REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

BIR Ruling No. 123-2013
DT- 016-2024
FEB 28 2024

NORTEAM SHIPPING SERVICES, INC.
Suite 201, ITC Building
337 Sen. Gil Puyat Avenue, Makati City

Attention: JULITO B. QUIBAN JR
President

Gentlemen:

This refers to your request that Norteam Shipping Service, Inc. ("NSSI") be allowed to record the unclaimed/denied value-added tax ("VAT") refund claim as "miscellaneous expense" for income tax purposes.

It is represented that NSSI has filed a claim for VAT refund representing unutilized input VAT attributable to zero-rated sales pursuant to Section 112(A) of the National Internal Revenue Code ("Tax Code") of 1997, as amended. Subsequently, the claim for VAT refund was denied for lack of factual and legal basis.

NSSI expressed that it no longer intends to pursue a judicial appeal with the Court of Tax Appeals ("CTA") due to high cost that may be incurred. Instead, NSSI is requesting that it be allowed to record the unclaimed / denied claim for VAT refund as "miscellaneous expense" for income tax purposes, citing the case of *Commissioner of Internal Revenue vs. Maersk Global Service Center (Philippines) Ltd. (CTA Case EB 1786, June 13, 2019),* wherein the CTA En Banc allowed the previously denied claim VAT refund to be deducted as expenses from gross income.

In reply, please be informed that Revenue Memorandum Circular ("RMC") No. 57-2013 previously clarified the issues concerning the recovery of unutilized creditable input taxes attributable to VAT zero-rated sales, to wit:

> *"[T]hat unutilized creditable input taxes attributable to zero-rated sales can only be recovered through the application for refund or tax credit. Nowhere in the Tax Code can we find a specific provision expressly providing for another mode of recovering unapplied input taxes, particularly your proposition that unapplied input taxes may be treated outright as deductible expense for income tax purposes. xxx"* (Underscoring supplied)

Moreover, the Supreme Court in the case of *United Coconut Planters Bank vs. Sps. Uy G.R. No. 204039, January 10, 2018*, explained that *Stare Decisis* applies only to cases decided by the Supreme Court, to wit:

> *"In other words, the doctrine of stare decisis becomes operative only when judicial precedents are set by pronouncements of this Court to the exclusion of lower courts. It is true regardless whether the decisions of the lower courts are logically or legally sound as only decisions issued by this Court become part of the legal system. At the most, decisions of lower courts only have a persuasive effect."*

The Supreme Court clearly established that the decision of lower courts, such as the CTA, is not a binding precedent considering that judicial precedents are only set by pronouncements of the Supreme Court to the exclusion of lower courts.

Accordingly, in the absence of a Supreme Court ruling allowing the same, RMC No. 57-2013 shall be enforced, and that the unutilized creditable input taxes attributable to zero-rated sales can only be recovered through the application for refund or tax credit.

Therefore, in view of the foregoing, this Office hereby denies the request of NSSI to claim the unutilized creditable input taxes attributable to VAT zero-rated sales as deduction for income tax purposes.

Please be guided accordingly

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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