REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 110(B), 112(A), NIRC
BIR Ruling No. 123-2013
#079-2016
3-1-2016

DIAZ MURILLO DALUPAN and COMPANY
5th Floor Don Jacinto Building
Dela Rosa corner Salcedo Sts.
Legaspi Village, Makati City

Attention: **Atty. Willie B. Santiago**
Principal, Tax and Corporate Services

Gentlemen:

This refers to your letter dated 17 May 2010 requesting on behalf of your client, **PANDIMAN PHILS., INC. (PANDIMAN),** confirmation of your opinion on the following issues as clarified in your supplemental letters dated 15 August 2011 and 24 June 2011:

> "1. That the accumulated and unapplied input VAT arising from the purchases of goods and services of zero-rated taxpayer maybe deducted from income for income tax purposes if the two-year prescriptive period has already prescribed; and
>
> "2. That the basis for computing the expanded withholding tax on such purchases of goods and services is the total amount appearing in the invoice/official receipt net of VAT."

It is represented that PANDIMAN, with Taxpayer's Identification No is registered with the Securities and Exchange Commission under Registration No. on 4 June 1982; that its primary purpose is to render technical services to domestic and international ship-owners, ship-owners' associations and clubs in the prevention and finding of solutions to problems or disputes arising out of or necessarily connected with the pursuit of their maritime business such as ship arrest, oil pollution and other cargo and crew claims; that because of the nature of its offered services and clientele, it mostly enters into VAT zero-rated transactions; that PANDIMAN is a VAT- registered Taxpayer and because its transactions do not result to any output VAT liability, its input VAT from its purchases has remained unapplied on its books and has accumulated over the years; that as of 31 December 2009, the unapplied input tax (asset account) has already amounted to P ; that PANDIMAN attempted to avail the remedy of a refund or Tax Credit Certificate for

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the said amount of input tax but the collation of the required documentation was proven to be too burdensome because of the change of company's personnel-in-charge and at the same time the custody of said documents, until inadvertently the period to claim refund has already expired; that it is reasonably projected that basing on experience in prior years, the said in-put tax account would continue to remain unused and further accumulate as there would be no enough output tax to offset it against.

In reply, please be informed that Section 110(B), in relation to Section 112(A) of the 1997 Tax Code, as amended, provides for the remedy of a taxpayer to recover the unapplied accumulated input VAT arising from zero-rated transactions, viz:

"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 however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112. (underscoring supplied)

xxx xxx xxx

In addition thereto, Section 112(A) of the same Code states:

"(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: xxx xxx xxx (Underscoring supplied)

It is noted, based on the above-cited provisions, that 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. Thus, your proposition, that accumulated and unapplied input value-added tax (VAT) arising from PANDIMAN's purchase of goods and services after the expiration of the two (2) year prescriptive period may be deducted from your income, is hereby denied for lack of legal basis. (*BIR Ruling No. 123-2013* dated March 25, 2013)

It is a governing principle in taxation that tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The

basic principle in the construction of laws granting tax exemptions has been very stable. He who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be beyond doubt or mistake (*City of Iloilo, et. al. vs Smart Communicatiqns, Inc. G.R. No. 167260*, dated February 27, 2009). And since a deduction for income tax purposes partakes of the nature of a tax exemption, then it must also be strictly construed *(CIR vs. Isabela Cultural Corporation, G.R. No. 172231* dated February 12, 2007*)*.

As regards the request that, in the purchase of goods and services, the amount to be used as basis for expanded withholding tax shall be the purchase amount net of VAT, the same is hereby granted. Revenue Memorandum Circular No. 72-04 clarifies that the basis of CWT to a VAT registered supplier of goods and services shall be the gross amount paid exclusive or net of VAT. (*BIR Ruling No. 123-2013* dated March 25, 2013)

Please be guided accordingly.

Very truly yours,

KIM S. JACINTO -HENARES
Commissioner of Internal Revenue

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