640 Phil. 163

FIRST DIVISION

[G.R. No. 180385, July 28, 2010]

PETRON CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PEREZ, J.:

Assailed in this petition for review on certiorari filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure* and Section 11 of Republic Act No. 9282[1] is the Decision dated October 30, 2007 rendered by the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 238.[2] The assailed decision affirmed the Decision dated August 23, 2006 in turn rendered by the CTA Second Division in CTA Case No. 6136, ordering petitioner Petron Corporation (Petron) to pay deficiency excise taxes for the taxable years 1995 to 1997, together with the surcharge, interests and delinquency interest imposed thereon.[3]

The Facts

A corporation engaged in the production of petroleum products, Petron is a Board of Investment (BOI) registered enterprise in accordance with the provisions of the Omnibus Investment Code, under Certificates of Registration No. 89-1037 and D95-136. Pursuant to Deeds of Assignment executed in its favor, Petron acquired Tax Credit Certificates (TCCs) from, among others, the following BOI-registered entities, namely, Diamond Knitting Corporation, Filstar Textile Industrial Corporation, Alliance Thread Co., Inc., Fiber Tech. Corporation, Jantex Phils., Inc. and Master Colour System Corporation.[4] Granted to the foregoing assignees pursuant to Administrative Order No. 226, in relation to Executive Order No. 226,[5] the TCCs were subject to the following conditions, to wit:

1. Post-audit and subsequent adjustment in the event of computational discrepancy;
2. A deduction for any outstanding account/obligation of claimant with the BIR and/or BOC; and
3. Revalidation with the Center in case the TCC is not utilized for payment within one (1) year from the date of issuance/date of last utilization.

The assignments of the TCCs were duly approved by the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (the Center), a tax credit window created under Administrative Order No. 226,[6] dated February 7, 1992, composed of representatives from the Department of Finance (DOF), the BOI, the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR). Issued DOF Tax Debit Memos (DOF-TDMs) by the Center, Petron, as assignee of said TCCs, utilized the same to pay its excise tax liabilities for the years 1993 to 1997. Upon Petron's surrender of the DOF-TDMs, TCCs and Deeds of Assignment, the corresponding Authorities to Accept Payment of Excise Taxes (ATAPETs) were further issued by the BIR Collection Program Division. Together with the aforesaid documents, the ATAPETs were further submitted to the BIR Head Office which issued BIR-TDMs signed by the Assistant Commissioner of Collection Service, signifying acceptance of the TCCs as payment of Petron's excise taxes.[7]

Pursuant to its undertaking under the aforesaid Deeds of Assignment, Petron issued Credit Notes (CNs) in an equivalent amount in favor of its assignors which, by themselves or thru their own assignees, used the same to avail of fuel products from the former.[8] On the ground, however, that its use of TCCs issued to said grantees was invalid for being violative of Rule IX of the Rules and Regulations issued by the BOI to implement Presidential Decree No. 1789[9] and Batas Pambansa Blg. 391,[10] Petron received a collection letter dated April 22, 1998 from the BIR Revenue District Office of South Makati, Metro Manila, demanding payment of the total amount of P1,107,542,547.08 in unpaid taxes, surcharges and interests for the years 1993 to 1997.[11] With the denial of its letters of protest to the foregoing collection letter, Petron perfected an appeal which was docketed as C.T.A. Case No. 5657 before the CTA. Upholding Petron's argument to the effect, among other matters, that its status as a BOI-registered enterprise and its transactions with the original grantees qualified it to be a transferee of the subject TCCs, the CTA rendered a decision dated July 23, 1999,[12] the decretal portion of which states:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby GRANTED. The collection of the alleged delinquent excise taxes in the amount of P1,107,542,547.08 is hereby CANCELLED AND SET ASIDE for being contrary to law. Accordingly, Respondents are ENJOINED from collecting the said amount of taxes against the petitioner.
>
> SO ORDERED.[13]

During the pendency of the respondent's appeal before the Court of Appeals under docket of CA-G.R. No. 55330, the Center conducted a post-audit in the premises. On October 24, 1999, the Center cancelled TCCs worth P284,390,845.00 of the same

TCCs[14] acquired and used by Petron on the ground that they were fraudulently procured and transferred. The cancellation was based on the following findings, *viz*.: (a) the grantees did not manufacture and export at the volumes which served as bases for the grant of the subject TCCs; and, (b) the grantees were not using fuel oil at the levels which served as bases for the approval of the transfer of the same TCCs.[15] As a consequence of the cancellation, respondent issued an Assessment dated November 15, 1999 (the Assessment), directing Petron to pay deficiency excise taxes in the sum of P284,390,854.00 for the period 1995 to 1997, surcharges in the sum of P142,195,422.50 and interest in the sum of P224,747,996.42 or an aggregate amount of P651,334,263.92.[16]

In view of respondent's inaction on the protest it filed to question the factual and legal bases of the Assessment, Petron filed the July 7, 2000 petition for review which was docketed before the CTA as C.T.A. Case No. 6136. Coupled with a motion to stay collection of the deficiency excise taxes, surcharges and interest sought to be collected, the petition alleged, among other matters, that Petron's right to due process was violated since it was not informed and/or given any opportunity to participate in the proceedings which resulted in the cancellation of the TCCs, that the Assessment was void for lack of a statement of the facts and the law on which the same was based; that the validity of Petron's use of the TCCs assigned in its favor as payment of its excise taxes had been upheld by the CTA in C.T.A. Case No. 5657; and, that respondent's right to collect the alleged tax delinquencies had already prescribed. Petron prayed for the issuance of an injunctive writ against the Assessment, the invalidation of the cancellation of the TCCs as well as the withdrawal of the Assessment.[17]

Served with summons, respondent filed its August 28, 2000 answer, specifically denying the material allegations of the foregoing petition. Contending that the cancellation of the subject TCCs rendered the same valueless and resulted in the non-payment of the excise taxes for which they were utilized, respondent averred that, Petron was apprised of the cancellation of the TCCs which served as basis for the Assessment as well as the law and facts on which the same was based; that the TCCs were cancelled on the strength of the Center's findings that they were fraudulently obtained and transferred to Petron upon fictitious supply agreements with the grantees; and, that the government's right to collect the deficiency excise taxes, together with the interests and surcharges, had yet to prescribe in view of Petron's filing of fraudulent returns with intent to evade payment of taxes. Maintaining that all presumptions are in favor of the correctness of the Assessment and that the government is never estopped from collecting legitimate taxes due to the errors committed by its agents, respondent sought the dismissal of the petition, with costs.[18]

At the pre-trial conference conducted in the case, the parties submitted a Joint Stipulation of Facts and Issues dated March 29, 2001[19] upon which Petron rested its

case. With the parties' further submission of the Joint Stipulations of Facts and Issues dated June 22, 2001[20] and January 24, 2002[21] as well as respondent's filing of his Formal Offer of Evidence,[22] Petron moved for the presentation of its rebuttal evidence and the appointment of an independent Certified Public Accountant to examine, evaluate and audit the pieces of documentary evidence intended to be adduced.[23] Commissioned for the purpose by the CTA, Lilian Linsangan of *Punongbayan & Araullo* submitted a written report dated March 10, 2003 and a supplemental report dated March 17, 2003 which Petron submitted in evidence alongside the TCCs, TDMs, CNs, ATAPETs and pertinent documents probative of its claim of valid payment of taxes.[24]

Subsequent to the parties' filing of their respective memoranda[25] and the submission of the case for decision, respondent filed a motion to reopen the case for the purpose of presenting additional evidence.[26] With the grant of said motion in the September 24, 2004 resolution issued by the CTA Second Division,[27] respondent presented Beverly Taneza-Basman, a Tax Specialist II at the Center, who presented and identified[28] the documents which served as bases for the Center's approval of the grantees' transfer of the subject TCCs to Petron.[29] In receipt of the parties' respective supplemental memoranda,[30] the CTA Second Division went on to render the August 23, 2006 decision,[31] denying Petron's petition for lack of merit, *viz*.:

> WHEREFORE, premises considered, this instant Petition for Review is hereby DENIED for lack of merit. Accordingly, petitioner is ORDERED TO PAY the respondent the amount of FIVE HUNDRED EIGHTY MILLION TWO HUNDRED THIRTY SIX THOUSAND FIVE HUNDRED FIFTY TWO AND 67/100 PESOS (P580,236,552.67), representing deficiency excise taxes for the taxable years 1995 to 1997, computed as follows:
>
> | | | |
> |---|---|---|
> | Basic Tax | | P284,390,845.00 |
> | Add: | | |
> | Late Payment Surcharge (25%) | P 71,097,711.25 | |
> | Interest (20%) | 224,747,996.42 | 295,847,707.67 |
> | | | P580,236,552.67 |
>
> In addition, petitioner is ORDERED TO PAY the respondent 20% delinquency interest per annum on the P580,236,552.67, computed from December 4, 1999 until the amount is fully paid.
>
> SO ORDERED.[32]

With the denial of its motion for reconsideration of the foregoing decision[33] for lack of merit in the CTA Second Division's resolution dated November 23, 2006,[34] Petron elevated the matter via the petition for review docketed before the CTA *En Banc* as CTA EB Case No. 238.[35] On October 30, 2007, the CTA *En Banc* rendered the herein assailed decision, affirming the August 23, 2006 decision of the CTA Second Division, [36] upon the following findings and conclusions, to wit:

> (a) The subsequent cancellation of the TCCs resulted in the non-payment of the excise tax liabilities since the post-audit partook the nature of a suspensive condition to the effectiveness of Petron's use thereof;
>
> (b) The Center's finding of fraud in the procurement of the TCCs by the grantees rendered the same worthless, even in the hands of an assignee like Petron;
>
> (c) The evidence adduced in the case which showed misrepresentation in the levels of fuel oil use by the grantees and the non-delivery of petroleum products by Petron also indicate that fraud also attended the transfer of the TCCs;
>
> (d) The Center acted within its mandate in declaring TCCs fraudulently issued and transferred; and
>
> (e) The resultant delay in the payment of Petron's excise tax liabilities justified the imposition of the 25% surcharge and annual interest of 20% pursuant to Sections 248A(3) and 249 of the Tax Code.

The Issues

Aggrieved, Petron filed the petition for review on certiorari at bench, on the following grounds:

> **I. THE COURT OF TAX APPEALS EN BANC COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT THE SUBSEQUENT CANCELLATION BY THE DOF CENTER OF THE TAX CREDIT CERTIFICATES PREVIOUSLY USED TO PAY PETRON'S TAX LIABILITIES HAD THE EFFECT OF NON-PAYMENT OF PETRON'S EXCISE TAXES ALLEGEDLY BECAUSE THE SUBSEQUENT CANCELLATION OF THE TCCs RESULTS IN NON-PAYMENT OF PETRON'S EXCISE TAX LIABILITIES CONSIDERING THAT:**
>
> A. **POST-AUDIT OF THE TAX CREDIT CERTIFICATES IS NOT IN**

THE NATURE OF A SUSPENSIVE CONDITION TO EFFECT PAYMENT.

B. **THERE WAS NO FRAUD IN THE TRANSFER OF THE SUBJECT TAX CREDIT CERTIFICATES.**

C. **BEING A PURCHASER IN GOOD FAITH, PETRON CANNOT BE PREJUDICED BY A SUBSEQUENT FINDING OF FRAUD IN THE GRANT AND TRANSFER OF THE TAX CREDIT CERTIFICATES.**

II. THE COURT OF TAX APPEALS EN BANC COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT THE TAX CREDIT CERTIFICATES WERE FRAUDULENTLY TRANSFERRED FROM THE GRANTEES TO PETRON CONSIDERING THAT:

A. **THE TCCS WERE ASSIGNED TO PETRON IN ACCORDANCE WITH THE LAW AND THE ASSIGNMENTS WERE APPROVED BY THE APPROPRIATE GOVERNMENT AGENCIES.**

B. **PETRON FULFILLED ITS OBLIGATION TO ISSUE CREDIT NOTES UNDER THE DEEDS OF ASSIGNMENT.**

C. **THE CREDIT NOTES WERE AVAILED BY THE ASSIGNORS AND FUEL AND OTHER PETROLEUM PRODUCTS WERE DELIVERED UPON THE ORDER OF THE ASSIGNORS.**

D. **D. AFFIDAVITS OF GENERAL MANAGERS ATTACHED TO THE CANCELLATION MEMORANDUM ALLEGEDLY DENYING DELIVERIES OF FUEL AND PETROLEUM PRODUCTS ARE HEARSAY.**

E. **VALIDITY OF PETRON'S PAYMENTS OF EXCISE TAXES THRU THE USE OF ASSIGNED TCCS UPHELD BY THE COURT OF TAX APPEALS IN CTA CASE NO. 5657, `PETRON CORPORATION VS. COMMISSIONER OF INTERNAL REVENUE, ET AL.'**

III. THE COURT OF TAX APPEALS EN BANC COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT THE DEPARTMENT OF FINANCE CENTER IS THE COMPETENT AUTHORITY TO DECLARE THE TAX CREDIT CERTIFICATES AS FRAUDULENTLY ISSUED AND TRANSFERRED.

IV. THE COURT OF TAX APPEALS EN BANC COMMITTED GRAVE

REVERSIBLE ERROR WHEN IT RULED THAT PETRON IS LIABLE TO PAY TWENTY-FIVE PERCENT (25%) LATE PAYMENT SURCHARGE PURSUANT TO SECTION 28(A) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 AND TWENTY PERCENT (20%) INTEREST PURSUANT TO SECTIONS 248 AND 249 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997.[37]

The Court's Ruling

We find the petition impressed with merit.

In urging the reversal of the assailed Decision, Petron argues that, having been issued pursuant to Administrative Order No. 226 in relation to Executive Order No. 226, the subject TCCs were immediately effective and could be readily used by the grantees and/or their transferees. Invoking this Court's ruling in the case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*[38] to the effect, among other matters, that the post-audit of the TCCs was not meant as a suspensive condition for their validity but pertained only to computational discrepancies resulting from their transfer and utilization, Petron maintains that respondent failed to prove the fraud which purportedly attended the procurement of the subject TCCs. Against Petron's contention that its rights as a purchaser in good faith cannot be prejudiced even in the face of the Center's subsequent finding of fraud in the grant of the TCCs,[39] the Office of the Solicitor General, in representation of respondent, argues that, the cancellation of the subject TCCs effectively avoided the payment of the excise tax liabilities of Petron which, as assignee, could not acquire rights better than the grantees-assignors.

As correctly pointed out by Petron, however, the issue about the immediate validity of TCCs and the use thereof in payment of tax liabilities and duties are not matters of first impression for this Court. Taking into consideration the definition and nature of tax credits[40] and TCCs,[41] this Court's Second Division definitively ruled in the aforesaid *Pilipinas Shell* case that the post audit is not a suspensive condition for the validity of TCCs, thus:

> Art. 1181 tells us that the condition is suspensive when the acquisition of rights or demandability of the obligation must await the occurrence of the condition. However, Art. 1181 does not apply to the present case since the parties did NOT agree to a suspensive condition. Rather, specific laws, rules, and regulations govern the subject TCCs, not the general provisions of the Civil Code. Among the applicable laws that cover the TCCs are EO 226 or the Omnibus Investments Code, Letter of Instructions No. 1355, EO 765, RP-US Military Agreement, Sec. 106 (c) of the Tariff and Customs Code, Sec. 106 of the NIRC, BIR Revenue Regulations (RRs), and others. Nowhere in the aforementioned laws does the post-audit become necessary for the

validity or effectivity of the TCCs. Nowhere in the aforementioned laws is it provided that a TCC is issued subject to a suspensive condition.

x x x x

xxx (T)he TCCs are immediately valid and effective after their issuance. As aptly pointed out in the dissent of Justice Lovell Bautista in CTA EB No. 64, this is clear from the Guidelines and instructions found at the back of each TCC, which provide:

> 1. This Tax Credit Certificate (TCC) shall entitle the grantee to apply the tax credit against taxes and duties until the amount is fully utilized, in accordance with the pertinent tax and customs laws, rules and regulations.
>
> x x x x
>
> 4. To acknowledge application of payment, the One-Stop-Shop Tax Credit Center shall issue the corresponding Tax Debit Memo (TDM) to the grantee.
>
> The authorized Revenue Officer/Customs Collector to which payment/utilization was made shall accomplish the Application of Tax Credit at the back of the certificate and affix his signature on the column provided."

The foregoing guidelines cannot be clearer on the validity and effectivity of the TCC to pay or settle tax liabilities of the grantee or transferee, as they do not make the effectivity and validity of the TCC dependent on the outcome of a post-audit. In fact, if we are to sustain the appellate tax court, it would be absurd to make the effectivity of the payment of a TCC dependent on a post-audit since there is no contemplation of the situation wherein there is no post-audit. Does the payment made become effective if no post-audit is conducted? Or does the so-called suspensive condition still apply as no law, rule, or regulation specifies a period when a post-audit should or could be conducted with a prescriptive period? Clearly, a tax payment through a TCC cannot be both effective when made and dependent on a future event for its effectivity. Our system of laws and procedures abhors ambiguity.

Moreover, if the TCCs are considered to be subject to post-audit as a suspensive condition, the very purpose of the TCC would be defeated as there would be no guarantee that the TCC would be honored by the government as payment for taxes. No investor would take the risk of

> utilizing TCCs if these were subject to a post-audit that may invalidate them, without prescribed grounds or limits as to the exercise of said post-audit.
>
> The inescapable conclusion is that the TCCs are not subject to post-audit as a suspensive condition, and are thus valid and effective from their issuance. As such, in the present case, if the TCCs have already been applied as partial payment for the tax liability of PSPC, a post-audit of the TCCs cannot simply annul them and the tax payment made through said TCCs. Payment has already been made and is as valid and effective as the issued TCCs. The subsequent post-audit cannot void the TCCs and allow the respondent to declare that utilizing canceled TCCs results in nonpayment on the part of PSPC x x x."[42]

Considered in the light of the foregoing pronouncements, Petron correctly argues that the CTA *En Banc* reversibly erred in holding that the result of the post-audit conducted by the Center partook the nature of a suspensive condition for the validity of the subject TCCs and the use thereof as payment of its tax liabilities or duties. Limited only to computational discrepancies arising from the use or transfer of TCCs, the post-audit conducted by the Center would, if at all, only give rise to an adjustment of the monetary value of the TCCs subjected thereto. Issued pursuant to Article 39 (k) of Executive Order No. 226[43] and subject to the aforequoted Guidelines and Instructions printed at the back thereof, the subject TCCs were, consequently, valid upon their issuance in favor of the original grantees which had the right to use them in payment of their tax liabilities and/or transfer them in favor of assignees like Petron which could, in turn, utilize them as payment of its own tax liabilities.

Not being privy to the issuance of the subject TCCs and having already used them in paying its own tax liabilities, Petron also correctly points out that it cannot be prejudiced by the fraud which supposedly attended the issuance of the same. More so, when it is borne in mind that, as ground for the cancellation of said TCCs, fraud was not adequately established by respondent with clear and convincing evidence showing that the grantees had not, indeed, manufactured and exported at the volumes which served as bases for the grant of the subject TCCs. Rather than presenting oral and documentary evidence to prove said material fact, the record shows that respondent simply relied on the findings and conclusions the Center cited in support of the cancellation of the TCCs[44] as well as those embodied in the Report of the Senate Committee on Ways and Means and Committee on Accountability of Public Officers and Investigation which jointly delved into the irregularities reported to have attended the Center's issuance of TCCs in favor of corporations in the textile industry, including petitioner's assignors.[45]

While the CTA is not governed strictly by technical rules of evidence on the principle that rules of procedure are not ends in themselves but are primarily intended as tools

in the administration of justice,[46] respondent's presentation of evidence to prove the fraud which attended the issuance of the subject TCCs is not a mere procedural technicality which may be disregarded considering that it is the very basis for the claim that Petron's payment of its excise tax liabilities had been avoided. It cannot be over-emphasized that fraud is a question of fact[47] which cannot be presumed and must be proven by clear and convincing evidence[48] by the party alleging the same. Without even presenting the documents which served as bases for the issuance of the subject TCCs from 1994 to 1997, respondent miserably failed in discharging his evidentiary burden with the presentation of the Center's cancellation memoranda to which were simply annexed some of the grantees' original registration documents[49] and their Financial Statements for an average of two years.[50]

On the other hand, the transferability of the TCCs issued in favor of the original grantees is primarily governed by Article 21 of EO 226 which provides that, "the tax credit certificates issued by the Board (of Investments) pursuant to laws repealed by this Code but without in any way diminishing the scope of negotiability under their laws of issue are transferable under such conditions as may be determined by the Board after consultation with the Department of Finance." In turn, the Implementing Rules and Regulations (IRR) of EO 226 incorporated the October 5, 1982 Memorandum of Agreement (MOA) between the Ministry of Finance (MOF) and the BOI, which pertinently provides the following guidelines for the transfer of said TCCs, to wit:

> 1) All tax credit certificates issued to BOI-registered enterprises under P.D. 1789 may be transferred under conditions provided herein;
>
> 2) The transferee should be a BOI-registered firm;
>
> 3) The transferee may apply such tax credit certificates for payment of taxes, duties, charges or fees directly due to the national government for as long as it enjoys incentives under P.D. 1789.

As a BOI-registered enterprise under Certificates of Registration No. 89-1037 and D95-136, Petron is undoubtedly a qualified transferee of the TCCs originally issued in favor of its assignors. In finding that the assignments of the TCCs in favor of Petron were likewise fraudulent, however, the CTA *En Banc* ruled that the aforesaid October 5, 1982 MOA between the MOF and the BOI was amended by the said agencies' August 29, 1989 MOA which additionally required that the TCC-assignee should be a "*domestic capital equipment supplier or a raw material and/or component supplier of the transferor*." Underscoring the fact that the assignments were approved upon the representation that the TCCs were to be used as payment for oil products purchased from Petron, the CTA *En Banc* found that the grantees' Financial Statements indicated that they could not have consumed fuels at the levels represented to the Center and that Petron had not, in fact, delivered petroleum products in consideration of the

assignment of the TCCs.[51]

As held in the *Pilipinas Shell* case, however, said August 29, 1989 MOA between the MOF and the BOI cannot prejudice transferees of TCCs like petitioner. Aside from not having been elevated to the level of or incorporated as an amendment in the IRR of EO 226, the same MOA was found ineffective for non-compliance with the publication requirement under Chapter 2, Book VII of EO 292, otherwise known as the Administrative Code of 1987.[52] For the validity of the transfer of the TCCs by the grantees, it is, consequently, enough that Petron is a BOI registered-enterprise, as provided under said agencies' October 5, 1982 MOA. Although not required by law to be a capital equipment provider or a supplier of raw material and/or component supplier to the transferors, the record, even then, shows that Petron issued credit notes to the grantees and, as a result, delivered petroleum products in favor of the latter and/or its assignees in the aggregate amount of P284,390,845.00.[53] In the absence of showing of any legal prohibition thereon, we find that Petron cannot be faulted for honoring the grantees' further assignment of said credit notes in favor of third parties.

For a party charged with the burden of proving the same, respondent did not even come close to establishing the fraud which purportedly attended both the issuance of the subject TCCs and the transfer thereof in favor of Petron. That respondent's reliance of the Center's cancellation memoranda was misplaced and misguided is evident from the following admissions in the parties' June 22, 2001 Joint Stipulation of Facts and Issues, to wit:

> 3. That the available records at the DOF Center upon which the findings and conclusions of the Cancellation Memorandum (Exhibit "2", "3", "4", "5", "6", "7" and "8") were based had not been explained nor confirmed by the issuer, signatory or parties to the said records;
>
> 4. That respondent's witness, Beverly M. Taneza has no actual knowledge that Petron actually delivered fuel and other petroleum products in fulfillment of, and in accordance with, its agreement or instructions of the assignors, namely, Diamond Knitting, Alliance Thread, Filstar Textile, Fiber Tech., Jantex Phils. and Master Colour which assigned their TCCs to Petron in consideration or payment of the delivery and supply of fuel and other petroleum products;
>
> 5. That the statement in the `Recommendation' on the Cancellation Memorandum (Exhibit "2", "3", "4", "5", "6", "7" and "8") that the TCC grantees Diamond Knitting, Alliance Thread, Filstar Textile, Fiber Tech., Jantex Phils. and Master Colour have concurred in their findings on the issuance and transfer of the TCCs to the oil companies is based on the Affidavits of the General Managers of the said TCC grantees marked as

Exhibit `2-G' (Virgilio Pinon of Alliance Thread), `3-F' (Reynato G. Andaya of Diamond Knitting), `5-G' (Carmencita C. Camara of Fiber Tech.), `6-G' (Rodel P. Rodriguez of Filstar Textile), `7-G' (Angel T. Chua of Jantex Phils.) and `8-G' (Margaret A. De Luna of Master Colour).[54]

In finding that the assignments of the TCCs in favor of Petron were fraudulent, we find that the CTA *En Banc* reversibly erred in relying on the abovementioned affidavits executed by the grantees' former general managers/officers who, after disavowing knowledge of the assignment of the subject TCCs and Petron's delivery of bunker fuel oil in consideration thereof, requested the cancellation of the TCCs.[55] Without said erstwhile general managers/officers being presented on the witness stand to affirm the truth and veracity of their statements, the affidavits they executed are, however, correctly impugned by Petitioner as hearsay for lack of opportunity to cross-examine said affiants. Almost always incomplete and often inaccurate, sometimes from partial suggestion, or for want of suggestion and inquiries,[56] the infirmity of affidavits as species of evidence is a matter of judicial experience and are thus considered inferior to the testimony given in open court.[57] Unless the affiant is placed on the witness stand to testify thereon, the rule is settled that affidavits are inadmissible as evidence under the hearsay rule.[58]

Having proven the valuable consideration for the grantees' transfer of the TCCs in its favor, it also bears pointing out that Petron has more than amply proved its good faith by complying with the procedures laid down for the transfer and use thereof. With its approval of the Deeds of Assignment executed by the grantees, the Center unequivocally affirmed not only the validity of the TCCs but also the transfer thereof in favor of Petron to whom it issued the requisite DOF-TDMs. On the other hand, upon surrender of the Deeds of Assignment, the TCCs and the DOF-TDMs, the BIR Collection Program Division issued the corresponding ATAPETs which, together with said documents, were further submitted to the BIR Head Office. It was only after further authentication and verification of the documents thus submitted that Petron was eventually issued BIR TDMs which bore the signature of the BIR Assistant Commissioner of Collection Service and signified acceptance of the TCCs as payment of the excise taxes due from the former.[59]

Under RR 5-2000, a TDM or a Tax Debit Memo "shall serve as the official receipt from the BIR evidencing a taxpayer's payment or satisfaction of his tax obligation." Until the Center's cancellation of the TCCs assigned in its favor, Petron was, in fact, never questioned nor assessed for deficiency or delinquency in the payment of its excise taxes thru the use of the same TCCs.[60] Even prescinding from the CTA July 23, 1999 decision in C.T.A. Case No. 5657 which remains on appeal before the Court of Appeals, we find that Petron had every right to rely on the validity of the subject TCCs, the Center's approval of the deeds of assignment the grantees executed over the same and the BIR's acceptance of its use thereof in payment of its excise taxes. While the

Government cannot, concededly, be estopped from collecting taxes by the mistake, negligence, or omission of its agents,[61] the Court's ruling in the *Pilipinas Shell* case is to the effect that an assignee's status as a transferee in good faith and for value provides ample protection from the adverse findings subsequently made by the Center.[62]

In urging the affirmance of the assailed decision, respondent calls our attention to the pronouncement in the case of *Proton Pilipinas Corporation vs. Republic of the Philippines*[63] that the resultant non-payment of customs duties and taxes by reason of the cancellation of the TCCs for having been found as fake and spurious is the obligation of the taxpayer. Rather than the legal implications and consequences of the cancellation of TCCs, however, the *Proton Pilipinas* case dealt with procedural matters such as the effect of the Sandiganbayan's jurisdiction over the criminal case involving the issuance of the TCCs to the collection case instituted by the government before the Regional Trial Court (RTC), the existence of *litis pendentia* as a consequence of the pendency of the criminal and civil cases filed under the circumstances and the prejudicial question arising therefrom. Sharing the same factual and legal milieu as the case at bench, more in point is the *Pilipinas Shell* case which ruled that the rights of a transferee in good faith cannot be prejudiced by the Center's turnaround from its previous approval of the assignments of the TCCs.

Once a case has been decided one way, the rule is settled that any other case involving exactly the same point at issue should be decided in the same manner[64] under the principle *stare decisis et non quieta movere.* Fealty to the same principle impels us to discount merit from respondent's reliance on the Liability Clause at the dorsal portion of the TCCs which provides that both the transferor and the transferee shall be jointly and severally liable for any fraudulent act or violation of the pertinent laws, rules and regulations relating to the transfer of the TCC. Expounding on the practical and legal significance of said Liability Clause in the *Pilipinas Shell* case, this Court ruled as follows:

> The above clause to our mind clearly provides only for the solidary liability relative to the **transfer** of the TCCs from the original grantee to a transferee. There is nothing in the above clause that provides for the liability of the transferee in the event that the validity of the TCC issued to the original grantee by the Center is impugned or where the TCC is declared to have been fraudulently procured by the said original grantee. Thus, the solidary liability, if any, applies only to the sale of the TCC to the transferee by the original grantee. Any fraud or breach of law or rule relating to the issuance of the TCC by the Center to the transferor or the original grantee is the latter's responsibility and liability. The transferee in good faith and for value may not be unjustly prejudiced by the fraud committed by the claimant or transferor in the procurement or issuance of the TCC from the Center. It is not only unjust but well-nigh violative of the constitutional right

not to be deprived of one's property without due process of law. Thus, a re-assessment of tax liabilities previously paid through TCCs by a transferee in good faith and for value is utterly confiscatory, more so when surcharges and interests are likewise assessed.

A transferee in good faith and for value of a TCC who has relied on the Center's representation of the genuineness and validity of the TCC transferred to it may not be legally required to pay again the tax covered by the TCC which has been belatedly declared null and void, that is, after the TCCs have been fully utilized through settlement of internal revenue tax liabilities. Conversely, when the transferee is party to the fraud as when it did not obtain the TCC for value or was a party to or has knowledge of its fraudulent issuance, said transferee is liable for the taxes and for the fraud committed as provided for by law.[65]

In addition to its lack of participation in the procurement of the subject TCCs as admitted in the parties' March 29, 2001 Joint Stipulation of Facts and Issues, Petron was not shown to have had a hand in or knowledge of the fraud which purportedly attended the issuance of the same TCCs. Qualified to be a transferee as a BOI-registered enterprise under October 5, 1982 MOA between the MOF and the BOI, Petron went through the multi-tiered prescribed procedures for the transfer of said TCCs and use thereof in payment of its tax obligations. Relying on the validity of the TCCs, the Center's approval of the transfer thereof and the BIR's acceptance of the same as payment for its excise tax obligations, Petron issued credit notes by way of consideration for the TCCs and delivered petroleum products in the total sum of P284,390,845.00 in favor of the grantees and/or their assignees. As a transferee in good faith and for value, Petron cannot, therefore, be said to have incurred any liability insofar as the transfers of the subject TCCs are concerned.

As for the government agency vested with the authority to cancel the subject TCCs, the ruling in the *Pilipinas Shell* is to the effect that, pursuant to Section 3 (a), (g) and (l) of AO 226,[66] the Center has concurrent authority to do so alongside the BIR and the BOC. Given the nature of the TCC's immediate effectiveness and validity, however, said authority may only be exercised before the TCC has been fully utilized by a transferee which had no participation in the perpetration of fraud in the issuance, transfer and utilization thereof.[67] Once accepted by the BIR and applied towards the satisfaction of such a tranferee's tax obligations, a TCC is effectively used up, debited and canceled such that there is nothing left to avoid or to cancel anew.[68] Considering the protection afforded to transferees in good faith and for value, it was held that the remedy of the Government is to go after the grantees alleged to have perpetrated fraud in the procurement of the subject TCCs.[69]

Viewed in the light of the foregoing disquisition, respondent had no legal basis to once again assess the excise taxes Petron already paid with the use of the TCCs assigned in

its favor, much less to impose the 25% late payment surcharge pursuant to Section 248 (A)[70] of the *National Internal Revenue Code of 1997* and the 20% interest provided under Section 249[71] of the same Code. Admitted to have filed it tax returns in accordance with law,[72] Petron was never questioned nor assessed for deficiency delinquency in the payment of its excise taxes from 1992 to 1997, thru the use of the TCCs assigned by the original grantees.[73] In receipt of the November 15, 1999 Assessment subsequent to the Center's cancellation of the subject TCCs, Petron filed the petition for review docketed before the CTA Second Division as CTA Case No. 6136 as a consequence of respondent's inaction on its protest. Although the August 23, 2006 adverse decision rendered in said case was affirmed in the herein assailed October 30, 2007 decision rendered in CTA EB No. 238, a reversal of said CTA *En Banc* decision would necessarily foreclose the factual and legal bases for respondent's impugned Assessment.

WHEREFORE, premises considered, the petition is **GRANTED** and the October 30, 2007 CTA *En Banc* Decision in CTA EB No. 238 is, accordingly, **REVERSED** and **SET ASIDE**. In lieu thereof, another is entered invalidating respondent's Assessment of petitioner's deficiency excise taxes for the years 1995 to 1997 for lack of legal bases. No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and *Del Castillo, JJ.*, concur.

---

[1] An Act Expanding the Jurisdiction of the Court of Tax Appeals.

[2] CTA EB No. 238, records, pp. 1069-1098

[3] CTA Case. No. 6136, records, pp. 1448-1468

[4] Exhibits "V73" -"D74", "E74"-"P74". "Q74"-"X74", "Y74"-"E75"; "F75"-"K75", "L75"-"M75", Id. at 648-673; 671-712; 717-739; 744-762; 766-783; 786-791

[5] Omnibus Investment Code of 1987

[6] Creating A One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center For the Processing of All Tax Credits and Duty Drawbacks Defining Its Powers, Duties and Functions, and For Other Purposes

[7] TSN, April 23, 2003, pp. 32-34.

[8] Exhibit "A".

[9] A Decree to Revise, Amend and Codify the Investment, Agricultural and Export Incentives Acts to be Known as the Omnibus Investment Code.

[10] An Act Declaring the 1983 Investment Incentives Policy by Modifying the System on the Grant of Investments Incentives.

[11] CTA Case No. 6136, records, p. 89.

[12] Id. at 56-87.

[13] Id. at 87.

[14] CTA Case No. 6136, records, pp. 183-185.

[15] Exhibits "2" to "8" and submarkings.

[16] CTA Case No. 6136, records, p. 182.

[17] Id. at 1-30.

[18] Id. at 120-125.

[19] Id. at 182-190.

[20] Id. at 209-211.

[21] Id. at 246-249.

[22] Id. at 254-268.

[23] Id. at 291-293; 296-298.

[24] CTA Case No. 6136, records, pp. 445-643; 992-994.

[25] Id. at 1024-1084; 085-1099.

[26] Id. at 1103-1108.

[27] Id. at 1119-1123.

[28] TSN, July 13, 2005, pp. 4-10.

[29] CTA Case No. 6136, records, pp. 1205-1215; 1240-1244.

[30] Id. at 1408-1424; 1431-1444.

[31] Id. at 1448-1468.

[32] Id. at 1466-1467.

[33] Id. at 1469-1503.

[34] Id. at 1516-1521.

[35] Record, CTA E.B. No. 238, pp. 37-97.

[36] Id. at pp. 1069-1098.

[37] Id. at 35-36.

[38] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, G.R. No. 172598, 541 SCRA 316, December 21, 2007.

[39] *Rollo*, pp. 790-816.

[40] A tax credit is an allowance against the tax itself (citing Smith, West's Tax Law Dictionary 177-178 [1993]) or a deduction from what is owed (citing Oran and Tosti, Oran's Dictionary of the Law 124 (3rd ed., 2000).

[41] A certification duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed by the provisions of these Regulations (Sec. 1, B, RR 5-200).

[42] Id. at 338-342.

[43] (k) Every BOI registered enterprise shall enjoy a tax credit equivalent to the national internal revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof, exported directly or indirectly by the registered enterprise, Provided, however, That the taxes on the supplies, raw materials and semi-manufactured products domestically purchased are indicated as a separate item in the sales invoice.

[44] Supra, see Note 15.

[45] Exhibit "12".

[46] *Dizon v. Court of Tax Appeals,* G.R. No. 140944. 553 SCRA 111, 129, April 30, 2008.

[47] *South Pacific Plastic Manufacturing Corporation vs. Manila Electric Company,* G.R. No.144300, 493 SCRA 114, 123, June 27, 2006.

[48] *Commissioner of Internal Revenue v. Court of Appeals,* 327 Phil. 1, 34 (1996).

[49] Exhibits "2-I", "5-I", "6-I", "7-I", "8-I".

[50] 1994/1995 for Alliance Thread Company, Inc. (Exhibit "2-H" and submarkings); 1995/1996 for Filstar Textile Industrial Corp. (Exhibit "4-B", "6-H" and submarkings); Fiber Technology Corporation (Exhibit "5-H" and submarkings); Jantex Phils., Inc. (Exhibit "7-H" and submarkings); and Master Colours Systems, Inc. (Exhibit "8-H" and submarkings) .

[51] CTA Case No. 6136, records, pp. 1088-1093.

[52] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, Supra at 345-346.

[53] Exhibits "A-13", "A-15", "A-16 and submarkings.

[54] CTA Case No. 6136, records, pp. 209-211.

[55] Exhibits "2-G", "3-F", "5-G", "6-G", "7-G" and "8-G".

[56] *Yu Eng Cho vs. Pan American World Airways, Inc.,*G.R. No. 123560, 385 Phil. 453, 465-466.

[57] *People vs. Diaz,* 331 Phil. 240, 252 (1996).

[58] *D.M. Consunji, Inc. vs. Court of Appeals,* 409 Phil. 275, 293 (2001).

[59] TSN, April 23, 2003, pp. 32-34.

[60] CTA Case No. 6136, records, pp. 182-190.

[61] *Philippine National Oil Company v. Court of Appeals*, 496 Phil. 506, 577 (2005).

[62] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, Supra at 349.

[63] *Proton Pilipinas Corporation v. Republic of the Phils., Represented by the Bureau of Customs*, G.R. No. 165027, 504 SCRA 528, October 16, 2006.

[64] *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.,* G.R. No. 149834, 488 SCRA 538, 545, May 2, 2006.

[65] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, Supra at 346-347.

[66] Section 3. *Powers Duties and Functions.* - The Center shall have the following powers, duties and functions:

a. To promulgate the necessary rules and regulations and/or guidelines for the effective implementation of this administrative order;

x x x x

b. To enforce compliance with tax credit/duty drawback policy and procedural guidelines;

x x x x

l. To perform such other functions/duties as may be necessary or incidental in the furtherance of the purpose for which it has been established.

[67] *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, Supra at 354-356, December 21, 2007.

[68] Id. at 351.

[69] Id. at 356.

[70] Section 248, Civil Penalties -

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due in the following cases:

x x x x

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment.

x x x x

[71] Section 249. Interest -

(A) In General - There shall be assessed and collected on any amount of tax, interest at the rate of twenty percent (20%) per annum or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. - In case of failure to pay:

x x x x

3) A deficiency tax or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

x x x x .

[72] Record, CTA Case No. 6136, p. 188.

[73] Id. at 187.