

SECOND DIVISION

[G.R. No. 176380, June 18, 2009]

PILIPINAS SHELL PETROLEUM CORPORATION, PETITIONER, VS. COMMISSIONER OF CUSTOMS, RESPONDENT.

D E C I S I O N

BRION, J.:

Before us is the Petition for Review on *Certiorari*^[1] filed by petitioner Pilipinas Shell Petroleum Corporation (*Shell*) questioning the Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 78564. The CA decision set aside the resolutions^[3] issued by the Court of Tax Appeals (CTA) in CTA Case No. 6484, which in turn denied the respondent Commissioner of Customs' (*respondent*) Motion to Dismiss the petition for review Shell filed with the tax court. The CA decision effectively dismissed Shell's tax protest case.

BACKGROUND FACTS

Shell is a domestic corporation engaged, among others, in the importation of petroleum and its by-products into the country. For these importations, Shell was assessed and required to pay customs duties and internal revenue taxes.

In 1997 and 1998, Shell settled its liabilities for customs duties and internal revenue taxes using tax credit certificates (TCCs) that were transferred to it for value by several Board of Investment (BOI)-registered companies. The transfers of the TCCs to Shell were processed by the transferors-BOI-registered companies and were eventually approved by the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (*the Center*). The Center is composed of the following government agencies: the Department of Finance (DOF), the Bureau of Internal Revenue (BIR), the Bureau of Customs (BOC), and the BOI. On the belief the TCCs were actually good and valid, both the BIR and the BOC accepted and allowed Shell to use them to pay and settle its tax liabilities.

In a letter dated November 3, 1999 (*Center's November 3 letter*), the Center, through the Secretary of the DOF, informed Shell that it was cancelling the TCCs transferred to and used as payment by the oil company, pursuant to its EXCOM Resolution No. 03-05-99. The Center claimed that after conducting a post-audit investigation, it discovered that the TCCs had been fraudulently secured by the original grantees who thereafter transferred them to Shell; no categorical finding was made regarding Shell's participation in the fraud. In view of the cancellation, the Center required Shell to pay the BIR and BOC the amounts corresponding to the TCCs Shell had used to settle its liabilities.

Shell objected to the cancellation of the TCCs claiming that it had been denied due process. Apparently, Shell had sent a letter to the Center on November 3, 1999

(*Shell's November 3 letter*) adducing reasons why the TCCs should not be cancelled; Shell claimed that the Center's November 3 letter cancelling the TCCs was issued without considering its letter of the same date.

The Center did not act on Shell's November 3 letter; instead, the respondent sent a letter dated November 19, 1999 (*respondent's November 19 letter*) to Shell requiring it to replace the amount equivalent to the amount of the cancelled TCCs used by Shell to satisfy its customs duties and taxes. The pertinent portion of the respondent's November 19 letter states:

In view of such cancellation, it becomes apparent that the Customs Official Receipts previously issued to [Shell] with the applications of the [TCCs] cited in said lists becomes null and void *ab initio*. In view thereof, your corporation must have to replace amount of P209,129,141.00 which is equivalent to the amount of the [TCCs] cancelled. The corresponding interest, surcharge and penalties thereof shall be relayed to you in due time after the recomputation.

Your immediate response to this demand letter shall be appreciated.

Shell submitted its reply letter dated December 23, 1999. [4] Shell maintained that the cancellation was improper since this was done without affording the corporation its right to due process. It further claimed that the existence of fraud in the issuance and transfer of the TCCs, or even Shell's participation in the alleged fraud, had not been sufficiently established.

Three years later, through letters dated February 15, February 20, and April 12, 2002 (*respondent's collection letters*), the respondent, through Atty. Gil Valera (*Atty. Valera*), Deputy Commissioner for Revenue Collections Monitoring Group, formally demanded from Shell payment of the amounts corresponding to the listed TCCs that the Center had previously cancelled. Except for the amount due, the respondent's collection letters were similarly worded, as follows:

In as much as the same [TCCs] were reported as having been utilized to pay your government obligations earlier, formal demand is hereby being made upon you to pay back the total amount of x x x within five (5) days from receipt thereof [*sic*]. Failure on your part to settle your obligation would constrain the Bureau of Customs to initiate legal action in the regular court.

Please consider this as our last and final demand.

As mentioned, all three letters were signed by Atty. Valera.

Shell replied to the respondent's February 15 and 20, 2002 collection letters *via* letters dated February 27 and March 4, 2002. Before it could reply to the respondent's April 12, 2002 collection letter, Shell received on April 23, 2002 the summons in one [5] of the three collection cases [6] filed by respondent against Shell before the Regional Trial Court (RTC) of Manila. In these collection cases, the respondent sought to recover the amounts covered by the cancelled TCCs; the complaints were all similarly worded except for the amount and TCCs involved, and were signed by Atty. Valera.

On May 23, 2002, Shell filed with the CTA a Petition for Review questioning the BOC collection efforts for lack of legal and factual basis. To quote the issues Shell submitted in its CTA petition:

1. Whether or not the TCCs subject of the instant petition for are genuine and authentic;
2. Whether or not petitioner's right to due process of law was violated by the issuance of the 1999 collection letter and/or the filing of the collection cases, both of which seek to enforce the Excom Resolution;
3. Whether or not attempts to collect unpaid duties and taxes, being based on the bare allegation that the TCCs were fraudulently issued and transferred, can be given any effect considering that fraud is never presumed but must be proven;
4. Assuming *arguendo* that fraud was present in the issuance of the original TCCs, whether or not such fraud can work to the prejudice of an innocent purchaser for value who is not a party to such fraud;
5. Whether or not the respondent and the DOF/Center are stopped from invalidating the TCCs and the transfers and utilizations thereof;
6. Whether or not the TCCs, having been utilized, are already *functus officio* and can no longer be cancelled.^[7]

The respondent filed a motion to dismiss Shell's petition for review on the ground of prescription. The respondent claimed that Shell's petition was filed beyond the 30-day period provided by law for appeals of decisions of the Commissioner of Customs to the CTA. The respondent also contended that this 30-day period should be counted from the time Shell received the respondent's collection letters.

Shell countered by invoking the case of *Yabes v. Flojo*,^[8] where this Court ruled, under the circumstances of that case, that a complaint for collection filed in court may be considered a final decision or assessment of the Commissioner^[9] that opened the way for an appeal to the CTA. Applying that principle, Shell contends the 30-day reglementary period should be counted from the date it received the summons for one of the collection cases filed by respondent or, specifically, on April 23, 2002, not from the date that it received the respondent's collection letters. The petition for review, having been filed on May 23, 2002, was thus instituted within the period provided by law.

The CTA found the respondent's contentions unmeritorious, and thus denied his motion to dismiss in a Resolution dated January 28, 2003.^[10] The tax court noted that the collection letters were issued and signed only by Atty. Valera, not by the respondent, so that Shell was justified in not heeding the demand. The CTA consequently declared that it is the filing of the collection cases in court that should instead be considered as the final decision of the respondent, and only then should the 30-day period to appeal commence. The respondent elevated the CTA decision

to the CA after the CTA denied its motion for reconsideration.^[11]

The appellate court annulled and set aside the CTA rulings in its decision dated May 3, 2006.^[12] It found the collection letters written by Atty. Valera "indicative of [respondent's] final rulings on the assessments concerning the spurious TCCs xxx which were then already appealable to the respondent CTA. Each letter carried a clear demand to pay within five (5) days from receipt, and each also carried a warning that *'this [is] our last and final demand.'*" On the authority of Atty. Valera to issue the collection letters, the appellate court pointed to Customs Memorandum Circular (CMC) No. 27-2001 that delegated the Commissioner's authority on matters relating to tax credit and transfers of tax credit to Atty. Valera, and to Customs Memorandum Order (CMO) No. 40-2001 that delegated the authority to sign, file, and prosecute civil complaints likewise to Atty. Valera.

Shell's attempt to have the CA decision reconsidered proved unsuccessful; hence, this petition.

THE PETITION

Shell insists, in this petition for review on *certiorari*, that its petition for review with the CTA was filed within the 30-day reglementary period that, it posits, should be counted from the date it received the summons for the collection cases filed by respondent against it before the regular court. Shell cites this Court's ruling in *Yabes v. Flojo*.^[13]

On the assumption that the collection letters amounted to a decision on its protest, Shell submits that these are not "decision[s] of the *Commissioner of Customs*" appealable to the CTA under Section 7, Republic Act (RA) No. 1125, as amended by RA No. 9282.^[14] *It maintains that it is the Commissioner's decision on the taxpayer's liability for customs duties and taxes, not the decision of his subordinate, which is the proper subject of the appeal to the CTA, the delegation of authority under CMC No. 27-2001 and CMO No. 40-2001 notwithstanding. It additionally claims that Atty. Valera was prohibited from carrying out his delegated duties under the injunctive writ issued the RTC of Manila in its Order dated August 27, 2001, and the Temporary Restraining Order the CA issued on April 4, 2002.*

THE COURT'S RULING

We resolve to DENY Shell's petition; the present case does not involve a tax protest case within the jurisdiction of the CTA to resolve.

The parties argue over which act serves as the decision of the respondent that, under the law, can be the subject of an appeal before the CTA, and from which act the 30-day period to appeal shall be reckoned. Shell insists it should be the filing of the collection suits as this was indicative of the finality of the respondent's action. The respondent, on the other hand, claims, it should be the earlier act of sending the collection letters where the respondent finally indicated his resolve to collect the duties due and demandable from Shell.

Section 7 of RA No. 1125, as amended, states: