REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BW SHIPPING PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **9888**

Members:

BACORRO-VILLENA, *Acting Chairperson, and,*
CUI-DAVID, *JJ.*

Promulgated:
AUG 16 2022 1:30 PM

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. Petitioner BW Shipping Philippines Inc.'s (**petitioner**'s/**BSPI**'s) "Omnibus Motion for Reconsideration and Motion for New Trial (Re: Decision Rendered on September 11, 2021)"[1] (**Omnibus Motion**), filed *via* registered mail on 26 October 2021[2], without comment from respondent Commissioner of Internal Revenue (**respondent/CIR**) despite due notice[3]; and,

2. Respondent CIR's "Motion for Partial Reconsideration"[4] (**MPR**), filed *via* registered mail on 19 October 2021[5], with petitioner's

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[1] Division Docket, Volume IV, pp. 1378-1415, with annexes.
[2] Received by the Court on 05 November 2021.
[3] *Per* Records Verification dated 04 March 2022, Division Docket, Volume IV, p. 1445.
[4] Id., pp. 1417-1428.
[5] Received by the Court on 10 November 2021.

"Comment (on Respondent's Motion for Partial Reconsideration dated October 18, 2021)"[6] (**Comment**), filed on 13 December 2021.

In both motions, the parties pray that the Court reconsider its Decision promulgated on 11 September 2021[7] (**assailed Decision**), partially granting the Petition for Review, the dispositive portion of which reads:

> ...
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> **WHEREFORE**, premises considered, the Petition for Review filed on 26 July 2018 by petitioner BW Shipping Philippines, Inc. is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **FOUR MILLION FIFTY THREE THOUSAND FOUR HUNDRED SIXTY SIX PESOS and FORTY ONE CENTAVOS** (₱4,053,466.41), representing the unutilized input value-added tax (VAT) attributable to its zero-rated sales for the four (4) quarters of taxable year 2016.
>
> **SO ORDERED.**
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> ...

In its Omnibus Motion, petitioner prays that the Court: (1) reverse and set aside its assailed Decision; or in the alternative, (2) grant a new trial for the presentation of corrected evidence; and, (3) grant petitioner's claim for refund and/or issuance of tax credit certificate (**TCC**) representing unutilized input taxes attributable to its zero-rated sales for the taxable year (**TY**) 2016 in the amount of ₱5,847,484.71.

As regards the disallowed zero-rated sales of ₱19,234,511.72 and the related foreign exchange gain of ₱376,672.79, petitioner submits that the use of the Securities and Exchange Commission (**SEC**) Certificates of Non-Registration of Company of its foreign clients, all issued on 23 November 2016, and which do not entirely cover the period of claim (*i.e.*, 01 January 2016 to 31 December 2016), was a mistake caused by an impression or honest belief that the said

6 Division Docket, Volume IV, pp. 1433-1443; Citation omitted.
7 Id., pp. 1336-1377.

certificates would be sufficient to prove that its clients are non-resident foreign corporations (**NRFCs**) doing business outside the Philippines for the entire TY 2016. According to petitioner, it sincerely thought that the said SEC Certificates of Non-Registration of Company are still valid for its claim for refund for TY 2016 as the Court's Third Division admitted the same, without exceptions, in another case involving petitioner's claim for refund for TY 2015.[8] Petitioner also avers that the aforesaid issue on the SEC Certificates of Non-Registration of Company of its foreign clients were not included in the Independent Certified Public Accountant (**ICPA**) Report; hence, it deemed that the said certificates were sufficient proof of the NRFC status of its foreign clients.

As regards the disallowed zero-rated sales amounting to ₱9,386,995.04, petitioner contends that non-compliance with the requirements under Section 113(B) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, was a result of the mistake and excusable negligence of petitioner's cashier in completing the information that should be contained in the Value-Added Tax (**VAT**) OR that involves indicating the full name of the customer, as well as indicating whether a particular sale is considered as VATable, VAT exempt, or VAT zero-rated sales.

Allegedly, the inaccurate entries and omissions were merely due to "mistake and excusable negligence" that resulted in an oversight when the cashier was filling out and/or correcting the ORs. Petitioner further claims the errors were merely clerical and inadvertent that could not result in falsehood, unfairness and injustice.

Alternatively, petitioner asks the Court to grant a new trial for the presentation of the corrected pieces of evidence in order to fully thresh out the matters involved in the present case, in the interest of substantial justice. By mistake and excusable negligence, it was not able to present such corrected pieces of evidence now being sought to be presented in a new trial, as the issue arose only after the issuance of the Court's assailed Decision. Such mistake and excusable negligence

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[8] *See BW Shipping Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9660, 07 October 2020.

are deemed proper grounds for the grant of new trial under Section 5[9], Rule 15 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

Petitioner further alleges that ordinary prudence could not have prevented such mistake and excusable negligence; that ensuring the completeness of all information in the VAT OR is no small feat considering the sheer volume of petitioner's transactions including its zero-rated sales. Despite exercising ordinary prudence, petitioner could not operate to prevent the mistake and excusable negligence committed. This is allegedly the reason why the cashier is authorized to effect corrections of necessary information on ORs and other documents.

On the other hand, respondent prays for the reversal of the assailed Decision mainly on the ground that petitioner failed to establish that it is engaged in zero-rated or effectively zero-rated sales of services.

In his MPR, respondent reiterates, that the recipients of services rendered by petitioner were doing business in the Philippines. Based on the Manning Agreements and/or Crew Agency Agreements between petitioner and its foreign clients, he argues that the appointment of petitioner as "local agent and/or representative" of its foreign clients, acting as "principal", for purposes of recruiting Filipino seamen for employment on board the vessels managed by the said principal, imply a continuity of commercial dealings or arrangements, and contemplate to the extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in the progressive prosecution of, commercial gain or for the purpose and object of the business organization.

Respondent avers that while petitioner's manning services are not directly related to its foreign clients' shipping business, such services are incidental thereto. Further, the said services were not limited to the screening of qualified Filipino seamen for employment on board of the foreign entities' vessels but extend to control, supervisory, and human resource management functions which are essential in the foreign entities' shipping business. Thus, petitioner's

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9 SEC. 5. *Grounds of motion for new trial.* — ...

foreign clients are considered as "doing business" in the Philippines as defined under Section 3(d)[10] of Republic Act (**RA**) No. 7042.[11]

In addition, respondent alleges that the consularized documents, *i.e.*, Certificates of Registration, Articles of Incorporation, Memoranda of Association and Service Agreements, are hearsay evidence and must not be given probative value as petitioner's witnesses, Christin Faith Palomar (**Palomar**) and Raymund Manaig (**Manaig**), were not competent to testify on the existence and genuineness of the said documents.

Lastly, respondent alleges that petitioner's tax liability must be computed anew and deducted from any refundable amount similar to the ruling made in *SMI-ED Philippines Technology, Inc.* v. *Commissioner of Internal Revenue*[12] (**SMI-ED**), wherein the Supreme Court held that the determination of the proper category of tax that should have been paid was incidental and necessary to resolve the issue of whether a refund should be granted.

In its Comment, petitioner counters that the term "doing business" under RA 7042 pertains to appointing representatives operating under full control of the foreign corporation. However, there is no showing that petitioner's foreign clients exercise full control over its business. Moreover, the Manning Agreements and/or Crew Agency Agreements between petitioner and its foreign clients do not authorize

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10 SEC. 3. *Definitions.* – As used in this Act:

...

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;

11 AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES.

12 G.R. No. 175410, 12 November 2014.

the former to hire, fire and transfer seamen without the final approval of the latter. Hence, petitioner's foreign clients are not doing business in the Philippines.

As to the consularized documents, petitioner contends that these are official records and are *prima facie* evidence of the facts stated therein pursuant to Section 46[13], Rule 130, and Sections 19[14] and 24[15], Rule 132 of the Revised Rules on Evidence, as amended by the 2019 Amendments to the 1989 Revised Rules on Evidence (**Revised Rules on Evidence**).[16] Hence, these are exceptions to the hearsay rule.

Finally, petitioner argues that *SMI-ED* involves a tax refund of erroneously or illegally collected taxes under Section 229[17] of the NIRC of 1997, as amended. Whereas, the present case involves a claim for VAT refund under Section 112[18] of the NIRC of 1997, as amended. Thus, the ruling in *SMI-ED* is inapplicable to this case.

We resolve below.

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13 Sec. 46. *Entries in official records.* — ...

14 Sec. 19. *Classes of documents.* — ...

15 Sec. 24. *Proof of official record.* — ...

16 A.M. No. 19-08-15-SC.

17 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* - no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

18 **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. ...

After an assiduous review of the parties' contrasting arguments and a second hard look on the records of the instant case, this Court finds no merit in their respective motions, specifically, petitioner's Omnibus Motion and respondent's MPR.

PETITIONER'S OMNIBUS MOTION FOR RECONSIDERATION AND MOTION FOR NEW TRIAL

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**) and a motion for reconsideration (**MR**), to wit:

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> 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:
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> (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
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> (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.
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> 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.
>
> Sec. 2. *Contents of motion for new trial* or *reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.
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> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly

authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.

...

Relative thereto are Sections 5 and 6, Rule 15 of the RRCTA, which read as follows:

...

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.

SEC. 6. *Contents of motion for reconsideration or new trial and notice.* – The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly

> authenticated documents which are proposed to be introduced in evidence.
>
> A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma*, which shall not toll the reglementary period for appeal.
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> ...

Based on the foregoing provisions, a motion for new trial may be allowed on the grounds of fraud, accident, mistake or excusable negligence, or if there is newly discovered evidence that the party could not, with reasonable diligence have discovered and produced at trial, and which, if presented, would alter the result or outcome of the case. While on the other hand, an MR shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

In this case, petitioner failed to specifically point out in its MR, the findings or conclusions in the assailed Decision that are not supported by evidence or contrary to law. Hence, petitioner's MR must fail.

As regards petitioner's MNT, the same is likewise unwarranted as petitioner failed to raise any compelling reason that would justify the grant thereof. Petitioner cites as grounds for new trial that there was mistake and excusable negligence (which ordinary prudence could not have guarded against and by reason of which its rights have been impaired in accordance with Section 5[19], Rule 15 of the RRCTA) when: (1) it deemed the SEC Certificates of Non-Registration of Company sufficient proof of its foreign clients' NRFC status, relying on the fact that the Court's Third Division admitted the same pieces of evidence without exception in another case involving its claim for refund for TY 2015; and, (2) its cashier inadvertently made inaccurate entries or omitted certain information in the preparation of certain ORs supporting its zero-rated sales.

19 Supra at note 9.

Petitioner also attached to its Omnibus Motion original copies of the SEC Certificates of Non-Registration of Company[20] of its foreign clients, all issued on 18 October 2021 and which now covers the period of claim, and various "corrected" ORs[21], the Affidavit of Merit[22] executed by petitioner's President, Maria Theresa O. Tamano (**Tamano**), and the Affidavit of Correction[23] executed by petitioner's cashier, Jocelyn A. Ayala (**Ayala**).

To recall, the Court disallowed in the assailed Decision: (1) petitioner's zero-rated sales of ₱19,234,511.72 and the related foreign exchange gain of ₱376,672.79 for the period beyond the issue date of the pertinent SEC Certificates of Non-Registration of Company (*i.e.*, 24 November 2016 to 31 December 2016); and, (2) additional zero-rated sales of ₱9,386,995.04 for failure to comply with the mandatory invoicing requirements under the NIRC of 1997, as amended. The relevant portions of this Court's ruling are hereby quoted as follows[24]:

> ...
>
> As such, for the period beyond the issue date of the pertinent SEC Certificates of Non-Registration of Company (*i.e.*, **24 November 2016 to 31 December 2016**), the aforementioned foreign entities cannot be considered NRFCs not engaged in business in the Philippines. Correspondingly, the zero-rated sales to the aforementioned foreign entities during the said period (*per* OR date) shall be disallowed, to wit:

Date	OR No.	Exhibit	Amount in USD *per* ORs	Amount in PHP *per* Summary of Billing Statements
1. BW Gas Foreign Manning AS				
24 November 2016	9	"P-124-GN"	$95,620.00	₱4,692,322.01
20 December 2016	25	"P-124-HD"	87,500.00	4,287,247.13
2. BW Offshore Global Manning Pte. Ltd.				
07 December 2016	20	"P-124-GY"	18,260.00	872,190.91
3. BW Maritime Pte. Ltd.				
24 November 2016	10	"P-124-GO"	67,200.00	3,306,367.68
23 December 2016	26	"P-124-HE"	66,500.00	3,276,286.09
4. BW Fleet Management AS				
02 December 2016	11	"P-124-GP"	877.00	41,765.87

20 Annex A, Division Docket, Volume IV, pp. 1395-1399.
21 Exhibits "P-124-C" to "P-124-F", "P-124-Y" to "P-124-AB", "P-124-AT" and "P-124-BM", id., pp. 1400-1409.
22 Annex B, id., pp. 1410-1413.
23 Annex C, id., pp. 1414-1415.
24 Id., pp. 1357-1359 and 1365; Citations omitted.

Date	OR No.	Exhibit	Amount in USD *per* ORs	Amount in PHP *per* Summary of Billing Statements
05 December 2016	12	"P-124-GQ"	516.00	24,573.76
02 December 2016	13	"P-124-GR"	7,016.00	334,126.90
02 December 2016	14	"P-124-GS"	13,829.00	660,543.71
05 December 2016	16	"P-124-GU"	516.00	24,573.76
05 December 2016	17	"P-124-GV"	877.00	41,765.87
05 December 2016	18	"P-124-GW"	877.00	41,765.87
05 December 2016	19	"P-124-GX"	2,631.00	125,297.58
15 December 2016	21	"P-124-GZ"	5,063.00	241,118.08
29 December 2016	28	"P-124-HG"	361.00	17,192.11
29 December 2016	29	"P-124-HH"	361.00	17,192.11
29 December 2016	30	"P-124-HI"	5,902.00	281,909.68
5. BW Fleet Management Pte. Ltd.				
22 December 2016	22	"P-124-HA"	1,512.00	72,006.82
22 December 2016	23	"P-124-HB"	14,749.00	704,487.60
23 December 2016	24	"P-124-HC"	3,607.00	171,778.18
			Total	₱19,234,511.72

Moreover, the related foreign exchange (**forex**) gain on the above-listed sales transactions shall likewise be disallowed, to wit:

Date	OR No.	Exhibit	Billing Statement No.	Realized Forex Gain *per* General Ledger
1. BW Gas Foreign Manning AS				
24 November 2016	9	"P-124-GN"	123	₱60,948.19
20 December 2016	25	"P-124-HD"	158	85,127.87
2. BW Offshore Global Manning Pte. Ltd.				
07 December 2016	20	"P-124-GY"	90/92	38,435.29
3. BW Maritime Pte. Ltd.				
24 November 2016	10	"P-124-GO"	124	34,144.32
23 December 2016	26	"P-124-HE"	159	34,083.91
4. BW Fleet Management AS				
02 December 2016	11	"P-124-GP"	69/80	1,970.12
05 December 2016	12	"P-124-GQ"	64	1,159.16
02 December 2016	13	"P-124-GR"	62/74	15,761.02
02 December 2016	14	"P-124-GS"	99	29,108.52
05 December 2016	16	"P-124-GU"	66	1,159.16
05 December 2016	17	"P-124-GV"	63/75	1,970.12
05 December 2016	18	"P-124-GW"	67/78	1,970.12
05 December 2016	19	"P-124-GX"	68/79	5,910.39
15 December 2016	21	"P-124-GZ"	84	10,918.06
29 December 2016	28	"P-124-HG"	77	767.64
29 December 2016	29	"P-124-HH"	76	767.64
29 December 2016	30	"P-124-HI"	121	11,714.82
5. BW Fleet Management Pte. Ltd.				
22 December 2016	22	"P-124-HA"	85	3,260.54
23 December 2016	23	"P-124-HB"	108/109	29,717.62
23 December 2016	24	"P-124-HC"	81	7,778.28

Date	OR No.	Exhibit	Billing Statement No.	Realized Forex Gain *per* General Ledger
Total				₱376,672.79

...

Moreover, upon further verification by the Court of the ORs supporting petitioner's zero-rated sales, the additional amount of ₱9,386,995.04 shall also be disallowed for the following reasons:

Customer	OR No.	Amount in USD *per* ORs	Gross Receipts in PHP	Exhibit No.	Reason
BW Gas Foreign Manning AS	1246	$6,993.50	₱4,710,951.00	"P-124-C"	Customer's name/ registered name in the ORs is NOT the same with the one reflected in the Articles of Association, Certificate of Registration, and SEC Certificate of Non-Registration of Company
	1247	8,253.50		"P-124-D"	
	1248	17,913.50		"P-124-E"	
	1249	65,513.50		"P-124-F"	
	1292	17,213.50	4,453,836.80	"P-124-Y"	Noted erasures in the ORs without countersignature
	1293	6,713.50		"P-124-Z"	
	1294	7,553.50		"P-124-AA"	
	1295	64,813.50		"P-124-AB"	
BW Fleet Management AS	1315	279.50	13,464.00	"P-124-AT"	
	1337	4,485.50	208,743.24	"P-124-BM"	
Total			₱9,386,995.04		

...

Notably, in attaching the original copies of the pertinent updated SEC Certificates of Non-Registration of Company covering the period of claim and the "corrected" ORs, petitioner confirmed the Court's findings above.

The Court cannot allow the submission of the aforementioned updated SEC Certificates of Non-Registration of Company and corrected ORs by way of a new trial on the basis of mistake and inexcusable negligence. It bears stressing that the "mistake" that is allowable in Rule 37 is one which ordinary prudence could not have guarded against. Negligence to be "excusable" must also be one which ordinary diligence and prudence could not have guarded against and by reason of which the rights of an aggrieved party have probably been impaired. The test of excusable negligence is whether a party has acted with ordinary prudence while transacting important business.[25]

Contrary to petitioner's claim, the aforementioned documents sought to be considered and admitted were not omitted due to mistake or excusable negligence but merely "forgotten evidence." In *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*[26], the Supreme Court ruled as follows:

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> As it is, the additional evidence offered by Coronel amount to no more than "forgotten" evidence, the belated uncovering of which would not have justified a reconsideration of the case. **Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel.** Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.
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> ...

Furthermore, in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[27], the Supreme Court likewise ruled that:

> ...
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> Besides, 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. ...
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> ...

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25 *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, 28 June 2005.

26 G.R. No. 164460, 27 June 2006; Citations omitted, emphasis supplied.

27 G.R. Nos. 141104 & 148763, 08 June 2007; Citation omitted.

As to the SEC Certificates of Non-Registration of Company, petitioner is well-aware of the period subject of its claim for refund, *i.e.*, 01 January 2016 to 31 December 2016. Despite this, petitioner presented SEC certifications that do not fully cover the period of claim (*i.e.*, issued on 23 November 2016, which is a little over a month short of the subject period of its refund claim). Thus, it cannot be said that such issue could not have been discovered during trial with reasonable diligence.

Petitioner's insistence that the Court's findings on the certificates were not noted in the ICPA Report does not hold water. It is well-settled that the Court is not bound by the findings of the ICPA. On the basis of its own finding, the Court may render judgment without considering the ICPA Report as it is only persuasive in nature and not conclusive upon the Court.[28]

It also bears noting that the tax refund case (CTA Case No. 9660), wherein the same SEC certifications were admitted by the Court's Third Division without exceptions, pertain to TY 2015. Surely, the subject SEC certifications issued in 2016 would cover the whole period of claim for that tax refund case.

Assuming for the sake of argument that petitioner is unaware that an SEC Certificate of Non-Registration of Company must be issued after the date of sale to its foreign clients for VAT refund purposes, petitioner is nevertheless expected to submit documents pertinent or relevant to the period of claim. It would certainly be absurd to simply require petitioner to submit SEC certifications without any reference to the period to which they pertain considering that an NRFC may subsequently register as doing business in the Philippines after securing such certification. In this case, however, petitioner failed to submit the pertinent SEC certifications that would cover the entire period of claim.

As to the "corrected" ORs with countersignatures, it cannot be said that petitioner's cashier, Ayala, who prepared the subject ORs, acted with ordinary prudence in the preparation of said receipts which

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28 *Davao City Water District* v. *Commissioner of Internal Revenue*, CTA Case Nos. 8505 and 8575, 27 April 2016.

would entitle it to a reconsideration of its refund claim, and its negligence is not excusable to justify a new trial.

To the Court's mind, 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. Instead of altering the subject ORs, petitioner should have secured certifications from its clients, namely, BW Gas Foreign Manning AS (with respect to Exhibits "P-124-C" to "P-124-F" and "P-124-Y" to "P-124-AB") and BW Fleet Management AS (with respect to Exhibits "P-124-AT" and "P-124-BM"), attesting to the fact of issuance of said ORs in its favor and the supposed mistake allegedly committed by petitioner in reflecting said clients' names and the nature of the other erasures.

Petitioner could have avoided this irregularity had petitioner's cashier exercised ordinary prudence and diligence in issuing ORs. Additionally, petitioner failed to carefully examine or scrutinize its supporting evidence prior to the filing of the instant case, or at the very least, before the presentation of its evidence for the Court's appreciation. Thus, a liberal application of the rules of procedure to suit petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[29]

We reiterate, for emphasis, that actions for tax refund or credit, as in the instant case, 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 burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[30]

RESPONDENT'S MOTION FOR PARTIAL RECONSIDERATION

Respondent's main argument that petitioner allegedly failed to prove that its foreign clients are NRFCs not doing business in the

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[29] *Commissioner of Internal Revenue v. A. Soriano, Corporation, et al.*, G.R. No. 113703, 31 January 1997.

[30] *Coca-Cola Bottlers Philippines, Inc.* v. *Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018.

Philippines has already been considered and passed upon in the assailed Decision. We thus reiterate Our findings that there is no showing that petitioner, as an "agent", was continuing the body or substance of its foreign client's shipping activities in the Philippines, to wit:

> ...
>
> In *Columbia Pictures, Inc., et al. v. Court of Appeals, et al.* (**Columbia**), the Supreme Court clarified what constitutes "doing business in the Philippines" on the part of a foreign corporation as follows:
>
> > ...
> >
> > No general rule or governing principle can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its own peculiar environmental circumstances. **The true tests, however, seem to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.**
> >
> > As a general proposition upon which many authorities agree in principle, subject to such modifications as may be necessary in view of the particular issue or of the terms of the statute involved, it is recognized that a foreign corporation is "doing", "transacting", "engaging in", or carrying on "business in the State **when, and ordinarily only when, it has entered the State by its agent and is there engaged in carrying on and transacting through them some substantial part of its ordinary or customary business**, usually continuous in the sense that it may be distinguished from merely casual, sporadic, or occasional transactions and isolated acts.
> >
> > The Corporation Code does not itself define or categorize what acts constitute doing or transacting business in the Philippines. Jurisprudence has, however, held that 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 or in progressive prosecution of the purpose and subject of its organization.
> >
> > ...
>
> Upon perusal of the said service agreements entered into by petitioner with its customers, services rendered by petitioner are limited to the following purposes: (1) recruitment of Filipino seamen for employment on board such vessels managed by the foreign shipping companies acting as principal; and, (2) providing information technology and purchasing support services for its clients' vessels.

> Applying the "true test" in *Columbia*, the service agreements show no indication that petitioner was continuing the body or substance of its clients' shipping activities. Hence, petitioner's foreign clients cannot be considered doing business in the Philippines.[31]
>
> ...

Anent respondent's claim that the consularized documents must not be given credence for being hearsay, the same is untenable. An examination of the said contested documents confirms that these are public documents pursuant to Section 19(c), Rule 132 of the Revised Rules on Evidence, which states:

> ...
>
> Sec. 19. *Classes of documents*. - For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> ...
>
> (c) Documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source[.]
>
> ...

In relation thereto, Section 24 of Rule 132 states:

> ...
>
> Sec. 24. *Proof of official record*. – ...
>
> ...
>
> If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the **certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.**
>
> ...

[31] Citation omitted and emphasis supplied in the original text.

> **A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved.** The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality.[32]
>
> ...

Based on the foregoing provisions, copies of official records proven to be stored outside of the Philippines must be: (1) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept; and, (2) authenticated by the seal of his office.

A perusal of the contested documents shows that the same were duly consularized, offered and admitted in evidence. Thus, the Court finds no reason to consider them as hearsay evidence.

Lastly, We agree with petitioner's contention that *SMI-ED* is inapplicable to the present petition. In the said case, the Supreme Court allowed offsetting of taxes only because the determination of therein taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229[33] of the NIRC, as amended. Such is not the case here as respondent is not assailing the correctness of petitioner's VAT returns or asserting that petitioner is liable to pay another type of tax.[34]

All told, the Court finds no compelling grounds to reverse or modify the assailed Decision.

WHEREFORE, in view of the foregoing, petitioner BW Shipping Philippines Inc.'s "Omnibus Motion For Reconsideration and Motion For New Trial (Re: Decision dated September 11, 2021)", filed on 26

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32 Emphasis supplied.
33 Supra at note 17.
34 Cf *Commissioner of Internal Revenue* v. *Toledo Power Company*, G.R. No. 196415, 02 December 2015.

October 2021, and respondent Commissioner of Internal Revenue's "Motion For Partial Reconsideration", filed on 19 October 2021, are hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice