REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

ENERGY DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7792

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JUN 1 1 2012
ABFernando 3:45p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Energy Development Corporation (hereafter "petitioner EDC") praying for the issuance of a tax credit certificate (TCC) or refund of the total amount of P293,058,460.62, OHL representing petitioner's excess and unutilized creditable income taxes attributable to its zero-rated sales of steam and electricity for the year 2006.

THE PARTIES

Petitioner EDC is a corporation duly organized and existing under the laws of the Republic of the Philippines under Securities and Exchange Commission Registration No. 66381, with principal office at Building V, Energy Center, Merritt Road, Fort Bonifacio, Taguig City.

On the other hand, respondent is the duly appointed CIR who is mandated by law to enforce and implement the *National Internal Revenue Code of 1997, as amended* (hereafter the "NIRC of 1997, as amended"), and related statutes, including, among others and in proper cases, the issuance of a tax credit certificate, with office address at the BIR National Office Building, Diliman, Quezon City.

THE FACTS

The facts, as stipulated by the parties in their Joint Stipulation of Facts and Issues, are, as follows:

> "3. Petitioner is a domestic corporation primarily engaged in the business of exploration, development and utilization of renewable energy resources, including selling of electricity and geothermal steam. It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer.

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4. On April 26, 2006, July 26, 2006, October 25, 2006 and January 29, 2007, petitioner filed its quarterly VAT returns for the 1st to 4th quarters of 2006. Subsequently, petitioner filed an amended VAT return on December 28, 2007 for the quarter ending December 31, 2006, declaring among others the amount of Php 293,058,460.62 as creditable VAT input attributable to its zero-rated electricity and steam sales.

5. On January 7, 2008, which is within the two-year period under Section 112(A) of the NIRC, PNOC-EDC duly filed with the large Taxpayer's District Office (LTDO) of Makati City a claim for tax credit/refund, with complete attachment of documentary support, of PNOC-EDC's input VAT attributable to its zero-rated sale of steam and electricity amounting to Php293,058,460.62 for the year 2006."

Due to respondent's failure to act on said claim, on June 5, 2008, petitioner EDC filed the present Petition for Review.

In her Answer, respondent by way of special and affirmative defenses alleged the following:

"3. Petitioner's claim for refund/tax credit of its alleged unutilized input taxes for the 1st quarter of 2006 has already prescribed.

4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable.

6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

> 7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the 1997 Tax Code including Revenue Regulations No. 5-87 as amended by Revenue Regulations Nos. 3-88 and 7-95, as amended, as well as the requirements imposed under Republic Act No. 9337.
>
> 8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

Petitioner EDC presented Jose C. Catequista, Felicito A. Gesite, and Romeo T. Lupac, as witnesses, and formally offered documentary evidence, marked as *Exhibits "A" to "JJJJ"*, inclusive of their submarkings, which were admitted by the Court, except for *Exhibits "A" to "J"* for petitioner's failure to have the same identified, and *Exhibit "W-23"* for petitioner's failure to submit the duly marked document, in the Resolutions dated September 13, 2010 and December 13, 2010, after petitioner filed a "Motion for Reconsideration".

On the other hand, respondent, thru counsel, manifested that she will not present any evidence and submitted the case for decision.

Both parties were granted thirty (30) days from March 7, 2011 to file their simultaneous memoranda afterwhich, the case shall be deemed submitted for decision.

Both parties having filed their respective memorandum, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for the Court's consideration:

I
WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT IN THE AMOUNT OF P293,058,460.62 FOR THE FOUR (4) QUARTERS OF 2006 ATTRIBUTABLE TO THE PETITIONER'S ZERO-RATED SALE OF STEAM AND ELECTRICITY.

II
WHETHER OR NOT PETITIONER'S ALLEGED UNUTILIZED INPUT VAT FOR THE FOUR (4) QUARTERS OF 2006 HAVE BEEN APPLIED AGAINST ITS OUTPUT TAXES FOR THE SUCCEEDING TAXABLE QUARTER/YEARS.

III
WHETHER OR NOT PETITIONER'S SALE OF STEAM AND ELECTRICITY QUALIFIES AS ZERO-RATED SALES.

IV
WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND/TAX CREDIT OF ALLEGED INPUT VAT ALLEGEDLY ATTRIBUTABLE TO ITS ZERO-RATED SALES OF STEAM AND ELECTRICITY FOR THE FOUR

(4) QUARTERS OF 2006 IN THE TOTAL AMOUNT OF PHP293,058,460.62 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not petitioner is entitled to a claim for refund of its alleged unutilized input VAT for the four (4) quarters of 2006, allegedly attributable to its zero-rated sales of steam and electricity.

THE COURT'S RULING

The petition is partly meritorious.

In its original Quarterly VAT Returns for taxable year 2006, petitioner declared, as follows:

	First Quarter	Output Tax	Second Quarter	Output Tax
Vatable Sales/Receipt	P1,093,645.98	P131,237.52	P1,117,587.80	P134,110.54
Sale to Government	0.00	0.00	00.00	00.00
Zero Rated Sales/Receipts	P4,525,402,553.64		P5,328,461,769.38	
Exempt Sales/Receipts	0.00	00.00	00.00	00.00
Total Sales/Receipts and Output Tax Due	P4,526,496,199.62	P114,113.17	P5,329,579,357.18	P134,110.54
	Purchases	**Input Tax**	**Purchases**	**Input Tax**
Input tax carried over from previous quarter		P20,092,465.36		P19,981,978.37

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Current Transactions				
Purchase of Capital Goods not exceeding P1Million	00.00	00.00	00.00	00.00
Purchase of Capital Goods exceeding P1Million	00.00	00.00	00.00	00.00
Domestic Purchases of Goods Other than Capital Goods	00.00	00.00	00.00	00.00
Importation of Goods other than Capital Goods	00.00	00.00	00.00	00.00
Domestic Purchases of Services	00.00	00.00	00.00	00.00
Total Current Purchases	00.00	00.00	00.00	00.00
Total Available Input Tax		P20,092,465.36		P19,981,978.37
				(Exhibits "E" and "F")

	Third Quarter	**Output Tax**	**Fourth Quarter**	**Output Tax**
Vatable Sales/Receipt	P1,392,394.14	P167,087.30	P2,801,670.82	P336,200.50
Sale to Government	356,142.75	42,737.13	356,142.75	42,737.13
Zero Rated Sales/Receipts	P5,434,636,648.88		P5,561,386,464.80	
Exempt Sales/Receipts	00.00	00.00	00.00	00.00
Total Sales/Receipts and Output Tax Due	P5,436,385,185.77	P209,824.43	P5,564,544,278.37	P378,937.63
	Purchases	**Input Tax**	**Purchases**	**Input Tax**

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Input tax carried over from previous quarter		P19,847,867.83		P19,664,635.40
Current Transactions				
Purchase of Capital Goods not exceeding P1Million	00.00	00.00	00.00	00.00
Purchase of Capital Goods exceeding P1Million	00.00	00.00	00.00	00.00
Domestic Purchases of Goods Other than Capital Goods	00.00	00.00	208,824,709.45	21,390,163.78
Importation of Goods other than Capital Goods	00.00	00.00	00.00	00.00
Domestic Purchases of Services	00.00	00.00	771,250,483.47	80,696,423.84
Total Current Purchases	00.00	00.00	00.00	80,696,423.84
Total Available Input Tax		P20,092,465.36		P121,751,223.30
		(Exhibits "G" and "H")		

While in its amended Quarterly VAT Returns for the fourth quarter of 2006, petitioner declared, as follows:

	Fourth Quarter	**Output Tax**
Vatable Sales/Receipt	P2,801,670.82	P336,200.50
Sale to Government	356,142.75	42,737.13
Zero Rated Sales/Receipts	**P5,561,386,464.80**	
Exempt Sales/Receipts	00.00	00.00
Total Sales/Receipts and Output Tax Due	P5,564,544,278.37	P378,937.63
	Purchases	**Input Tax**

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Input tax carried over from previous quarter		P19,664,635.40
Current Transactions		
Purchase of Capital Goods not exceeding P1Million	00.00	00.00
Purchase of Capital Goods exceeding P1Million	1,361,479,053.87	163,377,579.66
Domestic Purchases of Goods Other than Capital Goods	103,311,959.19	10,751,143.16
Importation of Goods other than Capital Goods	00.00	00.00
Domestic Purchases of Services	1,104,207,320.46	118,929,737.80
Total Current Purchases	P2,568,998,333.52	**P293,058,460.62**
Total Available Input Tax		P312,723,096.02
		(Exhibit "I")

Based on the foregoing, the input VAT for the 4th quarter of taxable year 2006 in the amount of P293,058,460.62, the subject of the claim for refund or issuance of TCC in the instant case, is attributable to petitioner's total sales of P5,564,544,278.37 for the 4th quarter of 2006 composed of a) vatable sales in the amount of P2,801,670.82; b) sale to the government in the amount of P356,142.75; and c) zero-rated sales in the amount of P5,561,386,464.80. Considering that petitioner is claiming for refund or issuance of TCC based on its zero-rated sales, then only the portion of the input VAT of P293,058,460.62 that is attributable to zero-rated sales will be considered by the Court, computed, as follows:

Zero rated sale	P5,561,386,464.80
Divided by total sales for the fourth quarter	5,564,544,278.37
Ratio of zero-rated sale over total sales	99.94%
Multiplied by total input VAT for the 4th quarter	P293,058,460.62

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Input VAT attributable to zero-rated sales that may be the subject of claim for refund or issuance of TCC **P292,882,625.54**

Having determined the input VAT attributable to zero-rated sales that may be the subject of the claim for refund or issuance of TCC, we now proceed to determine whether or not petitioner is entitled to the claim for refund in view of the requirements prescribed by law and jurisprudence.

In the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue, 605 SCRA 55,* the Supreme Court ruled that to claim for refund or tax credit under *Section 112(A)*, petitioner must comply with the following requisites:

1) The taxpayer is VAT-registered;

2) The taxpayer is engaged in zero-rated or effectively zero-rated sales;

3) The input taxes are due or paid;

4) The input taxes are not transitional input taxes;

5) The input taxes have not been applied against output taxes during and in the succeeding quarters;

6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

7) For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign

currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

8) Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

9) The claim is filed within two years after the close of the taxable quarter when such sales were made.

First Requisite – Taxpayer is VAT Registered

As regards the first requisite, records show that petitioner is a VAT registered taxpayer, as shown by its BIR Certificate of Registration No. OCN8RC0000018374 *(Exhibit "C")*, wherein it has been issued a Taxpayer Identification No. 000-169-125 *(Exhibit "D")*.

Second Requisite – Taxpayer is Engaged in Zero-Rated or Effectively Zero-Rated Sales

As regards the second requisite, petitioner claims that under *Section 108 (7) of the NIRC of 1997, as amended by RA 9337*, the 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 is zero-rated.

In this regard, *Section 6 of RA 9337* provides:

"SEC. 6. Section 108 of the same Code, as amended, is hereby further amended to read, as follows:

'SEC. 108. Value-Added Tax on Sale of Service and Use or Lease of Properties. –

(B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx

(7) 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."

Corollary thereto, *Revenue Regulations No. 16-2005*, implementing *RA 9337*, provides:

"SEC. 4.108-3. Definitions and Specific Rules on Selected Services. –

xxx xxx

(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% 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 sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.

'Generation companies' refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.

'Transmission companies' refers to any person or entity that owns and conveys electricity through the high voltage backbone system and/or subtransmission assets, e.g. NPC or TRANSCO. 'Subtransmission assets' shall refer to the facilities related to the power delivery service below the transmission voltages and based on the functional assignment of asset including, but not limited to step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve factor, overhead lines, and the land where such facilities/equipments are located. These include NPC assets linking the transmission system and the distribution system which are neither classified as generation or transmission.

'Distribution companies' refer to persons or entities which operate a distribution system in accordance with the provisions of the EPIRA. They shall include any distribution utility such as an electric cooperative organized pursuant to Presidential Decree No. 269, as amended, and/or under RA No. 6938, or as otherwise provided in the EPIRA, a private corporation, or a government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with the EPIRA.

For this purpose, a distribution system refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or subtransmission system or generator connection and the point of connection to the premises of the end-users.

> xxx xxx."
>
> "SEC. 4.108-5. Zero-Rated Sale of Services. –
>
> xxx xxx
>
> (b) Transactions Subject to Zero Percent (0%) VAT Rate. – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> xxx xxx
>
> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydrogen, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; Provided, however, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

From the above provisions, it is clear that the 1) sale of power generated through renewable sources of energy; and the 2) sale of fuel generated through renewable sources of energy are subject to zero percent (0%) VAT rate provided that such zero-rating shall not extend to the sale of services related to the maintenance or operation of plants generating said power.

The Webster New Collegiate Dictionary defines "power" as a source or means of supplying energy, especially: ELECTRICITY *(5.a., p. 902 thereof)* and the time rate at which work is done or energy is emitted or transferred *(6.c., p. 902 thereof)*. On the other hand, "fuel" is defined as a) a material used to produce heat or power by burning, b) a nutritive material; and c) a material upon which atomic energy can be liberated especially in a reactor [*Webster New Collegiate Dictionary (1977], p. 463)*. The sale of "power" therefore may refer to the sale of electricity itself, while the sale of "fuel" may refer to the material used to produce such power.

The fact that the sale of power or electricity and the sale of fuel are two distinct items in this provision was clarified during the deliberation as shown in Conference Committee Report on SN 1950/ HN 3555 & 3705 (Amending the NIRC for Value Added Tax) dated May 10, 2005, pertinent portion of which reads, as follows:

> "Senator Osmeña. Thank you for that clarification.
>
> Now, Section 7, line 7, the provision reads: 'SALE OF POWER OR FUEL-GENERATED THROUGH RENEWABLE SOURCES OF ENERGY SUCH AS, BUT NOT LIMITED TO,…' and we go on. What about the importation of power or fuel-generated?
>
> Senator Recto. As I understand it, it is zero-rated, Mr. President.
>
> Senator Osmeña. There may be something in the future… In other words, everything has to originate locally – the source of energy must be domestic. I am just anticipating because the

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> word 'biomass' appears here. Baka may mag-import ng 'biomass'. Kasama po ba iyon?
>
> Senator Recto. Well, if they import it, the way I read it, they are subject to VAT. But it is zero-rated and they can get their refund.
>
> Senator Osmeña. So, it will be a VAT zero-rated?
>
> Senator Recto. That is right.
>
> xxx xxx."

The criteria required in order that the sale of power or the sale of fuel will be subject to zero percent (0%) VAT is that said power or fuel is generated or produced from renewable sources of energy. *Section 4 (mm) of RA 9136* defines "Renewable Energy Resources" as energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider availability over an indefinite time. These include, among others, biomass, solar, wind, hydro and ocean energy. In addition to the above enumeration by example, *RA 9337* also mentioned geothermal and other emerging energy sources using technologies, such as fuel cells and hydrogen fuels, as renewable sources of energy.

Unlike in *RA 9136*, which subjects to zero percent VAT the sales of generated power by generation companies, to wit:

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> "Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated." *(Section 6, 5th paragraph thereof)*.

RA 9337, which repealed the above *Section 6, 5th paragraph of RA 9136*, subjects to zero percent (0%) VAT the sale of power or fuel generated through renewable sources of energy, without qualifying that said zero rating must pertain only to the sale of power by generation companies or to the sale of power or electricity. Instead, *RA 9337* subjects to zero percent rate (0%) all sales of power, or all sales of fuel, as long as said power/electricity and fuel are generated or produced from renewable sources of energy. Thus, in *RA 9337*, the seller of power/electricity or the seller of fuel must not only be limited to generation companies, unlike in *RA 9136*.

In fact, *RA 9513*, an "Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes" provides that the provision subjecting to zero percent VAT rate the sale of fuel or power generated from renewable sources of energy pursuant to the *NIRC of 1997, as amended by RA 9337*, shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors *(Section 15 (g), Chapter VII thereof)*.

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A perusal of petitioner's Amended Articles of Incorporation shows that petitioner is engaged in the exploration, discovery, development, extraction, digging and drilling for, production, utilization, refinement, treating, processing, transporting, marketing, using, experimenting with, distributing, manufacturing, smelting or otherwise dealing in, any substance, mineral or otherwise, which by itself or in combination with other substance, or after processing or refining, or the application to it of technology emanates, gives off, generates or causes the emanation of generation of heat or power or energy such as, but not limited to geothermal sources of heat and power *(Exhibits "FFF" to " FFF-18").*

Petitioner presented the following documentary evidence:

POWER PURCHASE AGREEMENTS				
Exhibit	**Name of Contract**	**Date of Effectivity**	**Termination Date**	**Relevant Provisions of the Agreement** *(emphasis supplied)*
YYY	Leyte A Geothermal Power Plant Purchase Agreement	March 15, 1994 *(Annex E1, thereof)*	July 24, 2021 *(supra)*	"WHEREAS, PNOC-EDC wishes to **sell electrical energy from the geothermal power plants** to NPC and the latter agrees to purchase said electrical energy under the terms and conditions hereunder" *(p. 1 thereof).* "This Agreement shall refer to the **sale of electrical energy** by PNOC-EDC to NPC xxx" *(Article 2, p. 2 thereof)*
ZZZ	Mindanao I Geothermal Power Plant Purchase Agreement	May 15, 1995 *(Annex D1 thereof)*	February 15, 2022 *(supra)*	"WHEREAS, PNOC-EDC wishes to **sell electrical energy from the geothermal power plants** to NPC and the latter agrees to purchase

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				said electrical energy under the terms and conditions hereunder" *(p. 1 thereof)* "This Agreement shall refer to the **sale of electrical energy** by PNOC-EDC to NPC xxx" *(Article 3, p. 4)*
BBBB	Mindanao II Geothermal Power Plant Power Purchase Agreement	June 1, 1998 *(Title page thereof)*	June 17, 2024*(Annex D1 thereof)*	"WHEREAS, PNOC-EDC wishes to **sell electrical energy from the geothermal power plants** to NPC and the latter agrees to purchase said electrical energy under the terms and conditions hereunder" *(p. 1 thereof)* "This Agreement shall refer to the **sale by PNOC-EDC to NPC of the electricity** xxx" *(Article 2, p. 5)*
GEOTHERMAL STEAM SALES AGREEMENTS				
CCCC	Bacon-Manito Sales Contract for Geothermal Resources	November 18, 1988 *(Title page thereof)*	November 18, 2013 *(Section 3.1, p. 4 thereof)*	"WHEREAS, the CONTRACTOR wishes to sell the **Geothermal Resources** produced pursuant to such Service Contract to NPC; and xxx NPC desires to purchase such Geothermal Resources produced for purposes of generating electrical energy" *(p. 1 thereof)*
DDDD	Bacon-Manito Geothermal Power Plant II Geothermal Resources Sales Contract	Mach 15, 1994*(Section 2.11, p. 3 thereof)*	March 15, 2019 *(Section 3.1, p. 6 thereof)*	"WHEREAS, the CONTRACTOR has developed **Geothermal Resources** in Commercial Quantity and Quality form its Contract Area, has sold to NPC such Geothermal Resource produced from said area and has committed to continue selling to NPC such Geothermal Resource; xxx WHEREAS, NPC has accepted the CONTRACTOR'S offer, and has committed to purchase and utilize the **Geothermal Resources for the generation of electric power** for transmission and distribution to

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				the customers" *(p. 1 thereof)*
EEEE	Palinpinon I Sales Contract for Geothermal Resources	December 25, 1988 *(Section 3.1 thereof)*	December 25, 2008 *(supra)*	"WHEREAS, the CONTRACTOR has developed **Geothermal Resources** in Commercial Quantity and Quality from its Contract Area and has sold to NPC such Geothermal Resources produced from said area at guaranteed steam specifications as stated Annex I and has committed to continue selling to NPC such Geothermal Resource; xxx WHEREAS, NPC has accepted CONTRACTOR'S offer, and has committed to purchase and utilize the **Geothermal Resources for the generation of electric power** for transmission and distribution to its customers" *(p. 1 thereof)*
FFFF	Geothermal Resources Sales Contract (Palinpinon Geothermal Power Plant II)	December 13, 1993 *(Section 2.11, p. 3 thereof)*	December 13, 2018 *(Section 3.1, p. 5 thereof)*	"WHEREAS, the CONTRACTOR has developed **Geothermal Resources** in Commercial Quantity and Quality form its Contract Area, has sold to NPC such Geothermal Resource produced from said area and has committed to **continue selling to NPC such Geothermal Resource**; and xxx WHEREAS, NPC has accepted the CONTRACTOR'S offer, and has committed to **purchase and utilize the Geothermal Resources for the generation of electric power** for transmission and distribution to its customers" *(p.1 thereof)*
AAAA	Tongonan I Sales Contract for Geothermal Resource	June 29, 1984 *(p. 21 thereof)*	June 29, 2009 *(Section 3.1, p. 5 thereof)*	"WHEREAS, the CONTRACTOR wishes to sell **Geothermal Resources** produced pursuant to such Service Contract to NPC xxx. WHEREAS, NPC desires to

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				purchase such **Geothermal Resources produced for purposes of generating electrical energy** *(p.1 thereof)*

On direct examination, petitioner's witness, Romeo T. Lupac, testified that by reason of said contracts, petitioner generated sales of geothermal steam and electricity *(Exhibit "JJJJ" and TSN dated May 27, 2010, pp. 7-10)*.

A perusal of said Power Purchase Agreements and Geothermal Steam Sales Agreements shows that petitioner is engaged in selling of geothermal steam and electrical energy generated through geothermal power plants. Accordingly, said sale of services falls within the ambit of *Section 108 (B) (7) of the NIRC of 1997, as amended by RA 9337.*

The Court Commissioned Independent CPA, Jose C. Catequista, in his report found that for the 4th quarter of taxable year 2006 petitioner has a total zero-rated sales with VAT OR and stamped with "Zero-rated Sale" of P5,794,222,162.36 and petitioner has zero-rated sales adjustments supported by journal vouchers in the amount of P284,716,252.76 *(Exhibit "NNN")*. Hence, after considering the adjustments, the total zero-rated sales with valid support for the fourth quarter of 2006 as found by the Court Commissioned ICPA, amounts to P5,509,505,709.00. Also, the Court Commissioned ICPA noted certain exceptions in the total amount of P51,880,755.20. Verification of the records, however, shows that the noted exception of P51,880,755.20 does not form part of the P5,509,505,709.00 validly supported zero-rated sales.

After a careful examination of the supporting documents submitted by petitioner, the Court finds that out of the P5,509,505,709.00 allegedly validly supported zero-rated sales:

1) P3,161,713,051.01 are with Official Receipts, dated beyond 2006, the period of claim *(Annex "1" of this Decision)*; and

2) P338,368,432.83 are without supporting documents *(Annex "2" of this Decision)*.

Accordingly, the Court hereby excludes the amount of P3,500,081,483.84 (P3,161,713,051.01+ P338,368,432.83) from petitioner's validly supported zero-rated sales. Thus, the substantiated zero-rated sales of petitioner for the 4th quarter of taxable year 2006 amounts to P2,009,424,225.76, computed, as follows:

Total zero-rated sales with valid support as found by the Court-Commissioned ICPA after considering adjustments		P5,509,505,709.60
Less: Court's Findings		
1) Zero-rated sales with OR dated outside the		

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period of claim	P3,161,713,051.01	
2) Zero-rated sales without supporting documents	P338,368,432.83	
Total zero-rated sales that should be excluded		P3,500,081,483.84
Valid zero-rated sales for the 4th quarter of taxable year 2006		P2,009,424,225.76
Allocation Factor for Zero-rated Sates		
Valid zero-rated sales for the 4th quarter of taxable year 2006		2,009,424,225.76
Divided by the total zero-rated sales per VAT returns for the 4th quarter of 2006		5,561,386,464.80
Allocation Factor for Zero-rated Sales		**36.13%**

Third, Fourth, Fifth and Sixth Requisites

As regards the requisites that input taxes, which are not transitional input taxes, must be attributable to zero-rated sales, and must not have been applied to any output tax liability during and in the succeeding quarters, petitioner's Amended Quarterly VAT Returns for the 4th quarter of 2006 *(Exhibit "I")* shows that it incurred input taxes in the amount of P293,058,460.62, broken down, as follows:

	Purchases	**Input Tax**
Purchases of Capital Goods exceeding P1 Million	P1,361,479,053.87	P163,377,579.66
Domestic Purchases of Goods Other than Capital Goods	103,311,959.19	10,751,143.16
Domestic Purchases of Services	1,104,207,320.46	118,929,737.80
Total		**P293,058,460.62**

Out of the P293,058,460.62 input VAT for the 4th quarter of taxable year 2006 claimed by petitioner, the Court-Commissioned ICPA found that only the amount of P271,553,316.29 are validly substantiated input VAT consisting of the following:

Particulars	**Amount**	**Annex**
a. Domestic purchases of goods supported by valid invoices	P5,379,262.19	"NN" to "NN-20"

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b. Domestic purchases of goods supported by valid VAT invoices dated not in the quarter of claim but within the calendar year 2006	13,686,394.51	"OO" to "OO-75"
c. Domestic purchases of services supported by valid VAT official receipts	41,877,451.97	"PP" to "PP-110"
d. Domestic purchases of services supported by official receipt dated not in the quarter of claim but within calendar year 2006	47,232,627.96	"QQ" to "QQ-155"
e. Imported capital goods supported by certified true copy IEDs and valid official receipts	163,377,579.66	"RR" to "RR-38"
Total valid input taxes for the 1st, 2nd, 3rd and 4th quarter of 2006	**P271,553,316.29**	

(Exhibit "NNN", pp. 6-7)

The Court-Commissioned ICPA excluded the amount of P21,505,144.33 for the following reasons, to which the Court agrees:

Domestic Purchases of Goods	**Amount**	**Annex**
a. Domestic purchases of goods with invoice in the name of PNOC instead of PNOC-EDC	P362,483.01	"SS" to "SS-2"
b. Domestic purchases of goods supported by OR dated out of the fiscal year	468,696.97	"TT" to "TT-1"
c. Domestic purchases of goods supported by invoices not registered with the BIR	108,000.00	"UU" to "UU-1"
Sub-total	P939,179.98	
Domestic Purchases of Services		
a. Domestic purchases of services supported by invoices only	P1,423,008.77	"VV" to "VV-8"
b. Domestic purchase of services with official receipts(OR) named to PNOC and/or PNOC-EDC's division (e.g. PNOC BGPF, PNOC LPF, etc.) instead of PNOC-EDC	9,460,579.21	"WW" to "WW-41"
c. Domestic purchases of services with official receipts named to PNOC/PNOC Energy instead of PNOC-EDC and dated out of the calendar year 2006	71,872.68	"XX" to "XX-2"
d. Purchase of service supported by OR stamped TIN-VAT and undated support	106,076.26	"YY" to "YY-1"
e. Domestic purchase of service supported by OR different from invoice supporting the input VAT	37,984.11	"ZZ" to "ZZ-1"
f. Input taxes claimed with photocopied supporting documents	150,035.87	"AAA" to "AAA-2"
g. Domestic purchases with no TIN VAT in the OR	1,853,885.99	"BBB" to "BBB-3"
h. Domestic purchases of services supported by OR		

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without the Company's TIN and dated out of the calendar year 2006	1,673,347.74	"CCC" to "CCC-4"
i. Domestic purchases of services supported by OR dated out of the calendar year 2006	1,471,329.27	"DDD" to "DDD-8"
j. Domestic purchases of services supported by Acknowledgment Receipts only	4,317,844.45	"EEE" to "EEE-5"
Sub-total	P20,565,964.35	
Total	**P21,505,144.33**	

Considering that the creditable input tax claimed by petitioner is attributable only to its input VAT declared in the 4th quarter of 2006 *(Exhibit "I")* and petitioner was able to substantiate only its zero-rated sales for the 4th quarter of 2006, the Court will consider only the input VAT for the 4th quarter of 2006. Thus, out of the P271,553,316.29 substantiated input VAT as found by the Court-Commissioned ICPA, the Court will consider only the following:

a) Domestic purchases of goods supported by valid VAT invoices	P5,379,262.19	"NN" to "NN-20"
b) Domestic purchases of services supported by valid VAT official receipts	41,877,451.97	"OO" to "OO-75"
c) Imported capital goods supported by certified true copy IEDs and valid official receipts	163,377,579.66	"RR" to "RR-38"
Total	**P210,634,293.83**	

Input VAT pertaining to 1) domestic purchases of goods supported by valid VAT invoices dated not in the quarter of claim, but within calendar year 2006 in the amount of P13,686,394.51 *(Annexes "OO" to "OO-75")* and 2) domestic purchases of services supported by official receipts dated not in the quarter of claim but within calendar year 2006 in the amount of

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P47,232,627.96 *(Annexes "QQ" to "QQ-155")* are hereby excluded for the above reasons.

a) Domestic Purchases of Goods in the Amount of P5,379,262.19

Verification of the invoices submitted by petitioner *(Annexes "NN" to "NN-20")*, however, shows that out of the domestic purchases of goods in the amount of P5,379,262.19, the amount of P4,354,158.21 *(Annex "3"of this Decision)* should be excluded from the foregoing substantiated input VAT by the Court-Commissioned ICPA for failure to comply with the provision of *Section 113 (B) (2) (a) of the NIRC of 1997, as amended by RA 9337*, which provides that the amount of the tax shall be shown as a separate item in the invoice or receipt. However, the input VAT for Invoice No. 13183, dated November 4, 2006, should be P78,211.07, and not only P43,332.06 *(Annex "NN-18")*. Hence, the duly substantiated input VAT incurred from domestic purchases of goods amounts to P1,059,982.99, computed, as follows:

Domestic purchases of goods supported by valid VAT invoices as found by the Court-Commissioned ICPA		P5,379,262.19
Less: Excluded input VAT for failure to comply with Section 113 (B) (2) (a) of the NIRC of 1997, as amended by RA 9337		4,354,158.21
Difference		P1,025,103.98
Add: Error in the input VAT recognized in Invoice No. 13183 dated November 4, 2006 Recognized Input VAT Should be	 P43,332.06 78,211.07	 P34,879.01
Total Duly Substantiated Input VAT from domestic purchases of goods		**P1,059,982.99**

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b) Domestic Purchases of Services in the Amount of P41,877,451.97

Verification of the Official Receipts submitted by petitioner *(Annexes "PP" to "PP-110"),* however, shows that out of the domestic purchases of services in the amount of P41,877,451.97, the amount of P24,550,810.64 *(Annex "4" of this Decision)* should be excluded from the foregoing substantiated input VAT by the Court-Commissioned ICPA for failure to comply with the provision of *Section 113 (B) (2) (a) of the NIRC of 1997, as amended by RA 9337.* Thus, the duly substantiated input VAT incurred from domestic purchases of services amounts to P17,326,641.33, computed, as follows:

Domestic purchases of services supported by valid VAT invoices as found by the Court-Commissioned ICPA	P41,877,451.97
Less: Excluded input VAT for failure to comply with Section 113 (B) (2) (a) of the NIRC of 1997, as amended by RA 9337	24,550,810.64
Total Validly Substantiated Input VAT from domestic purchases of service	**P17,326,641.33**

c) Imported Capital Goods in the Amount of P163,377,579.66

Verification of the documentary evidence submitted by petitioner *(Annexes "RR" to "RR-38", "QQQ-1" to "QQQ-11", "RRR-1" to "RRR-21", "TTT-1" to "TTT-1.3" and "UUU-1" to "UUU-5")* shows that the input taxes on said importation of capital goods were not incurred during the 4th quarter of 2006. Since the creditable input taxes claimed by petitioner are attributable only to its input VAT for the 4th quarter of 2006 and petitioner was able to substantiate only its zero-rated sales for the 4th quarter of 2006, then we cannot consider the input VAT of P163,377,579.66 from said importation of capital goods.

From the foregoing, the Court finds that the total duly substantiated input VAT amounts only to P18,386,624.32 (total duly substantiated input VAT from domestic purchases of goods of P1,059,982.99 and total duly substantiated input VAT from domestic purchases of services of P17,326,641.33).

Seventh and Eight Requisites

Considering that petitioner's sales of steam and electricity were made within the Philippines, the seventh requisite is not applicable to the instant case.

As regards the eight requisite, considering that petitioner declared in its Quarterly VAT Returns both sales subject to VAT and zero-rated sales, We hereby proportionately apportion the substantiated input VAT attributable to petitioner's zero-rated sales, as follows:

Duly substantiated input VAT for the 4th quarter of 2006	P18,386,624.32
Multiplied by the percentage of declared zero-rated sales to total sales	99.94%
Substantiated input VAT attributable to declared zero rated sales	18,375,592.35

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Multiplied by the percentage of total substantiated zero-rated sales to declared zero-rated sales for the 4th quarter of 2006	36.13%
Refundable Input VAT for the 4th quarter of 2006 attributable to substantiated zero-rated sales	**P6,639,101.52**

Ninth Requisite

Finally, the last requisite, whether petitioner's claim for refund was timely filed within the period prescribed by law, specifically, *Section 112 (A) of the NIRC of 1997, as amended*, as regards the period to file the administrative claim for refund, which is within two (2) years after the close of the taxable quarter when the sales were made, and *Section 112 (D) of the same Code*, as regards the period to file the judicial claim for refund, which is within 30 days from receipt of the decision of the CIR, or from the lapse of the 120-day period when no decision is made by the CIR within the 120-day period; records show that petitioner is claiming for refund of its unutilized input VAT for the 4th quarter of 2006. Hence, petitioner had until December 31, 2008 within which to file its administrative claim for refund. Considering that petitioner filed its administrative claim for refund on January 7, 2008, then said administrative claim for refund was filed within the two-year prescriptive period.

Considering that petitioner filed its administrative claim for refund on January 7, 2008, the CIR had 120 days from January, 8, 2008, or until May 6, 2008, within which to grant or deny petitioner's claim. Considering that respondent CIR did not act on petitioner's administrative claim for refund, petitioner had thirty (30) days from May 7, 2008, or until June 5, 2008, within which to file its judicial claim for refund with the CTA. Since petitioner filed its Petition for Review on June 5, 2008, then, petitioner's judicial claim for refund was timely filed. Accordingly, petitioner complied with the ninth requisite.

In sum, the Court finds petitioner to have sufficiently established its entitlement for refund or issuance of a TCC for the 4th quarter of 2006 in the reduced amount of P6,639,101.52.

Since the excess input VAT from the succeeding quarter plus the creditable VAT withheld for the first, second, third and fourth quarters of 2006 are sufficient to cover the output VAT for 2006, then the output VAT for 2006 will no longer be deducted from the substantiated input VAT of P6,639,101.52.

WHEREFORE, premises considered, the present Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of

Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Energy Development Corporation the reduced amount of **SIX MILLION SIX HUNDRED THIRTY NINE THOUSAND ONE HUNDRED ONE AND 52/100 PESOS (P6,639,101.52)**, representing unutilized input VAT for the 4th quarter of 2006.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
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 Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

Annex "1"

ZERO-RATED SALES WITH OFFICIAL RECEIPTS DATED BEYOND TAXABLE YEAR 2006								
Exhibit	**OR Number**	**Date of OR**	**OR Amount**	**Exhibit**	**Invoice Number**	**Invoice Date**	**Due Date**	**Invoice Amount**
III-3	VB-000020	**1-03-07**	P14,616,373.38	XXX-2	B00077	November 6, 2006	November 30, 2006	P15,244,070.40
III-4	VB-000021	**1-03-07**	14,995,725.09	XXX-3	B00086	December 4, 2006	December 31, 2006	15,639,713.28
III-5	VB-000022	**1-04-07**	100,024,359.17	XXX-4	B00072	November 6, 2006	November 30, 2006	104,319,883.80
III-6	VB-000023	**1-04-07**	103,482,626.59	XXX-5	B00084	December 4, 2006	December 31, 2006	107,926,663.68
III-12	VL-000050	**1-02-07**	1,056,393,806.92	XXX-11	L00078	November 27, 2006	December 31, 2006	1,119,253,141.03
III-13	VL-000051	**1-02-07**	106,386,925.95	XXX-12	T00024	November 30, 2006	December 31, 2006	107,055,750.53
III-14	VL-000052	**1-02-07**	1,434,156.55	XXX-13	T00022	November 7, 2006	November 30, 2006	1,469,269.50
III-15	VL-000053	**1-02-07**	1,013,366.97	XXX-14	T00023	November 7, 2006	November 30,2006	1,055,577.74
III-16	VL-000054	**1-31-07**	102,696,881.46	XXX-15	T00025	January 2, 2007	January 31, 2007	103,602,339.23
III-17	VL-000055	**1-31-07**	1,049,590,342.03	XXX-16	L00081	December 27, 2006	January 31, 2007	1,114,647,161.02
III-24	VM-000075	**1-02-07**	96,086,210.04	XXX-26	M00158	November 27, 2006	December 31, 2006	94,889,502.11
III-26	VM-000077	**1-31-07**	95,629,743.48	XXX-27	M00159	December 27, 2006	January 31, 2007	97,581,370.90
III-27	VM-000078	**1-31-07**	92,558,442.63	XXX-28	M00160	December 27, 2006	January 31, 2007	94,447,390.44
III-28	VM-000079	**1-31-07**	9,916,033.35	XXX-29	M00161	December 27, 2006	January 31, 2007	10,118,401.38
III-29	VM-000080	**1-31-07**	6,685,063.75	XXX-30	M00162	December 28, 2006	January 31, 2007	6,821,493.62
III-36	VS-000030	**1-02-07**	105,856,635.04	XXX-51	S00119	November 29, 2006	December 31, 2006	105,856,635.04
III-37	VS-000031	**1-10-07**	61,784,687.31	XXX-52	S00120	November 29, 2006	December 31, 2006	15,639,713.28
"	"	"	"	XXX-53	S00121	November 29, 2006	December 31, 2006	14,865,547.47
"	"	"	"	XXX-54	S00122	November 29, 2006	December 31, 2006	15,639,713.28
"	"	"	"	XXX-55	S00123	November 29, 2006	December 31, 2006	15,639,713.28
Total								**P3,161,713,051.01**

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Annex "2"

Zero Rated Sales Recognized by the ICPA Without Official Receipts				
Reference	Date	Alleged OR Number	Alleged Sales Invoice Number	Amount
1 23 0001	Dec – 06	VB000021	B00086	P3,027,041.28
1 23 0001	Dec – 06	VB000023	B00084	20,889,031.68
1 23 0001	Dec – 06	VL000050	L00078	46,531,760.04
1 23 0001	Dec – 06	VL000050	L00078	176,397,672.16
1 23 0001	Dec – 06	VL000051	T00024	20,720,467.84
1 23 0001	Dec – 06	VM00075	M00156	5,412,139.20
1 23 0001	Dec – 06	VM00075	M00156	14,104,134.98
1 23 0001	Dec – 06	VM00076	M00158	5,264,680.35
1 23 0001	Dec – 06	VM00076	M00158	13,624,797.74
1 23 0001	Dec – 06	VS000030	S00119	20,438,380.98
1 23 0001	Dec – 06	VS000031	S00120-S00123	11,958,326.58
Total Zero-Rated Sales of Services Without Official Receipts				**P338,368,432.83**

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Annex "3"

Invoices that do not show segregation/computation of Input VAT on Sales of Goods					
Exhibit/ Annex	Invoice Number	Invoice Date	Name of Supplier	Invoice Amount in Peso	Input VAT in Peso
"NN-1"	0160	Oct. 3, 2006	4th Avenue Industrial & Military Supply	P699,000.00	P74,892.86
"NN-2"	0354	Oct. 24, 2006	Euro Products, Inc.	3,416,000.00	366,000.00
"NN-2.4"	0355	Oct. 30, 2006	Euro Products, Inc.	2,732,800.00	292,800.00
"NN-3"	2997	Oct. 31, 2006	BJ Service International Inc.	2,076,434.70	222,475.15
"NN-3.6"	2998	Oct. 31, 2006	BJ Service International Inc.	3,796,808.48	406,800.91
"NN-3.8"	3000	Oct. 31, 2006	BJ Service International Inc.	3,752,188.18	402,020.16
"NN-3.10"	3010	Nov. 8, 2006	BJ Service International Inc.	6,168,531.00	660,914.04
"NN-4.1"	3014	Nov. 29, 2006	BJ Service International Inc.	2,510,039.94	268,932.85
"NN-4.6"	3015	Nov. 29, 2006	BJ Service International Inc.	4,097,707.74	439,040.12
"NN-5"	67382[1]	Oct. 14, 2006	Up-Town Industrial Sales, Inc.	923,900.00	98,989.29
"NN-6"	0660	Oct. 13, 2006	Heidelberg Motors Corporation	792,000.00	84,857.14
"NN-7"	1212	Nov. 2, 2006	FFC Equipment Parts Supply, Inc.	290,000.00	31,071.43
"NN-9"	0357	Nov. 10, 2006	Euro Products, Inc.	4,782,400.00	512,400.00
"NN-10"	0358	Nov. 23, 2006	Euro Products, Inc.	389,400.00	41,721.43
"NN-11"	0131	Nov. 13, 2006	Drilling Advisory & Logistics Corp.	1,783,600.00	191,100.00
"NN-14"	7588	Nov. 27, 2006	Hidromac-Dura Asia, Inc.	1,498,000.00	160,500.00
"NN-17"	89781[2]	Nov. 30. 2006	Harnwell Chemicals Corporation	930,000.00	99,642.86
Total Input VAT of Invoices that do not show segregation/computation of InputVAT on Sales of Goods					**P4,354,067.24**

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[1] Invoice No. 67382 is non existent. The invoice submitted is different, it is invoice No. 71455, with different date and invoice amount.
[2] Invoice No. 89781 is non existent. The invoice submitted is different, it is invoice No. 89508, with different date and invoice amount.

Annex "4"

Official Receipts that do not show segregation/computation of Input VAT on Sales of Services						
Exhibit/ Annex	Official Receipt No.	OR Date	Name of Supplier	Invoice No.	Amount in Peso	Input VAT in Peso
"PP-1"	0005	Sept. 1, 2006	EPI-COSL Consortium	0030	P949,023.24	P101,681.06
				0032	834,653.25	89,427.13
				0033	949,023.24	101,681.06
				0035	399,196.71	42,771.08
"PP-2"	0004	Sept. 1, 2006	EPI-COSL Consortium	0036	949,023.24	101,681.06
				0038	399,196.71	42,771.08
				0040	292,744.57	31,365.49
"PP-3"	0003	Sept. 1, 2006	EPI-COSL Consortium	0052	1,424,975.20	152,675.91
				0053	361,232.24	38,703.45
				0054	1,155,062.37	123,756.68
				0055	1,207,784.82	129,405.52
				0057	1,155,062.37	123,756.68
"PP-4"	0002	Sept. 1, 2006	EPI-COSL Consortium	0063	796,326.40	85,320.69
				0064	1,189,534.95	127,450.17
				0066	1,061,768.83	113,760.95
"PP-6"	0514	Oct. 3, 2006	Dynamic Builders & Construction Co. (Phil) Inc.	0484	2,089,749.59	223,901.74
"PP-7"	0301	Oct. 6, 2006	Fabmik Construction & Equipment Co., Inc.	0007	1,788,124.69	191,584.79
"PP-8"	1236	Oct. 6, 2006	Technology Exports Services Corp.	1829	2,109,306.08	225,997.08
"PP-9"	1237	Oct. 13, 2006	Technology Exports Services Corp.	1826	1,639,585.48	175,669.87
"PP-11"	41436	Oct. 30, 2006	Lockheed Detective & Watchman Agency, Inc.	0003	611,180.50	65,483.63
				0004	541,187.66	57,984.39
"PP-12"	41435	Oct. 30, 2006	Lockheed Detective & Watchman Agency, Inc.	0010	718,637.50	76,996.88
"PP-13"	0196	Oct. 6, 2006	Mechanics Construction Corp.	0023	887,726.40	95,113.54
"PP-14"	198389	Oct. 6, 2006	EEI Corporation	16786	3,462,657.04	370,998.97
"PP-16"	412	Oct. 23, 2006	B. Vicencio Construction	0007	17,945,286.72	1,922,709.29
"PP-18"	3850962	Oct. 16, 2006	People's Television Network Inc.	10069	635,000.00	68,035.71
				10070	1,000,000.00	107,142.86
"PP-19"	2005	Oct. 13, 2006	BJ Service International Inc.	02965	710,571.15	76,132.62
				02966	508,096.58	54,438.92
"PP-20"	2007	Oct. 20, 2006	BJ Service International Inc.	02974	336,690.03	36,073.93
				02975	2,539,797.66	272,121.18
				02976	4,146,739.83	444,293.55
"PP-21"	0008	Oct. 13, 2006	EPI-COSL Consortium	00072	1,184,590.64	126,920.43
				00074	876,748.98	93,937.39
"PP-21"	0008	Oct. 13, 2006	EPI-COSL Consortium	00075	1,184,590.54	126,920.43

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				00076	328,569.21	35,203.84
				00077	1,132,467.43	121,335.80
"PP-22"	0590	Sept. 31, 2006	Sta. Ana Manufacturing & Development Inc.	00093	544,560.00	58,345.71
				00094	544,560.00	58,345.71
"PP-25"	1092	Oct. 31, 2006	D & G Construction	00944	504,781.73	54,083.76
"PP-26"	2021043	Dec. 12, 2006	Globe Telecom		270,428.43	28,974.47
"PP-27"	11688	Oct. 27, 2006	AC Technical Services, Inc.	05671	P2,382,367.25	P255,253.63
"PP-28"	0483	Oct. 27, 2006	San Agustin Electric Co., Inc.	02041	985,296.36	105,567.47
"PP-29"	0482	Oct. 27, 2006	San Agustin Electric Co., Inc.	02044	1,024,316.51	109,748.20
"PP-30"	2015	Oct. 27, 2006	AT & E Technical Services, Inc.	00584	1,401,866.78	150,200.01
"PP-31"	102248	Nov. 17, 2006	Manila Electric Company	136101 231003	1,626,777.29	174,297.57
"PP-32"	1240	Nov. 3, 2006	Technology Exports Services Corp.	01828	1,104,331.20	118,321.20
"PP-33"	1244	Nov. 10, 2006	Technology Exports Services Corp.	01840	1,427,526.24	152,949.24
"PP-34"	1254	Nov. 17, 2006	Technology Exports Services Corp.	01857	420,000.00	45,000.00
"PP-35"	0009	Nov. 15, 2006	EPI-COSL Consortium	00087	656,050.74	70,291.15
				00089	1,168,826.38	125,231.40
				00090	280,423.98	30,045.43
				00091	540,675.88	57,929.56
				00092	1,168,826.38	125,231.40
				00094	1,081,351.76	115,859.12
"PP-36"	0011	Dec. 4, 2006	EPI-COSL Consortium	00100	1,115,844.37	119,554.75
				00102	556,139.86	59,586.41
"PP-37"	0010	Nov. 24, 2006	EPI-COSL Consortium	00097	1,115,844.37	119,554.75
				00909	320,023.83	34,288.27
"PP-38"	41447	Nov. 3, 2006	Lockheed Detective & Watchman Agency, Inc.	00006	280,872.41	30,093.47
				00017	716,275.00	76,743.75
				00018	611,831.50	65,553.38
				00019	538,387.65	57,684.39
"PP-39"	41456	Nov. 10, 2006	Lockheed Detective & Watchman Agency, Inc.	00022	716,275.00	76,743.75
				00023	611,668.75	65,535.94
				00024	538,387.65	57,684.39
"PP-40"	41468	Nov. 17, 2006	Lockheed Detective & Watchman Agency, Inc.	00103	628,290.00	67,316.79
				00104	257,760.00	27,617.14
				00107	435,330.00	46,642.50
				00112	628,290.00	67,316.79
				00103	262,080.00	28,080.00
				41747	628,290.00	67,316.79
				41748	273,870.00	29,343.21
"PP-41"	41476	Nov. 24, 2006	Lockheed Detective & Watchman Agency, Inc.	00028	716,275.00	76,743.75
				00029	611,723.00	65,541.75

				00030	538,387.65	57,684.39
"PP-43"	41477	Nov. 24, 2006	Lockheed Detective & Watchman Agency, Inc.	41917	406,802.25	43,585.96
"PP-45"	41495	Nov. 30, 2006	Lockheed Detective & Watchman Agency, Inc.	41918	408,155.92	43,730.99
"PP-50"	2010	Nov. 10, 2006	BJ Service International Inc.	02979	286,419.30	30,687.78
				02980	3,507,838.98	375,839.89
				02981	4,646,977.28	497,890.42
				02982	549,975.31	58,925.93
				02983	678,361.50	72,681.59
				02985	678,361.50	72,681.59
"PP-51"	0611	Nov. 16, 2006	Asher Builders	00013	573,763.22	61,474.63
"PP-53"	11721	Nov. 20, 2006	AC Technical Services, Inc.	5671-2	571,610.97	61,244.03
"PP-54"	4111	Nov. 16, 2006	Yakal Construction	04633	2,429,618.37	260,316.25
"PP-55"	4926	Nov. 23, 2006	MAC Builders	03780	1,361,935.06	145,921.61
"PP-57"	2018	Nov. 17, 2006	AC Technical Services, Inc.	00586	903,368.38	96,789.47
"PP-58"	2019	Nov. 24, 2006	AT & E Technical Services, Inc.	00585	358,266.21	38,385.67
"PP-59"	1042	Nov. 24, 2006	Silver Horizon Construction, Inc.	00797	3,327,354.10	356,502.23
"PP-60"	0054	Dec. 4, 2006	AZ Communications Network, Inc.	03614	786,121.93	84,227.35
"PP-61"	198538	Nov. 16, 2006	EEI Corporation	15476	1,486,559.21	159,274.20
"PP-63"	4202	Nov. 24, 2006	Asian Shipping Corporation	00542	820,000.00	87,857.14
"PP-64"	122487	Dec. 14, 2006	Manila Electric Company	136110 602797	1,900,887.39	203,666.51
"PP-65"	1093	Nov. 29, 2006	D & G Construction	00941	1,428,276.43	153,029.62
"PP-66"	0124	Dec. 5, 2006	BM Marketing	01367	5,337,469.68	571,871.75
"PP-68	0484	Dec. 11, 2006	San Agustin Electric Co., Inc.	02045	797,241.43	85,418.72
"PP-69"	2014	Dec. 5, 2006	BJ Service International Inc.	02859	6,716,649.60	719,641.03
				02863	9,990,021.60	1,070,359.46
"PP-70"	2017	Dec. 22, 2006	BJ Service International Inc.	02999	506,765.88	54,296.34
				03001	694,779.75	74,440.69
				03002	694,779.75	74,440.69
				03003	653,690.63	70,038.28
				03011	322,098.05	34,510.51
"PP-72"	1260	Dec. 8, 2006	Technology Exports Services Corp.	01855	3,222,082.75	345,223.15
"PP-73"	1263	Dec. 29, 2006	Technology Exports Services Corp.	01865	1,080,928.14	115,813.73
"PP-74"	1264	Dec. 29, 2006	Technology Exports Services Corp.	01866	1,100,453.93	117,905.78
"PP-75"	0055	Dec. 11, 2006	Ace Tubular Services Limited	00261	271,855.14	29,127.34
"PP-78"	41651	Dec. 8, 2006	Lockheed Detective & Watchman Agency, Inc.	00032	718,637.50	76,996.88
				00033	611,994.25	65,570.81
				00034	541,187.66	57,984.39

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"PP-80"	41677	Dec. 29, 2006	Lockheed Detective & Watchman Agency, Inc.	00035	297,994.97	31,928.03
				00038	716,275.00	76,743.75
				00039	611,017.75	65,466.19
				00040	538,387.65	57,684.39
"PP-81"	2091	Dec. 15, 2006	AT & E Technical Services, Inc.	00587	588,671.53	63,071.95
"PP-82"	2092	Dec. 15, 2006	AT & E Technical Services, Inc.	00589	1,661,257.00	177,991.82
"PP-84"	21142	Dec. 18, 2006	P.T. Cerna Corporation	20749	599,000.00	64,178.57
"PP-87"	045	Dec. 27, 2006	Joosung Electrical Construction Corp.	00036	907,565.67	97,239.18
"PP-88"	047	Dec. 27, 2006	Joosung Electrical Construction Corp.	00038	652,700.10	69,932.15
"PP-89"	048	Dec. 28, 2006	Joosung Electrical Construction Corp.	00037	2,415,299.03	258,782.04
"PP-92"	7788	Oct. 3, 2006	Miescor Builders, Inc.	35042	P3,355,886.43	P359,559.26
"PP-93"	8051	Nov. 3, 2006	Miescor Builders, Inc.	35043	3,233,757.21	346,473.99
"PP-94"	8075	Dec. 27, 2006	Miescor Builders, Inc.	35045	1,202,200.76	128,807.22
"PP-95"	41418	Oct. 6, 2006	Lockheed Detective & Watchman Agency, Inc.	41913	293,309.61	31,426.03
"PP-96"	0302	Oct. 6, 2006	Fabmik Construction & Equipment Co., Inc.	00008	303,828.63	32,553.07
"PP-97"	0007	Oct. 13, 2006	EPI-COSL Consortium	00049	1,207,784.83	129,405.52
"PP-99"	10661	Oct. 6, 2006	AZ Communications Network, Inc.	03520	785,141.33	84,122.29
"PP-100"	0525	Nov. 3, 2006	Dynamic Builders & Construction Co. (Phil) Inc.	00492	2,344,033.01	251,146.49
"PP-101"	0463	Nov. 24, 2006	Kestrel IMC Corp	00631	430,000.00	46,071.43
"PP-102"	416	Dec. 15, 2006	B. Vicencio Construction	00009	1,380,300.85	147,889.38
				00010	818,276.08	87,672.44
"PP-103	0806	Dec. 15, 2006	Silver Horizon Construction, Inc.	00803	3,005,148.30	321,980.18
"PP-104"	601	Oct. 6, 2006	Kanematsu Corporation	000SA-007418		5,223,742.19
"PP-106"	8798539	Dec. 11, 2006	People's Television Network, Inc.	8798539	1,000,000.00	107,142.86
"PP-108"	0511	Nov. 10, 2006	Lichel Technologies, Inc.	00158	585,409.65	62,722.46
"PP-109"	411	Oct. 6, 2006	B. Vicenciio Construction	00004	263,000.00	28,178.57
"PP-110"	4925	Nov. 23, 2006	MAC Builders	03791	1,172,651.18	125,641.20
Total Input VAT of Receipts that do not show segregation/computation of Input VAT on Sale of Service						**P24,550,810.64**

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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

ENERGY DEVELOPMENT CORPORATION, Petitioner,	**CTA CASE NO. 7792**
	Members:
- *versus* -	**BAUTISTA,** *Chairperson* **PALANCA-ENRIQUEZ,** and **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 11 2012 ABFernando 3:25 p.m.

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CONCURRING AND DISSENTING OPINION

BAUTISTA, J.:

The factual circumstances present in the case at bench supports the application of ***the then prevailing jurisprudence at the time the claim was made.***

With this, I concur with the findings of the Court that petitioner filed its administrative claim for refund within the prescribed period; nonetheless, I must point out that petitioner's judicial claim covering the first quarter of the taxable year 2006 was filed beyond the two (2)-year period, and thus, must be denied accordingly.

When petitioner filed its administrative claim on January 7, 2008, and its subsequent judicial claim before this Court on June 5, 2008, the then controlling doctrine in this forum is that of the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue.*[1]

The cases of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.],*[2] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*[3] have yet to be promulgated on September 12, 2008, and October 6, 2010, respectively.

Therefore, petitioner had until two (2) years from the filing of the relevant returns, within which to file *both* its administrative and judicial claims.

Further, the two (2)-year prescriptive period is supported in the pronouncements made in the cases of *Commissioner of Internal Revenue v. Toledo Power, Inc.,*[4] and *Commissioner of Internal Revenue v. San Roque Power Corporation.*[5] Thus, it must be borne in mind that no claim can be had, whether in the administrative or judicial *fora,* beyond the two (2)-year period provided under Section 112 of the 1997 National Internal Revenue Code, as amended. And if the two (2)-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the one hundred twenty (120)-day period before the taxpayer can lodge its appeal with this Court.[6]

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[1] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[2] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] G.R. No. 184823, October 6, 2010.
[4] CTA EB Case No. 321 (CTA Case Nos. 6805 & 6851), May 7, 2008.
[5] CTA EB Case No. 408 (CTA Case No. 6647), March 25, 2009.

[6] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB Case No. 426, May 29, 2009.

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Based on the records of the case, petitioner filed its returns for the taxable year 2006 on the following dates: April 26, 2006, July 26, 2006, October 25, 2006, and January 29, 2007.

Therefore, petitioner had the following dates within which to file both its administrative and judicial claims, *viz*: April 26, 2008, July 26, 2008, October 25, 2008, and January 29, 2009.

Thus, while I find the administrative claim filed within the prescribed period, I, however, must rule that the Petition for Review, insofar as the first (1st) quarter of the taxable year 2006 is concerned, was made beyond the above mentioned period.

In fine, petitioner's claim insofar as the first quarter is concerned should be denied for being filed out of time.

Accordingly, I vote that the Petition for Review be **PARTIALLY GRANTED**, insofar as the claims for refund/credit covering the second, third and fourth quarters of the taxable years 2006 is concerned.

LOVELL R. BAUTISTA
Associate Justice