September 28, 2018

BIR RULING NO. 1210-18

Sec. 2 (r) of Revenue Bulletin No. 01-03; BIR Ruling No. 201-2015

Kolonwel Trading
675 Sabino Padilla St.,
Binondo, Manila

Attention: *AAA*

Gentlemen :

This refers to your letter dated September 29, 2017, requesting for a ruling on the tax expenditure subsidy extended to the Bureau of Fire Protection (BFP) on importations of fire fighting equipment, rescue equipment, and personal protective gears.

It is represented that:

1. On August 27, 2014, the Bureau of Fire Protection (BFP) advertised the Invitation to Bid for the procurement of 469 fire trucks with a total approved budget of PHP_____ under the Special Account in the General Fund (SAGF) for CY 2010-2013 and General Appropriations Act (GAA) for CY 2014.

2. The Bidding Documents for the procurement of 469 fire trucks provide for the following general conditions of contract on taxes and duties:

   "The Supplier, whether local of foreign, shall be entirely responsible for all the necessary taxes, stamp duties, license fees, and other such levies imposed for the completion of this Contract."

3. The Joint Venture of Kolonwel Trading and Hubei Jiangnan Special Automobile Co., Ltd. ("Joint Venture") participated in the bidding for the procurement of 469 fire trucks and offered to supply and deliver fire trucks, to be manufactured in the People's Republic of China (PROC),

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and quoted prices using the standardized price schedules for goods offered from abroad. The summary of the Joint Venture's price schedules is as follows:

Description of Goods	Country of Origin	Quantity	Unit Prices	Total Price Delivered
1,000-Gallon Fire Trucks	PROC	244	_____	_____
500-Gallon Fire Trucks	PROC	225	_____	_____
Total		469		_____

4. After the detailed evaluation of bids and the conduct of post-qualification proceedings, the Joint Venture was recommended for the contract award by the BFP Bids and Awards Committee (BAC). Consequently, on February 2, 2015, the Joint Venture and the BFP entered into a Supply Contract and stipulated that:

"All fees, taxes, and other similar charges, imposed by the Philippine Government on the procurement of 469 units of fire trucks shall be on the account of the winning bidder."

5. From May 20, 2015 to March 18, 2016, the Joint Venture supplied and delivered to the BFP all the 469 fire trucks, manufactured in the PROC. In the importation, however, the BFP erroneously collected value added tax (VAT) from the payments due to the Joint Venture, which mistakenly paid the same as follows:

Year	No. of Units Delivered	Invoice Account	Erroneously Collected/Paid VAT per Issued BIR Form 2306
2015	294	_____	_____
2016	175	_____	_____
Total	**469**	_____	_____

6. In a certification dated July 18, 2016, the Chief Accountant of the BFP certified, as follows:

"This is to certify and attest that, indeed, Hubei Jiangnan Special Automobile Company and Joint Venture of Kolonwel Trading paid for the taxes and duties for the four hundred sixty-nine (469) fire trucks to the Bureau of Customs, that we have bought, meanwhile that we are determining whether our

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Bureau is covered with the existing Public Safety Modernization Act thru the Department of Finance as applied in the case of Civil Aviation Authority of the Philippines (CAAP) and Rosenbauer taxes and duties."

7. On April 26, 2017, the Joint Venture filed its claim for refund of erroneously paid VAT for the taxable year 2015 in the amount of PHP_____ and for the taxable year 2016 in the amount of PHP_____ or the aggregated amount of PHP_____, on the basis of Sections 204 (C) and 229 of the National Internal Revenue Code of 1997, as amended, duly supported by an accomplished BIR Form No. 1914.

In reply, please be informed that requests for rulings on issues covered by an on-going claim for refund or issuance of tax credit certificate is a "No Ruling Area" under Section 2 (r) of Revenue Bulletin (RB) No. 01-03 which provides, to wit:

*"**SECTION 2.** **List of No-Ruling Areas**. — The following shall hereby be construed and identified as "No-Ruling Areas":*

xxx xxx xxx

*r) Issue/s or transactions involving directly or indirectly the same taxpayer/s which is/are the subject of an investigation, on-going audit, administrative protest, **claim for refund or issuance of tax credit certificate**, collection proceedings, or a judicial appeal subject to Section 3 hereunder. Accordingly, the taxpayer must submit and include the following statement in the request for ruling: 'The issue/s or transaction subject of the request is not under investigation, on-going audit, administrative protest, claim for refund or issuance of a tax credit certificate, collection proceedings, or a judicial appeal of the taxpayer/s involved."* (Emphasis and underscoring supplied)

In view of your representation that the Joint Venture filed a claim for refund on April 26, 2017, this Office declines to issue a ruling on the issue raised.

Please be guided accordingly.

Very truly yours,

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

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