REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

<u>EN BANC</u>

BSM CREW SERVICE CENTRE PHILIPPINES, INC., Petitioner,	**CTA EB NO. 2788** (CTA Case No. 10135)
- versus -	Present: **DEL ROSARIO**, *<u>P.J.</u>*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *<u>JJ.</u>*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 19 2025 1:00 p.m.

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RESOLUTION

***BACORRO-VILLENA, <u>J.</u>*:**

For the Court's resolution is petitioner BSM Crew Service Centre Philippines, Inc.'s (**petitioner**'s/**BSM**'s) "Motion for Reconsideration (of the Decision dated March 25, 2025) with Compliance and Notice of Change of Firm Name"[1] (**MR**), filed on 16 April 2025, with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Opposition (Re: Motion for Reconsideration of the Decision dated 25 March 2025)"[2] (**Comment**) filed on 21 May 2025.

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1 *Rollo*, pp. 159-168.
2 Id., pp. 173-182.

Petitioner seeks the reversal and setting aside of the Court *En Banc*'s Decision promulgated on 25 March 2025[3] (**assailed Decision**) in the above-captioned case. The assailed Decision denied the Petition for Review[4] for lack of merit.

In the assailed Decision, the Court *En Banc* upheld the Special Third Division's finding that petitioner failed to sufficiently establish that the services it rendered to its foreign clients for calendar year (**CY**) 2017 were performed in the Philippines and consequently, denied petitioner's Petition for Review for lack of merit.

In the instant MR[5], petitioner once again contends that: (1) the corporate names "Bernhard Schulte Shipmanagement (L) Limited", "Bernhard Schulte Shipmanagement (Cyprus) Limited" and "Bernhard Schulte Shipmanagement (Cyprus) Limited (Hammonia)" all refer to the same entity as found by the Court-commissioned Independent Certified Public Accountant (**ICPA**), Gerardo S. Teofilo, Jr. (**Teofilo**); and (2) it sufficiently established that its services were rendered in the Philippines.

Respondent, in opposing petitioner's MR, argues that petitioner did not adequately prove that its clients were nonresident foreign corporations (**NRFCs**) not engaged in business in the Philippines, citing inconsistencies in the submitted corporate documents and billing statements. Respondent, echoing the assailed Decision, argues that petitioner failed to prove with reasonable certainty that the services were rendered within the Philippines, as required under the *situs-of-service* principle for value-added tax (**VAT**) zero-rating under Section 108(B)(2)[6] of National Internal Revenue Code (**NIRC**) of 1997, as

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[3] Id., pp. 123-146.
[4] Id., pp. 5-16.
[5] Supra at note 1.
[6] **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:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident 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

amended, citing the absence of nexus between the manning agreements and the submitted billing statements and official receipts, as well as petitioner's multiple sources of service income (aside from manning services), which cast doubt on the proper attribution of the claimed zero-rated transactions.

We resolve.

At the outset, We observe that petitioner's grounds in the instant MR merely reiterate its earlier submissions that the assailed Decision has thoroughly addressed and passed upon.[7] We find no compelling reason to revisit and re-examine the same issues. In *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[8], the Supreme Court declared:

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> 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 the 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.
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> ...

> accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.] (Emphasis supplied)
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> ...

[7] *Rollo*, pp. 136-144.

[8] G.R. No. 109645, 04 March 1996.

Even assuming *arguendo* that petitioner's second ground warrants further discussion, We, nonetheless, find it bereft of merit.

In support of this ground, petitioner raises four (4) principal arguments to establish that its services were rendered within the Philippines: (1) the Manning Agreements indicate that, as agent, petitioner undertakes to perform its services in the Philippines; (2) a substantial amount of withholding taxes on compensation purportedly demonstrates that petitioner's employees are based in the Philippines; (3) its Audited Financial Statements (**AFS**) were measured in Philippine Peso as its functional currency, signifying that the Philippines constitutes its primary economic environment; and (4) a disclosure regarding petitioner's lease contracts shows that petitioner has entered a lease contract for its office space and warehouse which are both located in the Philippines.

We will address the foregoing in *seriatim*.

Firstly, as astutely discussed in the assailed Decision, petitioner failed to present all the Manning Agreements it executed with its various NRFC clients. Furthermore, the testimony of ICPA Teofilo[9], corroborated by petitioner's Articles of Incorporation (**AOI**)[10], reveals that petitioner is engaged in the business of acting as representative, agent, charterer or broker of ships, vessels for owners and/or operators, whether individual or corporate. Thus, petitioner may act as a general agent for any of its principals and not solely as a manning agency. Petitioner's AFS further reflect multiple sources of service income, underscoring the diversity of its business operations.[11] Hence, even if the submitted Manning Agreements may suggest that certain services were performed in the Philippines, petitioner's engagement in other service activities shifts the burden onto it to clearly and convincingly demonstrate that the specific services subject of the refund claim were indeed rendered within Philippine territory and qualify for VAT zero-rating.

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9 Division Docket, Volume II, p. 516.
10 Exhibits "ICPA-P7-1" to "ICPA-P7-34", USB.
11 See Exhibits "ICPA-P6-1" to "ICPA-P6-60", id.

Secondly, it bears stressing that withholding tax serves merely as a mechanism to facilitate the collection of income tax.[12] Income taxation, however, is governed by the principles of citizenship, residence, and source, with the *situs-of-service* doctrine forming only one aspect of the broader source principle.[13] In other words, income may be subject to income tax not solely because it was earned within the country, but also because of the taxpayer's citizenship or residence status. In contrast, VAT, being a business tax, focuses solely on the *situs* of the service to determine VAT liability—whether subject to 12% or the preferential 0% rate. Accordingly, petitioner's invocation of significant withholding taxes on compensation does not conclusively establish that its services were rendered in the Philippines. At most, such withholding merely indicates that the related income was earned within the Philippines by a citizen or alien, or outside the Philippines by a resident citizen, but not necessarily that petitioner's services for its foreign principals were performed domestically for purposes of VAT zero-rating.

Thirdly, International Accounting Standards (**IAS**) 21 *The Effects of Changes in Foreign Exchange Rates*, as adopted by the Financial and Sustainability Reporting Standards Council (**FSRSC**) as Philippine Accounting Standards (**PAS**) 21, defines functional currency as the currency of the primary economic environment in which an entity operates.[14] It is normally the currency in which it primarily generates and expends cash.[15] Furthermore, PAS 21 provides the following primary indicators: (1) the currency that mainly influences sales prices for goods and services (this will often be the currency in which sales prices for its goods and services are denominated and settled) and the currency of the country whose competitive forces and regulations mainly determine the sales prices of its goods and services; or (2) the currency that mainly influences labour, material and other costs of providing goods or services (this will often be the currency in which such costs are denominated and settled).[16] From these provisions, it becomes evident that the use of the Philippine Peso as petitioner's functional currency merely signifies that Philippine Peso predominantly influences either its revenue or cost structures—or both. However, PAS 21 does not, in any

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12 *In The Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying The Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations"*, G.R. Nos. 215801 and 218924, 15 January 2020.

13 See Victorino C. Mamalateo, Philippine Income Tax 7-8 (2010).

14 IAS 21, par. 9, p. A1380.

15 Id.

16 Id.

manner, relate functional currency to the *situs* of the services rendered. Thus, petitioner's reliance on its use of Philippine Peso as indicative of the place of service performance is misplaced and unsupported by accounting principles.

Lastly, petitioner's execution of lease contracts merely establishes that it maintains physical office and warehouse spaces within the Philippines. However, such fact, standing alone, does not prove that the services subject of the refund claim were actually rendered within the Philippines. Without clear and direct linkage between the leased premises and the performance of the specific services for its NRFC clients, the existence of these contracts bears little, if any, probative value in establishing the *situs* of service for purposes of VAT zero-rating.

Accordingly, after a judicious and thorough evaluation of the parties' arguments and the applicable law and jurisprudence, the Court *En Banc* finds no cogent reason to disturb the assailed Decision. The issues raised in petitioner's MR have been fully and sufficiently addressed, and no substantial argument has been presented to warrant a reversal or modification. Thus, the Court *En Banc* finds it proper to uphold its prior ruling in all respects.

WHEREFORE, in view of the foregoing, petitioner's "Motion for Reconsideration of the Decision dated March 25, 2025) with Compliance and Notice of Change of Firm Name", filed on 16 April 2025, is hereby **DENIED** for lack of merit. The Notice of Change of Firm Name from "Bernaldo Directo & Po Law Offices" to "Bernaldo Po Presto & Poblador Law Offices" is **NOTED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I reiterate my Concurring Opinion

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice