege that at that time, they were not yet in receipt of the summons and copy of the complaint, as well as Obico's

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[1] *Rollo*, pp. 1-3.

[2] *Id*. at 7.

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affidavit and bond. Complainants claim that this is violative of Section 4(c) and (d) of Rule 58 of the Rules of Court.

On July 14, 2009, respondent judge issued an Order[3] extending the 72-hour TRO, which had already expired, "for another period provided that the total period should not exceed twenty days." Again, respondent judge failed to require Obico to put up a bond even as complainants assert that it is already of judicial notice that a TRO under the amended new rules has been elevated to the level of an injunction.

In his Resolution[4] dated August 11, 2009, respondent judge ordered, among others, the issuance of the writ of preliminary injunction conditioned upon the application of a bond by Obico in the amount of ₱100,000.00. Complainants argue, however, that said directive was violative of Section 5, Rule 58 of the Rules of Court since they were not required "to show cause, at a specific time and place, why the injunction should not be granted."

Due to these acts of respondent judge, complainants filed a motion for inhibition[5] from further hearing the case, since they perceive that respondent judge was bereft of the cold neutrality of an impartial judge. The motion was denied by respondent judge in his Resolution[6] dated October 28, 2009. Complainants thus consider respondent judge's non-inhibition as violative of the Code of Judicial Conduct, as it denied them due process and equal protection of the law.

On November 11, 2009, respondent judge issued an Order[7] upon Obico's motion, directing the reduction of the bond from ₱100,000.00 to ₱50,000.00.

Complainants then filed a Motion to Hold in Abeyance Further Proceedings[8] on the ground of the pendency of their appeal

[3] *Id*. at 8-9.

[4] *Id*. at 10-15.

[5] *Id*. at 17-20.

[6] *Id*. at 24-26.

[7] *Id*. at 16.

[8] *Id*. at 27-28.

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before the Supreme Court of the Order denying the motion for inhibition. However, at the December 15, 2009 setting for pre-trial of the civil case, respondent judge issued an Order[9] denying the motion to hold in abeyance further proceedings. Respondent judge also allowed Obico to present evidence *ex parte* on January 26, 2010 for failure of complainants to appear during the pre-trial.[10]

In his Comment[11] dated February 11, 2010, respondent judge clarifies that, as of the time of the filing of the civil complaint, Branches 27 and 43 of the RTC, Gingoog City, had no regular presiding judges. Branch 27 was temporarily presided over by Judge Rustico Paderanga, the regular presiding judge of RTC, Camiguin Province, while Branch 43 was presided over by respondent judge, who is the regular judge of RTC, Branch 4, Butuan City.

Respondent judge claims that he had faithfully observed the provisions of Rule 58 of the Rules of Court, with respect to Civil Case No. 2009-905. He explains that, as the acting executive judge of RTC, Gingoog City, he took cognizance of the civil case, convinced that it had to be acted upon immediately. Thus, the issuance of the 72-hour TRO on July 7, 2009 was by virtue of his sound discretion based on the civil complaint and its annexes.

Respondent judge said that he explained in his July 14, 2009 Order that he extended the 72-hour TRO to 20 days in this wise—

> Considering that the TRO previously granted was only for seventy-two hours, the same can be extended for another period provided that the total period should not exceed twenty days. In order to prevent plaintiff from incurring serious damage and heavy financial losses on her part, this court is inclined to grant the extension of the Temporary Restraining Order for another period not exceeding

[9] *Id*. at 29.

[10] Per Order of the same date; *id*. at 47-50.

[11] *Id*. at 32-36.

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twenty (20) days inclusive of the seventy two (72) hour period already granted previously by this court.[12]

With respect to the July 14, 2009 hearing for the TRO, respondent judge claims that it was justified since he, as a mere acting presiding (and executive) judge of RTC, Gingoog City, conducts hearings in that sala only on Tuesdays and Wednesdays because he has to travel about 144 kilometers from Butuan City, where he is actually stationed. In the same July 14, 2009 Order, respondent judge asserts that the conduct of the summary hearings on days other than Tuesdays and Wednesdays would cause undue prejudice to the other cases already scheduled way ahead of the subject civil action, thus, the sheer improbability of being accommodated.

Respondent judge asseverates that the writ of injunction was issued only after a serious consideration of all the factual and legal circumstances of the case. On the other hand, he insists that the denial of the motion for inhibition was due to its lack of factual and legal basis.

After due investigation of this administrative case, the Office of the Court Administrator (OCA) issued its Report dated September 13, 2010, recommending that this case be re-docketed as a regular administrative matter, and, based on its finding that respondent judge was grossly ignorant of the law and rules of procedure, recommended that he be meted a fine in the amount of ₱25,000.00, with a stern warning that a repetition of the same or any similar infraction shall be dealt with more severely.

The OCA found respondent judge to have been grossly and deliberately ignorant of the law and procedure for violation of Rule 58 of the Rules of Court, specifically by means of the following acts: (1) when the civil complaint with prayer for the issuance of a TRO was filed on July 2, 2009, respondent judge assumed jurisdiction thereon and, without the mandated raffle and notification and service of summons to the adverse party, issued a 72-hour TRO on July 7, 2009; (2) when respondent

[12] *Id.* at 8.

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judge set the case for summary hearing on July 14, 2009, purportedly to determine whether the TRO could be extended for another period, when the hearing should be set within 72 hours from the issuance of the TRO; (3) when he eventually granted an extension of an already expired TRO to a full 20-day period; and (4) when he issued a writ of preliminary injunction in favor of Obico without prior notice to herein complainants and without the required hearing.

We find the recommendations of the OCA to be well-taken.

Sections 4 and 5 of Rule 58 of the Rules of Court on preliminary injunction, pertinent to this case, provide—

SEC. 4. *Verified application and bond for preliminary injunction or temporary restraining order.*—A preliminary injunction or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and

(b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

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However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

(d) The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately.

SEC. 5. *Preliminary injunction not granted without notice; exception.*—No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted. The court shall also determine, within the same period, whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance, but shall immediately comply with the provisions of the next preceding section as to the service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order

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exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect, and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

The trial court, the Court of Appeals, the Sandiganbayan or the Court of Tax Appeals that issued a writ of preliminary injunction against a lower court, board, officer, or quasi-judicial agency shall decide the main case or petition within six (6) months from the issuance of the writ.[13]

Culled from the foregoing provisions, particularly with respect to the second paragraph of Section 5, Rule 58 of the Rules of Court, as amended, it is clear that, on the matter of the issuance of an *ex parte* 72-hour TRO, an executive judge of a multiple-sala court (applicable to respondent judge), or the presiding judge of a single-sala court, is empowered to issue the same in matters of extreme emergency, in order to prevent grave injustice and irreparable injury to the applicant. However, it is also an unequivocal provision that, after the issuance of the 72-hour TRO, the executive judge of a multiple-sala court is bound to comply with Section 4(c) of the same rule with respect to the service of summons and the documents to be served therewith.

The records of this case clearly show that respondent judge failed to cause the raffle of Civil Case No. 2009-905, since RTC, Gingoog City, is a multiple-sala court, or to cause the notification and service of summons to complainants after he issued the 72-hour TRO. Respondent judge's July 7, 2009 Order was explicit when the civil case was set for summary

[13] As amended by A.M. No. 07-7-12-SC, December 27, 2007.

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hearing on July 14, 2009, purportedly to determine whether or not the TRO issued could be extended for another period. Thus, it is manifest that respondent judge had directly assumed jurisdiction over the civil action and all together disregarded the mandatory requirements of Section 4(c), Rule 58, relative to the raffle in the presence of the parties, and service of summons. This is gross error.

Even assuming that there was a valid raffle to RTC, Branch 43, Gingoog City, where respondent judge acts as the presiding magistrate, the supposed extreme urgency of the issuance of the 72-hour TRO was belied by his setting of the required summary hearing for the determination of the necessity of extending the 72-hour TRO to 20 days, one week after the issuance thereof. Indeed, Section 5, Rule 58 is explicit that such summary hearing must be conducted within the said 72-hour period. Notwithstanding the explanation of respondent judge that he could not set the required summary hearing except on Tuesdays and Wednesdays, it should be noted that July 7, 2009, the date of the issuance of the 72-hour TRO, was a Tuesday, yet respondent judge could have set the summary hearing on July 8, 2009, a Wednesday. He failed to do so on the mistaken notion that, aside from his alleged hectic schedule, he could, at any time, extend the 72-hour TRO for another period as long as the total period did not exceed 20 days.

What is more appalling is that respondent judge extended the 72-hour TRO, which had already and obviously expired, into a full 20-day TRO. An already expired TRO can no longer be extended. Respondent judge should have known that the TRO he issued in his capacity as an acting executive judge was valid for only 72 hours. Beyond such time, the TRO automatically expires, unless, before the expiration of the said period, he, supposedly in his capacity as presiding judge to whom the case was raffled, conducted the required summary hearing in order to extend the TRO's lifetime. Indubitably, a 72-hour TRO, issued by an executive judge, is a separate and distinct TRO which can stand on its own, regardless of whether it is eventually extended or not. It is not, as respondent judge attempts to

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impress upon us, a mere part of the 20-day TRO issued by a presiding judge to whom the case is raffled.

Moreover, respondent judge committed another blunder when he ordered the issuance of a writ of preliminary injunction without the required hearing and without prior notice to the defendants, herein complainants. The records plainly disclose that the only hearing conducted prior to the August 11, 2009 Resolution granting the preliminary injunction was the July 14, 2009 summary hearing for the extension of the 72-hour TRO. This could be gathered from the August 11, 2009 Resolution, wherein respondent judge declared—

> During the hearing for the determination of the propriety (sic) the Temporary Restraining Order should be extended or whether the Writ of Injunction be granted, the plaintiff presented Christina M. Obico, who in essence testified that she operated fish cages at Gingoog Bay. x x x.[14]

Again, Rule 58, as amended, mandates a full and comprehensive hearing for the determination of the propriety of the issuance of a writ of preliminary injunction, separate from the summary hearing for the extension of the 72-hour TRO. The preliminary injunction prayed for by the applicant can only be heard after the trial court has ordered the issuance of the usual 20-day TRO. Within that period of 20 days, the court shall order the party sought to be enjoined to show cause at a specified time and place why the injunction should not be granted. During that same period, the court shall also determine the propriety of granting the preliminary injunction and then issue the corresponding order to that effect. In the case of respondent judge, he gravely failed to comply with what the rule requires, *i.e.*, to give complainants the opportunity to comment or object, through a full-blown hearing, to the writ of injunction prayed for. Instead, respondent judge railroaded the entire process by treating the summary hearing for the extension of the TRO as the very same hearing required for the issuance of the writ of preliminary injunction.

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[14] *Rollo*, p. 13.

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Verily, the absence of the hearing required by the Rules of Court is downright reprehensible and, thus, should not be countenanced. The requirement of a hearing is so fundamental that failure to comply with it not only amounts to gross ignorance of rules and procedure, but also to an outright denial of due process to the party denied such a hearing. Undoubtedly, the acts and omissions of respondent judge warrant sanction from this Court.

Though not every judicial error bespeaks ignorance of the law or of the rules, and that, when committed in good faith, does not warrant administrative sanction, the rule applies only in cases within the parameters of tolerable misjudgment. When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court proficiency in the law, and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.[15]

In the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action. However, the assailed judicial acts must not be in gross violation of clearly established law or procedure, which every judge must be familiar with. Every magistrate presiding over a court of law must have the basic rules at the palm of his hands and maintain professional competence at all times.[16]

Section 8, Rule 140 of the Rules of Court classifies gross ignorance of the law or procedure as a serious offense for which the imposable sanction ranges from dismissal from the service to suspension from office, and a fine of more than ₱20,000.00

[15] *Amante-Descallar v. Ramas,* A.M. No. RTJ-08-2142, March 20, 2009, 582 SCRA 22, 39.

[16] *Fortune Life Insurance Company, Inc. v. Luczon, Jr.,* A.M. No. RTJ-05-1901, November 30, 2006, 509 SCRA 65, 73-74.

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but not exceeding ₱40,000.00. Under the premises, this Court finds it appropriate to impose on respondent judge the penalty of a fine in the amount of ₱25,000.00.

WHEREFORE, Judge Godofredo B. Abul, Jr., of the Regional Trial Court, Branch 43, Gingoog City, is found liable for Gross Ignorance of the Law and Procedure, and is hereby meted a fine of ₱25,000.00, with a stern warning that a repetition of the same, or any similar infraction in the future, shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 172378. January 17, 2011]

SILICON PHILIPPINES, INC., (Formerly INTEL PHILIPPINES MANUFACTURING, INC.), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX (VAT); REFUNDS OR TAX CREDITS OF INPUT TAX ON ZERO-RATED SALES; REQUISITES.— In a claim for credit/refund of input VAT attributable to zero-rated sales, Section 112 (A) of the NIRC lays down four requisites, to wit: 1) the taxpayer must be VAT-registered; 2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; 3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and 4) the creditable input tax due or paid must be attributable to such