REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Republic Act (RA) No. 7916; Executive Order (EO) No. 226		OT-0195-2020

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36 / 927-09-63

Date: FEB 19 2020

PIONEER FLOAT GLASS MANUFACTURING, INC.
Asahi Special Economic Zone (ASEZ)
730 MH Del Pilar St., Brgy. Pinagbuhatan,
Pasig City

Attention: **PAUL VINCENT GO**
President

MARICEL CARBONEL
Manager – Finance and Accounting

Gentlemen:

This refers to your request on behalf of **PIONEER FLOAT GLASS MANUFACTURING, INC. ("PFGMI" for brevity),** for confirmation that its purchase of bunker fuel to be used in the production of float glass is exempt from excise tax in light of its incentive as an Ecozone Export Enterprise under Republic Act (RA) No. 7916, otherwise known as *"The Special Economic Zone Act of 1995"*, in relation to Executive Order (EO) No. 226, otherwise known as *"The Omnibus Investments Code of 1987"*.

It is represented that PFGMI, with Taxpayer Identification Number (TIN) and Certificate of Registration No. dated February 26, 2018, is a corporation engaged in the manufacture and distribution of float glass to both domestic and international markets which requires the use of substantial amounts of bunker fuel; that for every metric ton of glass produced, the production cost amounts to US$ (inclusive of fuel excise tax) of which US$ or accounts for fuel cost; and that the bunker fuel will be used solely for the production of glass within the special economic zone and is not in any way sold either domestically or internationally, and not brought out of the special economic zone.

PFGMI is likewise registered with the Philippine Economic Zone Authority (PEZA) under Certificate of Registration No. 18-143 dated November 22, 2018 as an Ecozone Export Enterprise at the Asahi Special Economic Zone (ASEZ) with registered activity[1] as follows:

> 2. *The scope of the REGISTRANT's registered activity shall be limited to the manufacture and distribution of float glass at the ASEZ. . . . .*

In reply, please be informed that Section 135 (c) of the National Internal Revenue Code of 1997, as amended, states that:

> *"SEC. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. - Petroleum products sold to the following are exempt from excise tax:*
>
> *xxx xxx xxx*

[1] Article II of the Registration Agreement dated November 22, 2018.

CTA 9195 - 2020
FEB 19 2020

(c) Entities which are by law exempt from direct and indirect taxes."

In relation thereto, Section 23 of RA No. 7916 states that:

"SEC. 23. Fiscal Incentives. - Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987."

Also, Section 77 (1) of Book VI of EO No. 226 provides that:

"Article 77. Tax Treatment of Merchandise in the Zone.

(1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, ***shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances,*** *the provisions of law to the contrary notwithstanding."* (Emphasis supplied)

Pursuant to the foregoing provisions, petroleum products sold to entities which are by law exempt from direct and indirect taxes are exempt from excise tax, and business establishments operating within the Ecozones shall be entitled to fiscal incentives as provided for under RA No. 7916, in relation to Presidential Decree (PD) No. 66 and EO No. 226, which includes tax and duty free importation of merchandise including raw materials, capital equipment, machineries, and spare parts, among others. In the case of *Secretary of Finance Cesar B. Purisima and Commissioner of Internal Revenue Kim S. Jacinto-Henares vs. Representative Carmelo F. Lazatin and Ecozone Plastic Enterprises Corporation*[2], the Supreme Court held that petroleum and petroleum products brought into the Freeport and Economic Zones (FEZs) and **which remain therein** are not taxable importations, to *wit*:

". . . . . Strictly speaking, however, articles brought into these FEZs are not taxable importations under the law based on the following considerations:

First, importation refers to bringing goods from abroad into the Philippine customs jurisdiction. It begins from the time the goods enter the Philippine jurisdiction and is deemed terminated when the applicable taxes and duties have been paid or the goods have left the jurisdiction of the BOC.

Second, under the Tax Code, imported goods are subject to VAT and excise tax. These taxes shall be paid prior to the release of the goods from customs custody. Also, for VAT purposes, an importer refers to any person who brings goods into the Philippines.

Third, the Philippine VAT system adheres to the cross border doctrine. Under this rule, no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the Philippine customs territory. Thus, we have already ruled before that an FEZ enterprise cannot be directly charged for the VAT on its sales, nor can VAT be passed on to them indirectly as added cost to their purchases.

---

[2] G.R. No. 210588, November 29, 2016.

FEB 19 2020

Fourth, laws such as RA 7227, RA 7916, and RA 9400 have established certain special areas as separate customs territories. In this regard, we have already held that such jurisdictions, such as the Clark FEZ, are, by legal fiction, foreign territories.

Fifth, the Implementing Rules provides that goods initially introduced into the FEZs and subsequently brought out therefrom and introduced into the Philippine customs territory shall be considered as importations and thereby subject to the VAT. One such instance is the sale by any FEZ enterprise to a customer located in the customs territory, which the VAT regulations refer to as a technical importation.

We find it clear from all these that when goods (e.g., petroleum and petroleum products) are brought into an FEZ, the goods remain to be in foreign territory and are not therefore goods introduced into Philippine customs territory subject to Philippine customs and tax laws.

Stated differently, goods brought into and traded within an FEZ are generally beyond the reach of national internal revenue taxes and customs duties enforced in the Philippine customs territory. This is consistent with the incentive granted to FEZs exempting the importation itself from taxes and duties.

Therefore, the act of bringing the goods into an FEZ is not a taxable importation. As long as the goods remain (e.g., sale and/or consumption of the article within the FEZ) in the FEZ or re-exported to another foreign jurisdiction, they shall continue to be tax-free. However, once the goods are introduced into the Philippine customs territory, it ceases to enjoy the tax privileges accorded to FEZs. It shall then be considered as an importation subject to all applicable national internal revenue taxes and customs duties."

Accordingly, PFGMI is exempt from excise tax on its purchase of bunker fuel to be used directly in the production of float glass at the ASEZ pursuant to Section 135 (c) of the National Internal Revenue Code of 1997, as amended, and RA No. 7916, in relation to EO No. 226.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

033084

K-1-LMAT