REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

COLT COMMERCIAL, INC.,
Respondent.

CTA *EB* NO. 1884
(CTA Case No. 9205)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

OCT 14 2019
4:12 p.m.

x- x

D E C I S I O N

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review[1] filed on July 19, 2018 seeking the reversal of the Amended Decision dated April 20, 2018 and the Resolution dated June 21, 2018, promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 9205

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[1] EB Docket,pp. 1-7.

entitled, *Colt Commercial, Inc. vs. The Commissioner of Internal Revenue,* the dispositive portions of which read as follows:

<u>Amended Decision dated April 20, 2018</u>

> "**WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** to petitioner, in the reduced amount of Php1,491,631.04, representing its unutilized input taxes attributable to its zero-rated sales for the second quarter of the taxable year 2013.
>
> **SO ORDERED."**

<u>Resolution dated June 21, 2018</u>

> "**WHEREFORE**, respondent's Motion for Partial Reconsideration (Re: Amended Decision dated April 20, 2018) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**

<u>THE PARTIES</u>

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with authority to administer and to enforce all laws pertaining to internal revenue taxes, and has jurisdiction to decide claims for refund.

Respondent is a corporation duly organized and existing under the laws of the Philippines, with business address at Suite 508 Padilla Delos Reyes Bldg., 232 Juan Luna St., Barangay 289, Zone 027, Binondo Manila. Its primary purposes are (1) to engage in the business of merchandising, distributing, and marketing; whether as principal; agent, indenter or manufacturer's representative, wholesale or retail, such as but not limited to industrial, agricultural, manufacturing tools and equipment, engineering products, hardware items, construction materials, and electrical supplies and or any and all kinds of goods, wares and merchandise and (2) to engage in the business of import and export as principals, factors and representatives, agents or commissioned merchants with respect to buying and selling, trading or dealing, in any and all kinds of goods, wares, products of all classes and description, distribution, import and export business.[2]

FACTS

The facts, as found by the Court in Division in its original Decision dated February 6, 2018 and as established by evidence on record, are as follows:

> "Petitioner has zero-rated and VATable sales per Quarterly VAT Returns filed for the second quarter of TY 2013.
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> In its Administrative Claim for Excess Input VAT Refund dated June 26, 2015, filed with BIR RDO No. 30 on even date, petitioner claimed the amount of Php2,131,445.28 as excess input VAT. Attached thereto are its Application for Registration Information Update (BIR Form No. 1914), and a Sworn Certification that the documents submitted are complete for the purpose of processing the claim for refund.
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> On August 6, 2015, petitioner, through Jennifer S. Mañago, received a Letter of Authority ("LOA")-030-2015-00000243 (SN:eIA201100089502) dated July 30, 2015 issued by Officer-in-Charge ("OIC")-Regional Director of Revenue Region No. 6-Manila, Araceli L. Francisco. The LOA authorizes Revenue Officer ("RO") Eliseo Raul Baclazo and Group Supervisor ("GS") Fernando Matias of Revenue District 030-Binondo to examine petitioner's books of accounts and other accounting records pursuant to a mandatory audit for its claim for VAT refund covering the period starting April 1,2013 to June 30, 2013.
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> On November 23, 2015, petitioner filed the present Petition for Review with the Court.
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> The Court issued Summons against respondent on December 4, 2015, ordering him to submit his Answer within fifteen (15) days from service.
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> Respondent filed an Answer on December 22, 2015, interposing the following Special and Affirmative Defenses: (1) that the Petition for Review is premature, considering that petitioner's claim for refund or credit of unutilized tax payments attributable to zero-rated sales for the first quarter of TY 2013 in the amount of Php2,131,445.28 is

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[2] Narration of Facts, Decision of the Court in Division in CTA Case No. 9205 dated February 6, 2018.

> still pending investigation; (2) that petitioner already applied the entire amount of input tax by carrying it over to succeeding taxable quarters; (3) that the remedies of tax refund and input tax carry over are alternative and the choice of one precludes the other; (4) that a claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically; and (5) and *(sic)* that tax refunds are in the nature of tax exemptions, and claimants bear the burden of proving the factual basis or bases of their claims, and showing that the legislature intended to exempt them.
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> On March 28, 2016, petitioner and respondent respectively submitted their Pre-Trial Briefs and Respondent's Pre-Trial Brief.
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> During the Pre-Trial Conference held on March 29, 2016, the Court granted the parties a period of fifteen (15) days or until April 12, 2016 to submit their joint stipulation of facts and issues. Accordingly, on April 13, 2016 and April 22, 2016, the parties filed their Joint Stipulation of Facts and Issues ("JSFI") and Supplemental JSFI, respectively.
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> On May 5, 2016, a Pre-Trial Order was issued by the court terminating the Pre-Trial Conference.
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> xxx xxx xxx
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> Respondent's Memorandum was submitted to the Court on March 23, 2017 via registered mail, while petitioner filed its Memorandum on April 12, 2017.
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> Thereafter, the Court resolved to submit the case for decision through its Resolution dated April 19, 2017, hence this Decision.

The Court in Division promulgated its original Decision on February 6, 2018 and denied the entire claim for refund of alleged unutilized input VAT for the second quarter of taxable year 2013, for lack of merit.

Aggrieved, Colt Commercial, Inc. (Colt Commercial), filed a *Motion for Reconsideration* on February 23, 2018 seeking the reversal of the Decision promulgated on February 6, 2018 and reiterating its claim for refund of Php2,131,445.28 representing alleged unutilized input VAT for the second quarter of taxable year 2013.

The Court in Division partially agreed with the arguments propounded by Colt Commercial in its *Motion for Reconsideration* and subsequently issued an Amended Decision on April 20, 2018 granting a portion of the said claim for refund.

The Commissioner of Internal Revenue (CIR) (respondent in the case decided by the Court in Division) filed a *Motion for Reconsideration (Re: Amended Decision)* on May 11, 2018 which was denied by the Court in Division in a Resolution dated June 21, 2018.

The CIR then filed a Petition for Review with the Court *En Banc* on July 19, 2018 docketed as CTA EB No. 1884 raising as its sole assignment of error, quoted as follows:

> "The Honorable Court of Tax Appeals-Third Division erred in partially granting respondent's Petition for Review, and ordering petitioner to refund to respondent in the reduced amount of P1,491,631.04 representing its unutiled *(sic)* input taxes attributable to its zero-rated sales for the second quarter of taxable year 2013."

In a Resolution dated July 30, 2018, the Court En Banc directed respondent Colt Commercial to file its Comment within ten (10) days from notice.

On September 17, 2019, respondent filed its *Comment* to the Petition for Review.

In a Resolution dated October 18, 2018, the Court *En Banc* submitted the case for decision.

<u>Petitioner's arguments</u>

Petitioner contends that respondent is not entitled to its entire claim for refund of alleged unutilized input taxes attributable to zero-rated sales for the second quarter of taxable year 2013 on the ground that it did not satisfy all the requirements provided under Section 112 of the 1997 National Internal Revenue Code (NIRC), as amended, to wit:

1. There must be zero-rated or effectively zero-rated sales;
2. Input taxes were incurred or paid;
3. Such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. Input taxes were not applied against any output VAT liability, and
5. That the claim was filed within the two-year prescriptive period.

Petitioner asserts that respondent has applied the entire amount of input tax claimed in the sum of Php2,131,445.28 against its output tax by carrying over the same to the succeeding taxable quarters as shown in the report submitted by the court commissioned Independent Certified Public Accountant (ICPA).

Moreover, petitioner claims that respondent failed to submit proof that it had zero-rated sales to entities registered with the Philippine Economic Zone Authority (PEZA) and the Subic Bay Metropolitan Authority (SBMA) such as the PEZA and SBMA's certificates of registration of its clients. According to petitioner, a PEZA certification contains a categorical statement that the enterprise named therein is PEZA- registered and is deemed a qualified enterprise for the purpose of zero-rating for its transactions with its local suppliers of goods and services. Petitioner points to the fact that the Court in Division denied the admission of Exhibit "P-7" which refers to the "PEZA Certificate of Registration, BIR Certificate of Registration and PEZA Form ERD 97-01 of petitioner's client/purchasers", for failure to present the original which he claims to be fatal to the entire claim for refund of respondent.

Petitioner also draws attention to his observation that respondent's purchases (where it claimed the input tax subject of the refund) were from Colt Commercial owned by respondent's Corporate Secretary and Treasurer, Ms. Cherilyn R. Chung and that to remove any doubt, respondent should have presented to the Court Ms. Chung's books of accounts showing that the latter's sales to respondent were actually recorded therein.

Lastly, petitioner maintains that the Court in Division should not have considered and admitted respondent's amended Quarterly Value-Added Tax Return or BIR Form No. 2550-Q for the 2nd quarter of taxable year (TY) 2015 because this was not formally offered in evidence. Petitioner cites Section

34, Rule 132 of the Revised Rules of Court which provides that a court should not consider evidence not formally offered.

Respondent's counter-arguments

In its *Comment,* respondent counters that all the issues raised by petitioner with the Court *En Banc* have already been settled in the Amended Decision dated April 20, 2018. Be that as it may, respondent insists that the Court in Division correctly admitted its Amended BIR Form 2550-Q for the second quarter of TY 2015 which reflected the fact that the unutilized input tax subject of the refund was deducted as "VAT Refund/TCC Claimed", considering that the said document was duly identified by testimony duly recorded through a Judicial Affidavit and that it was incorporated in the records of the case.

Respondent underscores the fact that BIR Form 2550-Q was identified by the ICPA as shown in his Judicial Affidavit dated October 5, 2016. Respondent cites several cases decided by the Supreme Court where it applied the exceptions to the rule provided in Section 34, Rule 132 of the Revised Rules of Court, depending on the peculiar set of circumstances inherent in a case. Respondent maintains that the exceptions made by the Supreme Court in several cases may well apply to the instant case, i.e., that even if BIR Form 2550-Q was not formally offered during trial of the case, the Court may still consider the same in its final disposition of the issues.

THE COURT EN BANC'S RULING

The instant Petition for Review lacks merit.

Pertinent to the resolution of the issue presented in this case is Section 112 (A) of the 1997 NIRC, as amended, quoted hereunder for ready reference:

> "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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx

Pursuant to the foregoing provisions and, as laid down by the Supreme Court in a number of cases[3], a taxpayer engaged in zero-rated or effectively zero-rated transactions may claim a refund/tax credit certificate for input taxes attributable to such sales upon compliance with the following requisites:

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

Petitioner avers that respondent was not able to fully comply with the requisites under Section 112 of the 1997 NIRC, as amended, and as such is not entitled to the entire claim for refund of alleged unutilized input VAT for the second quarter of taxable year 2013. It must be noted that petitioner no longer challenged the timeliness of the filing of respondent's claim for

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[3] *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013;
Southern Phil. Power Corp. vs. Commissioner of Internal Revenue, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communication Services Phil., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

refund in the *En Banc* level, i.e., whether or not the claim for refund was filed within the prescriptive period, but instead focused its challenge on the sufficiency or insufficiency of the evidence submitted by respondent in Court to prove its claim for refund.

First, petitioner states that respondent did not present the original or certified true copies of the PEZA and SBMA certificates of registration of its clients/customers to prove the VAT zero-rating of its sales to the latter, hence the claim of unutilized input VAT arising from such sales has no legal nor factual basis.

We are not swayed by the above argument of petitioner.

The Court in Division correctly admitted and appreciated in evidence the letter of then PEZA Director General Lilia B. de Lima dated February 16, 2016 to respondent's President, Cyrus S. Chung (Exhibit "P-6")[4] confirming the issuance of VAT zero-rating certifications to a number of petitioner's clients/customers detailed in the original Decision of the Court in Division dated February 6, 2018. The Court in Division then limited its findings and conclusions to the entities named in said certification with the additional requirement that the evidence presented complies with the invoicing requirements provided by relevant laws. Further study of the evidence presented to the Court led the latter to conclude that only a partial amount of the claim for refund must be considered as some of the customers/clients of respondent did not have similar VAT zero-rating certifications issued by PEZA, SBMA or even the Board of Investments (BOI). We quote with approval, the findings of the Court in Division in the original Decision dated February 6, 2019, thus:

> "To prove that its clients are duly registered with PEZA and SBMA, petitioner submitted the letter of PEZA Director General Lilia B. de Lima dated February 16, 2016 addressed to CCI President Mr. Cyrus S. Chung, confirming the issuance of VAT zero-rating certifications to the following petitioner's client/purchasers:
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> xxx xxx xxx
>
> Having been confirmed or certified by PEZA, only sales made to the above-mentioned clients shall qualify for VAT zero-rating, provided that the evidence presented complies with the

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[4] Page 179, Court Docket, Volume 2.

> invoicing requirements, pursuant to Section 11 of Republic Act ("RA") No. 9337, amending Section 113 of the 1997 NIRC.
>
> xxx xxx xxx
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> Further study of the sales invoice issued by petitioner to the following customers/clients reveal that VAT zero-rating certifications were not issued by PEZA, SBMA or BOI, Thus, zero-rated sales amounting to Php1,180,652 is also disallowed, to wit"
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> xxx xxx xxx

With the above findings of the Court in Division and as shown by the evidence presented in Court, we see no reason why petitioner still insists that no PEZA or SBMA certifications were submitted by respondent.

Another issue raised by petitioner which we believe deserves a second look is its allegation that BIR Form 2550-Q for the 2nd quarter of taxable year 2015, should not have been admitted as it was not formally offered by respondent during trial in the Court in Division.

The evidentiary purpose of BIR Form 2550-Q or the Quarterly Value-Added Tax Return for the 2nd quarter of taxable year 2015 is to prove that the alleged excess input VAT in the amount of Php2,943,224.19 incurred in 2013 was deducted as "VAT Refund /Tax Credit Certificate (TCC) Claimed" in the 2nd quarter of taxable year 2015 in compliance with the condition embodied in Section 110 (C) of the 1997 NIRC, as amended, and we quote:

> "Section 110. *Tax Credits.*-
>
> C. *Determination of Creditable Input Tax.* – The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.**
>
> The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments and the Bureau of Customs." (emphasis supplied)

Thus, it is imperative to present in evidence, respondent's amended BIR Form 2550-Q for TY 2015 in order to show that the input taxes for the second quarter of TY 2013 in the amount of Php2,943,224.19 was deducted as "VAT Refund/TCC Claimed" in the second quarter of TY 2015.

Having found that the requisites for a claim for refund of unutilized input VAT were complied with, the Court in Division began to conduct a factual determination on the amount to be refunded. However, the original Decision did not consider the said BIR Form 2550-Q for TY 2015 because it ruled that it was not formally offered in evidence, hence the entire claim for refund of respondent was denied. We quote portions of the original Decision, thus :

> "However, a portion of the Php2,241,862.60 shall be applied against the reported output VAT liability of Php660,111.64. Consequently, only the remaining input VAT of Php1,581750.96 can be attributed to the entire zero-rated sales amounting to Php24,781,862.34 and only the input VAT of Php1,491,631.04 is attributable to the valid zero-rated sales of Php23,369,921.15, computed as follows:
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> xxx xxx xxx
>
> As alleged by petitioner, the claimed input VAT remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the second quarter of TY 2015. Similarly, the ICPA also noted that input taxes for the 2nd quarter of TY 2013 in the amount of Php2,943,224.19 was deducted as "VAT Refund/TCC Claimed" in the 2nd quarter of TY 2015.
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> xxx xxx xxx
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> However, this document (amended BIR Form 2550-Q for the 2nd quarter of 2015) was not formally offered by petitioner and was never admitted by the Court, thus, cannot be given evidentiary value. Consequently, per evidence actually offered and admitted, the subject claim was carried-over to the succeeding periods.
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> xxx xxx xxx

In the Amended Decision, however, the Court in Division reconsidered its original position and eventually appreciated the contents of the amended BIR Form 2550-Q for TY 2015 which led to the partial grant of the refund. The Amended Decision reasoned that Section 34 of Rule 132 of the Revised Rules of Court admits of exceptions and such should be applied to the instant case.

Petitioner disagrees with the Amended Decision and maintains that the Court in Division should not have taken the said evidence into consideration, pursuant to the relevant provisions of the Revised Rules of Court.

We analyze.

Section 34 of Rule 132 of the Revised Rules of Court, reads as follows:

> "**Rule 132**
>
> C. Offer and Objection
>
> Sec. 34. *Offer of Evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

The Rules specifically provide that evidence must be formally offered to be considered by the court and evidence not offered is excluded in the determination of the case.[5]

Records show that in respondent's *Formal Offer of Evidence* filed on October 28, 2016, the amended BIR Form 2550-Q for the second quarter of taxable year 2015 was not included in the list of exhibits.[6]

Respondent commented that, although not individually offered in its *Formal Offer of Evidence,* the amended BIR Form 2550-Q for TY 2015 was attached as Exhibit "P-43" of the ICPA Report dated August 18, 2016 and duly identified and marked as such by the ICPA during his testimony on October 17, 2016. The ICPA Report was then offered in evidence as Exhibit "P-29" and identified in respondent's *Formal Offer of Evidence* as the "Report of Independent Certified Accountant and its annexes

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[5] *Republic of the Philippines vs. Fe Roa Gimenez and Ignacio B. Gimenez,* G.R. No. 174673, January 11, 2016.
[6] Pages 572 to 594, Court Docket, Volume 2.

dated August 18, 2016" [7] and was part of the exhibits admitted by the Court in Division in its Resolution dated January 6, 2017. Furthermore, said amended BIR Form 2550-Q was likewise identified and marked as Exhibit "P-26" in the Judicial Affidavit of respondent's witness, Cyrus S. Chung.[8]

The Court finds that the amended BIR Form 2550-Q for TY 2015 formed part of the evidence presented by respondent and has been rightfully considered in the Court's Amended Decision dated April 20, 2018. This conclusion is bolstered by the fact that respondent also offered in evidence the Judicial Affidavit of Mr. Garry S. Pagaspas, the court commissioned ICPA as Exhibit "P-30"[9] where he testified that he examined the VAT returns of herein respondent for the 3rd quarter of TY 2013 up to the **2nd quarter of TY 2015.**

Based on the foregoing premises and descriptions of some of the evidence offered by respondent, the exceptions cited by the latter (quoting several Supreme Court decisions), for the relaxation of the requirement embodied in Section 34 of Rule 132 of the Revised Rules of Court are no longer necessary to convince us that said amended BIR Form 2550-Q for TY 2015 should be considered as part of respondent's evidence because clearly, it forms part of the ICPA report which was indeed formally offered in evidence and admitted by this Court, hence, should form part of the records that will serve as bases for the Court in its final disposition of the issues.

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1884 is **DENIED** for lack of merit. The Amended Decision dated April 20, 2018 and the Resolution dated June 21, 2018 are hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[7] Exhibit "P-29", page 591, Court Docket, Volume 2.
[8] Amended Decision in CTA Case No. 9205 dated April 20, 2018, EB Docket, page 45.
[9] Pages 788- 802, Court Docket, Volume 2.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice