REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR, INC., Petitioner,	CTA EB No. 1761 (CTA Case No. 8967)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 15 2019 11:50a.m.

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RESOLUTION

Fabon-Victorino, J.:

On February 11, 2019, the Court *En* Banc rendered a Decision,[1] sustaining the Decision dated June 7, 2017 rendered by the Court in Division, in the following manner, thus:

> **WHEREFORE**, the Petition for Review dated November 20, 2017 filed by petitioner Hedcor, Inc. is **DENIED**, for lack of merit.

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[1] *Rollo*, pp. 298-313.

Consequently, the assailed Decision dated June 7, 2017 and Resolution dated October 12, 2017, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

The Court in Division denied petitioner's claim for refund of alleged excess and unutilized input taxes imputable to zero-rated sales covering the 3rd Quarter of taxable year (TY) 2012.

On May 7, 2019, petitioner filed its *Motion for Reconsideration* dated May 7, 2019,[2] anchored on the following grounds:

I. The Honorable Court erred in denying its claim for input VAT refund or tax credit on the basis of Republic Act (RA) No. 9513; and

II. The Honorable Court erred in denying its Motion for New Trial on the ground that there was no newly-discovered evidence.

Despite notice, respondent failed[3] to file comment/opposition to petitioner's *Motion for Reconsideration.*

Section 15(g) of RA No. 9513 states *inter alia,* that Renewable Energy (RE) Developers shall be conferred VAT zero-rating on its *purchases* of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, including the process of exploration and development of resources until transmutation of such energy into power.

As discussed in pages 8-12 of the impugned Decision, as a RE Developer, the law deems petitioner's purchases of goods, properties, and services pertinent to its plant and energy development subject to zero percent (0%) input VAT. *A fortiori*, suppliers may not shift output VAT on their sales in favor of petitioner. And since its suppliers erroneously charged output VAT on the purchases made by

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2 Ibid. at pp. 133-151.
3 Records verification report dated July 18, 2019.

petitioner, the legal recourse of the latter is to claim such mistakenly charged VAT to its suppliers and not with the government. It is for this reason that the instant claim for refund was denied.

The Court must also reject petitioner's plea for new trial on the ground of newly discovered evidence. By its own admission, the documents in support of the subject refund were already in petitioner's custody at the time of its presentation of evidence but nevertheless, it opted not to present such documents for the consideration of the Court in Division. Such fact removes the foregoing documents from the ambit of newly-discovered evidence under Section 1, Rule 37 of the Rules of Court. Moreover, while petitioner sought new trial via an *Omnibus Motion* filed with the Court in Division, it failed to append the affidavits of witnesses who would identify such proposed documents sought to be presented as evidence, in violation of Section 2 of the same Rule.[4]

WHEREFORE, petitioner's *Motion for Reconsideration* dated May 7, 2019 is **DENIED**, for lack of merit. The impugned Decision of February 11, 2019 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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4 Pages 12-13 of the impugned Decision.

We Concur:

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

NO PART
(On Official Time)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice