

FIRST DIVISION

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

PETRON CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PEREZ, J.:

Assailed in this petition for review on certiorari filed pursuant to Rule 45 of the 1997 *Rules of Civil Procedure* and Section 11 of Republic Act No. 9282^[1] is the Decision dated October 30, 2007 rendered by the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 238.^[2] The assailed decision affirmed the Decision dated August 23, 2006 in turn rendered by the CTA Second Division in CTA Case No. 6136, ordering petitioner Petron Corporation (Petron) to pay deficiency excise taxes for the taxable years 1995 to 1997, together with the surcharge, interests and delinquency interest imposed thereon.^[3]

The Facts

A corporation engaged in the production of petroleum products, Petron is a Board of Investment (BOI) registered enterprise in accordance with the provisions of the Omnibus Investment Code, under Certificates of Registration No. 89-1037 and D95-136. Pursuant to Deeds of Assignment executed in its favor, Petron acquired Tax Credit Certificates (TCCs) from, among others, the following BOI-registered entities, namely, Diamond Knitting Corporation, Filstar Textile Industrial Corporation, Alliance Thread Co., Inc., Fiber Tech. Corporation, Jantex Phils., Inc. and Master Colour System Corporation.^[4] Granted to the foregoing assignees pursuant to Administrative Order No. 226, in relation to Executive Order No. 226,^[5] the TCCs were subject to the following conditions, to wit:

1. Post-audit and subsequent adjustment in the event of computational discrepancy;
2. A deduction for any outstanding account/obligation of claimant with the BIR and/or BOC; and
3. Revalidation with the Center in case the TCC is not utilized for payment within one (1) year from the date of issuance/date of last utilization.

The assignments of the TCCs were duly approved by the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (the Center), a tax credit window created under Administrative Order No. 226,^[6] dated February 7, 1992, composed of representatives from the Department of Finance (DOF), the BOI, the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR). Issued

DOF Tax Debit Memos (DOF-TDMs) by the Center, Petron, as assignee of said TCCs, utilized the same to pay its excise tax liabilities for the years 1993 to 1997. Upon Petron's surrender of the DOF-TDMs, TCCs and Deeds of Assignment, the corresponding Authorities to Accept Payment of Excise Taxes (ATAPETs) were further issued by the BIR Collection Program Division. Together with the aforesaid documents, the ATAPETs were further submitted to the BIR Head Office which issued BIR-TDMs signed by the Assistant Commissioner of Collection Service, signifying acceptance of the TCCs as payment of Petron's excise taxes.^[7]

Pursuant to its undertaking under the aforesaid Deeds of Assignment, Petron issued Credit Notes (CNs) in an equivalent amount in favor of its assignors which, by themselves or thru their own assignees, used the same to avail of fuel products from the former.^[8] On the ground, however, that its use of TCCs issued to said grantees was invalid for being violative of Rule IX of the Rules and Regulations issued by the BOI to implement Presidential Decree No. 1789^[9] and Batas Pambansa Blg. 391,^[10] Petron received a collection letter dated April 22, 1998 from the BIR Revenue District Office of South Makati, Metro Manila, demanding payment of the total amount of P1,107,542,547.08 in unpaid taxes, surcharges and interests for the years 1993 to 1997.^[11] With the denial of its letters of protest to the foregoing collection letter, Petron perfected an appeal which was docketed as C.T.A. Case No. 5657 before the CTA. Upholding Petron's argument to the effect, among other matters, that its status as a BOI-registered enterprise and its transactions with the original grantees qualified it to be a transferee of the subject TCCs, the CTA rendered a decision dated July 23, 1999,^[12] the decretal portion of which states:

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby GRANTED. The collection of the alleged delinquent excise taxes in the amount of P1,107,542,547.08 is hereby CANCELLED AND SET ASIDE for being contrary to law. Accordingly, Respondents are ENJOINED from collecting the said amount of taxes against the petitioner.

SO ORDERED.^[13]

During the pendency of the respondent's appeal before the Court of Appeals under docket of CA-G.R. No. 55330, the Center conducted a post-audit in the premises. On October 24, 1999, the Center cancelled TCCs worth P284,390,845.00 of the same TCCs^[14] acquired and used by Petron on the ground that they were fraudulently procured and transferred. The cancellation was based on the following findings, viz.: (a) the grantees did not manufacture and export at the volumes which served as bases for the grant of the subject TCCs; and, (b) the grantees were not using fuel oil at the levels which served as bases for the approval of the transfer of the same TCCs.^[15] As a consequence of the cancellation, respondent issued an Assessment dated November 15, 1999 (the Assessment), directing Petron to pay deficiency excise taxes in the sum of P284,390,854.00 for the period 1995 to 1997, surcharges in the sum of P142,195,422.50 and interest in the sum of P224,747,996.42 or an aggregate amount of P651,334,263.92.^[16]

In view of respondent's inaction on the protest it filed to question the factual and

legal bases of the Assessment, Petron filed the July 7, 2000 petition for review which was docketed before the CTA as C.T.A. Case No. 6136. Coupled with a motion to stay collection of the deficiency excise taxes, surcharges and interest sought to be collected, the petition alleged, among other matters, that Petron's right to due process was violated since it was not informed and/or given any opportunity to participate in the proceedings which resulted in the cancellation of the TCCs, that the Assessment was void for lack of a statement of the facts and the law on which the same was based; that the validity of Petron's use of the TCCs assigned in its favor as payment of its excise taxes had been upheld by the CTA in C.T.A. Case No. 5657; and, that respondent's right to collect the alleged tax delinquencies had already prescribed. Petron prayed for the issuance of an injunctive writ against the Assessment, the invalidation of the cancellation of the TCCs as well as the withdrawal of the Assessment.^[17]

Served with summons, respondent filed its August 28, 2000 answer, specifically denying the material allegations of the foregoing petition. Contending that the cancellation of the subject TCCs rendered the same valueless and resulted in the non-payment of the excise taxes for which they were utilized, respondent averred that, Petron was apprised of the cancellation of the TCCs which served as basis for the Assessment as well as the law and facts on which the same was based; that the TCCs were cancelled on the strength of the Center's findings that they were fraudulently obtained and transferred to Petron upon fictitious supply agreements with the grantees; and, that the government's right to collect the deficiency excise taxes, together with the interests and surcharges, had yet to prescribe in view of Petron's filing of fraudulent returns with intent to evade payment of taxes. Maintaining that all presumptions are in favor of the correctness of the Assessment and that the government is never estopped from collecting legitimate taxes due to the errors committed by its agents, respondent sought the dismissal of the petition, with costs.^[18]

At the pre-trial conference conducted in the case, the parties submitted a Joint Stipulation of Facts and Issues dated March 29, 2001^[19] upon which Petron rested its case. With the parties' further submission of the Joint Stipulations of Facts and Issues dated June 22, 2001^[20] and January 24, 2002^[21] as well as respondent's filing of his Formal Offer of Evidence,^[22] Petron moved for the presentation of its rebuttal evidence and the appointment of an independent Certified Public Accountant to examine, evaluate and audit the pieces of documentary evidence intended to be adduced.^[23] Commissioned for the purpose by the CTA, Lilian Linsangan of *Punongbayan & Araullo* submitted a written report dated March 10, 2003 and a supplemental report dated March 17, 2003 which Petron submitted in evidence alongside the TCCs, TDMs, CNs, ATAPETs and pertinent documents probative of its claim of valid payment of taxes.^[24]

Subsequent to the parties' filing of their respective memoranda^[25] and the submission of the case for decision, respondent filed a motion to reopen the case for the purpose of presenting additional evidence.^[26] With the grant of said motion in the September 24, 2004 resolution issued by the CTA Second Division,^[27] respondent presented Beverly Taneza-Basman, a Tax Specialist II at the Center, who presented and identified^[28] the documents which served as bases for the Center's

approval of the grantees' transfer of the subject TCCs to Petron.^[29] In receipt of the parties' respective supplemental memoranda,^[30] the CTA Second Division went on to render the August 23, 2006 decision,^[31] denying Petron's petition for lack of merit, viz.:

WHEREFORE, premises considered, this instant Petition for Review is hereby DENIED for lack of merit. Accordingly, petitioner is ORDERED TO PAY the respondent the amount of FIVE HUNDRED EIGHTY MILLION TWO HUNDRED THIRTY SIX THOUSAND FIVE HUNDRED FIFTY TWO AND 67/100 PESOS (P580,236,552.67), representing deficiency excise taxes for the taxable years 1995 to 1997, computed as follows:

Basic Tax	P284,390,845.00
Add:	
Late	
Payment	
Surcharge	P 71,097,711.25
(25%)	
Interest	224,747,996.42
(20%)	<u>295,847,707.67</u>
	P580,236,552.67

In addition, petitioner is ORDERED TO PAY the respondent 20% delinquency interest per annum on the P580,236,552.67, computed from December 4, 1999 until the amount is fully paid.

SO ORDERED.^[32]

With the denial of its motion for reconsideration of the foregoing decision^[33] for lack of merit in the CTA Second Division's resolution dated November 23, 2006,^[34] Petron elevated the matter via the petition for review docketed before the CTA *En Banc* as CTA EB Case No. 238.^[35] On October 30, 2007, the CTA *En Banc* rendered the herein assailed decision, affirming the August 23, 2006 decision of the CTA Second Division,^[36] upon the following findings and conclusions, to wit:

(a) The subsequent cancellation of the TCCs resulted in the non-payment of the excise tax liabilities since the post-audit partook the nature of a suspensive condition to the effectiveness of Petron's use thereof;

(b) The Center's finding of fraud in the procurement of the TCCs by the grantees rendered the same worthless, even in the hands of an assignee like Petron;

(c) The evidence adduced in the case which showed misrepresentation in the levels of fuel oil use by the grantees and the non-delivery of petroleum products by Petron also indicate that fraud also attended the transfer of the TCCs;

(d) The Center acted within its mandate in declaring TCCs fraudulently

issued and transferred; and

(e) The resultant delay in the payment of Petron's excise tax liabilities justified the imposition of the 25% surcharge and annual interest of 20% pursuant to Sections 248A(3) and 249 of the Tax Code.

The Issues

Aggrieved, Petron filed the petition for review on certiorari at bench, on the following grounds:

I. THE COURT OF TAX APPEALS EN BANC COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT THE SUBSEQUENT CANCELLATION BY THE DOF CENTER OF THE TAX CREDIT CERTIFICATES PREVIOUSLY USED TO PAY PETRON'S TAX LIABILITIES HAD THE EFFECT OF NON-PAYMENT OF PETRON'S EXCISE TAXES ALLEGEDLY BECAUSE THE SUBSEQUENT CANCELLATION OF THE TCCs RESULTS IN NON-PAYMENT OF PETRON'S EXCISE TAX LIABILITIES CONSIDERING THAT:

- A. POST-AUDIT OF THE TAX CREDIT CERTIFICATES IS NOT IN THE NATURE OF A SUSPENSIVE CONDITION TO EFFECT PAYMENT.**
- B. THERE WAS NO FRAUD IN THE TRANSFER OF THE SUBJECT TAX CREDIT CERTIFICATES.**
- C. BEING A PURCHASER IN GOOD FAITH, PETRON CANNOT BE PREJUDICED BY A SUBSEQUENT FINDING OF FRAUD IN THE GRANT AND TRANSFER OF THE TAX CREDIT CERTIFICATES.**

II. THE COURT OF TAX APPEALS EN BANC COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT THE TAX CREDIT CERTIFICATES WERE FRAUDULENTLY TRANSFERRED FROM THE GRANTEES TO PETRON CONSIDERING THAT:

- A. THE TCCS WERE ASSIGNED TO PETRON IN ACCORDANCE WITH THE LAW AND THE ASSIGNMENTS WERE APPROVED BY THE APPROPRIATE GOVERNMENT AGENCIES.**
- B. PETRON FULFILLED ITS OBLIGATION TO ISSUE CREDIT NOTES UNDER THE DEEDS OF ASSIGNMENT.**
- C. THE CREDIT NOTES WERE AVAILABLE BY THE ASSIGNORS AND FUEL AND OTHER PETROLEUM PRODUCTS WERE DELIVERED UPON THE ORDER OF THE ASSIGNORS.**