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SECOND DIVISION

[G.R. No. 185568, March 21, 2012]

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

D E C I S I O N

SERENO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure filed by the Commissioner of Internal Revenue (CIR) assailing the Decision[1] dated 03 December 2008 of the Court of Tax Appeals En Banc (CTA En Banc) in CTA EB No. 311. The assailed Decision reversed and set aside the Decision[2] dated 04 May 2007 of the Court of Tax Appeals Second Division (CTA Second Division) in CTA Case No. 6423, which ordered respondent Petron Corporation (Petron) to pay deficiency excise taxes for the taxable years 1995 to 1998, together with surcharges and delinquency interests imposed thereon.

Respondent Petron is a corporation engaged in the production of petroleum products and is a Board of Investment (BOI) – registered enterprise in accordance with the provisions of the Omnibus Investments Code of 1987 (E.O. 226) under Certificate of Registration Nos. 89-1037 and D95-136. [3]

The Facts

The CTA En Banc in CTA EB Case No. 311 adopted the findings of fact by the CTA Second Division in CTA Case No. 6423. Considering that there are no factual issues in this case, we likewise adopt the findings of fact by the CTA En Banc, as follows:

> As culled from the records and as agreed upon by the parties in their Joint Stipulation of Facts and Issues, these are the facts of the case.
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> During the period covering the taxable years 1995 to 1998, petitioner (herein respondent Petron) had been an assignee of several Tax Credit Certificates (TCCs) from various BOI-registered entities for which petitioner utilized in the payment of its excise tax liabilities for the taxable years 1995 to 1998. The transfers and assignments of the said TCCs were approved by the Department of Finance's One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF Center), composed of representatives from the appropriate government agencies, namely, the Department of Finance (DOF), the Board of Investments (BOI), the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR).
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> Taking ground on a BOI letter issued on 15 May 1998 which states that 'hydraulic oil, penetrating oil, diesel fuels and industrial gases are classified as supplies and considered the suppliers thereof as qualified transferees of tax credit,' petitioner acknowledged and accepted the transfers of the TCCs from the various BOI-registered entities.
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> Petitioner's acceptance and use of the TCCs as payment of its excise tax liabilities for the taxable years 1995 to 1998, had been continuously approved by the DOF as well as the BIR's Collection Program Division through its surrender and subsequent issuance by the Assistant Commissioner of the Collection Service of the BIR of the Tax Debit Memos (TDMs).
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> On January 30, 2002, respondent [herein petitioner CIR] issued the assailed

Assessment against petitioner for deficiency excise taxes for the taxable years 1995 to 1998, in the total amount of P739,003,036.32, inclusive of surcharges and interests, based on the ground that the TCCs utilized by petitioner in its payment of excise taxes have been cancelled by the DOF for having been fraudulently issued and transferred, pursuant to its EXCOM Resolution No. 03-05-99. Thus, petitioner, through letters dated August 31, 1999 and September 1, 1999, was required by the DOF Center to submit copies of its sales invoices and delivery receipts showing the consummation of the sale transaction to certain TCC transferors.

Instead of submitting the documents required by the respondent, on February 27, 2002, petitioner filed its protest letter to the 'Assessment' on the grounds, among others, that:

> a. The BIR did not comply with the requirements of Revenue Regulations 12-99 in issuing the "assessment" letter dated January 30, 2002, hence, the assessment made against it is void;
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> b. The assignment/transfer of the TCCs to petitioner by the TCC holders was submitted to, examined and approved by the concerned government agencies which processed the assignment in accordance with law and revenue regulations;
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> c. There is no basis for the imposition of the 50% surcharge in the amount of P159,460,900.00 and interest penalties in the amount of P260,620,335.32 against it;
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> d. Some of the items included in the 'assessment' are already pending litigation and are subject of the case entitled 'Commissioner of Internal Revenue vs. Petron Corporation,' C.A. GR SP No. 55330 (CTA Case No. 5657) and hence, should no longer be included in the 'assessment'; and
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> e. The assessment and collection of alleged excise tax deficiencies sought to be collected by the BIR against petitioner through the January 30, 2002 letter are already barred by prescription under Section 203 of the National Internal Revenue Code.

On 27 March 2002, respondent, through Assistant Commissioner Edwin R. Abella served a Warrant of Distraint and/or Levy on petitioner to enforce payment of the P739,003,036.32 tax deficiencies.

Respondent allegedly served the Warrant of Distraint and/or Levy against petitioner without first acting on its letter-protest. Thus, construing the Warrant of Distraint and/or Levy as the final adverse decision of the BIR on its protest of the assessment, petitioner filed the instant petition before this Honorable Court [referring to the CTA Second Division] on April 2, 2002.

On April 30, 2002, respondent filed his Answer, raising the following as his Special Affirmative Defenses:

> 6. In a post-audit conducted by the One-Stop Inter-Agency Tax Credit and Duty Drawback Center (Center) of the Department of Finance (DOF), pursuant to the Center's Excom Resolution No. 03-05-99, it was found that TCCs issued to Alliance Thread Co., Inc., Allstar Spinning, Inc., Diamond Knitting Corp., Fiber Technology Corp., Filstar Textile Industrial Corp., FLB International Fiber Corp., Jantex Philippines, Inc., Jibtex Industrial Corp., Master Colour System Corp. and Spintex International, Inc. were fraudulently obtained and were fraudulently transferred to petitioner. As a result of said findings, the TCCs and the Tax Debit Memos (TDMs) issued by the Center to petitioner against said TCCs were cancelled by the DOF;

7. Prior to the cancellation of the aforesaid TCCs and TDMs, petitioner had utilized the same in the payment of its excise tax liabilities. With such cancellation, the TCCs and TDMs have no value in money or money's worth and, therefore, the excise taxes for which they were used as payment are now deemed unpaid;

8. The cancellation by the DOF of the aforesaid TCCs and TDMs has the presumption of regularity upon which respondent may validly rely;

9. Petitioner was informed by the DOF of the post-audit conducted on the TCCs and was given the opportunity to submit documents showing that the TCCs were transferred to it in payment of petroleum products allegedly delivered by it to the TCC transferors upon which the TCC transfers were approved, with the admonition that failure to submit the required documents would result in the cancellation of the transfers. Petitioner was also informed of the cancellation of the TCCs and TDMs and the reason for their cancellation;

10. Since petitioner is deemed not to have paid its excise tax liabilities, a pre-assessment notice is not required under Section 228 of the Tax Code;

11. The letter dated January 20, 2002 (should be January 30, 2002), demanding payment of petitioner's excise tax liabilities explicitly states the basis for said demand, i.e., the cancellation of the TCCs and TDMs;
12. The government is never estopped from collecting legitimate taxes due to the error committed by its agents (Visayas Cebu Terminal Inc., vs. Commissioner of Internal Revenue, 13 SCRA 257; Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 102 SCRA 246). The acceptance by the Bureau of Internal Revenue of the TCCs fraudulently obtained and fraudulently transferred to petitioner as payment of its excise tax liabilities turned out to be a mistake after the post-audit was conducted. Hence, said payments were void and the excise taxes may be validly collected from petitioner.

13. As found in the post-audit, petitioner and the TCC transferors committed fraud in the transfer of the TCCs when they made appear (sic) that the transfers were in consideration for the delivery of petroleum products by petitioner to the TCCs transferors, for which reason said transfers were approved by the Center, when in fact there were no such deliveries;

14. Petitioner used the TCCs fraudulently obtained and fraudulently transferred in the payment of excise taxes declared in its excise tax returns with intent to evade tax to the extent of the value represented by the TCCs, thereby rendering the returns fraudulent;

15. Since petitioner wilfully filed fraudulent returns, it is liable for the 50% surcharge and 20% annual interest imposed under Sections 248 and 249 of the Tax Code;

16. Since petitioner wilfully filed fraudulent returns with intent to evade tax, the prescriptive period to collect the tax is ten (10) years from the discovery of the fraud pursuant to Section 222 of the Tax Code; and

17. The case pending in the Court of Appeals (CA-G.R. Sp. No. 55330 [CTA Case No. 5657]), and the case at bar have distinct causes of action. The former involves the invalid transfers of the TCCs to petitioner on the theory that it is not a qualified transferee thereof, while the latter involves the fraudulent procurement of said TCCs and the fraudulent transfers thereof to petitioner.

However, on November 12, 2002, respondent filed a Manifestation informing this Court that on May 29, 2002, it had reduced the amount of deficiency excise taxes to P720,923,224.74 as a result of its verification that some of the TCCs which formed part of the original "Assessment" were already included in a case previously filed with this Court. In effect, the amount of deficiency excise taxes is recomputed as follows:

Transferor	Basic Tax	Surcharge	Interest	Total
Alliance Thread Co. Inc.	P12,078,823.00	P 6,039,411.50	P 16,147,293.21	P 34,265,527.21
Allstar Spinning, Inc.	37,265,310.00	18,632,655.00	49,781,486.95	105,679,451.95
Diamond Knitting Corporation	36,764,587.00	18,382,293.50	49,264,758.35	104,411,638.85
Fiber Technology Corp.	25,300,911.00	12,650,455.50	34,295,655.90	72,247,022.40
Filstar Textile Corp.	40,767,783.00	20,383,891.50	54,802,550.16	115,954,224.66
FLB International Fiber Corp.	25,934,695.00	12,967,347.50	34,977,257.14	73,879,299.64
Jantex Philippines, Inc.	12,036,192.00	6,018,096.00	15,812,547.24	33,866,835.24
Jibtex Industrial Corp.	15,506,302.00	7,753,151.00	20,610,319.52	43,869,772.52
Master Colour system Corp.	33,333,536.00	16,666,768.00	44,822,167.06	94,822,471.06
Spintex International Inc.	14,912,408.00	7,456,204.00	19,558,368.71	41,926,980.71
Total	**P253,900,547.00**	**P126,950,273.50**	**P340,072,404.24**	**P720,923,224.74**

During the pendency of the case, but after respondent had already submitted his Formal Offer of Evidence for this Court's consideration, he filed an 'Urgent Motion to Reopen Case' on August 24, 2004 on the ground that additional evidence consisting of documents presented to the Center in support of the TCC transferor's claims for tax credit as well as document supporting the applications for approval of the transfer of the TCCs to petitioner, must be presented to prove the fraudulent issuance and transfer of the subject TCCs. Respondent submits that it is imperative on his part to do so considering that, without necessarily admitting that the evidence presented in the case of Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, to prove fraud is not clear and convincing, he may suffer the same fate that had befallen upon therein respondent when this Court held, among others, that 'there is no clear and convincing evidence that the Tax Credit Certificates (TCCs) transferred to Shell (for brevity) and used by it in the payment of excise taxes, were fraudulently issued to the TCC transferors and were fraudulently transferred to Shell.'

An 'Opposition to Urgent Motion to Reopen Case' was filed by petitioner on September 3, 2004 contending that to sustain respondent's motion would 'smack of procedural disorder and spawn a reversion of the proceedings. While litigation is not a game of technicalities, it is a truism that every case must be presented in accordance with the prescribed procedure to insure an orderly administration of justice.'

On October 4, 2004, this Court resolved to grant respondent's Motion and allowed respondent to present additional evidence in support of his arguments, but deferred the resolution of respondent's original Formal Offer of Evidence until after the respondent has terminated his presentation of evidence. Subsequent to this Court's Resolution, respondent then filed on October 20, 2004, a Request for the Issuance of Subpoena Duces Tecum to the Executive Director of the Center or his duly authorized representative, and on October 21, 2004, a Subpoena Ad Testificandum to Ms. Elizabeth R. Cruz, also of the Center.

Petitioner filed a 'Motion for Reconsideration (Re: Resolution dated October 4, 2004)' on October 27, 2004, with respondent filing his 'Opposition' on November 4, 2004, and petitioner subsequently filing its 'Reply to Opposition' on December 20, 2004. Petitioner's motion was denied by this Court in a Resolution dated February 28, 2005 for lack of merit.

On March 18, 2005, petitioner filed an 'Urgent Motion to Revert Case to the First Division' with respondent's 'Manifestation' filed on April 6, 2005 stating that 'the question of which Division of this Honorable Court shall hear the instant case is an internal matter which is better left to the sound discretion of this Honorable Court without interference by a party litigant'. On April 28, 2005, this Court denied the Motion of petitioner for lack of merit.

On November 7, 2005, the Court finally resolved respondent's 'Formal Offer of Evidence' filed on May 7, 2004 and 'Supplemental Formal Offer of Evidence' filed on August 25, 2005. On November 22, 2005, respondent filed a 'Motion for Partial Reconsideration' of the Court's Resolution to admit Exhibits 31 and 31-A on the ground that he already submitted and offered certified true copies of said exhibits, which the Court granted in its Resolution on January 19, 2006.

However, on February 10, 2006, respondent filed a 'Motion to Amend Formal Offer of Evidence' praying that he be allowed to amend his formal offer since some exhibits although attached thereto were inadvertently not mentioned in the Formal Offer of Evidence. Petitioner's 'Opposition' was filed on March 14, 2006. This Court granted respondent's motion in the Resolution dated April 24, 2006 and considering that the parties already filed their respective Memoranda, this case was then considered submitted for decision.

On May 16, 2006, however, respondent filed an 'Omnibus Motion' praying that this Court take judicial notice of the fact that the TCCs issued by the Center, including the TCCs in this instant case, contained the standard 'Liability Clause' and that the case be consolidated with CTA Case No. 6136, on the ground that both cases involve the same parties and common questions of law or fact. An 'Opposition/Comment on Omnibus Motion' was filed by petitioner on June 26, 2006, and 'Reply to Opposition/Comment' was filed by respondent on July 17, 2006.

In a Resolution promulgated on September 1, 2006, this Court granted respondent's motion only insofar as taking judicial notice of the fact that each of the dorsal side of the TCCs contains the subject 'liability clause', but denied respondent's motion to consolidate considering that C.T.A. Case No. 6136 was already submitted for decision on April 24, 2006.[4]

The Ruling of the Court of Tax Appeals–Second Division
(CTA Case No. 6423)

On 04 May 2007, the CTA Second Division promulgated a Decision in CTA Case No. 6423, the dispositive portion of which reads: