July 12, 2018

BIR RULING NO. 1067-18

Sections 109 (1) (B) & 204 (C) NIRC;
VAT Ruling No. 074-01 & BIR Ruling
No. DA-559-06

AAA

_____
_____
_____

Dear AAA,

This refers to your request on behalf of **ARIELA MARKETING CO., INC. ("Ariela")** for refund of overpaid value-added tax (VAT) amounting to PhP_____ on its importation of 500 bags of Feed Premix Powder pursuant to Section 109 (1) (B) of the National Internal Revenue Code 1997, as amended (NIRC).

The facts as culled from the records are as follows:

1. A shipment of 1x20' Container No. MSKU5694907 STC: 500 bags Avemix 02CS (Feed Premix Powder) arrived at Manila International Container Port (MICP) on June 30, 2015 consigned to Ariela, covered by B/L No. 603953425 and declared under entry No. C144338-15.

2. On June 30, 2015, the declarant of Ariela lodged the shipment through the e2M system based on its declared customs value of US$_____ under HSC 3824.9099 at 3% rate of duty.

3. Accordingly, the computed customs duties and taxes due amounting to PhP_____ and PhP_____, respectively, were automatically debited from the account of Ariela by its bank.

4. On July 2, 2015, AAA, Licensed Customs Broker of Ariela requested the District Collector, MICP to refund the VAT amounting to PhP_____ on the subject shipment. AAA averred that instead of code 4000 N20 to signify that the shipment is exempt from payment of VAT, he used the code 4000 000 in Box No. 37 of the Single Administrative Document (SAD). As evidence to prove that the shipment is exempt from payment of VAT pursuant to Section 109 (1)

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(B) of the NIRC, AAA attached the original copy of the Authority to Release Imported Goods (ATRIG) dated June 30, 2015 issued by the Bureau of Internal Revenue (BIR) in favor of Ariela.

5. On July 3, 2015, Ariela's docket was forwarded to the Revenue Accounting Division (RAD) for verification of the payments made by Ariela for the subject shipment declared under Entry No. C144338-15. Ariela paid the Refund Processing Fee and Legal Research Fund (LRF) in the total amount of PhP_____ as evidenced by BCOR No. 01861758848.

6. On August 26, 2015, Mr. Emilio L. Jacinto, Chief, RAD, issued a Certification attesting to the fact that Ariela has paid on June 30, 2015 the amount of PhP_____ as customs duties and taxes and that said amount has been remitted to the Bureau of Treasury on July 1, 2015.

7. On September 3, 2015, the Law Division, MICP endorsed the docket of the claim to the Chief, Formal Entry Division (FED) for comment and preparation of the Discrepancy Report, as may be warranted.

8. On September 14, 2015, BBB, through Mr. Rizalino Jose C. Torralba, Chief of Section 12, FED, informed Mr. Florante P. Ricarte, Chief of FED, that Entry No. C144338-15 was processed under the Greenlane and assessed with customs duty of PhP_____ and that the same is exempt from payment of VAT based on the ATRIG dated June 8, 2015 issued by the BIR.

9. On October 28, 2015, CCC executed an Affidavit attesting that she committed the mistake of entering the wrong code in the e2M in lodging Entry No. C144338. Instead of entering 4000 N20 in Box No. 37, she entered 4000 000 thereby causing undue payment of VAT on the shipment.

10. On December 1, 2015, Atty. Tristan Armando II F. Langcay, OIC-Chief, Law Division, MICP, recommended to the District Collector, MICP the approval of the request for VAT refund of Ariela.

11. On January 18, 2016, the OIC-Chief, Law Division MICP endorsed the docket to the OIC, Liquidation and Billing Division, MICP with a request for a Statement of Refund. Meanwhile, Mr. Ricarte, Chief, FED, transmitted to the Law Division the Discrepancy Report which recommended accordingly the approval of the request for VAT refund of Ariela.

12. On February 6, 2016, the OIC, Liquidation and Billing Division,

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MICP endorsed to the OIC-District Collector, MICP the Statement of Refund which recommended the approval of the aforesaid request.

13. On February 29, 2016, the Ruling and Research Division (RRD), Legal Service, RCMG, verified with the BIR if Ariela has filed any claim/request for refund involving the subject shipment.

14. On April 12, 2016, a letter dated April 5, 2016 from Mr. Nelson Aspe, Deputy Commissioner, Operations Group, BIR, informed the RRD that the BIR does not have any pending application/claim/request from Ariela pertaining to Entry No. C-144338-15.

15. On May 19, 2016, RRD requested BIR to verify if the subject VAT payment is included in the returns or reported as input VAT by Ariela.

16. On June 24, 2016, BIR informed RRD that VAT returns only provide total declarations of sales and purchases and its corresponding output and input taxes.

17. On September 19, 2016, the docket pertaining to Ariela's claim for refund of VAT was endorsed by the Commissioner of Customs to BIR and received through the Commissioner's Office on October 6, 2016.

In reply, please be informed as follows:

Claim for Refund is within the 2-year prescriptive period.

Pursuant to Section 204 (C) of the NIRC, as amended by Republic Act (RA) 7716, as further amended by RA 8241, no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty. Records show that you paid the VAT in the amount of PhP_____ on June 30, 2015 under Bureau of Customs Receipt No. R185399. You filed your claim with the District Collector, Bureau of Customs on July 2, 2015 while your letter requesting for refund of VAT paid was received by this Office on October 6, 2016. Clearly, your claim was filed within the two (2)-year prescriptive period prescribed by law.

ATRIG is not per se proof of VAT exemption.

Contrary to your claim, [1] the Authority to Release Imported Goods (ATRIG) is not evidence in itself that Ariela and/or the imported goods are VAT exempt. It is merely a document that is issued by the BIR in accordance with the guidelines set forth in Revenue Memorandum Order No. 35-2002, and the same is addressed to the Commissioner of Customs, allowing the release of imported goods from customs custody upon payment of applicable taxes, or proof of exemption from payment thereof, whichever is applicable. In

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your case, it was issued following your payment of customs duties and taxes on the imported goods and not because your presented proof of exemption.

Proof of Exemption is required before Taxpayer can claim for refund of VAT.

Section 109 (1) (B) of the NIRC provides —

"***SEC. 109. Exempt Transactions.*** —

(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.

(A) x x x

(B) Sale or importation of fertilizers; seeds, seedlings and fingerlings; fish, prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets);

xxx xxx xxx"

Pursuant to the above-quoted provision, the sale or importation of fish, prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets) is exempt from VAT.

Section 3 of RA 1556, as amended by Presidential Decree No. 7, entitled "An Act to Regulate and Control the Manufacture, Importation, Labelling, Advertising, and Sale of Livestock and Poultry Feeds and Providing Funds Therefor" (except specialty feeds and ingredients) defines "feeds or feeding stuff," as follows:

> *"'**Feeds' or 'Feeding Stuff**' shall include all such articles used for the purpose of feeding purporting to supply proteins, carbohydrates, fats, minerals, vitamins, antibiotics and/or correcting nutritional disorders. Such articles may be locally produced or imported, mixed or in the form of simple ingredients."*

Pursuant to Section 6, in relation to Section 4 thereof, the Bureau of Animal Industry (BAI) is the implementing agency responsible for the **registration**, inspection, sample collection and field investigation of the concerned products and business entities. Moreover, it is a requirement that each type or kind of feeds or feed stuffs manufactured or imported must be registered separately. No feeds or feeding stuffs in the form of complete mixture, concentrate, supplement, or ingredient which have not been registered shall be manufactured, **imported**, advertised, sold or offered for sale or held in possession for sale in the Philippines.

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Stated differently, the BAI is the competent authority in determining eligibility to manufacture, import, sell or distribute "animal feeds" and "feed ingredients," as well as the nature or specification of any product claimed as such. The certification on the nature and composition of the commodities/items as stated in the registration and import permit that will be issued by BAI will govern the classification of the said items for purposes of VAT under Section 109 (1) (B) of the NIRC.

Accordingly, any person claiming such VAT exemption must secure the following mandatory requirements, to wit:

(a) current BAI-Certificate of Business Registration;

(b) BAI-Certificate of Product Registration for each type/kind of product; and/or

(c) BAI-Import Permit for each type/kind of product.

THEREFORE, if BAI classifies Avemix 02CS as feeds or feed additives (ingredients) as used in Section 109 (1) (B) of the NIRC, your importation thereof will qualify as VAT-exempt as soon as you secure the aforementioned mandatory requirements. Since Ariela's claim for refund is pending compliance with aforesaid requirements, its claim for refund cannot *ipso facto* be granted.

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

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. **See #4** on narration of facts.

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