REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

ENERGY DEVELOPMENT CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 7792**
	Members:
-versus-	BAUTISTA, Chairperson, PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** NOV 19 2012 10:57 a.m.

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AMENDED DECISION

PALANCA-ENRIQUEZ, J.:

This resolves:

1.a) respondent Commissioner of Internal Revenue's ("CIR") "Motion for Partial Reconsideration" of the Decision dated June 11, 2012, filed on July 11, 2012;

b)petitioner Energy Development Corporation's "Comment/Opposition [to Respondent's Motion for Partial Reconsideration dated July 3, 2012]" filed on July 25, 2012; and

2.a) petitioner's "Motion for Reconsideration [Re: Decision dated June 11, 2012]" filed on July 11, 2012.

Despite notice, respondent failed to file her comment to petitioner's "Motion For Reconsideration".

Respondent CIR's "Motion for Partial Reconsideration"

Respondent CIR's "Motion For Partial Reconsideration" is anchored on the ground that in the absence of evidence that petitioner is a generation company, all of the reported zero-rated receipts for the four quarters of 2006 cannot qualify for VAT zero-rating. Respondent contends that sale of generated power by generation companies shall be value added tax zero-rated under *Section 6 of RA 9136*; upon the enactment of *RA 9337, Section 6 of RA 9136* was repealed, but notwithstanding said repeal, the sale of power or fuel generated through renewable sources of energy is subject to zero percent (0%) rate under *Section 108(B)(7) of the NIRC of 1997, as amended*; and *Section 4.108-3(f) of Revenue Regulations No. 16-2005* provides that 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 energy sources using technologies, such as fuel cells and hydrogen fuels, shall be subject to 0% VAT, and 'Generation companies' refer to persons or entities authorized by the ERC to operate facilities used in the generation of electricity; hence, in order to qualify for VAT zero-rating under *Section 108(B)(7) of RA 9337*, petitioner must be able to prove that it is a generation company and that it is engaged in the sale of power or fuel generated through renewable source of energy.

In its Comment/Opposition, petitioner counters that respondent's arguments are utterly misplaced as *RA 9337*, the law applicable for VAT refunds in taxable year 2006, does not require the submission of Certificate of Compliance (COC) to qualify for VAT zero-rating; petitioner is undoubtedly a generation company; COC is not one of the requirements for VAT refund prescribed by the Supreme Court; petitioner has a COC issued by the ERC; and reliance by respondent on the decision of the CTA First Division in the Mindanao II case is totally misplaced and unwarranted.

We find no merit in respondent CIR's "Motion For Partial Reconsideration".

With the enactment of *RA 9337*, the intention of the law is to subject to VAT the entire power industry, which includes the generation, transmission, and distribution companies. This is evident when *Section 108*

(A) of the NIRC of 1997, as amended, was amended by *Section 6 of RA 9337* to subject to VAT at ten percent (10%) the sale or exchange of service, including the sale of electricity by generation companies, transmission, and distribution companies. Corollary thereto, *Section 24 of RA 9337* repealed *Section 6, fifth paragraph of RA 9136* on the zero VAT rate imposed on the sales of generated power by generation companies.

It is only the sale of power or fuel generated, through renewable sources of energy, that has been subjected to zero percent (0%) rate *(Section 6(B) of RA 9337, amending Section 108(B)(7) of the NIRC of 1997)*.

Hence, we do not agree to respondent CIR's contention that to qualify for VAT zero-rating under *RA 9337*, it is necessary to prove that the claimant for VAT refund or issuance of a TCC is a generation company, nor it is necessary for said claimant to present a Certificate of Compliance issued by the ERC to prove that it is a generation company. As we have previously discussed, under the present law, *RA 9337,* applicable to petitioner's claim, generation companies, as well as distribution and transmission companies, are now subject to ten percent (10%) VAT.

While it may be true that under *RA 9136*, sales of generated power by generation companies shall be value added zero-rated, hence it is necessary then for the claimant to prove that it is a generation company, as the law specifically provides that zero-rating will only pertain to sales of generated power "by generation companies", and correlating the same with the other provisions of *RA 9136* and its Implementing Rules and Regulations that a "generation company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity, and one of the obligations of a generation company is to secure a Certificate of Compliance from the ERC, the same is applicable only if the basis of the claim for refund or issuance of a TCC is *RA 9136* or the EPIRA Law, but not when the basis of the claim is *RA 9337*.

It must be emphasized that the instant claim for refund or issuance of a TCC is petitioner's unutilized input VAT attributable to its zero-rated sales of steam and electricity for taxable year 2006. As to petitioner's claim, the law applicable, therefore, is not *RA 9136*, but *RA 9337*, which took effect on November 1, 2005.

As we have exhaustively discussed in our Decision dated June 11, 2012, *RA 9337* subjects to zero percent (0%) rate all sales of power, or sales of fuel, as long as said power/electricity and fuel are generated or produced from renewable sources of energy, which means that the seller of power/electricity or the seller of fuel must not only be limited to generation companies, unlike in *RA 9136*.

Since petitioner was able to prove that it sells electrical energy from its geothermal power plants and geothermal steams, then pursuant to *RA 9337*, petitioner is subject to zero percent (0%) rate on said sale of power and fuel.

In view hereof, we have no alternative, but to deny respondent CIR's "Motion For Partial Reconsideration".

Petitioner EDC's "Motion for Reconsideration"

Petitioner's "Motion For Reconsideration" is anchored on the following grounds:

1) the decision unfairly introduced a separate layer of allocation factor in determining the allowable input VAT, which is clearly not in accordance with applicable laws and regulations;
2) the decision is contrary to the provisions of *Revenue Memorandum Circular No. 42-2003,* which expressly allows claim for input VAT incurred within the taxable period of 2006, which has not been claimed in any other quarter or different taxable year;
3) the exclusion of petitioner's total zero-rated sales amounting to P3,161,713,051.01 is unwarranted considering the undisputed fact that these sales are duly substantiated and actually reported in

petitioner's 2006 fourth quarterly VAT, and were no longer declared and/or reported in the 2007 first quarterly VAT Return of petitioner *(Exhibit "N" to "N-1")*; and

4) reduction on petitioner's zero-rated sales in the amount of P338,368,432.83 resulted in double deduction which is clearly erroneous.

Petitioner's "Motion for Reconsideration" is partly meritorious.

As regards the first ground, petitioner is questioning this Court's application of a 36.13% allocation factor in arriving at the refundable input VAT of ₱6,639,101.52, as shown hereunder:

Duly substantiated input VAT for the 4th quarter of 2006	₱18,386,624.32
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
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	**₱6,639,101.52**

According to petitioner, the proper application of *Section 112(A) of the NIRC of 1997, as amended*, in relation to *Section 4.112-1* and *Section*

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4.110-4 of Revenue Regulations (RR) No. 16-05 should be that once the valid creditable input VAT has been determined, the same should only be multiplied to the allocation factor of 99.94% alone, which allocation factor is based on the duly substantiated zero-rated sales of petitioner divided by its total sales for the 4th quarter of taxable year 2006, and without any need for applying another allocation factor, *i.e.*, 36.13%, as what this Court did in this case.

Thus, petitioner maintains that pursuant to *Section 112(A) of the NIRC,* in relation to *Section 4.112-1 of RR No. 16-05*, its refundable input VAT, as found by the ICPA, is, as follows:

Particulars	**Amount**
Total input Tax Claimed for Refund	₱ 293,058,460.62
Less: Exceptions noted during the review	21,505,144.33
Net input tax claim before attribution	₱ 271,553,316.29
Multiplied by: Allocation factor	
Zero-rated sales with valid ORs only	₱5,509,505,709.60
Divided by total sales per VAT return- 4th quarter only	5,564,544,278.37
Allocation Factor for zero-rated sales	99.010906%
Net Allowable Claim for Refund	**₱ 268,867,398.97**

Contrary to petitioner's contention, this Court computed the allocation factor of 36.13% in accordance with the provisions of *Section 112(A) of the*

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NIRC of 1997, as amended, as implemented by *Section 4.112-1 of RR 16-05*, which provide respectively, as follows:

> "SEC. 112.*Refunds or Tax Credits of Input Tax.* —
>
> (A) Zero-rated or Effectively Zero-rated Sales. - xxx *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, **it shall be allocated proportionately on the basis of the volume of sales:** xxx" *(emphasis supplied)*
>
> "SEC. 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* —
>
> (a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services
>
> xxx xxx.
>
> Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, **only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate**.
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> xxx xxx."

As correctly pointed out by petitioner, the foregoing law and regulations require that if the amount of creditable input tax cannot be directly and entirely attributed to zero-rated transactions, as when the taxpayer, such as herein petitioner, is engaged in both zero-rated or effectively zero-rated sales, as well as in taxable or exempt sale of goods or properties or services, the input tax shall be prorated to the taxpayer's zero-rated or effectively zero-rated sales, taxable sales and exempt sales.

As shown in petitioner's amended Quarterly VAT Returns for the fourth quarter of 2006, petitioner's total sales amounted to ₱5,564,544,278.37, consisting of the following:

	Amount	Percentage to Total Sales
VATable Sales/Receipts	₱ 2,801,670.82	.05%
Sale to Government	356,142.75	.01%
Zero-Rated Sales/Receipts	5,561,386,464.80	99.94%
Total Sales/Receipts	**₱5,564,544,278.37**	**100%**

Since the allocation of input VAT must be proportionate to the volume of sales, the above percentages shall be used in determining the amount of input VAT that can be allocated to petitioner's vatable sales/receipts, sale to government and zero-rated sales.

While the input VAT that can be allocated to petitioner's declared zero-rated sales/receipts is 99.94%, this Court found that not all of petitioner's declared zero-rated sales/receipts were properly substantiated. Since the allocation rate of 99.94% covers the entire reported zero-rated sales, substantiated and unsubstantiated, it necessarily follows that a portion of the input VAT claim attributable to the disallowed zero-rated sales should be denied. Otherwise, we will be disregarding the substantiation of petitioner's zero-rated sales, thereby negating its effect on the amount of unutilized input VAT claimed for refund.

As regards the second ground, petitioner argues that the exclusion of the following amounts of input VAT: a) ₱13,686,394.51; b) ₱47,232,627.96; c) ₱163,377,579.66 and d) ₱24,550,810.64 is erroneous and contrary to law because petitioner's claim involves not just its unutilized input VAT for the fourth quarter of 2006, but the entire taxable year of 2006, and Q-1 and A-1 of *Revenue Memorandum Circular (RMC) 42-2003* allows crediting of input taxes even if based on supporting documents (invoices/receipts) that were issued outside the taxable quarter, but were nonetheless issued within the taxable year, to wit:

> Q-1: In case the supporting documents (invoices/receipts) evidencing the sources of input tax credits were issued outside the taxable period covered by the claims (out-of-period claims), can the input taxes generated therefrom still be credited upon verification that the same have not yet been claimed?
>
> A-1: Out-of-period claims may be allowed provided that they comply with all the following requirements,

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> 1. That the VAT invoices receipts are issued within the taxable year that the claim was made;
> 2. That the VAT invoices/receipts cover transactions for the same taxable year;
> 3. That they have not been claimed in any other quarter of the same or different taxable year; and
> 4. The invoices/receipts are not claimed in any period ahead of the actual date of the said invoices/receipts.
>
> It is to be emphasized that provided the VAT' invoices/receipts are claimed within the taxable year, any excess input taxes generated therefrom can be carried over to the following taxable year.
>
> (Invoice is the supporting document for the claim of input tax on purchase of goods whereas official receipt is the supporting document for the claim of input tax on purchase of services)."

We find no merit in petitioner's contentions.

Records show that the entire input VAT claim per Petition for Review in the amount of ₱293,058,460.62 was declared by petitioner in its amended Quarterly VAT Returns for the fourth quarter of 2006. Thus, we ruled that petitioner's claim pertains only to the fourth quarter of 2006.

Although petitioner stated in its Petition for Review that the amount of ₱293,058,460.62 covers the entire taxable year of 2006, however, the input taxes supported by invoices, receipts or Import Entry Declarations, which were dated outside the fourth quarter of 2006, but within the taxable year 2006, cannot be refunded. Petitioner failed to substantiate its reported zero-rated sales/receipts for the first, second and third quarters of 2006. Thus, petitioner failed to prove that the input taxes sought to be reconsidered are attributable to its zero-rated sales/receipts for the first three quarters of 2006. *Section 112(A) of the NIRC of 1997, as amended*, allows the refund of input taxes only when such input taxes are attributable to zero-rated or effectively zero-rated sales.

Moreover, input VAT which has been capitalized or charged to expense cannot be claimed as tax credit during any taxable year notwithstanding any adjustment made during the succeeding taxable year, as provided under *RMC 42-2003*, to wit:

> "Q9: The taxpayer did not maintain separate input tax account in its books of accounts (VAT on purchases is capitalized or charged to cost in full). During the succeeding period, the taxpayer made a journal entry setting up the input tax account and crediting expense/capitalized asset account. Can this input tax credit be claimed for TCC in the year when the said account was adjusted?
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> **A-9: No. When input taxes have been capitalized or charged to expense, the same cannot be claimed as tax credit during any taxable year, notwithstanding any adjustment made during the succeeding taxable year. The input tax claim should always be recorded under the asset account 'Input Tax' in the books of the claimant, with full observance of the accounting principle of timeliness, before the same can be claimed as tax credit**." *(emphasis supplied)*

In this case, petitioner's claimed input VAT on imported capital goods amounting to ₱163,377,579.66 and income payments on service fees for the construction of Full Turnkey Northern Negros Geothermal Power Plant Project amounting to ₱34,633,849.26 were booked in 2006 as "Incomplete Construction", an asset account, and were reclassified to Input VAT account only in September and December 2007, respectively *(Exhibit "NNN", p. 4)*. Under *RMC 42-2003*, such input taxes cannot be claimed as tax credits during the year 2006.

Likewise, petitioner contends that the disallowance of its input VAT on domestic purchases of goods and services and importation of capital goods is contrary to *Section 4.110-2 of Revenue Regulations (RR) No. 16-05,* which provides:

> "SEC. 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:
>
> (a) To the importer upon payment of VAT prior to the release of goods from customs custody;
>
> (b) To the purchaser of the domestic goods or properties upon consummation of the sale; or
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> (c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee."

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Petitioner claims that pursuant to the foregoing regulations, it is only valid and just to allow the subject input taxes considering that the related purchases of goods and services and importations were actually incurred and paid for, including the VAT thereon, during the taxable year 2006, as evidenced by the invoices, official receipts and Import Entry Declarations.

Petitioner's contentions are devoid of merit.

Section 4.110-2 of RR 16-05, implementing *Section 110(A)(1) of the NIRC of 1997*, clearly provides that the input tax on purchases of goods or properties is creditable to the purchaser upon consummation of sale, that is, upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. In the case of purchase of services, the input tax shall be allowed as tax credit upon payment of the compensation, rental, royalty or fee, that is, upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed. While, in the case of importation, the corresponding input tax is available as tax credit upon payment of the VAT prior to the release of the goods from Customs' custody. Thus, petitioner is mandated to declare the input VAT on domestic purchases of goods and services and importations **at the end of the corresponding taxable month/quarter,** where purchases of goods were consummated, as evidenced by VAT invoices and where payments for domestic purchases of services and importations were made, as evidenced by VAT official receipts (for domestic purchases of services) and Import Entry Declarations, Bureau of Customs (BOC) or bank official receipts (for importations). Therefore, with more reasons that petitioner's input VAT on domestic purchases of goods and services and importations for the first, second and third quarters of taxable year 2006 that are being prayed for to be reconsidered, should be denied, for not having been declared at the end of the corresponding taxable month/quarter where such purchases were consummated and payments of services/importations were made.

As to the fourth ground, petitioner contends that this Court erred in excluding its zero-rated sales in the amount of ₱338,368,432.83 on the ground that the same are not supported with official receipts. Petitioner alleges that a cursory examination of the details, *i.e., Reference, Date, Alleged OR No., Alleged Invoice Sales* and *Amount* indicated in *Annex "2"* of the decision reveals that this exclusion may have been the result of a double take up on such documents by the accountants of this Court since the OR numbers VB-000021, VB-000023, VL-000050, VL-000051, VM-000075, VS-000030, and VS-000031, mentioned in *Annex "2"* of the decision, are similar to the OR numbers reflected in *Annex "1"* (Zero-Rated with Official Receipts dated Beyond Taxable Year 2006) of the decision; and as a result of this alleged double take-up, the Court effectively deducted twice the corresponding amounts of zero-rated sales covered by such official receipts.

Petitioner's contention is bereft of merit.

Included in petitioner's Schedule of Zero-Rated Sales for the CY 2006 *(Exhibit "NNN" of Annex "III")*, are the following:

Steam			Reference	Date	NPC	Sales Invoice	Official Receipt	Annex "III"
33	010	02	1 23 0001	Dec 06	₱ (3,027,041.28)	B00086	VB000021	4
33	010	05	1 31 3301	Dec 06	(15,639,713.28)	B00086	VB000021	4
32	010	02	1 23 0001	Dec 06	(20,889,031.68)	B00084	VB000023	6
32	010	02	1 31 3201	Dec 06	(107,926,663.68)	B00084	VB000023	6
42	010	01	1 23 0001	Dec 06	(46,531,760.04)	L00078	VL000050	12
42	011	01	1 23 0001	Dec 06	(176,397,672.16)	L00078	VL000050	12
42	010	01	1 31 4201	Dec 06	(1,119,253,141.03)	L00078	VL000050	12
41	010	01	1 23 0001	Dec 06	(20,720,467.84)	T00024	VL000051	13
41	010	01	1 31 4101	Dec 06	(107,055,750.53)	T00024	VL000051	13
76	010	01	1 31 7602	Nov 06	(98,047,153.10)	M00156	VM000075	24
76	010	01	1 23 0001	Dec 06	(5,412,139.20)	M00156	VM000075	24
76	011	01	1 23 0001	Dec 06	(14,104,134.98)	M00156	VM000075	24
82	010	01	1 31 8202	Nov 06	(94,889,502.11)	M00158	VM000076	25
82	010	01	1 23 0001	Dec 06	(5,264,680.35)	M00158	VM000076	25
82	011	01	1 23 0001	Dec 06	(13,624,797.74)	M00158	VM000076	25
56	010	01	1 23 0001	Dec 06	(20,438,380.98)	S00119	VS000030	36
56	010	01	1 31 5601	Dec 06	(105,856,635.04)	S00119	VS000030	36
57	010	01	1 23 0001	Dec 06	(11,958,326.58)	S00120-S00123	VS000031	37
57	010	01	1 23 0001	Dec 06	(15,639,713.28)	S00120	VS000031	37
57	010	01	1 23 0001	Dec 06	(14,865,547.47)	S00121	VS000031	37
57	010	01	1 23 0001	Dec 06	(15,639,713.28)	S00122	VS000031	37
57	010	01	1 23 0001	Dec 06	(15,639,713.28)	S00123	VS000031	37

As can be readily seen from the above-quoted schedule, each of the sales invoices and official receipts indicated therein covers two or more of the sales figures shown under the column "NPC". However, an examination of the official receipts and related sales invoices shows that only the sales figures indicated in *Annex "1"* of the decision (Zero-Rated Sales with Official Receipts dated Beyond Taxable Year 2006), were reflected in the official receipts and sales invoices. In other words, the sales figures indicated *in Annex "2"* of the decision, are without official receipts and sales invoices. To illustrate: Per schedule, petitioner's sales in the amounts of ₱3,027,041.28 and ₱15,639,713.28 are covered by sales invoice B00086 and official receipt VB000021. However, a careful scrutiny of sales invoice B00086 *(Exhibit "XXX-3")* and official receipt VB00021 *(Exhibit "III-4")* shows that only the amount of ₱15,639,713.28 was reflected. Thus, this Court maintains the disallowance of the reported zero-rated sales of ₱338,368,432.83 for being unsupported by official receipts.

As regards the third ground, petitioner explains that it adopted the accrual method of accounting whereby it records and/or declares in advance the sales in its Quarterly VAT Returns although it has not yet actually received the payment for the services rendered. As such, even if the official receipts amounting to ₱3,161,713,051.01 were dated in 2007, the same

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should not have been excluded as they are actual zero-rated sales of petitioner within the taxable year of 2006 and as a matter of fact were reported by petitioner in its fourth Quarterly VAT Returns.

Granting *arguendo* that the amount of ₱3,161,713,051.01 should be excluded, petitioner argues that the same should not form part of the divisor for purposes of determining the allocation factor for input taxes in 2006.

We disagree with petitioner's first contention under the third ground. The VAT due (be it at 0% or 12%) on sale of services by a VAT taxpayer, like herein petitioner, must be reported based on the taxpayer's gross receipts, which is defined under *Section 108 of the NIRC of 1997*, as follows:

> "The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

However, as regards petitioner's second contention under the third ground, we agree with petitioner on this point. Since the law mandates that total collections (for previous and current sales of services, as well as for services yet to be performed) during the period should be reported and no data is available for the entire collections of petitioner during the fourth quarter of 2006, we are constrained to use the figures reflected in the VAT return and allow the amount of ₱3,161,713,051.01. Thus, the allocation factor for petitioner's substantiated zero-rated sales for the fourth quarter of 2006 is hereby recomputed, as follows:

Valid Zero-Rated Sales per Decision dated June 11, 2012	₱2,009,424,225.76
Add: Zero-Rated Sales w/ ORs dated 2007	3,161,713,051.01
Adjusted Valid Zero-Rated Sales	₱5,171,137,276.77
Divided by Total Sales per VAT Return	5,564,544,278.37
Allocation Factor for Valid Zero-Rated Sales	92.93%

Accordingly, petitioner's refundable input VAT is recomputed, as follows:

Valid Zero-Rated Sales per Decision dated June 11, 2012	₱2,009,424,225.76
Add: Zero-Rated Sales w/ ORs dated 2007	3,161,713,051.01
Adjusted Valid Zero-Rated Sales	₱5,171,137,276.77
Divided by Total Sales per VAT Return	₱5,564,544,278.37
Allocation Factor	92.93%
Multiplied by Substantiated Input VAT	₱ 18,386,624.32
Refundable Input VAT	**₱ 17,086,710.73**

For all the foregoing, petitioner's refundable input VAT for the fourth quarter of taxable year 2006 is, therefore, hereby ordered increased from ₱6,639,101.52 to ₱17,086,710.73.

WHEREFORE, premises considered:

1) as regards respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration", the same is hereby **DENIED** for lack of merit;

2) as regards petitioner Energy Development Corporation's "Motion for Reconsideration", the same is hereby **PARTLY GRANTED**. Accordingly, the dispositive portion of our Decision dated June 11, 2012 is hereby amended to read, as follows:

> "**WHEREFORE**, premises considered, the present Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Energy Development Corporation in the amount of **SEVENTEEN MILLION EIGHTY SIX THOUSAND SEVEN HUNDRED TEN AND 73/100 PESOS (P17,086,710.73)**, representing unutilized input VAT for the fourth quarter of 2006.
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> **SO ORDERED.**"

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

A T T E S T A T I O N

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

C E R T I F I C A T I O N

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.

ERNESTO D. ACOSTA
Presiding Justice