REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TOLEDO POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8450, 8512, 8547 & 8596

Members:

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

Promulgated:
MAR 15 2019 9:20 am

x - x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution are the following:

1. petitioner's **Motion for Reconsideration**[1], filed on June 29, 2017, with respondent's **Comment/Opposition (Re: Petitioner's Motion to Reopen Proceedings (with Motion for Reconsideration)**[2], filed on August 2, 2017; and

2. respondent's **Motion for Partial Reconsideration Re: Decision dated 9 June 2017**[3], filed on June 29, 2017, with petitioner's **Comment (To Respondent's Motion for Partial Reconsideration filed on June 29, 2017)**[4], filed on July 25, 2017.

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[1] CTA Case No. 8450, Docket (Vol. V), pp. 2432-2453.
[2] CTA Case No. 8450, Docket (Vol. V), pp. 2617-2623.
[3] CTA Case No. 8450, Docket (Vol. V), pp. 2560-8568.
[4] CTA Case No. 8450, Docket (Vol. V), pp. 2601-2611.

Both parties seek reconsideration of the Court's Decision (assailed Decision) promulgated on June 9, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petitions for Review docketed as CTA Case Nos. 8450, 8512, and 8547 covering petitioner's claims for refund for the first, second and third quarters, respectively, are **denied** for lack of merit.
>
> On the other hand, the Petition for Review docketed as CTA Case No. 8596 is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED** to refund the amount of **₱3,612,740.75**, in favor of petitioner representing the latter's excess input VAT attributable to zero-rated sales/receipts for the fourth quarter of CY 2010.
>
> **SO ORDERED**."

Petitioner's Motion for Reconsideration

In the subject Motion, petitioner raises the following grounds for the consideration of the Court:

> **"A. 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 Honorable Court.**
>
> **B. Exhibit No. BBB-4493 is compliant with the requirements of Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations (RR) No. 16-05, as amended, and is within the period of the claim.**
>
> **C. Petitioner's sale of power to CEBECO III, which was eventually distributed to a PEZA-**

registered entity and a BOI-registered 100% export entity are subject to VAT zero-rating."

By way of opposition, respondent argues that the Court correctly disallowed input VAT for not being properly substantiated by VAT invoices or receipts and for failure to meet the substantiation requirements as prescribed under Sections 110 (A) and 113 (A) and (B), and 237 of the 1997 National Internal Revenue Code (1997 NIRC), as amended, and as implemented by Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05.

Respondent also maintains that the Court correctly disallowed the input tax in the official receipt issued by Cebu Energy Development Corporation (CEDC) on the ground that the same does not contain the calendar year of transaction in violation of the aforesaid VAT laws and implementing rules.

He, likewise, claims that CEBECO III is a non-PEZA registered or BOI-registered entity. Thus, petitioner's sales to the said entity should not be subject to zero-rating. Thus, the disallowance made by the Court is proper and lawful.

The Court partially grants petitioner's motion.

Petitioner seeks reconsideration of the following disallowed input VAT on its domestic purchases of services and importations of goods in the total amount of ₱63,307,690.40, to wit:

Exhibit No.	Invoice/OR No.	Supplier	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
4. Domestic purchases of goods and services supported by invoices/ORs dated outside the period of claim or with no year indicated						
BBB-4493	0092	CEBU ENERGY DEVELOPMENT CORPORATION				₱ 9,759,790.40
		subtotal				***₱ 9,759,790.40***
13. Importation of goods supported by IEIRD but without machine validation						
CCC-12	10370392	I AND N INTERNATIONAL CORP	₱ 22,445.00			
CCC-14	102813961	MAN DISEL SAS	802,273.00			
CCC-15	103813821	I AND N INTERNATIONAL CORP	49,833.00			
CCC-16	104522092	TECHNOMARINE CO LTD	561,944.00			
CCC-19	104984582	MITSUBISHI CORPORATION		₱ 461,599.00		
CCC-20	104522241	FUJI TRADING CO LTD		101,015.00		
CCC-21	104984512	FUJI TRADING CO LTD		703,729.00		
CCC-22	104984546	EASTERN ENERGY RESOURCES FZE		2,486,778.00		
CCC-24	104984756	EASTERN ENERGY RESOURCES FZE		2,496,606.00		

CCC-25	104984747	EASTERN ENERGY RESOURCES FZE		2,393,959.00		
CCC-26	17175445	EASTERN ENERGY RESOURCES FZE			₱ 2,539,536.00	
CCC-27	107336083	EASTERN ENERGY RESOURCES FZE			2,503,151.00	
CCC-28	108861103	I & N INTERNATIONAL CORP			34,221.00	
CCC-29	107336092	HOLCIM TRADING PTE LTD			4,521,111.00	
CCC-30	SN 107336047	Chris Marine AB				₱ 48,183.00
CCC-31	SN 108999913	Eastern Energy Resources Fze				2,343,144.00
CCC-32	SN 108999947	Eastern Energy Resources Fze				2,426,488.00
CCC-33	SN 108861207	Eastern Energy Resources Fze				2,540,278.00
CCC-34	SN 108861137	Eastern Energy Resources Fze				2,553,446.00
CCC-35	SN 107336257	Eastern Energy Resources Fze				2,611,779.00
CCC-36	SN-108999825	Eon Far East Limited				5,588,062.00
CCC-37	SN-108999807	Fuji Trading Co Ltd				238,927.00
CCC-38	SN-108861024	I and N International Corp				9,033.00
CCC-39	SN-108861173	I and N International Corp				29,612.00
CCC-40	SN-108999782	I and N International Corp				48,638.00
CCC-41	SN-108999764	I and N International Corp				59,378.00
CCC-42	SN 108999877	PT Insani Baraperkasa				3,138,963.00
CCC-43	SN 108999886	Sun Machinery & Trading Inc				81,092.00
CCC-44	SN 107336144	Sun Machinery & Trading Inc				393,027.00
CCC-45	SN 108861234	Technomarine Co Ltd				175,625.00
CCC-46	SN 111872241	Eastern Energy Resources Fze				2,240,191.00
CCC-47	SN 111872223	Yashima and Co Ltd				6,763,191.00
CCC-49	SN-108999931	I and N International Corp				31,038.00
CCC-50	SN 108861191	Sun Machinery & Trading Inc				178,775.00
CCC-51	SN 108999895	Eastern Energy Resources Fze				2,370,830.00
		subtotal	***₱1,436,495.00***	***₱8,643,686.00***	***₱9,598,019.00***	***₱33,869,700.00***
		Total per quarter	**₱ 1,436,495.00**	**₱8,643,686.00**	**₱9,598,019.00**	**₱43,629,490.40**
		Total				**₱63,307,690.40**

Upon scrutiny of the additional documents[5] submitted by petitioner, specifically, Bureau of Customs official receipts (ORs), Import Entry and Internal Revenue Declarations (IEIRDs), with machine validation and Statement of Settlement of Duties and Taxes (SSDTs), the Court finds that, out of the disallowed input VAT of ₱63,307,690.40, petitioner was able to prove the actual payment of input VAT on importations of goods in the total amount of ₱53,547,899.00, detailed as follows: Je

[5] Bureau of Customs official receipts (ORs), Import Entry and Internal Revenue Declarations (IEIRDs), with machine validation and Statement of Settlement of Duties and Taxes (SSDTs).

Exhibit No.[6]	BOC Receipt/ SSDT Customs Reference No.	Entry Reference/ IEIRD No.	Supplier	Input VAT
First Quarter				
CCCC-1	170379194	10370392	I AND N INTERNATIONAL CORP	₱ 22,445.00
CCCC-2	170470544	102813961	MAN DISEL SAS	802,273.00
CCCC-3/CCC-15	169637745	102813821	I AND N INTERNATIONAL CORP	49,833.00
CCCC-4		SN 104522092	TECHNOMARINE CO LTD	561,944.00
			subtotal	**₱ 1,436,495.00**
Second Quarter				
CCCC-5	172045544	104984582	MITSUBISHI CORPORATION	₱ 461,599.00
CCCC-6	172013204	104522241	FUJI TRADING CO LTD	101,015.00
CCCC-7		SN 104984512	FUJI TRADING CO LTD	703,729.00
CCCC-8		SN 104984546	EASTERN ENERGY RESOURCES FZE	2,486,778.00
CCCC-9	2010-C-1653	104984756	EASTERN ENERGY RESOURCES FZE	2,496,606.00
CCCC-10	2010-C-1462	104984747	EASTERN ENERGY RESOURCES FZE	2,393,959.00
			subtotal	**₱ 8,643,686.00**
Third Quarter				
CCCC-11	2010-C-4387	SN 107336223	EASTERN ENERGY RESOURCES FZE	₱ 2,539,536.00
CCCC-12	2010-C-3732	107336083	EASTERN ENERGY RESOURCES FZE	2,503,151.00
CCCC-13	2010-C-715	108861103	I & N INTERNATIONAL CORP	34,221.00
CCCC-14	2010-C-3929	107336092	HOLCIM TRADING PTE LTD	4,521,111.00
			subtotal	**₱ 9,598,019.00**
Fourth Quarter				
CCCC-15	2010-C-290	SN 107336047	Chris Marine AB	₱ 48,183.00
CCCC-16	2010-C-11904	SN 108999913	Eastern Energy Resources Fze	2,343,144.00
CCCC-17	2010-C-13379	SN 108999947	Eastern Energy Resources Fze	2,426,488.00
CCCC-18	2010-C-7212	SN 108861207	Eastern Energy Resources Fze	2,540,278.00
CCCC-19	2010-C-6774	SN 108861137	Eastern Energy Resources Fze	2,553,446.00
CCCC-20	2010-C-4770	SN 107336257	Eastern Energy Resources Fze	2,611,779.00
CCCC-21	2010-C-8890	SN-108999825	Eon Far East Limited	5,588,062.00
CCCC-22	2010-C-9033	SN-108999807	Fuji Trading Co Ltd	238,927.00
CCCC-23	2010-C-971	SN-108861024	I and N International Corp	9,033.00
CCCC-24	2010-C-800	SN-108861173	I and N International Corp	29,612.00
CCCC-25	2010-C-1291	SN-108999782	I and N International Corp	48,638.00
CCCC-26	2010-C-1223	SN-108999764	I and N International Corp	59,378.00
CCCC-27	2010-C-10452	SN 108999877	PT Insani Baraperkasa	3,138,963.00
CCCC-28	2010-C-1310	SN 108999886	Sun Machinery & Trading Inc	81,092.00
CCCC-29	2010-C-4052	SN 107336144	Sun Machinery & Trading Inc	393,027.00
CCCC-30	2010-C-8243	SN 108861234	Technomarine Co Ltd	175,625.00
CCCC-31	2010-C-15296	SN 111872241	Eastern Energy Resources Fze	2,240,190.00
CCCC-32	2010-C-15622	SN 111872223	Yashima and Co Ltd	6,763,191.00
CCCC-33	2010-C-1465	SN-108999931	I and N International Corp	31,038.00
CCCC-34	2010-C-7142	SN 108861191	Sun Machinery & Trading Inc	178,775.00
CCCC-35	2010-C-12155	SN 108999895	Eastern Energy Resources Fze	2,370,830.00
			subtotal	**₱33,869,699.00**
			Total	**₱53,547,899.00**

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[6] Annexes C-1 to C-35 to petitioner's Motion to Reopen Proceedings (with Motion for Reconsideration) dated June 29, 2017, CTA Case No. 8450, Docket (Vol. V), pp. 2457-2552.

As regards the domestic purchase of service to Cebu Energy Development Corporation (CEDC) in the amount of ₱9,759,790.40, which was disallowed by the Court for failure to indicate therein the year when the transaction actually occurred, petitioner presented its Tax Compliance Officer, Ms. Mary Ann C. Vergara, to testify on the corrections made by Ms. Leonida R. Tarnate, Finance Officer of CEDC, on the subject official receipt. To corroborate her testimony, Ms. Vergara presented the Sworn Statement issued by Ms. Melissa D. Vidal, CEDC's Finance Manager, on the said matter, as well as the corrected official receipt. Pertinent portions of Ms. Vergara's testimony are herein quoted for ready reference:

"21 Q: You also mentioned that Petitioner incurred input VAT on its purchase of electricity from CEDC for the period September 26, 2010 to October 25, 2010, covered under Official Receipt No. 0092, marked as Exhibit BBB-4593. What is your proof in saying so?

A: This is covered by CEDC Official receipt No. 0092 issued by CEDC to Petitioner on December 30, 2010. However, Official Receipt No. 0092, marked as Exhibit BBB-4493, was not properly dated, as the year of issue was not indicated on its face.

This official receipt was actually issued to Petitioner on December 30, 2010. Thus, on November 29, 2017, Petitioner requested CEDC to rectify the entry made in OR No. 0092 and to indicate the correct date of issuance which is December 30, 2010. The correction was duly initialled and dated by Leonilda R. Tarnate, Finance Officer of CEDC.

CEDC likewise issued a Sworn Statement dated November 29, 2017 attesting to the fact that OR NO. 0092 pertains to Petitioner's purchase of electricity for the period September 26, 2010 to October 25, 2010, and that said CEDC OR No. 0092 was issued to Petitioner on December 30, 2010.The Sworn Statement was executed by Melissa D. Vidal, Finance Manager of CEDC.

22. Q: If shown to you the rectified Official Receipt No. 0092 and the Sworn Statement that you

mentioned, will you be able to recognize them?

A: Yes.

23\. Q: How are you familiar with the initials of Leonilda R. Tarnate?

A: I have encountered the same initials before in the course of fulfilling my duties as Tax Compliance Officer.

24 Q: How are you familiar with the signature of Melissa D. Vidal?

A: I have also previously encountered the same in the course of fulfilling my duties as Tax Compliance Officer.

25\. Q: I am showing you the following documents:

Exhibit No.	Description
DDDD-5	CEDC Official Receipt No. 0092 dated December 30, 2010
DDDD-5-1	Date and Signature of Leonida Tarnate on Official Receipt No. 0092
DDDD-6	Sworn Statement dated November 29, 2017
DDDD-6-1	Signature of Melissa D. Vidal on the Sworn Statement dated November 29, 2017"[7]

This Court cannot give credit to the afore-quoted testimony of Ms. Mary Ann C. Vergara, as she appears to have no personal knowledge on the actual correction made by Ms. Tarnate on the subject official receipt. In fact, she merely narrated that petitioner had requested the CEDC to make the necessary correction on the subject official receipt; that a Sworn Statement was executed by CEDC's Finance Manager, Ms. Vidal, who stated therein that the correction or insertion of the year "2010" in the subject receipt was made by CEDC's Finance Officer, Ms. Tarnate; and, that she is familiar with the signatures of Ms. Tarnate and Ms. Vidal since she encountered the same "in the course of fulfilling" her "duties as Tax Compliance Officer" of petitioner.

Moreover, the subsequent correction made by CEDC in the official receipt, pursuant to the request made by petitioner, does not

[7] Judicial Affidavit of Mary Ann C. Vergara, CTA Case No. 8450, Docket (Vol. V), pp. 2706-2707.

rectify the fact that petitioner was issued an official receipt, which is not compliant with the invoicing requirements provided by law. Petitioner must be mindful that the law prescribes that the official receipts must be complete in information upon its issuance. Hence, Exhibit "DDDD-5" cannot, likewise, be given credence by the Court. As such, the disallowance of the claimed input VAT of ₱9,759,790.40 shall remain.

In view of the foregoing, petitioner's valid input VAT is now adjusted to ₱177,132,532.81, computed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Valid Input VAT per the Assailed Decision[8]	₱ 38,682,091.71	₱ 28,830,470.30	₱ 31,718,756.36	₱ 24,353,315.44	₱ 123,584,633.81
Add: Reconsidered Input VAT on Importations of goods	1,436,495.00	8,643,686.00	9,598,019.00	33,869,699.00	53,547,899.00
Valid Input VAT as Adjusted	**₱40,118,586.71**	**₱37,474,156.30**	**₱41,316,775.36**	**₱58,223,014.44**	**₱177,132,532.81**

Considering that petitioner is engaged both in taxable sales subject to zero percent (0%) and twelve percent (12%) rates, as well as exempt sales, and its input VAT cannot be directly or entirely attributed to any of the transactions, the Court shall allocate the adjusted valid input VAT proportionately on the basis of the volume of its sales, in this wise:

As per Assailed Decision:[9]	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Zero-Rated Sale ***(A)***	₱ 403,664,957.64	₱ 378,881,751.80	₱ 489,216,287.95	₱ 523,898,827.74	₱ 1,795,661,825.13
VAT Sales ***(B)***	323,285,336.68	254,653,568.27	269,413,258.33	164,996,139.32	1,012,348,302.60
Sale to Government ***(C)***	12,567,124.40	15,843,946.40	19,426,859.00	15,062,327.60	62,900,257.40
Exempt Sale ***(D)***	1,217,768.43	678,481.14	1,715,904.62	1,576,163.82	5,188,318.01
Total Sales *(E)*	**₱740,735,187.15**	**₱650,057,747.61**	**₱779,772,309.90**	**₱ 705,533,458.48**	**₱2,876,098,703.14**

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Adjusted Valid Input VAT ***(F)***	₱ 40,118,586.71	₱ 37,474,156.30	₱ 41,316,775.36	₱ 58,223,014.44	₱ 177,132,532.81
Allocation:					
Zero-Rated Sale ***[G=(A/E x F)]***	₱ 21,862,695.18	₱ 21,841,557.98	₱ 25,921,463.50	₱ 43,233,908.54	₱ 112,859,625.20
VAT Sales ***[H=(B/E x F)]***	17,509,294.87	14,680,122.89	14,275,047.90	13,616,041.15	60,080,506.81
Sale to Government ***(C/E x F)***	680,641.72	913,362.74	1,029,345.57	1,242,994.37	3,866,344.40

[8] CTA Case No. 8450, Docket (Vol. V), p. 2410.
[9] CTA Case No. 8450, Docket (Vol. V), p. 2410.

Exempt Sale *(D/E x F)*	65,954.94	39,112.69	90,918.39	130,070.39	326,056.41
Total	**₱40,118,586.71**	**₱37,474,156.30**	**₱41,316,775.36**	**₱58,223,014.45**	**₱177,132,532.82**[10]

Since petitioner's input VAT allocated to VATable sales in the respective amounts of ₱17,509,294.87, ₱14,680,122.89, ₱14,275,047.90 and ₱13,616,041.15 for the first, second, third and fourth quarters of calendar year (CY) 2010 is not enough to cover its output VAT liability in the amounts of ₱38,794,240.40, ₱30,558,428.19, ₱32,329,591.00 and ₱19,799,536.72 for the first, second, third and fourth quarters of CY 2010, respectively, the substantiated input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT of ₱21,284,945.53, ₱15,878,305.30, ₱18,054,543.10 and ₱6,183,495.57 for the first, second, third and fourth quarters of CY 2010, respectively, thereby resulting to excess input VAT of ₱577,749.65, ₱5,963,252.68, ₱7,866,920.40 and ₱37,050,412.97 for the first, second, third and fourth quarters of CY 2010, respectively, to wit:

	1st Qtr	**2nd Qtr**	**3rd Qtr**	**4th Qtr**	**Total**
Output tax on VAT Sales per assailed Decision[11]	₱38,794,240.40	₱ 30,558,428.19	₱ 32,329,591.00	₱ 19,799,536.72	₱ 121,481,796.31
Less: Input VAT allocated to VAT Sales *(H)*	17,509,294.87	14,680,122.89	14,275,047.90	13,616,041.15	60,080,506.80
Remaining output tax	₱21,284,945.53	₱ 15,878,305.30	₱ 18,054,543.10	₱ 6,183,495.57	₱ 61,401,289.50
Less: Input VAT allocated to zero-rated sales *(G)*	21,862,695.18	21,841,557.98	25,921,463.50	43,233,908.54	112,859,625.20
Excess Input VAT	**(₱577,749.65)**	**(₱5,963,252.68)**	**(₱7,866,920.40)**	**(₱37,050,412.97)**	**(₱51,458,335.70)**

Also, relying on the provision of Revenue Memorandum Circular (RMC) No. 61-05, specifically, Question/Answer 26, petitioner maintains that its sales of power to Cebu III Electric Cooperative (CEBECO III), a pass-through entity, are subject to VAT zero-rating 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. Accordingly, said RMC mandates that the payment of the end-user for the power it purchased, even if passed through a distribution company, shall form part of the generation company's gross receipts. Hence, 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. As such, petitioner concludes that

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[10] With ₱0.01 difference due to rounding off.
[11] CTA Case No. 8450, Docket (Vol. V), p. 2411.

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.

The Court agrees with petitioner's contentions.

It bears noting that 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."

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.
>
> xxx xxx xxx
>
> *"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

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> 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,[12] 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.
>
> 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. x x x
>
> (n) Pursuant to RMC 61-2005, sales of electricity by GC, TRANSCO, and DUs [or] to Philippine

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

> 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"

It can be inferred from the foregoing that 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- *ge* registered 100% exporter, then the transaction should qualify for VAT zero-rating.

In the instant cases, petitioner sold power to CEBECO III, a duly registered electric cooperative, as evidenced by the Certificate of Registration[13] issued by the National Electrification Administration. Accordingly, such sales to CEBECO III are pass through charges and are eventually distributed to BEC and CCC, PEZA and BOI-registered entities, respectively, thus, qualify for VAT zero-rating.

Based from petitioner's Schedule of Gross Sales (Vatable, Zero-Rated, VAT-Exempt and Sales to Government)[14], petitioner had zero-rated sales of power to CEBECO III in the amount of ₱141,553,909.52.

A scrutiny of petitioner's ORs[15] and invoices[16] issued to CEBECO III and the statements of accounts (SOAs) and ORs issued by CEBECO III to BEC and CCC[17] reveals that the amount of zero-rated sales were indicated in the VAT ORs issued by petitioner to CEBECO III. Further, the corresponding VAT sales invoices issued by petitioner to CEBECO III show the breakdown of the power (in kwh) distributed to the end-users, including BEC and CCC, which may be traced to the SOAs issued by CEBECO III to BEC and CCC. However, certain pass through charges to BEC and CCC are not supported by ORs and SOAs upon which the distributed power may be traced. Further, the ORs issued by CEBECO III to BEC and CCC failed to comply with Section 113(B)(2)(c) of the NIRC of 1997, as amended, which provides that *"the term '**zero-rated sale**' shall be written or printed prominently on the invoice or receipt".*

The details of the foregoing findings are summarized hereunder:

ORs issued by petitioner to CEBECO III			Sales Invoice issued by petitioner to CEBECO III				SOA issued by CEBECO III to BEC & CCC			OR issued by CEBECO III to BEC & CCC		
Exh.	OR No.	Zero-Rated Sales	Exh.	SI No.	Charged To (among others):	kWh	Exh.	Bill No.	kWh used	Exh.	OR No.	Amount
First Quarter												

[13] Exhibit "II", CTA Case No. 8450, Docket (Vol. II), p. 737.
[14] Exhibit "EEE", Pet's FOE Binder.
[15] Exhibits "GGGG", "IIII", "KKKK", "NNN", "QQQQ", "TTTT", "WWWW", "AAAAA", "BBBBB", "EEEEE", "HHHHH", "KKKKK", CTA Case No. 8450, Docket (Vol. II), pp. 809-839.
[16] Exhibits "EEE-10", "EEE-19", "EEE-25", "EEE-32", "EEE-40", "EEE-44", "EEE-48", "EEE-53", "EEE-60", "EEE-184", "EEE-205" and "EEE-242", Original Box 2, Book 11 of 11.
[17] Exhibits "CCCC-1" to CCCC-24" and "DDDD-1" to "DDDD-24", Pet's FOE Binder.

• No supporting SOA to which the power distributed to BEC & CCC may be traced and no supporting OR issued by CEBECO III to BEC & CCC												
					BEC	1,851,266.18						
GGGG	2400	₱ 12,680,426.68	EEE-242	0948	CCC	1,462,722.00						
• The supporting ORs issued by CEBECO III to BEC & CCC was not imprinted with the word "zero-rated"												
					BEC	1,587,370.25	DDDD-1	8253119	1,587,370.07	DDDD-13	025224	₱ 7,394,824.59
IIII	2409	12,134,268.44	EEE-10	0963	CCC	1,513,700.00	CCCC-1	8254913	1,488,000.00	CCCC-13	CN532172	7,363,839.30
					BEC	2,181,075.43	DDDD-2	8718047	2,181,075.27	DDDD-14	025243	11,464,848.53
KKKK	2416	14,901,903.75	EEE-19	0975	CCC	1,506,446.00	CCCC-2	8718048	1,482,646.00	CCCC-14	CN0007900	7,815,805.32
subtotal		***39,716,598.87***										
Second Quarter												
• The supporting ORs issued by CEBECO III to BEC & CCC was not imprinted with the word "zero-rated"												
					BEC	1,985,351.70	DDDD-3	8777270	1,985,351.70	DDDD-15	025284	10,823,404.64
NNNN	2423	12,340,720.59	EEE-25	0986	CCC	1,366,800.00	CCCC-3	8776858	1,344,000.00	CCCC-15	CN618818	7,216,064.70
					BEC	2,015,231.70	DDDD-4	8831777	2,015,231.70	DDDD-16	030010	10,268,233.56
QQQQ	2438	14,028,177.37	EEE-32	0998	CCC	1,512,300.00	CCCC-4	8831776	1,488,000.00	CCCC-16	CN0007901	7,488,541.80
subtotal		***26,368,897.96***										
Third Quarter												
• The supporting ORs issued by CEBECO III to BEC & CCC was not imprinted with the word "zero-rated"												
					BEC	1,646,252.03	DDDD-5	8894447	1,646,252.03	DDDD-17	030044	9,137,914.96
TTTT	2449	10,995,457.31	EEE-44	1010	CCC	1,462,000.00	CCCC-5	8904118	1,440,000.00	CCCC-17	CN671345	7,725,798.90
					BEC	1,808,672.33	DDDD-6	8955437	1,808,672.33	DDDD-18	030078	9,349,758.66
WWWW	2458	12,691,694.88	EEE-48	1024	CCC	1,509,900.00	CCCC-6	8955436	1,488,000.00	CCCC-18	CN818992	7,404,655.70
					BEC	1,977,511.09	DDDD-7	9010251	1,977,511.09	DDDD-19	032403	10,335,192.59
AAAAA	2472	13,943,445.96	EEE-53	1040	CCC	1,463,200.00	CCCC-7	8955436	1,440,000.00	CCCC-19	CN941250	7,554,030.10
					BEC	2,090,027.63	DDDD-8	9064388	2,090,027.63	DDDD-20	032442	11,634,427.91
BBBBB	2483	3,148,687.77	EEE-60	1052	CCC	1,409,063.57	CCCC-8	9064389	1,488,000.00	CCCC-20	CN902014	8,247,224.30
subtotal		***40,779,285.92***										
Fourth Quarter												
• The supporting ORs issued by CEBECO III to BEC & CCC was not imprinted with the word "zero-rated"												
					BEC	1,962,103.85	DDDD-9	9123877	1,962,103.85	DDDD-21	032474	9,342,893.30
EEEEE	2494	12,168,778.25	EEE-184	1067	CCC	1,374,259.49	CCCC-9	9133273	1,349,659.49	CCCC-21	CN857748	6,689,616.77
					BEC	1,844,842.86	DDDD-10	9177315	1,844,842.86	DDDD-22	034903	9,260,977.48
HHHHH	2498	11,593,201.97	EEE-40	1082	CCC	1,317,436.97	CCCC-10	9177316	1,292,036.97	CCCC-22	CN0007902	6,926,311.25
					BEC	1,907,554.38	DDDD-11	9241042	1,907,554.38	DDDD-23	03499	9,169,293.95
KKKKK	2510	10,927,146.55	EEE-205	1102	CCC	1,371,840.73	CCCC-11	9240579	1,342,640.73	CCCC-23	CN0007903	6,856,825.04
subtotal		***34,689,126.77***										
Total		**₱141,553,909.52**										

Thus, the reported zero-rated sales of power to CEBECO III in the amount of ₱141,553,909.52 shall properly be denied VAT zero-rating.

Considering that petitioner had excess input VAT for the four quarters of CY 2010, and only the valid zero-rated sales for the fourth quarter of CY 2010 in the amount of ₱475,620,199.66 was computed in the assailed Decision[18], the Court shall determine the valid zero-rated sales of petitioner to BEC and CCC for the first, second and third quarters of CY 2010.

In support of its zero-rated sales for the first to third quarters of CY 2010, petitioner presented various sales invoices and ORs[19] issued to BEC and CCC.

Upon examination of the said documents, the Court finds that the total amount of ₱6,051,499.82, representing petitioner's sales to BEC and CCC for the first to second quarters of CY 2010 are not covered by VAT zero-rated ORs, thus, shall be denied VAT zero-rating, to wit:

Exhibit	OR No.	Amount per Schedule[20]	Amount per OR	Amount Disallowed
1st Quarter				
EEE-68	2218	₱ 116,667,245.94	₱ 115,477,518.84	₱ 1,189,727.10
EEE-86	2224		*53,000,000.00*	
EEE-87	2227		*49,543,364.82*	
		103,638,063.94	102,543,364.82	1,094,699.12
EEE-88	2230		*39,600,000.00*	
EEE-89	2233		*21,827,358.41*	
EEE-90	2235		*59,101,931.84*	
		121,808,085.43	120,529,290.25	1,278,795.18
subtotal				***₱ 3,563,221.40***
2nd Quarter				
EEE-133	2253		*27,492,256.16*	
EEE-133	2253		*83,815,213.48*	
		113,795,748.06	111,307,469.64	2,488,278.42
subtotal				***₱ 2,488,278.42***
Total				**₱ 6,051,499.82**

Consequently, out of the total declared zero-rated sales of ₱1,795,661,825.13, only the amount of ₱1,634,466,914.48 represents petitioner's valid zero-rated sales for the four quarters of CY 2010, as computed below: *gr*

[18] CTA Case No. 8450, Docket (Vol. V), p. 2416.
[19] Exhibits "EEE-1" to "EEE-172", FOE Original Box 2, Book 11 of 11.
[20] Exhibit "EEE", Petitioner's FOE Binder.

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter[21]	Total
Zero-Rated Sales per Returns	₱ 403,664,957.64	₱ 378,881,751.80	₱ 489,216,287.95	₱ 523,898,827.74	₱ 1,795,661,825.13
Less: Disallowances on					
Sales to BEC & CCC	3,563,221.40	2,488,278.42		13,589,501.31	19,641,001.13
Sales to CEBECO III	39,716,598.87	26,368,897.96	40,779,285.92	34,689,126.77	141,553,909.52
Valid Zero-Rated Sales as Adjusted	**₱360,385,137.37**	**₱350,024,575.42**	**₱448,437,002.03**	**₱475,620,199.66**	**₱1,634,466,914.48**

Considering the foregoing, the excess input VAT attributable to zero-rated sales of ₱51,458,335.70 and the adjusted valid zero-rated sales of ₱1,634,466,914.48 shall be incorporated in the computation of the refundable input VAT for the CY 2010.

Accordingly, petitioner's excess input VAT in the total amount of ₱51,458,335.70 is attributable to the entire amount of ₱1,795,661,825.13 zero-rated sales declared by petitioner in its Quarterly VAT Returns for the four quarters of CY 2010. However, only the input VAT of ₱46,872,156.51 is attributable to the valid zero-rated sales of ₱1,634,466,914.48, as computed below:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Excess input VAT attributable to zero-rated sales	₱ 577,749.65	₱ 5,963,252.68	₱ 7,866,920.40	₱ 37,050,412.97	₱ 51,458,335.70
Divide by Declared Zero-Rated Sales	403,664,957.64	378,881,751.80	489,216,287.95	523,898,827.74	1,795,661,825.13
Multiply by Valid Zero-Rated Sales	360,385,137.37	350,024,575.42	448,437,002.03	475,620,199.66	1,634,466,914.48
Refundable Input VAT attributable to Zero-Rated Sales	**₱ 515,804.96**	**₱ 5,509,067.08**	**₱ 7,211,162.60**	**₱ 33,636,121.86**	**₱ 46,872,156.51**

Respondent's Motion for Partial Reconsideration

Respondent contends that petitioner has no excess input taxes for the fourth quarter of taxable year 2010 for the latter failed to substantiate its claims as prescribed under Sections 110 and 113 of the NIRC of 1997 and Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005; that petitioner failed to prove that its alleged input taxes for the fourth quarter is directly attributable to its zero-

[21] Per the Assailed Decision, CTA Case No. 8450, Docket (Vol. V), p. 2416.

rated sales; and that petitioner failed to prove that it had zero-rated or effectively zero-rated sales for the fourth quarter of taxable year 2010 as the sales invoices and ORs issued to BEC and CCC are insufficient in proving that petitioner had zero-rated sales.

Respondent's motion is unmeritorious.

A cursory reading of the foregoing arguments presented by respondent readily reveals that no new matters or issues have been raised and that they deal with the very same issues which have been thoroughly passed upon at length in our assailed Decision[22] dated June 9, 2017. Thus, to discuss them anew is a superfluity.

In the case of *Shangri-La International Hotel Management, Ltd., et al. vs. Developers Group of Companies, Inc.*[23], the Supreme denied respondent's Motion for Reconsideration for being a mere reiteration of their previous arguments and for failure to raise matters substantially plausible or compellingly persuasive to warrant the reversal of the assailed Decision, to wit:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration**, is **PARTIALLY GRANTED**, while respondent's **Motion for Partial Reconsideration Re: Decision dated 9 June** Jc

[22] Docket (Vol. V), pp. 2036-2038.
[23] G.R. No. 159938, January 22, 2007.

2017, is **DENIED** for lack of merit. Accordingly, the dispositive portion of this Court's Decision dated June 9, 2017, is hereby amended to read as follows:

> "**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱46,872,156.51**, representing the latter's excess input VAT for the first to fourth quarters of CY 2010 attributable to its zero-rated sales/receipts.
>
> **SO ORDERED**."

SO ORDERED.

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice