REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 6547**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** APR 30 2009 3:16 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Stare decisis et non quieta movere. This principle of adherence to precedents has not lost its luster and continues to guide the bench in keeping with the need to maintain stability in the law *(Tala Realty Services Corp. vs. Banco Filipino Savings and Mortgage Bank, 359 SCRA 469)*. The principle finds application to the case now before us.

THE CASE

This is a Petition for Review filed by Pilipinas Shell Petroleum Corporation (hereafter "PSPC") praying for the following: (1) the cancellation of the subject Tax Credit Certificates (TCCs), and their corresponding Tax Debit Memos (TDMs) by the Department of Finance One-Stop-Shop Tax Credit and Duty Drawback Center (the "Center"), which resulted to deficiency excise tax in the amount of P234,555,275.48, inclusive of surcharge and interests, be declared invalid and illegal; (2) the Collection Letters and Warrant of Distraint and/or Levy served to petitioner on September 27, 2002 be declared null and void; and (3) respondent and his agents be permanently enjoined from any and all attempts to collect the alleged deficiency excise taxes, surcharge and interest subject of this case.

THE PARTIES

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines, with principal place of business at Shell House, 156 Valero Street, Salcedo Village, 1227 Makati City. It is duly registered with the Board of Investments ("BOI").

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), the government agency

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tasked, among others, the duty to collect national internal revenue taxes, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

The facts, as stipulated by the parties, are as follows:

> "3. During the years 1988 to 1997, Petitioner paid certain excise tax liabilities using Tax Credit Certificates (TCCs) duly assigned and transferred to Petitioner by entities that, like itself, are registered with the BOI.
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> 4. The TCC transfers to, and utilizations thereof by, Petitioner were all approved by the appropriate government agencies, namely the BOI and, subsequently, the Center, and were all approved, and accepted by, the BIR, as payment of Petitioner's excise tax liabilities. The government agencies comprising the Center are the Department of Finance ("DOF"), the BIR, the Bureau of Customs, and the BOI.
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> 5. The process and procedures relating to said TCC transfers and utilization were as follows:
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> > a. Petitioner and the transferor executed Deeds of Assignment over the TCCs, subject to the due approval by the relevant government agencies.
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> > b. Petitioner was advised of the BOI's or the Center's approval of the transfer when the transferor presented to it the TCC, with an annotation by the BOI or the Center of such approval at the reverse side of the TCC.

c. Petitioner then requested the BOI or the Center for authority to utilize the transferred TCCs as payment of its tax liabilities and thereafter, TDMs were issued by the BOI or the Center to signify such authority.

d. Thereafter, Petitioner presented the BOI's or the Centers TDMs and the corresponding TCCs to the BIR with written requests for the BIR to accept the transferred TCCs as payment of its excise tax liabilities. The BIR then issued its own TDMs in exchange for the TCCs which it then retained to signify its acceptance of the said TCCs as valid tax payments by Petitioner.

e. Petitioner then requested the BIR Regional District Office to issue an "Authority to Accept Payment of Excise Taxes ("ATAPET"), which served as the return for excise taxes being paid by Petitioner, as well as an instruction to the BIR's Authorized Agent Banks to accept Petitioner's payments in the form of BIR TDMs and Petitioner's checks.

6. Petitioner's acceptance of TCC transfers, and utilization of the same in payment of taxes, were never subjected to any question, challenge or dispute until April 22, 1998, when the Revenue District Officer of Revenue District No. 50 of the BIR sent a collection letter to Petitioner, demanding payment of allegedly unpaid excise taxes.

7. Petitioner questioned said collection letter administratively and, subsequently, in a petition before this Honorable Court, said petition docketed as CTA Case No. 5728.

8. On July 23, 1999, this Honorable Court rendered its Decision in said CTA Case No. 5728.

9. Respondent appealed said Decision before the Court of Appeals, and the appeal remains pending to date.

10. In the meantime, the Center, in a series of letters to Petitioner dated August 31, September 1 and October 18, 1999, revived the issue relating to the transfers to and utilization by Petitioner of certain TCCs subject of CTA Case No. 5728 by requiring the latter to submit to the Center copies of sales invoices and delivery receipts showing consummation of sale transactions of Petitioner's products to certain TCC transferors, purportedly in connection with an ongoing post-audit of TCC issuances and transfers under pain of cancellation of the TCC transfers if Petitioner fails to comply with the requirement.

11. Petitioner replied through a letter dated October 29, 1999 and received by the Center on November 3, 1999.

12. November 3, 1999, the DOF/Center wrote a letter to Petitioner cancelling the TDMs issued to it and their related TCCs and their transfers.

13. In a letter dated November 4, 1999, Petitioner asked the DOF/Center to reconsider the cancellation of the TDMs, related TCCs and their transfers.

14. On November 22, 1999, Petitioner received a letter dated November 15, 1999 from Respondent that purports to be an assessment for deficiency excise tax.

15. Said assessment was protested by Petitioner through a letter dated December 2, 1999. Upon the denial of said protest, Petitioner filed a Petition with this Honorable Court, said Petition docketed as CTA Case No. 6003.

The Petition is pending before this Court.

16. The Respondent, sent a Collection Letter dated June 17, 2002 (the 'June 17, 2002 Collection Letter') to Petitioner, which the latter received on July 1, 2002, wherein the Respondent seeks to collect from Petitioner the total sum of P234,555,275.48, representing allegedly unpaid taxes, inclusive of surcharge and interest, which had already been paid by Petitioner using several TCCs/TDMs. The June 17, 2002 Collection Letter modifies, with respect to the TCCs covered, an earlier collection letter dated January 30, 2002 (the 'January 30, 2002 Collection Letter').

17. Petitioner protested the June 17, 2002 Collection Letter in a letter dated July 10, 2002 (the "Protest"), which was received by Respondent on July 11, 2002.

18. To date, Respondent has not acted on the Protest. However, on September 27, 2002, Respondent served a warrant of Distraint and/or Levy (the 'Warrant') on Petitioner; this is tantamount to a denial of the Protest made by Petitioner on the June 17, 2002 Collection Letter.

19. Respondent and/or the BIR based the Collection Letter solely on findings made by the DOF/Center.

20. The BIR never served Petitioner a notice for preliminary conference nor was any preliminary conference under Revenue Regulation No. 12-99 ever held between Petitioner and the BIR prior to issuance of the Collection Letters.

21. No preliminary assessment pursuant to Revenue Regulations No. 12-99 was ever issued by the BIR against Petitioner.

22. The ATAPET's issued by the BIR for the taxes covered by the TCCs involved in this case serve as confirmation of the correctness of the amount of excise taxes paid by Petitioner during the tax years in question.

23. As set forth in pages 21 and 22 of the Amended Petition for Review, fifteen (15) out of the twenty (20) TCCs subject of the June 17, 2002 Collection Letter are not part of those purportedly cancelled by the letter of the Center dated November 3, 1999.

24. Most of the TCCs subject of the June 17, 2002 Collection Letter are already the subject of CTA Case No. 5728, presently on appeal before the Court of Appeals.

25. More than three (3) years have passed since the deadline for filing excise tax returns for taxpayers 1992, 1994, 1995, 1996 and 1997.

26. The BIR never conducted any preliminary investigation pursuant to Revenue Memorandum Order No. 15-95 dated June 9, 1995 to establish any indication of fraud in this case.

27. All the TCCs contain the following provision:

> 'Liability Clause'
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> 'Both the transferor and the transferee shall be jointly and severally liable for any fraudulent act or violation of the pertinent laws, rules and regulations relating to the transfer of this TAX CREDIT CERTIFICATE.'

28. In the list (Annex 'G-2' of the Amended Petition) attached to the June 17, 2002 Collection Letter (Annex 'G-1' Amended Petition), the BIR erroneously listed Alliance Thread Company, Inc. as the transferor of TCCs Nos. 5482, 4931, 5460, and 5337. Based on available records, the correct transferors of said TCCs are as follows:

TCC No.	Transferor
5482	Allstar Spinning, Inc.
4931	Filstar Textile Industrial Corporation

5460 Filstar Textile Industrial Corporation
5337 FLB International Fiber Corporation"

In his "Answer" filed on November 29, 2002, respondent, by way of special and affirmative defenses, averred the following: in a post audit conducted by the DOF Center, pursuant to Excom Resolution No. 03-05-99, it was found that TCCs issued to Alliance Thread Co., Inc., Allstar Spinning, Inc., Express Colour Industries, Inc., Fiber Technology Corp., Filstar Textile Industrial Corp., FLB International Fiber Corp., and Mannequin International Corp. were fraudulently obtained and fraudulently transferred to petitioner. As a result of said findings, the TCCs and the TDMs issued by the Center to petitioner were cancelled by the DOF. Since said TCCs and TDMs were utilized by petitioner in payment of its excise tax liabilities, with such cancellation, the TCCs and TDMs have no value in money or money's worth and, therefore, the excise taxes for which they were used as payment are now deemed unpaid.

As found in the post-audit, the TCCs transferred to petitioner were fraudulently obtained, hence, are null and void from the very beginning. Petitioner and the TCC transferors committed fraud in the transfer of the TCCs when they made it appear that the transfers were in consideration for the delivery of petroleum products by petitioner to the TCC transferors, for which reason said transfers were approved by the Center, when in fact there were no such deliveries.

Petitioner used the transferred TCCs in the payment of excise taxes with intent to evade tax to the extent of the value represented by the TCCs, thereby rendering the returns fraudulent. Since petitioner willfully filed fraudulent returns with intent to evade the tax, the prescriptive period to collect the tax is ten (10) years from the discovery of the fraud, pursuant to *Section 222 of the Tax Code*.

Petitioner was informed by the DOF of the post-audit conducted on the TCCs and was given the opportunity to submit documents. Petitioner was also informed of the cancellation of the TCCs and TDMs and the reason for their cancellation.

The government is never estopped from collecting legitimate taxes due to the mistake committed by its agents. The acceptance by the BIR of the TCCs fraudulently obtained and transferred to petitioner, as payment of its excise tax liabilities, turned out to be a mistake after the post-audit was conducted. Hence, said payments were void, and the excise taxes may be validly collected from petitioner.

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

Code. Petitioner is liable for surcharge and interest, pursuant to *Sections 248 and 249 of the Tax Code*.

Petitioner presented Emmanuel P. Mendoza, Jr., its former Tax Compliance and Claims Manager, and Pacifico R. Cruz, its former General Manager of Treasury and Taxation Department, as witnesses, and documentary evidence, marked as *Exhibits "A"* to *"PP"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated February 16, 2005, after petitioner filed a Motion for Reconsideration (Of the Resolution Dated March 17, 2004).

On rebuttal, petitioner presented Gerardo C. Valentin, Jr., and Florinda D. Soriano, as witnesses, and documentary evidence, marked as *Exhibits "QQ"* to *"SSS"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated June 4, 2008.

On the other hand, respondent presented Elizabeth Cruz, Planning Officer of the Center, DOF; Marlyn L. Marquez, Chief Tax Specialist of the DOF; Philip R. Santiago, Records Officer of the Center, DOF; Aquita Olimpo, Budget Officer II of the BOI; and Romeo Simon Esparago, Jr., Library Helper of Manila Bulletin Publishing Corporation; as witnesses, and documentary evidence, marked as *Exhibits "1" to "23"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated December 13, 2006.

Both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice of the Resolution dated June 4, 2008; afterwhich the case shall be deemed submitted for decision.

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

ISSUES

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

I

WHETHER OR NOT THE ISSUANCE OF THE COLLECTION LETTERS AND THE WARRANT CONSTITUTES VIOLATIONS OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW.

II

WHETHER OR NOT THE ENFORCEMENT OF THE EXCOM RESOLUTION CONSTITUTES A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW.

III

WHETHER OR NOT OF THE TWENTY (20) TCCS SUBJECT OF THE JUNE 17, 2002 COLLECTION LETTERS AND THE WARRANT, ONLY FOUR (4) ARE

PART OF THOSE PURPORTEDLY CANCELLED BY THE CENTER UNDER THE EXCOM RESOLUTION.

IV

WHETHER OR NOT THE CENTER HAS THE JURISDICTION OR AUTHORITY TO CANCEL THE TCCS, TDMS, AND THE TCC TRANSFERS.

V

WHETHER OR NOT THE COLLECTION LETTERS AND THE WARRANT, CONSIDERING THAT THE TAXES INVOLVED THEREIN ARE AMONG THE TAXES SUBJECT OF C.T.A. CASE NO. 5728, ARE BARRED BY THE PRINCIPLE OF *LITIS PENDENTIA*.

VI

WHETHER OR NOT THE TCCS AND TRANSFERS OF THE TCCS CAN BE VALIDLY, LEGALLY, AND JUSTLY CANCELLED.

VII

WHETHER OR NOT THE COLLECTION LETTERS AND THE WARRANT, BEING BASED ON THE ALLEGATION THAT THE TCCS WERE FRAUDULENTLY ISSUED AND TRANSFERRED, CAN BE GIVEN ANY EFFECT CONSIDERING THAT FRAUD IS NEVER PRESUMED BUT MUST BE PROVEN.

VIII

ASSUMING *ARGUENDO* THAT FRAUD WAS PRESENT IN THE ISSUANCE OF THE ORIGINAL TCCS, WHETHER OR NOT SUCH FRAUD CAN WORK TO THE PREJUDICE OF AN INNOCENT PURCHASER FOR VALUE.

IX

WHETHER OR NOT THE RESPONDENT AND THE DOF/CENTER ARE ESTOPPED FROM INVALIDATING THE TRANSFER AND UTILIZATION OF THE TCCS AND COLLECTING ANEW THE EXCISE TAX FROM PETITIONER.

X

WHETHER OR NOT THE TCCS AND RELATED TDMS ARE ALREADY *FUNCTUS OFFICIO* AND CAN NO LONGER BE CANCELLED.

XI

WHETHER OR NOT RESPONDENT'S AUTHORITY TO ASSESS AND COLLECT THE EXCISE TAXES HAS ALREADY PRESCRIBED.

XII

WHETHER OR NOT RESPONDENT CAN VALIDLY IMPOSE SURCHARGE AND INTEREST ON THE ALLEGEDLY DEFICIENT TAXES.

XIII

WHETHER OR NOT THE CANCELLATION BY THE SECRETARY OF FINANCE OF THE TDMS ISSUED TO PETITIONER AND THEIR RELATED TCCS AND TCC TRANSFERS, WHICH WERE USED BY THE LATTER IN THE PAYMENT OF EXCISE TAXES, HAS THE EFFECT OF VOIDING SAID PAYMENT.

XIV

WHETHER OR NOT PETITIONER WAS DENIED DUE PROCESS IN THE CANCELLATION OF THE TDMS AND THEIR RELATED TCCS.

XV

WHETHER OR NOT PETITIONER WAS DENIED DUE PROCESS IN THE COLLECTION OF THE EXCISE TAX.

XVI

WHETHER OR NOT THE TCCS TRANSFERRED TO PETITIONER WERE FRAUDULENTLY OBTAINED.

XVII

WHETHER OR NOT THE TCCS WERE FRAUDULENTLY TRANSFERRED TO PETITIONER.

XVIII

WHETHER OR NOT THE USE BY PETITIONER OF THE TCCS TRANSFERRED TO IT IN THE PAYMENT OF EXCISE TAXES CONSTITUTED FRAUD WITH INTENT TO EVADE TAX.

Principal Issue:

The foregoing issues boil down to the principal issue of whether or not petitioner is liable for deficiency excise tax in the amount of P234,555,275.48, inclusive of surcharge and interests, by reason of the cancellation by the DOF Center of the TCCs and TDMs used in the payment of said excise tax liabilities.

THE COURT'S RULING

The petition is meritorious.

The Principal Issue Raised Herein Had Already Been Ruled With Finality By The Supreme Court

There is nothing novel in this case, as this case is a mere sequel to C.T.A. Case No. 6003, entitled *"Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue"*, which was appealed to the Court *En Banc,* docketed as C.T.A. EB No. 64, and finally elevated to the Supreme Court in the case entitled *"Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue"*, docketed as G.R. No. 172598. The Supreme Court rendered a Decision on December 21, 2007 in favor of petitioner PSPC, which has become final in view of the Supreme Court's denial of the Commissioner of Internal Revenue's ("CIR") Motion for Reconsideration, in its Resolution dated February 20, 2007. In a Resolution dated April 30, 2008, the Supreme Court denied, for being a prohibited pleading, CIR's Second Motion for Reconsideration. Finally, on March 17, 2008, an Entry of Judgment was issued by the Supreme Court. avl

In *Pilipinas Shell Petroleum Corporation vs. CIR, 541 SCRA 316* (hereafter the "Shell Case"), the Supreme Court essentially ruled, among others, that:

a) The conduct of a post-audit of the disputed TCCs, their transfer, and their corresponding TDMs, is not a valid suspensive condition in light of the fact that utilization of these TCCs, as tax payments, are immediately valid and effective;

b) The law does not require that a company, like PSPC, be a capital equipment provider or a raw material and/or component supplier of TCC transferors to be a qualified transferee of such TCCs;

c) The August 29, 1989 Memorandum of Agreement ("1989 MOA") between the DOF and BOI remains an internal agreement between these agencies and could not have validly and effectively amended the October 5, 1982 Memorandum of Agreement ("1982 MOA") between the DOF and BOI, which requires only BOI registration to be a qualified transferee of TCCs. Thus, it cannot prejudice TCC transferees, like PSPC, by imposing a requirement more than that imposed by the 1982 MOA, i.e., BOI registration;

d) PSPC is an innocent purchaser for value of the TCCs in dispute and cannot be made to suffer for any alleged fraud in the issuance of the TCCs;

e) The period within which to assess and collect allegedly deficient excise taxes covered by the disputed TCCs has already prescribed;

f) The subject TCCs, after having been fully utilized in payment of PSPC's excise tax liabilities, are already *functus officio*;

g) The CIR has not shown or proven that PSPC participated in the perpetration of any fraudulent act in the issuance of the disputed TCCs, much less, in the transfer and utilization of said TCCs;

h) Although there is a principle that the State in the performance of its government functions is not estopped by the negligence or omission of its agents, this principle cannot be applied where it would work injustice against an innocent party, like PSPC;

i) The Center Excom Resolution No. 03-05-99, pursuant to which the disputed TCCs and their corresponding TDMs were cancelled, cannot be validly enforced against PSPC;

j) No surcharge and interest can be imposed against PSPC; and

k) PSPC's right to substantive and procedural due process was violated.

Considering that the present case involves the same issues and defenses raised in C.T.A. Case No. 6003 (C.T.A. EB NO. 64), which were settled in the Supreme Court Shell decision, this Court has no option, but to apply with consistency the rulings made by the Supreme Court in said Shell Case under the rule of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) *(Pepsi-Cola Products Philippines, Incorporated vs. Pagdanganan, 504 SCRA 563).*

The principle of *stare decisis et non quieta movere* is entrenched in *Article 8 of the Civil Code*, to wit:

> "ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." *(De Mesa vs. Pepsi Cola Products Phils., Inc., 467 SCRA 440).*

It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument *(Castillo vs. Sandiganbayan, 377 SCRA 515)*.

In C.T.A. Case No. 6003, which was affirmed by the Supreme Court in the Shell Case, the CIR sought to assess against and collect from PSPC the alleged deficiency excise taxes, surcharge and interest, by reason of the cancellation by the DOF Center of TCCs transferred to PSPC by companies, which like itself, are BOI registered, which PSPC utilized to settle its excise tax liabilities. This issue is the very same principal issue raised in the instant case. Moreover, the following facts obtaining in the Shell Case are also attendant in the present case: first, the TCCs were issued, transferred, and utilized by PSPC in the same manner and under the same circumstances; second, the issuance and transfers of these TCCs, as well as their utilization as excise tax payments, were subject to the same stringent approval processes of the Center and BIR; third, five of the TCCs, which are part of this case were part of the list of cancelled TCCs in C.T.A. Case No. 6003, and together with the rest of the TCCs in this case, they were cancelled through the same process; and most importantly, the grounds for cancellation of the TCCs, their transfers and utilization by PSPC, are all the same in this case.

Thus, in line with the settled doctrine to adhere to judicial precedents, this Court cannot deviate from the aforesaid ruling of the Supreme Court in the Shell Case, which is on all-fours with the present case. The cancellation by the Center of the TCCs transferred to petitioner by BOI registered companies, which were issued with corresponding TDMs by the Center and BIR, and BIR's ATAPETs, used by petitioner in payment of its excise tax liabilities, cannot be invalidated. Petitioner, therefore, cannot be held liable for the deficiency excise taxes in the amount of P234,555,275.48, inclusive of surcharge and interests, for the following reasons:

The Transfer to Petitioner of the Subject TCCs and its Utilization are In Accordance with Existing Law, Therefore, Valid

Respondent contends that the post audit disclosed that there were no deliveries of petroleum products from petitioner to the TCC transferors allegedly disclosed in the Supply Agreements found in the transfer folders of the transferors, which, according to respondent, were the basis for the approval of the transfer of TCCs to petitioner. This contention is in view of the additional requirement imposed by the 1989 MOA that the transferor of the TCCs must be a "raw material and/or component supplier of the transferor", in addition to being a BOI registered prescribed by the 1982 MOA. It is respondent's contention that in order for petitioner to be a qualified transferee of the TCCs, it must be a supplier of petroleum products to the TCC transferors.

In the *Shell Case, supra, pp. 344-346*, the Supreme Court, however, ruled as follows:

> "While the October 5, 1982 MOA appears to have been amended by the August 29, 1989 MOA between the DOF and BOI, such may not operate to prejudice transferees like PSPC. For one, the August 29, 1989 MOA remains only an internal agreement as it has neither been elevated to the level of nor incorporated as an amendment in the IRR of EO 226. As aptly put by the CTA Division:
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> > 'If the 1989 MOA has validly amended the 1982 MOA, it would have been incorporated either expressly or by reference in Rule VII of the Implementing Rules and Regulations (IRRs) of E.O. 226. To date, said Rule VII has not been repealed, amended or otherwise modified. It is noteworthy that the 1999 edition of the official publication by the BOI of E.O. 226 and its IRRs (*Exhibit R*) which is the latest version, as amended, has not mentioned expressly or by reference [sic] 1989 MOA. The MOA mentioned therein is still the 1982 MOA.
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> > The 1982 MOA, although executed as a mere agreement between the DOF and the BOI was elevated to the status of a rule and regulation applicable to the general public by reason of its having been expressly

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> incorporated in Rule VII of the IRRs. On the other hand, the 1989 MOA which purportedly amended the 1982 MOA, remained a mere agreement between the DOF and the BOI because, unlike the 1982 MOA, it was never incorporated either expressly or by reference to any amendment or revision of the said IRRs. Thus, it cannot be the basis of any invalidation of the transfers of TCCs to petitioner nor of any other sanction against petitioner.'

For another, even if the August 29, 1989 MOA has indeed amended the IRR, which it has not, still, it is ineffective and cannot prejudice third parties for lack of publication as mandatorily required under Chapter 2 of Book VII, EO 292, otherwise known as the Administrative Code of 1987, which pertinently provides:

> 'Section 3. *Filing.*—(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or person.
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> (2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.
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> (3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.
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> Section 4. *Effectivity.*—In addition to other rule-making requirement provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.
>
> Section 5. x x x

> (2) Every rule establishing an offense or defining an act which pursuant to law, is punishable as a crime or subject to a penalty shall in all cases be published in full text.'
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> It is clear that the Center or DOF cannot compel PSPC to submit sales documents for the purported post-audit, as PSPC has duly complied with the requirements of the law and rules to be a qualified transferee of the subject TCCs."

Pursuant to the aforesaid ruling of the Supreme Court, the 1989 MOA remained an internal agreement only between the DOF and BOI for not having been elevated to the level of an Implementing Rules and Regulations ("IRR") and for lack of publication and filing with the Office of the National Administrative Register ("ONAR"), at the University of the Philippines ("UP") Law Center, unlike the 1982 MOA, which was elevated to the level of an *IRR of EO 266,* for having been incorporated with Rule VII of the IRR. Thus, the 1989 MOA cannot prejudice a transferee, like PSPC, which has complied with the requirement of the 1982 MOA to be a transferee of the subject TCCs.

Although, in the instant case, respondent was able to prove that the 1982 MOA was published in the September 11, 1989 issue of the Manila Bulletin, as testified to by Romeo Simon Esparago, Jr., Library Helper of Manila Bulletin Publishing Corporation *(TSN dated June 19, 2006, pp. 13-14, and Exhibits "23" and "23-a"),* the fact remains that the 1989 MOA was not filed with the ONAR, as shown by the Certification dated October 8, 1999, issued by the office *(Exhibit "M")*. It has been held that both the requirements of publication and filing of administrative issuances intended to enforce existing laws are mandatory for the effectivity of said issuances *(Republic vs. Pilipinas Shell Petroleum Corporation, 550 SCRA 691)*.

For lack of filing with the ONAR, as required by the Administrative Code, the 1989 MOA has not become effective as an IRR and has not repealed the 1982 MOA, which was elevated to the level of an IRR of EO 266.

Under the 1982 MOA, the only requisite for the validity of a TCC transfer is that the transferee must be a BOI registered company, which in this case, petitioner had duly complied with.

Petitioner is an Innocent Transferee and for Value of the Subject TCCs

Respondent contends that petitioner is not an innocent purchaser for value because it was aware that the TCCs are subject to post-audit, as indicated in the TCCs themselves, therefore, before payment of its excise tax liabilities with the subject TCCS, it was forewarned of said condition. Also, respondent contends that petitioner is in bad faith as petitioner, in compliance with the requirement that it be a supplier of component parts of the products of the TCC transferors, executed Sales Agreements with the TCC transferors, whereby it shall purportedly supply petroleum products to the transferors in consideration of the TCCs. But, petitioner admitted that it did not actually deliver said petroleum products.

In the *Shell Case, supra, pp. 342-344*, the Supreme Court ruled, to wit:

> "The inescapable conclusion is that the TCCs are not subject to post-audit as a suspensive condition, and are thus valid and effective from their issuance. As such, in the present case, if the TCCs have already been applied as partial payment for the tax liability of PSPC, a post-audit of the TCCs cannot simply annul them and the tax payment made through said TCCs. Payment has already been made and is as valid and effective as the issued TCCs. The subsequent post-audit cannot void the TCCs and allow the respondent to declare that utilizing canceled TCCs results in nonpayment on the part of PSPC. As will be discussed, respondent and the Center expressly recognize the TCCs as valid payment of PSPC's tax liability.
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> *Second*, the only conditions the TCCs are subjected to are those found on its face. And these are:
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> 1. Post-audit and subsequent adjustment in the event of computational discrepancy;
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> 2. A reduction for any outstanding account/obligation of herein claimant with the BIR and/or BOC; and
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> 3. Revalidation with the Center in case the TCC is not utilized or applied within one (1) year from date of issuance/date of last utilization.
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> The above conditions clearly show that the post-audit contemplated in the TCCs does not pertain to their genuineness or validity, but on computational discrepancies that may have resulted from the transfer and utilization of the TCC.
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> This is shown by a close reading of the first and second conditions above; the third condition is self explanatory. Since a tax credit partakes of what is owed by the State to a taxpayer, if the taxpayer has an outstanding liability with the BIR or the BOC, the money value of the tax credit covered by the TCC is primarily applied

to such internal revenue liabilities of the holder as provided under condition number two. Elsewise put, the TCC issued to a claimant is applied first and foremost to any outstanding liability the claimant may have with the government. Thus, it may happen that upon post-audit, a TCC of a taxpayer may be reduced for whatever liability the taxpayer may have with the BIR which remains unpaid due to inadvertence or computational errors, and such reduction necessarily affects the balance of the monetary value of the tax credit of the TCC.

For example, Company A has been granted a TCC in the amount of PhP 500,000 through its export transactions, but it has an outstanding excise tax liability of PhP 250,000 which due to inadvertence was erroneously assessed and paid at PhP 225,000. On post-audit, with the finding of a deficiency of PhP 25,000, the utilization of the TCC is accordingly corrected and the tax credit remaining in the TCC correspondingly reduced by PhP 25,000. This is a concrete example of a computational discrepancy which comes to light after a post-audit is conducted on the utilization of the TCC. The same holds true for a transferee's use of the TCC in paying its outstanding internal revenue tax liabilities.

Other examples of computational errors would include the utilization of a single TCC to settle several internal revenue tax liabilities of the taxpayer or transferee, where errors committed in the reduction of the credit tax running balance are discovered in the post-audit resulting in the adjustment of the TCC utilization and remaining tax credit balance.

Third, the post-audit the Center conducted on the transferred TCCs, delving into their issuance and validity on alleged violations by PSPC of the August 29, 1989 MOA between the DOF and BOI, is completely misplaced. As may be recalled, the Center required PSPC to submit copies of pertinent sales invoices and delivery receipts covering sale transactions of PSPC products to the TCC assignors/transferors purportedly in connection with an ongoing post audit. As correctly protested by PSPC but which was completely ignored by the Center, PSPC is not required by law to be a capital equipment provider or a supplier of raw material and/or component supplier to the transferors. What the law requires is that the transferee be a BOI-registered company similar to the BOI-registered transferors."

Pursuant to the above ruling, the post audit contemplated by law does not pertain to a suspensive condition, which will make the

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effectivity of the subject TCCs dependent on the outcome of the post audit, but it pertains only to computation discrepancies that may have resulted from the transfer and utilization of the TCCs. Thus, genuine and valid TCCs applied in payment of tax liability by a transferee in good faith and for value cannot simply be annulled by a post-audit of said TCCs. As succinctly held by the Supreme Court: "A transferee in good faith and for value of a TCC who has relied on the Center's representation of the 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 belatedly 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.

In the instant case, a close review of the factual milieu and the records reveals that PSPC is a transferee in good faith and for value. No evidence was adduced that PSPC participated in any way in the issuance of the subject TCCs to the corporations, who in turn conveyed the same to PSPC. It has likewise been shown that PSPC was not involved in the processing for the approval of the transfers of the subject TCCs from the various BOI-registered transferors.

Respondent, through the Center, made much of the alleged non-payment through non-delivery by PSPC of the IFOs it purportedly sold to the transferors covered by supply agreements, which were allegedly the basis of the Center for the approval of the transfers. Respondent points to the requirement under the August 29, 1989 MOA between the DOF and BOI, specifying the requirement that '[t]he transferee should be a BOI-registered firm, which is a domestic capital equipment supplier, or a raw material and/or component supplier of the transferor.'

As discussed above, the above amendment to the October 5, 1982 MOA between BOI and DOF cannot prejudice any transferee, like PSPC, as it was neither incorporated nor elevated to the IRR of EO 226, and for lack of due publication. The pro-forma supply agreements allegedly executed by PSPC and the transferors covering the sale of IFOs to the transferors have been specifically denied by PSPC. Moreover, the above-quoted requirement is not required under the IRR of EO 226. Therefore, it is incumbent for respondent to present said supply agreements to prove participation by PSPC in the approval of the transfers of the subject

TCCs. Respondent failed to do this." (*Supreme Court Shell Decision, supra, pp. 347-348*)

In the instant case, a review of the records shows that no evidence was likewise presented to prove that petitioner had participated in the issuance of the subject TCCs to the corporations, which subsequently transferred the same to petitioner. Neither has it been shown that petitioner was involved in the processing for the approval of the transfers of the subject TCCs to petitioner from the various BOI-registered transferors.

But, unlike in the *Shell Case*, respondent, in the case at bench, presented photocopies of the Sales Agreements *(Exhibits "11-C" to "16-C", and "18-C" to "22-C")* to show that the subject TCCs were transferred to petitioner in consideration of its deliveries of petroleum products to the TCC transferors.

However, a careful reading of the Sales Agreements shows that there is nothing stated therein that the said Sales Agreements were executed in consideration of deliveries of petroleum products by petitioner to its TCC transferors.

On cross-examination, petitioner's witness, Pacifico R. Cruz, testified that the consideration for the transfer of the TCCs to petitioner is

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not the delivery of petroleum products, but petitioner paid 90% of the face value of the TCCs *(TSN dated November 24, 2003, p. 23)*. Pacifico R. Cruz further testified that petitioner delivered products to the TCC transferors, but not in exchange for the TCCs. Also, in his Affidavit dated July 11, 2007, Pacifico R. Cruz categorically denied having executed nor signed said Sales Agreements *(Exhibits "OOO" to "OOO-1", and TSN dated July 16, 2007, p. 10)*. The testimony of Pacifico R. Cruz was corroborated by the testimonies of petitioner's other rebuttal witnesses, Gerardo C. Valentin, Jr., and Florinda D. Soriano, former subordinate and Secretary, respectively, of Pacifico R. Cruz, who are both familiar with his signature for having worked with him in PSPC for many years. Both categorically stated that the signatures appearing in the Sales Agreements *(Exhibits "11-C" to "16-C", and "18-C" to "22-C")*, allegedly signed by Pacifico R. Cruz, are not his true and genuine signatures *(Exhibits "PPP" and "PPP-1", and "QQQ" and "QQQ-1", respectively, and TSN dated March 26, 2008, pp. 11 and 26)*. In support of their allegations, Gerardo C. Valentin, Jr., and Florinda D. Soriano presented documents bearing the genuine signatures of Pacifico R. Cruz *(Exhibits "PPP-2" to "PPP-6" and their submarkings)*. The rule is that the handwriting of a person may be proved by a witness who believes to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his, upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person *(Section 2, Rule 132 of the Revised Rules of Court)*. Thus, We give credence to the testimonies of Gerardo C. Valentin, Jr., and Florinda D. Soriano, more so that respondent failed to present countervailing evidence to refute their testimonies.

In addition, considering that no less than *Section 22, Rule 132 of the Revised Rules of Court* also explicitly authorizes the Court, by itself, to make a comparison of the disputed handwriting 'with writings admitted or treated as genuine by the party against whom the evidence is offered or proved to be genuine to the satisfaction of the judge' *(G & M Philippines, Inc. vs. Cuambot, 507 SCRA 567-568)*, the Court deems it necessary to compare the signatures of Pacifico R. Cruz appearing on the purported Deeds of Assignment with his signatures appearing on the documents enumerated below, claimed by Pacifico R. Cruz to be his genuine signatures.

A cursory perusal and comparison of the alleged signatures of Pacifico R. Cruz appearing on said Sales Agreements with the signatures of Pacifico R. Cruz appearing on the records of this case, such as: (1)

Minutes of the Hearing *(Original Docket, p. 1145);* (2) Deeds of Assignment, dated April 20, 1996, August 5, 1996, February 26, 1996, and March 13, 1997 *(Exhibits "S" to "V")*; (3) Affidavit dated July 11, 2007 of Pacifico R. Cruz *(Exhibits "OOO" and "OOO-1")*; (4) Application for Leave dated November 28, 1996 of Pacifico R. Cruz *(Exhibits "PPP-2" and "PPP-2-a")*; (5) Pacifico R. Cruz' Resignation Letter dated December 31, 1986 from PSPC *(Exhibits "PPP-3" and "PPP-3-a")*; (6) Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC *(Exhibits "PPP-4" and "PPP-4-a")*; (7) Letter dated June 1995 of petitioner, bearing Pacifico R. Cruz' signature under the "Received by" portion *(Exhibits "PPP-5" and "PPP-5-a")*; and (8) Letter dated December 7, 1996 of Pacifico R. Cruz to CIR Liwayway V. Chato *(Exhibits "PPP-6" and "PPP-6-a"),* readily shows glaring disparities.

At the outset, a mere layman will immediately notice that the name Pacifico R. Cruz is clearly readable on the contested Deeds of Assignment, as compared with the signatures appearing on the above genuine documents *(Original Docket, p. 1145; Exhibits "S" to "V", Exhibits "OOO" to "PPP-5" and their submarkings)* executed by Pacifico R. Cruz, which can hardly be read. Second, the stroke of the capital Letter "P" on the contested Deeds of Assignment starts from the bottom, and without any tail, whereas, on the other genuine documents, the capital letter "P" has a tail from which the stroke starts. Third, the capital letter "P", small letter "f", and capital letters "R" and "C" on the contested Deeds of Assignment are of the same height, while on the other genuine documents, the capital letter "P" is the only dominant or visibly capitalized letter. Fourth, both letters "i" have periods on the contested Deeds of Assignment, while only the first letter "i" has a period on the other genuine documents. Fifth, the tail of the letter "f" on the contested Deeds of Assignment is more rounded, while on the other documents they are visibly pointed. Sixth, the loop of the capital letter "C" on the contested Deeds of Assignment starts from the top going down, whereas, in the other genuine documents, the loop of the letter "c" starts from the middle going up. Seventh, as to the distance of the letters, on the contested Deeds of Assignment, they are more spread out, while on the other genuine documents, the letters are more constricted.

From the foregoing, it is evident that the signatures "Pacifico R. Cruz" appearing on the contested Deeds of Assignment were signed, not by Pacifico R. Cruz, but by another person. It is clear, therefore, that the Deeds of Assignment were not executed by petitioner. Thus, petitioner cannot be considered to have participated in the approval of the transfer of the subject TCCs by presenting the Deeds of Assignment.

Considering that the subject TCCs were transferred to petitioner for valuable consideration and petitioner did not participate in the commission of any fraud in the procurement of the subject TCCs, nor in the perpetration of any fraudulent act in the transfer of the subject TCCs, the ruling of the Supreme Court in the *Shell Case,* that petitioner is a transferee in good faith and for value remains a binding precedent.

Even Assuming Arguendo that Fraud was Present in the Issuance of the Original TCCs, Petitioner, Being An Innocent Transferee and For Value, Cannot be Prejudiced By Such Fraud

Respondent contends that the post audit of the subject TCCs showed that the companies to which they were issued did not export at the volume they had represented to the Center. Thus, the basis for the approval of the TCCs were spurious export documents. Therefore, the subject TCCs were fraudulently obtained.

In the *Shell Case, supra, p. 347*, the Supreme Court ruled, to wit:

> "xxx The transferee in good faith and for value may not be unjustly prejudiced by the fraud committed by the claimant or transferor in the procurement or issuance of the TCC from the Center. It is not only unjust but well-nigh violative of the constitutional right

> not to be deprived of one's property without due process of law. Thus, a re-assessment of tax liabilities previously paid through TCCs by a transferee in good faith and for value is utterly confiscatory, more so when surcharges and interests are likewise assessed."

Pursuant to the above ruling, a transferee in good faith and for value may not be unjustly prejudiced by the fraud committed by the claimant or transferor in the procurement of the TCC from the Center.

In the case at bench, it would appear that the allegation of fraud relates only to the purported documents supporting the application for the issuance of the TCCs. However, the subject TCCs on their face were validly issued, and are genuine and authentic. They were reviewed by different appropriate government agencies prior to their issuance and were signed by the proper government officials. Also, the transfer of the subject TCCs and their utilization, as payment of petitioner's excise tax liabilities, and the issuance of TDMs by the Center and BIR, and ATAPETs by the BIR, were duly approved and accepted by said government agencies. More importantly, it was proved that petitioner is an innocent transferee and for value of the subject TCCs. Therefore, petitioner cannot be prejudiced by any fraud committed by the claimant or transferor in the procurement of the subject TCCs from the Center.

Petitioner, Being An Innocent Transferee and for Value, Respondent and the

<u>Center/DOF are Estopped from Invalidating the Transfer and Utilization of the Subject TCCs</u>

Although settled is the rule that the government is not estopped from collecting legitimate taxes due to the error committed by its agents, this principle cannot be applied to work injustice to an innocent party.

In the *Shell Case, <u>supra</u>, p. 356*, the Supreme Court ruled, as follows:

> "While we agree with respondent that the State in the performance of governmental function is not estopped by the neglect or omission of its agents, and nowhere is this truer than in the field of taxation, yet this principle cannot be applied to work injustice against an innocent party. In the case at bar, PSPC's rights as an innocent transferee for value must be protected. Therefore, the remedy for respondent is to go after the claimant companies who allegedly perpetrated the fraud. This is now the subject of a criminal prosecution before the Sandiganbayan docketed as Criminal Case Nos. 25940-25962 for violation of RA 3019."

Pursuant to the above ruling, considering that petitioner is an innocent transferee and for value, and considering further that it has already paid its deficiency excise tax liabilities with the use of the subject TCCs, issued with the corresponding TDMs and ATAPETs, the subsequent cancellation of said TCCs and TDMs by the Center is null and void. The remedy for respondent is to go after the claimant companies who allegedly perpetrated the fraud.

Petitioner Was Denied Due Process in the Collection of the Alleged Deficiency Excise Taxes

In the *Shell Case, supra, pp. 358-360*, the Supreme Court ruled, as follows:

> "While this has likewise been mooted by our discussion above, **it would not be amiss to state that PSPC's rights to substantive and procedural due process have indeed been violated.** The facts show that PSPC was not accorded due process before the assessment was levied on it. The Center required PSPC to submit certain sales documents relative to supposed delivery of IFOs by PSPC to the TCC transferors. PSPC contends that it could not submit these documents as the transfer of the subject TCCs did not require that it be a supplier of materials and/or component supplies to the transferors in a letter dated October 29, 1999 which was received by the Center on November 3, 1999. On the same day, the Center informed PSPC of the cancellation of the subject TCCs and the TDM covering the application of the TCCs to PSPC's excise tax liabilities. The objections of PSPC were brushed aside by the Center and the assessment was issued by respondent on November 15, 1999, without following the statutory and procedural requirements clearly provided under the NIRC and applicable regulations.
>
> What is applicable is RR 12-99, which superseded RR 12-85, pursuant to Sec. 244 in relation to Sec. 245 of the NIRC implementing Secs. 6, 7, 204, 228, 247, 248, and 249 on the assessment of national internal revenue taxes, fees, and charges. The procedures delineated in the said statutory provisos and RR 12-99 were not followed by respondent, depriving PSPC of due process in contesting the formal assessment levied against it. Respondent ignored RR 12-99 and did not issue PSPC a notice for informal conference and a preliminary assessment notice, as required. PSPC's November 4, 1999 motion for reconsideration of the purported Center findings and cancellation of the subject TCCs and the TDM was not even acted upon.
>
> PSPC was merely informed that it is liable for the amount of excise taxes it declared in its excise tax returns for 1992 and 1994 to 1997 covered by the subject TCCs via the formal letter of demand and assessment notice. For being formally defective, the November 15, 1999 formal letter of demand and assessment notice is void. xxx

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> In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued. Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in *Roxas v. Court of Tax Appeals*: xxx" *(Emphasis supplied)*

Pursuant to the foregoing ruling, PSPC was denied procedural and substantive due process since (1) PSPC was required to submit sales documents, which are not required by the applicable statutory provisions in the transfer of TCCs; (2) PSPC was not invited to an informal conference and was not given a preliminary assessment notice required by Revenue Regulations 12-99; and (3) the CIR merely relied on the findings of the Center, which did not give PSPC ample time to air its side.

Considering that in the instant case, the procedure conducted by the CIR is a mere repetition of what he did in the Shell Case, said ruling is entirely applicable to the present case. Here, the Collection Letter dated January 20, 2002 states that petitioner is being assessed for purportedly deficient excise tax liabilities because the TCCs/TDMs used to pay the same "had been identified as cancelled by the Department of Finance One Stop Shop & Duty Drawback Center (CENTER) under Excom Resolution No. 03-05-99" *(Exhibit "H")*.

However, Excom Resolution No. 03-05-99 was declared invalid and unenforceable by the Supreme Court in the *Shell Case, supra, pp. 356-357*:

> "On the issue of the publication of the Center's Excom Resolution No. 03-05-99 providing for the 'Guidelines and Procedures for the Cancellation, Recall and Recovery of Fraudulently Issued Tax Credit Certificates,' **we find that the resolution is invalid and unenforceable.** It authorizes the cancellation of TCCs and TDM which are found to have been granted without legal basis or based on fraudulent documents. The cancellation of the TCCs and TDM is covered by a penal provision of the assailed resolution. Such being the case, it should have been published and filed with the National Administrative Register of the U.P. Law Center in accordance with Secs. 3, 4, and 5, Chapter 2 of Book VII, EO 292 or the Administrative Code of 1987." *(Emphasis supplied)*

Thus, the Center's cancellation of the subject TCCs, pursuant to Excom Resolution No. 03-05-99, which was declared invalid and unenforceable, is also null and void.

Also, in the instant case, petitioner was not served a notice for preliminary conference, and in fact no preliminary conference was ever held between petitioner and respondent *(Amended Joint Stipulation of Facts and Issues, par. 20)*. Likewise, no preliminary assessment notice was issued by the BIR against petitioner before the issuance of the Collection Letter, which are both mandated by Revenue Regulations 12-99 *(Amended Joint Stipulation of Facts and Issues, par. 21)*. As ruled by the Supreme Court in the

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Shell Case, such act of the respondent deprived petitioner due process in contesting the assessment levied against it.

Finally, respondent admitted that he based solely the Collection Letter on the findings made by the DOF/Center *(Amended Joint Stipulation of Facts and Issues, par. 19)*. In effect, neither the CIR, nor any of his representatives, made his own findings or conduct an investigation that could be the basis of the assessment against petitioner. As declared by the Supreme Court, this is a clear violation of petitioner's statutory and procedural due process.

In sum, the cancellation by the Center of the TCCs, pursuant to Excom Resolution No. 03-05-99, being violative of substantive and procedural due process, cannot be a valid basis of any tax assessment against petitioner, which is an innocent transferee and for value.

Of the Twenty TCCs Subject of the Collection Letter dated June 17, 2002 and the Warrant of Distraint and/or Levy, Only Five were Actually Cancelled by the Center Under Excom Resolution No. 03-05-99

The assessment of petitioner for deficiency excise taxes is based on the supposed cancellations of the TCCs and TDMs, which petitioner used to pay its excise tax liabilities.

However, a comparison of the lists of TCCs cancelled, annexed to the Collection Letter dated June 17, 2002 *(Exhibit "I-2"),* with the one annexed to the Letter dated November 3, 1999 of the Center *(Exhibit "E-1"),* shows that of the twenty TCCs, subject of the Collection Letter dated June 17, 2002, only five TCCs were actually cancelled by the Center. They are as follows:

Date	TCC No.	Basic Amount	Exhibit No.
February 16, 1996	4181	P5,104,142.00	"N"
August 16, 1996	5132(5133)	6,680,846.00	"O"
March 31, 1997	6304	7,013,845.00	"P"
March 13, 1997	6619	6,166,621.00	"Q"
April 4, 1997	6287(6387)	2,613,217.00	"R"
Total		P27,578,671.00	

Thus, only the aforesaid five TCCs should have been included in the Collection Letter dated June 17, 2002. The Collection Letter dated June 17, 2002 is not only violative of petitioner's due process, but, also erroneous. With more reason that said collection letter cannot be the basis of any assessment against petitioner for deficiency excise tax liabilities.

Respondent Cannot Validly Impose Surcharge and Interest on the Alleged Deficiency Excise Taxes

Considering Our earlier findings that petitioner had timely paid its excise tax liabilities by utilizing genuine and authentic TCCs, obtained in accordance with the existing laws, in good faith and for value, with the necessary authorization and approval from the appropriate government agencies, respondent has absolutely no basis to assess petitioner of any surcharge and interest.

For all the foregoing, petitioner is not liable for deficiency excise taxes in the amount of P234,555,275.48, as the same had already been paid by TCCs validly transferred to petitioner, and issued with corresponding TDMs and ATAPETs.

WHEREFORE, premises considered, the instant Petition For Review is hereby **GRANTED**. The Collection Letters and Warrant of Distraint and/or Levy are **CANCELLED** and declared without force and effect for lack of legal basis.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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 case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice