REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

National Office Building
Quezon City

Section 112(A) of Tax Code of 1997, as amended
Revenue Regulations No.16-05, as amended
BIR Ruling No. 1405-18
VAT- 045-2023
MAY 09 2023

Manila Bay Thread Corporation
Lopez Jaena Street Bo. Tañong,
Marikina City 1803

Attention: **Ms. Ester T. Gabaldon**
Finance Director

Gentlemen:

This refers to the request of Manila Bay Thread Corporation[1] ("MBTC" for brevity) for legal opinion on whether or not MBTC may be allowed to reverse/return the amount applied for tax credit to its value-added tax (VAT) return as excess input tax.

Background

1. MBTC with Taxpayer Identification No. (TIN) is a corporation duly organized and existing under the law of the Republic of the Philippines.

2. On February 13, 2007, MBTC applied for tax credit memo for excess of input taxes from January to December 2005: that on June 01, 2007, Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 45 issued Letter of Authority (LOA) No. to examine the books of accounts and accounting records of MBTC for excess input taxes; that on May 08, 2007 and June 13, 2007, MBTC submitted documents which was received on May 08, 2007 and June 13, 2007 respectively; that on September 01, 2008, MBTC submitted additional documents for further review and continuance of audit investigation; that on March 12, 2012, upon follow up, MBTC was informed of the denial of their application for non-submission of documents; that on October 17, 2012, MBTC sent a letter request for reconsideration of its denial to the Assessment Division of Revenue Region (RR) No. 7 due to the fact that all requested documents were submitted and another letter was sent addressed to then Deputy Commissioner Nelson Aspe on November 20, 2012, which was referred to Regional Director of RR No 7 – Quezon City and RDO No. 45 – Marikina City on December 03, 2012;

3. On December 08, 2007 and May 29, 2008, MBTC applied for tax credit memo for excess of input taxes from January to June 2006 and July to December 2006, respectively; that on February 22, 2008 and October 09, 2008, BIR RDO No. 45 issued LOA No. and LOA No. respectively, to examine the books of accounts and accounting records of MBTC for excess input taxes; that on September 11, 2011 MBTC submitted the requested documents duly received by the assigned Revenue Officer; that on September 05,

[1] *Formerly Coats Manila Bay, Inc.*

VAT R 0 4 5 - 2 0 2 3
MAY 0 9 2023

2012, MBTC received letter from BIR RDO No. 45 informing MBTC that continuance of audit investigation will be assigned to another Revenue Officer;

4. On November 28, 2008, MBTC applied for second tax credit memo for its excess input tax on taxable period covering January to December 2007 which was allegedly acknowledged by RDO No. 45 but was later withdrawn for reason that the said RDO cannot issue LOA because the authority period to issue LOA had prescribed;

5. On April 25, 2012, MBTC applied for tax refund for the excess input taxes covering period from January 01, 2010 to December 31, 2010; and that on May 25, 2012, August 10, 2012 and November 13, 2012 the Large Taxpayers Regular Audit Division 1 issued LOA No. LOA No. and LOA No. respectively, for the examination of the books of accounts and other accounting records of MBTC pursuant to its claim for refund.

Hence this request.

In reply, please be informed of the following provisions of the National Internal Revenue Code (Tax Code) of 1997, as amended, applicable to the present cases:

Section 105:

"Section 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

xxx xxx xxx"

Section 110(B):

"Sec. 110. Tax Credits. —

xxx xxx xxx

(B) Excess Output or Input Tax. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: [Provided, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT:][2] Provided, however, That any input tax attributable to zero-rated sales by a VAT

[2] *Bracketed proviso was deleted by RA 9361, which took effect on 13 December 2006.*

VAT - 045 - 2023
MAY 09 2023

registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

Section 112:

"Sec. 112. Refunds or Tax Credits of Input Tax. —

(A) Zero-Rated or Effectively Zero-Rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): 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.

(B) Capital Goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

(C) Cancellation of VAT Registration. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

VAT-045-2023
MAY 09 2023

(E) Manner of Giving Refund. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, that refunds under this paragraph shall be subject to post audit by the Commission on Audit." (Underscoring)

Based on the above-cited provisions, it can be gleaned that only the claim for tax credit and/or refund for the year 2010 was denied, and for the years 2005, 2006 and 2007 no action was made. In such circumstance that the Commissioner failed to act upon the request within the prescribed period, the taxpayer may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

While all the remedies under the provisions of the Tax Code of 1997, as amended, are in place, it is to be noted that nowhere in the said law can we find a specific provision expressly providing for another mode of recovering unapplied input taxes, more so a denied application or unacted application of tax credit and/or refund, through a reversal/return to VAT return to be considered as excess input tax.

Premises considered, this Office cannot grant the request of MBTC to allow the return of the amount previously applied for conversion for tax credit or return back as excess input tax on its VAT return for lack of legal basis.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
007236

K-1