December 22, 2016

BIR RULING NO. 446-16

Commissioner of Internal Revenue v.
Solidbank Corporation, 462 Phil. 96

GDR Law
6/F W Global Center, 30th St. cor. 9th Avenue
Bonifacio Global City
Metro Manila

Attention: *AAA*

BBB

CCC

Gentlemen :

This refers to your letter dated September 18, 2015, requesting on behalf of Seneca Tobacco Philippines, Inc. ("Seneca") for refund or tax credit of the Php_____ in excise taxes, corresponding to 900,000 pieces of internal revenue stamps paid to the Bureau of Internal Revenue on July 11, 2014.

It is represented that Seneca is a resident corporation duly organized and existing under the laws of the Philippines and is engaged in the business of importing and distributing 100% organic tobacco products; and that it is the holder of the exclusive Asian distributorship rights for the Seneca cigarettes and is a local affiliate of the Nuvola Group of Companies of Canada.

It is further represented that Seneca, having relied upon Revenue Regulations (RR) No. 3-2006, made advance payments for the internal revenue stamps upon the belief that the stamps it purchased and will be sending abroad may still be used upon delivery back to the Philippines; that after the stamps were paid and while being affixed in Canada, RR No.

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7-2014, as amended by RR No. 8-2014, was promulgated, setting a deadline of April 1, 2015 for importers to dispose of their products bearing the old stamps, giving the company a period of only three (3) months from the time it commenced the marketing and sale of its products, which made it difficult for the company to dispose 1.4 Million individual packs of Seneca cigarettes; that RR No. 7-2014, as amended, should not have been applied retroactively as it did not provide a transitory provision for adjusting the deadline for importers to fully dispose of their products bearing the old stamps; and that the application of RR No. 7-2014, as amended, resulted in losses suffered by Seneca, hence, entitling it to a refund, by way of a tax credit under the law.

It is likewise represented that Seneca filed the herein claim within the reglementary period of two (2) years prescribed under Section 204 (C) of the National Internal Revenue Code of 1997, as amended (NIRC).

In reply, please be informed that Section 204 (C) of the NIRC as amended, provides:

> "Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. —
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. 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: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund."

The above provision provides for specific instances in which the Commissioner of Internal Revenue may refund or credit taxes, to wit: 1) the taxes have been erroneously or illegally received or penalties imposed without authority; 2) the value of internal revenue stamps when they are returned in good condition by the purchaser; and 3) the unused stamps have been rendered unfit for use and there is proof of destruction of the same.

In the instant case, Seneca claims that it is entitled to tax refund or credit on the ground that the implementation of RR No. 7-2014, as amended by RR No. 8-2014, prejudiced the company because of the losses it incurred due to unsold cigarettes bearing the old stamps which have been rendered useless by the said Regulations. It argued that the deadline to use the new stamps gave the importers barely seven (7) months to comply with the new regulations, and that importers like Seneca, whose established market turnaround

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time takes as long as nine months, were left with no sufficient time to dispose its unsold cigarettes bearing the old stamps.

It must be noted that the ground being invoked by Seneca in its request for tax refund or credit, that is, that the implementation of RR No. 7-2014 had caused prejudice to the company, is not one of the grounds in which the Commissioner of Internal Revenue may grant tax refund or tax credit. Thus, we rule to deny your request for tax refund/tax credit for lack of legal basis. It is a well settled rule that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government. *(Commissioner of Internal Revenue v. Solidbank Corporation, 462 Phil. 96)*

Please be guided accordingly.

Very truly yours,

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

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