REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

SPLASH CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6801

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

AUG 2 8 2008
3:46 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Being null and void, the sale of the questioned TCCs to petitioner, who is not an innocent purchaser, produced no legal effects whatsoever. *Quod nullum est, nullum porducit effectum (Uy vs. Court of Appeals, 359 SCRA 272).*

THE CASE

This is a Petition for Review With Motion to Suspend Collection of the Tax and/or Enjoin Seizure, Levy or Distraint filed by Splash

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Corporation (hereafter 'petitioner"), which seeks to cancel and/or to consider deemed paid the deficiency Value-Added Tax ("VAT") assessments against petitioner for the first quarter of 2002 and 2003, in the total amount of P16,123,980.48, inclusive of surcharges and interests, and to consider the Final Notice of Seizure null and void.

THE PARTIES

Petitioner Splash Corporation is a corporation organized and existing under Philippine laws, with office address at the HBC Corporate Centre, Mindanao Avenue, Quezon City.

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR) and may be served with summons and other court processes at the 5^{th} Floor of the BIR National Office, Diliman, Quezon City.

THE FACTS

The facts, as culled from the records, are as follows:

On October 9, 2003, petitioner received a copy of the "Final Notice Before Seizure" dated September 30, 2003, demanding from petitioner the payment of its deficiency value-added taxes for the return periods of February 28, 2002, March 31, 2002, and March 31, 2003 in the total amount of P16,123,980.48, inclusive of surcharges and penalties. The

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assessment of petitioner's deficiency VAT arose when Tax Credit Certificate ("TCC") Nos. 00000990 and 00000991 were found by respondent as having no value.

Rohm Electronics Philippines, Inc. ("Rohm") was originally issued Tax Credit Certificate Nos. 018967 and 019031. However, on April 22, 2003, these TCCs were cancelled and in exchange, TCC Nos. 00000990 and 00000991 were issued in the name of Splash Corporation. Out of the new TCCs, the Department of Finance issued Tax Debit Memo ("TDM") Nos. 121-03-00185 to 188, which petitioner utilized in the settlement of its VAT liabilities, as follows:

Tax Type	Return Period	TDM No.	Date Issued	Amount
VAT	3/31/2002	121-03-00185	4/25/2003	2,105,266.77
VAT	2/28/2002	121-03-00186	4/25/2003	699,532.34
VAT	3/31/2003	121-03-00187	4/25/2003	3,788,797.34
VAT	3/31/2003	121-03-00188	4/25/2003	5,217,561.79
Total				**11,811,158.24**

On August 4, 2003, however, petitioner received a collection notice issued by respondent for its "unpaid taxes" as a result of the findings that TCC Nos. 00000990 and 00000991 did not have any value. Respondent formally demanded the payment of the amount of P16,123,980.48, inclusive of surcharges and interests. Consequently, on August 8, 2003, petitioner sought reconsideration of the collection notice. In reply, on

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September 30, 2003, respondent issued the subject Final Notice Before Seizure.

In his "Answer" filed on January 12, 2004, respondent alleged by way of special and affirmative defenses, that TCC No. 018967 was originally issued on 18 November 1998 to Rohm, while TCC No. 019031 was issued on 2 February 1999; Rohm fully utilized these TCCs in payment of its tax liabilities, as early as November 1999, TCC Nos. 018967 and 019031 from where petitioner's TCCs came from are spurious; they cannot produce any valid transfer, hence cannot produce the effect of payment, if utilized; petitioner is not being asked to pay its tax liabilities twice; the first payment made was ineffective despite documents erroneously issued attesting due payment; equally false is the assertion that the collection of the taxes in the assessment notice will unjustly enrich the Commissioner, as no money flowed in the first utilization being that the TCC petitioner used in payment is empty.

Moreover, one of the documents cited by petitioner, the certification dated 16 July 2003 issued by the Central Management Information Office (CMIO), is a document that has no legal effect; it is not within the power of CMIO to validate invalid transfers, much less, certify the validity of TCC transactions; the government was an indirect

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victim of this scam as its records were harmed; under the law on public officers, and sound political law doctrine, the government is not estopped by the mistakes of its employees.

Contrary to petitioner's claim that it was very careful and diligent in verifying, executing and ensuring compliance with legal requirements and procedures in the transfer of Rohm's TCCs, petitioner is to be blamed primarily for its misery. Besides putting itself into a risky transaction, it chose to be negligent with its money; trusting millions of pesos on a mere assurance by a Bureau employee, which petitioner fully knew that it is not part of Caroline Pineda's duties to broker TCC transactions.

The TCCs used, purporting to be TCC No. 018967 and TCC No. 019031, have erasures on their serial numbers, and do not contain application number below the serial number. These facts alone should have excited the suspicion of the petitioner. Plain on the face of the TCC is written that erasure on the TCCs face void a TCC. As a company already 'experienced' in TCC transactions, these ought to have not passed unnoticed; the original TCC No. 018967 was issued on 18 November 1998, while the spurious TCC was issued on 7 April 1999. Ordinary checking could have verified this.

More glaring is the fact that petitioner did not inquire with the purported transferor whether it is indeed selling said TCC or not; Rohm likewise denied having an employee by the name of May B. Reyes; the secretary's certificate which petitioner relied on is faulty and not worthy of reliance, if not outright anomalous; the meeting granting May Reyes authority to allegedly sell Rohm's TCCs was held on 31 March 2003, however, the instrument appears to be dated 1 April 1999. These circumstances outright shun petitioner's claims of *bona fide*. In fact, the NBI report on the controversy faults petitioner for manifest bad faith, and that for personal gain it caused undue injury to the government.

Petitioner presented Lilia Francisco, Ma. Jesusa Magno, Director Ernesto Hiansen, and Gloria Dazo, as witnesses, and formally offered documentary evidence, marked as *Exhibits "A" to "BBB"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated April 12, 2006, except for *Exhibits "D", "G-1"* and *"Y"*, which were denied admission for failure to present their originals.

On the other hand, counsel for respondent presented Ma. Gracia Javier, Atty. Polo Pantaleon, Sandra Alkuino and Atty. Dennis Siyhian, as witnesses, and formally offered documentary evidence, marked as *Exhibits "1" to "13"*, inclusive of their submarkings, which were all

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admitted by the Court in a Resolution dated April 1, 2008, after respondent filed an "Omnibus Motion (1) to Admit Respondent's Exhibit Nos. 4, 4-a, 5, 5-a, 6, 7, 8, 9, 10, 11, 11-a, 12, 12-a, 13 and 13-a and (2) To Defer Respondent's Submission of Memorandum".

Thereafter, petitioner was granted thirty days from September 10, 2007 to file its memorandum, while respondent was granted twenty days from notice, afterwhich, the case shall be deemed submitted for decision.

On April 2, 2008, the Court issued a Resolution granting petitioner's "Motion to Suspend Collection of the Tax".

Both parties having filed their respective memorandum, the case was deemed submitted for decision.

Hence, the instant Petition for Review.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT ROHM ELECTRONICS PHILIPPINES, INC. HAS FULLY UTILIZED TCC NOS. 019031 AND 018967 IN PAYMENT OF ITS TAX LIABILITIES IN NOVEMBER 1999.

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II

WHETHER OR NOT THE ROHM TCCS PRESENTED BY PETITIONER IN OBTAINING TCC NOS. 00000990 AND 00000991 ARE THE SAME TCCS ISSUED TO ROHM ELECTRONICS PHILIPPINES, INC.

III

WHETHER OR NOT PETITIONER BOUGHT THE SPURIOUS TCCS FROM AUTHORIZED OFFICERS AND EMPLOYEES OF ROHM ELECTRONICS PHILIPPINES, INC.

IV

WHETHER OR NOT THE DOCUMENTS SUPPORTING THE TCC TRANSFER FROM ROHM ELECTRONIC PHILIPPINES, INC. TO PETITIONER WERE EXECUTED BY THE DULY AUTHORIZED REPRESENTATIVES, EMPLOYEES, AND/OR OFFICERS OF ROHM ELECTRONICS PHILIPPINES, INC.

V

WHETHER OR NOT OFFICIAL RECEIPT NO. 532829 ALLEGEDLY ISSUED BY ROHM ELECTRONICS PHILIPPINES, INC. IS AUTHENTIC, AND DULY ISSUED BY THE CASHIER OF THE COMPANY.

VI

WHETHER OR NOT REPRESENTATIVES OF PETITIONER AND ALLEGED REPRESENTATIVES OF ROHM ELECTRONICS PHILIPPINES, INC., PERSONALLY APPEARED BEFORE THE NOTARY

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PUBLIC WHEN THEY EXECUTED THE DEED OF ASSIGNMENT OF TCCS.

VII

WHETHER OR NOT THERE WERE ALTERATIONS ON THE FACE OF THE TCCS TRANSFERRED FROM ROHM ELECTRONICS PHILIPPINES, INC. TO PETITIONER.

VIII

GIVEN THE REPRESENTATIONS AND APPROVALS OF THE DOF, BIR AND ONE STOP SHOP, WHETHER RESPONDENT CAN RETROACTIVELY REVERSE PETITIONER'S UTILIZATION OF ITS TCCS IN PAYMENT OF ITS VAT LIABILITIES.

IX

WHETHER OR NOT ROHM ELECTRONICS PHILIPPINES, INC. HAS FULLY UTILIZED TCC NOS. 019031 AND 018967 IN PAYMENT OF ITS TAX LIABILITIES IN NOVEMBER 1999.

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COROLLARY TO THE ABOVE, WHETHER OR NOT THE IMPOSITION OF SURCHARGES, INTERESTS AND COMPROMISE PENALTIES IS JUSTIFIED CONSIDERING THAT THE PETITIONER RELIED ON THE REPRESENTATIONS AND APPROVALS OF THE DOF, ONE STOP SHOP AND BIR IN UTILIZING THE TCCS AND TDMS IN PAYMENT OF ITS VAT LIABILITIES.

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Principal Issue

The above issues boil down to the principal issue of whether petitioner is liable to pay its deficiency VAT for the first quarters of 2002 and 2003, considering the attendant circumstances.

Petitioner Splash's Arguments

Petitioner argues that it cannot be held liable twice for the same tax within the same taxable period since petitioner's TCCs were valid and petitioner's utilization of the TCCs was approved by the DOF and the BIR; that the tax assessments unjustly enriches the collector, while subjecting petitioner to double taxation; that respondent cannot retroactively reverse the position of the DOF and/or government; and the imposition of surcharges and penalties cannot be justified.

Petitioner also asserts that it had every reason to rely on the documents presented by Rohm, as well as, the active representations of the BIR and the DOF officials. It had no reason to doubt the veracity and authenticity of the documents considering that some of these documents bore the signatures of the President, Corporate Secretary, and other corporate officers of Rohm. Copies of the same set of documents were kept by the DOF and BIR as reference for verification and/or validation of the signatures and data as part of the checking mechanisms. Thus, if

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anything was amiss, these should have been detected by the DOF/BIR or by the seller. Petitioner was allegedly victimized by these agencies' ineptitude in failing to register Rohm's purported utilization of the TCCs way back in 1999. It did not matter that petitioner may opt to assert its claims against other entities, the fact is that petitioner was not privy to the unauthorized, nay fraudulent alterations in Rohm's TCCs.

<u>Respondent Commissioner of Internal Revenue's Counter-Arguments</u>

Respondent counters that the transferor never transferred anything to petitioner since as early as November 1999 the TCCs were already fully utilized for payment of Rohm's own tax liabilities; it stands to reason that petitioner cannot be the holder of anything, for value, gratuitously, or in any other matter. Petitioner's TCC transaction is tainted with illegality from the onset since petitioner bought the TCCs using a government official who has a direct hand in TCC transaction in the BIR. Petitioner cannot claim good faith in the transaction it entered with Carol Pineda and May Reyes. The NBI Report of investigation found that the TCC's used to obtain TCC Nos. 00000990 and 00000991 were spurious.

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THE COURT'S RULING

The petition is devoid of merit.

There is Total Lack of Consent on the Part of the Transferor/Assignor to Transfer TCC Nos. 018967 and 019031, hence the Deed of Assignment is Null and Void *Ab Initio*

When consent was not only vitiated, but a party thereto has not given its consent at all, there was no consent, the contract is, therefore, null and void *ab initio* *(Rongavilla vs. Court of Appeals, 294 SCRA 298)*. One of the requisites of a valid contract under Article 1318 of the Civil Code is the consent and the capacity to give consent of the parties to the contract. The legal capacity of the parties is an essential element for the existence of the contract because it is an indispensable condition for the existence of consent. There is no effective consent in law without the capacity to give such consent. In other words, legal consent presupposes capacity. Thus, there is said to be no consent, and consequently, no contract when the agreement is entered into by one in behalf of another who has never given him authorization therefore, unless he has by law a right to represent the latter *(Heirs of Sevilla vs. Sevilla, 402 SCRA 512)*.

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In the instant case, record shows that Rohm, the alleged assignor/transferor, has not given any consent to the execution of the Deed of Assignment of TCC Nos. 018967 and 019031 to the petitioner.

At the outset, it must be pointed out that Rohm had not sold and had no intention of selling TCC Nos. 018967 and 01903, as testified by Rohm's President, Yoshiyasu Okuda, Accounting Manager, Sandra Alkuino, and external auditor, Emmanuel Alcantara *(Exhibits "4", "5" and "5-a"*.

Moreover, in his Affidavit dated June 26, 2003 *(Exhibits "13" and "13-a")* and Supplemental Affidavit dated July 17, 2003 *(Exhibits "12" and "12-a")*, Atty. Polo Pantaleon denied having prepared and executed the Secretary's Certificate dated April 1, 1999, allegedly executed by him, authorizing May Reyes to enter into any contract or agreement in connection with the transfer of Rohm TCCs *(Exhibit "J")*, as well as the Secretary's Certificate, allegedly authorizing May Reyes to sign all withdrawal slips in connection with the alleged Rohm's Postal Savings Bank, Inc. savings and checking accounts *(Annex "A" of Exhibits "13" and "13-a")*. The same was amply corroborated by Rohm's officers, Yoshiyasu Okuda, and Sandra Alkuino *(Exhibits "4", "5" and "5-a")*.

In fact, Rohm's officers, namely, Sandra Alkuino and Arthur Alejar III, on direct examination, testified that May Reyes is not connected whatsoever with Rohm and has never been given any authority to sell Rohm's TCCs *(Exhibits "4", "5" and "5-a").* Evidently, May Reyes does not have the capacity to give consent to or to execute the Deed of Assignment, considering that she is neither the owner of the subject TCCs, nor the authorized representative of Rohm. Since she has no legal capacity to give consent to the Deed of Assignment, it follows that there is no consent given to the execution of the Deed of Assignment. Therefore, there is no contract to speak of. As such, the Deed of Assignment is void *ab initio*.

TCC Nos. 018967 and 019031, the Object of the Deed of Assignment, were Fake and Spurious, Had Been Fully Utilized and Cancelled as Early as November 1999.

Also, record shows that TCC Nos. 018967 and 019031, object of the contract of Deed of Assignment, transmitted to petitioner by the broker, Caroline Pineda, and presented to the DOF for cancellation *(Exhibits "E" to "E-1" and "F")*, which were replaced by TCC Nos.

00000990 *(Exhibit "N")* and 00000991 *(Exhibit "O")*, were fake and spurious.

A plain reading and comparison of TCC Nos. 018967 *(Exhibits "E" and "E-1")* and 019031 *(Exhibit "F")*, object of sale, with their duplicate original copies on file with the DOF, shows the following discrepancies: (a) TCC Nos. 018967 and 019031, object of sale, both do not contain the numbers, "N20613" and "N18149", respectively, in between the SN and Appn No., but, which numbers are present in the duplicate original copies of TCC Nos. 018967 and 019031, respectively, on file with the DOF; (b) Rohm account number, which is "000-143-055-000", as appearing in TCC Nos. 018967 and 019031, object of sale, is different from Rohm's account number, which is "540-000-143-055", as appearing in the duplicate original copies of the TCCs on file with the DOF; (c) the date of issue, which is "18th November 1998", as appearing in TCC No. 018967, object of sale, is different from the date of issue, which is "Apr 07, 1999", as appearing in the duplicate original copy of TCC No. 018967 on file with the DOF.

The above findings are corroborated by the result of the investigation conducted by the NBI *(Exhibits "6" to "10")*, as follows: (1)

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there is a significant fundamental differences in typewriting characteristics between the questioned TCCs and the standard carbon duplicate copies; (2) there are also typewritten entries appearing in the standard carbon duplicate copy of the TCCs, which do not appear in the questioned TCCs; (3) there are evidence/indications of alteration by mechanical erasure (scraping off) and superimposition on the portions of the questioned TCCs. In sum, the Investigator concluded that the original copies of the questioned TCCs are not the exact original copies of the standard carbon duplicate copies, therefore, the questioned original TCCs *(Exhibits "E", "E-1", and "F")* were altered *(Exhibit "4").*

A further examination of the record shows that TCC Nos. 018967 and 019031 had already been fully utilized and cancelled, as early as November 1999, as evidenced by TDM Nos. 029382 *(Exhibits "4", "5", and "5-a")* issued by the BIR to Rohm.

Since TCC Nos. 018967 *(Exhibits "E" to "E-1")* and 019031 *(Exhibit "F")*, the object of the Deed of Assignment, were fake and spurious and the value of TCC Nos. 018967 and 019031 had already been fully utilized and subsequently cancelled, as early as November 1999; technically, there is no object to speak of. Hence, with more reasons that the Deed of Assignment is considered void *ab initio*.

A void or inexistent contract is one which has no force and effect from the very beginning, as if it had never been entered into; it produces no effect whatsoever either against or in favor of anyone *(Manila Banking Corporation, vs. Silverio,466 SCRA 454).*

Accordingly, TCC Nos. 00000990 *(Exhibit "N")* and 00000991 *(Exhibit "O")* issued by the DOF to petitioner, in replacement of TCC Nos. 018967 and 01903, cannot also produce the effect of payment. They have come into existence by virtue of a void contract and in replacement of spurious TCCs that had already been fully utilized and cancelled. *Quod nullum est, nullum producit effectum.* That which is a nullity produces no effect *(Tan vs. Bantegui, 473 SCRA 674)*.

A Transferee Merely Steps Into the Shoes of His Predecessor-in-Interest, Who had No Valid Title to the TCCs.

No one can give what he does not have *(Sanchez vs. Mapalad Realty Corporation, 541 SCRA 417)*. Settled also is the rule that an assignee cannot, after all, acquire a greater right than that pertaining to the assignor *(PNB*

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vs. General Acceptance and Finance Corp., 161 SCRA 457). The foregoing doctrines also find application to the instant case. Since TCC Nos. 018967 and 019031 were sold by a person who is not the owner, nor the authorized representative of Rohm, it has no title whatsoever to TCC Nos. 018967 and 019031. Accordingly, it had nothing to transfer to petitioner. Hence, as regards TCC Nos. 00000990 *(Exhibit "N")* and 00000991 *(Exhibit "O")* issued by the DOF to petitioner, in replacement of TCC Nos. 018967 and 019031, which were subsequently cancelled, petitioner merely steps into the shoes of its predecessor-in- interest who had no valid title. It cannot acquire any better right than its transferor.

It cannot be argued by petitioner that it was Rohm who requested the DOF the transfer of the whole amount of TCC No. 019031 and the balance amount of P6,595,590.45 of TCC No. 018967, as such, it has valid title to TCC Nos. 00000990 *(Exhibit "N")* and 00000991 *(Exhibit "O"),* which could be used in payment of its VAT liabilities. Record shows that both the Letters dated April 8, 2003, addressed to the DOF, requesting the transfer of TCC Nos. 018967 and 019031, signed by Yoshiyasu Okuda, President of the transferor, Rohm *(Exhibits "H" and "G", respectively),* were fake and spurious. Both letters were denied to have been prepared and signed by Yoshiyanu Okuda himself *(Exhibit "4"),* as confirmed by Rohm's Accounting Manager, Sandra Alkuino *(Exhibits "5" and "5-a").*

Clearly, even the transfer of TCC Nos. 018967 and 019031 to petitioner, and the request to replace the same with TCC Nos. 00000990 and 00000991 were not authorized and consented to by the transferor, Rohm. With more reasons that petitioner cannot acquire valid title to TCC Nos. 00000990 and 00000991.

Equally settled is the doctrine that no river or stream can rise higher than its source *(Sanchez vs. Mapalad Realty Corporation, supra, 418).* Considering that in the instant case TCC Nos. 018967 and 019031 were fake and spurious, and had already been fully utilized and cancelled as early as November 1999, the same are worthless pieces of paper, which cannot produce the effect of payment anymore. Accordingly, TCC Nos. 00000990 and 00000991, issued in replacement of fake and spurious TCC Nos. 018967 *(Exhibits "E" to E-1")* and 019031 *(Exhibit "F")* cannot likewise be used to pay petitioner's VAT liability.

Even if TDMs Had Already Been Issued to Petitioner, Evidencing Its Utilization of TCC Nos. 00000990 and 00000991 in Payment of Its

<u>VAT Liabilities, the Same did not Produce the Effect of Payment</u>

It cannot also be argued by petitioner that since the issuance of TCC Nos. 00000990 and 00000991 and its utilization of the same, in payment of its VAT liabilities, with the issuance of TDM Nos. 2003-0399-R-R *(Exhibit "V")*, 2003-0398-R-R *(Exhibit "W")*, 2003-0400-R-R *(Exhibit "T")*, and 2003-0401-R-R *(Exhibit "S")* which were duly approved by the DOF and the BIR, respondent can no longer retroactively reverse petitioner's utilization of the same.

While in the recent case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, 541 SCRA 347 (Shell Case)*, the Supreme Court ruled that it is indubitable that with the issuance of the corresponding TDM, not only is the TCC cancelled when fully utilized, but the payment is also final, subject only to a post-audit on computational errors since TDM serves as the official receipt evidencing the taxpayer's payment on satisfaction of its tax liabilities, said ruling however was applied by the Supreme Court to a transferee in good faith and for value of the TCC, as clearly shown in the following:

> "A transferee in good faith and for value of a TCC who has relied on the Center's representation of the

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genuineness and validity of the TCC transferred to it may not be legally required to pay again the tax covered by the TCC which has been belated declared null and void, that is, after the TCCs have been fully utilized through settlement of internal revenue tax liabilities. Conversely, when the transferee is party to the fraud as when it did not obtain the TCC for value or was a party to or has knowledge of its fraudulent issuance, said transferee is liable for the taxes and for the fraud committed as provided for by law."

As we have explained above, the subject TCCs after being fully utilized in the settlement of PSPC's excise tax liabilities have been canceled, and thus cannot be canceled anymore. For being immediately effective and valid when issued, the subject TCCs have been duly utilized by transferee PSPC which is a transferee in good faith and for value *(Shell Case, supra, 352).*

A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he has notice of the adverse claims and interest of another person in the same property. The honesty of intention which constitutes good faith implies a freedom from knowledge of circumstances which ought to put a person on inquiry *(Chua vs. Soriano, 521 SCRA 78)*. As the Supreme Court enunciated in *Lim v. Chuatoco, 453 SCRA 317-318*:

"x x x good faith consists in the possessor's belief that the person from whom he received the thing was the owner of the same and could convey his title. Good faith, while it is always to be presumed in the absence of proof to the contrary, requires a well founded belief that the person from

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> whom title was received was himself the owner of the land, with the right to convey it. There is good faith where there is an honest intention to abstain from taking any unconscientious advantage from another. Otherwise stated, good faith is the opposite of fraud and it refers to the state of mind which is manifested by the acts of the individual concerned."

Conversely, for failure to exercise the measure of precaution which may be required of a prudent man in a like situation, a buyer cannot be called a purchaser in good faith *(Consolidated Rural Bank [Cagayan Valley], Inc., vs. Court Of Appeals, 448 SCRA 366).*

In the instant case, a careful examination of the record shows that petitioner is not a transferee in good faith and for value, as shown by the following circumstances:

First, petitioner purchased the TCCs through a broker, Caroline Pineda, whom petitioner's representative, Lilia Francisco, knew to be the Head of the Collection Service of the BIR *(Joint Affidavit of Gloria Dazo and Lilia Francisco, TSN, June 23, 2004, p. 21, and TSN, April 25, 2006, pp. 7 and 12).* In fact, because of Caroline Pineda's position in the BIR, Lilia Francisco testified that she had relied on Caroline Pineda for a faster facilitation of the TCCs transactions *(TSN, April 25, 2005, pp. 20-21).* Having known Caroline Pineda, as an employee of the BIR, petitioner should have been

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aware that brokering TCCs is not part of her duties as a BIR employee. Such circumstance should have put petitioner's representative on guard of the legality of the transaction involved. Accordingly, petitioner should have inquired on the authority of Caroline Pineda and the transferor's representative to sell the subject TCCs. Hence, petitioner should have inquired with the original transferor, Rohm, whether it is actually selling the subject TCCs, and whether it has authorized Caroline Pineda to broker the sale of said TCCs. But, petitioner did not even bother to call Rohm *(TSN, June 20, 2005, p. 7)*. Nor did it bother to ask for the Articles of Incorporation of Rohm *(TSN, April 25, 2006, p. 26, and June 20, 2005, p. 6)*. Instead, petitioner relied solely on Caroline Pineda.

Second, considering that Lilia Francisco admitted that Caroline Pineda did not want to disclose her seller *(TSN, June 23, 2004, p. 24)*, this should have created suspicion in petitioner's mind as to the authenticity of the TCCs subject of sale. Petitioner's argument that the usual practice in brokering TCCs is that the buyer does not meet the seller until the time of payment *(TSN, June 23, 2004, p. 24)* cannot be sustained considering the situation herein that petitioner is directly dealing with a broker, who is the Head of the Revenue Executive Assistant of the BIR, whose duty as such does not include brokering TCCs. Instead, petitioner heavily relied on the

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assurance of a BIR employee, whom it knew was not authorized to broker TCCs.

It has been held that even in dealing with registered lands, a person who deals with registered land, through someone who is not the registered owner, he is expected to look behind the certificate of title and examine all the factual circumstances, in order to determine if the vendee has the capacity to transfer any interest in the land. He has the duty to ascertain the identity of the person with whom he is dealing and the latter's legal authority to convey *(Chua vs. Soriano, supra, 79)*. This is equally true in dealing with TCCs, which petitioner failed to exercise in the present case.

Third, since the amount involved herein is millions of pesos, prudence dictates that petitioner should have thoroughly investigated the source of the TCCs, whether the same is a legally existent company, whether said TCC's really belong to the transferor and whether the same are valid, authentic and remained unutilized and cancelled. But, as heretofore discussed, petitioner did not even bother to call Rohm or inquire about its Articles of Incorporation *(TSN, June 20, 2005, pp. 6-7)*. Instead, Lilia Francisco and Gloria Dazo, representatives of petitioner,

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merely affixed their signatures on the Deed of Assignment, after the same was transmitted to their office *(TSN, June 20, 2005, pp. 7-8)*. Petitioner's witnesses even admitted that they did not bother to appear before the notary public for the execution of the document *(TSN, June 20, 2005, p. 8)* and did not even see May Reyes, who purportedly represented Rohm and signed the Deed of Assignment *(TSN, June 20, 2005, p. 9)*. Clearly, We find that petitioner's representatives are grossly negligent in purchasing the subject TCCs.

Fourth, since copies of TCC Nos. 018967 and 019031, issued to Rohm, were faxed to Lilia Francisco before the execution of the Deed of Assignment *(TSN, April 25, 2005, p. 23)*, with the presence of the foregoing irregular circumstances, petitioner should have thoroughly examined the data appearing in said TCCs, such as: SN number and application number, monetary value, name of the taxpayer to whom the TCCs were issued, taxpayer's account number, date of issue and signatories of said TCCs. Petitioner should have verified with the appropriate government agencies, such as the SEC, BIR and DOF Center itself, as to the veracity of the data contained in said TCCs and should not have relied merely on the broker.

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Had petitioner exerted efforts to carefully investigate the above circumstances before purchasing the subject TCCs, petitioner should have noticed and discovered the obvious discrepancies previously discussed. Consequently, it should have known that TCC Nos. 018967 *(Exhibits "E" to "E-1")* and 019031 *(Exhibit "F")* are fake and spurious.

Fifth, considering that the documents pertaining to the purchase of the subject TCCs were brought only to petitioner's office by unknown persons and considering further that petitioner was dealing with an undisclosed seller, petitioner should have been more circumspect in examining the documents supporting the sale of the subject TCCs, particularly the authority of May Reyes, the person who purportedly represented Rohm. Petitioner should have investigated why the Secretary's Certificate, allegedly executed by Polo Pantaleon, authorizing May Reyes to enter into any contract or agreement in connection with the transfer of Rohm's TCCs, was dated April 1, 1999, when the board of directors' meeting approving said authorization was held on March 31, 2003 and the date of notarization was April 1, 2003 *(Exhibit "J").* Such obvious discrepancies on the dates should have caused a prudent person to inquire and investigate as to its authenticity. In *Chua vs. Soriano, supra, 80*, the Supreme Court held:

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> "The strength of the buyer's inquiry on the seller's capacity or legal authority to sell depends on the proof of capacity of the seller. If the proof of capacity consists of a special power of attorney duly notarized, mere inspection of the face of such public document already constitutes sufficient inquiry. If no such special power of attorney is provided or there is one but there appear flaws in its notarial acknowledgment, mere inspection of the document will not do; the buyer must show that his investigation went beyond the document and into the circumstances of its execution."

But, here, notwithstanding the flaw in the notarization date, when compared with the date of the instrument, petitioner did not investigate, nor even inquire the veracity of May Reyes' authority. Had petitioner been more diligent, it should have known that the Secretary's Certificate was fake and spurious and May Reyes was not authorized by Rohm to sell its TCCs.

Evidently, in all instances, petitioner failed to exercise due diligence, despite knowledge of the foregoing circumstances, which ought to put it on inquiry. Hence, petitioner cannot be considered as a buyer/transferee in good faith. This was corroborated by the result of the NBI investigation, to wit:

> "Notable as well is the lack of diligence, purposely or not, on the part of SPLASH and NISSAN to determine whether indeed the TCCs they were purchasing were authentic. Said companies even if they relied on the representations or assurances made by Ms. PINEDA of the

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> BIR that everything is in order should have exercised basic corporate practice of conducting due diligence audit or effort before finally deciding to buy the TCC's. Aside from the assurance of Ms. PINEDA, they should have conducted independent efforts of verifying existence and validity of subject TCCs. Prudence dictates that they should have considered the amount of corporate funds involved in buying those TCC's that is in millions of pesos. Unfortunately, these two (2) corporate giants miserably failed in that aspect of conducting due diligence audit."

In fact, the NBI even found that there was an attempt on the part of petitioner to pre-empt the outcome of the investigation being conducted by the Bureau, when petitioner submitted an alleged letter-clearance dated July 16, 2003 from Atty. Leon Acuna, who declared in effect that TCC Nos. 018967 and 019031 are genuine *(Exhibit "4")*. However, in a letter-reply, Assistant Secretary Emmanuel Bonoan, for and in behalf of the Secretary of Finance, denied having granted authority to Atty. Acuna to issue such letter clearance *(Exhibit "4")*. On this basis, petitioner did not only negate its duty to exercise due diligence in purchasing TCC Nos. 018967 and 019031, but it even acted in evident bad faith.

Being not a buyer in good faith, the following TCCs issued to petitioner with their corresponding TDMs, also issued to petitioner did not produce the effect of payment of its VAT liability for the first quarter of 2002 and 2003 in the total amount of P11,811,158.24, exclusive of interest and surcharge:

Original TCC issued to Rohm	TDMs issued to Rohm, Showing Utilization of TCCs Issued to Rohm	Replacement TCCs issued to Petitioner, after the Original TCCs were Cancelled	TDMs issued to petitioner, Showing Utilization of TCCs Issued to Petitioner	Total
SN 018967 amounting to P19,593,596.45	SN 029382 dated Nov. 24, 1999 amounting to P19,593,596.45	00000990 amounting to P6,593,596.45 (Exh. "N")	2003-0399-R-R P2,105,266.77 (Exh "V") 2003-0398-R-R P699,532.34 (Exh. "W") 2003-0400-R-RP3,788,797.34 (Exh. "T")	**P6,593,596.45**
SN 019031 amounting to P5,387,325.04	SN 029383 dated Nov. 24, 1999 amounting to P5,387,325.04	00000991 amounting to P5,387,325.04 (Exh. "O")	2003-0401-R-RPP5,217,561.79 (Exh."S")	**P5,217,561.79**
				P11,811,158.24

Thus, pursuant to the Shell case, petitioner is legally required to pay again said tax liability.

Well settled is the rule that taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. It is also settled that taxes are the lifeblood of the government and their prompt and certain availability is an imperious need. Thus, in *Proton Pilipinas Corporation vs. Republic, 504 SCRA 548*, the Supreme Court ruled that in case the TCCs used for payment of petitioner's tax liability are fake or spurious, "it is the obligation of the petitioner to make good its obligation by paying the customs duties and taxes, which remain unpaid

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by reason of cancellation of the subject TCCs for having been found as fake and spurious. It should not make the Government suffer for its own misfortune."

Equally settled is the rule that the Government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents because upon taxation depends the Government ability to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people, in the same manner as private persons may be made to suffer individually on account of his own negligence, the presumption being that they take good care of their personal affairs. This should not hold true to government officials with respect to matters not of their own personal concern. This is the philosophy behind the government's exception, as a general rule, from the operation of the principle of estoppel *(Philippine National Oil Company vs. Court of Appeals, 457 SCRA 102-103).*

Since petitioner's VAT liability remains unpaid to date, subjecting the total amount of P11,811,158.24 to 20% deficiency interest and imposing the 25% surcharge, are therefore justified. The deficiency interest is mandated by *Section 249(B) of the NIRC of 1997, as amended.*

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While the imposition of surcharge is justified under *Section 248 of the NIRC of 1997, as amended.* Considering that there was only negligence on the part of petitioner, it may be subjected only to the 25% surcharge, prescribed by the aforesaid law. This was held by the Supreme Court in *Commissioner of Internal Revenue vs. Japan Air Lines, Inc., 202 SCRA 459*, to wit: "At most, only negligence may be imputed to JAL for not ascertaining the dispensability of filing the tax returns. As such, JAL may be subjected only to the 25% surcharge prescribed by the aforequoted law."

Thus, We sustain respondent's computation of petitioner's VAT liability, as follows:

Return Period	Basic Tax	25% Surcharge	20% Int. p.a. until 8-25-03	Total
3-31-02	2,105,266.77	526,316.69	561,405.17	3,192,988.63
2-28-02	699,532.34	174,883.08	198,200.59	1,072,616.01
3-31-03	9,006,359.13	2,251,589.78	600,426.93	11,858,375.84
Total	**11,811,158.24**	**2,952,789.55**	**1,360,032.69**	**16,123,980.48**

WHEREFORE, premises considered, the present Petition For Review is hereby **DISMISSED**. Petitioner is hereby **ORDERED** to pay respondent Commissioner of Internal Revenue the amount of SIXTEEN MILLION ONE HUNDRED TWENTY THREE THOUSAND NINE

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HUNDRED EIGHTY AND 48/100 PESOS (P16,123,980.48), representing deficiency VAT for the first quarters of 2002 and 2003.

In addition, petitioner is hereby **ORDERED** to pay respondent 20% delinquency interest per annum on the total amount of P16,123,980.48, counted from August 14, 2003 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice