



MARSMAN BUILDING, 22 MUELLE DE SAN FRANCISCO, SOUTH HARBOR, PORT AREA, MANILA 1018, PHILIPPINES
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AUG 13 2007



PPA OPERATIONS MEMORANDUM CIRCULAR
NO. 03 - 2007

TO : All Port District Managers
All Port Managers
Port Users
Others Concerned

SUBJECT : **Wharfage Exemption of Firms Registered with the Philippine Economic Zone Authority (PEZA)**

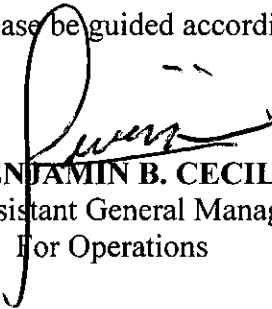
In view of the conflicting interpretations relative to the wharfage exemption granted to PEZA registered enterprises, the Legal Services Department (LSD), in its memorandum dated 12 July 2007 clarified that PEZA registered firms are exempted only from the payment of export wharfage on its registered export products. (copy of memo attached)

Further, it clarified that the imported goods of PEZA registered enterprises may be exempted from payment of import wharfage, only if the following conditions are present:

- 1) The imported goods are direct components of the registered export products; **AND**
- 2) There is a law specifically exempting the aforesaid imported goods from payment of wharfage dues.

This Circular shall take effect immediately.

Please be guided accordingly.


BENJAMIN B. CECILIO
Assistant General Manager
for Operations

Attachment: LSD Memorandum

MC PEZA/my doc/ibm

VISION

By 2010, PPA shall have met the international standards in port facilities and services in at least ten (10) ports in support of national development.

MISSION

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We commit to provide reliable and responsive services in our ports, sustain development of our port communities and the environment, and be a model corporate agency of the government.



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July 12, 2007

MEMORANDUM

FOR : The Manager, CSD
FROM : The Manager, LSD
SUBJECT : Wharfage Exemption of PEZA Registered Firms

This refers to your request for clarification on the exemption of PEZA-registered firms from the payment of wharfage on **imported materials** which are directly used in the production of its registered export products. It was advised that MICT and South Harbor differ on the collection of import wharfage on such materials from PEZA-registered firms. MICT accordingly grants exemption while similar importations that are handled at the South Harbor are being charged import wharfage.

There is a notion of inconsistency in the LSD's Memorandum of 28 March 2007 denying the request of Pan Century Surfactants, Inc. for exemption from wharfage dues with the earlier decision of the Operations Office of granting exemption to PASAR on its imported copper concentrates and coal which are used in extracting pure copper from its ore.

For clarity, we are quoting hereunder pertinent portions of our March 28, 2007 Memorandum to your end, thus:

"In this connection, please be informed that in our 10 September 2003 Memorandum for the Assistant General Manager for Operations, we clarified the said Opinion for the information and guidance of all concerned, thus:

"As stated, the OGCC agreed with the earlier position/opinion of LSD on the matter. Our position/opinion thereon is that PASAR may be exempted only from payment of **export** wharfage on its registered export products pursuant to Section 4, Rule XV of the Implementing Rules and Regulations (IRR) of Republic Act No. 7916.

In the same opinion, the OGCC also stated that "imported goods like chemicals which shall be used in extracting pure copper from its ore qualify as exempted". **However**, the OGCC further stated that "in the absence of any law that exempts imported goods from wharfage dues, **and** unless such imported goods are direct components of the product to be exported, goods imported by PASAR are subject to wharfage". Based on

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the foregoing pronouncement, it can be deduced that in order that the imported goods of PASAR may be exempted from payment of wharfage dues it is required that: 1) The imported goods are direct components of the registered export products; and 2) there is a law specifically exempting the aforesaid imported goods from payment of wharfage dues. This Department is not aware of any law, rules and regulations which exempt's PASAR's *imported goods* from payment of wharfage due to this Authority. It bears pointing out that under the IRR of R.A. No. 7916, imported goods/merchandise of ECOZONE Export and Free Trade Enterprises are exempted or not subject only to customs and internal revenue laws and regulations and local tax ordinances. This is explicitly provided for in Section 1, Rule VIII, Part V of the IRR of R.A. No. 7916, which states, thus:

“SECTION 1. Exemptions. - Merchandise brought *to the restricted areas* in the ECOZONES by registered Export or Free Trade Enterprises, except prohibited merchandise, shall not be subject to all customs and internal revenue laws and regulations of the Philippines nor to local tax ordinances: *Provided,* That they are to be sold, stored, broken-up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured and/or mixed with foreign or domestic merchandise **within the restricted areas in the ECOZONES.**”

and in Section 1, Rule XV, Part VII, supra, which provides, viz:

“SECTION 1. Exemption from Duties and Taxes on Merchandise. - Merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description *brought into the ECOZONE Restricted Area* by an ECOZONE Export or Free Trade Enterprise to be sold, stored, broken-up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations of the Philippines nor to local tax ordinances. Importations of certain goods or merchandise under this paragraph shall be subject to the following conditions: xxx.”

It is clear that the two (2) sections quoted above do not include wharfage (on imported cargoes) as among the exemptions granted by R.A. No. 7916.

Thus, we submit and so hold that PASAR's imported goods are subject to wharfage dues.

For the information and guidance of the PDOs/PMOs and others concerned, issuance of corresponding circular on the matter is hereby recommended.”

Considering that there is no law exempting imported raw materials like Fatty Acid, Lauric-Myristic Acid and Crude Palm Kernel Oil from the payment of wharfage, it is our considered opinion that the request of Pan Century Surfactants, Inc. for refund of import wharfage cannot be given due course." (Emphasis supplied)

LSD's position/opinion is that 'PASAR may be exempted only from payment of **export** wharfage on its registered export products pursuant to Section 4, Rule XV of the Implementing Rules and Regulations of R.A. No. 7916. Under OGCC Opinion No. 139, Series of 2003, dated 7 August 2003, there are conditions sine qua non in order that the imported goods of PASAR may be exempted from the payment of import wharfage, viz:

1. The imported goods are direct components of export products; **and**
2. There is a law specifically exempting the aforesaid imported goods from payment of wharfage dues.

Pursuant to the said OGCC Opinion, the two conditions must concur. Thus, the condition that the imported goods are direct components of export products should concur with the condition that there is a law specifically exempting the aforesaid imported goods from payment of wharfage dues. The word "**and**" is a conjunction pertinently defined as meaning "together with," "joined with," used to conjoin word with word, phrase with phrase, clause with clause. The word "**and**" does not mean "or"; it is a conjunction used to denote a joinder or union, binding together", relating the one to the other. If the conjunctive "**and**" is used the various members of a sentence are to be taken jointly. "When in an enumeration of things or persons in a statute, the conjunctive is placed immediately before the last of the series, the same connective is understood between the previous members of the series (Pombano Horse Club vs. State, 52 A.L.R., 51, cited in Statutory Construction, Martin).

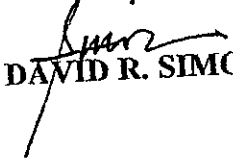
The third condition for the exemption of imported goods of PEZA-registered enterprises is that provided under Section 1, Rule VIII, Part V of the IRR of R.A. No. 7916. Under said provision, imported goods/merchandise brought **to the restricted areas** in the ECOZONES by registered Export or Free Trade Enterprises are not subject to **customs and internal revenue laws and regulations and local tax ordinances**. There is a proviso, however, that these goods are to be sold, stored, broken-up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured and/or mixed with foreign or domestic merchandise **within the restricted areas** in the ECOZONES."

The rule of statutory construction is "Tax exemptions are held strictly against the taxpayer, and *if not expressly mentioned in the law* must be within its purview by clear legislative intent (Comm. Of Customs vs. Philippine Acetylene Co. Inc., L-22443, May 29, 1971, 39 SCRA 70). Tax exemptions are generally subject to a rigid interpretation against the assertion of a tax payer and in favor of the taxing power. The reason for the rule is that the burdens of taxation should be distributed equally and fairly among members of society (3 Sutherland, Stat. Const., 3rd ed., p. 296, cited in Martin, Statutory Construction). Exemption from the payment of taxes cannot be claimed unless it is provided for in the law (Collector vs. Manila Jockey Club, 98 Phil. 670). Considering that

importation of materials directly used in the production of export products by PEZA-registered firms are not expressly mentioned in R.A. No. 7916, it must be within the purview of taxation.

In view of the foregoing, we maintain our position that PEZA-registered enterprises are exempted only from the payment of export wharfage on its registered export products.

For your information and guidance of our field offices.


DAVID R. SIMON