REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SPECIAL SECOND DIVISION</u>

TOLEDO POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8792

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

NOV 05 2018
2:50 p.m.

x - x

AMENDED DECISION

CASTAÑEDA, JR., *J.*:

For resolution are the following:

1. petitioner's **Motion for Reconsideration**, filed on June 21, 2017, without respondent's comment despite notice per Records Verification dated July 20, 2017; and

2. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 6 June 2017)**, filed through registered mail on June 22, 2017 and received by the Court on June 28, 2017, with petitioner's **Comment (To Respondent's Motion for Partial Reconsideration dated June 22, 2017)**, filed on July 19, 2017.

Both parties seek reconsideration of the Court's Decision promulgated on June 6, 2017 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱4,127,329.39** representing its unutilized excess input VAT for the four quarters of taxable year 2012 attributable to its zero-rated sales/receipts.
>
> **SO ORDERED**.

Petitioner's Motion for Reconsideration

To recall, on June 21, 2017, petitioner filed its Motion to Reopen Proceedings (with Motion for Reconsideration), raising the following arguments:

1. There was a mistake on the representation of the commissioned Independent Certified Public Accountant (ICPA) that all the necessary documents had been photocopied and submitted to the Court; and

2. Petitioner's sale of power to Cebu Electric Cooperative III (CEBECO III), which was eventually distributed to a Philippine Economic Zone Authority (PEZA)-registered entity and a Board of Investments (BOI)-registered 100% export entity are subject to value-added tax (VAT) zero-rating.

In the Resolution dated August 17, 2017, the Court granted petitioner's Motion to Reopen Proceedings while the resolution of petitioner's Motion for Reconsideration and respondent's Motion for Partial Reconsideration (Re: Decision promulgated on 6 June 2017) was held in abeyance.

During the hearing held on October 4, 2017, petitioner presented (1) Mr. Joseph Cedric V. Calica, the ICPA[1]; and (2) Ms. Mary Ann C. Vergara, petitioner's Tax Compliance Officer[2].

Thereafter, petitioner filed its Formal Offer of Evidence on December 18, 2017. The Court admitted all of petitioner's additional evidence in the Resolutions[3] dated February 2, 2018 and May 22, 2018.

The parties' respective motions for reconsideration of the assailed Decision were considered submitted for resolution on August 23, 2018[4] in view of the filing of petitioner's Memorandum on July 27, 2018 through registered mail and received by the Court on August 8, 2018, and the Report of the Records Division dated August 15, 2018 stating that respondent failed to file his memorandum.

In the assailed Decision, this Court disallowed petitioner's input VAT in the aggregate amount of ₱55,964,770.63 out of the total reported input VAT per return of ₱148,611,453.13.[5] Part of the disallowance was a total amount ₱32,971,348.00 input VAT from importation of goods supported by Import Entry and Internal Revenue Declaration (IEIRD) but without a validation of the payment, or Statement of Duties and Taxes (SSDT) or Bureau of Customs (BOC) official receipt, to wit:[6]

Exhibit P-103	**Invoice/ OR No.**	**Supplier**	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
1 to 2	114960325	PT KIDECO JAYA AGUNG	₱4,080,063.00				₱4,080,063.00
12	118730841	KSB SINGAPORE PTE LTD	696,349.00				696,349.00
13 to 15	116409413	SUN MACHINERY and TRADING INC	16,718.00				16,718.00
16 to 18	116409465	KSB SINGAPORE PTE LTD	32,066.00				32,066.00
19	120767963	KSB SINGAPORE PTE LTD	10,760.00				10,760.00
20	118553757	YASHIMA and CO LTD	156,378.00				156,378.00
21 to 22	118553741	FUJI TRADING COL LTD		₱ 84,431.00			84,431.00
23 to 25	118553705	IANDN INTL		94,632.00			94,632.00
26 to 28	120751303	NOMAX LTD		1,552,713.00			1,552,713.00
29 to 31	120751303	NOMAX LTD		456,619.00			456,619.00

[1] Minutes of the Hearing dated October 4, 2017, docket, vol. V, p. 2095; Exhibit "P-600", docket, vol. V, pp. 1985-1993.
[2] Minutes of the Hearing dated October 4, 2017, docket, vol. V, p. 2095; Exhibit "P-601", docket, vol. V, pp. 2026-2038.
[3] Docket, vol. V, pp. 2151-2152 and 2166-2167.
[4] Resolution dated August 23, 2018, docket, vol. V, p. 2217.
[5] Decision, p. 24, docket, vol. V, p. 1866.
[6] Decision, p. 23, docket, vol. V, p. 1865.

32 to 34	118553522	FUJI TRADING CO LTD		221,585.00			221,585.00
35 to 37	121773251	I AND N INTERNATIONAL			₱ 127,011.00		127,011.00
38	121773084	PT SION MANDI			2,654,991.00		2,654,991.00
39 to 40	123885002	HWAN TAI CEMENT PRODUCTS CO LTD				₱2,963,129.00	2,963,129.00
41 to 43	123884993	HWAN TAI CEMENT PRODUCTS LTD				798.00	798.00
44 to 45	121773102	PT SION ANUGRAH MANDIRI				2,616,500.00	2,616,500.00
48	121773181	PT SION ANUGRAH MANDIRI				3,530,132.00	3,530,132.00
55 to 57	18180153	FORMOSA HEAVY INDUSTRIES CORPORATION				3,388,641.00	3,388,641.00
58 to 60	121853286	PT SION ANUGRAH MANDIRI				3,521,760.00	3,521,760.00
61	121853313	PT SION ANUGRAH MANDIRI				3,492,053.00	3,492,053.00
62 to 63	116603094	FORMOSA HEAVY INDUSTRIES CORPORATION				1,371,231.00	1,371,231.00
64 to 65	116603103	FORMOSA HEAVY INDUSTRIES CORPORATION				1,852,731.00	1,852,731.00
66	116603146	LONJING HONGKONG COMPANY LIMITED				50,577.00	50,577.00
	121853286	PT SION ANUGRAH MANDIRI				(520.00)	(520.00)
TOTAL			**₱4,992,334.00**	**₱2,409,980.00**	**₱2,782,002.00**	**₱22,787,032.00**	**₱32,971,348.00**

Upon examination of the additional documents submitted by the petitioner, particularly, the Statement of Settlement of Duties and Taxes[7] issued by the Bureau of Customs, the Court finds that out of the disallowed input VAT of ₱32,971,348.00, petitioner was able to prove actual payment thereof to the extent of ₱30,249,469.00, detailed as follows:

Exhibit	Customs Reference	Declarant Reference	Supplier		Input VAT
First Quarter					
"P-500"	2011-C-24978	2011-114960325	PT KIDECO JAYA AGUNG	₱	4,080,063.00
"P-501"	2012-C-320	2012-116409465	KSB SINGAPORE PTE LTD		32,066.00
"P-502"	2012-C-46809	2012-120767963	KSB SINGAPORE PTE LTD		10,760.00
"P-503"	2012-C-4703	2012-118553757	YASHIMA & CO. LTD		156,378.00
			Subtotal	*₱*	*4,279,267.00*
Second Quarter					
"P-504"	2012-C-6876	2012-118553741	FUJI TRADING CO. LTD	₱	84,431.00
"P-505"	2012-C-879	2012-118553705	I AND N INTERNATIONAL		94,632.00
"P-506"	2012-C-10044	2012-118553522	FUJI TRADING CO. LTD		221,585.00
			Subtotal	*₱*	*400,648.00*
Third Quarter					
"P-507"	2012-C-15475	2012-121773251	I AND N INTERNATIONAL	₱	127,011.00
"P-508"	2012-C-18512	2012-121773084	PT SION MANDI		2,654,991.00

[7] Exhibits "P-500" to "P-518", docket, vol. V, pp. 1897-1936.

			Subtotal	*₱ 2,782,002.00*
Fourth Quarter				
"P-509"	2012-C-21910	2012-5AXA1200002	HWAN TAI CEMENT PRODUCTS CO. LTD	₱ 2,963,129.00
"P-510"	2012-C-21914	2012-5AXA1200002	HWAN TAI CEMENT PRODUCTS CO. LTD	798.00
"P-511"	2012-C-21822	2012-121773102	PT SION ANUGRAH MADIRI	2,616,500.00
"P-512"	2012-C-23840	2012-121773181	PT SION ANUGRAH MADIRI	3,530,132.00
"P-513"	2012-C-26171	2012-5AXA1200032	FORMOSA HEAVY INDUSTRIES CORP	3,388,641.00
"P-514"	2012-C-27869	2012-121853286A	PT SION ANUGRAH MADIRI	3,521,760.00
"P-515"	2012-C-26775	2012-121853313	PT SION ANUGRAH MADIRI	3,492,053.00
"P-516"	2012-C-27645	2012-5AXA1200035	FORMOSA HEAVY INDUSTRIES CORP	1,371,231.00
"P-517"	2012-C-27656	2012-5AXA1200036	FORMOSA HEAVY INDUSTRIES CORP	1,852,731.00
"P-518"	2012-C-27967	2012-5AXA1200037	LONJING HONGKONG COMPANY LIMITED	50,577.00
			Subtotal	*₱ 22,787,552.00*
			TOTAL	**₱ 30,249,469.00**

Thus, petitioner's total substantiated input VAT is now increased to ₱122,896,151.50, computed as follows:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Substantiated Input VAT per this Court's June 6, 2017 Decision[8]	₱ 25,526,443.40	₱ 17,287,108.64	₱ 19,739,208.80	₱ 30,093,921.66	₱ 92,646,682.50
Add: Input VAT on Importation of Goods supported by IEIRD and SSDT	4,279,267.00	400,648.00	2,782,002.00	22,787,552.00	30,249,469.00
Substantiated Input VAT, As Adjusted	**₱29,805,710.40**	**₱17,687,756.64**	**₱22,521,210.80**	**₱52,881,473.66**	**₱122,896,151.50**

Petitioner also maintains that its sales of power to CEBECO III, a pass-through entity, are considered as zero-rated sales, since the power sold was ultimately consumed by Balamban Enerzone Corporation (BEC), a PEZA-registered entity, and Carmen Copper Corporation (CCC), a BOI-registered 100% exporter. Petitioner argues that Revenue Memorandum Circular (RMC) No. 61-05 mandates that the payment of the end-user for the power it purchased, even if it passes through a distribution company, shall form part of the generation company's gross receipts.

Hence, petitioner contends that the VAT component of a sale of power from a power generating company which passes through a distribution company prior to the end user is to be treated as if incurred between the end user and the generation company.

[8] Decision, p. 24, docket, vol. V, p. 1866.

Following this mandate, petitioner deduced that if the end user is subject to zero-rated sales, then the sale made by the power generation company to the distribution company should also be subject to VAT zero-rating.

In support of its argument, petitioner invokes Question/Answer 19 and 26 of RMC No. 61-05, which provide:

> Q19 What is the treatment of sales of electricity (by generation, transmission and distribution companies or electric cooperatives) to PEZA- or SBMA-registered enterprises?
>
> A19 Since PEZA- or SBMA-registered enterprises are entitled to the five percent (5%) preferential tax rate under R.A. 7916 and R.A. 7227, respectively, sales of electricity by generation, transmission and distribution companies or electric cooperatives shall effectively be subject to the zero percent (0%) VAT rate. Sales to enterprises duly-registered and accredited with the SBMA and PEZA shall effectively be subject to zero percent (0%) VAT. The zero-percent (0%) VAT rate shall not apply to sales made to individuals who are mere residents in the PEZA Ecozone or Subic Bay Freeport and Economic Zone.
>
> Q26 What is the treatment of the Generation and Transmission charges including the VAT thereon which are pass through charges of the Distribution Companies and Electric Cooperatives?
>
> A26 The Generation and Transmission companies shall bill the end-user through the Distribution Companies and Electric Cooperatives for the sale and transmission of electricity and ancillary services including the VAT thereon. The amount collected from the end-user for such charges shall not form part of the gross receipts of the Distribution Companies and Electric Cooperatives. The Distribution Companies and Electric Cooperatives shall not claim an input tax on such pass-through charges. The amount collected from the end-user

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> as payment for the generation and transmission charges including the VAT thereon shall form part of the gross receipts and output VAT of the Generation Company or Transmission Company, accordingly.
>
> The Distribution Companies and Electric Cooperatives may advance, exclusive of the corresponding VAT, the generation fee to the Generation company. The amount advanced may be offset against the amount collected from the end-user and only the VAT portion of the generation fee shall be remitted to the generation company upon collection from the end-user. The reckoning of the VATable sale between the generation company and the end-user shall be upon collection on the billing made by the Distribution Companies and Electric Cooperatives.

Notably, Question/Answer No. 26 of RMC No. 61-05 was later amended by RMC No. 62-12 to read as follows:

> Q26 What is the treatment of the Generation and other power related charges including the VAT thereon which are pass through charges of the Distribution Companies and Electric Cooperatives?
>
> A26 The Generation Companies, Aggregators, Market Operators, Retail Electricity Suppliers, and other suppliers of electricity shall bill the Distribution Companies and Electric Cooperatives for the sale and transmission of electricity and ancillary services including the VAT thereon, if applicable. The VAT shall be remitted by the Distribution Companies and Electric Cooperatives to the Generation Companies, Aggregators, Market Operators, Retail Electricity Suppliers, and other suppliers of electricity together with the payment for generation and transmission services. All collections by Generation Companies, Aggregators, Market Operators, Retail Electricity Suppliers, and other suppliers of electricity from Distribution Companies and Electric Cooperatives pertaining to generation and other VATable charges shall be deemed to include the VAT thereon.

> The amount collected by the Distribution Companies and Electric Cooperatives from the end-user for such charges, including the VAT thereon, shall not form part of the gross receipts of the Distribution Companies and Electric Cooperatives. The Distribution Companies and Electric Cooperatives shall not claim an input tax on such pass-through charges. The amount collected from the end-user as payment for the generation and other VATable charges including the VAT thereon shall form part of the gross receipts and output VAT of the Generation Company or Transmission Company, accordingly.
>
> If the Distribution Companies and Electric Cooperatives pay in advance the generation fee to the Generation company, the amount paid shall be inclusive of the corresponding VAT. The amount advanced may be offset against the amount collected from the end-user.[9]

In relation thereto, Section 4.108-3(f) of RR No. 16-05 provides what composes the gross receipts of a generation, transmission and distribution company, to wit:

> SECTION 4.108-3. *Definitions and Specific Rules on Selected Services.* —
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% [now 12%] VAT on their gross receipts; *Provided,* That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.
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> xxx xxx xxx

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[9] This new procedure shall take effect beginning billing period August 26-September 25, 2012.

> *"Gross Receipts"* under this Subsection (f) shall refer to the following:
>
> (a) Total amount charged by generation companies for the sale of electricity and related ancillary services; and/or
>
> (b) Total amount charged by transmission companies for transmission of electricity and related ancillary services; and/or
>
> (c) Total amount charged by distribution companies and electric cooperatives for distribution and supply of electricity, and related electric service. The universal charge passed on and collected by distribution companies and electric cooperatives shall be excluded from the computation of the Gross Receipts.
>
> xxx xxx xxx

Moreover, Energy Regulatory Commission (ERC) Resolution No. 20[10], Series of 2005 provides how generation companies (GC) shall bill end-user for its charges, to wit:

> I. GENERAL PRINCIPLES
>
> xxx xxx xxx
>
> (k) The GC and TRANSCO shall bill the end-user through the DUs for the sale and transmission of electricity and ancillary services including VAT thereon. The amount collected from the end-user for such charges shall not form part of the GR [gross receipts] of the DUs and shall not be claimed by the DUs as input tax. The amount collected from the end-user as payment for the generation and transmission charges including the VAT thereon shall form part of the GR and output VAT of the GC or TRANSCO, accordingly. *gr*

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[10] Implementing the Recovery of Value Added Tax (VAT) and Other Provisions of Republic Act No. 9337 Affecting the Electric Power Industry.

xxx xxx xxx

(m) DUs with billing cycles that do not start on the 1st day of each month shall calculate the VAT on a pro-rata basis applied on the distribution component for consumption beginning November 1, 2005. The generation and transmission components shall be billed to their end users upon receipt of the power bills from the GC and TRANSCO. xxx

(n) Pursuant to RMC 61-2005, sales of electricity by GC, TRANSCO, and DUs [or] to Philippine Economic Zone Authority (PEZA) or Subic Bay Metropolitan Authority (SBMA) registered enterprises shall effectively be subject to zero (0%) VAT rate.

xxx xxx xxx

II. IMPOSITION OF THE VALUE-ADDED TAX – The appropriate VAT shall be imposed as follows:

xxx xxx xxx

(c) FOR DISTRIBUTION UTILITIES

1. The DUs shall bill the end-user for the corresponding VAT on the sale and transmission of electricity. The said VAT is neither part of the DU's GR nor input VAT. The DU shall ensure it is revenue-neutral in its collection of said VAT. The VAT on the current month's sale and transmission of electricity shall be billed to the end-users on the next billing cycle.

xxx xxx xxx

Based on the foregoing, generation and transmission charges, including the VAT thereon, although billed to the end-user by the distribution companies and electric cooperatives, are not part of their gross receipts; neither can they claim an input tax on such charges. Hence, these charges are considered pass-through charges of the distribution companies and electric cooperatives and the amount collected by them for these charges shall form part of the gross receipts and output VAT of the generation companies.

Considering that sales of services by a VAT-registered taxpayer to entities located in ecozones and to BOI-registered manufacturers/producers whose products are 100% exported are considered "export sales" subject to zero percent (0%) VAT rate pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, then, if the end-user who pays for the sale of electricity and related ancillary services through an electric cooperative for remittance to the generation company is a PEZA-registered entity or a BOI-registered 100% exporter, then the transaction should qualify for VAT zero-rating.

In this case, CEBECO III is a registered electric cooperative as shown in the Certificate of Registration[11] issued by the National Electrification Administration. Petitioner alleges that the sale of power to CEBECO III in the total amount of ₱138,162,620.07 are pass through charges and directly attributable to BEC and CCC. Hence, the Court considered the documents supporting the total amount of ₱138,162,620.07, such as the Schedule of Gross Sales (VATable, Zero-Rated, VAT-exempt and Sales to Government)[12] with the related sales invoices and official receipts[13], billing statements issued by petitioner to CEBECO III[14] as summarized in Exhibit "P-132", statements of account[15] issued by CEBECO III to BEC and CCC as summarized in Exhibits "P-133" and "P-134.

However, a scrutiny of the said documents shows that out of the sales/receipts of ₱138,162,620.07, only the amount of ₱31,530,518.36 qualifies for VAT zero-rating as this can be clearly traced as pass-through charges of CEBECO III to BEC and CCC. Below is the breakdown of the amount of ₱31,530,518.36:

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[11] Exhibit "P-124".
[12] Exhibit "P-105".
[13] Exhibits "P-105-1" to "P-105-358".
[14] Exhibits "P-132-1" to "P-132-11".
[15] Exhibits "P-133-1" to "P-133-12" and "P-134-1" to "P-134-24".

SALES INVOICE				BILLING STATEMENT			OFFICIAL RECEIPT			
Exh.	SI No.	Total Amount	Amount of Zero-Rated Sales	Exh.	Charged to:	Total kWh	Exh.	OR No.	Amount	For Invoice No.
P-105-12	1332	53,981,619.75	8,818,614.94	P-132-1	CEBECO III & KABULIHAN	7,998,874.39	P-105-153	2733	54,728,416.60	1332/ 1333/ 1334
					CCC	1,353,186.02				
					BEC	399,900.00				
P-105-50	1396	48,789,689.74	7,829,375.98	P-132-4	CEBECO III & KABULIHAN	8,107,857.27	P-105-213	2771	53,568,750.86	1382/ 1383/ 1396
					CCC	1,369,007.36				
					BEC	370,300.00				
P-105-103	1459	45,503,451.41	7,392,333.52	P-132-8	CEBECO III & KABULIHAN	8,416,333.76	P-105-306	2879	46,901,654.04	1459/ 1460/ 1461
					CCC	1,420,941.76				
					BEC	411,900.00				
P-105-116	1478	44,903,446.78	7,490,193.92	P-132-9	CEBECO III & KABULIHAN	8,458,980.52	P-105-325	2896	47,519,379.30	1478/ 1479/ 1480
					CCC	1,282,371.47				
					BEC	619,100.00				
Total			31,530,518.36							

The remaining amount of ₱106,632,101.71 should still be disallowed for the reasons stated as follows:

SALES INVOICE				BILLING STATEMENT			OFFICIAL RECEIPT			
Exh.	SI No.	Total Amount	Amount of Zero-Rated	Exh.	Charged to:	Total kWh	Exh.	OR No.	Amount	For Invoice No.
A. The supporting official receipt is unreadable										
P-105-358	1317	55,007,010.64	8,366,451.93	-	-	-	P-105-138	2717	10,000,000.00	-
-	1318		6,924,583.91	-	-	-	P-105-139	2718	50,716,968.50	-
B. The power distributed to BEC and CCC is not indicated in the supporting sales invoice										
P-105-52	1382	5,995,611.22	5,982,481.37	-	-	-	P-105-213	2771	53,568,750.86	1382/ 1383/ 1396
P-105-88	1446	4,112,743.06	4,102,823.97	-	-	-	P-105-273	2869	38,236,137.03	1444/ 1445/ 1446
P-105-101	1460	2,176,685.24	2,171,417.99	-	-	-	P-105-306	2879	46,901,654.04	1459/ 1460/ 1461
P-105-102	1461	105,098.79	56,268.11	-	-	-				
P-105-117	1479	3,236,801.10	3,228,804.45	-	-	-	P-105-325	2896	47,519,379.30	1478/ 1479/ 1480
C. The power distributed to BEC and CCC is not indicated in the supporting sales invoice and the amount of zero-rated sales is not indicated in the supporting official receipt										
P-105-11	1333	6,589,521.17	6,576,566.19	-	-	-	P-105-152	2732	5,000,000.00	
P-105-39	1366	5,558,568.32	5,545,934.36	-	-	-	P-105-192	2754	39,547,970.49	1365/ 1366/ 1367
D. The amount of zero-rated sales is not indicated in the supporting official receipt										
P-105-24	1357	45,599,219.36	7,470,878.44	P-132-2	CEBECO III & KABULIHAN	7,983,146.02	P-105-173	2744	51,400,984.43	1357/ 1358/

					CCC	1,317,513.01				1359
					BEC	438,900.00				
P-105-26	1358	6,120,629.76	6,106,423.96	-	-	-				
P-105-38	1365	44,473,702.77	6,752,768.35	P-132-3	CEBECO III & KABULIHAN	7,641,023.06	P-105-191	2753	10,000,000.00	-
					CCC	1,157,672,15				
					BEC	378,100.00				
P-105-86	1444	44,232,236.24	6,018,956.23	P-132-7	CEBECO III & KABULIHAN	8,334,369.58	P-105-272	2868	10,000,000.00	-
					CCC	1,065,168.57				
					BEC	408,500.00				
P-105-124	1492	41,389,189.19	9,525,723.51	P-132-10	CEBECO III & KABULIHAN	8,101,310.94	P-105-344	2900	16,500,000.00	-
					CCC	1,058,696.08				
					BEC	477,400.00				
E. No supporting sales invoice wherein the power distributed to BEC and CCC can be determined										
-	1401/ 1402/ 1403	-	9,506,165.89	P-132-5	CEBECO III & KABULIHAN	8,232,405.11	P-105-356	2786	10,000,000.00	1401/ 1402/ 1403
					CCC	1,066,827.73	P-105-357	2787	41,262,637.97	1401/ 1402/ 1403
					BEC	415,300.00	P-105-235	2788	2,035,863.38	-
-	1425	-	454,092.05	P-132-6	CEBECO III & KABULIHAN	8,856,727.78	P-105-255	2797	25,000,000.00	1423/ 1424/ 1425
-	-	-	-		CCC	1,607,242.33	P-105-256	2798	25,137,550.16	1423/ 1424/ 1425
-	1423	-	5,856,012.52		BEC	347,300.00				
-	1424	-	3,438,606.48	-	-	-				
-	1527/ 1528/ 1529	-	8,547,142.00	-	-	-	-	2924	-	
TOTAL			**106,632,101.71**							

Thus, petitioner's total valid zero-rated sales/receipts for the four taxable quarters of CY 2012 shall be adjusted to ₱1,392,238,205.82, computed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Total Allowed Zero-Rated Sales/Receipts per this Court's June 6, 2017 Decision	₱ 331,302,113.28	₱ 466,307,238.22	₱ 400,589,280.68	₱ 162,509,055.28	₱ 1,360,707,687.46
Add: Zero-Rated Sales/Receipts made to CEBECO III attributable to BEC and CCC	8,818,614.94	7,829,375.98	7,392,333.52	7,490,193.92	31,530,518.36
Total Allowed Zero-Rated Sales/Receipts, As Adjusted	**₱340,120,728.22**	**₱474,136,614.20**	**₱407,981,614.20**	**₱169,999,249.20**	**₱1,392,238,205.82**

Consequently, petitioner's excess input VAT attributable to its entire declared zero-rated sales/receipts for CY 2012 is recomputed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Sales per VAT return					
Vatable Sales/ Receipts –Private	₱ 142,290,065.92	₱213,266,370.23	₱179,525,702.25	₱ 172,096,239.00	₱ 707,178,377.40
Sales to Government	15,498,374.80	15,220,068.60	14,385,534.60	13,574,278.83	58,678,256.83
Zero-Rated Sales/Receipts	542,930,177.94	501,923,964.17	430,079,791.55	306,678,113.10	1,781,612,046.76
Exempt Sales/ Receipts	1,082,505.00	1,138,810.24	1,133,588.81	1,211,682.00	4,566,586.05
Total	₱ 701,801,123.66	₱731,549,213.24	₱625,124,617.21	₱ 493,560,312.93	₱2,552,035,267.04
Allocation Factor (Percentage of each type of sales to total sales):					
Vatable Sales/ Receipts –Private	20.2749841%	29.1527031%	28.7183863%	34.8683301%	
Sales to Government	2.2083713%	2.0805256%	2.3012267%	2.7502776%	
Zero-Rated Sales/Receipts	77.3623979%	68.6111003%	68.7990490%	62.1358940%	
Exempt Sales/ Receipts	0.1542467%	0.1556710%	0.1813381%	0.2454983%	
Total	100.0000000%	100.0000000%	100.0000000%	100.0000000%	
Valid Input VAT, As Adjusted	**₱ 29,805,710.40**	**₱17,687,756.64**	**₱22,521,210.80**	**₱52,881,473.66**	**₱122,896,151.50**
Input VAT Allocation Per Each Type of Sales (Allocation Factor multiplied by Valid Input VAT):					
Vatable Sales/ Receipts –Private	₱ 6,043,103.04	₱ 5,156,459.18	₱ 6,467,728.32	₱ 18,438,886.80	₱ 36,106,177.34
Sales to Government	658,220.75	367,998.30	518,264.12	1,454,387.32	2,998,870.50
Zero-Rated Sales/Receipts	**23,058,412.28**	**12,135,764.45**	**15,494,378.85**	**32,858,376.42**	**83,546,932.00**
Exempt Sales/ Receipts	45,974.32	27,534.71	40,839.54	129,823.12	244,171.69
Total	₱ 29,805,710.39	₱ 17,687,756.64	₱ 22,521,210.83	₱ 52,881,473.66	₱ 122,896,151.52
OUTPUT VAT DUE	₱ 17,074,807.91	₱ 25,591,964.43	₱ 21,543,084.27	₱ 20,651,548.68	₱ 84,861,405.29
Less: Input VAT allocated to VATable Sales/Receipts	6,043,103.04	5,156,459.18	6,467,728.32	18,438,886.80	36,106,177.34
Balance of Output VAT Due	11,031,704.87	20,435,505.25	15,075,355.95	2,212,661.88	48,755,227.95
Less: Input VAT allocated to Zero-rated Sales/Receipts	23,058,412.28	12,135,764.45	15,494,378.85	32,858,376.42	83,546,932.00
Output VAT Still Due/(Excess Input VAT), As Adjusted	**(₱12,026,707.41)**	**₱8,299,740.80**	**(₱419,022.90)**	**(₱30,645,714.54)**	**(₱34,791,704.05)**

Based from the foregoing, petitioner had excess input VAT for the CY 2012 in the amount of ₱34,791,704.05, which can be attributed to its entire declared zero-rated sales/receipts in the amount of ₱1,781,612,046.76.

However, petitioner was able to properly substantiate only the amount of ₱1,392,238,205.82 out of its total declared zero-rated sales/receipts of ₱1,781,612,046.76. Thus, petitioner's refundable excess input VAT attributable to its valid zero-rated sales/receipts of ₱1,392,238,205.82 amounts only to ₱27,187,927.75, as computed below:

Excess Input VAT attributable to Declared Zero-Rated Sales/Receipts	₱ 34,791,704.05
Divided by Declared Zero-Rated Sales/Receipts	÷ 1,781,612,046.76
Multiplied by: Valid Zero-Rated Sales/Receipts	x 1,392,238,205.82
Refundable Excess Input VAT Attributable to Valid Zero-Rated Sales/Receipts, As Adjusted	**₱ 27,187,927.75**

Respondent's Motion for Partial Reconsideration

In his Motion for Partial Reconsideration, respondent argues that petitioner failed to prove its entitlement to zero-rating.

According to respondent, while he agrees with the Court's ruling that petitioner's sales to CEBECO III are not entitled to zero-rating, he disagrees with the finding that petitioner has proven its sales to BEC and CCC are entitled to zero-rating. While petitioner provided certifications from the PEZA and BOI, respondent argues that petitioner did not provide evidence that these certifications are not yet revoked. Moreover, respondent stresses that the Certification presented by petitioner to prove that CCC is a BOI-registered entity pertains to taxable year 2011 instead of taxable year 2012.

In its comment, petitioner contends that respondent failed to substantiate its assertion that petitioner allegedly failed to prove that its transactions with BEC and CCC are subject to VAT zero-rating. On the contrary, petitioner stresses that it was able to duly prove that its transactions with BEC and CCC are subject to VAT zero-rating. As for sales to BEC, petitioner presented BEC's PEZA registration valid for 2012. As for sales to CCC, Revenue Memorandum Order (RMO) No. 9-00 provides that sales to a BOI-registered exporter shall be accorded automatic VAT zero-rating, without need to apply for the same. Moreover, petitioner avers that it submitted BOI Certifications of CCC which are both valid for years 2012 and 2013 citing Exhibit P-123[16]. As far as petitioner is concerned, the certifications issued by

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[16] BOI Certification of CCC valid for 2012 only.

PEZA and BOI are in full effect and it is incumbent upon respondent to prove otherwise.

Respondent's motion is bereft of merit.

In order to address respondent's argument, the pertinent provisions of the subject BOI Certification[17] are reproduced below:

CERTIFICATION

This is to certify that **CARMEN COPPER CORPORATION** is registered with the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, with the following data:

xxx xxx xxx

Information is hereby given that **the firm exported 100% of its total sales volume/value for the calendar year covering January 01 to December 31, 2011** based on the attached documents (Annexes B & C) submitted to the BOI, summarized as follows:

xxx xxx xxx

This Certification is issued pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled "Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales" dated February 02, 2000.

This Certification is valid from **January 01 to December 31, 2012 unless sooner revoked by the BOI** Governing Board for any or all of the following grounds: (a) Failure of the herein registered enterprise to

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[17] Exhibit "P-11", docket, vol. II, pp. 918-920; Exhibit "P-123".

comply with any of its BOI registration terms, commitments, and conditions; (b) Failure to export 100% in any of the instances set forth in Section 2 of RMO No. 9-2000; (c) Submission of fraudulent documents; and (d) Failure to submit Audited Financial Statements, Annual Income Tax Return and Annual Report on Actual Operations for the year 2011.

Since the firm's accounting reporting period ends every 31st day of December, its succeeding applications should be filed within fifteen (15) days from the end of the said calendar year period **in order that BOI certification to be issued shall be valid for a period of one (1) year effective from date of the start of the new calendar year**.

xxx xxx xxx

To understand the purpose of this certification and why the above certification is worded as such, Section 3 of RMO No. 9-00[18] dated February 2, 2000 is quoted hereunder:

SECTION 3. ***Sales of goods, properties or services made by a VAT-registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating*** *as provided in Revenue Regulations No. 7-95, subject to the following conditions:*

(1) The supplier must be VAT-registered,

(2) The BOI-registered buyer must likewise be VAT-registered;

(3) **The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose a Certification to this effect must be issued by the Board of Investments (BOI) and which**

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18 SUBJECT: Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters With 100% Export Sales.

certification shall be good for one year unless subsequently re-issued by the BOI;

(4) **The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers;** and;

(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly-registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec. 4.108-1(5) of RR 7-95. The supplier must likewise indicate in the VAT invoice the name and BOI-registry number of the buyer. (*Emphasis supplied*)

In relation thereto, Section 4.106-5(a)(5) of RR No. 16-05 provides:

SECTION. 4.106-5. *Zero-Rated Sales of Goods or Properties.* — xxx

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* — "*Export Sales*" shall mean:

xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

xxx xxx xxx

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall

> not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided, finally*, **that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI**. (*Emphasis supplied*)

Moreover, the BOI Guidelines on the Issuance of Certification to BOI-Registered Companies pursuant to BIR Revenue Memorandum Order No. 9-2000 provides that:

> III. *Procedures for the Issuance of the BOI Certification*
>
> For the purpose of issuing the BOI Certification specified under BIR RMO 9-2000, the following operational procedures and other related administrative matters should be observed.
>
> A. *Application*
>
> xxx xxx xxx
>
> 2. *Filing of Request* — After checklisting and determination of the firm's compliance with the terms and conditions of its registration, the request for BOI Certification together with all the documentary requirements under III.B of this Guidelines shall be officially filed with the concerned Department of the BOI Industry Planning Group at the BOI Main Office in Makati City; or if located in the provinces, requests may be filed with the respective BOI Regional Offices in the area.
>
>   **Applicant firm with accounting reporting period ending in *calendar year* (*i.e.,* ending 31 December) should file its application not later than 15 January of the**

> **succeeding year in order that the BOI certification to be issued shall be valid for a period of one (1) year effective 01 January of that year.**
>
> xxx xxx xxx
>
> 5. *Issuance of Certification* — **BOI Certification should indicate the one (1) year validity period whether in calendar or fiscal year** (*e.g.*, from 01 January 2001 to 31 December 2001, from 01 April 2001 to 31 March 2002). The Executive Director of the Industry Planning Group shall sign the BOI Certification bearing a control number *(Annex F)*. In the absence of the IPG Executive Director, the Executive Director of the Technical Services Group may sign the said Certification.
>
> xxx xxx xxx
>
> C. *Revocation of Certification*
>
> The BOI through its monitoring system shall revoke any certification issue herewith based on any or all the following grounds:
>
> 1. Failure of the herein registered enterprise to comply with any of its BOI registration terms, commitments, and conditions;
>
> 2. Failure to export 100% in any of the instances set forth in Section 2 of RMO No. 9-2000;
>
> 3. Submission of fraudulent documents. (*Emphasis supplied*)

From the foregoing, it is clear that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered 100% exporter shall be accorded automatic zero-rating, *i.e.*, without necessity of applying for and securing approval of the application for zero-rating. However, a certification to the effect that the buyer is a BOI-registered manufacturer/producer whose products are 100% exported must be issued by the BOI and which certification shall be good for one year. Moreover, the BOI-registered buyer shall furnish each of its suppliers with a copy of the said BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers, and the said certification shall be valid unless revoked by the BOI.

Hence, while the BOI Certification certifies that CCC exported 100% of its total sales volume/value for the period January 1 to December 31, 2011 (and not for the year 2012, the period of petitioner's claim for refund), the same certification specifically states that it is valid from January 1 to December 31, 2012, which is in accordance with Section 3 of RMO No. 9-00, Section 4.106-5(a)(5) of RR No. 16-2005 and the guidelines on the issuance of BOI Certification. Moreover, pursuant to these issuances, said BOI Certification shall remain valid unless revoked by the BOI and shall serve as authority for petitioner to avail of the benefits of zero-rating for its sales to CCC.

Considering that there is no showing that the subject BOI Certification was revoked, then, petitioner's sale of electricity to CCC should qualify for VAT zero-rating.

Moreover, the Court does not agree with respondent's argument that petitioner must provide evidence that the PEZA and BOI certifications are not yet revoked. There is no law or regulation requiring a VAT-registered supplier to prove that the PEZA/BOI VAT zero-rating certifications issued to its buyers are not yet revoked for VAT zero-rating purposes. Considering that petitioner was able to present the PEZA and BOI VAT zero-rating certifications of BEC and CCC, respectively, and there being no evidence presented that these certifications were already revoked, then, these certification are considered valid and effective.

Significantly, in the case of *Republic vs. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation)*[19], the Supreme Court held that when the taxpayer was able to establish *prima facie* its right to the refund by testimonial and object evidence, the BIR should present rebuttal evidence to shift the burden of evidence back to the taxpayer, *viz*:

[19] G.R. No. 188016, January 14, 2015.

> "We are likewise unmoved by the assertion of the petitioner that the respondent should have submitted the quarterly returns of the respondent to show that it did not carry-over the excess withholding tax to the succeeding quarter. **When the respondent was able to establish *prima facie* its right to the refund by testimonial and object evidence, the petitioner should have presented rebuttal evidence to shift the burden of evidence back to the respondent.** Indeed, the petitioner ought to have its own copies of the respondent's quarterly returns on file, on the basis of which it could rebut the respondent's claim that it did not carry over its unutilized and excess creditable withholding taxes for the immediately succeeding quarters. The BIR's failure to present such vital document during the trial in order to bolster the petitioner's contention against the respondent's claim for the tax refund was fatal." (*Emphasis supplied.*)

Considering that petitioner was able to establish *prima facie* its right to claim for refund in this case, it was upon respondent to present a rebuttal evidence to shift the burden of evidence back to petitioner to establish its entitlement for a refund. However, respondent failed to present evidence to rebut petitioner's claim.

Thus, the Court finds no cogent reason to deny the refund of the substantiated portion of petitioner's claim.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED** while respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 6 June 2017)** is **DENIED**. Accordingly, the dispositive portion of this Court's Decision dated June 6, 2017 is amended to read as follows:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱27,187,927.75** representing its unutilized excess input VAT for the four quarters of taxable year 2012 attributable to its zero-rated sales/receipts."
>
> **SO ORDERED.**"

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

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 Amended 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