

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,

Petitioner,

CTA EB No. 2481
(CTA Case No. 9660)

-versus-

BW SHIPPING PHILIPPINES,
INC.,

Respondent.

x-----x
BW SHIPPING PHILIPPINES,
INC.,

Petitioner,

CTA EB No. 2482
(CTA Case No. 9660)

Present:

-versus-

COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, II.

Promulgated:

DEC 22 2022

x-----x

DECISION

REYES-FAJARDO, J.:

Before the Court *En Banc* are two (2) *Petitions for Review*, assailing the Decision dated October 7, 2020¹ and Resolution dated

May 27, 2021², rendered by the Third Division of this Court (Court in Division) in CTA Case No. 9660, entitled "*BW Shipping Philippines, Inc. v. Commissioner of Internal Revenue*." These cases involve BW Shipping's claim for refund or issuance of tax credit certificate (TCC) in the amount of ₱4,953,983.07 allegedly representing BW Shipping's unutilized input value-added tax (VAT) attributable to its zero-rated sales for the taxable year (TY) 2015. The Court in Division partially granted the refund or issuance of TCC in the amount of Three Million One Hundred Eighty-One Thousand Three Hundred Fifty-Four & 1/100 Pesos (₱3,181,354.01).

CTA EB No. 2481

CTA EB No. 2481 is the *Petition for Review* filed on July 5, 2021³ by the Commissioner of Internal Revenue (CIR) against BW Shipping Philippines, Inc. (BW Shipping), praying that the assailed Decision and Resolution in CTA Case No. 9660 be partially reconsidered and/or set aside and that the subject claim for refund be denied in its entirety.

CTA EB No. 2482

CTA EB No. 2482 is the *Petition for Review* filed on July 5, 2021⁴ by BW Shipping against CIR, praying that the assailed Decision and Resolution in CTA Case No. 9660 be reversed, the present case be remanded to the Court in Division for the presentation of corrected evidence and that the subject claim for refund or issuance of TCC in the amount of Four Million Nine Hundred Fifty-Three Thousand Nine Hundred Eighty-Three and 7/100 Pesos (₱4,953,983.07) be granted.

THE FACTS

BW Shipping is a corporation duly organized and existing under the laws of the Philippines with principal address at 5/F Goodland Building, 377 Sen. Gil Puyat Ave., Makati City.

² Rollo, (CTA EB No. 2481), pp. 55-66; and (CTA EB 2482), pp. 57-68.

³ Rollo, (CTA EB NO. 2481), pp.5-21.

⁴ Rollo, (CTA EB NO. 2482), pp.8-22.

On the other hand, CIR is suing and being sued in his official capacity, having been duly appointed and empowered to act on and approve claims for refund or tax credit as provided by law.

Petitioner filed its Quarterly VAT Returns for the TY 2015 on the following dates:

Period (2015)	VAT Return	Date of Filing	Exhibit
1 st Quarter	Original Quarterly VAT Return	April 22, 2015	Exhibit P-8
	1 st Amended Quarterly VAT Return	July 27, 2015	Exhibit P-9
	2 nd Amended Quarterly VAT Return	November 18, 2016	Exhibit P-10
2 nd Quarter	Original Quarterly VAT Return	July 27, 2015	Exhibit P-16
	1 st Amended Quarterly VAT Return	August 17, 2015	Exhibit P-17
	2 nd Amended Quarterly VAT Return	November 18, 2016	Exhibit P-18
3 rd Quarter	Original Quarterly VAT Return	October 26, 2015	Exhibit P-23
	1 st Amended Quarterly VAT Return	November 18, 2016	Exhibit P-24
4 th Quarter	Original Quarterly VAT Return	January 26, 2016	Exhibit P-29
	1 st Amended Quarterly VAT Return	April 22, 2016	Exhibit P-30
	2 nd Amended Quarterly VAT Return	November 18, 2016	Exhibit P-31

On March 27, 2017, BW Shipping filed an application for refund or issuance of TCC for its alleged unutilized input taxes attributable to its zero-rated sales for the first to fourth quarters of TY 2015 in the total amount of ₱4,953,983.07.

On August 23, 2017, petitioner filed a Petition for Review with the CTA, due to CIR's inaction on BW Shipping's administrative claim for refund.

On October 13, 2017, CIR filed his Answer. According to CIR, the judicial claim should be denied because petitioner's alleged claim for refund or issuance of TCC is still subject to administrative investigation by the BIR. CIR contended that BW Shipping's claim for refund in the amount of ₱4,953,983.07 were not fully substantiated by proper documents pursuant to Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the National Internal Revenue Code (NIRC) of 1997, as amended.

On March 21, 2018, the parties filed their Joint Stipulation of Facts and Issues. On April 17, 2018, the Court issued a Pre-Trial Order.

During trial, petitioner presented testimonial and documentary evidence. Petitioner's formally offered exhibits were admitted in the Court's Resolution dated May 27, 2019 and Resolution dated September 11, 2019, respectively. Respondent, on the other hand, failed to present any evidence.

On November 7, 2019, the case was submitted for decision.

On October 7, 2020, the Court in Division partially granted BW Shipping's petition and ordered the refund/ issuance of TCC in the amount of ₱3,181,354.01, as follows:

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 [BW Shipping] 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.

On October 30, 2020, BW Shipping filed an Omnibus Motion for Reconsideration and Motion for New Trial (Re: Decision Rendered on Oct 7, 2020).⁵ On November 9, 2020, CIR filed a Motion for Partial Reconsideration.⁶

⁵ Docket, CTA Case No. 9660, Vol. IV, p.1494-1525.

⁶ Docket, CTA Case No. 9660, Vol. IV, p.1526-1531.

On May 27, 2021, the Court in Division denied BW Shipping's *Omnibus Motion for Reconsideration and Motion for New Trial (Re: Decision Rendered on October 7, 2020)* and the CIR's *Motion for Partial Reconsideration*, as follows:

WHEREFORE, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

On July 5, 2021, BW Shipping and CIR both filed before the Court *En Banc*, their respective Petitions for Review within the extended period granted.⁷ Thereafter, the Court *En Banc* consolidated the above-captioned cases.⁸

On November 2, 2021, in CTA EB No. 2481, BW Shipping filed its *Comment* (To the Petition for Review dated July 5, 2021).⁹ On November 8, 2021, in CTA EB No. 2482, CIR filed his *Comment* (Re: Petition for Review dated 02 July 2021).¹⁰

On January 3, 2022, the above-captioned consolidated cases were submitted for Decision.¹¹

ISSUES

In CTA EB No. 2481, CIR raised the following issues¹²: Whether the Court in Division erred in: a) ordering the refund or issuance of TCC in favor of BW Shipping in the amount of ₱3,181,354.02; b)

⁷ Records reveal that CIR and BW Shipping received the assailed Resolution on June 4, 2021. Therefore, CIR and BW Shipping had until June 19, 2021 to file their respective Petitions for Review. CIR and BW Shipping respectively filed Motions for Extension to file Petition for Review praying for an additional fifteen (15) days from June 19, 2021 or until July 4, 2021 within which to file their respective Petitions for Review. The Court *En Banc* granted the Motions of CIR and BW Shipping in the Minute Resolutions dated June 21, 2021. Hence, the filing of CIR and BW Shipping respective Petitions for Review on July 5, 2021 were timely.

⁸ *Rollo*, CTA EB No. 2481, Minute Resolution dated July 12, 2021, p. 72.

⁹ *Rollo*, CTA EB No. 2481, pp. 76-86.

¹⁰ *Rollo*, CTA EB No. 2481, pp. 88-96.

¹¹ *Rollo*, CTA EB No. 2481, pp. 99-100.

¹² *Rollo*, CTA EB No. 2481, p.9.

holding that the recipient of BW Shipping's services are foreign corporations doing business outside the Philippines; and c) holding that BW Shipping generated zero-rated sales.

On the other hand, in CTA EB No. 2482, BW Shipping raised the lone issue¹³ that the Court in Division erred in denying BW Shipping's Motion for New Trial for the presentation of its corrected evidence.

CIR's arguments:

CIR argues that BW Shipping failed to substantiate its entitlement for refund or issuance of TCC in the amount of ₱3,181,354.01 and that services rendered to its customers do not qualify for VAT zero-rating because: *one*, the recipients of services of BW Shipping are entities doing business in the Philippines; *two*, BW Shipping's foreign principals have an intention to establish a continuous business in the Philippines through the appointment of BW Shipping as their agent; and *three*, no evidence was offered by BW Shipping to prove that the services it rendered to its foreign clients were performed in the Philippines.

BW Shipping's arguments:

BW Shipping argues that the inaccurate entries and omissions in its VAT official receipts (ORs) were merely due to the mistake and excusable negligence of its cashier who prepared it.

BW Shipping alleges that ordinary prudence could not have prevented such mistake and excusable negligence in not detecting unsigned corrections in the official receipts. It adds that ensuring the completeness of all information in the VAT official receipt is no small feat considering the sheer volume of BW Shipping's transactions including its zero-rated sales. It was only when the Court in Division noted the erasures in the official receipts without countersignature that BW Shipping was apprised of such mistake.

BW Shipping asserts that its cashier has properly accounted for the alterations in the ORs when it attached the corrected ORs countersigned by its cashier together with the latter's Affidavit of Correction

¹³ Rollo, CTA EB No. 2482, p.12.

in its Omnibus Motion for Reconsideration and Motion for New Trial filed before the Court in Division.

THE RULING OF THE COURT *EN BANC*

The Petitions for Review are denied.

This Court finds no legal basis to reverse the assailed Decision and Resolution of the Court in Division and expounds on matters below.

Findings of fact by the Court in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Court in Division are in the best position to analyze the documents presented by the parties.¹⁴

Requisites for Refund/ Issuance of TCC of Input VAT

Section 112 (A) and (C) of the NIRC of 1997, as amended provides:

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales.* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106 (A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP)*: *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108

¹⁴ *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2016 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001.

(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

...

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Jurisprudence has laid down requisites which the taxpayer-applicant must comply to obtain a refund / issuance of TCC of input VAT as follows:

As to the timeliness of the filing of the administrative and judicial claims:

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;
2. In case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of one hundred twenty (120) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 120-day period;

With reference to the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
5. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes;
7. The input taxes are due or paid;
8. The input taxes have not been applied against output taxes during and in the succeeding quarters; and
9. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

**CIR's Petition for Review
(CT EB No. 2481)**

The Court in Division correctly found that BW Shipping's sale of services to foreign shipping companies doing business outside the Philippines for TY 2015 qualifies as VAT zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended.

CIR claims that services rendered by BW Shipping to foreign shipping companies cannot qualify for VAT zero-rating because the recipients of services rendered by BW Shipping were doing business in the Philippines.

CIR is mistaken.

Section 108(B)(2) of the NIRC of 1997, as amended, reads:

SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —

...

(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.

...

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);...¹⁵

Based on the foregoing provision, the following elements must concur for services to be subject to the VAT rate of zero percent (0%):

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;¹⁶
2. The services fall under any of the categories under Section 108(B)(2);¹⁷
3. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;¹⁸ and
4. The services must be performed in the Philippines¹⁹ by a VAT-registered person.

This Court adopts the finding of the Court in Division that BW Shipping satisfied the above-enumerated elements for zero-rating of services under Section 108(B)(2) of the NIRC of 1997, as amended and explains the *first* and *fourth* element to address the arguments of CIR.

First element- Proof that petitioner's client-foreign shipping companies are non-resident foreign corporations

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte Ltd.*,²⁰ the Supreme Court pronounced that for purposes of zero-rating under Section 108(B)(2) of the NIRC of 1997, as

¹⁵ Boldfacing supplied.

¹⁶ *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

¹⁷ *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* No. 153205, January 22, 2007; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ G.R. No. 234445, July 15, 2020.

amended, the taxpayer-claimant must establish two components of a client’s non-resident foreign corporation (NRFC) status: (1) the client was established under the laws of a country not the Philippines as proven by its SEC Certifications of Non-Registration; and (2) it is not engaged in trade or business in the Philippines as proven by its articles of association/certificates of incorporation stating that these clients are registered to operate in their respective home countries.

BW Shipping was able to establish that its foreign clients are NRFCs doing business outside the Philippines. This pronouncement of the Court in Division was supported by documentary evidence, as follows: (1) Certificates of Non-Registration of Company issued by the Securities and Exchange Commission (SEC), (2) Certificates of Registration, (3) Articles of Association, and (4) Memorandum of Association, as follows:

Registered Name	SEC Certificate of Non-Registration	Certificate of Registration	Articles of Association	Memorandum of Association
BW Gas Foreign Manning AS	P-120.2	P-120.1	-	-
BW Offshore Global Manning PTE. LTD.	P-121-2	-	P-121.1	-
BW Maritime Pte. Ltd.	P-122.2	-	P-122.1	P-122.1
Berge Bulk Maritime Pte. Ltd.	P-123.2	-	P-123.1	P-123.1
BW Fleet Management AS	P-124.2	P-124.1	-	-
BW Fleet Management PTE. LTD.	P-125.2	-	P-125.1	P-125.1

Now on to CIR’s contention that the recipients of BW Shipping services are entities doing business in the Philippines because they have an intention to establish a continuous business through the appointment of BW Shipping as their agent.

The Court disagrees.

As correctly found by the Court in Division, there is no showing that BW Shipping, as an "agent," referred to in the Service Agreements entered between BW Shipping and its different foreign clients was continuing the body or substance of its client's shipping activities in the Philippines.

As ruled by the Court in Division, the service agreements²¹ entered by BW Shipping and its foreign clients are limited to the following purposes:

...

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;²² and 2) providing information technology and purchasing support services for its clients' vessels.²³

The clients of BW Shipping do not fall in the definition of "doing business" as defined in Section 1(f) of the Implementing Rules and Regulations of Republic Act (RA) No. 7042 or the Foreign Investment Act of 1991, as amended by RA No. 8179.²⁴ The foreign clients of BW Shipping cannot be considered as doing business in the Philippines because it did not solicit orders, service contracts, open offices in the Philippines, appoint representatives or distributors,

²¹ Docket, CTA Case No. 9660, Volume III, pp.1137-1217.

²² Docket, CTA Case No. 9660, Vol. III, pp.1136-1193.

²³ Docket, CTA Case No. 9660, Vol. III, pp.1194-1217.

²⁴ f. **Doing business** shall include soliciting orders, service contracts, opening offices, whether liaison offices or branches; appointing representatives or distributors, **operating under full control of the foreign corporation, domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate 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 of the purpose and object of the business organization. The following acts shall not be deemed "doing business" in the Philippines:**

....

(3) **Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account; ...**
(Boldfacing supplied)

operating under its full control, participate in the management, supervision or control of any domestic business, entity or corporation, or perform any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate 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 of the purpose and object of the foreign client's business organization.

The foreign client engaged BW Shipping for its crewing, manning, information technology and purchasing support services. BW Shipping's authority to act on behalf of its foreign client as an alleged "agent" is limited to screening Filipino seamen and/or engineers for employment onboard the latter's vessels. Thus, BW Shipping was paid agency fees in foreign currency duly accounted for in accordance with the rules and regulations of the BSP. There is no evidence that BW Shipping acts in furtherance of its foreign clients' shipping activities.

On this point, in *Cargill, Inc. v. Intra Strata Assurance Corporation*,²⁵ the Supreme Court explained that activities within the Philippine jurisdiction that do not create earnings or profits to the foreign corporation do not constitute doing business in the Philippines. To constitute doing business, the activity undertaken in the Philippines should involve profit-making. Clearly, it was BW Shipping, and not its foreign clients which derived income from the transaction in screening and engaging Filipino seamen and engineers for employment on board the vessels of the latter.

*Fourth element - Services
performed in the Philippines*

In insisting that BW Shipping's services should not be zero-rated, CIR alleges that the services rendered by BW Shipping to its foreign clients were not performed in the Philippines.

²⁵ G.R. No. 168266, March 15, 2010.

In this regard, the issue of whether the refund claimant performed the subject services in the Philippines is a question of fact and must be proven by specific evidence.²⁶

BW Shipping asserts in its Petition for Review that it presented its SEC Certificate of Registration and Articles of Incorporation to prove that it rendered services to its foreign client in the Philippines. BW Shipping witness, Carmencita Escalante, who is BW Shipping's Manager of Accounts testified that it is engaged in the manning and crewing of vessels, specifically for foreign shipping companies. As a manning agency, BW Shipping is a recruitment and placement agency for Filipino seafarers.²⁷

Records show that BW Shipping is a duly licensed recruitment and placement agency with the Philippine Overseas Employment Administration (POEA) as evidenced by Certificate of Renewal No. POEA-382-SB-121713-R-MLC.²⁸ The Certificate of Renewal grants to petitioner the license to recruit, process and deploy seafarers in the Philippines. In addition, the service agreements clearly state that BW Shipping is appointed as manning or crewing agent for its clients' vessels, for purposes of recruiting Filipino seamen/ engineers for employment on board such vessels managed by the foreign client.

Relevantly, in CIR's Answer to BW Shipping's Petition for Review, CIR admitted the allegation that pursuant to BW Shipping's primary purpose as a domestic corporation registered with the SEC, BW Shipping provides manpower services specifically human resources catered to foreign shipping companies.²⁹ The Supreme Court in *Donabelle V. Gonzales-Saldana v. Spouses Gordon R. Niamatali and Amy V. Niamatali*,³⁰ recognizes that statements in the Answer constitute judicial admissions which binds petitioner and which dispenses with the need for proof with respect to the matter or fact admitted.

²⁶ *Tongonan Holdings and Development Corporation v. Atty. Francisco Escaño*, G.R. No. 190994 citing *Republic of the Philippines v. Angelo B. Malabanan, Pablo B. Malabanan, Greenthumb Realty and Development Corporation and The Registrar of Deeds of Batangas*, G.R. No. 169067, October 6, 2010; *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 9154, February 14, 2020.

²⁷ Judicial Affidavit of Carmencita Escalante dated March 1, 2018, Q&A No., 12, Docket, CTA Case No. 9660, Volume I, p.334.

²⁸ Docket, CTA Case No. 9660, Volume II, p.954.

²⁹ Paragraph 8 of BW Shipping's Petition for Review dated August 23, 2017, which was admitted in paragraph 1 of CIR's Answer dated October 13, 2017.

³⁰ G.R. No. 226587, November 21, 2018

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In this instance, BW Shipping sufficiently established that the services were indeed performed in the Philippines. Thus, the Court agrees with BW Shipping's contention that to fulfill its obligations under the service agreements with its foreign clients, it is necessary that it performs the recruitment services in the Philippines.

**BW Shipping's Petition for Review
(CTA EB No. 2482)**

***BW Shipping failed to strictly comply with
invoicing requirements for input VAT refund.***

To accord 0% VAT on sales of services, such sales of services must also be substantiated by their corresponding VAT ORs, compliant with invoicing and substantiation requirements, under Sections 113(A) and (B), and 237 of the NIRC, as amended, in relation to Section 4.113-1(A) and (B) of RR No. 16-2005,³¹ which respectively state:

SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —

(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:

³¹ See *Commissioner of Internal Revenue v. Filminera Resources Corporation*, G.R. No. 236325, September 16, 2020.

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(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term "**zero-rated sale**" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale;*

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

...

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service:

...

SEC. 4.113-1. **Invoicing Requirements.** —

(A) A VAT-registered person shall issue: —

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or "VAT official receipt". All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.*
— The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided, That:*

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand peso (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.³²

Case law states that failure to comply with the invoicing requirements is sufficient ground to deny the claim for refund or tax credit.³³

The Court in Division did not err in denying the Motion for New Trial³⁴ of BW Shipping and in disallowing the submission of the corrected evidence based on mistake and inexcusable negligence.

To recall, the Court in the assailed Decision disallowed BW Shipping's zero-rated sales amounting ₱41,807,449.29 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.

³³ *Commissioner of Internal Revenue, v. Philex Mining Corporation*, G.R. No. 230016, November 23, 2020.

³⁴ Sections 1 and 2, Rule 37 of the Revised Rules of Court set forth the specific and well-defined grounds for a motion for new trial (MNT) to wit:
Sec. 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 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 5, Rule 15 of the Revised Rules of the Court of Tax Appeals, as amended, reads:
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 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.
A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

According to BW Shipping, the inaccurate entries and omissions in its official receipts (OR)s were simply a result of the mistake and excusable negligence of its cashier in completing the information that should be contained in the ORs supporting its zero-rated sales.

To rectify its errors, BW Shipping submitted the “corrected” ORs counter-signed by its cashier, Jocelyn A. Ayala, together with her Affidavit of Correction in its Omnibus Motion for Reconsideration and Motion for New Trial (Re: Decision Rendered on October 7, 2020) filed before the Court in Division.

Yet, these “corrected” ORs were not formally offered as evidence at the earliest opportunity; hence, said documents may not be considered now. The contents of these “corrected” ORs are different from the ORs offered as evidence during the trial of CTA Case No. 9660. Section 34, Rule 132 of the Rules of Court Section 34, Rule 132 of the Rules of Court, ordains that courts shall not consider evidence which was not formally offered.³⁵ To consider these documents at this stage will deny the other parties the right to rebut them.³⁶

Indeed, these “corrected” ORs, being an allegation alone, may not be used as basis in deciding a case, or in granting a relief.³⁷

As correctly found by the Court in Division, it cannot be said that BW Shipping’s cashier or employee who prepared the subject ORs acted with ordinary prudence in the preparation of the ORs which would entitle it to a reconsideration of its refund claim. Moreover, its negligence is not excusable to justify a new trial. 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. BW Shipping could have avoided this irregularity had petitioner’s cashier exercised ordinary prudence and diligence in issuing its official receipts.

³⁵ Section 34. *Offer of evidence.* - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. See *Montelibano v. Yap*, G.R. No. 197475, December 6, 2017; and *Republic of the Philippines v. Gimenez*, G.R. No. 174673, January 11, 2016.

³⁶ *Westmont Investment Corporation, v. Amos P. Francia, Jr., Cecilia Zamora, Benjamin Francia, And Pearlbank Securities, Inc.*, G.R. No. 194128, December 7, 2011.

³⁷ See *Spouses Guidangen v. Wooden*, G.R. No. 174445, February 15, 2012.

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In this case, BW Shipping failed to prove that it is entitled to the entire amount sought to be refunded because its compliance with the mandatory invoicing requirements under the law was not established. BW Shipping’s act of correcting the ORs was a mere afterthought. The subsequent correction will not cure its non-compliance with the invoicing requirements which must be made at the time the transaction was effected under Section 237 of the NIRC of 1997, as amended.³⁸

It bears stressing that litigation is not a “trial and error” proceeding. A party who moves for a new trial on the ground of mistake must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate. Ordinary prudence in these cases would have dictated the presentation of all available evidence that would have supported the claims for refund/credit of input VAT of petitioner corporation.³⁹

The Court sustains the Court in Division’s finding that out of BW Shipping’s claimed input VAT of ₱4,953,983.07 for the TY 2015, only the amount of ₱4,735,288.35 represents substantiated input VAT, computed as follows:

Claimed Input VAT		4,953,983.07
Less: Disallowances		
Per ICPA	127,097.96	
Per Court’s Verification	91,596.76	218,694.72

³⁸ Sec. 237. Issuance of Receipts or Sales or Commercial Invoices. - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-Five Pesos (₱25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One Hundred Pesos (₱100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client; Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period. ... (Boldfacing supplied)

³⁹ *Atlas Consolidated Mining and Development Corporation, v. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007.

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Substantiated Input VAT	4,735,288.35
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Consequently, only the excess valid input VAT of ₱4,735,288.35 can be attributed to the total zero-rated sales declared by BW Shipping in the amount of ₱162,198,495.10, and only the input VAT of ₱3,181,354.01 is attributable to the valid zero-rated sales of ₱108,971,364.44, computed below as follows:

Substantiated Input VAT	4,735,288.35
Divided by Declared Zero Rated Sales	162,198,495.10
Multiply by Valid Zero-Rated Sales	108,971,364.44
Excess Input VAT Attributable to Valid Zero-Rated Sales	3,181,354.01

Therefore, the Court in Division committed no reversible error in granting BW Shipping’s excess and unutilized input VAT refund attributable to its zero-rated sales for the four quarters of CY 2015 to the extent of ₱3,181,354.01.

WHEREFORE, the Petitions for Review are **DENIED** for lack of merit. The Decision dated October 7, 2020 and Resolution dated May 27, 2021, in CTA Case No. 9660, whereby the Court in Division partially granted BW Shipping’s claim for refund or issuance of a TCC of unutilized excess input VAT attributable to its zero-rated sales/receipts amounting to ₱3,181,354.01, covering the four (4) quarters of TY 2015 are **AFFIRMED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

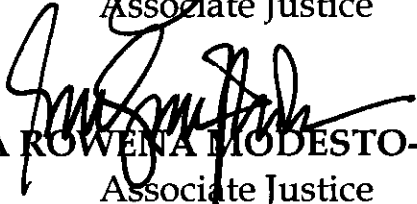

ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice

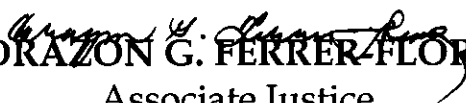

MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice