May 15, 2018

BIR RULING NO. 814-18

Section 109 (T) of the NIRC of 1997, as amended; Revenue Regulations (RR) No. 16-2005, as amended

Cebu Air, Inc.
Cebu Pacific Bldg.,
Domestic Rd., Pasay City

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 08, 2016, as indorsed by Assistant Secretary Danielle Marie S. Rieza-Culangen of Department of Finance (DOF), in connection with Cebu Air, Inc.'s ("Cebu Air" for brevity) application for exemption from value-added tax (VAT) on its importation of x-ray cargo screening machines under B/L No. PGDNLN13286.

Documents submitted show that Cebu Air is a corporation organized and existing under Philippine laws and which has been granted a franchise to establish, operate and maintain transport services for the carriage of passengers, mails, goods, and property by air, both domestic and international under Republic Act (RA) No. 7151. Cebu Air purchased from BAI, Inc. of Suite B, 21 Airport Blvd., South San Francisco, California, U.S.A. eight (8) units of Rapiscan x-ray units with accessories solely for the operation of Cebu Air.

The aforesaid units being brought in by Cebu Air will primarily be used for screening activities for its cargo operation and will be sent out to its various domestic stations throughout the country. The screening machine x-ray units currently being utilized by the airport authorities are principally for passenger use and the airport authorities have now required airlines to provide their own x-ray units for their cargo business. The above-mentioned equipment are not locally available and the shipment is herein described as follows:

Copyright 2020 CD Technologies Asia, Inc.

B/L Date	B/L No.	Description	Qty.-Package	Invoice No.-Invoice Date	Currency Value
06/02/2016	PGDNLN13286	8 Rapiscan x-ray units with accessories: SN 6161511, SN 6161429, SN 6161430, SN 6161431, SN 6161513, SN 6161514, SN 6161528, SN 6165117	3X40' containers STC; 17 packages	INV41357 05/12/2016	US$_____

In a Memorandum dated May 18, 2016, the Office of Transportation Security (OTS), Transportation Security Risk Management Services (TSRMS) of Zamboanga International Airport in Zamboanga City emphasized that the screening of cargoes (unaccompanied cargoes/baggage) is the responsibility of the aircraft operator or any regulated agent or postal authority as appropriate pursuant to Manila International Airport Authority's (MIAA's) Airport Security Program (ASP), which states as follows:

> *"9.4.2. Aircraft Operator shall be responsible for its accredited known shippers or cargo handling agents that perform cargo and/or baggage handling activities following the minimum requirements of ASP and NCASP.*
>
> *9.4.2.1: Such processes include cargo booking; acceptance, screening; packaging; cargo storage; trans-shipment; and ground movement —*
>
> xxx xxx xxx
>
> *9.4.4. Use of Security Equipment Technology: All cargo shipments shall undergo screening requirement of either manual inspection, x-ray machine, explosive vapor detection/explosive trace detector, k-9 dogs and/or combination of at least two of the screening methodology during normal situations and additional screening procedure may apply during high threat security situations.*
>
> xxx xxx xxx
>
> *9.5.2. Operator/airlines are responsible for security control and integrity of cargo."*

Based on the foregoing security requirements, you now request for the approval of this application for VAT exemption.

In reply, please be informed that Section 109 (T) of the National Internal Revenue Code of 1997, as amended, provides that:

> *"Sec. 109. Exempt Transactions. —*
>
> *(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.*

Copyright 2020 CD Technologies Asia, Inc.

xxx xxx xxx

(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."*

In relation thereto, Section 4.109-1 (B) (1) (t) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 15-2015, which implements the above-quoted provision, provides:

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

xxx xxx xxx

(B) Exempt transactions. —

(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT:

xxx xxx xxx

(t) 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, however, that the exemption from VAT on the importation and local purchase of passenger and/or cargo vessels shall be subject to the requirements on restriction on vessel importation and mandatory vessel retirement program of MARINA."

Based on the above-cited provisions, the importation of passenger or cargo vessels and aircraft, including engine, equipment and spare parts for domestic or international transport operations shall be exempt from VAT. The importation of engine, equipment and spare parts to be VAT exempt must pertain to the vessel or aircraft itself. It does not cover peripheral articles even if considered necessary or incidental for the proper operation of its domestic or international transport operations.

Such being the case, this Office hereby rules that Cebu Air's application for VAT exemption cannot be granted for lack of legal basis. Thus, its importation of 8 units of Rapiscan x-ray with accessories from BAI, Inc. is subject to VAT.

As repeatedly held by the Supreme Court, *"laws granting exemption from tax are construed strictissimi juris against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."* [2]

Please be guided accordingly.

Copyright 2020 CD Technologies Asia, Inc.

Very truly yours,

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

Footnotes

1. Renumbered by Republic Act (RA) No. 10378.
2. *Sea-Land Service, Inc. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 122605, April 30, 2001.

Copyright 2020 CD Technologies Asia, Inc.