November 21, 2018

BIR RULING NO. 1405-18

Sec. 112 (A) of NIRC; RR 16-05

Step Asia Tax Credits & Tax Refunds
1100, 88 Corporate Center, Sedeño cor. Valero Sts.
Salcedo Village, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated May 30, 2018, requesting on behalf of your client, JG Summit Olefins Corporation ("JG Summit" for brevity), for confirmation of your opinion that JG Summit's unutilized excess input tax covering the period from October 1, 2013 to September 30, 2014, may be restored as an asset account in its financial records/book of accounts and that the existing excess input tax for the period October 1, 2014 to December 31, 2014 be allowed to be refunded in the future, subject to the existence of zero-rated sales.

It is represented that JG Summit is a domestic corporation duly registered with the Securities and Exchange Commission and the Bureau of Internal Revenue with Taxpayer's Identification No. 000-000-000-000. The primary purpose of the Corporation is to acquire, construct, operate and maintain a naphtha cracker plant and its related facilities for the production primarily of polymer grade ethylene, polymer grade propylene, partially hydrogenated pyrolysis gasoline and pyrolysis fuel oil. It is likewise registered with the Board of Investments (BOI) as a new producer of polymer-grade ethylene and propylene, pyrolysis (Py) gas and secondary products, (*i.e.*, fuel gas, fuel oil and acid gas). JG Summit obtained passed-on input VAT from its purchases that can be used to offset against its output VAT liabilities. Since JG Summit 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. Furthermore, it started commercial operation on November 2014.

On March 30, 2016, JG Summit applied for VAT refund representing unutilized/excess input tax covering the period October 1, 2013 to September 30, 2014. Thereafter, the amount of claim was deducted from the available excess input during the 4th Quarterly VAT Return (July 1 to September 30, 2014) and the same amount has been removed from the Input Tax account per Financial Statement. However, the subject claim

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was not given due course for the reason that the commercial operations of JG Summit commenced only on November 2014. Thus the same was denied on the basis of premature application.

In reply, please be informed that Section 112 (A) of the 1997 Tax Code, as amended, provides for the period within which to apply for the issuance of a TCC or refund of creditable input tax due or paid attributable to VAT zero-rated sales, *viz.*:

> "***SEC. 112. Refunds of 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 the output tax. x x x" (Underscoring supplied)*

Relative to the above provision, Revenue Regulations (RR) No. 16-2005 provides:

> *"SECTION 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. —*
>
> *(a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services.*
>
> *A VAT-registered person whose sales of goods, properties or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The application should be filed within two (2) years after the close of the taxable quarter when such sales were made." (Underscoring supplied)*

Based on the above-cited provisions, it is clear that the two (2)-year prescriptive period within which to file a claim for refund or issuance of TCC of input tax attributable to VAT zero-rated sales is reckoned from the close of the taxable quarter when such sales were made. (*BIR Ruling No. 123-2013* dated March 25, 2013)

The Supreme Court, in the case of *CIR v. Mirant Pagbilao Corporation*, *G.R. No. 172129*, *dated September 12, 2008*, had occasion to clarify the above provision, to wit:

> *"x x x. Sec. 112(A) of the NIRC pertinently reads:*
>
> *(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: x x x. (Emphasis ours.)*
>
> *The above proviso clearly provides in no uncertain terms that unutilized*

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input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), [P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued. Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. x x x" (Underscoring supplied)

Considering that the reckoning period for the filing of the claim for refund of excess/unutilized input VAT attributable to zero-rated sales is from the end of the quarter when the pertinent sale was made, regardless when the input VAT was paid, input VAT to be refunded need not be incurred in the same period or year when the zero-rated sales transpired. Input VAT accumulated, incurred or paid prior to the year when the zero-rated sale was made can be the subject of a claim for refund/application for TCC provided that the input VAT is unutilized and directly attributable to zero rated sales.

That said, since the application for VAT refund has been properly denied for being prematurely filed, this Office is of the opinion that, for accounting purposes, input taxes pertaining to period October 1, 2013 to September 30, 2014, may be restored as an asset account in its financial records/book of accounts, if the same has already been deducted from the said account following the application for VAT refund. It should be stressed, however, that unutilized creditable input taxes attributable to zero-rated sales can only be recovered through the application for refund or tax credit (BIR Ruling No. 133-13 dated April 4, 2013).

Accordingly, in the absence of zero-rated sales, the denial of application for VAT refund prematurely applied is without prejudice to a new and later application for VAT refund, provided that it can be clearly shown that said input taxes are actually and directly attributed to zero-rated sales. Moreover, the claim for refund shall be supported by source documents which must be compliant with the invoicing requirements as required under existing laws and rules and regulations.

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,

(SGD.) CAESAR R. DULAY

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