Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PILIPINAS SHELL PETROLEUM CORPORATION, Petitioner, **- versus -** **COMMISSIONER OF CUSTOMS, COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS, BUREAU OF CUSTOMS, AND THE BUREAU OF INTERNAL REVENUE,** Respondents.	**CTA EB No. 1007** (CTA Case No. 8004)

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COMMISSIONER OF CUSTOMS, COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS, BUREAU OF CUSTOMS, COMMISSIONER OF INTERNAL REVENUE AND THE BUREAU OF INTERNAL REVENUE, Petitioners, **-versus -** **PILIPINAS SHELL PETROLEUM CORPORATION,** Respondent.	**CTA EB No. 1003** (CTA Case No. 8004) Present: **DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.* **Promulgated:** SEP 05 2016 4:15 p.m.

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AMENDED DECISION

CASANOVA, *J.*:

Submitted before the Court *En Banc* are the following:

1. Pilipinas Shell Petroleum Corporation's (PSPC's) **Motion for Reconsideration of the Decision dated 28 September 2015**[1] filed on November 2, 2015, with the Commissioner of Customs, Collector of Customs of the Port of Batangas, Bureau of Customs, Commissioner of Internal Revenue and the Bureau of Internal Revenue's (hereafter, "public petitioners") **Manifestation and Motion (In lieu of Comment)**[2], filed through registered mail on January 13, 2016;

2. Public petitioners' **Omnibus Motion for (1) Partial Reconsideration and (2) Clarification**[3] filed, through registered mail, on October 27, 2015, with PSPC's **Opposition [Re: Omnibus Motion for Partial Reconsideration and Clarification dated 26 October 2015]**[4] filed on December 21, 2015;

3. PSPC's **Manifestation and Motion [To Defer Resolution]**[5] filed on January 21, 2016, with public petitioner's **Opposition**[6] filed, through registered mail, on February 15, 2016 and PSPC's **Reply [To Opposition dated 15 February 2016]**[7] filed on June 24, 2016; and

4. PSPC's **Motion for Leave to File and Admit Supplemental Motion for Reconsideration with Supplemental Motion for Reconsideration [Re: Decision dated 28 September 2015]**[8] filed on April 15, 2016, with public petitioners' **Comment (With Motion for Urgent Resolution)**[9] filed on June 22, 2016.

On September 28, 2015, the Court *En Banc* promulgated a Decision[10] which modified the conclusions reached by the Court in Division, the *fallo* of which reads as follows:

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[1] CTA *En Banc* Rollo (CTA EB No. 1003), Vol. VI, pp. 2618-2634
[2] *Ibid.*, pp. 2722-2726
[3] *Id.*, pp. 2635-2648
[4] *Id.*, pp. 2665-2717
[5] *Id.*, pp. 2728-2735
[6] *Id.*, pp. 2741-2748
[7] *Id.*, pp. 2786-2797
[8] *Id.*, pp. 2759-2767
[9] *Id.*, pp. 2776-2785
[10] CTA *En Banc* Rollo (CTA EB No. 1003), Vol. VI, pp. 2531-2617

> "**WHEREFORE**, the public petitioners' Petition for Review is **PARTIALLY GRANTED**, while PSPC's Petition for Review is hereby **DENIED** for lack of merit.
>
> Accordingly, the Resolutions dated November 27, 2012 and March 26, 2013, respectively, promulgated by the CTA Third Division is **MODIFIED**. Pilipinas Shell Petroleum Corporation is **LIABLE** for the unpaid excise taxes and VAT for its subject Catalytic Cracked Gasoline and Light Catalytic Cracked Gasoline importations <u>for the relevant periods in 2006 to 2009</u>.
>
> **SO ORDERED.**"

Undaunted, PSPC filed a Motion for Reconsideration assailing the above Decision. In its Motion, PSPC mainly argues that the Court *En Banc* grossly erred, acting, in fact, with grave abuse of discretion amounting to excess of jurisdiction, in upholding the letter-ruling dated December 15, 2009 made by then Commissioner of Internal Revenue (CIR) Joel L. Tan-Torres (*"Tan-Torres Ruling"*) and finding PSPC liable for excise taxes on its Catalytic Cracked Gasoline (CCG) and Light Catalytic Cracked Gasoline (LCGG) importations. In support of its arguments, PSPC reiterated, with much emphasis, its previous arguments during trial and adopted as integral parts of its Motion the *Dissenting Opinion* of Honorable Justice Ma. Belen M. Ringpis-Liban in the assailed Decision. As such, PSPC prays that the *En Banc* Decision dated September 28, 2015 insofar as it held PSPC liable for excise taxes and value-added tax (VAT) on its relevant past CCG and LCCG importations from 2004-2009 be reversed and the *Tan-Torres Ruling* dated December 15, 2009 be nullified.

On the other hand, public petitioners filed an Omnibus Motion seeking partial reconsideration and clarification of the same *En Banc* Decision. Public petitioners claim that PSPC's availment of tax amnesty under Republic Act (RA) No. 9480 does not altogether exempt it from paying the assessed excise taxes and VAT for taxable years 2004 and 2005 since the said tax amnesty applies only to unpaid internal revenue taxes collectible by the Bureau of Internal Revenue (BIR); whereas, CCG and LCCG are excise taxes paid to and collected by the Bureau of Customs (BOC). Public petitioners also assert that PSPC's failure to pay the assessed excise taxes, documentary customs stamp and docket fee, as required under the Tariff and Customs Code of the Philippines (TCCP), effectively rendered the assessment issued by the Collector of

Customs of the Port of Batangas final and conclusive. Lastly, as to their clarification, public petitioners seek to clarify the imposition of interest, surcharges and penalties which should be attendant to the unpaid excise taxes and VAT in the assailed Decision.

While, as to PSPC's Manifestation and Motion [To Defer Resolution], PSPC requests for the deferment of the resolution of its Motion for Reconsideration of the Decision dated 28 September 2015 and that of public petitioners' Omnibus Motion for (1) Partial Reconsideration and (2) Clarification. PSPC beseeches the Court *En Banc* that pursuant to the principle of judicial courtesy, the determination of the aforesaid Motions should be held in abeyance in order to afford the Supreme Court the opportunity to evaluate the merits of its Petition for Certiorari [With Application For The Issuance Of A Temporary Restraining Order and/or Writ Of Preliminary Injunction][11] filed on June 26, 2015, which questions the denial of its Motion to Suspend Proceedings.[12]

Furthermore, in its Motion for Leave to File and Admit Supplemental Motion for Reconsideration, PSPC bears emphasis on the CTA case entitled Kerry Food Ingredients Cebu, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8593, February 9, 2016, (*"Kerry case"*) in as much as it is relevant herein as the validity of the assessment in the *Kerry case* was nullified since its basis, Revenue Memorandum Circular (RMC) No. 44-2007, was ostensibly issued without due process of law, just like that of the *Tan-Torres Ruling*. Thus, PSPC prays that leave be granted by the Court *En Banc* and that its Supplemental Motion for Reconsideration be admitted. PSPC likewise reiterates its previous prayers in its Motion for Reconsideration.

Accordingly, after due consideration, the parties' respective Manifestations filed on January 13, 2016 and January 21, 2016 are hereby **NOTED**. As to PSPC's Motion for Leave to File and Admit Supplemental Motion for Reconsideration, the same is hereby **GRANTED**. Thus, the attached Supplemental Motion for Reconsideration [Re: Decision dated 28 September 2015] is hereby admitted as forming part of the records of the case.

[11] Docketed as G.R. Nos. 218532-33
[12] As per CTA *En Banc* Resolution dated September 2, 2014

Conversely, however, *We* find no merit in PSPC's Motion for Reconsideration, Supplemental Motion for Reconsideration and Motion to Defer Resolution.

With regard to public petitioners' Motion (In lieu of Comment) and Motion for Urgent Resolution, *We* **GRANT** the same. Consequently, public petitioners' Comment[13] on the PSPC's Petition for Review and their Consolidated Memorandum[14] are adopted and deemed as their comment. At any rate, however, *We* only find partial merit in public petitioners' Omnibus Motion for (1) Partial Consideration and (2) Clarification.

We shall first discuss PSPC's Motions.

Perusal of PSPC's Motion for Reconsideration reveals that the arguments raised therein were already threshed out in the Decision dated September 28, 2015. PSPC merely restates portions of the *Dissenting Opinion* in an attempt to sway the Court *En Banc* into holding otherwise and reversing the assailed Decision; hence, to address them anew would be mere superfluity.

With regard to its Supplemental Motion for Reconsideration, PSPC's reliance on the *Kerry case* is misplaced considering that the issues and subject matter in the said case are not on all fours with the present controversy. In the *Kerry case*, petitioner therein claims that pursuant to Section 3 of Revenue Regulations (RR) No. 3- 2004, the 1% withholding tax on income payments by taxpayers to suppliers of agricultural products under Section 2.57.2(S) of RR No. 2-98, as amended, was indefinitely suspended. Thus, by virtue of such suspension, petitioner therein did not apply the 1% withholding tax on its purchases of marine products from its agricultural suppliers. However, when the then CIR issued Revenue Memorandum Circular (RMC) No. 44-2007 on July 6, 2007, petitioner argues that it was not informed of the clarifications made therein, especially the portion which explicitly states that, "there is no ground by which agricultural suppliers can claim that they are exempt from the imposition of withholding tax on their sales to top 10,000 private corporations and/or to the government by virtue of the suspension granted by RR No. 3-2004. In fine, RR No. 3-2004 did not in any way affect the taxability of

[13] Filed on August 2, 2013
[14] Filed, through registered mail, on November 18, 2013

agricultural suppliers for withholding tax purposes, insofar as their dealing with the top 10,000 private corporations and/or with the government is concerned". It is for the precise reason that there were conflicting administrative issuances in the *Kerry case* why the CTA Third Division elucidated the matter on administrative rule. By contrast, such is not the predicament in the present consolidated cases. PSPC's obligation to pay the assessed excise taxes is anchored not on an administrative issuance but on the explicit provisions of the National Internal Revenue Code (NIRC) of 1997, as amended.

As to the Motion to Defer Resolution, *We* cannot help but observe that PSPC has been insisting this issue as early as April 4, 2014[15]. Albeit having been found without any factual and legal basis to warrant the suspension of the proceedings,[16] PSPC is still determined to have the same deferred banking on the sole theory that the CTA First Division might prejudge the case pending before it entitled *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, et al.*, docketed as CTA Case No. 8535. The only difference now, is that PSPC invokes the principle of "judicial courtesy" to bolster its argument.

We see no reason to deviate from our earlier ruling on the issue at hand.

The principle of judicial courtesy and comity stemmed out from the familiar norm that when a court of competent jurisdiction acquires jurisdiction over the subject matter of a case, its authority continues, subject only to the appellate authority, until the matter is finally and completely disposed of, and that no court of co-ordinate authority is at liberty to interfere with its action. The principle is essential to the proper and orderly administration of the laws and is enforced to prevent unseemly, expensive, and dangerous conflicts of jurisdiction and of the process.[17] In the present controversy, the consolidated cases are already within an arm's reach to the finish line. As such, to suspend the resolution of the instant cases would only be futile.

Moreover, the Rules of Civil Procedure are explicit on the matter. Section 7 of Rule 65 thereof decrees that "[t]he petition shall not interrupt the course of the principal case, unless a temporary

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[15] PSPC's Motion to Suspend Proceedings And/Or Defer Resolution
[16] As per *En Banc* Resolution dated April 8, 2015
[17] *See* 14 Am, Jr. 435-436, cited in Francisco, Vicente, Revised Rules of Court, pp. 57-58, Vol. I, 1965 ed.

restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case."[18] Thus, without any Temporary Restraining Order or Preliminary Injunction issued by the Supreme Court over the pending incident, *We* shall continue to perform our duty to dispense every pending case within our jurisdiction with utmost integrity, diligence and haste.

That having been settled, *We* shall now proceed with public petitioners' Motions.

Anent their Omnibus Motion for (1) Partial Consideration, public petitioners' foremost claim that PSPC's availment of tax amnesty under RA No. 9480 does not altogether exempt it from paying the assessed excise taxes and VAT for taxable years 2004 and 2005 since the said tax amnesty applies only to unpaid internal revenue taxes collectible by the BIR.

We do not agree.

Paragraph 1, Section 6 of RA No. 9480[19], otherwise known as "An Act Enhancing Revenue Administration And Collection By Granting An Amnesty On All Unpaid Internal Revenue Taxes Imposed By The National Government For Taxable Year 2005 And Prior Years", provides that:

> "**SEC. 6. Immunities and Privileges.** — Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:
>
> 1. <u>The taxpayer shall be immune from the payment of taxes</u>, as well as addition thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, <u>arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years</u>." *(Underscoring Ours)*

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[18] *See* A.M. No. 07-7-12-SC dated December 4, 2007
[19] Dated July 24, 2006

Clearly, taxpayers who avail of the tax amnesty provided under RA No. 9480 are immune from paying taxes arising from the failure to pay any and all internal revenue taxes for the relevant years involved. In fact, Section 3 of Department Order No. 29-07[20] of the Department of Finance, as reiterated in RMC No. 55-2007[21], further strengthens PSPC's entitlement to the tax amnesty by pronouncing that "[t]he tax amnesty shall cover all national revenue taxes imposed by the National Government for the taxable year 2005 and prior years, with or without assessments duly issued therefore, that have remained unpaid as of December 31, 2005."

In addition thereto, public petitioners cannot insist that RA No. 9480 does not apply to the taxes collectible by the Commissioner of Customs (COC), Collector of Customs and the BOC since the "tax amnesty applies only to unpaid internal revenue taxes collectible by the BIR". Lest they have forgotten, Section 12[22] of the NIRC of 1997, as amended, constitutes the COC and his subordinates as agents of the CIR with respect to the collection of national internal revenue taxes on imported goods. Considering that excise tax and value-added tax are national internal revenue taxes, PSPC's application for tax amnesty for the relevant periods of 2004 and 2005 are upheld.

More so, public petitioners assert that PSPC's failure to pay the assessed excise taxes, documentary customs stamp and docket fee, as required under Sections 2308, 3301 and 3303 of the TCCP, as amended, and Customs Administrative Order (CAO) No. 2-2001 effectively rendered the assessment issued by the Collector of Customs of the Port of Batangas final and conclusive.

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[20] "RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9480", dated August 15, 2007

[21] "Publishing the Full Text of Department Order No. 29-07 Dated August 15, 2007, 'Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9480,' Otherwise Known as 'Tax Amnesty Act of 2007'", dated August 21, 2007

[22] **SEC. 12.** ***Agents and Deputies for Collection of National Internal Revenue Taxes*** - The following are hereby constituted agents of the Commissioner:(a) The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods;(b) The head of the appropriate government office and his subordinates with respect to the collection of energy tax; and(c) Banks duly accredited by the Commissioner with respect to receipt of payments internal revenue taxes authorized to be made thru bank.Any officer or employee of an authorized agent bank assigned to receive internal revenue tax payments and transmit tax returns or documents to the Bureau of Internal Revenue shall be subject to the same sanctions and penalties prescribed in Sections 269 and 270 of this Code.

Again, *We* do not agree.

As correctly pointed out by PSPC, the issue of effectively rendering the assessment as final and executory has been belatedly raised by public petitioners. Had public petitioners really believed that their assessment already attained finality, they would have adequately pointed out such fact at the onset. Nonetheless, to squarely address the current issue raised, the applicable provisions cited by the public petitioners are quoted hereafter for ease of reference:

> "**Section 2308.** *Protest and Payment of Protest in Civil matter* – When a ruling or decision of the Collector is made whereby liability for duties, fees or other money charge is determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefore. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 3301." *(Underscoring Ours)*
>
> "**Sec. 3301.** *Other Fees and Charges.* — For services rendered and documents issued by the Bureau of Customs the following fees shall be charged and collected, by affixing the documentary customs stamps in the correct amount upon the document or any other paper which is the subject of the charge and by the cancellation of such stamps in the manner prescribed by the Commissioner; and no such document or any other paper shall be issued or granted by any customs official until the correct amount of stamps shall have been affixed and cancelled: *x x x*" *(Underscoring Ours)*
>
> "**Sec. 3303.** *Effect of Failure to Affix Stamp upon Document.* — No document or any other paper upon which no documentary customs stamps have been affixed and cancelled shall be received or recognized by any customs official."
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> "**CUSTOMS ADMINISTRATIVE ORDER NO. 02-2001**
> SUBJECT: Rates of Customs Fees and Charges

Pursuant to Sections 608 and Section 3301 to 3304, Tariff and Customs Code of the Philippines, in relation to Section 36, Administrative Code of 1987 and Executive Orders Nos. 197 and 218, both series of year 2000 as implemented by DOF and DBM Joint Circular No. 2000-2 dated April 3, 2000, the rates of Customs fees and charges in all ports of the Philippines shall be as follows:

1. *x x x* *x x x* *x x x*

2. *Refund Processing Fees/Docket Fees*

On ordinary claims for refund of tax and duty payments, including cash bonds; and for each formal protest/appeal from the decision of the District Collector/Valuation and Classification Review Committee (VCRC)

Amount of Claim Protested Amount	Processing Fees/ Docket Fee
Up to ₱50,000	₱500
Over ₱50,000 to 100,000	600
Over ₱100,000 to 200,000	700
Over ₱200,000 to 300,000	800
Over ₱300,000 to 400,000	900
Over ₱400,000 to 500,000	1,000
Over ₱500,000 to 750,000	1,500
Over ₱750,000 to 1,000,000	2,000
Over ₱1,000,000	3,000"

From the foregoing, payment of the assessed taxes as a prerequisite to the filing of a protest requires that the case must be the subject of a protest or a protestable case[23]. Apropos thereto, the protest mechanism mentioned in the above-cited provisions applies when the liability for duties, taxes, fees or other money charge is determined. In other words, the protest contemplated under Section 2308 of the TCCP, as amended, refers to goods that are still within the customs territory.

[23] **Section 2309.** *Protest Exclusive Remedy in Protestable Case* – In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters correctible for manifest error in the manner prescribed in section one thousand seven hundred seven thereof.

which first requires payment of duties and taxes pending its release thereof. As stated in the said Section, *"at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter".* Even so, the very fact that PSPC had secured Authority To Release Imported Good (ATRIG) from public petitioners confirms that the present controversy is not the one covered by the protest mechanism referred above.

Similarly, the case of *Philippine Phosphate Fertilizer Corporation vs. The Honorable Commissioner of Customs*[24], contemplates the scenario when the protest mechanism applies, *viz*:

> "A reading of the said provisions of law <u>clearly shows that the requirement of a prior protest as an exclusive remedy in protestable cases applies only to a situation 'whereby liability for duties, taxes, fees and other charges are determined'. This necessarily refers to a situation where a particular shipment has arrived and there is a dispute between the importer and the Collector as to the correct determination of duties, taxes, fees and other charges</u>. That is why the law requires the importer to file a protest 'at the time when payment of the amount claimed to be due the government is made or within fifteen (15) days thereafter.' *x x x." (Underscoring Ours)*

In the same vein, considering that there was no protest to speak of under Section 2308 of the TCCP, as amended, or a protestable case for that matter, the requirement of payment of documentary customs stamps under Section 3301, in relation to Section 3303 of the TCCP, as amended and CAO No. 2-2001 is necessarily not applicable for the simple reason that there were no services rendered or documents issued by the BOC to warrant its application.

Lastly, as to their Omnibus Motion for (2) Clarification, public petitioners' seek to clarify the imposition of interest, surcharges and penalties which are attendant to the unpaid excise taxes and VAT as held by the Court *En Banc.*

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[24] CTA Case No. 4994, August 4, 1995

As borne in the records, PSPC received a demand letter[25] dated January 30, 2009 from the District Collector of the Port of Batangas, Atty. Juan N. Tan, demanding payment within ten (10) days from receipt thereof, of the aggregate amount of ₱21,419,603,310.00, broken down as follows:

VAT	EXCISE TAX	PENALTY	TOTAL
₱383,518,910.00	₱3,186,414,975.00	₱17,849,669,425.00	₱21,419,603,310.00

Subsequently, a final demand letter[26] dated September 14, 2009 was issued by the District Collector of the Port of Batangas stating that it was able to retrieve additional import entries of PSPC's CCG shipments for years 2004, 2005 and 2009 with unpaid excise tax and VAT on the excise tax in the amount of ₱3,778,834,048.00 which shall be in addition to PSPC's initial unpaid deficiency taxes in the amount of ₱3,569,933,885.00[27]. Hence, the total due and demandable amount for the unpaid excise tax and the VAT thereon of PSPC's CCG and LCCG importations for years 2004 to 2009 ballooned up to ₱7,348,767,933.00, exclusive of interests, penalty and other charges.

In this regard, Section 131 of the NIRC, of 1997, as amended, is clear on when payment for excise taxes on imported articles should be made, viz:

> "**SEC. 131.** *Payment of Excise Taxes on Imported Articles.—*
>
> *Persons Liable.*—Excise taxes on imported <u>articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse</u>, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption."
> *(Underscoring Ours)*

In the present cases, the time of removal from the customhouse is reckoned from the time that PSPC was supposed to pay the excise tax and the VAT due thereon. Intrinsically, *We* shall consider the bank

[25] Annex "I" of the Petition for Review, Docket (CTA Case No. 8004), Vol. I
[26] Annex "P", *ibid.*
[27] ₱383,518,910.00 + ₱3,186,414,975.00 (VAT + Excise Tax)

validation date printed on the Import Entry Internal Revenue Declaration (IEIRD) as the reckoning point thereof. The bank certification date found at the rightmost portion of the IEIRD signifies the time when customs duties and fees were paid by PSPC and, likewise, the time when the excise taxes and the VAT due on the subject importations should have also been paid. Nevertheless, *We* shall only determine the deficiency amount for the relevant periods of 2006 to 2009 in view of PSPC's availment of tax amnesty for the years 2004 to 2005.

As to the attendant interest, surcharges and penalties arising from PSPC's deficiency tax liabilities, *We* find the case of *Connel Bros. Co. (Phil.) vs. Collector of Internal Revenue*[28] instructive on the matter, *viz*:

> "The last question refers to the 25% surcharge imposed upon appellant, amounting to P4,343.31. Appellant seeks relief therefrom and cites the following applicable principles, from which the Solicitor General express no dissent:
>
> > 'The question of whether the specific penalty in addition to the 25% surcharge will be enforced in cases of delinquency in paying the percentage taxes is one of discretion with the Collector of Internal Revenue. <u>In all cases where the delinquent has delayed the administration of the law or has intentionally violated the provisions of the law, or has purposely delayed filing the return, the Collector of Internal Revenue will insist on enforcing the specific penalty for failure to make return within the time prescribed by law</u>. Failure to make this return and pay the tax during the months in which the said taxes are payable will be considered as purposely delaying filing the return. The necessity of notifying the taxpayer of his delinquency or the discovery of such a delinquency by a revenue officer will be treated as delaying the administration the law.' (Sec. 15 [c], Reg. No. 11, Formilleza, Comments on the National Internal Revenue Code, Vol. II, pp. 712-713, 1950 ed.)

[28] G.R. No. L-15470, December 26, 1963

> We are convinced that appellant, in preparing its sales invoices as it did, was not guilty of an intentional violation of the law. <u>It did not delay filing the returns for the sales taxes corresponding to the period in question, let alone did so purposely. The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty</u>." *(Underscoring Ours)*

The said ruling was reiterated in the case of *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*[29], whereby the Supreme Court held that, "[t]he settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest." Henceforth, *We* see no reason not to apply the same doctrine in the instant consolidated cases which settles the divergent rulings of the public respondents.

WHEREFORE, PSPC's Motion for Reconsideration of the Decision dated 28 September 2015 and Motion To Defer Resolution are hereby **DENIED**. While, public petitioners' Omnibus Motion for (1) Partial Consideration and (2) Clarification is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision dated September 28, 2015, is hereby amended to read as follows:

> "**WHEREFORE,** premises considered, the public petitioners' Petition for Review is **PARTIALLY GRANTED**, while PSPC's Petition for Review is hereby **DENIED** for lack of merit.
>
> Accordingly, the Resolutions dated November 27, 2012 and March 26, 2013, respectively, promulgated by the CTA Third Division is **MODIFIED**. Pilipinas Shell Petroleum Corporation is ordered to pay **FIVE BILLION SEVEN HUNDRED FIFTEEN MILLION EIGHT HUNDRED NINETY THOUSAND NINETY-SEVEN PESOS AND 50/100 (₱5,715,890,097.50)** for the unpaid excise taxes and VAT for its subject Catalytic Cracked Gasoline and Light Catalytic Cracked Gasoline importations <u>for</u>

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[29] G.R. No. 166786, September 11, 2006

the relevant periods in 2006 to 2009, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

	Basic Tax Due	25% Surcharge	TOTAL
Deficiency Excise Tax	₱ 4,081,511,595.00	₱ 1,020,377,898.75	₱ 5,101,889,493.75
Deficiency VAT on the Excise Tax	491,200,483.00	122,800,120.75	614,000,603.75
Total	**₱ 4,572,712,078.00**	**₱ 1,143,178,019.50**	**₱ 5,715,890,097.50**

SO ORDERED."

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(I maintain my Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice