Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB CASE NO. 535
(CTA Case No. 6547)

-versus-

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, JJ.

PILIPINAS SHELL PETROLEUM CORPORATION,
Respondent.

Promulgated:
FEB 22 2011

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition For Review for the Court *En Banc* filed by petitioner Commissioner of Internal Revenue (CIR) on October 5, 2009 pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, of the Decision[1] dated April 30,

[1] Penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring, EB Docket, pp. 65-107

2009 and the Resolution[2] dated August 18, 2009 rendered by the former Second Division of this Court in CTA Case No. 6547. The dispositive portions of which, respectively read as follows:

> **Decision dated 30 April 2009:**
>
> **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.**
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> **Resolution dated 18 August 2009:**
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> **WHEREFORE**, premises considered, respondent Commissioner of Internal Revenue's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

The antecedent facts as culled from the records and Decision of the Court *a quo* are as follows:

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) vested with the authority to exercise the functions of said office, including, *inter alia,* the power to administer and enforce National Internal Revenue Laws. The CIR holds office at the Bureau of Internal Revenue (BIR) Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Pilipinas Shell Petroleum Corporation (PSPC) is a corporation duly organized and existing under

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[2] *Ibid, EB Docket, pp. 109-112*

the laws of the Philippines, with principal business address at Shell House, 156 Valero St., Salcedo Village, 1227 Makati City.

From 1988 to 1997, PSPC paid some of its excise tax liabilities with Tax Credit Certificates (TCCs) duly assigned and transferred to it by other Board of Investment (BOI)-registered entities, after having secured prior approval from the Department of Finance (DOF) One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (Center). The Center is a composite body run by four government agencies, namely: the DOF, Bureau of Internal Revenue (BIR), Bureau of Customs (BOC), and BOI.[3]

The process and procedures relating to said TCC transfers and utilization thereof are as follows:[4]

> a. PSPC and the other BOI-registered entities (the "transferor") executed Deeds of Assignment over the TCCs, subject to the due approval by the relevant government agencies;
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> b. PSPC was advised of 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;
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> c. PSPC then requested the BOI or the Center for authority to utilize the transferred TCCs as payment of its tax liabilities and thereafter, Tax Debit Memos (TDMs) were issued by the BOI or the Center to signify such authority; ℓ

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[3] Paragraphs 3 and 4, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, pp. 273-274, Division Docket.

[4] Paragraph 5, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, pp. 274-275, Division Docket.

d. Thereafter, PSPC presented the BOI's or the Center's 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 PSPC;

e. PSPC 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 PSPC, as well as an instruction to the BIR's Authorized Agent Banks to accept PSPC's payments in the form of BIR TDMs and PSPC's checks.

Following the procedure as set forth above, PSPC'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 BIR[5] sent a Collection Letter to PSPC demanding payment of allegedly unpaid excise taxes.[6]

Simply put, the foregoing Collection Letter became the subject of several protests which led to various cases before this Honorable Court such as CTA Case No. 5728, CTA Case No. 6003 and CTA Case No. 6547 (the instant case).

PSPC questioned the Collection Letter administratively before the CIR and, subsequently, it filed a Petition for Review before this Court which was docketed as CTA Case No. 5728.

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[5] Revenue District Officer of Revenue District No. 50 of the BIR.
[6] Paragraph 6, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, p. 275, Division Docket.

On July 23, 1999, this Court rendered a Decision in said CTA Case No. 5728 in favor of PSPC ruling, *inter alia*, that the transfers to and utilization by PSPC of the TCCs in question are valid and legal, and that the BIR's attempt to collect supposedly delinquent taxes and penalties from PSPC without an assessment or pre-assessment notice constitutes a denial of due process.

Thereafter, the CIR appealed the foregoing Decision of the Court *a quo* before the Court of Appeals through a Petition for Review docketed as CA-G.R. SP No. 55329, and the said appeal remains pending to date.

Meantime, the Center, in a series of letters to PSPC dated August 31,[7] September 1,[8] and October 18, 1999,[9] revived the issue relating to the transfers to, and utilization by, PSPC of certain TCCs subject of CTA Case No. 5728. In the said letters, the Center required PSPC to submit copies of sales invoices and delivery receipts showing consummation of sale transactions of PSPC'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 should PSPC fails to comply with the requirement.[10]

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[7] Exhibit "A", Division Docket, pp. 301-302.
[8] Exhibit "B", Division Docket, p. 303.
[9] Exhibit "C", Division Docket, pp. 304-315.
[10] Paragraph 10, Amended Joint Stipulation of Facts and Issues filed on October 23,

On November 3, 1999, the Center received PSPC's letter dated October 29, 1999[11] explaining, among others, that the requirement for it to submit the documents mentioned in the Center's letters, and the threatened sanction on PSPC if it failed to comply, has no legal basis as the applicable laws, rules and regulations[12] at the time of the transfer of the subject TCCs to PSPC merely require that both transferor and transferee be BOI-registered entities.[13]

However, on the same date that the Center received PSPC's Reply dated October 29, 1999, the Center wrote PSPC a letter[14] regarding the cancellation of the previously issued TDMs and their related TCCs and TCC transfers.[15]

In a Letter dated November 4, 1999,[16] PSPC asked the Center to reconsider the cancellation of the TDMs, related TCCs and their transfers.[17] PSPC's plea for reconsideration later proved to be futile.

2003, pp. 275-276, Division Docket.

[11] Exhibit "D", Division Docket, pp. 316-327.

[12] Rule VII of the Rules and Regulations implementing Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987 as amended (the "IRRs"), as supplemented by the Memorandum of Agreement (MOA) dated October 5, 1982 (the "1982 MOA") between the DOF and BOI.

[13] Paragraph 11, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, p. 276, Division Docket.

[14] Letter dated 03 November 1999, PSPC's Exhibit "E", Division Docket, pp. 328-332.

[15] Paragraph 12, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, p. 276, Division Docket.

[16] Exhibit "F", Division Docket, pp. 333-348.

[17] Paragraph 13, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, p. 276, Division Docket.

On November 22, 1999, PSPC received a letter dated November 15, 1999 from the CIR which purports to be an assessment for deficiency excise tax, arising from the cancellation of the subject TCCs/TDMs.[18]

On December 2, 1999, PSPC protested the foregoing assessment. Upon the denial of said protest, PSPC filed a Petition for Review before this Court, docketed as CTA Case No. 6003.[19]

On August 2, 2004, the CTA Division rendered a Decision granting PSPC's petition for review and ordered the cancellation of the assessment issued by the CIR dated November 15, 1999. A subsequent Motion for Reconsideration filed by the CIR was likewise denied by the same CTA Division in a Resolution dated January 20, 2005. The CIR thereafter elevated the case before the CTA *En Banc* (CTA EB No. 64).

On April 28, 2006, the CTA *En Banc* reversed the foregoing Decision and Resolution of the CTA Division and ordered PSPC to pay the amount of P570,577,401.61 as deficiency excise tax for the taxable years 1992 and 1994 to 1997, inclusive of 25% surcharge and 20% interest. L

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[18] Paragraph 14, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, p. 276, Division Docket.
[19] Paragraph 15, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, p. 276, Division Docket.

The case was then elevated to the Supreme Court in the case entitled ***Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue***, docketed as G.R. No. 172598. In a Decision promulgated on December 21, 2007, the Supreme Court ruled in favor of PSPC and reversed the Decision of the CTA *En Banc*. The dispositive portion of which reads:

> "**WHEREFORE**, the petition is **GRANTED**. The April 28, 2006 CTA *En Banc* Decision in CTA EB No. 64 is hereby **REVERSED** and **SET ASIDE**, and the August 2, 2004 CTA Decision in CTA Case No. 6003 disallowing the assessment is hereby **REINSTATED**. The assessment of respondent for deficiency excise taxes against petitioner for 1992 and 1994 to 1997 inclusive contained in the April 22, 1998 letter of respondent is canceled and declared without force and effect for lack of legal basis. No pronouncement as to costs."

On July 1, 2002, while CTA Case No. 6003 was still pending before the CTA Division, PSPC received a Collection Letter[20] dated June 17, 2002 (the "June 17, 2002 Collection Letter"), wherein the CIR seeks to collect from PSPC the total sum of Two Hundred Thirty Four Million Five Hundred Fifty Five Thousand Two Hundred Seventy Five and 48/100 Pesos (P234,555,275.48), representing allegedly unpaid taxes, inclusive of surcharge and interest, which had already been paid by PSPC 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").[21] L

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[20] Exhibit "I", Division Docket, p. 373.
[21] Paragraph 16, Amended Joint Stipulation of Facts and Issues filed on October 23,

On July 11, 2002, PSPC filed an administrative Protest dated July 10, 2002 (the "Protest")[22] to the June 17, 2002 Collection Letter before the CIR.[23]

Without acting on the Protest, however, the CIR served a Warrant of Distraint and/or Levy dated September 27, 2002[24] (the "Warrant") on PSPC, which is tantamount to a denial of the Protest made by PSPC on the June 17, 2002 Collection Letter.[25]

Hence, on October 14, 2002, PSPC filed a Petition for Review before this Court which is docketed as CTA Case No. 6547 (the instant case).

Also, in the Joint Stipulation of Facts and Issues dated March 6, 2003[26] and the Amended Joint Stipulation of Facts and Issues dated October 22, 2003,[27] the parties stipulated, as follows:

a. CIR and/or the BIR based its Collection Letter solely on findings made by the DOF/Center;

b. The BIR never served PSPC a notice for preliminary

2003, p. 276, Division Docket.
[22] Exhibit "J", Division Docket, pp. 376-384.
[23] Paragraph 17, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, p. 277, Division Docket.
[24] Exhibit "K", Division Docket, p. 385.
[25] Paragraph 18, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, Division Docket, p. 277.
[26] Filed on 07 March 2003, Division Docket, pp. 148-155.
[27] Filed on 23 October 2003, Division Docket, pp. 277-281.

conference nor was any preliminary conference under Revenue Regulation No. 12-99 (RR No. 12-99) ever held between PSPC and the BIR prior to issuance of the said Collection Letters;

c. Similarly, there was no preliminary assessment notice (PAN) pursuant to RR No. 12-99 issued by the BIR against PSPC;

d. 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 PSPC during the taxable years in question;

e. 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;

f. 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 (CA-G.R. SP No. 55329);

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

h. 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;

i. All the TCCs contain the following provision:

> 'Liability Clause'
> 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.'

j. In the list (Annex "G-2", 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

On April 30, 2009, the former Second Division of this Court rendered a Decision[28] in favor of PSPC and ordered the cancellation of the disputed Collection Letters and Warrant of Distraint and/or Levy. Considering that the instant case involves the same issues and defenses raised in a case decided by the Supreme Court in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue* (G.R. No. 172598, December 21, 2007), the Court *a quo* applied the aforesaid ruling in the case at bench based on the doctrine of *Stare Decisis et non quieta movere.*

The CIR filed a Motion for Reconsideration on May 15, 2009 and which was subsequently denied for lack of merit in a Resolution[29] dated August 18, 2009. L

[28] EB Docket, pp. 65-107.
[29] EB Docket, pp. 109-112.

Undaunted, the CIR filed a Petition for Review[30] before the Court *En Banc* on October 5, 2009.[31]

The issues presented are as follows:

1. Whether or not the Court *a quo* erred in recognizing the principle of *stare decisis*;
2. Whether or not the Court *a quo* erred in not resolving the issue of the validity of the TCCs, despite overwhelming proof that the TCCs were void *ab initio*;
3. Whether or not the Court *a quo* erred in ruling that the subject TCCs can be used by PSPC in payment of its excise tax liabilities;
4. Whether or not the Court *a quo* erred in declaring PSPC as an innocent transferee in good faith and thus, cannot be prejudiced by the fraudulent procurement of TCCs;
5. Whether or not the Court *a quo* erred in holding that only five (5) out of twenty (20) TCCs subject of the Collection Letter and Warrant of Distraint and/or Levy were actually cancelled by the Center;
6. Whether or not the Court *a quo* erred in ruling that CIR and the Center are estopped from seeking invalidation of the TCCs, including their transfer and utilization;
7. Whether or not the Court *a quo* erred in holding that the period within which to collect PSPC's unpaid excise taxes has already prescribed;
8. Whether or not the Court *a quo* erred in holding that PSPC was denied of due process in the collection of excise taxes;

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[30] EB Docket, pp. 7-63.

[31] Resolving the CIR's Motion for Extension of Time to file Petition for Review dated September 14, 2009, the CTA *En Banc*, in a minute resolution, granted a final and non-extendible period of fifteen (15) days from September 17, 2009 or until October 2, 2009 within which to file the Petition for Review. On October 7, 2009, the CIR filed a Manifestation and Motion explaining his failure to personally file the Petition for Review beyond the period granted by the Resolution dated 15 September 2009 due to typhoon "Pepeng". In a Resolution dated 15 October 2009, the CTA En Banc noted CIR's Manifestation in the interest of substantial justice, EB Docket, p. 168.

9. Whether or not the Court *a quo* erred in holding that the CIR cannot validly impose surcharges and interests against PSPC's tax liabilities.

The principal issue is whether PSPC is liable to pay deficiency excise taxes in the amount of P234,555,275.48, inclusive of surcharge and interests, by reason of the cancellation by the Center of the TCCs and TDMs used in the payment of said excise tax liabilities for the taxable years 1995-1998.[32]

The principal issue is answered negatively.

The doctrine of *stare decisis* was correctly applied by the Court a quo in the instant case. In ***Lazatin, et al. vs. Hon. Desierto, et al.,***[33] the Supreme Court extensively discussed the concept and rationale of the doctrine of *stare decisis* in our jurisdiction, thus:

> The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines which provides, thus:
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> > ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
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> It was further explained in *Fermin v. People* [G.R. No. 157643, March 28, 2008, 550 SCRA 132] as follows:
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> > The doctrine of *stare decisis* enjoins adherence to judicial precedents. **It requires courts in a country** L

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[32] Exhibit "I", Division Docket, p. 373.
[33] G.R. No. 147097, June 5, 2009.

to follow the rule established in a decision of the Supreme Court thereof. 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. [*Id.* at 145, citing *Castillo v. Sandiganbayan*, 427 Phil. 785, 793 (2002). (Emphasis supplied).]

In *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation* [G.R. No. 159422, March 28, 2008, 550 SCRA 180], the Court expounded on the importance of the foregoing doctrine, stating that:

The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:

Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same**, even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be decided alike**. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, **the rule of *stare decisis* is a bar to any attempt to relitigate the same issue**. [*Id.* at 197-198. (Emphasis supplied).]

The doctrine has assumed such value in our judicial system that the Court has ruled that "**[a]bandonment thereof**

> **must be based only on strong and compelling reasons**, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished." [*Pepsi-Cola Products, Phil., Inc. v. Pagdanganan*, G.R. No. 167866, October 12, 2006, 504 SCRA 549, 564.] Verily, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting aside the same.

Similarly, in a recent case entitled ***Petron Corporation v. Commissioner of Internal Revenue***,[34] the Supreme Court in applying the principle of *stare decisis* definitely ruled that:

> **Once a case has been decided one way, the rule is settled that any other case involving exactly the same point at issue should be decided in the same manner under the principle *stare decisis et non quieta movere*.** xxx [Emphasis supplied.]

To reiterate, the doctrine of *stare decisis* requires the courts to follow the rule established in a decision of the Supreme Court, which decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. It 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.[35] Abandonment thereof must be based only on strong and compelling reasons.[36]

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[34] G.R. No. 180385, July 28, 2010.
[35] *Fermin vs. People*, G.R. No. 157643, March 28, 2008, 550 SCRA 132.
[36] *Pepsi-Cola Products, Phil., Inc. v. Pagdanganan*, G.R. No. 167866, October 12, 2006, 504 SCRA 549, 564.

In the instant case, the CIR argues that the novelty of the issues presents an exception to the doctrine of *stare decisis*. The CIR states that the huge amount involved in the instant case constitutes as a "compelling reason" for the Court *a quo* to abandon the application of the doctrine of *stare decisis*.

PSPC asserts that the issues in the instant case are not novel and that the Court *a quo* correctly adhered to the case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue* (G.R. No. 172598) decided by the Supreme Court under the doctrine of *stare decisis*.

The CIR's argument is misplaced.

As correctly observed by the Court *a quo,* there is nothing novel in the instant case as the same is a mere sequel to CTA Case No. 6003 (CTA EB No. 64), entitled "*Pilipinas Shell Petroleum Corporation* vs. *Commissioner of Internal Revenue*", which was 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 "*Shell Case*").

It must be underscored that the *Shell Case* promulgated on December 21, 2007 has become final in view of the denial with finality by the Supreme Court of the CIR's Motion for Reconsideration through a Resolution dated February 20, 2007. Subsequently, in a Resolution dated April 30, 2008, the Supreme Court denied the CIR's Second Motion for Reconsideration for being a prohibited pleading. Finally, an Entry of Judgment was made on March 17, 2008.

The rationale laid down by the Supreme Court in the *Shell case* can be summarized as follows:

a. The TCCs duly issued by the Center is not subject to post-audit as a suspensive condition, and are thus immediately effective and valid from the date of their issuance;

b. The conditions found on the face of the TCCs 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;

c. The prevailing law[37] at the time of the issuance of the subject TCCs merely requires that the TCC transferee, like PSPC, be BOI-registered company and does not require the company to be a capital equipment provider or a supplier of raw material and/or component supplier to the transferors in order to qualify as a qualified TCC transferee. Similarly, 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,

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[37] The Implementing Rules and Regulations of Executive Order No. 226, which incorporated the October 5, 1982 Memorandum of Agreement between the MOF and BOI.

1982 Memorandum of Agreement ("1982 MOA") between the DOF and BOI as it has neither been elevated to the level of nor incorporated as an amendment in the IRR of EO 226, and for lack of due publication as required under Chapter 2 of Book VII, EO 292, otherwise known as the Administrative Code of 1987. Hence, it cannot prejudice TCC transferees, like PSPC, by imposing a requirement more than that imposed by the 1982 MOA, i.e., BOI registration;

d. 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. Thus, PSPC, as an innocent purchaser for value of the TCCs in dispute, may not be prejudiced and made to suffer for any alleged fraud in the issuance of the TCCs;

e. Section 222(a) of the NIRC does not apply as PSPC has neither been shown nor proven to have committed any fraudulent act in the transfer and utilization of the subject TCCs. Hence, the three (3)-year period within which to assess and collect allegedly deficiency excise taxes covered by the disputed TCCs has already prescribed pursuant to Section 203 of the NIRC;

f. A taxpayer, like PSPC, cannot be faulted in relying on the Center's approval for the transfers of the subject TCCs and its acceptance of the TCCs for the payment of its excise tax liabilities, and the BIR's acceptance of the subject TCCs as payment for its excise tax liabilities;

g. The subject TCCs cannot be cancelled by the Center as these had already been cancelled and used up after their acceptance as payment for PSPC's excise tax liabilities. What has been used up, debited, and cancelled cannot anymore be declared to be void, ineffective, and cancelled anew;

h. The real issue in the instant petition does not dwell on the validity of the TCCs procured by the transferor from the Center but on whether fraud or breach of law attended the transfer of said TCCs by the transferor to the transferee; L

i. While the Center has authority to cancel the TCCs, it must bear in mind the nature of the TCC's immediate effectiveness and validity for which cancellation may only be exercised before a transferred TCC has been fully utilized or cancelled by the BIR after due application of the available tax credit to the internal revenue tax liabilities of an innocent transferee for value, unless the claimant or transferee was involved in the perpetration of the fraud in the TCC's issuance, transfer, or utilization;

j. While 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, like PSPC;

k. The Center's Excom Resolution No. 03-05-99, pursuant to which the disputed TCCs and their corresponding TDMs were cancelled, cannot be validly enforced against PSPC due to non-publication and non-filing 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;

l. No surcharge and interest can be imposed against PSPC; and

m. PSPC's right to substantive and procedural due process was violated due to the CIR's non-compliance with statutory provisos and revenue regulations, and thereby depriving PSPC of due process in contesting the formal assessment levied against it.

It is noteworthy to emphasize that the Supreme Court similarly applied the foregoing ruling in a recent case entitled ***Petron Corporation v. Commissioner of Internal Revenue*** *(the "Petron Case")*[38] L

[38] G.R. No. 180385, July 28, 2010.

based on the doctrine of *stare decisis et non quieta movere*. In the said case, the Supreme Court reiterated the rule that the TCCs are not subject to post-audit as a suspensive condition for it is immediately valid and effective after its issuance. Moreover, the Supreme Court held that the TCCs used in payment of Petron's excise tax liabilities are valid and effective, and cannot be unduly cancelled by the Center, absent any proof of fraud on the part of Petron in the procurement and issuance of the subject TCCs.

A perusal of the records of the instant case reveals that the legal rights and relations of the parties, the facts, the applicable laws, the causes of action, and the issues are exactly the same as those in the decided case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, supra*. Hence, as the issue has been settled, the Supreme Court decision in the *Shell case* must be respected.

As the Court *a quo* puts it, the principal issue in the aforesaid *Shell Case* and in the instant case are exactly the same, i.e., the propriety of the CIR's assessment and collection of alleged deficiency excise taxes, surcharge and interest from PSPC, by reason of the cancellation by the DOF Center of TCCs previously transferred to PSPC by other BOI-registered companies, which PSPC utilized to settle its excise tax liabilities. Similarly, the facts as presented in both cases (*Shell* *case* and the instant case) are substantially the same, *viz:*

> 1. The TCCs were issued, transferred, and utilized by PSPC in the same manner and under the same circumstances;
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> 2. The issuance, transfers, and utlization of the TCCs were subjected to the same stringent approval processes of the Center and BIR;
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> 3. Five (5) of the TCCs included in the instant case were part of the list of the cancelled TCCs in CTA Case No. 6003, and like the rest of the TCCs in the instant case, they were cancelled through the same process;
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> 4. The grounds for cancellation of the TCCs, their transfers and utlization by PSPC, are the same in the instant case.

Finally, the CIR has not shown any strong and compelling reason to convince this Court that the doctrine of *stare decisis* should not be applied in the instant case. Contrary to the CIR's contention, the huge amount of the alleged excise tax deficiency in the instant case is not a compelling reason to justify the non-application of the doctrine of *stare decisis*.

In the case of ***Commissioner of Internal Revenue v. Algue, Inc.***,[39] the Supreme Court had occasion to remind us of the need to balance the conflicting interests of the government and the taxpayers in this wise: L

[39] G.R. No. L-18896, 17 February 1988, 158 SCRA 9, 11.

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interest of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of common good, may be achieved. [Emphasis supplied.]

Thus, the application of the doctrine of *stare decisis* in the instant case is proper. The cancellation by the Center of the TCCs transferred to PSPC by BOI-registered companies, which were issued with corresponding TDMs by the Center and BIR, and BIR's ATAPETs, used by PSPC in payment of its excise tax liabilities, cannot be invalidated. Hence, PSPC cannot be held liable for the deficiency excise taxes in the amount of P234,555,275.48, inclusive of surcharge and interests based on the reasons discussed hereinbelow.

PSPC is an innocent transferee in good faith and for value; hence, it cannot be prejudiced by the fraudulent procurement of TCCs.

The CIR argues that PSPC is not an innocent transferee in good faith because an assignment of credit involves no transfer of ownership but merely effects the transfer of rights which the assignor has at the time to the assignee. Hence, PSPC, being an assingee, merely stepped into the shoes of the assignor and should therefore suffer the consequences of the fraudulent procurement of the TCCs.

Moreover, the CIR argues that PSPC was aware of the conditions attached to the transfer of the TCCs: that the TCCs are subject to post-audit as indicated therein. Therefore, when PSPC used the TCC in the payment of its excise tax liabilities at the time when the post-audit was yet to be conducted, it did so at its own risk.

This Court disagrees.

First, the Supreme Court in the *Shell Case*[40], already ruled with finality that the TCCs are valid and effective from their issuance and are not subject to post-audit as a suspensive condition, thus:

> **"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.

[40] *Supra*, pp.342-347

Second, the only conditions the TCCs are subjected to are those found on its face. And these are:

1. Post-audit and subsequent adjustment in the event of computational discrepancy;

2. A reduction for any outstanding account/obligation of herein claimant with the BIR and/or BOC; and

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.

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.**

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.

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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.

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Fourth, we likewise fail to see the liability clause at the dorsal portion of the TCCs to be a suspensive condition relative to the result of the post-audit. Said liability clause indicates:

> LIABILITY CLAUSE
>
> 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." (Emphasis supplied.)

The above clause to our mind clearly provides only for the solidary liability relative to the transfer of the TCCs from the original grantee to a transferee. There is nothing in the above clause that provides for the liability of the transferee in the event that the validity of the TCC issued to the original grantee by the Center is impugned or where the TCC is declared to have been fraudulently procured by the said original grantee. Thus, **the solidary liability, if any, applies only to the sale of the TCC to the transferee by the original grantee.** Any fraud or breach of law or rule relating to the issuance of the TCC by the Center to the transferor or the original grantee is the latter's responsibility and liability. **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.

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. L

> 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." [Emphasis supplied]

The Supreme Court already ruled 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. Significantly, the Supreme Court added that the solidary liability provided at the dorsal portion of the TCCs applies only to the sale of the TCC to the transferee by the original grantee. Therefore, the Supreme Court concluded that 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 or issuance of the TCC from the Center. Hence, the CIR's argument that PSPC was aware of the conditions attached to the transfer of the TCCs, i.e., the TCCs are subject to post-audit as indicated therein, must necessarily fail.

Second, in a futile attempt to convince this Court that the Center's subsequent cancellation of the subject TCCs by reason of its fraudulent issuance resulted to non-payment of PSPC's excise tax liabilities, the CIR mistakenly relied on the pronouncement in the case of ***Proton Pilipinas Corporation v. Republic of the Philippines*** *(the "Proton Case")*.[41] Significantly, the CIR's reliance in the *Proton Case* was brushed aside by the Supreme Court in the *Petron Case*,[42] the substantial portion of which reads:

> "In urging the affirmance of the assailed decision, respondent calls our attention to the pronouncement in the case of *Proton Pilipinas Corporation vs. Republic of the Philippines [G.R. No. 165027, 504 SCRA 528, October 16, 2006]* that the resultant non-payment of customs duties and taxes by reason of the cancellation of the TCCs for having been found as fake and spurious is the obligation of the taxpayer. **Rather than the legal implications and consequences of the cancellation of TCCs, however, the *Proton Pilipinas* case dealt with procedural matters such as the effect of the Sandiganbayan's jurisdiction over the criminal case involving the issuance of the TCCs to the collection case instituted by the government before the Regional Trial Court (RTC), the existence of *litis pendencia* as a consequence of the pendency of the criminal and civil cases filed under the circumstances and the prejudicial question arising therefrom.** Sharing the same factual and legal milieu as the case at bench, more in point is the *Pilipinas Shell* case which ruled that the rights of a transferee in good faith cannot be prejudiced by the Center's turnaround from its previous approval of the assignments of the TCCs." [Emphasis supplied.]

In light of the foregoing, the *Proton Case* cited by the CIR is wholly inapplicable in the instant case as it merely dealt with procedural matters such as the scope of the Sandiganbayan's jurisdiction, the existence of *litis pendencia* and prejudicial question. The core issue in the instant case was adeptly discussed and ruled

[41] G.R. No. 165027, 504 SCRA 528, October 16, 2006.
[42] *Supra* note 38.

upon by the Supreme Court in the *Shell Case* above-cited where it vividly discussed the nature of the TCC's immediate effectiveness and validity *vis-a-vis* the Center's authority to cancel the same in the *Shell Case*[43], *viz:*

> "Sec. 3, letter I. of AO 266, in relation to letters a. and g., does give ample authority to the Center to cancel the TCCs it issued. Evidently, the Center cannot carry out its mandate if it cannot cancel the TCCs it may have erroneously issued or those that were fraudulently issued. It is axiomatic that when the law and its implementing rules are silent on the matter of cancellation while granting explicit authority to issue, an inherent and incidental power resides on the issuing authority to cancel that which was issued. **A caveat however is required in that while the Center has authority to do so, it must bear in mind the nature of the TCC's immediate effectiveness and validity for which cancellation may only be exercised <u>before</u> a transferred TCC has been fully utilized or canceled by the BIR after due application of the available tax credit to the internal revenue tax liabilities of an innocent transferee for value, unless of course the claimant or transferee was involved in the perpetration of the fraud in the TCC's issuance, transfer, or utilization.** The utilization of the TCC will not shield a guilty party from the consequences of the fraud committed."

Accordingly, it is crystal clear that the Center may only cause the cancellation of TCCs before and not after a transferred TCC has been fully utilized or cancelled by the BIR after due application of the available tax credit to the tax liabilities of an innocent transferee for value. Hence, it is imperative for this Court to determine whether PSPC is an innocent transferee in good faith and for value in the instant case presented before us. *L*

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[43] <u>Supra</u>, *pp. 355-356*

A further perusal of the records reveals that PSPC is an innocent transferee in good faith and for value. As correctly found by the Court *a quo*, there was no evidence presented which shows PSPC's participation in the procurement and issuance of the subject TCCs by the Center to the original grantees. Neither has it shown that PSPC was involved in the processing for the approval of the transfers of the subject TCCs from the various BOI-registered transferors.

In order to prove that the TCCs were fraudulently transferred to PSPC by the original grantees, the CIR then presented various memoranda approving the requests for transfer of subject TCCs *(Exhibits 11 to 22)*, Deeds of Assignment of TCCs *(Exhibits 11-B to 22-B)* and Sales Agreements *(Exhibits 11-C to 22-C)* allegedly executed by PSPC and TCC transferors. The CIR alleged that the Center approved the TCC transfers on the basis of the representation that the TCCs shall be in payment for petroleum products purchased by the TCC transferors from PSPC pursuant to the aforesaid Sales Agreements.[44] Consequently, as there were no deliveries of petroleum products from PSPC to the TCC transferors as disclosed in the post-audit report and as admitted by Mr. Pacifico Cruz, PSPC's former General Manager of Treasury and Taxation *(tsn., November 24, 2003, p. 23)*, the said transfers C

[44] Division Docket, p. 1475.

to PSPC were made in contravention to Rule VII of the Rules of Regulations implementing the provisions of E.O. No. 226 and the 1989 MOA between the DOF and BOI, which requires that the TCC transferee should be a domestic capital equipment supplier or a raw material and/or component supplier of the transferor.[45] It is on this premise that the CIR concluded that there was a misrepresentation made to the Center because the latter would not have approved the transfers of the subject TCCs were it not for such misrepresentation, thereby making the TCC transfers fraudulent.[46]

The Supreme Court in the *Shell Case* has explicitly held that "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."[47] Thus, PSPC, a BOI-registered company, is a qualified transferee of the subject TCCs.

On the claim of alleged misrepresentation, the Court *a quo*, in brushing aside the theory of the CIR, made the following observations:

> "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

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[45] Ibid.
[46] Ibid.
[47] Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue, G.R. No. 172598, 541 SCRA 316, December 21, 2007, p. 344.

the subject TCCs were transferred to petitioner in consideration of its deliveries of petroleum products to 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 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 it 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.
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> 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."[48]

A careful scrutiny of the records of the case reveals that the signatures "Pacifico R. Cruz" appearing on the contested Sales Agreements *(Exhibits "CCC" to "HHH" and "JJJ" to "NNN")*, and not the Deeds of Assignment as above-cited in the assailed Decision, were signed, not by Mr. Pacifico R. Cruz, but by another person. Nevertheless, we see no cogent reason to deviate from the said findings of the Court *a quo* that PSPC was an innocent transferee in good faith and for value. To emphasize, the Sales Agreements presented by the CIR sufficiently established that PSPC had no participation in the execution thereof as the signatures "Pacifico R. ℒ

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[48] Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue, CTA Case No. 6547, April 30, 2009, EB Docket, pp. 93-98.

Cruz", allegedly representing PSPC, appearing on these documents were not the genuine signature of Mr. Pacifico R. Cruz as compared with the signatures appearing on the genuine documents *(Original Docket, p. 1145; Exhibits "S" to "V", Exhibits "OOO" to "PPP-5" and their submarkings)* executed by Mr. Pacifico R. Cruz as sufficiently explained by the Court *a quo*.

To reiterate, PSPC did not participate in the fraudulent issuance of the subject TCCs, if any, to the original grantees nor in the perpetration of any fraudulent act in the transfer thereof; thus, the ruling of the Court *a quo* that PSPC is a transferee in good faith and for value is hereby affirmed.

The issues on the validity of the subject TCCs and the utilization thereof by PSPC have been rendered moot by the findings of this Court that PSPC is an innocent transferee in good faith and for value.

The CIR posits that the Court a quo should have resolved the core issue in the instant case – the validity of the TCCs transferred to and utilized by PSPC, due to overwhelming proof that the same were fraudulently obtained; thus, they are void *ab initio* and could not be validly used in the payment of PSPC's excise tax liabilities.

Again, the CIR's argument must necessarily fail. The Supreme Court, in addressing this issue in the *Shell case*,[49] held that:

> "On the issue of fraudulent procurement of the TCCs, it has been asseverated that fraud was committed by the TCC claimants who were the transferors of the subject TCCs. **We see no need to rule on this issue in view of our finding that the real issue in this petition does not dwell on the validity of the TCCs procured by the transferor from the Center but on whether fraud or breach of law attended the transfer of said TCCs by the transferor to the transferee.**
>
> **The finding of the CTA *En Banc* that there was fraud in the procurement of the subject TCCs is, therefore, irrelevant and immaterial to the instant petition.** Moreover, there are pending criminal cases arising from the alleged fraud. We leave the matter to the anti-graft court especially considering the failure of the affiants to the affidavits to appear, making these hearsay evidence." [Emphasis supplied.]

Therefore, contrary to the CIR's stance, the real issue to be resolved in the instant petition is not on the validity in the procurement of the subject TCCs from the Center but rather on whether fraud or breach of law attended the transfer of said TCCs by the transferors to PSPC.

This Court sees no cogent reason to belabor on the issues of validity of the subject TCCs and the utilization thereof by PSPC as the same have been rendered moot by the findings of this Court that PSPC is an innocent transferee in good faith and for value.

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[49] *Supra*, p. 353.

As to the issue on the actual number of TCCs that were actually cancelled by the Center, the same is mooted by the pronouncement of the Supreme Court in the Shell Case that the PSPC's payments using the subject TCCs are valid.

The CIR vehemently argues that the Center cancelled all the twenty (20) TCCs subject of the June 17, 2002 Collection Letter as shown in various Cancellation Memoranda approved by the Center's Executive Director, Alberto R. Salanga.[50] In response thereto, PSPC claims that other than the list of purportedly cancelled TCCs/TDMs attached to the Center's Letter dated November 3, 1999, it has not received any notice of any additional TCC/TDM that has been subsequently cancelled by the Center.[51]

Considering the Supreme Court's pronouncement in the *Shell Case* on the validity of payments made by PSPC using the TCCs/TDMs transferred to it by the TCC transferors coupled with the fact that these TCCs cannot be subsequently cancelled by the Center as the same were already used up, debited, and cancelled after its application to PSPC's excise tax liabilities, the issue on the actual number of TCCs

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[50] CIR's Exhibits No. "2" to "8".
[51] EB Docket, pp. 269-270.

cancelled by the Center has been rendered moot and academic. Settled is the rule that "[a] case becomes moot and academic when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits."[52]

On estoppel, the CIR and the Center are estopped from seeking invalidation of the TCCs, including their transfer and utilization.

The CIR assails that he is not estopped from seeking invalidation of the TCCs, including its transfer and utilization without running afoul to the well-established judicial precedents holding that the Government cannot be stopped from collecting taxes by the mistake, negligence, or omission of its agents.

Again, adherence to the principle of *stare decisis* is proper. This issue was similarly settled in the aforesaid *Shell Case,*[53] where the Supreme Court held that:

> "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

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[52] Ocampo v. House of Representatives Electoral Tribunal, G.R. No. 158466, 15 June 2004 *citing Enrile v. Senate Electoral Tribunal*, G.R. No. 132986, May 19, 2004.
[53] *Supra*, p. 356

> the claimant companies who allegedly perpetrated the fraud." [Emphasis supplied.]

Evidently, having established that PSPC is an innocent transferee in good faith and for value of the subject TCCs and therefore, an innocent party, PSPC's rights must be protected. The CIR cannot sweepingly invoke the general rule that the State in the performance of governmental function is not estopped by the neglect or omission of its agents as the same cannot be applied to work injustice against an innocent party, like PSPC in this case. Hence, the CIR and the Center are estopped from seeking invalidation of the subject TCCs, including their transfer and utilization.

On the issue of prescription, the period within which to collect PSPC's unpaid excise taxes has prescribed.

The CIR vehemently argues that PSPC filed a false excise tax return because the TCCs utilized in the payment of excise taxes were subsequently cancelled by the Center; hence, the applicable provision of law in the instant case is Section 222 of the Tax Code, which provides a ten (10)-year prescriptive period from the discovery of the falsity of PSPC's returns for the CIR to assess and collect deficiency taxes. Therefore, since the reckoning point is the date of the various

Cancellation Memoranda (October 24, 1999 and sometime in March with respect to Mannequin International Corp.) which contain the post-audit report, the June 17, 2002 Collection Letter was well within the 10-year period of prescription.

We are not persuaded.

The Supreme Court in the *Shell Case*,[54] ruled that the ten (10)-year period of prescription under Sec. 222(a) of the NIRC does not apply absent any fraudulent act on the part of PSPC in the transfer and utilization of the subject TCCs. Hence, the three (3)-year period of prescription under Sec. 203 of the NIRC has set in, thus:

> "[I]t is clear that PSPC is a transferee in good faith and for value of the subject TCCs and may not be prejudiced with a re-assessment of excise tax liabilities it has already settled when due with the use of the subject TCCs. Logically, therefore, the excise tax returns filed by PSPC duly covered by the TDM and ATAPETs issued by the BIR confirming the full payment and satisfaction of the excise tax liabilities of PSPC, have not been fraudulently filed. Consequently, **as PSPC is a transferee in good faith and for value, Sec. 222(a) of the NIRC does not apply in the instant case as PSPC has neither been shown nor proven to have committed any fraudulent act in the transfer and utilization of the subject TCCs.** With more reason, therefore, that the three-year prescriptive period for assessment under Art. 203 of the NIRC has already set in and bars respondent from assessing anew PSPC for the excise taxes already paid in 1992 and 1994 to 1997. Besides, even if the period for assessment has not prescribed, still, there is no valid ground for the assessment as the excise tax liabilities of PSPC have been duly settled and paid." [Emphasis supplied.]

[54] *Supra*, p. 349.

Considering the earlier pronouncement that PSPC is a transferee in good faith and for value of the subject TCCs, the foregoing ruling of the Supreme Court equally applies. Absent any fraudulent act on the part of PSPC in the issuance and subsequent transfer thereto of the subject TCCs from the original grantees or TCC transferors, the applicable provision is Sec. 203 and not Sec. 222(a) of the NIRC, which provides a three (3)-year period of prescription for assessment and collection of internal revenue taxes. Failure to adhere with the said period necessarily bars the CIR from reassessing PSPC for excise taxes already paid for the taxable years in question.

On due process, PSPC was denied of due process in the collection of excise taxes.

The CIR emphasized that PSPC was not denied of due process in the collection of the unpaid excise taxes because the procedures under RR No. 12-99 is not applicable in the instant case as the Collection Letter is not an assessment for deficiency excise tax but rather, a demand for payment of unpaid excise tax liabilities. In addition, PSPC was given the opportunity to dispute the Collection Letter before the Warrant of Distraint and/or Levy was issued to enforce the collection of deficiency excise taxes. Also, the CIR is justified to rely solely on the findings of the Center's post-audit examination of the TCCs considering that the Center is a specialized government agency tasked to determine fraudulently obtained TCCs.

This argument is untenable.

The Supreme Court in the *Shell Case*,[55] expressly held that PSPC's substantive and procedural due process were equally violated for failure of the CIR to observe the statutory and procedural requirements provided under the NIRC and applicable regulations, thus:

> "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

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[55] *Supra*, pp. 358-360.

> 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
>
> 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. xxx " [Emphasis supplied.]

Thus, the Supreme Court clearly delineated the reasons why PSPC's substantive and procedural due process were violated. *First*, the Center required PSPC to submit certain sales documents relative to supposed delivery of IFOs by PSPC to the TCC transferors, which is not required by the prevailing statutory provisions in the transfer of the subject TCCs. *Second*, no Notice for Informal Conference and Preliminary Assessment Notice were issued to PSPC in violation of Revenue Regulations No. 12-99, thereby depriving PSPC of due process in contesting the formal assessment levied against it. *Third*, the CIR merely relied on the findings of the Center, which did not give PSPC ample opportunity to air its side.

It is undisputed that the factual circumstance and procedure in effecting the assessment and collection of deficiency excise tax liabilities in the *Shell Case* was similarly adopted herein by the CIR. Hence, the aforesaid ruling squarely applies following the doctrine of *stare decisis*.

In the instant case, the Center required PSPC to submit certified copies of the sales invoices and delivery receipts to prove its sale and delivery of Industrial Fuel Oil to the TCC transferors in the Letters dated August 31, 1999[56] and September 1, 1999,[57] respectively. In a Letter dated October 29, 1999,[58] PSPC reasoned that the submission of sales invoices and delivery receipts has no legal basis as the applicable rule at the time of the transfer of TCCs merely requires TCC transferee to be a BOI-registered company. Thereafter, the Center informed PSPC in a Letter dated November 3, 1999[59] that the subject TCCs/TDMs were cancelled in accordance with Excom Resolution No. 03-05-99. PSPC's subsequent letter dated November 4, 1999[60] went on unheeded.

[56] Exhibit "A", Division Docket, pp. 301-302.
[57] Exhibit "B", Division Docket, p. 303.
[58] Exhibit "D", Division Docket, pp. 316-327.
[59] Exhibit "E", Division Docket, p. 328.
[60] Exhibit "F", Division Docket, pp. 333-348.

Instead, the CIR issued a Collection Letter dated January 30, 2002[61] informing PSPC its obligation to pay deficiency excise tax liabilities in the amount of P691,508,005.82, in view of the Center's cancellation of the TCCs/TDMs it previously utilized in payment of its excise tax liabilities pursuant to Excom Resolution No. 03-05-99. Subsequently, the CIR issued another Collection Letter dated June 17, 2002[62] reducing the deficiency excise tax in the amount of P234,555,275.48. Again, the basis for the collection is the inclusion of the subject TCCs/TDMs in the Center's Excom Resolution No. 03-05-99.

The Supreme Court in the *Shell Case* ruled that the Center's Excom Resolution No. 03-05-99 is invalid and unenforceable for lack of publication and requisite filing with the National Administrative Register of the U.P. Law Center pursuant to Sections 3, 4 and 5, Chapter 2 of Book VII, of EO 292, otherwise known as the Administrative Code of 1987.[63] Thus, the Center's basis for cancellation of the subject TCCs/TDMs was clearly without any legal basis.

Significantly, the CIR admitted that (1) he merely based the Collection Letter solely on the findings made by the DOF/Center;[64] (2) C

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[61] Exhibit "H", Division Docket, p. 357.
[62] Exhibit "I", Division Docket, p. 373.
[63] *Supra* note 43, pp. 356-357.
[64] Paragraph 19, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, Division Docket, p. 277.

no Notice for Preliminary Conference and Preliminary Assessment Notice were served to PSPC nor preliminary conference ever held between PSPC and BIR prior to the issuance of the Collection Letters.[65] Clearly then, the CIR merely relied on the findings of the Center in issuing the Collection Letters without making his own findings or conducting an investigation relative thereto. Notably, the CIR ignored the provisions of RR 12-99 which requires the issuance of a notice for informal conference and a preliminary assessment notice, thereby depriving PSPC of its opportunity to ventilate its side before the issuance of the Collections Letters above-cited. Undoubtedly, PSPC's denial of both substantive and procedural due process is clear and unmistakable.

On the surcharges and interests, the CIR cannot validly impose them against PSPC's tax liabilities.

The CIR stood firm in its position that it can validly impose surcharges and interests against PSPC's tax liabilities pursuant to Sections 248 and 249 of the Tax Code. L

[65] Paragraphs 20 and 21, Amended Joint Stipulation of Facts and Issues filed on October 23, 2003, Division Docket, p. 277.

Since PSPC has duly settled its excise tax liabilities by utilizing the subject valid and genuine TCCs/TDMs, obtained in good faith and for value, and in accordance with the applicable laws and rules, the CIR has no legal basis to impose the surcharges and interests.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated April 30, 2009 and assailed Resolution dated August 18, 2009 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ERNESTO D ACOSTA
Presiding Justice