October 21, 2019

BIR RULING NO. 669-19

Section 109 (1) (T) NIRC; BIR Ruling No. 385-2014

Rodriguez Esquivel Palpal-latoc Law Firm
1505 Mega Plaza, ADB Avenue corner Garnet Road
Ortigas Center, 1605 Pasig City

Attention: *AAA*

Gentlemen :

This refers to your letter dated October 10, 2014 requesting on behalf of your client, Dunfeng Shipping Phils., Corp. ("Dunfeng Shipping"), exemption from value-added tax (VAT) on its importation of One (1) unit 2014-built 1,716.00 GT deck barge named "GF 201" pursuant to Section 109 (1) (T) of the 1997 Tax Code, as amended.

Documents submitted show that Dunfeng Shipping, with Tax Identification No. 000-000-000-000, is a domestic corporation registered with the Securities and Exchange Commission (SEC) under Company Registration No. CS201114060; that it is duly accredited by the Maritime Industry Authority (MARINA) to engage in domestic shipping business per MARINA Certification No. 012-2014 dated July 2, 2014 valid until August 20, 2017; and that Dunfeng Shipping is currently importing, for a total purchase price of USD _____, One (1) unit 2014-built 1,716.00 GT deck barge named "GF 201," with the following specifications:

Specifications	
Vessel's Name	GF 201
Vessel's Type	Barge
Flag	China
Port of Registry	Ningde
Ship Building No.	FHH20120109
Owner's Name	Golden Fortune 102 Limited
Ship Builder	Fujian Huahai Shipbuilding Co., Ltd.
GRT	1716
NRT	1441

Copyright 2020 CD Technologies Asia, Inc.

Length O.A.	83.8M
Length B.P.	83.8M
Breadth MLD	16M
Depth MLD	4.5M
Designed Draft	3.2M
Diesel Engine	6CT8.3-GM115

and that MARINA has approved the importation of the aforesaid cargo vessel in its letter dated May 19, 2014.

In support of its request for exemption, Dunfeng Shipping has submitted the following documents:

1. Certified true copies of the SEC Certificate of Registration and Articles of Incorporation;

2. Certified true copy of the MARINA Registration;

3. Certified true copy of the MARINA Authority to Import;

4. Letter of Undertaking;

5. Certified true copy of BIR Certificate of Registration; and

6. Other pertinent documents.

In reply, please be informed that Section 109 (1) (T) of the NIRC of 1997, as amended, provides as follows:

"Sec. 109. ***Exempt Transactions****. —*

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

(T) [1] *Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations."*

Based on the above-cited provision, the importation, among others, of a cargo vessel destined for domestic transport operations shall be exempt from VAT. In relation thereto, Section 4.109-1 (B) (1) (s) of the Revenue Regulations (RR) No. 16-2005, which implements the above-quoted provision, provides:

"SECTION 4.109-1. VAT-Exempt Transactions. —

XXX XXX XXX

Copyright 2020 CD Technologies Asia, Inc.

(B) Exempt transactions. —

> *(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT:*
>
> xxx xxx xxx
>
> *(s) Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations; Provided, that the exemption from VAT on the importation and local purchase of passenger and/or cargo vessels shall be limited to those of one hundred fifty (150) tons and above, including engine and spare parts of said vessels; Provided, further, that the vessels to be imported shall comply with the age limit requirement, at the time of acquisition counted from the date of the vessel's original commissioning, as follows: (i) for passenger and/or cargo vessels, the age limit is fifteen (15) years old, (ii) for tankers, the age limit is ten (10) years old, and (iii) for high-speed passenger crafts, the age limit is five (5) years old; Provided, finally, that exemption shall be subject to the provisions of Section 4 of Republic Act No. 9295, otherwise known as "The Domestic Shipping Development Act of 2004";* (Underscoring supplied)

Section 4 of RA No. 9295, on the other hand, sets forth the conditions for the availment of the VAT Exemption on the importation of a cargo vessel, to wit:

> *"**SEC. 4. Investment Incentives**. — To insure the continued viability of domestic shipping, and to encourage investments in the domestic shipping industry, the following incentives shall be granted to qualified domestic ship operators:*
>
> *(a) Exemption from value-added tax on the importation and local purchase of passenger and/or cargo vessels of one hundred fifty (150) tons and above, including engine and spare parts of said vessels: Provided: That the vessels to be imported shall comply with the age limit requirement at the time of acquisition counted from the date of the vessels, original commissioning, as follows; 1) For passenger and/or cargo vessels, the age limit is fifteen (15) years old, 2) For tankers, the age limit is ten (10) years old, and 3) For high-speed passenger crafts, the age limit is five (5) years old; and*
>
> *(b) x x x*
>
> *The importation of the articles under Section 4(a) and (b) of the Act shall be granted exemption from value-added tax subject to the following conditions: (1) That said articles are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices; (2) That said articles are directly imported by a MARINA-registered domestic shipping operator; (3) That said articles are reasonably-needed and will be used exclusively by the registered domestic shipping operator in its transport operations; (4) That the approval of MARINA was obtained prior to the importation of said articles; and (5) That exemption from value-added tax on the importation of said articles shall be granted*

Copyright 2020 CD Technologies Asia, Inc.

to all domestic shipping operators within a period of ten (10) years from the effectivity of this Act." [2] (Underscoring supplied)

In view of the foregoing, the importation of Dunfeng Shipping of One (1) unit 2014-built 1,716.00 GT deck barge named "GF 201," having been found compliant with the conditions set forth in RR No. 16-2005 and Section 4 of RA 9295, shall be exempt from VAT pursuant to Section 109 (1) (T) of the 1997 Tax Code. The VAT exemption, however, shall remain subject to the strict compliance of the conditions contained in the letter of approval issued by MARINA for the importation of the subject cargo vessel. (*BIR Ruling No. 385-2014* dated October 8, 2014)

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
Commissioner of Internal Revenue

Footnotes

1. Renumbered by Republic Act No. 10378.
2. While RA No. 9295 provides that the exemption from VAT on the importation of a cargo vessel shall be granted to all domestic shipping operators within a period of ten (10) years from the effectivity of said law which took effect on May 27, 2004, Section 7 of RA No. 9337, amending Section 109 of the NIRC of 1997, does not provide for a limitation on the period of availment of the VAT exemption.

Copyright 2020 CD Technologies Asia, Inc.