REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

PACIFIC OCEAN MANNING, INC.,	**CTA CASE NO. 9901**
Petitioner,	Members:
	RINGPIS-LIBAN, *Chairperson, and*
-versus-	**MODESTO-SAN PEDRO,** *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE,	JAN 2 3 2024
Respondent.	11:00 a.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

Before this Court is petitioner's Motion for Reconsideration, filed on 6 December 2022,[1] with respondent's Comment (To Petitioner's Motion for Reconsideration dated 05 December 2022), filed through registered mail on 16 January 2023 ("Comment").[2]

In the Motion for Reconsideration, petitioner alleges that:

1. This Court erred in ruling that petitioner failed to establish that it is indeed engaged in zero-rated or effectively zero-rated sales;

2. The Manning Agency Agreement, while effective only on 1 July 2016, expressly provided that petitioners would supply its foreign clients with seafarers. Moreover, the Certification[3] issued by the V. Group Manpower Services, Ltd. that the services rendered by the petitioner to the V Group Manpower Services, Ltd. was only for manning services. Moreover, the mere name of petitioner would suggest that it is essentially a manning agency. Further, in petitioner's Amended Articles of Incorporation,[4] nowhere does it say that petitioner is in the business of processing, manufacturing or repacking of goods. Altogether, these pieces of evidence would show that petitioner is

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[1] Records, Vol. 2.
[2] *Ibid.,*
[3] Exhibit "P-24".
[4] Exhibit "P-5-a".

rendering service other than processing, manufacturing or repacking of goods;

3. The fact that the payments for manning services provided by the petitioner were not made by V. Ships UK, Ltd., but by V. Ships Crew, Ltd., is because of the fund management practice of V. Group Manpower Services, Ltd. (formerly known as V. Ships Crew, Ltd.) wherein, although V. Ships Crew, Ltd. will be the one to make payments, such payments were actually made by V. Ships UK, Ltd;

4. Even if the Manning Agency Agreement only started on 1 July 2016, and did not embrace the full four (4) Value Added Tax ("VAT") quarters of taxable year 2016, still petitioner must be granted a pro-rata allowance of input tax refund; and

5. Moreover, this Court erred in finding that petitioner failed to adduce evidence that its foreign clients are not doing business in the Philippines. Petitioner has already submitted in evidence the Securities and Exchange Commission ("SEC") Certificate of Non – Registration and Certification from the Maritime Industry Authority ("MARINA").

Contrarily, respondent counter-argues the following in his Comment:

1. Jurisprudence is replete with pronouncements that in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by both an SEC Certificate of Non – Registration and proof of incorporation or registration in a foreign country. The SEC Certification only establishes the first component, which is that the affiliate is foreign, while the proof of incorporation or registration proves the second component, which is that the affiliate is not doing business here in the Philippines. Since petitioner failed to provide the individual proofs of incorporation or registration of each of its clients, it necessarily means that petitioner failed to prove that its clients are not doing business here in the Philippines;

2. The fund management practice of V. Group Manpower Services, Ltd. (formerly known as V. Ships Crew, Ltd.) allegedly proven by the Certification issued by Edward McDermott is considered hearsay; and

3. Since petitioner's sales of services to V. Ships UK, Ltd. for the taxable year 2016 do not qualify for VAT zero-rating under ***Section 108(B)(2) of the NIRC***, the present claim for refund cannot be given due course. Tax refunds 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 Comment filed by respondent is hereby **NOTED** and made part of the records.

Following a studied review of the arguments, we **DENY** the Motion for Reconsideration for lack of merit.

In ***Ortigas and Company Limited Partnership vs. Judge Tirso Velasco and Dolores V. Molina, and Dolores V. Molina vs. Hon. Presiding Judge, RTC, Quezon City, Br. 105, and Manila Banking Corporation,***[5] the Supreme Court had the occasion to rule in this wise:

> "*Effect, and Disposition of*
> *Motion for Reconsideration*
>
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards be issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, ART. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc."

Moreover, in ***H. Harry L. Roque, Jr., et al. v. Commission on Election, represented by Hon. Chairman Jose Melo, et al.,***[6] the Supreme Court *En Banc* ruled that whenever the issues raised in the Motion for Reconsideration have already been addressed and passed upon in the Decision, and the Motion for Reconsideration failed to raise matters which are substantially plausible or compellingly persuasive, enough to lead the Court to rule in favor of the desired course of action, then the Motion for Reconsideration will be denied by the Court, to wit:

> "Petitioners' above contention, as well as the arguments, citations, and premises holding it together, is a rehash of their previous position articulated in their memorandum in support of their petition. They have been considered, squarely addressed, and found to be without merit in the Decision subject hereof. The Court is not inclined to embark on another extended discussion of the same issue again...

[5] G.R. Nos. 109645 and 112564, Resolution, 4 March 1996.
[6] G.R. No. 188456, Resolution, 10 February 2010

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While a motion for reconsideration may tend to dwell on issues already resolved in the decision sought to be reconsidered—and this should not be an obstacle for a reconsideration—the hard reality is that petitioners have failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.

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WHEREFORE, the instant separate motions for reconsideration of the main and intervening petitioners are DENIED."

Likewise, in ***Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.***,[7] it was provided that:

"The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.

Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

A perusal of the Motion for Reconsideration would show that the arguments raised therein have already been sufficiently passed upon, discussed, threshed out and judiciously resolved in the Decision sought to be reconsidered. The Motion for Reconsideration discloses no cogent reason to disturb the findings and conclusions which this Court made in said Decision.

Particularly, with respect to petitioner's contention that it was able to prove that it rendered service other than processing, manufacturing or repacking of goods, the same is without merit. Together, (a) the Manning Agency Agreement;[8] (b) the Certification issued by the V. Group Manpower Services, Ltd. that the services rendered by the petitioner to the V Group Manpower Services, Ltd. was only for manning services;[9] (c) the mere name of petitioner; and (d) petitioner's Amended Articles of Incorporation[10] do not clearly prove that petitioner is not engaged in a service other than processing, manufacturing or repacking of goods. First, the Manning Agency Agreement only had a duration of until 1 July 2016, which means that the type of services

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[7] G.R. No. 159938, Resolution, 22 January 2007.
[8] Exhibit "P-15", Records, Vol. 1, pp. 429-435.
[9] Exhibit "P-24".
[10] Exhibit "P-5-a".

rendered by petitioner to V. Ships UK, Ltd. before such date cannot be ascertained. This was in fact confirmed by petitioner's witness, Mr. Aborot, during cross-examination when he could not identify the Agreement that was in effect before 1 July 2016.[11] This alone raises doubt as to the type of services actually rendered by petitioner to its clients (*i.e.*, whether it be is of a nature other than processing, manufacturing, or repacking of goods) before 1 July 2016. Then, the Certification by Mr. Edward McDermott allegedly providing that the services rendered by petitioner were only manning services cannot be given probative weight considering that the same is hearsay due to the fact that Mr. McDermott was not presented in the witness stand to testify on such document. Further, just because petitioner's name includes the term "manning" does not mean that it is the only type of service that it has actually rendered to its clients. The same is equally true with respect to petitioner's Amended Articles of Incorporation wherein, while petitioner is only authorized to provide manning service, its actual operations may be different.

At most by raising the above arguments and offering the cited pieces of evidence, petitioner only raised suspicion but not fact. However, these do not clearly show that petitioner indeed rendered service other than processing, manufacturing or repacking of goods.

Moreover, the payment scheme explained by petitioner cannot be accorded any probative value. Aside from the Certification by Mr. Edward McDermott, which clearly is hearsay as explained above, petitioner failed to show any evidence showing that payments made by V. Ships Crew, Ltd. were for the services rendered by petitioner to V. Ships UK, Ltd. This manner of payment is even contrary to the express provisions of the Manning Agency Agreement, which clearly provided that petitioner's services were to be rendered to V. Ships UK, Ltd. and that, in exchange for these services, manning fees would be paid by V. Ships UK, Ltd. to petitioner.[12]

With respect to petitioner's contention that it had sufficiently proven that all of its clients are non-resident foreign corporations doing business outside the Philippines, the same is erroneous. In ***Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.,***[13] the Supreme Court stated that SEC Certification of Non-Registration only proves that the client is foreign while the client's proofs of incorporation or registration in a foreign country proves that said client is not doing business in the Philippines. Thus, both documents are necessary to prove that a client is a non-resident foreign corporation doing business outside the Philippines. Since petitioner failed to adduce evidence on its client's proofs of incorporation or registration in a foreign country, it cannot be established that such clients are non-resident foreign corporations doing business outside the Philippines.

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[11] TSN, Hearing, dated 3 July 2019, pp. 17-20.
[12] Par. 16, Exhibit "P-15", *id.*, p. 433.
[13] G.R. No. 234445, 15 July 2020.

Applying the judicial pronouncements, above, nothing is left for this Court to do but to deny the same.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice