



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

07 October 2019

SEC-OGC Opinion No. 19-46

Re: Retail Trade; Sale as Incident to
a Corporation's Primary
Purpose

DEETHA AURAA, INC.

A.D. Curato Street
Barangay Sikatuna
Butuan City

Mr. Sachdev:

This refers to your letter dated 17 January 2019 requesting for confirmation of your position that Deetha Auraa, Inc. (Deetha), a domestic corporation duly registered with the Commission on 10 February 2016 with CR No. CS201631683, is not engaged in retail trade, pursuant to the Retail Trade Liberalization Act of 2000 (RTLA)¹.

According to your letter, Deetha is engaged in the establishment and operation of optical clinics managed by professionally registered optometrist(s) to provide optometry services in Butuan City and Davao City. However, while applying for the renewal of your business permit, the Davao City Hall informed you that the establishment of your optical clinics is a retail form of business, and considering that the corporation has 37% foreign equity, the institution of the same is in violation of the RTLA. Hence, your request.

Section 3 of the RTLA defines retail trade as any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or good for consumption. For sales transactions to be considered as "retail", the following elements should concur: (1) The seller should be **habitually engaged in selling**; (2) the sale must be **direct to the general public**; and (3) the object of the sale is **limited to merchandise, commodities or goods for consumption**.²

Based on your representation, the optical clinics, through Deetha's duly licensed Filipino optometrist, mainly conducts eye check-up and recommends appropriate prescription lenses and eyeglasses frames to its patients. The sale of prescription lenses and frames is only done after a thorough examination is conducted by an optometrist, which makes it merely incidental in providing a complete care service to patients.

¹ Republic Act No. 8762

² SEC-OGC Opinion No. 18-14 dated 24 August 2018 addressed to Tokyo Consulting Firm – Philippine Branch, citing SEC-OGC Opinion No. 18-10 dated 04 June 2018 addressed to First Associated Medical Distribution Co., Inc.

Considering that the sale of lenses and frames are made only after the prescription of the attending optometrist and specific only to a particular patient, the same are not readily available for sale to the general public. Hence, the aforementioned second element of retail is absent.

Further, the Commission had consistently opined that engaging in the selling of merchandise as an incident to the primary purpose of a corporation does not constitute retail trade. In an opinion holding that the sale of replacement of motor parts during repair is not retail, the Commission said, to wit:

“[a] firm engaged in the business of rendering services, in some occasions, may require certain materials in order that the service may be made. It may supply these materials for the convenience of the client or when the materials required are produced exclusively by the same firm. Of course, the client has to pay for the cost of these materials separately from the cost of the service. In the same vein, the activity of repair of motorcycle units may involve replacement of parts, which necessarily must be paid for by the owner of the motorcycle unit being repaired. Although this is a sale, **the same is incidental to the repair** and is **not being pursued as an independent business**. Thus, the same is not considered retail trade.”³ (Emphasis supplied)

In another opinion, the Commission stated that “[s]ince a gym operation, by its nature, involves transacting with gym members or guests that need to be attired properly, require hydration and rehydration, and make use of the shower facilities of the gym, the sale of the drinks, sundry apparel and hygiene articles is incidental to the primary purpose of operating [a gym] and is not itself pursued by the FFPI as an independent business. Thus, the contemplated activity is not considered retail trade”.⁴

Lastly, the Commission held that “since a hospital, by its very nature, cannot operate without a pharmacy to cater to its patients, it is believed that the putting up by a hospital of its own pharmacy does not constitute a ‘retail trade’ within the purview of the Retail Trade Nationalization Law.”⁵

In the same vein, the act of rendering optometry services involves the cutting of prescribed lenses and sale of eyeglasses frames, which must be necessarily paid by the patient. By this, the optical clinic is able to provide a convenient and complete eye care services to its patients without the hassle of venturing outside the clinic just to avail himself of the prescribed prescription lenses and eyeglasses frames, in line with providing quality service. Accordingly, although this involves a sale, the same is incidental to the rendering of optometry services and is not being pursued as an independent business.

³ SEC-OGC Opinion No. 14-08 dated 19 May 2014 addressed to Aranas Law Offices, citing SEC Opinion No. 05-08 dated 23 June 2005 (citing DOJ Opinion No. 275. S. 1954)

⁴ SEC Opinion No. 11-34 dated 03 August 2011 addressed to Atty. Ma. Adelina S. Gatdula

⁵ SEC-OGC Opinion No. 16-06 dated 01 April 2016 addressed to Atty. Nicholas C. Santizo

From the foregoing, Deetha's sale of prescription lenses and eyeglasses frames is not within the purview of the RTLA.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.⁶ If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.


ROMUALD C. PADILLA
Officer-in-Charge

⁶ SEC Memorandum Circular 2003-15, No.7