REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

B.W. SHIPPING PHILIPPINES INC.,
Respondent.

CTA EB NO. 2254
(CTA Case No. 9448)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

OCT 2 9 2021
11:15 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *en banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) against the respondent B.W. Shipping Philippines, Inc. (BWSPI) within an extended period[2] granted by the Court[3], seeking the reversal of the Decision dated September 23, 2019[4] (assailed Decision) rendered by the First Division of this Court in CTA Case No. 9448, as well as the Resolution dated February 19, 2020[5] (assailed Resolution) denying his motion for reconsideration.

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[1] *Rollo*, pp. 5-18, with Annexes "A" to "C", pp. 19-46.
[2] *Id.*, pp. 1-3.
[3] *Id.*, p. 4.
[4] *Id.*, pp. 19-39.
[5] *Id.*, pp. 40-43.

In the Petition, CIR prays that both the assailed Decision and Resolution be reversed and set aside; that judgment be rendered denying BWSPI's for refund in the amount of ₱5,503,628.95, representing unutilized input Value-added Tax (VAT) attributable to its zero-rated sales for the four quarters of taxable year (TY) 2014.

The Parties

Petitioner CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who is empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law.[6]

On the other hand, respondent BWSPI is a corporation duly organized and existing under the laws of the Philippines. It is registered as a VAT taxpayer with Taxpayer Identification No. (TIN) 000-160-779-000.[7] It is engaged in the general business of shipping, which includes the manning and crewing of vessels, the carriage of passengers, freight, mail, livestock, goods and other lawful merchandise.

The Facts[8]

BWSPI filed its quarterly VAT returns for TY 2014.[9]

In TY 2014, BWSPI rendered manning services to shipping companies located and doing business outside the Philippines. In consideration for such manning services, it was paid manning fees in foreign currency which was duly accounted for in accordance with rules and regulations of the Bangko Sentral ng Pilipinas (BSP). These manning fees for the services rendered to shipping companies located and doing business outside the Philippines were subjected to zero percent (0%) VAT.[10]

In TY 2014, BWSPI generated purely zero-rated receipts in the aggregate amount of ₱129,866,272.96.[11] BWSPI also incurred/ paid input VAT attributable to the aforesaid zero-rated sales in the total amount of ₱7,346,268.45.[12] Since BWSPI's sales are purely zero-rated, these input taxes all relate to zero-rated

[6] *Docket-Vol. 1*, p. 11, Petition for Review.
[7] *Id.*, p. 459, Joint Stipulation of Facts and Issues (JSFI).
[8] As found by the First Division and as culled from the records of the case.
[9] *Id.* at Note 6, p. 12.
[10] *Id.*
[11] *Id.*
[12] *Id.*

accounts.[13] Further, these input taxes attributable to BWSPI's zero-rated sales/receipts were not utilized in the same quarter and were likewise not used against its output taxes in the subsequent periods.[14]

On March 30, 2016, BWSPI filed its application for refund[15] (dated August 30, 2016) of the unutilized input VAT in the total amount of ₱7,346,268.45, for TY 2014, along with all supporting documents, with the BIR.[16]

On August 22, 2016, BWSPI received from the BIR a letter of denial of its administrative claim for refund dated August 16, 2016.[17]

On August 26, 2016, BWSPI filed a Petition for Review with the Court of Tax Appeals (CTA), docketed as CTA Case No. 9448.

The CIR filed his Answer[18] on October 28, 2016, interposing the Special and Affirmative Defenses that BWSPI failed to demonstrate that the tax was erroneously or illegally collected; that taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable; that BWSPI's claim for refund was not fully substantiated by proper documents, such as sales invoices, official receipts and others; that BWSPI failed to satisfactorily show all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit; and, lastly, claims for refund are construed strictly against the claimant, as the same partake the nature of exemption from taxation.

On March 3, 2017, the Court in Division received the Pre- Trial Brief of BWSPI[19] and the CIR.[20] The pre-trial conference was held on May 30, 2017.[21]

The parties filed their Joint Stipulation of Facts and Issues (JSFI)[22] on June 9, 2017. The Pre-Trial Order (PTO)[23] was subsequently issued on July 10, 2017.

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[13] *Id.*, p. 13.
[14] *Id.*
[15] *Docket-Vol. 2*, Exhibit "P-9", p. 677.
[16] *Id.* at Note 13.
[17] *Id.*
[18] *Id.* at Note 6, pp. 76-78.
[19] *Id.*, pp. 437-440.
[20] *Id.*, pp. 443-453.
[21] *Id.*, p. 456, Minutes of Hearing on May 30, 2017; pp. 457-458, Order.
[22] *Id.*, pp. 459-464.
[23] *Id.*, pp. 466-471.

Trial ensued. BWSPI presented the following witnesses: (1) Ms. Carmencita Escalante;[24] (2) Ms. Herminia Dela Peña;[25] and (3) Independent Certified Public Accountant (ICPA) Enrico T. Pizarro.[26]

BWSPI filed its Formal Offer of Evidence (FOE)[27] which the Court in Division resolved by denying several of its exhibits and admitting the rest.[28] This prompted BWSPI to file a Motion for Reconsideration (With Motion to Set Additional Commissioner's Hearing)[29] which the Court in Division only partially granted,[30] causing BWSPI to file a Tender of Excluded Evidence[31].

On the other hand, the CIR filed a Manifestation[32] that he would no longer present any evidence or witness and requested for a period of thirty (30) days for the parties to file their respective memoranda.

Within the extended period granted,[33] BWSPI filed its Memorandum while the Court in Division admitted the CIR's Memorandum[34] that was belatedly filed in the interest of justice[35]. The case was then submitted for decision.

On September 23, 2019, the Court in Division promulgated the Assailed Decision and partially granted BWSPI's Petition. The dispositive portion of the Assailed Decision reads, as follows:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent [the CIR] is **ORDERED to REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner [BWSPI] 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.

[24] *Id.*, pp. 373-385, Exhibit "P-50", Judicial Affidavit of Carmencita Escalante; p. 486, Minutes of Hearing on August 29, 2017.
[25] *Id.*, pp. 103-112, Exhibit "P-56", Judicial Affidavit of Herminia Dela Peña; *id.*at Note 15, p. 513, Minutes of Hearing on September 26, 2017.
[26] *Id.* at Note 15, pp. 606-629, Exhibit "P-60", Judicial Affidavit of Enrico T. Pizarro; p. 633, Minutes of Hearing on December 4, 2017.
[27] *Id.*, pp. 636-650.
[28] *Id.*, pp. 965-968, Resolution dated January 31, 2018.
[29] *Id.*, pp. 969-976.
[30] *Id.*, pp. 993-995, Resolution dated May 10, 2018.
[31] *Id.*, pp. 997-1001.
[32] *Id.*, pp. 1019-1020.
[33] *Id.*, p. 1028, Resolution dated September 5, 2018.
[34] *Id.*, pp. 1064-1067.
[35] *Id.*, pp. 1070-1071, Resolution dated October 12, 2018.

SO ORDERED."[36]

On October 29, 2019, the CIR filed his Motion for Reconsideration praying that a new Decision be rendered denying BWSPI's claim for refund in its entirety. BWSPI filed its Comment/Opposition (To Respondent's Motion for Reconsideration) on November 21, 2019.

On February 19, 2020, the Court in Division issued the assailed Resolution denying the motion for lack of merit.[37] The dispositive portion of the Assailed Resolution reads, as follows:

> " **WHEREFORE,** respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED."**[38]

Within an extended period granted by the Court, the CIR timely posted his appeal via Petition for Review on June 26, 2020, which the Court *en banc* received on July 3, 2020.[39]

On September 7, 2020, BWSPI was directed to file its Comment thereto.[40]

On September 18, 2020, BWSPI filed its Comment (To Petition for Review dated June 25, 2020).[41]

On October 29, 2020, the Court *en banc* issued a Resolution submitting the case for decision.[42]

The Assignments of Errors

The CIR assigns the following errors to the Court in Division's assailed Decision and Resolution:

[36] *Id.* at Note 4, p. 38.
[37] *Id.* at Note 5.
[38] *Id.*, p. 51.
[39] *Id.* at Note 1.
[40] *Id.*, pp. 49-50.
[41] *Id.*, pp. 51-61.
[42] *Id.*, pp. 63-64.

1. In holding that the recipient of BWSPI's services are foreign corporations doing business outside the Philippines;
2. In not finding that BWSPI is a local agent of the foreign corporations, hence, making the subject transactions local transactions;
3. In not holding that BWSPI exercises control and supervision over the complements of its foreign principals;
4. In not finding that BWSPI conducts business in the name of its foreign principals as shown in the agreements between BWSPI and each of its foreign principals;
5. In holding that BWSPI generated zero-rated or effectively zero-rated sales; and
6. In not denying the Petition for Review of BWSPI.

The Arguments of the Parties

The CIR argues that BWSPI's sales of services to its foreign principals are not entitled to be zero-rated or effectively zero-rated because the foreign principals that it renders manning services to are doing business in the Philippines. While BWSPI may have established that its clients/principals are foreign corporations, this does not ipso facto mean that these clients/principals are doing business outside the Philippines.

The CIR contends that BWSPI renders services and performs functions which do not only pertain to screening competent and qualified Filipino seamen for employment on board the vessels of its foreign principals, but also extends to control, supervisory and human resource management functions which are essential functions in the operation of a corporation.

Moreover, BWSPI has the power and authority to hire, fire and transfer seamen hired by its principals which is an exercise of control and supervision. The manning agreements/crew agency agreements between BWSPI and its foreign principals show the latter's intention to establish a continuous business by appointing BWSPI as its local agent and/or representative.

Since BWSPI, as the service provider, and the foreign principals, as recipients of services, are both doing business in the Philippines, its sales of services are purely domestic sales or exchange of services which are subject to the regular VAT.

On the other hand, BWSPI claims that it has sufficiently proven that its foreign principals are non-resident foreign corporations doing business outside the Philippines by presenting Certificates of Non-Registration issued by the Securities and Exchange Commission (SEC) and consularized Certificates/Articles of Foreign Incorporation.

Furthermore, BWSPI argues that it merely screens competent and qualified Filipino seamen for employment on board the vessels of the foreign shipping companies, and other services in furtherance thereof, which activity does not in any way constitute a business activity or a commercial dealing by its foreign principals in the Philippines. To constitute doing business, the activity undertaken in the Philippines should involve profit-making.

BWSPI also claims that the service agreements it executed with its foreign principals does not give rise to a contract of agency as understood in civil law, as the relationship is limited to providing crewing and manning services and to ensure the imposition of liability for violation of the recruitment agreement or contract of employment. It transacts business in its own name and for its own account and there is no showing that the foreign principals exercise control over its business.

The Ruling of the Court

A judicious review of the arguments raised by the parties in the Petition for Review and the Comment (To Petition for Review dated June 25, 2020) shows that they merely rehashed the very same arguments in their previous pleadings all of which have been thoroughly discussed and passed upon by the Court in Division in the assailed Decision of September 23, 2019, and, similarly, in the assailed Resolution of February 19, 2020. The Court *En Banc* sees no compelling reason to deviate from the ruling of the Court in Division or even modify its findings.

In the Petition for Review, the CIR alleges that BWSPI failed to satisfy the third requisite for its supply of services to qualify as VAT zero-rated under Section 108(B)(2) of the National Internal Revenue Code of 1997, as amended (NIRC), that is, that the recipient of such services is doing business outside the Philippines. This requirement was laid down by the Supreme Court in *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[43] along with two others: a) that the services must be other than processing, manufacturing or repacking of goods; and b) that the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

[43] G.R. No. 153205, January 22, 2007.

In the case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*[44], We have previously identified the documents that would support the finding that a corporation is a non-resident foreign corporation doing business outside the Philippines, to wit:

> "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 a certificate of non-registration of corporation/partnership issued by the SEC and a certificate/articles of foreign incorporation/association.
>
> These two documents are necessary. The SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines (*i.e.*, not engaged in trade or business within the Philippines). On the other hand, the certificate/articles of incorporation/association prove two things: (1) that the recipient of the service is indeed foreign, and (2) it is engaged in business in the country of incorporation/association (*i.e.* a showing of a continuity of commercial dealings and intention to establish a continuous business)."

As per the Court in Division's findings, BWSPI was able to show 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
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

The Certificates of Non-Registration issued by the SEC certify that the records of the Commission do not show that the abovementioned corporations are registered as a corporation or as a partnership in the Philippines.[45] On the other hand, the consularized Certificates/Articles of Foreign Incorporation

[44] CTA EB No. 1508 and 1509, March 21, 2018.
[45] Exhibits "P-29", "P-32", "P-35", "P-38", "P-41" and "P-44".

presented by BWSPI indicate that the aforementioned corporations are non-resident foreign corporations which were organized and are doing business outside the Philippines.[46] Moreover, BWSPI was able to likewise show that its customers are duly registered in foreign countries as per official online websites.[47]

All the aforementioned, taken together with the Consularized Manning Agreements/Purchasing & Infrastructure Support Agreements presented by BWSPI, are deemed by the Court *En Banc* as sufficient documentary proof that the recipient of its services were foreign entities "not doing business" in the Philippines, pursuant to the doctrine laid down in *Chevron*.

However, the Court *En Banc* notes that sources that are immediately available to the general public show that the foreign principals of BWSPI are mostly affiliates of the BW Group. BWSPI's company profile online states in fact that it "recruits seafarers for Affiliates of BW Group -- BW LNG, BW LPG, BW OFFSHORE, and as well as for Berge Bulk Maritime Pte. Ltd."[48]

Publicly available company profiles of the BW Group characterize it as "a leading global maritime company involved in shipping, floating infrastructure, deepwater oil & gas production, and new sustainable technologies."[49] The company website touts that "BW controls a fleet of over 420 vessels transporting oil, gas and dry commodities, with its 190 LNG and LPG ships constituting the largest gas fleet in the world."[50] These vessels are managed but not owned by companies in the BW Group.[51] BW Group's predecessor companies are Bergesen d.y. ASA and World-Wide Shipping.[52] It was in 2005 that a reorganization took place and the business was rebranded under a single group brand, BW.[53]

BW Gas Foreign Manning AS was previously known as Bergesen d.y. ASA until the company was restructured into BW Gas in 2005 through demerger and sale of non-gas assets[54] turning it into a pure gas shipping company. The BW

[46] Exhibits "P-30", "P-33", "P-36", "P-39", "P-42" and "P-45".
[47] Norweigian Register of Business Enterprises (Bronnoysund Register Center) and Singapore's Accounting and Corporate Regulatory Authority.
[48] LinkedIn Company Profile, BW Shipping Philippines, Self-Published, viewed 25 August 2021, <https://www.linkedin.com/company/bw-shipping-philippines/about/>.
[49] BW Group, Homepage, viewed August 26, 2021, <https://bw-group.com/>.
[50] BW Group, Homepage, viewed August 26, 2021, <https://bw-group.com/>.
[51] Primidi, BW Group, viewed August 27, 2021, <https://www.primidi.com/bw_group/bw_group>.
[52] POEA Jobs, Agency Profile, BW Shipping Philippines, viewed on August 24, 2021, <https://poeajobs.ph/agency/bw-shipping-philippines/>.
[53] BW Offshore, History, viewed September 4, 2021, <https://www.bwoffshore.com/about-us/our-history/>.
[54] Oslo Børs, Bergensen Worldwide Gas ASA (BW Gas) Bond Issue Prospectus-Registration Document, viewed on September 8, 2021, <https://www.oslobors.no/content/download/19732/504918/file/GAS01%20-%20NO0010322738%20-%20RD,0.pdf>

Group retained a majority share.[55] **BW Maritime PTE Ltd.**, on the other hand, is involved in corporate activities across the BW Group.[56] Originally named BW Shipping Managers, it is the commercial and technical manager of BW Group's tanker fleet, and the technical manager of a number of BW Group's dry bulk vessels.[57] **BW Offshore Global Manning PTE Ltd.** is involved in the management of human resource functions where it enters into employment contracts with personnel for various projects.[58] They staff the company through competence mapping, talent development, recruitment and retention[59] and engineers FPSO (Floating Production Storage and Offloading) and FSO (Floating Storage and Offloading) systems, its conversions, operating most of the units after completion.[60] BW Group is also a significant shareholder in BW Offshore.[61] **BW Fleet Management PTE Ltd.** and **BW Fleet Management AS** are BW Group's in-house ship management companies.[62] **Berge Bulk Maritime PTE Ltd.**, on the other hand, is engaged in the transportation of coal and iron ore[63] and is one of the world's leading independent dry bulk owners.[64] Formerly under the same BW Group,[65] in 2007, Berge Bulk was formed as a separate private dry bulk firm, distinct from the BW Group.[66]

In other words, it would seem that an overwhelming majority of BWSPI's clients subject of this case are affiliates of the BW Group. The publicly available information on these affiliates are, however, merely the tip of the iceberg. The true extent of the control and influence of the BW Group on their affiliates are hidden in layers of corporate restructuring brought on by mergers and acquisitions within the grand umbrella of the BW Group.

While it is certainly worth further investigating in pursuance of the CIR's theory, there is a dearth of evidence present before the Court *En Banc* to fortify such theory resulting in a definitive pronouncement.

[55] Primidi, BW Group, viewed August 27, 2021, <https://www.primidi.com/bw_group/bw_group>.
[56] Maritime Union Company, Company Profile, BW Shipping Philippines, Inc., viewed on September 5, 2021, <https://maritime-union.com/company/bw-shipping-philippines-inc>.
[57] Primidi, BW Group, viewed August 27, 2021, <https://www.primidi.com/bw_group/bw_group>.
[58] Singapore Company Search, BW OFFSHORE GLOBAL MANNING PTE. LTD. (200802282M) registered on January 30, 2008, viewed on September 8, 2021, <https://www.companies.sg/business/200802282M/BW-OFFSHORE-GLOBAL-MANNING-PTE-LTD->.
[59] BW Offshore, About Us, Who We Are, viewed September 3, 2021, <https://www.bwoffshore.com/about-us/who-we-are/>.
[60] BW Offshore, Homepage, viewed September 3, 2021, <https://www.bwoffshore.com/>.
[61] BW Offshore, About Us, Our History, viewed September 3, 2021, <https://www.bwoffshore.com/about-us/our-history/>.
[62] Maritime Union Company, Company Profile, BW Shipping Philippines, Inc., viewed on September 5, 2021, <https://maritime-union.com/company/bw-shipping-philippines-inc.>.
[63] Primidi, BW Group, viewed August 27, 2021, <https://www.primidi.com/bw_group/bw_group>.
[64] Berge Bulk, About Us, viewed on September 8, 2021, <https://www.bergebulk.com/about-us-info/our-company/>.
[65] SeamanJOBS, "How to Apply for Seaman Jobs at BW SHIPPING PHILIPPINES INC.", viewed on September 9, 2021, <https://seamanjobs.com.ph/apply/how-to-apply-for-seaman-jobs-at-bw-shipping-philippines-inc/>.
[66] Grant Rowles, Splash 247, "BW Dry Cargo fixes first bulker to Glencore" published on June 23, 2016, viewed on September 6, 2021, <https://splash247.com/bw-dry-cargo-fixes-first-bulker-to-glencore/>.

As for the CIR's argument that the appointment of BWSPI as "agent" and the duration of the Crew Agency Agreements shows that its customers are engaged in business in the Philippines, the same is likewise unpersuasive.

In *Accenture, Inc. v. Commissioner of Internal Revenue*[67], the Supreme Court ruled as follows:

> "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."' *(Emphasis supplied)*

Furthermore, in *National Sugar Trading Corp. v. Court of Appeals*[68] *and Cargill, Inc. v. Intra State Assurance Corporation*[69], the Supreme Court held that activities within 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.[70]

In this case, it appears that BWSPI simply renders manning or crewing services to foreign shipping companies. It merely screens competent and qualified Filipino seamen for employment on board the vessels of the foreign shipping companies.

[67] 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.
[68] 316 Phil. 562 (1995).
[69] G.R. No. 168266, March 15, 2010.
[70] *Agilent Technologies Singapore (PTE) Ltd. v. Integrated Silicon Technology Philippines*, G.R. No. 154618, April 14, 2004.

Section 3(d) of the Foreign Investments Act of 1991[71] (FIA) defines the phrase "doing business" as follows:

> "x x x d) **the phrase 'doing business' shall include** soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; **appointing representatives or distributors 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: *Provided, however,* That **the phrase 'doing business' shall not be deemed to include** mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; **nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account**; x x x" *(Emphasis supplied)*

The CIR makes the case that the services that BWSPI provides to its foreign principals are essential to the operations and business of the latter since it exercises human resource functions such as hiring, firing, and transferring seamen hired by its principals and that these amount to the control and supervision referred to in the definition of "doing business" in Section 3(d) of the FIA.

A perusal of the Crew Agency Agreements, however, show that the transfer or dismissal of a seaman by BWSPI must always be with the prior written approval of the foreign shipping company. Neither can BWSPI exercise such power to transfer or dismiss without concurrence from the foreign shipping companies. While these give a semblance of the foreign shipping companies exerting some measure of control or participation in the domestic corporation, BWSPI, these are merely a necessary consequence of the foreign companies' outsourcing recruitment of manpower.

[71] Republic Act No. (RA) 7042, as amended by RA 8179.

Indeed, human resources is near indispensable for businesses that would like to succeed in attaining the purposes for which it was established. However, there is no requirement that limits corporations to staffing its workforce only through direct hiring. Recruiting activity may be outsourced to other companies such as what the foreign shipping companies did when they engaged the BWSPI for its crewing and manning services.

With respect to the Crewing Agreements, in the event the foreign companies are unsatisfied with such service being provided by BWSPI, the former have the right to terminate the service agreements in writing, three (3) months before the termination. In other words, the parties are free to abide by the terms of the Crew Agency Agreements and are likewise free to disengage from their obligations under it, if they so desire. This necessarily negates the allegation of control.

The Court notes, however, that as a consequence of Section 10 of Republic Act No. (RA) 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, jurisprudence on money claims of seafarers recounts several instances wherein the foreign corporation is characterized as "doing business in the Philippines through its agent", the licensed manning agency.[72] It appears though that whether or not a licensed manning agency's clients are doing business in the Philippines or not is largely a label that is self-imposed when it comes to money claims of seafarers.

Still and all, several questions have to be asked: Are BWSPI's clients "doing business in the Philippines" by participating in BWSPI's management, supervision or control? And does BWSPI transact business in its own name and for its own account free from the management, supervision or control of the BW Group and/or its affiliates?

In BWSPI's company profile, they claim that BW Group "own[s] and operate[s] a fleet of quality vessels which are managed by competent and experienced staff" and that it "employs more than 7,000 people including seafarers, and has offices in countries such as Singapore, Norway, Denmark, USA, China, Bermuda, India, the Philippines and Cyprus."[73] It appears therefore that BW Group indeed has offices in the Philippines.

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[72] *Gau Sheng Phils, Inc. vs. Joaquin*, G.R. No. 144665, September 8, 2004; *Tagud v. BSM Crew Service Centre Phils., Inc.*, G.R. No. 219370, December 06, 2017.
[73] POEA Jobs, Agency Profile, BW Shipping Philippines, viewed on August 24, 2021, <https://poeajobs.ph/agency/bw-shipping-philippines/>.

A search on the status of BWSPI as a recruitment agency in the Philippine Overseas Employment Administration (POEA) website[74] indicates that "www.bwphilippines.com" is BWSPI's website. However, that Uniform Resource Locator (URL) when entered into a search engine, redirects to "https://bw-group.com/", the website of the BW Group.

In the "Contact Us" page of the BW Group website[75], the BW Group lists its office locations, among them, its office location in the Philippines, to wit:

> "Philippines
> 5/F Omnis Prosperity Tower
> 377 Senator Gil Puyat Ave.
> Makati City 1200
> Philippines
>
> Tel +632 895 2469
> Fax +632 895 9870
> recruitment.philippines@bwfm.com"

The Omnis Prosperity Tower was formerly named Goodland Building. The address listed by the BW Group as its "Office Location" in the Philippines is the same address of BWSPI as stipulated to by the parties in this case in the JFSI.[76] Moreover, the email address indicated by the BW Group in their "Office Location" in the Philippines is the same email address used by BWSPI when posting for seafaring jobs.[77]

While the BW Group admittedly owns one of the largest fleets in the world, the fact remains beyond question that ships do not steer themselves. Another fact beyond question is that the Court cannot make the case for either of the litigants. It can only act upon the evidence that is presented before it. As mentioned earlier, the publicly available information that came to the Court's attention is but the tip of the iceberg of the connection BWSPI has to the BW Group and/or its affiliates. Perhaps it would be more favorable for the CIR's advocacy next time to connect the dots, make its case, and formally present evidence on the matter.

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[74] POEA website, Status, Recruitment Agency BW SHIPPING PHILIPPINES INC. (FOR BERGESEN D Y PHILIPPINES INC) Manning Agency, viewed on August 20, 2021, <https://poea.gov.ph/cgi-bin/agSearch.asp>.

[75] BW Group, Contact Us, viewed on August 18, 2021, <https://bw-group.com/contact-us/>.

[76] Docket, Vol. I, Joint Stipulation of Facts and Issues (JSFI), p. 459.

[77] SeamanJOBS, Employer, BW Shipping, viewed on September 4, 2021, <https://seamanjobs.com.ph/apply/employer/bwshipping/>; POEAJobs, Agency, viewed on September 1, 2021, <https://poeajobs.ph/agency/bw-shipping-philippines/>; SeamanJobSolution, Listing by BWSPI, viewed on September 7, 2021, <https://poeajobs.ph/agency/bw-shipping-philippines/>; and OceanCrew, Vacancies, Crew For Gas Fleet, viewed on August 23, 2021, <https://oceancrew.org/vacancies/merchant/full-crew/crew-for-gas-fleet_10-08-2021>, among others.

As for this case, considering the aforementioned discussion, there is no evidence that the foreign shipping companies to which BWSPI provided services are doing business in the Philippines such that it would disqualify BWSPI's sales of services to the former from being VAT zero-rated. Accordingly, the Court *En Banc* upholds the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The assailed Decision dated September 23, 2019 and the Resolution dated February 19, 2020 of the First Division in CTA Case No. 9448 are **AFFIRMED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I concur in result and solely on grounds stated in assailed decision

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
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 case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice