REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BW SHIPPING PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9448

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

FEB 19 2020 11:30a

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RESOLUTION

MANAHAN, *J.:*

This resolves the *Motion for Reconsideration* filed by respondent Commissioner of Internal Revenue (CIR), praying that a new decision be rendered denying petitioner's claim for refund of excess/unutilized input VAT for the four quarters of taxable year 2014.

On September 23, 2019, the Court partially granted petitioner's claim for refund, as follows:

> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED to REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **Php5,503,628.95** representing unutilized input VAT attributable to zero-rated sales for the four quarters of taxable year 2014.
>
> **SO ORDERED.**[1]

In his *Motion*, respondent argues that the recipients of services rendered by petitioner were doing business in the

[1] Decision dated September 23, 2019, p. 20.

Philippines, and should not be considered as VAT zero-rated. Respondent states that the recipients of services/customers of petitioner were entities doing business in the Philippines, through the appointment of the latter as "agent" of its customers, acting as "principal" for the purposes of recruiting Filipino seamen for employment on board the vessels managed by the said principal. Respondent also points to the Crew Agency Agreements which were executed as early as 2008 as evidence of the continuity of conduct and intention to establish a continuous business in the Philippines on the part of the petitioner and its customers.

Petitioner, in its *Comment/Opposition (To Respondent's Motion for Reconsideration)*,[2] states that it has sufficiently proven that its customers are not registered and are not doing business in the Philippines by the presentation of: (1) consularized Certificate/Articles of Foreign Incorporation; (2) official online websites; and (3) Certificates of Non-Registration of Company issued by the Securities and Exchange Commission. Petitioner states that it simply renders manning or crewing services to foreign shipping companies. Petitioner screens competent and qualified Filipino seamen for employment on board the vessels of the foreign shipping company, and other services in furtherance thereof. Petitioner states that this activity does not constitute a business activity or commercial dealing by the foreign shipping companies in the Philippines.

The *Motion* has no merit.

The Court found that the recipients of petitioner's services are doing business outside the Philippines as shown by the Certificates of Non-Registration of Company issued by the SEC, Certificates of Registration/Articles of Incorporation issued by foreign government agencies, screenshots of foreign registration per foreign regulatory websites and consularized Manning Agreements/Purchasing & Infrastructure Support Agreements, as follows:

Registered Name	**SEC Certificate of Non-Registration**	**Certificate of Incorporation**	**Other Supporting Documents**
BW Gas Foreign Manning AS	P-29	P-30	P-31 / P-23
BW Maritime PTE Ltd.	P-32	P-33	P-34

[2] Filed on November 21, 2019.

Berge Bulk Maritime PTE Ltd.	P-35	P-36	P-37 / P-25
BW Offshore Global Manning PTE Ltd.	P-38	P-39	P-40 / P-26
BW Fleet Management PTE Ltd.	P-41	P-42	P-43 / P-27
BW Fleet Management AS	P-44	P-45	P-46 / P-28

We find no merit to respondent's allegation that the appointment of petitioner as "agent" and the duration of the Crew Agency Agreements shows that petitioner's customers are engaged in business in the Philippines.

As previously ruled in *Accenture, Inc. v. Commissioner of Internal Revenue*:[3]

> There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:
>
>> x x x. There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in light of its peculiar environmental circumstances. The term implies a 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 commercial gain or for the purpose and object of the business organization. "In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character."

The alleged "agency" between petitioner and its customers is limited to petitioner's authority to act on behalf of its customers for the screening of Filipino seamen, which will be subsequently hired by the foreign shipping companies. There is no evidence that petitioner acts in furtherance of its customers' shipping activities.

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[3] G.R. No. 190102, July 11, 2012, recently cited in *Sitel Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017.

Based on the foregoing, the Court finds no reason to reverse its Decision dated September 23, 2019, which partially granted petitioner's claim for refund.

WHEREFORE, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice