REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BW SHIPPING PHILIPPINES, INC.,
Petitioner,

CTA EB NO. 2677
(CTA Case No. 9888)

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2682
(CTA Case No. 9888)

Present:

Del Rosario, *P.J.*,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David, and
Ferrer-Flores, *JJ.*

- *versus* -

BW SHIPPING PHILIPPINES, INC.,
Respondent.

Promulgated:
NOV 13 2024 4:25pm

x---x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution of the Court *En Banc* are the following:

1. BW Shipping Philippines, Inc.'s (BWSPI) *Motion for Reconsideration (Re: Decision dated May 14, 2024)* filed on May 30, 2024; and

2. Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration* filed on June 4, 2024 with BWSPI's *Comment (To Petitioner's Motion for Reconsideration dated June 3, 2024)* filed on June 21, 2024.

The CIR failed to file comment on BWSPI's *Motion for Reconsideration (Re: Decision dated May 14, 2024)* as per the Records Verification Report dated July 4, 2024 submitted by this Court's Judicial Records Division.

Both *Motions* seek reconsideration of the Decision of the Court *En Banc* promulgated on May 14, 2024,[1] ("Assailed Decision") affirming the judgment of the Second Division ("Court in Division") of this Court in CTA Case No. 9888.

BWSPI's Motion

In its *Motion*, BWSPI insists the non-submission of updated SEC Certificates of Non-registration of Company was due to mistake and excusable negligence and that its non-compliance with the invoicing and substantiation requirements was a result of the mistake and excusable negligence of BWSPI's cashier.

By and large, the arguments raised by BWSPI in its Motion are mere rehash of those that were exhaustively ruled upon by this Court *En Banc* in the Assailed Decision. Accordingly, it is sufficient for this Court *En Banc* to state that it maintains its position on the matter as enunciated in the Assailed Decision. In this regard, the Supreme Court's ruling in *Social Justice Society Officers v. Lim*,[2] is edifying:

> "The grounds relied on being mere reiterations of the issues already passed upon by the Court, there is no need to 'cut and paste' pertinent portions of the Decision or re-write the *ponencia* in accordance with the outline of the instant motion.
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> As succinctly put by then Chief Justice Andres R. Narvasa in *Ortigas and Co. Ltd. Partnership v. Judge Velasco* on the effect and disposition of a motion for reconsideration:
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>> <u>The filing of a motion for reconsideration</u>, authorized by Rule 52 of the Rules of Court, <u>does not impose on the Court the obligation to deal individually and specifically with the</u>

[1] CTA EB No. 2677's Docket, pp. 138-152.
[2] G.R. Nos. 187836 & 187916 (Resolution), March 10, 2015, 755 Phil 323.

> 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." *(Underscoring supplied and citations omitted)*

CIR's Motion

In his *Motion*, the CIR maintains that BWSPI failed to prove that it is engaged in zero-rated or effectively zero-rated sales of services and that its foreign principals are nonresident foreign corporations doing business outside the Philippines. The CIR also asserts that BWSPI is the local agent and/or representative of its foreign principals. The CIR emphatically points out that based on the provisions of the Manning/Crew Agency Agreements presented, BWSPI renders services and performs functions which do not only pertain to the screening of 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 to the operations of the foreign principals. Without the personnel screened by BWSPI, the latter's shipping business will be dead on the water.

Moreover, the CIR claims that the exhibits presented by BWSPI should not be given any probative value for being hearsay and that the amount of BWSPI's tax liability should be computed and deducted from any refundable amount.

The CIR's position is untenable.

It bears stressing that the arguments raised by the CIR above were already laid to rest by the Supreme Court in a similar case entitled *Commissioner of Internal Revenue v. BW Shipping Philippines, Inc.*[3] The Supreme Court held as follows:

> "The CIR's contention is anchored on the *third* requisite alleging that although respondent was able to establish that that the shipping companies are foreign entities, an examination of its Manning Agreements/Purchasing & Infrastructure Support Agreements would reveal that said recipients are performing acts that imply a continuity of business dealings or arrangements in the Philippines. This is further exemplified by the provision in said agreements that designates respondent as the agent and the shipping companies as the principal. According to the CIR, while the manning services are not directly related to the main business of these companies, which is the shipping of goods, said services are incidental to and in progressive prosecution of commercial gain or for the purpose and object of the shipping companies; it would not be able to operate without said services. Accordingly, these shipping companies may be considered as doing business in the Philippines.
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> The Court is not convinced.
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> In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, the Court, through Associate Justice Henri Jean Paul B. Inting, held that in order for sales to a non-resident foreign corporation to qualify for zero-rating under Section 108(B)(2) of the NIRC, the claimant must be able to prove '(1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.' Accordingly, the Court likewise ruled that 'the SEC Certifications of Non-Registration show that [clients] are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these [clients] are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.'
>
> Here, it is notable that the CIR does not dispute that the shipping companies are foreign corporations. Moreover, based on the consularized Certificates/Articles of Foreign Incorporation, there is *prima facie* evidence that the shipping companies are not engaged in trade or business in the Philippines. This notwithstanding, the CIR claims that the Manning Agreements/Purchasing & Infrastructure Support Agreements between respondent and the shipping companies show that the latter are doing business in the Philippines. The foregoing begs this question: 'are the foregoing agreements sufficient to overcome the *prima facie* evidence in favor of the shipping companies?'

[3] G.R. No. 261171, October 4, 2023.

In *Sitel Philippines Corp. v. Commissioner of Internal Revenue*, the Court, through Associate Justice Benjamin S. Caguioa, held that '[t]here is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the 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.*'

Relatedly, under Rule I, Section 1 (j) of the Implementing Rules and Regulation of RA 11647, amending RA 7042, otherwise known as the 'Foreign Investment Act of 1991,' the term *'doing business'* includes '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.' Likewise, under said provision, the following acts shall not be considered as doing business in the Philippines:

> 1) Mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, or the exercise of rights as such investor;
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> 2) Having a nominee director or officer to represent its interests in such corporation;
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> 3) Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account;
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> 4) The publication of a general advertisement through any print or broadcast media;
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> 5) Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;
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> 6) Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export;
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> 7) Collecting information in the Philippines; and

8) Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services.

In *Agilent Technologies Singapore v. Integrated Silicon Technology Phil. Corp.*, the Court held, through Associate Justice Consuelo Ynares-Santiago, that to constitute 'doing business,' the activity to be undertaken in the Philippines is one that is by and large for *profit-making*.

Based on the foregoing, the Court holds that the CIR failed to establish that the shipping companies are doing business in the Philippines.

First, there was no showing that respondent, as representative/agent of the shipping companies, the principal, are operating under the full control of the latter. On the contrary, it appears that beyond providing recruitment instructions with respect to the number of complements and categories or rating of seaman for a particular vessel, scale of remuneration and approving the dismissal or transfer of a seafarer, the shipping companies have no command over respondent on the operation of the latter's business even in the conduct of its recruitment process. The recruitment instructions and the approval of the dismissal or transfer of crew members, as held by the CTA *En Banc*, are merely necessary consequences of outsourcing manpower recruitment.

Moreover, the designation of shipping companies as 'Principal' in the Manning Agreements/Purchasing & Infrastructure Support Agreements was specifically provided in the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as Amended by Republic Act No. 10022 (Omnibus Rules). Under Rule II, Section 1 (oo) of the Omnibus Rules, a principal refers to 'an employer or foreign placement agency hiring or engaging Filipino workers for overseas employment through a licensed private recruitment/manning agency.' This was likewise reiterated under Part I, Rule II (39) of the 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers (POEA Rules), which defined it as referring to 'the employer or to a person, partnership or corporation engaging and employing seafarers through a licensed manning agency.' A manning agency, on the other hand, which is designated in the agreements as the 'Agent' is defined under Rule II, Section 1 (y) of the Omnibus Rules as referring to 'any person, partnership or corporation duly licensed by the Secretary of Labor and Employment to engage in the recruitment and placement of seafarers for ships plying international waters and for related maritime activities.' Licensed Manning Agency is likewise defined under Part 1, Rule II (24) of the POEA Rules as 'a person, partnership or corporation duly licensed by the Secretary or his/her duly authorized representative to engage in the recruitment and placement of Filipino seafarers for a ship plying international waters and for related maritime activities.' Said

> designations, as shown above, do not necessarily imply control or the conduct of business in the Philippines by the shipping companies.
>
> *Second*, the hiring of the crew members in the Manning Agreements/Purchasing and Infrastructure Support Agreements engaged by the shipping companies are not considered a continuity of its commercial dealings nor are these in pursuit of commercial gain. The shipping companies in this case own vessels that transport goods such as gas, coal, and iron ore. Although crew members or engineers and the purchase of provisions are essential in the operation of these vessels, these recruitments do not necessarily bring in profit; the shipping companies earn profit by providing transport services. As pointed out by the CTA *En Banc*, nothing limits corporations to employ their workforce through direct hiring. Recruitment activities may be outsourced, as specifically acknowledged by the POEA Rules and Omnibus Rules. As noted by the CTA *En Banc*, there are cases on money claims by seafarers which would identify foreign shipping companies as 'doing business through its agent'; however, a study of these cases shows that said characterization have no basis and that the same has never been raised nor resolved as an issue therein, thus may not be used as a source for a definitive pronouncement." *(Citations omitted)*

The other arguments raised by the CIR with respect to the probative value of BWSPI's exhibits as well as the deductibility of BWSPI's tax liability from its refundable amount are matters that were already passed upon and brushed aside by the Court *En Banc* in the Assailed Decision and there is no compelling reason to reserve or even modify such ruling.

WHEREFORE, premises considered, BWSPI's *Motion for Reconsideration (Re: Decision dated May 14, 2024)* filed on May 30, 2024 and the CIR's *Motion for Reconsideration* filed on June 4, 2024 are both **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With Due Respect, I reiterate my Dissenting Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan

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

LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice