

FIRST DIVISION

[G.R. No. 197945, July 09, 2018]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, vs.
PILIPINAS SHELL PETROLEUM CORPORATION, RESPONDENT.**

[G.R. Nos. 204119-20]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
PILIPINAS SHELL PETROLEUM CORPORATION AND PETRON
CORPORATION, RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO,* J.:

Before the Court are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court, as amended, filed by petitioner Commissioner of Internal Revenue (CIR):

1. **G.R. No. 197945** assailing the Decision^[1] dated February 22, 2011 and Resolution^[2] dated July 27, 2011 of the Court of Tax Appeals (CTA) in CTA *En Banc* Case No. 535; and
2. **G.R. Nos. 204119-20** assailing the Decision^[3] dated March 21, 2012 and Resolution^[4] dated October 10, 2012 of the Court of Appeals in CA-G.R. SP Nos. 55329-30.

Respondents Pilipinas Shell Petroleum Corporation (Shell) and Petron Corporation (Petron) are domestic corporations engaged in the production of petroleum products and are duly registered with the Board of Investments (BOI) under the Omnibus Investments Code of 1987.^[5]

On different occasions during 1988 to 1996, respondents separately sold bunker oil and other fuel products to other BOT-registered entities engaged in the export of their own manufactured goods (BOI export entities).^[6] These BOT-registered export entities used Tax Credit Certificates (TCCs) originally issued in their name to pay for these purchases.

To proceed with this mode of payment, the BOT-registered export entities executed Deeds of Assignment in favor of respondents, transferring the TCCs to the latter. Subsequently, the Department of Finance (DOF), through its One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF Center), approved the Deeds of Assignment.^[7]

Thereafter, respondents sought the DOF Center's permission to use the assigned

TCCs in settling respondents' own excise tax liabilities. The DOF Center issued Tax Debit Memoranda (DOF TDMs) addressed to the Collection Program Division of the Bureau of Internal Revenue (BIR),^[8] allowing respondents to do so.

Thus, to pay for their excise tax liabilities from 1992 to 1997 (Covered Years),^[9] respondents presented the DOF TDMs to the BIR. The BIR accepted the TDMs and issued the following: (a) TDMs signed by the BIR Assistant Commissioner for Collection Service^[10] (BIR TDMs); (b) Authorities to Accept Payment for Excise Taxes (ATAPETs) signed by the BIR Regional District Officer; and (c) corresponding instructions to BIR's authorized agent banks to accept respondents' payments in the form of BIR TDMs.^[11]

Three significant incidents arising from the foregoing antecedents resulted in the filing of several petitions before this Court, viz.:

Significant Incidents	Resultant Petition/s before the Court
(a) 1998 Collection Letters issued by the BIR against respondents	G.R. Nos. 204119-20 (one of the present petitions)
(b) 1999 Assessments issued by the BIR against respondents	<i>Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue</i> , G.R. No. 172598, December 21, 2007 (2007 Shell Case) <i>Petron Corporation v. Commissioner of Internal Revenue</i> , G.R. No. 180385, July 28, 2010 (2010 Petron Case)
(c) 2002 Collection Letter issued by the BIR against respondent Shell	G.R. No. 197945 (one of the present petitions)

Said incidents and petitions are discussed in detail below.

A. 1998 Collection Letters (G.R. Nos. 204119-20)

In its collection letters^[12] dated April 22, 1998 (1998 Collection Letters) addressed to respondents' respective presidents, the BIR^[13] pointed out that respondents partly paid for their excise tax liabilities during the Covered Years using TCCs issued in the names of other companies; invalidated respondents' tax payments using said TCCs; and requested respondent Shell and respondent Petron to pay their delinquent tax liabilities amounting to P1,705,028,008.06 and P1,107,542,547.08, respectively. The 1998 Collection Letters similarly read:

Our records show that for the years x x x, you have been paying part of your excise tax liabilities in the form of Tax Credit Certificate (TCC) which bear the name of a company other than yours in violation of Rule IX of the Rules and Regulations issued by the Board of Investments to implement P.D. No. 1789 and B.P. 391. **Accordingly, your payment**

through the aforesaid TCC's are considered invalid and therefore, you are hereby requested to pay the amount of x x x inclusive of delinquency for late payments as of even date, covering the years heretofore mentioned within thirty days (30) from receipt hereof, **lest we will be constrained to resort to administrative and legal remedies available in accordance with law.** (Emphasis supplied.)

Respondents separately filed their administrative protests^[14] against the 1998 Collection Letters, but the BIR denied^[15] said protests. The BIR maintained that the transfers of the TCCs from the BOI-registered export entities to respondents and the use of the same TCCs by respondents to pay for their self-assessed specific tax liabilities were invalid, and reiterated its demand that respondents pay their delinquent taxes.

This prompted respondent Petron to file a Petition for Review^[16] before the CTA docketed as CTA Case No. 5657.

As for respondent Shell, it first requested for reconsideration of the denial of its protest by the BIR.^[17] However, while said request for reconsideration was pending, the BIR issued a Warrant of Garnishment^[18] against respondent Shell. Taking this as a denial of its request for reconsideration, respondent Shell likewise filed a Petition for Review^[19] before the CTA docketed as CTA Case No. 5728.

In their respective petitions before the CTA, respondents raised similar arguments against petitioner, to wit: (a) The collection of tax without prior assessment was a denial of the taxpayer's right to due process; (b) The use of TCCs as payment of excise tax liabilities was valid; (c) Since the BIR approved the transfers and subsequent use of the TCCs, it was estopped from questioning the validity thereof; and (d) The BIR's right to collect the alleged delinquent taxes had already prescribed.

The CTA granted respondents' petitions in separate Decisions both dated July 23, 1999, decreeing as follows:

CTA Case No. 5657

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, [herein petitioner and BIR Regional Director of Makati, Region No. 8] are ENJOINED from collecting the said amount of taxes against [herein respondent Petron].^[20]

CTA Case No. 5728

IN LIGHT OF ALL THE FOREGOING, the instant petition for review is GRANTED. The collection letter issued by [herein petitioner] dated April 22, 1998 is considered withdrawn and he is ENJOINED from any attempts to collect from [herein respondent Shell] the specific tax, surcharge and interest subject of this petition.^[21]

In both Decisions, the CTA upheld the validity of the TCC transfers from the BOI-registered export entities to respondents, the latter having complied with the requirements of transferability. The CTA further ruled that the BIR's attempt to collect taxes without an assessment was a denial of due process and a violation of Section 228^[22] of the National Internal Revenue Code of the Philippines of 1997 (Tax Code). The CTA also noted that the BIR might have purposely avoided the issuance of a formal assessment because its right to assess majority of respondents' alleged delinquent taxes had already prescribed.

Petitioner's motions for reconsideration of the above-mentioned decisions were denied by the CTA.^[23] Thus, petitioner CIR sought recourse before the Court of Appeals^[24] through the consolidated petitions docketed as CA-G.R. SP Nos. 55329-30.

However, the Court of Appeals dismissed the petitions and found the transfer and utilization of the subject TCCs were valid, in accordance with the *2007 Shell Case*.^[25] The appellate court eventually denied petitioner's motion for reconsideration.

Undaunted, petitioner CIR filed the present petition docketed as G.R. Nos. 204119-20.

B. 1999 Assessments (The *2007 Shell Case* and *2010 Petron Case*)

During the pendency of the consolidated petitions in CA-G.R. SP Nos. 55329-30 before the Court of Appeals, the DOF Center conducted separate post-audit procedures^[26] on all of the TCCs acquired and used by respondents during the Covered Years, requiring them to submit documents to support their acquisition of the TCCs from the BOI-registered export entities. As a result of its post-audit procedures, the DOF Center cancelled the first batch of the transferred TCCs^[27] used by respondent Shell and Petron, with aggregate amount of P830,560,791.00 and P284,390,845.00, respectively.

Following the cancellation of the TCCs, petitioner issued separate assessment letters to respondents in November 1999 (1999 Assessments) for the payment of deficiency excise taxes, surcharges, and interest for the Covered Years, which were also covered by the 1998 Collection Letters. Respondents filed their respective administrative protests against said assessments. While petitioner denied respondent Shell's protest, he did not act upon that of respondent Petron.

B.1 The *2007 Shell Case*

Respondent Shell raised petitioner's denial of its protest through a petition for review before the CTA, docketed as CTA Case No. 6003. The CTA Division rendered a Decision dated August 2, 2004 granting said petition and cancelled and set aside the assessment against respondent Shell; but then the CTA *en banc*, in its Decision dated April 28, 2006, set aside the CTA Division's judgment and ordered respondent Shell to pay petitioner deficiency excise tax, surcharges, and interest. Hence, respondent Shell filed a petition for review before this Court docketed as G.R. No. 172598, the *2007 Shell Case*.

In its Decision in the *2007 Shell Case*, the Court cancelled the 1999 assessment against respondent Shell and disposed thus:

WHEREFORE, the petition is GRANTED. The April 28, 2006 CTA *En Banc* Decision in CTA EB No. 64 is hereby REVERSED and SET ASIDE, and the August 2, 2004 CTA Decision in CTA Case No. 6003 disallowing the assessment is hereby REINSTATED. The assessment of respondent for deficiency excise taxes against petitioner for 1992 and 1994 to 1997 inclusive contained in the April 22, 1998 letter of respondent is cancelled and declared without force and effect for lack of legal basis. No pronouncement as to costs.^[28]

In nullifying petitioner's assessments, the Court upheld the TCCs' validity, respondent Shell's qualifications as transferees of said TCCs, respondent Shell's status as a transferee in good faith and for value, and respondent Shell's right to due process.

The *2007 Shell Case* became final and executory on March 17, 2008.^[29]

B.2 The 2010 Petron Case

Considering petitioner's inaction on its protest, respondent Petron likewise filed a petition for review with the CTA, docketed as CTA Case No. 6136, to challenge the assessment. In a Decision dated August 23, 2006, the CTA Division denied the petition and ordered respondent Petron to pay petitioner deficiency excise taxes, surcharges, and interest. Said judgment was subsequently affirmed by the CTA *En Banc* in its Decision dated October 30, 2007. This prompted respondent Petron to seek relief from this Court through a petition for review, docketed as G.R. No. 180385, the *2010 Petron Case*.^[30]

Citing the *2007 Shell Case*, the Court similarly cancelled the 1999 assessment against respondent Petron and decided the *2010 Petron Case* as follows:

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.^[31]

Entry of Judgment^[32] was made in the *2010 Petron Case* on November 2, 2010.

C. 2002 Collection Letter (G.R. No. 197945)

Meanwhile, during the pendency of respondent Shell's CTA Case No. 6003 (which was eventually elevated to this Court in the *2007 Shell Case*), the BIR requested respondent Shell to pay its purported excise tax liabilities amounting to P234,555,275.48, in a collection letter^[33] dated June 17, 2002 (2002 Collection Letter), which read: