REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

BW SHIPPING PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9660**
	Members:
- versus -	**UY,** *Chairperson*, **RINGPIS-LIBAN,** and **MODESTO-SAN PEDRO,** *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 27 2021 11:52 a.m.

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RESOLUTION

UY, *J*.:

For this Court's resolution are the following:

1) respondent's ***Motion for Partial Reconsideration*** filed on October 29, 2020, with petitioner's ***Comment (To Respondent's Motion for Partial Reconsideration dated October 28, 2020)*** filed on December 9, 2020; and

2) petitioner's ***Omnibus Motion for Reconsideration and Motion for New Trial (Re: Decision Rendered on October 7, 2020)*** filed on October 30, 2020, without respondent's comment despite due notice as per Records Verification dated January 5, 2021.

In both *Motions,* the parties pray that the Court reconsider the Decision promulgated on October 7, 2020, partially granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of ₱3,181,354.01, representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2015.
>
> **SO ORDERED**."

Petitioner's Omnibus Motion for Reconsideration and Motion for New Trial

In its *Motion*, petitioner prays that the Court: (1) reverse and set aside its Decision dated October 7, 2020; or in the alternative, (2) to grant a new trial for the presentation of corrected evidence; and (3) to grant petitioner's claim for refund and/or issuance of tax credit certificate representing unutilized input taxes attributable to its zero-rated sales for the taxable year 2015 in the amount of ₱4,953,983.07.

Petitioner contends that non-compliance with the requirements under Section 113 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, was a result of the mistake and excusable negligence of petitioner's cashier in completing the information that should be contained in the VAT official receipt which involves indicating the full name of the customer, as well as, indicating whether a particular sale is conserved as VATable, VAT Exempt, or VAT Zero-Rated Sales.

Allegedly, the inaccurate entries and omissions were merely due to mistake and excusable negligence which resulted in an oversight when the cashier was filling up and/or correcting the official receipts; and that the errors were merely clerical and inadvertent and did not change the nature of the subject zero-rated sales. Therefore, petitioner prays for the reconsideration of the Court's Decision dated October 7, 2020.

Alternatively, petitioner prays that the Court grant a new trial for the presentation of the corrected pieces of evidence in order to fully thresh out the matters involved in the instant case, in the interest of substantial justice. By mistake and excusable negligence, petitioner was not able to present such evidence as are now being sought to be presented in a new trial, considering that such an issue arose only after the issuance of the Court's decision. Such are deemed proper grounds for the grant of new trial under Section 5, Rule 15 of the Revised Rules of Court.

Furthermore, petitioner alleges that ordinary prudence could not have prevented such mistake and excusable negligence; that ensuring the completeness of all information in the VAT official receipt is no small feat considering the sheer volume of petitioner's transactions including its zero-rated sales. Despite exercising ordinary prudence, petitioner could not operate to prevent the mistake and excusable negligence committed. This is allegedly the reason why the cashier is authorized to effect corrections of necessary information on official receipts and other documents.

Respondent's Motion for Partial Reconsideration

In his *Motion*, respondent reiterates that the recipients of services rendered by petitioner were doing business in the Philippines; that the appointment of petitioner as "agent" of its customers abroad acting as "principal", for purposes of recruiting Filipino seamen for employment on board the vessels managed by the said principal, as stated in the Crew Agency Agreements; that the said agreements imply a continuity of commercial dealings or arrangements, and contemplate to the extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in the progressive prosecution of, commercial gain or for the purpose and object of the business organization.

Likewise, respondent reiterates that the Crew Agency Agreements were executed as early as 2008 which implies continuity of conduct and intention to establish a continuous business in the Philippines on the part of petitioner and its customers.

Petitioner's Comment to respondent's Motion for Partial Reconsideration

Petitioner counter-argues that it has proved that the recipients of its services are non-resident foreign corporations doing business outside the Philippines.

Petitioner also argues that respondent's allegations are mere reiterations of arguments made during the proceedings before the

Court; that the issue on whether petitioner's foreign principals are nonresident foreign corporations doing business outside the Philippines had been sufficiently passed upon and threshed out by the Court in the assailed Decision.

THE COURT'S RULING

After due consideration, the Court finds no merit in both parties' respective motions, specifically, petitioner's *Omnibus Motion for Reconsideration and Motion for New Trial;* and respondent's *Motion for Partial Reconsideration.*

Petitioner's Omnibus Motion for Reconsideration and Motion for New Trial

Sections 1 and 2 of Rule 37 of the 1997 Rules of Civil Procedure set forth the specific and well-defined grounds of a motion for new trial and motion for reconsideration, to wit:

> "Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of the said party:
>
> > (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
> >
> > (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
>
> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order or that the decision or final order is contrary to law.

Section 2. *Contents of motion for new trial or reconsideration and notice thereof.* – The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motion. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the caused mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions."

Relative thereto are Sections 5 and 6, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, which read as follows:

"SEC. 5. *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial, and which if presented, would probably alter the result."

Sec. 6. *Contents of motion for reconsideration or new trial and notice.* – The motion shall be in writing stating its grounds,

> a written notice of which shall be served by the movant on the adverse party
>
> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (1) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.
>
> A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma,* which shall not toll the reglementary period for appeal."

Based on the foregoing remedial measures, a motion for new trial may be allowed on the grounds of fraud, accident, mistake or excusable negligence, or if there is newly discovered evidence which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result or outcome of the case. While on the other hand, a motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

In this case, petitioner failed to specifically point out in its motion for reconsideration, the findings or conclusions in the assailed Decision, which are not supported by evidence or contrary to law. Hence, petitioner's motion for reconsideration must fail.

With regard to petitioner's motion for new trial, the same is unwarranted. As grounds for new trial, petitioner states that there was *mistake and excusable negligence* which ordinary prudence could not have guarded against and by reason of which its rights has been impaired in accordance with Sections 5 of Rule 15 of the Revised Rules of the Court of Tax Appeals as amended, when petitioner's cashier inadvertently made inaccurate entries or omitted certain information in the preparation of certain official receipts supporting its zero-rated sales.

Petitioner also attached to its motion various "corrected" official receipts, Affidavit of Merit executed by Maria Theresa O. Tamano, petitioner's President, and Affidavit of Correction executed by Jocelyn A. Ayala, petitioner's Cashier.

To recall, the Court in the assailed Decision disallowed an additional amount of ₱41,807,449.29 for failure to comply with the mandatory invoicing requirements under the NIRC of 1997, as amended. A portion of Our ruling is hereby quoted as follows:

> "Moreover, upon further verification by the Court of the official receipts supporting petitioner's zero-rated sales, the additional amount of ₱41,807,449.29 shall also be disallowed for the following reasons:
>
> a. Customer's name/registered name is NOT the same with the one reflected in the Articles of Association, Certificate of Registration, SEC Certificate of Non-Registration;
>
> b. The amount in the official receipts was NOT reflected as "Zero-Rated Sales";
>
> c. Noted erasures in the official receipts without countersignature.
>
> The details of the transactions are as follows:

Customer	Zero-Rated Sales		Exhibit	Reason
	USD	PHP		
BW Foreign Manning AS	64,934.00	2,867,355.57	P-127.1	a
BWG Foreign Manning AS	65,506.00	2,927,463.14	P-127.2	a
BWG Foreign Manning AS	66,942.00	2,960,443.01	P-127.3	a
BWG Foreign Manning AS	71,542.00	3,197,211.98	P-127.4	a
BWG Foreign Manning AS	67,510.00	3,047,603.93	P-127.5	a
BWG Foreign Manning AS	71,318.00	3,234,199.98	P-127.6	a
BWG Foreign Manning AS	233,494.00	10,948,533.66	P-127.7	a
BWG Foreign Manning AS	164,502.00	7,803,152.37	P-127.8	a
Berge Bulk Maritime Pte. Ltd.	40,653.50	1,837,741.47	P-127.31	b
BWG Foreign Manning AS	65,382.00	2,897,337.95	P-127.36	a
BW Fleet Management AS	772.50	35,745.89	P-127.81	b
PMS Fleet Management AS	1,070.50	50,660.34	P-127.105	a & c
TOTAL	**913,626.50**	**41,807,449.29**		

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In the instant motion, petitioner attaches the same exhibits in support of its motion for new trial, but notably, petitioner admits having made the following corrections or insertions, to wit :

Official Receipt Number	Exhibit Reference	Noted corrections in the entries
0739	P-127.1	Insertion of the word "Gas" to correct customer name from BW Foreign Manning AS to "BW Gas Foreign Manning AS"
1009	P-127.2	Crossing out of the letter "G" and insertion of the word "Gas" to correct customer name from BWG Foreign Manning to "BW Gas Foreign Manning AS"
1026	P-127.3	Crossing out of the letter "G" and insertion of the word "Gas" to correct customer name from BWG Foreign Manning to "BW Gas Foreign Manning AS"
1036	P-127.4	Crossing out of the letter "G" and insertion of the word "Gas" to correct customer name from BWG Foreign Manning to "BW Gas Foreign Manning AS"
1050	P-127.5	Crossing out of the letter "G" and insertion of the word "Gas" to correct customer name from BWG Foreign Manning to "BW Gas Foreign Manning AS"
1068	P-127.6	Crossing out of the letter "G" and insertion of the word "Gas" to correct customer name from BWG Foreign Manning to "BW Gas Foreign Manning AS"
1136	P-127.7	Crossing out of the letter "G" and insertion of the word "Gas" to correct customer name from BWG Foreign Manning to "BW Gas Foreign Manning AS"
1179	P-127.8	Crossing out of the letter "G" and insertion of the word "Gas" to correct customer name from BWG Foreign Manning to "BW Gas Foreign Manning AS"
1063	P-127.31	Insertion of the amount "US$ 40,653.50" in the blank box after the words VAT Zero-Rated Sales
0746	P-127.36	Crossing out the letter "G" and insertion of the word "Gas" to correct customer name from BWG Foreign Manning to "BW Gas Foreign Manning AS"
1122	P-127.81	Insertion of the amount "US$ 772.50" in the blank box after the words VAT Zero-Rated Sale
1173	P-127.105	Crossing out "PMS Fleet Management AS" and insertion of the words "BW Fleet Management AS" to correct customer name from PMS Fleet Management to "BW Fleet Management AS"

The Court cannot allow the submission of the aforementioned corrected exhibits by way of a new trial on the basis of *mistake and* *inexcusable negligence.* It bears stressing that the 'mistake' that is allowable in Rule 37 is one which ordinary prudence could not have guarded against. Negligence to be 'excusable' must also be one which ordinary diligence and prudence could not have guarded against and by reason of which the rights of an aggrieved party have probably been impaired. The test of excusable negligence is whether a party has acted with ordinary prudence while transacting important business.[1]

In this case, it cannot be said that petitioner's cashier or employee who prepared the subject Official Receipts acted with ordinary prudence in the preparation of said receipts which would entitle it to a reconsideration of its refund claim, and its negligence is not excusable to justify a new trial.

To the mind of the Court, the corrections and insertions made cannot be given credence because the very act of doing so by petitioner's cashier is self-serving and without probative value. Instead of altering the subject official receipts, petitioner should have secured certifications from its clients, namely: *"BW Gas Foreign Manning AS"* (with respect to *"Exhibits P-127.5, P-127.6, P-127.7, P-127.8, and P-127.36"),* and *"BW Fleet Management AS"* (with respect to *"Exhibit P-127.105")* attesting to the fact of issuance of said Official Receipts in its favor, and the supposed mistake allegedly committed by petitioner in reflecting its correct names.

The same holds true with *"Exhibits P-127.31 and P-127.81".* These exhibits were denied by the Court for not being compliant with the invoicing requirements under Section 113(B) of the NIRC of 1997, particularly on the requirement that the amount of VAT must be indicated in the official receipt. The insertion of the numerical figures in the blank box after the words "VAT Zero-Rated Sale" is tantamount to tampering of evidence. Such is a dangerous practice which the Court cannot allow as it would be a bad precedent whenever evidence is given no probative value for being incomplete.

Petitioner could have avoided this irregularity had petitioner's cashier exercised ordinary prudence and diligence in issuing its official receipts. Additionally, petitioner also failed to carefully examine or scrutinize its supporting evidence prior to the filing of the instant case, or at the very least before the presentation of its evidence. Thus, a liberal application of the rules of procedure to suit

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[1] *Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue,* G.R. No. 141973, June 28, 2005.

petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[2]

Let it be emphasized that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax law must be faithfully and strictly implemented as they are not to be liberally construed.[3]

Respondent's Motion for Partial Reconsideration

Notably, the arguments raised by respondent in support of its *Motion for Reconsideration* are mere rehash of its previous arguments which have already been considered, thoroughly discussed, and passed upon in the assailed Decision.

Hence, We reiterate Our findings that there is no showing that petitioner, as an "agent", was continuing the body or substance of its client's shipping activities in the Philippines, to wit:

> "However, respondent argues that the recipients of services/customers of petitioner are entities doing business in the Philippines, because of the appointment of petitioner as "agent" of its customers, acting as "principal" for purposes of recruiting Filipino seamen or crew members for employment on board the vessels managed by the said principal, as stated in the Crew Agency Agreements. Respondent further argues that the said agreements were executed as early as 2008 which implies continuity of conduct and intention to establish a continuous business in the Philippines on the part of petitioner and its customers.
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> We do not agree.

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[2] Commissioner of Internal Revenue vs. A. Soriano, Corp., Court of Tax Appeals and Court of Appeals, G.R. No. 113703, January 31, 1997.

[3] *Coca-cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222428, February 19, 2018.

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In *MR Holdings, Ltd. vs Sheriff Carlos P. Bajar et al., (MR Holdings case),* the Supreme Court clarified what constitutes "doing business in the Philippines" on the part of a foreign corporation, to wit:

> "Batas Pambansa Blg. 68, otherwise known as the 'The Corporation Code of the Philippines, is silent as to what constitutes 'doing' or 'transacting' business in the Philippines. Fortunately, jurisprudence has supplied the deficiency and has held that the term 'implies continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object for which the corporation was organized.'. In *Mentholatum Co., Inc. vs Mangaliman,* this Court laid down the test to determine whether a foreign company is 'doing busines', thus:
>
> 'xxx xxx **The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.** (*Traction Cos. vs. Collectors of Int. Revenue* [C.C.A., Ohio]. 223 F. 984, 987.).'

Applying the foregoing guideline in the instant case, the question is whether or not petitioner, acting as an agent of its foreign principals, is continuously performing the body or substance of the business or enterprise for which the latter was organized.

To resolve the foregoing question, We look into the Service Agreements entered into between petitioner and its different foreign client. Relative thereto, records show that petitioner presented several service agreements, identified by its witness Carmencita Escalante, to establish that petitioner rendered services to foreign shipping companies, namely:

xxx xxx xxx

NO

> Upon perusal of the said service agreements entered into by petitioner, the alleged "agency" between petitioner and its customers is limited to the following purposes: 1) recruitment of Filipino seamen for employment on board such vessels managed by the foreign shipping companies acting as principals; and 2) providing information technology and purchasing support services for its clients' vessels.
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> On the basis of the "true test" referred to in *MR Holdings* case, the service agreements with petitioner show no indication that as an "agent", petitioner was continuing the body or substance of its clients' shipping activities.
>
> Hence, the foreign clients of petitioner cannot be considered as doing business in the Philippines."

In sum, the Court finds no compelling grounds to reverse or modify the assailed Decision.

WHEREFORE, in light of the foregoing considerations, petitioner's *Omnibus Motion for Reconsideration and Motion for New Trial* and respondent's *Motion for Partial Reconsideration* are **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice