REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

YH GREEN ENERGY INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2995
(CTA CASE NO. 9784)

Present:

RINGPIS-LIBAN, *P.J.,*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, *JJ.*

Promulgated:

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D E C I S I O N

ANGELES, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by YH Green Energy Incorporated (petitioner) against Commissioner of Internal Revenue (CIR) (respondent), seeking the reversal of the December 07, 2021 *Decision*[2] (assailed Decision) of the Third Division and the June 10, 2024 *Resolution*[3] (assailed Resolution) of the Special Third Division in CTA Case No. 9784, entitled *YH Green Energy Incorporated v. Commissioner of Internal Revenue*, the dispositive portions of which respectively read:

Decision dated December 07, 2021:

> **WHEREFORE**, in light of the foregoing considerations, the Petition for Review filed by petitioner YH Green Energy Incorporated is hereby **DENIED** for lack of merit.

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[1] *En Banc* (EB) Docket, pp. 14 to 33.
[2] *Id.* at 44 to 66; Penned by Associate Justice Maria Rowena Modesto-San Pedro, concurred in by Associate Justice Erlinda P. Uy and Associate Justice Ma. Belen M. Ringpis-Liban.
[3] *Id.* at 68 to 72.

SO ORDERED.

Resolution dated June 10, 2024:

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration (of the Decision dated December 7, 2021)* is **DENIED** for lack of merit.

SO ORDERED.

THE PARTIES

Petitioner, YH Green Energy, Incorporated, is a corporation duly organized under the laws of the Republic of the Philippines[4] primarily to produce, generate, market, distribute, and sell energy and electricity from a renewable energy system and hybrid energy system.[5] It is a Value Added-Tax (VAT)-registered entity with Taxpayer Identification No. 008-906-087-000.[6] It is also registered with the Board of Investments (BOI) as a renewable energy developer of solar energy resources.[7]

On the other hand, respondent CIR is empowered to perform various duties of his office including approving claims for refund or tax credit as provided by law.[8] Respondent may be served with orders and other processes at the BIR National Office Building, Room 703, Agham Road, Diliman, Quezon City.[9]

ANTECEDENTS

In the assailed *Decision*, the Court in Division states the factual background of this case, to wit:[10]

> On 5 October 2017, petitioner filed with Bureau of Internal Revenue ("BIR") Revenue District Office ("RDO") No. 80 an Application for Tax Credits/Refunds (BIR Form No. 1914) requesting the refund of its unutilized input VAT for the fourth quarter of taxable year 2015 in the aggregate amount of ₱29,706,751.00.

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[4] Division Docket – Vol. I, p. 23, Exhibit "P-1."
[5] *Id.* at 28 to 36, Exhibit "P-5."
[6] *Id.* at 27, Exhibit "P-4."
[7] *Id.* at 24, Exhibit "P-2."
[8] Division Docket – Vol. II, pp. 977 to 983, Amended Pre-Trial Order.
[9] *Ibid.*
[10] EB Docket, pp. 45 to 49.

Subsequently, on 13 October 2017, respondent issued a Letter of Authority (SN: eLA201500022774) authorizing Revenue Officer Jessa Joy Bismanos and Group Supervisor Arlene Adriano of RDO No. 80 to examine petitioner's books of accounts and other accounting records for the period 1 October 2015 to 31 December 2015, pursuant to a mandatory audit arising from a claim for VAT refund.

In a letter, dated 22 January 2018, respondent, through Assistant Commissioner for Assessment Service Erlinda A. Simple, denied petitioner's claim for VAT refund for lack of factual basis, which petitioner received on 31 January 2018.

Aggrieved, petitioner filed through registered mail the instant Petition for Review on 2 March 2018 praying that judgment be rendered in favor of petitioner and that the claim for input VAT refund in the amount of ₱29,706,751.00 be granted.

Summons[es] were served upon respondent CIR on 3 April 2018 and the Office of the Solicitor General on 2 April 2018.

On 18 May 2018, within the extended period, respondent filed his Answer, interposing the following defenses:

(1) the denial of petitioner's VAT refund claim is proper due to its failure to prove that it had zero-rated or effectively zero-rated sales for the 4th quarter of 2015;

(2) in a claim for tax refund, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements thereof; and

(3) a claim for tax refund is in the nature of tax exemptions; thus, it cannot rest on vague, uncertain, or indefinite inference but should be granted only upon clear and unequivocal provision of law.

Meanwhile, on 29 May 2018, respondent transmitted the BIR Records of the case consisting of 221 pages contained in 1 folder and filed the corresponding Compliance, which the Court took note in a Minute Resolution dated 30 May 2018.

Following the Pre-Trial Conference and the issuance of an Amended Pre-Trial Order, trial ensued.

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On 25 August 2020, the Court received respondent's Memorandum, filed through registered mail on 17 August 2020. On

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> 3 December 2020, the Court received petitioner's Memorandum, filed through registered mail on 26 October 2020.
>
> The case was then submitted for decision on 9 December 2020. *(Citations omitted)*

On December 07, 2021, this Court's Third Division promulgated the assailed *Decision*,[11] denying petitioner's *Petition for Review* for lack of merit.

Aggrieved, petitioner filed its *Motion for Reconsideration (of the Decision Dated December 7, 2021)* on April 29, 2022,[12] to which respondent filed its *Comment/Opposition (To Petitioner's Motion for Reconsideration)* on January 15, 2024.[13] However, the same was denied by the Special Third Division in the assailed *Resolution* dated June 10, 2024.[14]

PROCEEDINGS BEFORE THIS COURT *EN BANC*

Petitioner filed a *Motion for Extension of Time (to File Petition for Review under Rule 43 before the Court of Tax Appeals En Banc)* on September 16, 2024 via registered mail and electronically filed the same on September 04, 2024.

In a Minute Resolution dated September 17, 2024, the Court granted petitioner a non-extendible period of fifteen (15) days from September 04, 2024, or until September 19, 2024, within which to file its Petition for Review.

Petitioner personally filed the present *Petition for Review* on September 18, 2024.[15]

Respondent filed its *Comment/Opposition (to Petitioner [sic] for Review dated 10 September 2024)* on November 25, 2024.[16]

Thereafter, the present case was submitted for decision on January 15, 2025.[17]

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[11] *Id.* at 44 to 66; Division Docket – Vol. III, pp. 1147 to 1168.
[12] Division Docket – Vol. III, pp. 1171 to 1176.
[13] *Id.* at 1214 to 1217.
[14] EB Docket, pp. 68 to 72; Division Docket – Vol. III, pp. 1221 to 1225.
[15] EB Docket, pp. 14 to 33.
[16] *Id.* at 103 to 106.
[17] *Id., Minute Resolution* dated January 15, 2025, unpaginated.

ASSIGNMENT OF ERRORS

In the instant *Petition for Review*, petitioner assigns the following error allegedly committed by the Court in Division for this Court's *En Banc* resolution, *viz.*:

> **THE HONORABLE COURT IN DIVISION ERRED IN DENYING PETITIONER'S REFUND CLAIM IN THE AMOUNT OF ₱29,706,751.00, REPRESENTING PETITIONER'S UNUTILIZED INPUT VAT FOR THE FOURTH QUARTER OF TAXABLE YEAR 2015.**[18]

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner argues that it is engaged in zero-rated sales, asserting that while the Republic Act No. 9513 (R.A. 9531) otherwise known as the Renewable Energy (RE) Law[19] and its implementing rules and regulations (IRR)[20] require registration with the Department of Energy (DOE) and the Board of Investments (BOI) to avail of tax incentives, Section 108(B)(7) of the National Internal Revenue Code of 1997, as amended (Tax Code), standing alone, subjects the sale of renewable energy to zero percent (0%) VAT without additional conditions. It maintains that the RE Law did not amend the Tax Code and thus did not qualify or limit the VAT zero-rating expressly provided under the Tax Code. In support, petitioner cites *CBK Power Company Limited v. Commissioner of Internal Revenue*,[21] where the Supreme Court held that sales of electricity generated through hydropower are subject to zero percent VAT pursuant to Section 108(B)(7) of the Tax Code notwithstanding the taxpayer's non-compliance with the registration requirements under R.A. 9513.

Petitioner further contends that the unutilized input VAT it seeks to refund is attributable to its zero-rated sales, arguing that there is no requirement that zero-rated or effectively zero-rated sales be made in the same period when the input taxes were incurred or paid.

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[18] *Id.* at 17.
[19] Renewable Energy Act of 2008, Republic Act No. 9513, December 16, 2008.
[20] Rules and Regulations Implementing Republic Act No. 9513 (Renewable Energy Act of 2008), DOE Department Circular No. DC2009-05-0008, May 25, 2009.
[21] G.R. No. 247918, February 01, 2023.

Finally, petitioner claims that the unutilized input VAT was not applied against output VAT, emphasizing that it had no sales during taxable year 2015 and only made its first sale in 2016, making it impossible for the input VAT to have been offset against any output VAT.

Respondent's counter-arguments

Respondent argues that the Court in Division correctly ruled that petitioner failed to establish engagement in zero-rated sales, noting that petitioner did not present the required DOE certificates and that its VAT returns for the fourth quarter of taxable year 2015 reflected no zero-rated sales, with its financial statements showing only interest income for the year.

Respondent further contends that petitioner failed to prove that the claimed unutilized input VAT is attributable to zero-rated sales, as the absence of any zero-rated transactions during the period of claim leaves no basis for a refund.

Respondent maintains that the issues raised are not novel and have already been settled in *Luzon Hydro Corporation v. Commissioner of Internal Revenue*,[22] where refund claims were denied for failure to prove zero-rated sales.

Respondent also asserts that the official receipts submitted by petitioner are either outside the period covered by the claim or lack evidentiary value for having not been formally offered, and that tax refund claims are construed strictly against the claimant, justifying the denial of the petition.

RULING OF THE COURT *EN BANC*

The Court denies the *Petition for Review.*

The instant Petition for Review was filed on time.

Before resolving the merits, the Court must first determine whether the present *Petition* was filed within the prescribed period.

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[22] G.R. No. 188260, November 13, 2013.

On August 20, 2024, petitioner received a copy of the assailed *Resolution*.[23] Petitioner therefore had fifteen (15) days from such receipt or until September 04, 2024 to file a *Petition for Review* with the Court *En Banc*, pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[24] which provides:

> SEC. 3. *Who may appeal; period to file petition.* — xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. *(Emphasis supplied)*

On September 03, 2024, petitioner filed its *Motion for Extension of Time (To File Petition for Review under Rule 43 before the Court of Tax Appeals En Banc)* through registered mail.[25] The Court granted such *Motion* in the *Minute Resolution* dated September 17, 2024, and gave petitioner a non-extendible period of fifteen (15) days from September 04, 2024, or until September 19, 2024, to file its Petition for Review.[26]

On September 18, 2024, petitioner filed the instant *Petition for Review*.[27] Accordingly, the instant *Petition for Review* was timely filed.

Petitioner failed to establish that it is engaged in zero-rated sales.

Petitioner's contention that it is engaged in zero-rated sales lacks merit.

Petitioner argues that the RE Law did not amend the provisions of the Tax Code and, consequently, that a RE Developer may still avail

[23] Division Docket – Vol. III, p. 1220.
[24] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA); and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[25] EB Docket, pp. 1 to 3.
[26] *Id.* at 13.
[27] *Id.* at 14 to 33.

of VAT zero-rating on the sale of renewable energy even without registration with the DOE, since Section 108(B)(7) of the Tax Code imposes no express conditions for VAT zero-rating. This position is untenable.

While R.A. 9513 did not expressly enumerate Section 108(B)(7) of the Tax Code among the provisions amended, it is a **later** and **special law** that specifically governs the grant, regulation, and availment of fiscal incentives to RE Developers. Settled is the rule that where a general law and a special law relate to the same subject matter, the provisions of the special law prevail, particularly when it is the later enactment. R.A. 9513 precisely defines the scope, conditions, and regulatory framework for the availment of incentives granted to RE Developers, including VAT zero-rating.

Significantly, R.A. 9513 contains an express repealing clause. Section 39 thereof provides:

> SECTION 39. Repealing Clause. — Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.
>
> Consistent with the foregoing paragraph and Section 13 of this Act, Section 1 of Presidential Decree No. 1442 or the Geothermal Resources Exploration and Development Act, insofar as the exploration of geothermal resources by the government, and Section 10 (1) of Republic Act No. 7156, otherwise known as the "Mini-Hydro Electric Power Incentive Act", insofar as the special privilege tax rate of two percent (2%) are hereby repealed, modified or amended accordingly.[28] *(Underscoring supplied)*

This express legislative declaration evinces clear congressional intent that the fiscal incentives granted under R.A. 9513, including VAT zero-rating, be availed of only in accordance with the conditions and regulatory scheme established under the statute.

Consistent with this statutory framework, the IRR of R.A. 9513 concretely define and enforce these statutory conditions pursuant to the regulatory authority expressly delegated by Congress to the DOE. In this regard, Section 39 of the IRR provides:

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[28] *Supra* note 19.

SECTION 39. Transitory Provisions. —

> Benefits or incentives extended to RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment under existing laws not amended or withdrawn under this Act shall remain in full force and effect. No provision of the Act shall be taken as to diminish any right vested by virtue of existing laws, contracts, or agreements. <u>However, in order to qualify for the availment of the incentives provided under Chapter VII of the Act and this IRR, the RE Developer, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be required to secure a certificate of registration or accreditation with the DOE.</u>
>
> The fiscal incentives granted under Section 15 of the Act shall apply to all RE capacities upon the effectivity of the Act.
>
> Pending the issuance of other necessary guidelines, the grant of provisional certificates of registration by the DOE shall be valid and effective.[29] *(Underscoring supplied)*

Thus, petitioner's attempt to invoke Section 108(B)(7) of the Tax Code in isolation, detached from the statutory framework established by R.A. 9513 and the regulatory conditions validly imposed pursuant thereto, cannot be sustained.

This conclusion accords with settled jurisprudence. In *Department of Energy v. Court of Tax Appeals*,[30] the Court has defined a **general law** as one that applies uniformly to all persons or to all members of a particular class within the State, with equal force and obligation.[31] It has likewise been described as a statute that embraces a class of subjects or places and does not exclude any subject or locality that naturally belongs to such class. In contrast, a **special law** applies only to particular individuals, to a specific section or portion of the State, or to particular persons or things within a class. Where two laws appear to govern the same subject matter, and one is general while the other is special, the law specifically designed to address the particular subject must prevail, in accordance with the principle *generalia specialibus non derogant*.[32]

Here, R.A. 9513, being a later and special law governing the grant of fiscal incentives to RE Developers, necessarily qualifies the availment of VAT zero-rating under Section 108(B)(7) of the Tax

[29] *Supra* note 20.
[30] G.R. No. 260912, August 17, 2022.
[31] *Ibid.*
[32] *Ibid.*

Code. Tax incentives, being in the nature of exemptions, must be availed of strictly in accordance with the conditions prescribed by law.

In this regard, Section 18 of the IRR of R.A. 9513 expressly provides that, for purposes of entitlement to the incentives under the law, existing and new RE Developers must register with the DOE, which shall issue a DOE Certificate of Registration to an RE Developer holding a valid RE Service or Operating Contract. The same provision further requires registration with the BOI and, in appropriate cases, the securing of a DOE Certificate of Endorsement on a per-transaction basis, subject to compliance with the conditions laid down in the law and its implementing rules and regulations.

In *CBK Power Company Limited v. Commissioner of Internal Revenue*,[33] the Supreme Court categorically held that it is not the mere fact that an entity is engaged in renewable energy activities that entitles it to the fiscal incentives under R.A. 9513. Registration with the Department of Energy, compliance with the criteria imposed pursuant to the DOE's regulatory authority, and registration with the Board of Investments are mandatory conditions for entitlement to the incentives granted by law, including VAT zero-rating.[34]

Thus, the Court in Division correctly required petitioner to prove its status as a duly registered RE Developer through the submission of the requisite DOE certification, as such registration is a statutory condition for entitlement to the fiscal incentives granted under R.A. 9513, including VAT zero-rating.

In the present case, while petitioner was able to present its BOI Certificate of Registration,[35] it failed to timely submit its DOE Certificate of Registration during the course of the proceedings.

It bears emphasis that the Supreme Court, in *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*,[36] clarified the rule on forgotten evidence, thus:

> Be that as it may, even if Atlas has complied with the affidavits-of-merits requirement, its prayer for a new trial would still not prosper. First, Atlas is guilty of inexcusable negligence in the prosecution of its case. It is duty-bound to ensure that all proofs required under the rules are duly presented. Atlas has indeed repeatedly asserted that in its action for the instant judicial claim,

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[33] *Supra* note 21.
[34] *Ibid.*
[35] Division Docket – Vol. II, p. 687, Exhibit "P-2."
[36] G.R. No. 159490, February 18, 2008.

> the CTA is bound by its rules and suppletorily by the Rules of Court. It certainly has not exercised the diligence required of a litigant who has the burden of proof to present all that is required. Second, forgotten evidence, not presented during the trial nor formally offered, is not newly found evidence that merits a new trial. Third, and most importantly, it goes against the orderly administration of justice to allow a party to submit forgotten evidence which it could have offered with the exercise of ordinary diligence, more so when a decision has already been rendered.[37] *(Underscoring supplied)*

Here, petitioner attached its DOE Certificate of Registration only to its *Motion for Reconsideration* as Exhibit "P-1–Motion for Reconsideration."[38] The Court in Division correctly denied its admission for being forgotten evidence. As reiterated by jurisprudence, evidence belatedly submitted without having been formally offered during trial, and without any justification for its late presentation, cannot be admitted on appeal.

Consequently, considering that the DOE Certificate of Registration is the foundational document that establishes an entity's status as a Registered RE Developer, petitioner's failure to timely present the same precludes the recognition of its entitlement to the fiscal incentives under R.A. 9513, including VAT zero-rating.

Even assuming, *arguendo*, that the Court were to disregard the mandatory certification requirement under the RE Law, petitioner still cannot rely solely on Section 108(B)(7) of the Tax Code to support its claim for refund, as it remains incumbent upon petitioner to prove that it was in fact engaged in zero-rated sales.

While Section 108(B)(7) of the Tax Code provides that sales of electricity generated from renewable energy sources are subject to zero percent (0%) VAT, such statutory classification does not dispense with the taxpayer's burden to prove that zero-rated sales were actually made. Entitlement to VAT zero-rating merely establishes eligibility for the incentive; it does not, by itself, prove the factual existence of zero-rated transactions.

A careful review of the records confirms the correctness of the Court in Division's finding that petitioner failed to establish that it generated and sold electricity during the fourth quarter of taxable year 2015. Petitioner's Quarterly VAT Return for the period October 1 to December 31, 2015[39] expressly reflected no declared zero-rated

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[37] *Ibid.*
[38] Division Docket – Vol. III, p. 1180, Exhibit "P-1-Motion for Reconsideration."
[39] Division Docket – Vol. II, p. 723, Exhibit "P-16."

sales. This is corroborated by petitioner's Audited Financial Statements for taxable year 2015[40] and its Annual Income Tax Return for the same year,[41] which merely shows that petitioner's income for 2015 consisted solely of interest income from bank deposits, with no operating revenue from electricity generation or sale.

More tellingly, petitioner itself admitted that it had no recorded sale of electricity during taxable year 2015. In its *Motion for Reconsideration*,[42] petitioner expressly stated that it "has no recorded sale of electricity in the year 2015 as it only started generating electricity in 2016."[43] This admission further confirms that petitioner was not engaged in zero-rated sales during the fourth quarter of taxable year 2015.

Even assuming petitioner's claim of having sales in taxable year 2016 to be correct, reliance on its Income Tax Return for that year does not suffice to establish engagement in zero-rated sales. Said return merely reflects the total amount of revenue allegedly earned in 2016 and does not indicate the nature of such income, the specific transactions involved, or whether the same constituted zero-rated sales. Apart from its Audited Financial Statements for 2015 and its Income Tax Return, petitioner failed to formally offer any other documentary evidence that could substantiate its alleged zero-rated sales. It did not present a summary list of zero-rated sales, sales invoices, official receipts, or other primary evidence ordinarily required to prove the existence and nature of zero-rated transactions as basis for a claim for refund.

Notably, petitioner attempted to cure this evidentiary deficiency only on appeal by attaching copies of official receipts as Annex "D"[44] to its *Petition for Review* before the Court *En Banc*. These documents were not formally offered in evidence before the Court in Division or at the administrative level, nor did petitioner provide any justification for their belated submission. Consistent with the Court's earlier ruling on the inadmissibility of petitioner's DOE Certificate of Registration, these official receipts likewise constitute forgotten evidence that cannot be considered at this stage.

In sum, petitioner failed to present competent and timely evidence to prove that it was engaged in zero-rated sales during the fourth quarter of taxable year 2015. Absent proof of zero-rated sales,

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[40] *Id.* at 826, Exhibit "P-54."
[41] *Id.* at 860, Exhibit "P-55."
[42] Division Docket – Vol. III, pp. 1171 to 1176.
[43] *Id.* at 1172.
[44] EB Docket, pp. 76 to 95.

petitioner cannot be deemed to have established the factual basis necessary to support its claim for refund.

At this juncture, it is clear that petitioner is not entitled to the refund sought. In view of this fundamental failure, there is no longer any necessity to resolve the other issues raised by petitioner, as the same have been rendered immaterial.

Accordingly, the Court *En Banc* finds no reversible error to warrant the disturbance of the ruling of the Court in Division. The assailed Decision and Resolution of this Court's Special Third Division must therefore be affirmed *in toto*.

WHEREFORE, premises considered, the present *Petition for Review* filed by YH Green Energy Incorporated is **DENIED** for lack of merit.

Accordingly, the *Decision* dated December 07, 2021, and the *Resolution* dated June 10, 2024, promulgated by this Court's Special Third Division in CTA Case No. 9784, are hereby **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice