REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PETRON CORPORATION, Petitioner,	**CTA EB No. 311** (CTA Case No. 6423)
-versus-	Present: ACOSTA, *PJ.* CASTAÑEDA JR., BAUTISTA UY, CASANOVA, and PALANCA-ENRIQUEZ, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 0 3 2008 [signature] 2:05 p.m.

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DECISION

CASANOVA, J:

This is an appeal, by way of a Petition for Review,[1] filed by the petitioner-Petron Corporation (PETRON) from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated May 4, 2007 in CTA Case No. 6423 entitled, *"Petron Corporation, petitioner vs. Commissioner of Internal Revenue, respondent"* denying petitioner-PETRON's Petition for Review therein, and from the Resolution[3] (*Assailed Resolution*) dated August 14, 2007 denying PETRON's Motion for Reconsideration.

The facts of the case, as culled from the records[4], are as follows:

THE PARTIES

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[1] CTA En Banc Rollo, pp. 43-100.
[2] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 106-132.
[3] Annex "B", Petition for Review, CTA En Banc Rollo, pp. 134-140.
[4] Supra, note 2, pp. 107-115.

"Petitioner, Petron Corporation, is a corporation organized and existing under and by virtue of Philippine Law, with principal place of business at Petron Mega Plaza, 358 Sen. Gil Puyat Avenue, Makati City. It is a producer of petroleum products and is a Board of Investments (BOI) registered enterprise in accordance with the provisions of the Omnibus Investments Code of 1987 (E.O. 226) under Certificates of Registration No. 89-1037 and D95-136.[5] *Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked, among others, to collect national internal revenue taxes, with office address at the BIR Building, Diliman, Quezon City."*

THE FACTS

"As culled from the records and as agreed upon by the parties in their Joint Stipulation of Facts and Issues, these are the facts of the case.

During the period covering the taxable years 1995 to 1998, petitioner had been an assignee of several Tax Credit Certificates (TCCs) from various BOI-registered entities for which petitioner utilized in the payment of its excise tax liabilities for the taxable years 1995 to 1998. The transfers and assignments of the said TCCs were approved by the Department of Finance's One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF Center), composed of representatives from the appropriate government agencies, namely, the Department of Finance (DOF), the Board of Investments (BOI), the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR).[6]

Taking ground on a BOI letter issued on May 15, 1998 which states that 'hydraulic oil, penetrating oil, diesel fuels and industrial gases are classified as supplies and considered the suppliers thereof as qualified transferees of tax credit',[7] *petitioner acknowledged and accepted the transfers of the TCCs from the various BOI-registered entities.*

Petitioner's acceptance and use of the TCCs as payment of its excise tax liabilities for the taxable years 1995 to 1998, had been continuously approved by the DOF as well as the BIR's Collection Program Division through its surrender and subsequent issuance by the

[5] Par. 3, Petition for Review, CTA Second Division Rollo, p. 2.
[6] Par. 4, Joint Stipulation of Facts & Issues, CTA Second Division Rollo, p. 128.
[7] Diamond Knitting Corporation, Fiber Technology Corporation, Filstar Textile Industrial Corporation, Alliance Thread Co., Inc., Allstar Spinning, Inc., FLB International Fiber Corporation, Jantex Philippines, Inc., Jibtex Industrial Corporation, Master Colour System Corporation and Spintex International, Inc.

Assistant Commissioner of the Collection Service of the BIR of the Tax Debit Memos (TDMs).[8]

On January 30, 2002, respondent issued the assailed 'Assessment' against petitioner for deficiency excise taxes for the taxable years 1995 to 1998, in the total amount of P739,003,036.32, inclusive of surcharges and interests,[9] *based on the ground that the TCCs utilized by petitioner in its payment of excise taxes have been cancelled by the DOF for having been fraudulently issued and transferred, pursuant to its EXCOM Resolution No. 03-05-99. Thus, petitioner, through letters dated August 31, 1999 and September 1, 1999, was required by the DOF Center to submit copies of its sales invoices and delivery receipts showing the consummation of the sale transactions to certain TCC transferors.*[10]

Instead of submitting the documents required by the respondent, on February 27, 2002, petitioner filed its protest letter to the 'Assessment' on the grounds, among others, that:[11]

> *a. The BIR did not comply with the requirements of Revenue Regulations 12-99 in issuing the "assessment" letter dated January 30, 2002, hence, the assessment made against it is void;*
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> *b. The assignment/transfer of the TCCs to petitioner by the TCC holders was submitted to, examined and approved by the concerned government agencies which processed the assignment in accordance with law and revenue regulations;*
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> *c. There is no basis for the imposition of the 50% surcharge in the amount of P159,460,900.00 and interest penalties in the amount of P260,620,335.32 against it;*
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> *d. Some of the items included in the 'assessment' are already pending litigation and are subject of the case entitled 'Commissioner of Internal Revenue vs. Petron Corporation,' C.A. GR SP No. 55330 (CTA Case No. 5657) and hence, should no longer be included in the 'assessment'; and*
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> *e. The assessment and collection of alleged excise tax*

[8] Par. 5, Joint Stipulation of Facts & Issues, CTA Second Division Rollo, p. 128.
[9] Par. 1, Joint Stipulation of Facts & Issues, CTA Second Division Rollo, p. 126.
[10] Par. 10, Joint Stipulation of Facts & Issues, CTA Second Division Rollo, p. 129.
[11] Par. 12 – 12.5, Joint Stipulation of Facts & Issues, CTA Second Division Rollo, pp. 129-130.

> *deficiencies sought to be collected by the BIR against petitioner through the January 30, 2002 letter are already barred by prescription under Section 203 of the National Internal Revenue Code.*

On 27 March 2002, respondent, through Assistant Commissioner Edwin R. Abella served a Warrant of Distraint and/or Levy on petitioner to enforce payment of the P739,003,036.32 tax deficiencies.[12]

Respondent allegedly served the Warrant of Distraint and/or Levy against petitioner without first acting on its letter-protest. Thus, construing the Warrant of Distraint and/or Levy as the final adverse decision of the BIR on its protest of the assessment, petitioner filed the instant petition before this Honorable Court on April 2, 2002.

On April 30, 2002, respondent filed his Answer, raising the following as his Special and Affirmative Defenses:

> *6. In a post-audit conducted by the One-Stop Inter-Agency Tax Credit and Duty Drawback Center (Center) of the Department of Finance (DOF), pursuant to the Center's Excom Resolution No. 03-05-99, it was found that TCCs issued to Alliance Thread Co., Inc., Allstar Spinning, Inc., Diamond Knitting Corp., Fiber Technology Corp., Filstar Textile Industrial Corp., FLB International Fiber Corp., Jantex Philippines, Inc., Jibtex Industrial Corp., Master Colour System Corp. and Spintex International, Inc. were fraudulently obtained and were fraudulently transferred to petitioner. As a result of said finding, the TCCs and the Tax Debit Memos (TDMs) issued by the Center to petitioner against said TCCs were cancelled by the DOF;*
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> *7. Prior to the cancellation of the aforesaid TCCs and TDMs, petitioner had utilized the same 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;*
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> *8. The cancellation by the DOF of the aforesaid TCCs and TDMs has the presumption of regularity upon which respondent may validly rely;*

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[12] CTA Second Division Rollo, p. 37.

9. Petitioner was informed by the DOF of the post-audit conducted on the TCCs and was given the opportunity to submit documents showing that the TCCs were transferred to it in payment of petroleum products allegedly delivered by it to the TCC transferors upon which the TCC transfers were approved, with the admonition that failure to submit the required documents would result in the cancellation of the transfers. Petitioner was also informed of the cancellation of the TCCs and TDMs and the reason for their cancellation;

10. 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;

11. The letter dated January 20, 2002 (should be January 30, 2002), demanding payment of petitioner's excise tax liabilities explicitly states the basis for said demand, i.e., the cancellation of the TCCs and TDMs;

12. The government is never estopped from collecting legitimate taxes due to the error committed by its agents (Visayas Cebu Terminal Inc., vs. Commissioner of Internal Revenue, 13 SCRA 257; Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 102 SCRA 246). The acceptance by the Bureau of Internal Revenue of the TCCs fraudulently obtained and fraudulently 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;

13. As found in the post-audit, petitioner and the TCC transferors committed fraud in the transfer of the TCCs when they made appear that the transfers were in consideration for the delivery of petroleum products by petitioner to the TCCs transferors, for which reason said transfers were approved by the Center, when in fact there were no such deliveries;

14. Petitioner used the TCCs fraudulently obtained and fraudulently transferred in the payment of excise taxes declared in its excise tax returns with intent to evade tax to the extent of the value represented by the TCCs, thereby rendering the returns fraudulent;

15. Since petitioner willfully filed fraudulent returns, it is liable for the 50% surcharge and 20% annual interest imposed under Sections 248 and 249 of the Tax Code;

16. Since petitioner willfully filed fraudulent returns with intent to evade 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; and

17. The case pending in the Court of Appeals (CA-G.R. Sp. No. 55330 [CTA Case No. 5657]), and the case at bar have distinct causes of action. The former involves the invalid transfers of the TCCs to petitioner on the theory that it is not a qualified transferee thereof, while the latter involves the fraudulent procurement of said TCCs and the fraudulent transfers thereof to petitioner.

However, on November 12, 2002, respondent filed a Manifestation informing this Court that on May 29, 2002, it had reduced the amount of deficiency excise taxes to P720,923,224.74 as a result of its verification that some of the TCCs which formed part of the original "Assessment" were already included in a case previously filed with this Court. In effect, the amount of deficiency excise taxes is recomputed as follows:

Transferor	Basic Tax	Surcharge	Interest	Total
Alliance Thread Co. Inc.	P 12,078,823.00	P 6,039,411.50	P 16,147,293.21	P 34,265,527.71
Allstar Spinning, Inc.	37,265,310.00	18,632,655.00	49,781,486.95	105,679,451.95
Diamond Knitting Corporation	36,764,587.00	18,382,293.50	49,264,758.35	104,411,638.85
Fiber Technology Corp.	25,300,911.00	12,650,455.50	34,295,655.90	72,247,022.40
Filstar Textile Corp.	40,767,783.00	20,383,891.50	54,802,550.16	115,954,224.66
FLB International Fiber Corp.	25,934,695.00	12,967,347.50	34,977,257.14	73,879,299.64
Jantex Philippines, Inc.	12,036,192.00	6,018,096.00	15,812,547.24	33,866,835.24
Jibtex Industrial Corp.	15,506,302.00	7,753,151.00	20,610,319.52	43,869,772.52
Master Colour System Corp.	33,333,536.00	16,666,768.00	44,822,167.06	94,822,471.06
Spintex International Inc.	14,912,408.00	7,456,204.00	19,558,368.71	41,926,980.71
Total	**P253,900,547.00**	**P126,950,273.50**	**P340,072,404.24**	**P720,923,224.74**

During the pendency of the case, but after respondent had already submitted his Formal Offer of Evidence for this Court's consideration, he filed an 'Urgent Motion to Reopen Case' on August 24, 2004 on the ground that additional evidence consisting of documents presented to the Center in support of the TCC transferors' claims for tax *credit as well as documents supporting the applications for approval of the transfer of the TCCs to petitioner, must be presented to prove the fraudulent issuance and transfer of the subject TCCs. Respondent submits that it is imperative on his part to do so considering that, without necessarily admitting that the evidence presented in the case of Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,[13] to prove fraud is not clear and convincing, he may suffer the same fate that had befallen upon therein respondent when this Court held, among others, that 'there is no clear and convincing evidence that the Tax Credit Certificates (TCCs) transferred to Shell (for brevity) and used by it in the payment of excise taxes, were fraudulently issued to the TCC transferors and were fraudulently transferred to Shell.'*

An 'Opposition to Urgent Motion to Reopen Case' was filed by petitioner on September 3, 2004 contending that to sustain respondent's motion would 'smack of procedural disorder and spawn a reversion of the proceedings. While litigation is not a game of technicalities, it is a truism that every case must be presented in accordance with the prescribed procedure to insure an orderly administration of justice.'

On October 4, 2004, this Court resolved to grant respondent's Motion and allowed respondent to present additional evidence in support of his arguments, but deferred the resolution of respondent's original Formal Offer of Evidence until after the respondent has terminated his presentation of evidence. Subsequent to this Court's Resolution, respondent then filed on October 20, 2004, a Request for the Issuance of Subpoena Duces Tecum to the Executive Director of the Center or his duly authorized representative, and on October 21, 2004, a Subpoena Ad Testificandum to Ms. Elizabeth R. Cruz, also of the Center.

Petitioner filed a 'Motion for Reconsideration (Re: Resolution dated October 4, 2004)' on October 27, 2004, with respondent filing his 'Opposition' on November 4, 2004, and petitioner subsequently filing its 'Reply to Opposition' on December 20, 2004. Petitioner's motion was denied by this Court in a Resolution dated February 28, 2005 for lack of merit.

On March 18, 2005, petitioner filed an 'Urgent Motion to Revert Case to the First Division' with respondent's 'Manifestation' filed on April 6, 2005 stating that 'the question of which Division of this Honorable Court shall hear the instant case is an internal matter which is better left to the sound discretion of this Honorable Court without interference by a party litigant'. On April 28, 2005, this Court denied the Motion of petitioner for lack of merit.

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[13] CTA Case No. 6003, August 2, 2004.

On November 7, 2005, the Court finally resolved respondent's 'Formal Offer of Evidence' filed on May 7, 2004 and 'Supplemental Formal Offer of Evidence' filed on August 25, 2005. On November 22, 2005, respondent filed a 'Motion for Partial Reconsideration' of the Court's Resolution to admit Exhibits 31 and 31-A on the ground that he already submitted and offered certified true copies of said exhibits, which the Court granted in its Resolution on January 19, 2006.

However, on February 10, 2006, respondent filed a 'Motion to Amend Formal Offer of Evidence' praying that he be allowed to amend his formal offer since some exhibits although attached thereto were inadvertently not mentioned in the Formal Offer of Evidence. Petitioner's 'Opposition' was filed on March 14, 2006. This Court granted respondent's motion in the Resolution dated April 24, 2006 and considering that the parties already filed their respective Memoranda, this case was then considered submitted for decision.

On May 16, 2006, however, respondent filed an 'Omnibus Motion' praying that this Court take judicial notice of the fact that the TCCs issued by the Center, including the TCCs in this instant case, contained the standard 'Liability Clause[14] *and that the case be consolidated with CTA Case No. 6136, on the ground that both cases involve the same parties and common questions of law or fact. An 'Opposition/Comment on Omnibus Motion' was filed by petitioner on June 26, 2006, and 'Reply to Opposition/Comment' was filed by respondent on July 17, 2006.*

In a Resolution promulgated on September 1, 2006, this Court granted respondent's motion only insofar as taking judicial notice of the fact that each of the dorsal side of the TCCs contains the subject 'liability clause', but denied respondent's motion to consolidate considering that C.T.A. Case No. 6136 was already submitted for decision on April 24, 2006."

After trial on the merits, the *CTA Second Division* promulgated the *Assailed Decision*[15] on May 4, 2007, the dispositive portion of which reads as follows:

***"WHEREFORE**, premises considered, the instant Petition for*

[14] 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."

[15] Supra, note 2.

*Review is hereby **DENIED** for lack of merit. Accordingly, petitioner is **ORDERED TO PAY** the respondent the reduced amount of **SIX HUNDRED MILLION SEVEN HUNDRED SIXTY NINE THOUSAND THREE HUNDRED FIFTY THREE AND 95/100 PESOS (P600,769,353.95)**, representing petitioner's deficiency excise taxes for the taxable years 1995 to 1998, recomputed as follows:*

Transferor	Basic Tax		25% Surcharge	20% Interest	Total
Alliance Thread Co. Inc.	P 12,078,823.00		P 3,019,705.75	P 13,456,077.68	P 28,554,606.43
Allstar Spinning, Inc.	37,265,310.00		9,316,327.50	41,484,572.46	88,066,209.96
Diamond Knitting Corp.	36,764,587.00		9,191,146.75	41,053,965.29	87,009,699.04
Fiber Technology Corp.	25,300,911.00		6,325,227.75	28,579,713.25	60,205,852.00
Filstar Textile Corp.	40,767,783.00		10,191,945.75	45,668,791.80	96,628,520.55
FLB International Fiber Corp.	25,934,695.00		6,483,673.75	29,147,714.28	61,566,083.03
Jantex Philippines, Inc.	12,036,192.00		3,009,048.00	13,177,122.70	28,222,362.70
Jibtex Industrial Corp.	15,506,302.00		3,876,575.50	17,175,266.27	36,558,143.77
Master Colour System Corp.	33,333,536.00		8,333,384.00	37,351,805.88	79,018,725.88
Spintex International Inc.	14,912,408.00		3,728,102.00	16,298,640.59	34,939,150.59
Total	**P253,900,547.00**	[16]	**P63,475,136.75**	**P283,393,670.20**	**P600,769,353.95**

*In addition, petitioner is **ORDERED TO PAY** the respondent **TWENTY FIVE PERCENT (25%) LATE PAYMENT SURCHARGE AND TWENTY PERCENT (20%) DELINQUENCY INTEREST** per annum on the amount of **SIX HUNDRED MILLION SEVEN HUNDRED SIXTY NINE THOUSAND THREE HUNDRED FIFTY THREE & 95/100 PESOS (P600,769,353.95)**, computed from June 27, 2002[17] until the amount is fully paid.*

SO ORDERED."

Not satisfied with the above decision, PETRON filed a "Motion for Reconsideration"[18] on May 31, 2007.

In the *Assailed Resolution*[19] dated August 14, 2007, the *CTA Second Division* denied PETRON's "Motion for Reconsideration" for lack of merit.

On September 14, 2007, PETRON filed a "Motion for Extension of Time to File Petition for Review[20]" with the *CTA En Banc*. In a Resolution[21] dated

[16] Per Manifestation of respondent filed on November 12, 2002, CTA Second Division Rollo, p. 138.
[17] See Collection Letter of respondent dated May 29, 2002, CTA Secon Division Rollo, p. 142 and petitioner's protest-letter dated July 16, 2002, CTA Second Division Rollo, pp. 147-152.
[18] "Annex TT", Petition for Review, CTA En Banc Rollo, pp. 665-695.
[19] Supra, note 3.

September 18, 2007, the *CTA En Banc* granted the said motion thereby giving petitioner a final and non-extendible period of fifteen (15) days from September 15, 2007 or until September 30, 2007, within which to file a Petition for Review. On October 1, 2007, PETRON filed, through registered mail, the instant Petition for Review[22] with the *CTA En Banc*, praying that the *CTA En Banc* reverse and set aside the Decision dated May 4, 2007, and the Resolution dated August 14, 2007 of the CTA Second Division in CTA Case No. 6423 entitled, *"Petron Corporation, petitioner vs. Commissioner of Internal Revenue, respondent"* and that the demand and collection of the alleged deficiency excise taxes of Petron in the amount of P600,769,353.95 excluding penalties and interest covering the taxable years 1995-1998 be cancelled and set aside and that respondent be enjoined from collecting the said amount from the petitioner.

Petitioner raised the following grounds[23] in support of the instant Petition for Review, to wit:

I. WITH ALL DUE RESPECT, IT WAS GRAVE REVERSIBLE ERROR FOR THE HONORABLE COURT'S SECOND DIVISION TO RULE THAT THE SUBSEQUENT CANCELLATION OF THE TAX CREDIT CERTIFICATES WHICH PETRON USED TO PAY ITS EXCISE TAXES AFTER APPROVAL BY THE DOF AND THE BIR HAS THE EFFECT OF NON-PAYMENT OF PETRON'S EXCISE TAXES CORRESPONDING TO THE VALUE OF THE TAX CREDIT CERTIFICATES CONSIDERING THAT:

A. PETRON'S ACCEPTANCE OF THE SUBJECT TAX CREDIT CERTIFICATES IS NOT A CONTRACT WITH THE ISSUING AUTHORITY BURDENED WITH CERTAIN CONDITIONS;

B. THE STATEMENT IN THE TAX CREDIT CERTIFICATES THAT THE SAME IS "SUBJECT TO POST-AUDIT" IS NOT IN THE NATURE OF A SUSPENSIVE CONDITION

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[20] CTA En Banc Rollo, pp. 3-6.
[21] CTA En Banc Rollo, p. 42.
[22] Supra, note 1.
[23] Ibid, p. 65-67.

AS CONTEMPLATED IN ARTICLE 1181 OF THE CIVIL CODE BESIDE THE FACT THAT THE TAX CREDIT CERTIFICATE HAS ALREADY BEEN "POST-AUDITED" AS THE ISSUANCE OF THE SAID TCCS IS BASED ON PRIOR USE AND ENTITLEMENT THERETO OF THE APPLICANT;

C. PETRON'S EXCISE TAXES HAD BEEN PAID AND UNCONDITIONALLY EXTINGUISHED WHEN THE BIR ACCEPTED THE TCCS AS PAYMENT THEREOF AFTER THE DOF HAD ISSUED THE DOF TAX DEBIT MEMO ("TDM") AND THE BIR TAX DEBIT MEMO ("TDM"), AND BIR AUTHORITY TO ACCEPT PAYMENT OF EXCISE TAXES ("ATAPET");

II. WITH ALL DUE RESPECT, IT WAS GRAVE REVERSIBLE ERROR FOR THE HONORABLE COURT'S SECOND DIVISION TO RULE THAT THE DEPARTMENT OF FINANCE CENTER IS THE COMPETENT AUTHORITY TO DECLARE THE TAX CREDIT CERTIFICATES AS FRAUDULENT.

III. WITH ALL DUE RESPECT, IT WAS GRAVE REVERSIBLE ERROR FOR THE HONORABLE COURT'S SECOND DIVISION TO RULE THAT THERE WAS FRAUD IN THE TRANSFER OF SUBJECT TAX CREDIT CERTIFICATES CONSIDERING THAT:

A. THERE WAS NO FRAUDULENT TRANSFER OR ASSIGNMENT OF THE TAX CREDIT CERTIFICATES TO PETRON;

B. PETRON WAS NOT A PARTY NOR WAS IT AWARE OF ANY FRAUD IN OBTAINING THE TAX CREDIT CERTIFICATES OR OF ANY FLAW OR DEFECT ON THE SAME;

C. PETRON IS AN INNOCENT PURCHASER FOR VALUE OF THE TAX CREDIT CERTIFICATES;

D. THE TAX CREDIT CERTIFICATES ASSIGNED TO PETRON WERE GENUINE;

E. THE TAX CREDIT CERTIFICATES WERE ASSIGNED TO PETRON IN ACCORDANCE WITH LAW AND APPROVED BY THE APPROPRIATE GOVERNMENT AGENCIES;

F. THE CREDIT NOTES WHICH PETRON ISSUED TO THE ASSIGNORS AS COMPENSATION/PAYMENT OF THE ASSIGNMENT OF THE TCCS WERE AVAILED BY THE ASSIGNORS AND FUEL AND OTHER PETROLEUM PRODUCTS WERE DELIVERED UPON THEIR ORDER;

G. AFFIDAVITS OF GENERAL MANAGERS ATTACHED TO CANCELLATION MEMORANDUM ALLEGEDLY DENYING DELIVERIES OF FUEL AND PETROLEUM PRODUCTS ARE HEARSAY;

H. THE FINANCIAL STATEMENTS OF ASSIGNORS DO NOT AFFECT THE VALIDITY OF PETRON'S PAYMENTS OF EXCISE TAXES THROUGH THE USE OF TAX CREDIT CERTIFICATES;

I. THE VALIDITY OF PETRON'S PAYMENTS OF EXCISE TAXES THROUGH THE USE OF ASSIGNED TAX CREDIT CERTIFICATES WAS ALREADY UPHELD BY THE HONORABLE COURT IN CTA CASE NO. 5657, "PETRON CORPORATION VS. COMMISSIONER OF INTERNAL REVENUE, ET AL.";

IV. WITH ALL DUE RESPECT, IT WAS GRAVE REVERSIBLE ERROR FOR THE HONORABLE COURT'S SECOND DIVISION TO RULE THAT RESPONDENT COMMISSIONER IS NOT BARRED BY ESTOPPEL FROM QUESTIONING THE VALIDITY OF PETRON'S PAYMENTS THROUGH THE USE OF THE ASSIGNED TAX CREDIT CERTIFICATES.

V. WITH ALL DUE RESPECT, IT WAS GRAVE REVERSIBLE ERROR FOR THE HONORABLE COURT'S SECOND DIVISION TO RULE THAT RESPONDENT COMMISSIONER'S REMEDY TO COLLECT THE ALLEGED DEFICIENCY TAX HAD NOT PRESCRIBED.

VI. WITH ALL DUE RESPECT, IT WAS GRAVE REVERSIBLE ERROR FOR THE HONORABLE COURT'S SECOND DIVISION TO RULE THAT PETRON SHOULD BE HELD LIABLE TO PAY TWENTY FIVE PERCENT (25%) LATE PAYMENT SURCHARGE AND TWENTY PERCENT (20%) INTEREST PER ANNUM PURSUANT TO SECTION 248 (A) AND 249 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997.

The grounds relied upon by the petitioner can be summed up in one issue:

Whether or not the Second Division erred in holding petitioner liable for the amount of P600,769,353.95 as deficiency excise taxes for the years 1995-1998, including surcharges and interest, plus 25% surcharge and 20% delinquency interest per annum from June 27, 2002 until the amount is fully paid.

The *CTA En Banc* promulgated a Resolution[24] on November 7, 2007, ordering the CIR to file a Comment on the said Petition for Review, within ten (10) days from receipt of the said Resolution. On November 16, 2007, respondent filed a "Motion for Extension of Time to File Comment"[25] which was granted by the *CTA En Banc* in a Resolution[26] dated November 20, 2007. In compliance with the said Resolution, CIR filed its Comment[27] on November 28, 2007. Petitioner filed a "Reply to Comment"[28] on December 13, 2007.

On February 20, 2008, petitioner filed a "Manifestation and Motion"[29] informing the *CTA En Banc* that on December 21, 2007, the Supreme Court granted the appeal of Pilipinas Shell Petroleum in G.R. No. 172598 entitled, *"Pilipinas Shell Petroleum Corp. vs. Commissioner of Internal Revenue" (SHELL*

[24] CTA En Banc Rollo, pp. 761-762.
[25] CTA En Banc Rollo, pp. 763-764.
[26] CTA En Banc Rollo, pp. 767.
[27] CTA En Banc Rollo, pp. 768-783.
[28] CTA En Banc Rollo, pp. 785-811.
[29] CTA En Banc Rollo, pp. 813-817.

CASE)[30], which involved the same issues as in the present case. Respondent, on the other hand filed a "Motion to Hold in Abeyance the Resolution of the Case"[31] on March 3, 2008 stating that the main issue in the above-cited *SHELL CASE* is similar to the issue in the instant case and since the *SHELL CASE* is under appeal, the resolution of the case at bar should be held in abeyance pending resolution of the appeal in the Supreme Court. On March 13, 2008, petitioner filed another "Manifestation and Motion"[32] attaching therewith a copy of the Resolution[33] of the Supreme Court's Second Division, as Annex "A" thereof, denying with finality the Solicitor General's Motion for Reconsideration in G.R. No. 172598.

On April 9, 2008, the *CTA En Banc* promulgated a Resolution[34] taking note of petitioner's two "Manifestation and Motion" and denying respondent's "Motion to Hold in Abeyance the Resolution of the Case" for lack of merit.

After a careful and thorough evaluation and consideration of the records of the case, the *CTA En Banc* finds merit in petitioner's contentions.

The *CTA Second Division* ruled that the subsequent cancellation of the tax credit certificates previously used to pay the assignee's tax liabilities would have the effect of non-payment of the assignee's excise taxes corresponding to the value of the tax credit certificates supposedly used for payment. The findings of the DOF that the TCCs do not have monetary value are undisputed. Consequently, the effect would be non-payment of respondent's excise taxes corresponding to the value of the TCCs supposedly used for payment simply because payment can only occur if the instrument used to discharge an obligation represented its stated value.

The *CTA Second Division* stated in the assailed Decision that, *"it must be*

[30] "Annex A", Manifestation and Motion, CTA En Banc Rollo, pp. 818-850.
[31] CTA En Banc Rollo, pp. 852-853.
[32] CTA En Banc Rollo, pp. 855-856.
[33] CTA En Banc Rollo, p. 859.
[34] CTA En Banc Rollo, pp. 861-862.

*emphasized at this point that under established procedure, when the Secretary of Finance issues a TCC, notwithstanding compliance of the holder of certain requirements, the same is still subject to re-evaluation. This is unmistakably clear under the express provision in the TCC, which states that '**This Tax Credit is issued subject to: 1. Post-audit x x x**'.*

Hence, it cannot be over-emphasized that the acceptance by the petitioner of the subject TCCs is considered a contract entered into by and between the issuing authority and the petitioner itself. And as with any other valid contract, the same is subject to certain conditions binding to both parties. In other words, when petitioner obtained the TCCs, it was bound by the conditions expressly set forth therein. Logically, a party entering into a contract must necessarily be aware of the conditions it is to be subjected to before agreeing to be a party thereto, more so, if the said contract concerns huge amounts of taxes, like in this instant case. Simply put, it cannot be said that petitioner was unaware of the specific condition of 'post-audit' and the consequences, which may arise after such post-audit is conducted"[35].

Further, it ruled that, *"in view of the foregoing, it is clear that the issuance of the tax credit certificate is subject to the suspensive condition of post-audit, wherein post-audit is one which is conducted in order to determine whether or not the holder of the TCCs is qualified to the issuance of the same. Thus, unless and until there is a final determination of the holder's right to the issuance of the TCCs, there really exists no obligation on the part of the DOF or the BIR to recognize the rights of the holder or transferee/assignee"*[36].

The *CTA En Banc* does not agree.

[35] Assailed Decision, Annex "A", Petition for Review, CTA En Banc Rollo, p. 123.
[36] Ibid, p. 124.

The issues raised by the petitioner have been resolved, with finality, by the Supreme Court in the *SHELL CASE*[37], where the Highest Tribunal held and We quote:

> *"The CTA En Banc upheld respondent's theory by holding that the Center has the authority to do a post-audit on the TCCs it issued; the TCCs are subject to the results of the post-audit since their issuance is subject to a suspensive condition; the transferees of the TCCs are solidarily liable with the transferors on the result of the post-audit; and the cancellation of the subject TCCs resulted in PSPC having to bear the loss anchored on its solidary liability with the transferor of the subject TCCs.*
>
> *We can neither sustain respondent's theory nor that of the CTA En Banc.*
>
> ***First**, in overturning the August 2, 2004 Decision of the CTA Division, the CTA En Banc applied Article 1181 of the Civil Code in this manner:*
>
>> *To completely understand the matter presented before Us, it is worth emphasizing that the statement on the subject certificate stating that it is issued subject to post-audit is in the nature of a suspensive condition under Article 1181 of the Civil Code, which is quoted hereunder for ready reference, to wit:*
>>
>>> *'In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.'*
>>
>> *The above-quoted article speaks of obligations. 'These conditions affect obligations in diametrically opposed ways. If the suspensive condition happens, the obligation arises; in other words, if the condition does not happen, the obligation does not come into existence. On the other hand, the resolutory condition extinguishes rights and obligations already existing; in other words, the obligations and rights already exist, but under the threat of extinction upon the happening of the resolutory condition'. (8 Manresa 130-131, cited on page 140, Civil Code of the Philippines, Tolentino, 1962 ed., Vol. IV).*
>>
>> *In adopting the foregoing provision of law, this Court rules that the issuance of the tax credit certificate is subject to*

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[37] Supre, note 30.

> *the condition that a post-audit will subsequently be conducted in order to determine if the holder is indeed qualified for its issuance. As stated earlier, the holder takes the same subject to the outcome of the post-audit. Thus, unless and until there is a final determination of the holder's right to the issuance of the certificate, there exists no obligation on the part of the DOF or the BIR to recognize the rights of then holder or transferee. . . .*
>
> *xxx xxx xxx*
>
> *The validity and propriety of the TCC to effectively constitute payment of taxes to the government are still subject to the outcome of the post-audit. In other words, when the issuing authority (DOF) finds, as in the case at bar, circumstances which may warrant the cancellation of the certificate, the holder is inevitably bound by the outcome by the virtue of the express provisions of the TCCs.*

The CTA En Banc is incorrect.

Art. 1181 tells us that the condition is suspensive when the acquisition of rights or demandability of the obligation must await the occurrence of the condition. However, Art. 1181 does not apply to the present case since the parties did NOT agree to a suspensive condition. Rather, specific laws, rules, and regulations govern the subject TCCs, not the general provisions of the Civil Code. Among the applicable laws that cover the TCCs are EO 226 or the Omnibus Investments Code, Letter of Instructions No. 1355, EO 765, RP-US Military Agreement, Sec. 106 (c) of the Tariff and Customs Code, Sec. 106 of the NIRC, BIR Revenue Regulations (RRs), and others. Nowhere in the aforementioned laws does the post-audit become necessary for the validity or effectivity of the TCCs. Nowhere in the aforementioned laws is it provided that a TCC is issued subject to a suspensive condition.

The CTA En Banc's holding of the presence of a suspensive condition is untenable as the subject TCCs duly issued by the Center are immediately effective and valid. The suspensive condition as ratiocinated by the CTA En Banc is one where the transfer contract was duly effected on the day it was executed between the transferee and the transferor but the TCC cannot be enforced until after the post-audit has been conducted. In short, under the ruling of the CTA En Banc, even if the TCC has been issued, the real and true application of the tax credit happens only after the post-audit confirms the TCC's validity and not before the confirmation; thus, the TCC can still be canceled even if it has already been ostensibly applied to specific internal revenue tax liabilities.

We are not convinced.

We cannot subscribe to the CTA En Banc's holding that the suspensive condition suspends the effectivity of the TCCs as payment until after the post-audit. This strains the very nature of a TCC.

A tax credit is not specifically defined in our Tax Code, but Art. 21 of EO 226 defines a tax credit as 'any of the credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or the Board (of Investments), if so delegated by the Secretary of Finance.' Tax credits were granted under EO 226 as incentives to encourage investments in certain businesses. A tax credit generally refers to an amount that may be 'subtracted directly from one's total tax liability.' It is therefore an 'allowance against the tax itself' or 'a deduction from what is owed' by a taxpayer to the government. In RR 5-2000, a tax credit is defined as 'the amount due to a taxpayer resulting from an overpayment of a tax liability or erroneous payment of a tax due.'

A TCC is

> *a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed by the provisions of these Regulations.*

From the above definitions, it is clear that a TCC is an undertaking by the government through the BIR or DOF, acknowledging that a taxpayer is entitled to a certain amount of tax credit from either an overpayment of income taxes, a direct benefit granted by law or other sources and instances granted by law such as on specific unused input taxes and excise taxes on certain goods. As such, tax credit is transferable in accordance with pertinent laws, rules, and regulations.

Therefore, the TCCs are immediately valid and effective after their issuance. As aptly pointed out in the dissent of Justice Lovell Bautista in CTA EB No. 64, this is clear from the Guidelines and Instructions found at the back of each TCC, which provide:

> 1. *This Tax Credit Certificate (TCC) shall entitle the grantee to apply the tax credit against taxes and duties until the amount is fully utilized, in accordance with the pertinent tax and customs laws, rules and regulations.*
>
> *xxx xxx xxx*
>
> 4. *To acknowledge application of payment, the One-Stop-Shop Tax Credit Center shall issue the corresponding Tax Debit Memo (TDM) to the grantee.*
>
> *The authorized Revenue Officer/Customs Collector to which payment/utilization was made shall accomplish the Application of Tax Credit portion at the back of the certificate and affix his signature on the column provided. (Emphasis supplied)*

The foregoing guidelines cannot be clearer on the validity and effectivity of the TCC to pay or settle tax liabilities of the grantee or transferee, as they do not make the effectivity and validity of the TCC dependent on the outcome of a post-audit. In fact, if we are to sustain the appellate tax court, it would be absurd to make the effectivity of the payment of a TCC dependent on a post-audit since there is no contemplation of the situation wherein there is no post-audit. Does the payment made become effective if no post-audit is conducted? Or does the so-called suspensive condition still apply as no law, rule, or regulation specifies a period when a post-audit should or could be conducted with a prescriptive period? Clearly, a tax payment through a TCC cannot be both effective when made and dependent on a future event for its effectivity. Our system of laws and procedures abhors ambiguity.

Moreover, if the TCCs are considered to be subject to post-audit as a suspensive condition, the very purpose of the TCC would be defeated as there would be no guarantee that the TCC would be honored by the government as payment for taxes. No investor would take the risk of utilizing TCCs if these were subject to a post-audit that may invalidate them, without prescribed grounds or limits as to the exercise of said post-audit.

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 cancelled 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.*

***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.*

The IRR of EO 226, which incorporated the October 5, 1982 MOA between the MOF and BOI, pertinently provides for the guidelines concerning the transferability of TCCs:

> *[T]he MOF and the BOI, through their respective representatives, have agreed on the following guidelines to govern the transferability of tax credit certificates:*
>
> *1) All tax credit certificates issued to BOI-registered enterprises under P.D. 1789 may be transferred under conditions provided herein;*
> *2)* ***The transferee should be a BOI-registered firm;***
> *3) The transferee may apply such tax credit certificates for payment of taxes, duties, charges or fees directly due to the national government for as long as it enjoys incentives under P.D. 1789. (Emphasis supplied)*

The above requirement has not been amended or repealed during the unfolding of the instant controversy. Thus, it is clear from the above proviso that it is only required that a TCC transferee be BOI-registered. In requiring PSPC to submit sales documents for its purported post-audit of the TCCs, the Center gravely abused its discretion as these are not required of the transferee PSPC by law and by the rules.

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:

> *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.*

> *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 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.*
> *(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.*
> *(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.*
>
> *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. . . . .*
>
> *(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.*

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.*

***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.

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PSPC claims to be a transferee in good faith of the subject TCCs. It believed that its tax obligations for 1992 and 1994 to 1997 had in fact been paid when it applied the subject TCCs, considering that all the necessary authorizations and approvals attendant to the transfer and utilization of the TCCs were present. It is undisputed that the transfers of the TCCs from the original holders to PSPC were duly approved by the Center, which is composed of a number of government agencies, including the BIR. Such approval was annotated on the reverse side of the TCCs, and the Center even issued TDM which is proof of its approval for PSPC to apply the TCCs as payment for the tax liabilities. The BIR issued its own TDM, also signifying approval of the TCCs as payment for PSPC's tax liabilities. The BIR also issued ATAPETs covering the aforementioned BIR-issued TDM, further proving its acceptance of the TCCs as valid tax payments, which formed part of PSPC's total tax payments along with checks duly acknowledged and received by BIR's authorized agent banks.

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Thus, it 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.

***Fifth**, PSPC cannot be blamed for relying on the Center's approval for the transfers of the subject TCCs and the Center's acceptance of the TCCs for the payment of its excise tax liabilities. Likewise, PSPC cannot be faulted in relying on the BIR's acceptance of the subject TCCs as payment for its excise tax liabilities. This reliance is supported by the fact that the subject TCCs have passed through stringent reviews starting from the claims of the transferors, their issuance by the Center, the Center's approval for their transfer to PSPC, the Center's acceptance of the TCCs to pay PSPC's excise tax liabilities through the issuance of the*

Center's TDM, and finally the acceptance by the BIR of the subject TCCs as payment through the issuance of its own TDM and ATAPETs.

Therefore, PSPC cannot be prejudiced by the Center's turnaround in assailing the validity of the subject TCCs which it issued in due course.

Sixth, *we are of the view that the subject TCCs cannot be cancelled by the Center as these had already been canceled after their application to PSPC's excise tax liabilities. PSPC contends they are already functus officio, not quite in the sense of being no longer effective, but in the sense that they have been used up. When the subject TCCs were accepted by the BIR through the latter's issuance of TDM and the ATAPETs, the subject TCCs were duly canceled.*

The tax credit of a taxpayer evidenced by a TCC is used up or, in accounting parlance, debited when applied to the taxpayer's internal revenue tax liability, and the TCC canceled after the tax credit it represented is fully debited or used up. A credit is a payable or a liability. A tax credit, therefore, is a liability of the government evidenced by a TCC. Thus, the tax credit of a taxpayer evidenced by a TCC is debited by the BIR through a TDM, not only evidencing the payment of the tax by the taxpayer, but likewise deducting or debiting the existing tax credit with the amount of the tax paid.

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In the instant case, with due application, approval, and acceptance of the payment by PSPC of the subject TCCs for its then outstanding excise tax liabilities in 1992 and 1994 to 1997, the subject TCCs have been cancelled as the money value of the tax credits these represented have been used up. Therefore, the DOF through the Center may not now cancel the subject TCCs as these have 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 canceled anew.

Besides, it is indubitable that with the issuance of the corresponding TDM, not only is the TCC cancelled when fully utilized, but the payment is also final subject only to a post-audit on computational errors. Under RR 5-2000, a TDM is

> *a certification, duly issued by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the taxpayer named therein has duly paid his internal revenue tax liability in the form of and through the use of a Tax Credit*

Certificate, duly issued and existing in accordance with the provisions of these Regulations. The Tax Debit Memo shall serve as the official receipt from the BIR evidencing a taxpayer's payment or satisfaction of his tax obligation. The amount shown therein shall be charged against and deducted from the credit balance of the aforesaid Tax Credit Certificate.

Thus, with the due issuance of TDM by the Center and TDM by the BIR, the payments made by PSPC with the use of the subject TCCs have been effected and consummated as the TDMs serve as the official receipts evidencing PSPC's payment or satisfaction of its tax obligation. Moreover, the BIR not only issued the corresponding TDM, but it also issued ATAPETs which doubly show the payment of the subject excise taxes of PSPC.

Based on the above discussion, we hold that respondent erroneously and without factual and legal basis levied the assessment. Consequently, the CTA En Banc erred in sustaining respondent's assessment."

On the argument that the DOF Center is the competent authority to declare the tax credit certificates are fraudulent, We agree with the *CTA Second Division* that the Center has concurrent authority with the BIR and BOC to cancel the TCCs it issued. The Center was created under Administrative Order No. (AO) 266, in relation to EO 226. A scrutiny of said executive issuances clearly shows that the Center was granted the authority to issue TCCs pursuant to its mandate under AO 266. Sec. 5 of AO 266 provides:

SECTION 5. Issuance of Tax Credit Certificates and/or Duty Drawback. — The Secretary of Finance shall designate his representatives who shall, upon the recommendation of the CENTER, issue tax credit certificates within thirty (30) working days from acceptance of applications for the enjoyment thereof.

However, the Supreme Court held in the same *SHELL CASE*[38] that,

"On the other hand, it is undisputed that the BIR under the NIRC and related statutes has the authority to both issue and cancel TCCs it has issued and even those issued by the Center, either upon full utilization in the settlement of internal revenue tax liabilities or upon

[38] Ibid.

conversion into a tax refund of unutilized TCCs in specific cases under the conditions provided. AO 266 however is silent on whether or not the Center has authority to cancel a TCC it itself issued. Sec. 3 of AO 266 reveals:

> *SECTION 3. Powers, Duties and Functions. — The Center shall have the following powers, duties and functions:*
>
> *a. To promulgate the necessary rules and regulations and/or guidelines for the effective implementation of this administrative order;*
>
> *xxx xxx xxx*
>
> *g. To enforce compliance with tax credit/duty drawback policy and procedural guidelines;*
>
> *xxx xxx xxx*
>
> *l. To perform such other functions/duties as may be necessary or incidental in the furtherance of the purpose for which it has been established. (Emphasis supplied)*

Sec. 3, letter l. 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 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 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."***
(Emphasis supplied)

With regard to the findings of the *CTA Second Division* as to the presence of fraud in the procurement of the TCCs, the Court in the assailed Decision[39] held that:

"Pursuant to Article 39 (k) of the Omnibus Investments Code of 1987, tax credits are granted to BOI-registered entities on taxes and duties paid on raw materials used for the manufacture of their export products. Indubitably, it is mandatory that the claimants for tax credits export their products. However, the said post-audit conducted on the subject TCCs revealed that the companies to which they were issued did not export at the volume they had represented to the Center. Apparently, the bases for the approval of the TCCs were spurious export documents. This conclusion arrived at was grounded on the fact of the excessively or impossibly high amounts of the tax credits per export sales of the assignor/transferor-companies ratios. The ratios of the amount of TCCs to the amount of sales, which was computed by dividing the average yearly TCC by the average yearly sales as indicated in the "Schedule of Tax Credit Certificates/Sales Ratio",[40] were way above the industry average of 13%. This clearly shows that the volume of export sales declared to the Center on the basis of which the TCCs were issued, was fake.

Moreover, it was concluded, among others, that the transferor/assignor entity Diamond Knitting Corporation was not in operation by virtue of a Cease and Desist Order[41] issued by the Pollution Adjudication Board on February 18, 1993, yet it was granted TCCs in the amount of P168,080,709.00 from 1993 to 1998. Also, in the case of Spintex International, Inc., verification of its export documents with the Bureau of Customs revealed the absence of Export Declarations, Authority to Load and Inspector Certificates of Loading.[42] Likewise, the Center's findings[43] disclosed that the transferors could not have exported their registered capacity of yarns and threads considering that their reported cost of machinery and equipment, per their Audited Financial Statements, obviously could not produce that much yarn and thread.

In addition, the affidavits[44] from the general managers of the

[39] Supra, note 2, CTA En Banc Rollo, pp. 124-127.
[40] Exhibit "13", CTA Second Division Records.
[41] Exhibits "5-C" and "5-C-1", CTA Second Division Records.
[42] Exhibits "12-H" and "12-H-1", CTA Second Division Records.
[43] Exhibits "2-A", "3-A", "5-A", "6-A", "7-A", "8-A", "9-A", "10-A", and "11-A", CTA Second Division Records.
[44] Exhibits "2-F", "3-F", "4-E", "6-F", "7-F", "8-F", "9-F", "10-F", and "11-F", CTA Second Division Records.

transferor/assignor entities indicated that they had no knowledge of any transfer or assignment of the subject TCCs nor were there any deliveries of bunker fuel from petitioner. This clearly shows that the volume of export sales declared to the Center, on the basis of the TCCs issued, were false. Effectively, the post-audit conducted by the Center resulted in a finding of fraud in the transfer of the subject TCCs.

It must be pointed out that Rule VII of the Rules and Regulations implementing the provisions of the Omnibus Investments Code of 1987 and the Memorandum of Agreement between the DOF and BOI specifically provide that 'a TCC transferee should be a domestic capital equipment supplier or a raw material and/or component supplier of the transferor.' In the case at bench, post-audit disclosed that during the period covering 1995 to 1998, there were no deliveries of fuel and other petroleum products from petitioner to the transferor/assignor-companies as stated in their Supply Agreement. This is confirmed by the Report[45] *submitted by the Court-commissioned Independent CPA dated May 6, 2003 as shown on Annex 12,*[46] *which revealed that most of the fuel products which were supposed to be delivered to the transferors/assignor-companies were delivered instead to Duracom, Petrotrade, Royale Fishing, and Filsyn.*[47] *Also, some of the fuel products which were supposed to be delivered to Fiber Technology were delivered to Filsyn;*[48] *those supposedly for Filstar Textile were delivered to Diamond Knitting Corporation, Jantex Philippines and Alliance Thread Co., Inc.;*[49] *and those supposedly for Master Colour were delivered instead to Jantex Philippines, Alliance Thread and Fiber Technology.*[50]

Respondent's Bureau (the BIR), being a subordinate government agency, is bound to adopt the findings of the DOF considering that the latter is the agency, which actually conducts the investigations. Under the governing rules, regulations, guidelines and procedures for the application, issuance and transfer of tax credit certificates, the DOF/Center is the competent authority in this respect. And when in the conduct of its official mandate, the said authority declaring that certain TCCs are tainted with gross irregularities should be afforded great weight and credit. It cannot be denied that in the present case, circumstances are brim with fraud, both as to the issuance of the subject TCCs and their transfer to petitioner."

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[45] Exhibit "A", CTA Second Division Records.
[46] Annex "12" of Exhibit "A", CTA Second Division Records.
[47] Exhibits "M" to "M-17", CTA Second Division Records.
[48] Exhibits "M-4" to "M-5", CTA Second Division Records.
[49] Exhibit "M-7", CTA Second Division Records.
[50] Exhibits "M-11" to "M-14", CTA Second Division Records.

The said argument was resolved by the Supreme Court in the *SHELL CASE* [51] in this manner:

> *"On the issue of the 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.*
>
> *xxx xxx xxx*
>
> *But even assuming that fraud attended the procurement of the subject TCCs, it cannot prejudice PSPC's rights as earlier explained since PSPC has not been shown or proven to have participated in the perpetration of the fraudulent acts, nor is it shown that PSPC committed fraud in the transfer and utilization of the subject TCCs."*
> (Emphasis supplied)

In the present case, it was jointly stipulated[52] by both parties that,

> *"13. That* ***petitioner did not participate in the procurement and issuance of the TCCs,*** *which TCCs were transferred to Petron and later utilized by Petron in payment of its excise taxes."* (Emphasis supplied)

In the case at bar, it is undisputed that Petron was not shown or have been proven to have participated in the perpetration of the fraudulent acts, or

[51] Supra, note 30.

[52] Par. 13, Joint Stipulation of Facts and Issues, Annex "D", Petition for Review, CTA En Banc Rollo, p. 185.

was it shown that Petron committed fraud in the transfer and utilization of the subject TCCs. Petron is a transferee in good faith and for value of the subject tax credit certificates.

The *CTA En Banc* partially agrees with the *CTA Second Division* that respondent Commissioner is not barred by estoppel from questioning the validity of Petron's payments through the use of the assigned tax credit certificates. However, as aptly stated by the Supreme Court in the *SHELL CASE*[53], and We quote:

> *"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*[54], ***yet this principle cannot be applied to work injustice against an innocent party."*** (Emphasis supplied)

As shown above, PETRON is considered as an innocent transferee for value and as such, its rights must be protected. The remedy of the Bureau of Internal Revenue (BIR) is to go after the claimant companies who perpetrated the fraud, and not after PETRON.

Being a transferee in good faith and for value of the subject TCCs, PETRON 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 PETRON duly covered by the TDM and ATAPETs issued by the BIR confirming the full payment and satisfaction of the excise tax liabilities of PETRON, have not been fraudulently filed. This leads us to the discussion of the Supreme Court with regard to the argument of PETRON that the remedy of respondent to collect the alleged deficiency tax has already prescribed. In the *SHELL CASE*[55], the Supreme Court held,

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[53] Supra, note 30.

[54] Commissioner of Internal Revenue v. Procter and Gamble PMC, G.R. No. L-66838, April 15, 1988, 160 SCRA 560.

[55] Supra, note 30.

> *"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."*

On the argument that PETRON should be held liable to pay 25% late payment surcharge and 20% interest per annum pursuant to Secs. 248 (a) and 249 of the 1997 Tax Code, the *CTA En Banc* resolves in the negative. The Supreme Court held in the *SHELL CASE*[56], and We quote with approval, to wit:

> *"PSPC claims that having no deficiency excise tax liabilities, it may not be liable for the late payment surcharges and annual interests.*
>
> *This issue has been mooted by our disquisition above resolving the first issue in that PSPC has duly settled its excise tax liabilities for 1992 and 1994 to 1997. Consequently, there is no basis for the imposition of a late payment surcharges and for interests, and no need for further discussion on the matter."*

Jurisprudential rule states that only decisions of the Supreme Court are authoritative and precedent setting. Since the *SHELL CASE*[57] is a *stare decisis* in the instant case, the ruling of the High Court, will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised.

The Supreme Court defined *stare decisis* in its previous rulings, to wit:

> "*Stare decisis et non quieta movere.* Stand by the decision 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

[56] Ibid.
[57] Ibid.

> considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by 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.[58]"

As stated by the Supreme Court, the tax credit certificates used in the *SHELL CASE*[59] are not subject to post audit as a suspensive condition, and are thus valid and effective from their issuance. A transferee in good faith and for their value of a tax credit certificate who has relied on the DOF 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 a 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 case at bar, PETRON cannot be faulted for the fraud that accompanied the procurement of the subject TCCs. PETRON was a transferee in good faith and for value of the TCCs thus, its rights must be protected.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the May 4, 2007 Decision and August 14, 2007 Resolution of the *CTA Second Division* in CTA Case No. 6423 entitled, *"Petron Corporation, petitioner vs. Commissioner of Internal Revenue, respondent"*, are hereby **REVERSED** and **SET ASIDE**. In addition, the demand and collection of the deficiency excise taxes of PETRON in the amount of P600,769,353.95 excluding penalties and interest covering the taxable years 1995 to 1998 are hereby

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[58] *Grand Placement and General Services Corporaton vs. Court of Appeals, et. al.*, G.R. NO. 142358,January 31, 2006; Ayala Corporation vs. Rosa-Diana Realty and Development Corporation, G.R. No. 134284, December 1, 2000.

[59] Supra, note 30.

CANCELLED and **SET ASIDE**, and respondent-Commissioner of Internal Revenue is hereby **ENJOINED** from collecting the said amount from PETRON.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice