May 10, 2018

BIR RULING NO. 811-18

Sec. 112 (A) NIRC; RMC 54-2014; BIR Ruling No. 123-2013

Hedcor Tudaya, Inc.
Tudaya, Sibulan, Sta. Cruz
Davao del Sur, 8001 Philippines

Attention: *AAA*

Gentlemen :

This refers to your request for confirmation that the two (2)-year prescriptive period, within which to file a claim for refund or issuance of a Tax Credit Certificate ("TCC") of the creditable input tax due or paid which are attributable to value-added tax (VAT) zero-rated sales, is reckoned from the close of the taxable quarter when the sales were made pursuant to Section 112 (A) of the 1997 Tax Code, as amended.

It is represented that Hedcor Tudaya, Inc. (the "Company") is a corporation duly organized and existing under the laws of the Philippines, with SEC Company Registration No. CS201127057; that the primary purpose of the Company is "to engage in the business of owning, developing, constructing, operating, repairing, and maintaining hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations"; and that the Company is registered with the Bureau of Internal Revenue ("BIR") as a VAT taxpayer on June 21, 2011, with registered line business of "generation, collection and distribution of electricity" as shown in its BIR Certificate of Registration No. OCN 2RC0000492159, with Tax Identification Number (TIN) 000-000-000-000.

It is further represented that, as a hydro-electric power plant operator, the Company's transactions are purely VAT zero-rated falling under Sec. 108 (B) (7) of the 1997 Tax Code, as amended; that the Company has started filing its Monthly VAT Declarations in July 2012 even before it started its commercial operation and during the construction/building of the hydro power plant; and that the Company's first commercial sale of hydropower was made in April 2014 and declared in its May 2014 VAT return.

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Based on the foregoing representations, you would like to get a confirmation that the two (2)-year prescriptive period, within which to file a claim for refund or issuance of a TCC of the creditable input tax due or paid which are attributable to VAT zero-rated sales, is reckoned from the close of the taxable quarter when the sales were made, pursuant to Section 112 (A) of the 1997 Tax Code, as amended.

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,*

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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 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)

Moreover, Revenue Memorandum Circular (RMC) No. 54-2014 (Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as Amended), also clearly states that the application for the issuance of TCC or refund shall be filed within two (2) years after the close of the taxable quarter when sales were made, to wit:

"I. Prescriptive Period within which Administrative Claim for Refund or Tax Credit of Input Taxes shall be Made —

Section 112 (A) of the Tax Code, as amended, provides that 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 sales were made, apply for the issuance of tax credit certificate or refund of creditable input tax due or attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax. As such, the taxpayer can file his administrative claim for VAT refund or credit at any time within two-year prescriptive period." (Underscoring supplied)

The statement of the law is clear and unambiguous hence, it does not need further interpretation. Accordingly, the two (2)-year prescriptive period, within which to file a claim for refund or issuance of a TCC of the creditable input tax due or paid which are attributable to VAT zero-rated sales, shall be reckoned from the close of the taxable quarter when the sales were made, in accordance with Section 112 (A) of the 1997 Tax Code, as amended.

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.

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Sincerely yours,

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

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