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SECOND DIVISION

[G.R. No. 168266. March 15, 2010]

CARGILL, INC., *petitioner, vs.* **INTRA STRATA ASSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; FOREIGN CORPORATION; A FOREIGN CORPORATION "DOING BUSINESS" IN THE PHILIPPINES WITHOUT PROPER LICENSE CANNOT MAINTAIN ANY ACTION BEFORE THE PHILIPPINE COURTS.— Under Article 123 of the Corporation Code, a foreign corporation must first obtain a license and a certificate from the appropriate government agency before it can transact business in the Philippines. Where a foreign corporation does business in the Philippines without the proper license, it cannot maintain any action or proceeding before Philippine courts as provided under Section 133 of the Corporation Code xxx.

2. ID.; ID.; ID.; ID.; PHRASE "DOING BUSINESS," EXPLAINED.— The Corporation Code provides no definition for the phrase "doing business." Nevertheless, Section 1 of Republic Act No. 5455 (RA 5455), provides that: x x x the phrase "doing business" shall include soliciting orders, purchases, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty 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.** This is also the exact definition provided under Article 44 of the Omnibus Investments Code of 1987. Republic Act No. 7042 (RA 7042), otherwise known

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as the Foreign Investments Act of 1991, which repealed Articles 44-56 of Book II of the Omnibus Investments Code of 1987, enumerated not only the acts or activities which constitute "doing business" but also those activities which are not deemed "doing business." Section 3(d) of RA 7042 states: [T]he 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 totalling 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.

3. ID.; ID.; ID.; ID.; TO CONSTITUTE "DOING BUSINESS" IN THE PHILIPPINES, IT MUST BE PROVED THAT THE BUSINESS ACTIVITIES OF THE CORPORATION ARE NOT JUST CASUAL OR OCCASIONAL, BUT SO SYSTEMATIC AND REGULAR AS TO MANIFEST CONTINUITY AND PERMANENCE OF ACTIVITY.— Since respondent is relying on Section 133 of the Corporation Code to bar petitioner from maintaining an action in Philippine courts, respondent bears the burden of proving that petitioner's business activities in the Philippines were not just casual or occasional, but so systematic and regular as to manifest continuity and permanence of activity to constitute doing business in the Philippines. In this case, we find that respondent failed to prove that petitioner's activities in the Philippines constitute doing business as would prevent it from bringing an action.

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4. ID.; ID.; ID.; ID.; TO CONSTITUTE "DOING BUSINESS" THE SERIES OF TRANSACTIONS ENTERED INTO BY THE PARTIES SIGNIFY AN INTENT TO ESTABLISH A CONTINUOUS BUSINESS IN THE PHILIPPINES.— The determination of whether a foreign corporation is doing business in the Philippines must be based on the facts of each case. In the case of *Antam Consolidated, Inc. v. CA*, in which a foreign corporation filed an action for collection of sum of money against petitioners therein for damages and loss sustained for the latter's failure to deliver coconut crude oil, the Court emphasized the importance of the element of continuity of commercial activities to constitute doing business in the Philippines. The Court held: x x x The three seemingly different transactions were entered into by the parties only in an effort to fulfill the basic agreement and in no way indicate an intent on the part of the respondent to engage in a continuity of transactions with petitioners which will categorize it as a foreign corporation doing business in the Philippines. Similarly, in this case, petitioner and NMC amended their contract three times to give a chance to NMC to deliver to petitioner the molasses, considering that NMC already received the minimum price of the contract. There is no showing that the transactions between petitioner and NMC signify the intent of petitioner to establish a continuous business or extend its operations in the Philippines.

5. ID.; ID.; ID.; ID.; IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT 7041; ACTS THAT DO NOT CONSTITUTE "DOING BUSINESS," ENUMERATED; TO CONSTITUTE "DOING BUSINESS," THE ACTIVITY UNDERTAKEN SHOULD BRING DIRECT PROFITS TO THE FOREIGN CORPORATION.— The Implementing Rules and Regulations of RA 7042 provide under Section 1(f), Rule I, that "doing business" does not include the following acts: 1. 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; 2. Having a nominee director or officer to represent its interests in such corporation; 3. Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account; 4. The publication of a general advertisement through any print or broadcast media; 5. Maintaining a stock of goods in the Philippines solely for

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the purpose of having the same processed by another entity in the Philippines; 6. Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export; 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. Most of these activities do not bring any direct receipts or profits to the foreign corporation, consistent with the ruling of this Court in *National Sugar Trading Corp. v. CA* that activities within Philippine jurisdiction that do not create earnings or profits to the foreign corporation do not constitute doing business in the Philippines. xxx In this case, the contract between petitioner and NMC involved the purchase of molasses by petitioner from NMC. It was NMC, the domestic corporation, which derived income from the transaction and not petitioner. To constitute "doing business," the activity undertaken in the Philippines should involve profit-making. Besides, under Section 3(d) of RA 7042, "soliciting purchases" has been deleted from the enumeration of acts or activities which constitute "doing business."

6. ID.; ID.; ID.; ID.; A FOREIGN COMPANY THAT MERELY IMPORTS MOLASSES FROM A PHILIPPINE EXPORTER, WITHOUT OPENING AN OFFICE OR APPOINTING AN AGENT IN THE PHILIPPINES IS NOT DOING BUSINESS IN THE PHILIPPINES.— Other factors which support the finding that petitioner is not doing business in the Philippines are: (1) petitioner does not have an office in the Philippines; (2) petitioner imports products from the Philippines through its non-exclusive local broker, whose authority to act on behalf of petitioner is limited to soliciting purchases of products from suppliers engaged in the sugar trade in the Philippines; and (3) the local broker is an independent contractor and not an agent of petitioner. As explained by the Court in *B. Van Zuiden Bros., Ltd. v. GTVL Marketing Industries, Inc.*: x x x **To be doing or "transacting business in the Philippines" for purposes of Section 133 of the Corporation Code, the foreign corporation must *actually transact business in the Philippines*, that is, perform specific business transactions within the Philippine**

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territory on a continuing basis in its own name and for its own account. Actual transaction of business within the Philippine territory is an essential requisite for the Philippines to acquire jurisdiction over a foreign corporation and thus require the foreign corporation to secure a Philippine business license. If a foreign corporation does not transact such kind of business in the Philippines, even if it exports its products to the Philippines, the Philippines has no jurisdiction to require such foreign corporation to secure a Philippine business license. In the present case, petitioner is a foreign company merely importing molasses from a Philipine exporter. A foreign company that merely imports goods from a Philippine exporter, without opening an office or appointing an agent in the Philippines, is not doing business in the Philippines.

7. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE APPELLATE COURT MAY BE REVIEWED BY THE SUPREME COURT WHERE THE SAME ARE IN CONFLICT WITH THE FINDINGS OF THE TRIAL COURT.— The Supreme Court may review the findings of fact of the Court of Appeals which are in conflict with the findings of the trial court. We find that the Court of Appeals' finding that petitioner was doing business is not supported by evidence. Furthermore, a review of the records shows that the trial court was correct in holding that the advance payment of $500,000 was released to NMC in accordance with the conditions provided under the "red clause" Letter of Credit from which said amount was drawn. The Head of the International Operations Department of the Bank of Philippine Islands testified that the bank would not have paid the beneficiary if the required documents were not complete. It is a requisite in a documentary credit transaction that the documents should conform to the terms and conditions of the letter of credit; otherwise, the bank will not pay. The Head of the International Operations Department of the Bank of Philippine Islands also testified that they received reimbursement from the issuing bank for the $500,000 withdrawn by NMC. Thus, respondent had no legitimate reason to refuse payment under the performance and surety bonds when NMC failed to perform its part under its contract with petitioner.

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APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioner.

Jose J. Ferrer, Jr. for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 26 May 2005 Decision[2] of the Court of Appeals in CA-G.R. CV No. 48447.

The Facts

Petitioner Cargill, Inc. (petitioner) is a corporation organized and existing under the laws of the State of Delaware, United States of America. Petitioner and Northern Mindanao Corporation (NMC) executed a contract dated 16 August 1989 whereby NMC agreed to sell to petitioner 20,000 to 24,000 metric tons of molasses, to be delivered from 1 January to 30 June 1990 at the price of $44 per metric ton. The contract provides that petitioner would open a Letter of Credit with the Bank of Philippine Islands. Under the "red clause" of the Letter of Credit, NMC was permitted to draw up to $500,000 representing the minimum price of the contract upon presentation of some documents.

The contract was amended three times: first, on 11 January 1990, increasing the purchase price of the molasses to $47.50 per metric ton;[3] second, on 18 June 1990, reducing the quantity of the molasses to 10,500 metric tons and increasing the price

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Roberto A. Barrios with Associate Justices Amelita G. Tolentino and Vicente S. E. Veloso, concurring.

[3] Records, p. 393.

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to $55 per metric ton;[4] and third, on 22 August 1990, providing for the shipment of 5,250 metric tons of molasses on the last half of December 1990 through the first half of January 1991, and the balance of 5,250 metric tons on the last half of January 1991 through the first half of February 1991.[5] The third amendment also required NMC to put up a performance bond equivalent to $451,500, which represents the value of 10,500 metric tons of molasses computed at $43 per metric ton. The performance bond was intended to guarantee NMC's performance to deliver the molasses during the prescribed shipment periods according to the terms of the amended contract.

In compliance with the terms of the third amendment of the contract, respondent Intra Strata Assurance Corporation (respondent) issued on 10 October 1990 a performance bond[6] in the sum of ₱11,287,500 to guarantee NMC's delivery of the 10,500 tons of molasses, and a surety bond[7] in the sum of ₱9,978,125 to guarantee the repayment of downpayment as provided in the contract.

NMC was only able to deliver 219.551 metric tons of molasses out of the agreed 10,500 metric tons. Thus, petitioner sent demand letters to respondent claiming payment under the performance and surety bonds. When respondent refused to pay, petitioner filed on 12 April 1991 a complaint[8] for sum of money against NMC and respondent.

Petitioner, NMC, and respondent entered into a compromise agreement,[9] which the trial court approved in its Decision[10] dated 13 December 1991. The compromise agreement provides that

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[4] *Id.* at 394-395.

[5] *Id.* at 396-397.

[6] *Id.* at 398.

[7] *Id.* at 399.

[8] *Id.* at 1-8.

[9] *Id.* at 251-254.

[10] *Id.* at 258-261.

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NMC would pay petitioner ₱3,000,000 upon signing of the compromise agreement and would deliver to petitioner 6,991 metric tons of molasses from 16-31 December 1991. However, NMC still failed to comply with its obligation under the compromise agreement. Hence, trial proceeded against respondent.

On 23 November 1994, the trial court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, judgment is rendered in favor of plaintiff [Cargill, Inc.], ordering defendant INTRA STRATA ASSURANCE CORPORATION to solidarily pay plaintiff the total amount of SIXTEEN MILLION NINE HUNDRED NINETY-THREE THOUSAND AND TWO HUNDRED PESOS (₱16,993,200.00), Philippine Currency, with interest at the legal rate from October 10, 1990 until fully paid, plus attorney's fees in the sum of TWO HUNDRED THOUSAND PESOS (₱200,000.00), Philippine Currency and the costs of the suit.
>
> The Counterclaim of Intra Strata Assurance Corporation is hereby dismissed for lack of merit.
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> SO ORDERED.[11]

On appeal, the Court of Appeals reversed the trial court's decision and dismissed the complaint. Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals held that petitioner does not have the capacity to file this suit since it is a foreign corporation doing business in the Philippines without the requisite license. The Court of Appeals held that petitioner's purchases of molasses were in pursuance of its basic business and not just mere isolated and incidental transactions.

The Issues

Petitioner raises the following issues:

1. Whether petitioner is doing or transacting business in the Philippines in contemplation of the law and established jurisprudence;

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[11] CA *rollo*, pp. 89-90.

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2. Whether respondent is estopped from invoking the defense that petitioner has no legal capacity to sue in the Philippines;

3. Whether petitioner is seeking a review of the findings of fact of the Court of Appeals; and

4. Whether the advance payment of $500,000 was released to NMC without the submission of the supporting documents required in the contract and the "red clause" Letter of Credit from which said amount was drawn.[12]

The Ruling of the Court

We find the petition meritorious.

Doing Business in the Philippines and Capacity to Sue

The principal issue in this case is whether petitioner, an unlicensed foreign corporation, has legal capacity to sue before Philippine courts. Under Article 123[13] of the Corporation Code, a foreign corporation must first obtain a license and a certificate from the appropriate government agency before it can transact business in the Philippines. Where a foreign corporation does business in the Philippines without the proper license, it cannot maintain any action or proceeding before Philippine courts as provided under Section 133 of the Corporation Code:

Sec. 133. *Doing business without a license*. – No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded

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[12] *Rollo*, pp. 154-155.

[13] Section 123 of the Corporation Code reads:

SEC. 123. *Definition and rights of foreign corporations*. – For the purpose of this Code, a foreign corporation is one formed, organized or existing under any laws other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or state. **It shall have the right to transact business in the Philippines after it shall have obtained a license to transact business in this country in accordance with this Code and a certificate of authority from the appropriate government agency**. (Emphasis supplied)

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against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

Thus, the threshold question in this case is whether petitioner was doing business in the Philippines. The Corporation Code provides no definition for the phrase "doing business." Nevertheless, Section 1 of Republic Act No. 5455 (RA 5455),[14] provides that:

> x x x the phrase "doing business" shall include soliciting orders, purchases, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty 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.** (Emphasis supplied)

This is also the exact definition provided under Article 44 of the Omnibus Investments Code of 1987.

Republic Act No. 7042 (RA 7042), otherwise known as the Foreign Investments Act of 1991, which repealed Articles 44-56 of Book II of the Omnibus Investments Code of 1987, enumerated not only the acts or activities which constitute "doing business" but also those activities which are not deemed "doing business." Section 3(d) of RA 7042 states:

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[14] Entitled "AN ACT TO REQUIRE THAT THE MAKING OF INVESTMENTS AND THE DOING OF BUSINESS WITHIN THE PHILIPPINES BY FOREIGNERS OR BUSINESS ORGANIZATIONS OWNED IN WHOLE OR IN PART BY FOREIGNERS SHOULD CONTRIBUTE TO THE SOUND AND BALANCED DEVELOPMENT OF THE NATIONAL ECONOMY ON A SELF SUSTAINING BASIS, AND FOR OTHER PURPOSES." RA 5455 was approved on 30 September 1968.

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[T]he 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 totalling 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.

Since respondent is relying on Section 133 of the Corporation Code to bar petitioner from maintaining an action in Philippine courts, respondent bears the burden of proving that petitioner's business activities in the Philippines were not just casual or occasional, but so systematic and regular as to manifest continuity and permanence of activity to constitute doing business in the Philippines. In this case, we find that respondent failed to prove that petitioner's activities in the Philippines constitute doing business as would prevent it from bringing an action.

The determination of whether a foreign corporation is doing business in the Philippines must be based on the facts of each case.[15] In the case of *Antam Consolidated, Inc. v. CA*,[16] in which a foreign corporation filed an action for collection of sum of money against petitioners therein for damages and

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[15] *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, G.R. No. 152228, 23 September 2005, 470 SCRA 650; *MR Holdings, Ltd. v. Sheriff Bajar*, 430 Phil. 443 (2002); *Top-Weld Manufacturing, Inc. v. ECED, S.A., IRTI, S.A., Eutectic Corp.*, 222 Phil. 424 (1985).

[16] 227 Phil. 267 (1986).

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loss sustained for the latter's failure to deliver coconut crude oil, the Court emphasized the importance of the element of continuity of commercial activities to constitute doing business in the Philippines. The Court held:

> In the case at bar, the transactions entered into by the respondent with the petitioners are not a series of commercial dealings which signify an intent on the part of the respondent to do business in the Philippines but constitute an isolated one which does not fall under the category of "doing business." The records show that the only reason why the respondent entered into the second and third transactions with the petitioners was because it wanted to recover the loss it sustained from the failure of the petitioners to deliver the crude coconut oil under the first transaction and in order to give the latter a chance to make good on their obligation. x x x
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> x x x The three seemingly different transactions were entered into by the parties only in an effort to fulfill the basic agreement and in no way indicate an intent on the part of the respondent to engage in a continuity of transactions with petitioners which will categorize it as a foreign corporation doing business in the Philippines.[17]

Similarly, in this case, petitioner and NMC amended their contract three times to give a chance to NMC to deliver to petitioner the molasses, considering that NMC already received the minimum price of the contract. There is no showing that the transactions between petitioner and NMC signify the intent of petitioner to establish a continuous business or extend its operations in the Philippines.

The Implementing Rules and Regulations of RA 7042 provide under Section 1(f), Rule I, that "doing business" does not include the following acts:

> 1. 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;
>
> 2. Having a nominee director or officer to represent its interests in such corporation;

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[17] *Id.* at 274-275.

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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;

4. The publication of a general advertisement through any print or broadcast media;

5. Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;

6. Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export;

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.

Most of these activities do not bring any direct receipts or profits to the foreign corporation, consistent with the ruling of this Court in *National Sugar Trading Corp. v. CA*[18] that activities within Philippine jurisdiction that do not create earnings or profits to the foreign corporation do not constitute doing business in the Philippines.[19] In that case, the Court held that it would be inequitable for the National Sugar Trading Corporation, a state-owned corporation, to evade payment of a legitimate indebtedness owing to the foreign corporation on the plea that the latter should have obtained a license first before perfecting a contract with the Philippine government. The Court emphasized that the foreign corporation did not sell sugar and derive income from the Philippines, but merely purchased sugar from the Philippine government and allegedly paid for it in full.

In this case, the contract between petitioner and NMC involved the purchase of molasses by petitioner from NMC. It was NMC,

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[18] 316 Phil. 562 (1995).

[19] C. Villanueva, *PHILIPPINE CORPORATE LAW* 801-802 (2001).

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the domestic corporation, which derived income from the transaction and not petitioner. To constitute "doing business," the activity undertaken in the Philippines should involve profit-making.[20] Besides, under Section 3(d) of RA 7042, "soliciting purchases" has been deleted from the enumeration of acts or activities which constitute "doing business."

Other factors which support the finding that petitioner is not doing business in the Philippines are: (1) petitioner does not have an office in the Philippines; (2) petitioner imports products from the Philippines through its non-exclusive local broker, whose authority to act on behalf of petitioner is limited to soliciting purchases of products from suppliers engaged in the sugar trade in the Philippines; and (3) the local broker is an independent contractor and not an agent of petitioner.[21]

As explained by the Court in *B. Van Zuiden Bros., Ltd. v. GTVL Marketing Industries, Inc.*:[22]

> An exporter in one country may export its products to many foreign importing countries without performing in the importing countries specific commercial acts that would constitute doing business in the importing countries. The mere act of exporting from one's own country, without doing any specific commercial act within the territory of the importing country, cannot be deemed as doing business in the importing country. The importing country does not require jurisdiction over the foreign exporter who has not yet performed any specific commercial act within the territory of the importing country. Without jurisdiction over the foreign exporter, the importing country cannot compel the foreign exporter to secure a license to do business in the importing country.
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> Otherwise, Philippine exporters, by the mere act alone of exporting their products, could be considered by the importing countries to be doing business in those countries. This will require Philippine exporters

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[20] *Agilent Technologies Singapore (PTE) Ltd. v. Integrated Silicon Technology Phil. Corp.*, 471 Phil. 582 (2004).

[21] See Exh. "T" (contract between petitioner and its broker, Agrotex Commodities, Inc.), records, pp. 553-557.

[22] G.R. No. 147905, 28 May 2007, 523 SCRA 233.

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to secure a business license in every foreign country where they usually export their products, even if they do not perform any specific commercial act within the territory of such importing countries. Such a legal concept will have deleterious effect not only on Philippine exports, but also on global trade.

To be doing or "transacting business in the Philippines" for purposes of Section 133 of the Corporation Code, the foreign corporation must *actually transact business in the Philippines,* that is, perform specific business transactions within the Philippine territory on a continuing basis in its own name and for its own account. Actual transaction of business within the Philippine territory is an essential requisite for the Philippines to acquire jurisdiction over a foreign corporation and thus require the foreign corporation to secure a Philippine business license. If a foreign corporation does not transact such kind of business in the Philippines, even if it exports its products to the Philippines, the Philippines has no jurisdiction to require such foreign corporation to secure a Philippine business license.[23] (Emphasis supplied)

In the present case, petitioner is a foreign company merely importing molasses from a Philippine exporter. A foreign company that merely imports goods from a Philippine exporter, without opening an office or appointing an agent in the Philippines, is not doing business in the Philippines.

Review of Findings of Fact

The Supreme Court may review the findings of fact of the Court of Appeals which are in conflict with the findings of the trial court.[24] We find that the Court of Appeals' finding that petitioner was doing business is not supported by evidence.

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[23] *Id.* at 242-243.

[24] *AMA Computer College-East Rizal v. Ignacio,* G.R. No. 178520, 23 June 2009, 590 SCRA 633; *Producers Bank of the Philippines v. Excelsa Industries, Inc.*, G.R. No. 152071, 8 May 2009, 587 SCRA 370; *Cavile v. Litania-Hong,* G.R. No. 179540, 13 March 2009, 581 SCRA 408; *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550 (2004).

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Furthermore, a review of the records shows that the trial court was correct in holding that the advance payment of $500,000 was released to NMC in accordance with the conditions provided under the "red clause" Letter of Credit from which said amount was drawn. The Head of the International Operations Department of the Bank of Philippine Islands testified that the bank would not have paid the beneficiary if the required documents were not complete. It is a requisite in a documentary credit transaction that the documents should conform to the terms and conditions of the letter of credit; otherwise, the bank will not pay. The Head of the International Operations Department of the Bank of Philippine Islands also testified that they received reimbursement from the issuing bank for the $500,000 withdrawn by NMC.[25] Thus, respondent had no legitimate reason to refuse payment under the performance and surety bonds when NMC failed to perform its part under its contract with petitioner.

WHEREFORE , we *GRANT* the petition. We *REVERSE* the Decision dated 26 May 2005 of the Court of Appeals in CA-G.R. CV No. 48447. We *REINSTATE* the Decision dated 23 November 1994 of the trial court.

SO ORDERED.

Brion, Abad, Villarama, Jr.,[*] and *Perez, JJ.,* concur.

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[25] TSN, 14 June 1993, pp. 19-25. The Head of the International Operations Department of the Bank of Philippine Islands further testified that most of the documents supporting the negotiations in 1989 could no longer be found in their files since they only keep current records and at the time she testified, the records before 1991 were already destroyed.

[*] Designated additional member per Raffle dated 8 March 2010.