

## SECOND DIVISION

[ G.R. No. 176380, June 18, 2009 ]

**PILIPINAS SHELL PETROLEUM CORPORATION, PETITIONER,  
VS. COMMISSIONER OF CUSTOMS, RESPONDENT.**

### DECISION

**BRION, J.:**

Before us is the Petition for Review on *Certiorari*<sup>[1]</sup> filed by petitioner Pilipinas Shell Petroleum Corporation (*Shell*) questioning the Decision<sup>[2]</sup> of the Court of Appeals (*CA*) in CA-G.R. SP No. 78564. The CA decision set aside the resolutions<sup>[3]</sup> issued by the Court of Tax Appeals (*CTA*) in CTA Case No. 6484, which in turn denied the respondent Commissioner of Customs' (*respondent*) Motion to Dismiss the petition for review Shell filed with the tax court. The CA decision effectively dismissed Shell's tax protest case.

### BACKGROUND FACTS

Shell is a domestic corporation engaged, among others, in the importation of petroleum and its by-products into the country. For these importations, Shell was assessed and required to pay customs duties and internal revenue taxes.

In 1997 and 1998, Shell settled its liabilities for customs duties and internal revenue taxes using tax credit certificates (*TCCs*) that were transferred to it for value by several Board of Investment (*BOI*)-registered companies. The transfers of the *TCCs* to Shell were processed by the transferors-*BOI*-registered companies and were eventually approved by the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (*the Center*). The Center is composed of the following government agencies: the Department of Finance (*DOF*), the Bureau of Internal Revenue (*BIR*), the Bureau of Customs (*BOC*), and the *BOI*. On the belief the *TCCs* were actually good and valid, both the *BIR* and the *BOC* accepted and allowed Shell to use them to pay and settle its tax liabilities.

In a letter dated November 3, 1999 (*Center's November 3 letter*), the Center, through the Secretary of the *DOF*, informed Shell that it was cancelling the *TCCs* transferred to and used as payment by the oil company, pursuant to its EXCOM Resolution No. 03-05-99. The Center claimed that after conducting a post-audit investigation, it discovered that the *TCCs* had been fraudulently secured by the original grantees who thereafter transferred them to Shell; no categorical finding was made regarding Shell's participation in the fraud.

In view of the cancellation, the Center required Shell to pay the BIR and BOC the amounts corresponding to the TCCs Shell had used to settle its liabilities.

Shell objected to the cancellation of the TCCs claiming that it had been denied due process. Apparently, Shell had sent a letter to the Center on November 3, 1999 (*Shell's November 3 letter*) adducing reasons why the TCCs should not be cancelled; Shell claimed that the Center's November 3 letter cancelling the TCCs was issued without considering its letter of the same date.

The Center did not act on Shell's November 3 letter; instead, the respondent sent a letter dated November 19, 1999 (*respondent's November 19 letter*) to Shell requiring it to replace the amount equivalent to the amount of the cancelled TCCs used by Shell to satisfy its customs duties and taxes. The pertinent portion of the respondent's November 19 letter states:

In view of such cancellation, it becomes apparent that the Customs Official Receipts previously issued to [Shell] with the applications of the [TCCs] cited in said lists becomes null and void *ab initio*. In view thereof, your corporation must have to replace amount of P209,129,141.00 which is equivalent to the amount of the [TCCs] cancelled. The corresponding interest, surcharge and penalties thereof shall be relayed to you in due time after the recomputation.

Your immediate response to this demand letter shall be appreciated.

Shell submitted its reply letter dated December 23, 1999. [4] Shell maintained that the cancellation was improper since this was done without affording the corporation its right to due process. It further claimed that the existence of fraud in the issuance and transfer of the TCCs, or even Shell's participation in the alleged fraud, had not been sufficiently established.

Three years later, through letters dated February 15, February 20, and April 12, 2002 (*respondent's collection letters*), the respondent, through Atty. Gil Valera (*Atty. Valera*), Deputy Commissioner for Revenue Collections Monitoring Group, formally demanded from Shell payment of the amounts corresponding to the listed TCCs that the Center had previously cancelled. Except for the amount due, the respondent's collection letters were similarly worded, as follows:

In as much as the same [TCCs] were reported as having been utilized to pay your government obligations earlier, formal demand is hereby being made upon you to pay back the total amount of x x x within five (5) days from receipt thereof [*sic*]. Failure on your part to settle your obligation would constrain the Bureau of Customs to initiate legal action in the regular court.

Please consider this as our last and final demand.

As mentioned, all three letters were signed by Atty. Valera.

Shell replied to the respondent's February 15 and 20, 2002 collection letters *via* letters dated February 27 and March 4, 2002. Before it could reply to the respondent's April 12, 2002 collection letter, Shell received on April 23, 2002 the summons in one<sup>[5]</sup> of the three collection cases<sup>[6]</sup> filed by respondent against Shell before the Regional Trial Court (*RTC*) of Manila. In these collection cases, the respondent sought to recover the amounts covered by the cancelled TCCs; the complaints were all similarly worded except for the amount and TCCs involved, and were signed by Atty. Valera.

**On May 23, 2002, Shell filed with the CTA a Petition for Review questioning the BOC collection efforts for lack of legal and factual basis.** To quote the issues Shell submitted in its CTA petition:

1. Whether or not the TCCs subject of the instant petition for are genuine and authentic;
2. Whether or not petitioner's right to due process of law was violated by the issuance of the 1999 collection letter and/or the filing of the collection cases, both of which seek to enforce the Excom Resolution;
3. Whether or not attempts to collect unpaid duties and taxes, being based on the bare allegation that the TCCs were fraudulently issued and transferred, can be given any effect considering that fraud is never presumed but must be proven;
4. Assuming *arguendo* that fraud was present in the issuance of the original TCCs, whether or not such fraud can work to the prejudice of an innocent purchaser for value who is not a party to such fraud;
5. Whether or not the respondent and the DOF/Center are stopped from invalidating the TCCs and the transfers and utilizations thereof;
6. Whether or not the TCCs, having been utilized, are already *functus officio* and can no longer be cancelled.<sup>[7]</sup>

The respondent filed a motion to dismiss Shell's petition for review on the ground of prescription. The respondent claimed that Shell's petition was filed beyond the 30-day period provided by law for appeals of decisions of the Commissioner of Customs to the CTA. The respondent also contended that this 30-day period should be counted from the time Shell received the respondent's collection letters.

Shell countered by invoking the case of *Yabes v. Flojo*,<sup>[8]</sup> where this Court ruled, under the circumstances of that case, that a complaint for collection filed in court may be considered a final decision or assessment of the Commissioner<sup>[9]</sup> that opened the way for an appeal to

the CTA. Applying that principle, Shell contends the 30-day reglementary period should be counted from the date it received the summons for one of the collection cases filed by respondent or, specifically, on April 23, 2002, not from the date that it received the respondent's collection letters. The petition for review, having been filed on May 23, 2002, was thus instituted within the period provided by law.

The CTA found the respondent's contentions unmeritorious, and thus denied his motion to dismiss in a Resolution dated January 28, 2003.<sup>[10]</sup> The tax court noted that the collection letters were issued and signed only by Atty. Valera, not by the respondent, so that Shell was justified in not heeding the demand. The CTA consequently declared that it is the filing of the collection cases in court that should instead be considered as the final decision of the respondent, and only then should the 30-day period to appeal commence. The respondent elevated the CTA decision to the CA after the CTA denied its motion for reconsideration.<sup>[11]</sup>

The appellate court annulled and set aside the CTA rulings in its decision dated May 3, 2006.<sup>[12]</sup> It found the collection letters written by Atty. Valera "indicative of [respondent's] final rulings on the assessments concerning the spurious TCCs xxx which were then already appealable to the respondent CTA. Each letter carried a clear demand to pay within five (5) days from receipt, and each also carried a warning that *'this [is] our last and final demand.'*" On the authority of Atty. Valera to issue the collection letters, the appellate court pointed to Customs Memorandum Circular (CMC) No. 27-2001 that delegated the Commissioner's authority on matters relating to tax credit and transfers of tax credit to Atty. Valera, and to Customs Memorandum Order (CMO) No. 40-2001 that delegated the authority to sign, file, and prosecute civil complaints likewise to Atty. Valera.

Shell's attempt to have the CA decision reconsidered proved unsuccessful; hence, this petition.

### **THE PETITION**

Shell insists, in this petition for review on *certiorari*, that its petition for review with the CTA was filed within the 30-day reglementary period that, it posits, should be counted from the date it received the summons for the collection cases filed by respondent against it before the regular court. Shell cites this Court's ruling in *Yabes v. Flojo*.<sup>[13]</sup>

On the assumption that the collection letters amounted to a decision on its protest, Shell submits that these are not "decision[s] of the *Commissioner of Customs*" appealable to the CTA under Section 7, Republic Act (RA) No. 1125, as amended by RA No. 9282.<sup>[14]</sup> *It maintains that it is the Commissioner's decision on the taxpayer's liability for customs duties and taxes, not the decision of his subordinate, which is the proper subject of the appeal to the CTA, the delegation of authority under CMC No. 27-2001 and CMO No. 40-2001 notwithstanding. It additionally claims that Atty. Valera was prohibited from carrying out his delegated duties under the injunctive writ issued the RTC of Manila in its Order*

dated August 27, 2001, and the Temporary Restraining Order the CA issued on April 4, 2002.

### **THE COURT'S RULING**

**We resolve to DENY Shell's petition; the present case does not involve a tax protest case within the jurisdiction of the CTA to resolve.**

The parties argue over which act serves as the decision of the respondent that, under the law, can be the subject of an appeal before the CTA, and from which act the 30-day period to appeal shall be reckoned. Shell insists it should be the filing of the collection suits as this was indicative of the finality of the respondent's action. The respondent, on the other hand, claims, it should be the earlier act of sending the collection letters where the respondent finally indicated his resolve to collect the duties due and demandable from Shell.

Section 7 of RA No. 1125, as amended, states:

*Sec. 7. Jurisdiction.* - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal xxx;

xxx    xxx    xxx

4. **Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges**, seizure, detention, or release or property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

These decisions of the respondent involving customs duties specifically refer to his decisions on *administrative tax protest cases*, as stated in Section 2402 of the Tariff and Customs Code of the Philippines (*TCCP*):

Section 2402. *Review by Court of Tax Appeals.* - **The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals**, in the manner and within the period prescribed by law and regulations.

Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive. [Emphasis supplied.]

A tax protest case, under the TCCP, involves a protest of the liquidation of import entries. A liquidation is the final computation and ascertainment by the collector of the duties on

imported merchandise, based on official reports as to the quantity, character, and value thereof, and the collector's own finding as to the applicable rate of duty; it is akin to an assessment of internal revenue taxes under the National Internal Revenue Code<sup>[15]</sup> where the tax liability of the taxpayer is definitely determined.

In the present case, the facts reveal that Shell received three sets of letters:

- a. the Center's November 3 letter, signed by the Secretary of Finance, informing it of the cancellation of the TCCs;
- b. the respondent's November 19 letter requiring it to replace the amount equivalent to the amount of the cancelled TCCs used by Shell; and
- c. the respondent's collection letters issued through Atty. Valera, formally demanding the amount covered by the cancelled TCCs.

None of these letters, however, can be considered as a liquidation or an assessment of Shell's import tax liabilities that can be the subject of an administrative tax protest proceeding before the respondent whose decision is appealable to the CTA. *Shell's import tax liabilities had long been computed and ascertained in the original assessments,*<sup>[16]</sup> *and Shell paid these liabilities using the TCCs transferred to it as payment.* It is even an error to consider the letters as a "reassessment" because they refer to the same tax liabilities on the same importations covered by the original assessments. The letters merely *reissued* the original assessments that were previously settled by Shell with the use of the TCCs. However, on account of the cancellation of the TCCs, the tax liabilities of Shell under the original assessments were considered unpaid; hence, the letters and the *actions for collection*. When Shell went to the CTA, the issues it raised in its petition were all related to *the fact and efficacy of the payments made*, specifically the genuineness of the TCCs; the absence of due process in the enforcement of the decision to cancel the TCCs; the facts surrounding the fraud in originally securing the TCCs; and the application of estoppel. These are payment and collection issues, not tax protest issues within the CTA's jurisdiction to rule upon.

We note in this regard that Shell never protested the original assessments of its tax liabilities and in fact settled them using the TCCs. These original assessments, therefore, have become final, incontestable, and beyond any subsequent protest proceeding, administrative or judicial, to rule upon.

To be very precise, Shell's petition before the CTA principally questioned the validity of the cancellation of the TCCs - a decision that was made not by the respondent, but by the Center. As the CTA has no jurisdiction over decisions of the Center, Shell's remedy against the cancellation should have been a *certiorari* petition before the regular courts, not a tax protest case before the CTA. Records do not show that Shell ever availed of this remedy. Alternatively, as we held in *Shell v. Republic of the Philippines*,<sup>[17]</sup> the appropriate forum for Shell under the circumstances of this case should be at the collection cases before the

RTC where Shell can put up the fact of its payment as a defense.

Parenthetically, our conclusions are fully in step with what we held in *Shell v. Republic*<sup>[18]</sup> that a case becomes ripe for filing with the RTC as a collection matter after the finality of the respondent's assessment. We hereby confirm that this assessment has long been final, and this *recognition* of finality removes all perceived hindrances, based on this case, to the continuation of the collection suits. In *Dayrit v. Cruz*,<sup>[19]</sup> we declared on the matter of collection that:

[A] suit for the collection of internal revenue taxes, where the assessment has already become final and executory, the action to collect is akin to an action to enforce the judgment. No inquiry can be made therein as to the merits of the original case or the justness of the judgment relied upon.

In light of our conclusion that the present case does not involve a decision of the respondent on a matter brought to him as a tax protest, Atty. Valera's lack of authority to issue the collection letters and to institute the collection suits is irrelevant. For this same reason, the injunction against Atty. Valera cannot be invoked to enjoin the collection of unpaid taxes due from Shell.

**WHEREFORE**, we **DENY** Shell's petition for review on *certiorari* and **AFFIRM** the result of the Decision of the Court of Appeals dated May 3, 2006 in CA-G.R. SP No. 78564, based on the principles and conclusion laid down in this Decision. Shell's petition for review before the Court of Tax Appeals, docketed as CTA Case No. 6484, is **DISMISSED**.

**SO ORDERED.**

*Quisumbing, (Chairperson), Ynares-Santiago, Chico-Nazario, and Leonardo-De Castro, JJ., concur.*

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\* Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

\*\* Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

\*\*\* Designated additional Member of the Second Division effective May 11, 2009, per Special Order No. 635 dated May 7, 2009.

[1] Under Rule 45 of the Rules of Court.

[2] Dated May 3, 2006 and penned by Justice Eliezer R. De Los Santos, with Justice Jose C. Reyes and Justice Arturo G. Tayag concurring; *rollo*, pp. 38-53.

[3] Dated January 28, 2003 and June 2, 2003; *id.*, pp. 159-167 and pp. 196-201, respectively.

[4] Shell sent an earlier letter dated December 3, 1999 asking for an extension of time to file a reply to the respondent's November 19 letter.

[5] Docketed as Civil Case No. 02-103300; *rollo*, pp. 82-86.

[6] The two other collection cases filed with the RTC of Manila were docketed as Civil Case Nos. 02-103191 and 02-103192; summonses in these two cases were received by Shell on April 25 and 30, 2002; *id.*, pp. 88-99.

[7] *Id.*, pp. 108-109.

[8] G.R. No. L-46954, July 20, 1982, 115 SCRA 278.

[9] Commissioner of Internal Revenue, as the assessment was under the National Internal Revenue Code, *supra* note 8, p. 286.

[10] *Rollo*, pp. 159-167.

[11] Respondent's Motion for Reconsideration was denied in the CTA Resolution dated June 2, 2003; *id.*, pp. 196-201.

[12] *Supra* note 2.

[13] *Supra* note 8.

[14] *The Law Creating the Court of Tax Appeals, and For Other Purposes*; RA No. 1125 was amended by RA No. 9282 on March 30, 2004.

[15] NIRC, Section 228.

[16] The records did not disclose the exact dates when the liquidation of entries were made, but they most likely refer to importations made by Shell on or before 1997 and 1998, as payments using the TCCs were made in 1997 and 1998.

[17] G.R. No. 161953, March 6, 2008, 547 SCRA 701.



[18] *Id.*

[19] G.R. No. L-39910, September 26, 1988, 165 SCRA 571.