REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

PHILIPPINE CORINTHIAN LINER CORPORATION, (PCLC), CLARITA DE GUZMAN a.k.a. CLAIRE DE LA FUENTE,
Accused.

CTA CRIM. CASE NOS. O-172, O-173, O-174, O-175, O-176, O-177, & O-178

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 08 2021
9:32 a.m.

x - x

RESOLUTION

RINGPIS-LIBAN, J.:

For resolution is the Prosecution's **Motion for Partial Reconsideration (of the Decision promulgated on June 30, 2020)** filed on July 15, 2020, seeking reconsideration of the civil aspect of the Decision, with Accused Clarita De Guzman a.k.a. Claire Dela Fuente's **Comment (To Motion for Partial Reconsideration of the Decision Dated June 30, 2020)** filed on September 7, 2020.

On June 30, 2020, the Court rendered its Decision finding Accused Dela Fuente guilty in the above-captioned consolidated cases. The dispositive portion thereof reads, as follows:

> "**WHEREFORE**, premises considered, the Court rules as follows:
>
> 1. Accused **CLARITA DE GUZMAN a.k.a. CLAIRE DELA FUENTE** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Sections 75, 76, and 255

in relation to Section 253 of the NIRC of 1997, as amended, in **CTA Criminal Case Nos. O-172, O-173, O-174, O-175, O-176, O-177, and O-178**. For each of the consolidated criminal cases, she is hereby **SENTENCED** to suffer the straight penalty of imprisonment of one (1) year and **ORDERED** to pay a fine in the amount of Fifty Thousand Pesos (₱50,000.00), with subsidiary imprisonment, in case Accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC, as amended; and

2. Accused **PHILIPPINE CORINTHIAN LINER CORPORATION** is likewise found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 in relation to Section 256 of the NIRC of 1997, as amended, in **CTA Criminal Case Nos. O-172, O-173, O-174, O-175, O-176, O-177, and O-178**. For each of the consolidated criminal cases, it **ORDERED TO PAY** a fine of One Hundred Thousand Pesos (₱100,000.00).

SO ORDERED."[1]

As grounds for reconsideration, the Prosecution claims that the Court erred in finding that the civil liability to pay the taxes which are the subject of the tax evasion case is not deemed instituted in the criminal case. The Prosecution argues that the case of *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue,*[2] should not have been applied as the factual circumstances are different.

This is incorrect.

In the *Lim Gaw* case, the FDDA was issued while the trial for the criminal case was ongoing. Lim Gaw filed a Petition for Review *Ad Cautelam* which he filed to assail the deficiency assessment for 2008 which was dismissed, however, due to the non-payment of filing fees. The assessment of "zero filing fees" by the CTA Clerk of Court was based on **Section 7(b)(1) of Republic Act No. 9282**, which states:

"Sec. 7. Jurisdiction – The CTA shall exercise:

"b. Jurisdiction over cases involving criminal offenses as herein provided:

"1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided,

[1] *Id.*, p. 8963.
[2] G.R. 222837, July 23, 2018.

> however, That offenses or felonies mentioned in this paragraph where the principal amount or taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, **the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.**"[3]

Rule 9, Section 11 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), implements the aforequoted section, thus:

> SEC. 11. Inclusion of civil action in criminal action. – In cases within the jurisdiction of the Court, **the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action.** No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized. *(Emphasis supplied)*

When Lim Gaw appealed the dismissal of the case to the Supreme Court, the High Court interpreted the said provision to mean that only civil liability *ex delicto* is what is jointly instituted with a criminal action. This is the same provision relied on by the Prosecution for reconsideration now. There is no difference.

Under the principle of stare decisis or rule of binding precedent, the general rule is that decisions of the Supreme Court have the force and effect of law and are binding upon the courts.[4] The Supreme Court by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only Supreme Court from whose decisions all other courts take their bearings.[5]

---

[3] Emphasis supplied.
[4] *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005, 478 SCRA 61.
[5] *Commissioner of Internal Revenue v. Michel J. Lhuillier*, G.R. No. 150947, July 15, 2003, 406 SCRA 178; *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, CTA EB No. 1215, April 28, 2015.

The Prosecution claims that the RRCTA took effect on December 15, 2005, and the instant criminal case was filed on January 5, 2009 with the understanding that the civil liabilities of taxes and penalties related to the tax evasion case are deemed instituted in the criminal case, with no right to reserve the filing of such civil action separately.

However, it must likewise be stressed that the interpretation placed upon a law by the Supreme Court constitutes a part of the law as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law, as held by the Supreme Court in the case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[6], as follows:

> "Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, **such interpretation constitutes a part of the law as of the date the statute is enacted.** It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith." *(Emphasis supplied)*

As discussed in the Decision, which *We* repeat for emphasis, *the Lim Gaw* case, elucidated the Bench and Bar on what encompasses the civil action that is jointly instituted with a criminal action, thus:

> "Rule 111, Section 1(a)[7] of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime.[8] **Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.**
>
> It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.[9]

[6] G.R. No. 197525, June 4, 2014.
[7] Sec. 1. *Institution of criminal and civil actions.* - (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action. (Emphasis ours)
[8] *Casupanan v. Laroya*, 436 Phil. 582, 595 (2002).
[9] *Proton Pilipinos Corp. v. Republic of the Phils.*, 535 Phil. 521, 533 (2006).

In the case of *Republic of the Philippines v. Patanao,*[10] We held that:

> **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x **Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes.** It is error to hold, as the lower court has held that the judgment in the criminal cases Nos. 2089 and 2090 bars the action in the present case. The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, **since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged.** x x x.[11](Citations omitted and emphasis ours)

Further, in a more recent case of *Proton Pilipinas Corp. v. Republic of the Phils.,*[12] We ruled that:

> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil

[10] 127 Phil. 105 (1967).
[11] *Id.* at 108-109.
[12] 535 Phil. 521 (2006).

liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan**, as it cannot be made the civil aspect of the criminal cases filed before it. It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. **Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged**. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.[13]" *(Emphasis supplied aside from those in the original)*

Even prior to the promulgation of the *Lim Gaw* case, the concept of civil liability *ex delicto* was discussed by the Supreme Court in *Dy v. People of the Philippines*[14], thus:

"Our laws recognize a bright line distinction between criminal and civil liabilities. **A crime is a liability against the state. It is prosecuted by and for the state.** Acts considered criminal are penalized by law as a means to protect the society from dangerous transgressions. As criminal liability involves a penalty affecting a person's liberty, acts are only treated criminal when the law clearly says so. On the other hand, civil liabilities take a less public and more private nature. Civil liabilities are claimed through civil actions as a means to enforce or protect a right or prevent or redress a wrong. They do not carry with them the imposition of imprisonment as a penalty. Instead, civil liabilities are compensated in the form of damages.

Nevertheless, our jurisdiction recognizes that a crime has a private civil component. Thus, while an act considered criminal is a breach of law against the State, our legal system allows for the recovery of civil damages where there is a

[13] *Id.* at 532-533.
[14] G.R. No. 189081, August 10, 2016.

> **private person injured by a criminal act. It is in recognition of this dual nature of a criminal act that our Revised Penal Code provides that every person criminally liable is also civilly liable. This is the concept of civil liability *ex delicto*.**" *(Emphasis supplied)*

The *Dy Case* went on to discuss the instances when civil liability *ex delicto* exists despite acquittal, stating that it may only be extinguished when there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist. However, such is not the case here where Accused Dela Fuente has been found guilty on all counts for which the penalties of imprisonment and fines have been imposed. While Accused Dela Fuente has applied for probation which is still being processed, the Court notes that she has paid all the fines in connection with the guilty verdict.[15] Hence, Accused Dela Fuente's civil liability *ex delicto* has been settled.

Proceedings Allowed to be Filed in Court Refer to Criminal Proceedings

The Prosecution claims that it should be allowed to collect Accused's civil liability arising from obligation - their deficiency taxes - in the criminal case as well since the Tax Code[16] itself provides that in the case of failure to file a return, **"a proceeding in court for the collection of taxes may be begun without assessment"**.

The Prosecution is correct to an extent. *We* stated in the Decision that it is not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper.[17] However, this is particular **only for criminal prosecutions**, and, as discussed above, the civil liability that may be adjudicated in such **pertains only to civil liability *ex delicto*.**

This was emphasized in *Ungab vs. Cusi, Jr., et al.*[18] where the Supreme Court held that while there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code.

As recounted in the Decision, this was later reiterated in the case of *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[19]

[15] *Id.* at Note 1, p. 9003-9004, Resolution dated July 16, 2020.
[16] National Internal Revenue Code, R.A. 8424, as amended by R.A. 10963.
[17] *Id.* at Note 2, citing *Ungab v. Judge Cusi, Jr.*, 186 Phil. 604, 610-611 (1980).
[18] G.R. No. L-41919-24, May 30, 1980.
[19] G.R. No. 128315, June 29, 1999.

where the Supreme Court held that an assessment is not necessary before filing a criminal complaint, to wit:

> Private respondents maintain that the filing of a criminal complaint must be preceded by an assessment. This is incorrect, because **Section 222 of the NIRC specifically states that** in cases where a false or fraudulent return is submitted or **in cases of failure to file a return such as this case, proceedings in court may be commenced without an assessment.** Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously. In *Ungab v. Cusi,* petitioner therein sought the dismissal of the criminal Complaints for being premature, since his protest to the CTA had not yet been resolved. The Court held that such protests could not stop or suspend the criminal action which was independent of the resolution of the protest in the CTA. This was because the commissioner of internal revenue had, in such tax evasion cases, discretion on whether to issue an assessment or to file a criminal case against the taxpayer or to do both.
>
> Private respondents insist that Section 222 should be read in relation to Section 255 of the NLRC, which penalizes failure to file a return. They add that a tax assessment should precede a criminal indictment. We disagree. To reiterate, said Section 222 states that an assessment is not necessary before a criminal charge can be filed. This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, the criminal charge need only be supported by a *prima facie* showing of failure to file a required return. This fact need not be proven by an assessment. (*Emphasis supplied)*

The Court Has Not Acquired Jurisdiction to Enforce Civil Liability Arising from the Assessments

The Prosecution claims that requiring an assessment or awaiting the CIR's decision before civil liabilities may be imposed to collect the taxes is a clear contravention of such provision in the NIRC which states that even without assessment, the government can collect taxes if there was failure to file a return.

We have already discussed above how collection of taxes arising out of obligation, and not from delict, is not included in criminal proceedings that may be filed without assessment.

As for civil liabilities arising from obligation that require an assessment, Section 228 of the Tax Code provides:

"SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In the Decision sought to be reconsidered, *We* stated:

"Section 9 of R.A. No. 9282 also gives the taxpayer the remedy of filing a case with the CTA, a Petition for Review, within 30 days from receipt of the decision or the inaction of the respondent.

It appears from the record that the PAN[20] with Annexes, Details of Discrepancies and Computation of Liabilities, FLD[21] and FAN[22] were all **actually received** by Accused Dela Fuente as indicated in the Protest to FLD/FAN[23] by one of her counsels, Kapunan Garcia & Castillo, thus:

> 'PCLC saw a copy of the said letter on January 21, 2012 and noticed that the contents of this letter were communicated to our client several times. Correspondingly, **our client already answered such contents several times.**'

The last sentence in boldface presumably referring to Protest to the PAN[24] and the Protest Letter[25] to FLD/FAN, both by Atty. Marbibi whose representation Accused Dela Fuente has not disavowed. In any case, the protests to the FAN/FLD by both counsels have both been filed timely.

In the instant case, pursuant to Section 228 of the NIRC, as amended, and Section 3.1.4 of RR No. 12-99, as amended, **both Accused are given the option to either appeal to the CTA** within 30 days after the expiration of the 180-day period counted from the date of submission of the relevant supporting documents within sixty (60) days from filing of the protest on February 17, 2012, counted from the filing of the *Kapunan Protest*; **or await the final decision of the Commissioner's duly authorized representative on the disputed assessment.**

Since the record is bereft of any information on whether or not both Accused filed any supporting documents, the **180-day period** given by law for the CIR's duly authorized representative to act on the protest **ended on August 15, 2012, counted from the filing of the protest**. Accordingly, both Accused had 30 days from August 15, 2012 or **until September 14, 2012** to file its appeal with the CTA. However, since that time has long passed, **both Accused have no other recourse but to await the final decision of the CIR on the protest**. Prior to that eventuality, this Court is bereft of jurisdiction to subject the assessment to judicial review."

[20] Exhibit V^4, 111, 111-A to 111-C showing the PAN.
[21] Exhibit B^8, B^8-1, 111-DD, 111-DD-1, 111-EE showing the FLD with attached Details of Discrepancies.
[22] Exhibits B^8-2 to B^8-8 showing the FAN for the years 1998 to 2004.
[23] Exhibit Q^8 showing Protest Letter dated February 17, 2002 by Kapunan Garcia and Castillo Law Offices to protest the FLD dated September 12, 2011.
[24] Exhibit P^8, 111-KK; Marbibi Law Office letter dated June 14, 2011 addressed to Asst. Comm. James Roldan.
[25] Exhibit X^8 showing Letter of Maribi & Associates dated January 21, 2012.

As can be gleaned from the foregoing, the ball is in the hands of the Commissioner of Internal Revenue (CIR) whose decision on the protest is still being awaited by the taxpayer. Whether the CIR chooses to act on the protest or not is outside the ambit of the jurisdiction of this Court on the matter.

Accused PCLC Had Representation During Trial

In the Comment of the Defense to the motion for reconsideration, Accused Dela Fuente claims that since the inception of the proceedings in this case, it was only her that was represented by counsel and that Philippine Corinthian Liner Corp. (PCLC) was not represented by any counsel.

She further avers that the records would show that no one represented PCLC in the case as it is no longer in operation and that the penalty imposed against PCLC in the Decision was paid by her just to buy peace and was against the advice of her lawyers.

We find no merit in Accused Dela Fuente's claim that it was only her that was represented by counsel and not PCLC. While the Entries of Appearance of Accused Dela Fuente's counsel in the consolidated cases use the caption "People of the Philippines, *Plaintiff*, vs. Clarita De Guzman a.k.a. Claire Dela Fuente, *Accused*", such is a violation of Rule 7, Section 1 of the Revised Rules of Court.[26]

In the Warrants of Arrests issued by the Court in these consolidated cases, the caption clearly stated therein that this case was for "People of the the Philippines, *Plaintiff*, vs. **Philippine Corinthian Liner Corporation (PCLC),** Clarita De Guzman a.k.a. Claire Dela Fuente, *Accused*". A perusal of the records of the case also show that in no less than **twenty-nine (29) hearings**[27], counsel for both Accused entered their appearance **with no reservations or qualifications whatsoever that they were representing Accused Dela Fuente only**.

The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result.[28] It should be resorted to solely as a means

---

[26] Rule 7, Parts of a Pleading, Section 1. *Caption*. - The caption sets forth the name of the court, the title of the action, and the docket number if assigned.
[27] TSN, p. 2, Minutes of the Hearing dated October 17, 2012, January 16, 2013, July 17, 2013 August 7, 2013, September 4, 2013, October 30, 2013, February 5, 2014, March 26, 2014, April 30, 2014, July 9, 2014,July 30, 2014, August 20, 2014, September 17, 2014, March 25, 2015, April 8, 2015, June 10, 2015, September 9, 2015, October 21, 2015, May 11, 2016, April 11, 2018, May 09, 2018, July 25, 2018, January 30, 2019, March 13, 2019, April 10, 2019, May 8, 2019, June 19, 2019, June 26, 2019, and July 3, 2019.
[28] *Megan Sugar Corporation v. Regional Trial Court of Iloilo, Branch 68, Dumangas, Iloilo, et al.*, G.R. No. 170352, June 1, 2011.

of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond the requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.

The elements of estoppel are: *first,* the actor who usually must have knowledge, notice or suspicion of the true facts, **communicates something to another in a misleading way, either by words, conduct or silence**; *second,* the other in fact relies, and relies reasonably or justifiably, upon that communication; *third,* the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and *fourth,* the actor knows or expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[29]

From the foregoing, it is clear that throughout the entire trial, PCLC was indeed also represented by counsel for Accused Dela Fuente.

Furthermore, under the doctrine of separate legal entity, a corporation is considered to have a legal personality distinct and separate from its directors, individual stockholders or members.[30] However, this is just a general rule. As a matter of exception, the doctrine of Piercing the Corporate Veil allows a stockholder or member of a corporation to be held liable for the obligations of the corporation. This doctrine allows the State to disregard for certain justifiable reasons the notion or fiction that the corporation has a legal personality separate and distinct from the corporators composing it. The said doctrine is applicable when the separate personality of the corporation is used as a means to perpetuate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.[31]

In relation to the foregoing, the following excerpts from the Decision are quoted to bear emphasis:

> In *Republic Gas Corporation, et. al, vs. Petron Corporation, et.al.,*[32] the Supreme Court ruled that the corporate officers whose **act, default or omission** caused a corporation to commit a crime may themselves be individually liable for the crime. The liability of corporate officers were discussed in *Republic Gas*, thus:
>
> > "Petitioners, being corporate officers and/or directors, **through whose act, default or omission the corporation commits a crime, may**

[29] *British American Tobacco v. Camacho, et al.,* G.R. No. 163583, August 20, 2008.
[30] *Bustos v. Millians Shoe Inc.,* G.R. 185024, 24 April 2017.
[31] *Lanuza Jr. v. BF Corp.,* G.R. 174938, 1 October 2014.
[32] G.R. No. 194062, June 17, 2013.

> **themselves be individually held answerable for the crime.** Veritably, the CA appropriately pointed out that petitioners, **being in control and supervision in the management and conduct of the affairs of the corporation, must have known or are aware** that the corporation is engaged in the act of refilling LPG cylinders bearing the marks of the respondents without authority or consent from the latter which, under the circumstances, could probably constitute the crimes of trademark infringement and unfair competition. **The existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally caused the corporation to commit a crime.** Thus, petitioners cannot hide behind the cloak of the separate corporate personality of the corporation to escape criminal liability. **A corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor.**"

Given the foregoing discussion, it is without a doubt that Accused Dela Fuente was well-aware that operations were being conducted by PCLC, either through themselves or the smaller bus operators who were using the franchises granted exclusively to PCLC, especially since most, if not all, LTFRB and LTO approvals granted to PCLC were indeed facilitated by her. Considering that she herself admitted to being given the "power of the purse" to settle any and all claims against PCLC, which necessarily includes claims by the government as regards unpaid taxes, Accused Dela Fuente cannot escape the consequences of being a responsible officer, agent or employee of PCLC and must be held liable for its crimes.

Considering the foregoing, the CIR's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice