REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

RA No. 11469; RR No. 6-2020	000-00	VAT-353-2021 OCT 04 2021

Person to Contact: Chief, Law Division
Tel Nos. 926-5536/927-0963

MICROBIOLOGICAL LABORATORY, INC.
1157 Rodriguez Avenue corner Heneral Lacuna Street
Bangkal, Makati City

Attention: **<u>Mr. Vicente P. Mercado</u>**
President

Gentlemen:

This refers to your letter dated July 20, 2020 requesting for confirmation that the sale of personal protective equipments (PPEs) of Micro Biological Laboratory, Inc. ("MicroLab") to Wilcon Depot, Inc. ("Wilcon") is exempt from value-added tax (VAT) pursuant to Republic Act (RA) No. 11469, and implemented by Revenue Regulations (RR) Nos. 6-2020 and 9-2020.

From the submitted Deed of Donation and Acceptance, it appears that on June 4, 2020, Wilcon, as Donor, MicroLab, as Importing Party, and Office of Civil Defense, as Donee, entered into a Deed of Donation and Acceptance ("Deed") whereby the Donor agreed to donate to the Donee and the latter accepted the following PPEs:

ITEM	QUANTITY
Medical Mask	80,000
Thermal Scanner	600
PPE Suit	9,000
PPE with gown, head cover and shoe cover	5,000

The Deed further provides that the Donor, through the assistance of the Importing Party, purchased the aforementioned PPEs. The Donee likewise acknowledged that the PPEs were coursed through the Importing Party which were shipped by the latter from a foreign territory and into the Philippines.

It is also represented that the importation of PPEs was made by MicroLab on behalf of Wilcon, to facilitate and accommodate the speedy procurement and importation since MicroLab is an accredited importer of the BIR and Bureau of Customs. Upon delivery of the imported PPEs to Wilcon, the amount to be invoiced by MicroLab to Wilcon is the exact same amount of the landed cost of the PPEs.

In reply, please be informed that Section 4 of RA No. 11469, otherwise known as the "Bayanihan to Heal as One Act", provides to wit:

"SECTION 4. Authorized Powers. – Pursuant to Article VI, Section 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:

xxx xxx xxx

(o) Liberalize the grant of incentives for the manufacture or importation of critical or needed equipment or supplies for the carrying-out of the policy declared herein, including healthcare equipment and supplies: Provided, That importation of these equipment and supplies shall be exempt from import duties, taxes and other fees;" (Underscoring supplied)

In relation thereto, RR No. 6-2020 dated March 27, 2020, implementing RA No. 11469, in turn provides to wit:

"SECTION 3. Coverage. — Based on the law, it is hereby declared that:

(a) The importation of critical or needed healthcare equipment or supplies intended to combat the COVID-19 public health emergency, including personal protective equipment (i.e., gloves, gowns, masks, goggles, face shields, surgical equipment and supplies); laboratory equipment and its reagents; medical equipment and devices; support and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables (i.e., alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hydrochloride, cleaning materials, povidone iodine, common medicines (e.g., paracetamol tablet and suspension, mefenamic acid, vitamins tablet and suspension, hyoscine tablet and suspension, oral rehydration solution, and cetirizine tablet and suspension); testing kits), and such other supplies or equipment as may be determined by the DOH and other relevant government agencies, shall be EXEMPT from value-added tax, excise tax and other fees.

(b) Importation of materials needed to make health equipment and supplies deemed as critical or needed to address the current public health emergency shall likewise be EXEMPT from value-added tax, excise tax and other fees, provided that the importing manufacturer is included in the Master List of the Department of Trade and Industry and other incentive granting bodies." (Underscoring supplied)

It is evident from the foregoing provisions of RA No. 11469, as implemented by RR No. 6-2020 that only those related to or engaged in the manufacture or importation of critical or needed equipment or supplies to combat the COVID-19 public health emergency are to be granted incentives, such as exemption from import duties, VAT, excise tax and other fees. Thus, any transaction or activity not involving the importation or manufacture of PPEs is not covered by the grant of incentives, such as the sale of PPEs made by MicroLab to Wilcon, regardless of the fact

VAT - ... - 2021
OCT 04 2021

that the amount invoiced by the former to the latter is the exact amount as appearing in the landed cost of the imported PPEs.

Thus, "statutes granting tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed[1]."

IN VIEW OF THE FOREGOING, this Office is of the opinion that the sale of PPEs made by MicroLab in favor of Wilcon does not qualify for exemption under RA No. 11469, as implemented by RR No. 6-2020 and shall be subject to VAT.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation [G.R. No. 166408, October 6, 2008].