December 9, 2019

BIR RULING NO. 776-19

Sec. 96, RR 2-40

Chevron Philippines, Inc.
6/F 6750, Ayala Avenue,
Makati City

Attention: *AAA*

BBB

CCC

Gentlemen :

This refers to your letter, dated November 10, 2009, and supplemental letter, dated March 12, 2010, requesting for confirmation of your opinion that Chevron Philippines, Inc. ("CPI") can claim as deduction from gross income the amount of legal obligation it incurred from a judgment rendered by the Supreme Court.

It is represented that CPI is a domestic corporation engaged in the business of importing, distributing and marketing of petroleum products in the Philippines with Taxpayers Identification Number (TIN) 000-000-000-000. From April to May of 1996, CPI imported into the Philippines eight (8) cargoes of petroleum products (the "Imported Goods"). Pursuant to Section 1301 of the Tariff and Customs Code of the Philippines, as amended ("TCCP"), CPI was required to file an entry within thirty (30) days from the discharge of the last package of goods from the vessel. CPI filed the corresponding Import Entry Declarations and voluntarily paid in advance ninety percent (90%) of the duties due on these importations. However, the Import Entry and Internal Revenue Declarations ("IEIRD") were filed shortly beyond the prescribed 30-day period.

You further represented that because the IEIRDs were filed a few days after the lapse

Copyright 2020 CD Technologies Asia, Inc.

of the prescribed period, the Bureau of Customs ("BOC") concluded that CPI had impliedly abandoned the Imported Goods. The BOC technically construed CPI's failure to file IEIRDs as tantamount to its intention to renounce all its interests and property rights to the Imported Goods and thus falling within the purview of Section 1801 of the TCCP. [1] The BOC demanded CPI to reimburse and refund the Philippine Government (the "Government") the amount of _____ (P_____) representing the dutiable value of the Imported Goods.

You also represented that since CPI already disposed of the Imported Goods, BOC compelled CPI to reimburse the Government for the value thereof, minus the 90% advance duties already paid (or a remaining balance of P_____). The BOC reasoned that the ownership of the Imported Goods belongs to the Government by virtue of the implied abandonment.

This prompted CPI to file a petition for review with the Court of Tax Appeals on November 28, 2001 praying for the reversal of the decision of BOC. The case had been the subject of a long court battle until the same reached the Supreme Court. In its final decision, the Supreme Court held that it was the filing of the IEIRDs that constituted entry under the TCCP. Since these were filed beyond the 30-day period, they were not seasonably filed in accordance with Section 1301 of the TCCP. Consequently, the Imported Goods were deemed abandoned. Thus, CPI was ordered to pay the Government P_____ representing the dutiable value of the Imported Goods (the "Judgment"), plus interest, to wit:

> "WHEREFORE, the petition is hereby DENIED. Petitioner Chevron Philippines. Inc. *[sic]* is ORDERED to pay the amount of _____ (P_____) plus six percent (6%) legal interest *per annum* accruing from the date of promulgation of this decision until its finality. Upon finality of this decision, the sum so awarded shall bear interest at the rate of percent (12%) * *per annum* until its full satisfaction.
>
> "Costs against petitioner.
>
> **"SO ORDERED."**

Finally, you represented that CPI has complied with the Judgment of the Supreme Court and fully paid its entire obligation to the Government as described above, within the taxable year 2009.

It is, therefore, in this context that you are seeking confirmation of your opinion that your payments made pursuant to a judgment rendered by the Supreme Court falls within the purview of Section 76 of Revenue Regulations (RR) No. 02-40. This being so, the same can be claimed as a deduction from gross income. You posit that the particular provision does not restrict its application to damages for patent infringement and personal injuries but

Copyright 2020 CD Technologies Asia, Inc.

includes "*other causes*" such as the above.

In reply, please be informed that after consideration of the facts and the applicable law thereto, your request cannot be granted. The legal obligation that CPI incurred was a loss sustained in an illegal transaction, and hence not allowed as a deduction under Section 96 of RR No. 02-40.

It is necessary to mention that in the Supreme Court Decision, which was rendered final by the entry of judgment per Resolution dated January 19, 2009, the existence of fraud was established. The Supreme Court's decision provided the following:

> *"Petitioner's arguments lack merit.*
>
> *"Fraud, in its general sense, "is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another." It is a question of fact and the circumstances constituting it must be alleged and proved in the court below. The finding of the lower court as to the existence or non-existence of fraud is final and cannot be reviewed here unless clearly shown to be erroneous. In this case, fraud was established by the IPD-CIIS of the BOC. Both the CTA First Division and en banc agreed completely with this finding.*
>
> "xxx xxx xxx.
>
> *"Hence, due to the presence of fraud, the prescriptive period of the finality of liquidation under Section 1603 was inapplicable."*

The Judgment of the Supreme Court upheld the findings of fraud by the Court of Tax Appeals. Thus, the loss sustained by CPI by virtue of the Decision of the Supreme Court should be considered as sustained in illegal transactions since fraud was established. Therefore, it cannot be allowed as a deduction from CPI's income pursuant to Section 96 of RR No. 02-40 which provides that losses sustained in illegal transactions are not deductible.

Please be guided accordingly.

Very truly yours,

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

Copyright 2020 CD Technologies Asia, Inc.

Footnotes

1. Section 1801. Abandonment, Kinds and Effect of. — An imported article is deemed abandoned under any of the following circumstances: x x x
b. When the owner, importer, consignee or interested party after due notice, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days which shall not likewise be extendible, from the date of posting of the notice to claim such importation.

Copyright 2020 CD Technologies Asia, Inc.