

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

SPLASH CORPORATION,
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

CTA EB No. 457
(C.T.A. CASE No. 6801)

Present:

**Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Manalastas, JJ.**

Promulgated:

JUL 29 2010

3:46pm

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DECISION

ACOSTA, PJ:

Before this Court of Tax Appeals *En Banc*¹ is a Petition for Review filed on February 4, 2009 assailing the Decision of the Court of Tax Appeals Second Division² dated August 28, 2008 and the subsequent Resolution dated January 16,

¹ CTA *En Banc*.

² CTA Second Division.

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2009, affirming the assailed Decision. The dispositive portion of the assailed Decision reads:

"WHEREFORE, premises considered, the present Petition For Review is hereby **DISMISSED**. Petitioner is hereby **ORDERED** to pay respondent Commissioner of Internal Revenue the amount of SIXTEEN MILLION ONE HUNDRED TWENTY THREE THOUSAND NINE HUNDRED EIGHTY AND 48/100 PESOS (P16,123,980.48), representing deficiency VAT for the first quarters of 2002 and 2003.

In addition, petitioner is hereby **ORDERED** to pay respondent 20% delinquency interest per annum on the total amount of P16,123,980.48, counted from August 14, 2003 until full payment thereof, pursuant to *Section 249 (C) of the NIRC of 1997, as amended*.

SO ORDERED."

The CTA Second Division found the pertinent facts to be as follows:

On October 9, 2009, petitioner received a copy of the "Final Notice before Seizure" dated September 30, 2003, demanding from petitioner the payment of its deficiency value-added taxes for the return periods of February 28, 2002, March 31, 2002 and March 31, 2003 in the total amount of P16,123,980.48, inclusive of surcharges and penalties. The assessment of petitioner's deficiency VAT arose when Tax Credit Certificate ("TCC") Nos. 00000990 and 00000991 were found by respondent as having no value.

Rohm Electronics Philippines, Inc. ("Rohm") was originally issued Tax Credit Certificate Nos. 018967 and 019031. However, on April 22, 2003, these TCCs were cancelled and in exchange, TCC Nos. 00000990 and 00000991 were issued in the name of Splash Corporation. Out of the new TCCs, the Department of Finance issued Tax Debit Memo ("TDM") Nos. 121-03-00185 to 188, which petitioner utilized in the settlement of its VAT liabilities, as follows:

Tax Type	Return Period	TDM No.	Date Issued	Amount
VAT	3/31/2002	121-03-00185	4/25/2003	2,105,266.77
VAT	2/28/2002	121-03-00186	4/25/2003	699,532.34
VAT	3/31/2003	121-03-00187	4/25/2003	3,788,797.34
VAT	3/31/2003	121-03-00188	4/25/2003	5,217,561.79
Total				11,811,158.24

On August 4, 2003, however, petitioner received a collection notice issued by respondent for its "unpaid taxes" as a result of the findings that TCC Nos. 00000990 and 00000991 did not have any value. Respondent formally demanded the payment of P16,123,980.48, inclusive of surcharges and interests. Consequently, on August 8, 2003, petitioner sought reconsideration of the collection notice. In reply, on September 30, 2003, respondent issued the subject Final Notice Before Seizure.



In his "Answer" filed on January 12, 2004, respondent alleged by way of special and affirmative defenses, that TCC No. 018967 was originally issued on 18 November 1998 to ROHM while TCC No. 019031 was issued on 2 February 1999; Rohm fully utilized these TCCs in payment of its tax liabilities, as early as November 1999; TCC Nos. 018967 and 019031 from where petitioner's TCCs came from are spurious; they cannot produce any valid transfer, hence cannot produce the effect of payment, if utilized; petitioner is not being asked to pay its tax liabilities twice; the first payment made was ineffective despite documents erroneously issued attesting due payment; equally false is the assertion that the collection of the taxes in the assessment notice will unjustly enrich the Commissioner, as no money flowed in the first utilization being that the TCC petitioner used in payment is empty.

Moreover, one of the documents cited by petitioner, the certification dated 16 July 2003 issued by the Central Management Information Office (CMIO) is a document that has no legal effect; it is not within the power of the CMIO to validate invalid transfers, much less, certify the validity of TCC transactions; the government was an indirect victim of this scam as its records were harmed; under the law on public officers, and sound political law doctrine, the government is not estopped by the mistakes of its employees.

Contrary to petitioner's claim that it was very careful and diligent in verifying, executing and ensuring compliance with legal requirements and procedures in the transfer of Rohm's TCCs, petitioner is to be blamed primarily for its misery. Besides putting itself into a risky transaction, it chose to be negligent with its money; trusting millions of pesos on a mere assurance by a Bureau employee, which petitioner fully knew that it is not part of Caroline Pineda's duties to broker TCC transactions.

The TCCs used, purporting to be TCC No. 018967 and TCC No. 019031 have erasures on their serial numbers, and do not contain application number below the serial number. These facts alone should have excited the suspicion of the petitioner. Plain on the face of the TCC is written that erasure on the TCC's face void a TCC. As a company already 'experienced' in TCC transactions, these ought to have not passed unnoticed; the original TCC No. 018967 was issued on 18 November 1998, while the spurious TCC was issued on 7 April 1999. Ordinary checking could have verified this.

More glaring is the fact that petitioner did not inquire with the purported transferor whether it is indeed selling said TCC or not; Rohm likewise denied having an employee by the name May B. Reyes; the secretary's certificate which petitioner relied on is faulty and not worthy of reliance; if not outright anomalous; the meeting granting May Reyes authority to allegedly sell Rohm's TCCs was held on 31 March 2003, however, the instrument appears to be dated 1 April 1999. These circumstances outright shun petitioner's claim of *bona fide*. In fact, the NBI report on the controversy faults petitioner for manifest bad faith, and that for personal gain it caused undue injury to the government.

Petitioner presented Lilia Francisco, Ma. Jesusa Magno, Director Ernesto Hiansen, and Gloria Dazo as witnesses and formally offered documentary evidence, marked as *Exhibits "A" to "BBB"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated April 12, 2006, except for *Exhibits "D", "G-1" and "Y"* which were denied admission for failure to present their originals.

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On the other hand, counsel for respondent presented Ma. Gracia Javier, Atty. Polo Pantaleon, Sandra Alkuino and Atty. Dennis Siyhian, as witnesses, and formally offered documentary evidence, marked as *Exhibits "1" to "13"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated April 1, 2008, after respondent filed an "Omnibus Motion (1) to Admit Respondent's Exhibit Nos. 4, 4-a, 5, 5-a, 6, 7, 8, 9, 10, 11, 11-a, 12, 12-a, 13 and 13-a and (2) To Defer Respondent's Submission of Memorandum."

Thereafter, petitioner was granted thirty days from September 10, 2007 to file its memorandum while respondent was granted twenty days from notice, after which, the case shall be deemed submitted for decision.

On April 2, 2008, the Court issued a Resolution granting petitioner's "Motion to Suspend Collection of Tax."

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

On August 28, 2008, the CTA Second Division rendered the assailed Decision, which dismissed the Petition for Review and ordered petitioner to pay the amount of P16,123,980.48 representing deficiency VAT for the first quarters of 2002 and 2003, as well as 20% delinquency interest per annum on the total amount of P16,123,980.48 counted from August 14, 2003 until full payment thereof.

Petitioner filed its Motion for Reconsideration of the said Decision on September 18, 2008. The CTA Second Division, however, denied petitioner's Motion in a Resolution dated January 16, 2009.

Hence, petitioner filed the instant Petition for Review with Application for Issuance of Writ of Preliminary Injunction before this Court praying that the assailed decision and resolution of the CTA Second Division be reversed and set aside. It likewise prayed that a judgment be entered declaring the alleged delinquent value added taxes to be deemed cancelled and/or paid, and the Assessment/Collection Notice dated August 04, 2003, as well as, the Final Notice of Seizure dated September 30, 2003 as null and void.

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On April 13, 2009, the CTA *En Banc* issued a Resolution granting the suspension of collection of taxes upon petitioner's filing of a surety bond equivalent to one and one-half times the amount being collected or Twenty Four Million One Hundred Eighty Five Thousand Nine Hundred Seventy Pesos and 72/100 (P24,185,970.72).

The CTA *En Banc* promulgated a resolution on June 25, 2009 ordering the parties to file their respective memoranda.

On July 31, 2009, respondent filed her Memorandum. On the other hand, petitioner filed its Memorandum on August 10, 2009, within the allowed extended period. Thereafter, this case was submitted for decision in a resolution dated August 25, 2009.

Petitioner raised the following assigned errors in its Petition for Review:

I

Whether or not the Court of Tax Appeals Second Division committed gross/reversible error in ruling that petitioner Splash is not a transferee in good faith and for value of the subject TCCs.

II

Whether or not the court a quo committed gross/reversible error in ruling that petitioner Splash is liable to pay its deficiency VAT for the first quarters of 2002 and 2003 despite full payment of the same by Splash through the use of validly issued TCCs/TDMs.

III

Whether or not the court a quo committed gross/reversible error in finding Splash liable to pay surcharges and penalties.

Petitioner argues that it validly acquired TCC Nos. 00000990 and 00000991 through the regular/usual process of acquisition of TCCs as borne by the certifications/memorandum/letter issued by the One Stop Shop, BIR and DOF.



Moreover, petitioner argues that the principle stating that the government is never estopped from collecting taxes because of mistakes or errors of its agents cannot be applied in this case not only because of the institutionalization of the TCC procedure, but also because there is no prejudice caused to the government, anchoring its stance on the case of *ABS-CBN Broadcasting Corp. vs. Court of Tax Appeals* (No. L-52306, 108 SCRA 142 (1981)) as reiterated in the case of *Commissioner of Internal Revenue vs. Burroughs Ltd.* (GR No.L-66653,142 SCRA 324 (1986)) where the Supreme Court ruled that the well entrenched principle that the government is never estopped from collecting taxes because of mistakes or errors of its agents admits of exceptions in the interest of justice and fair play.

Finally, it asserts that, as a purchaser in good faith and for value, the imposition of surcharges and penalties is unjustified. Petitioner claims that it merely relied on established procedures and the actuations of the DOF, One Stop Shop and Bureau of Internal Revenue in good faith.

THE COURT *EN BANC*'S RULING

The CTA *En Banc* finds the petition for review bereft of merit.

After a closer look and scrutiny of the arguments laid down by petitioner in the instant petition for review, the CTA *En Banc* observes that the grounds relied upon and matters raised therein are mere restatements of petitioner's previous arguments before the CTA Second Division, which have already been exhaustively considered, discussed and passed upon in the assailed Decision and Resolution. Hence, the CTA *En Banc* adheres to the factual findings of the CTA Second Division that petitioner is liable for the assessment of deficiency VAT for the first quarters of 2002 and 2003.



As exhaustively discussed in the assailed Decision and Resolution by the CTA Second Division, there was no valid transfer by ROHM in favor of Splash of the subject TCC Nos. 018967 and 019031.

Notable is the fact that ROHM had not sold nor had any intention to sell subject TCC Nos. 018967 and 019031, as testified by ROHM's President, Yoshiyasu Okuda, its Accounting Manager, Sandra Alkuino and its External Auditor, Emmanuel Alcantara (Exhibits "4", "5" and "5-a"). The truth of the matter being that the subject TCC Nos. 018967 and 019031 had already been fully utilized and cancelled as early as November 1999, as evidenced by TDM No. 029382 issued by BIR to ROHM. Correspondingly, TCC Nos. 018967 and 019031 (Exhibits "E" to "E-1" and "F"), the object of the Deed of Assignment, which were transmitted to petitioner by broker, Carol Pineda, are fake and spurious. The discrepancies between Exhibits "E" to "E-1" and "F" and the duplicate original copies on file with the DOF ("duplicate original copies") clearly enunciate this finding, to wit: (a) TCC Nos. 018967 and 019031 (Exhibits "E" to "E-1" and "F"), object of sale, both do not contain the numbers, "N20613" and "N18149", respectively, in between SN and Appn No., but which numbers are present in the duplicate original copies; (b) ROHM's account number, which is "000-143-055-000", as appearing in Exhibits "E" to "E-1" and "F" is different from ROHM's account number, specifically "540-000-143-055", as appearing in the duplicate original copies; (c) the date of issue, which is "18th November 1998", as appearing in Exhibit "E" is different from the date of issue, specifically "Apr 07, 1999", as appearing in the duplicate original copy of TCC No. 018967. These findings are likewise corroborated by the result of the investigation conducted by the National Bureau of Investigation as outlined in its report (Exhibits "6" to "10").

More importantly, however, petitioner cannot claim that it purchased the subject TCC Nos. 018967 and 019031 (Exhibits "E" to "E-1" and "F") in good faith

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and for value. In the case of Heirs of Ignacia Aguilar-Reyes vs. Spouses Cipriano Mijares and Florentine Mijares³, the Supreme Court ruled that:

"A purchaser in good faith is one who buys property of another, without notice that some other person has a right to, or interest in, such property and pays full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property. He buys the property with the belief that the person from whom he receives the thing was the owner and could convey title to the property. A purchaser cannot close his eyes to facts which should put a reasonable man on his guard and still claim he acted in good faith."

As exhaustively discussed in the assailed Decision, there are several circumstances that should have, at the very least, excited the suspicion of petitioner and "put him on guard". Foremost, the act of purchasing the subject TCCs through a broker, a BIR official whose duties do not include brokering TCCs, should have made petitioner more cautious of the transaction rather than relying heavily on the broker's representations. On the contrary instead, petitioner did not even inquire from ROHM whether it was selling the subject TCCs. It did not bother to check on the authority of alleged representative of ROHM nor did it appear before the Notary Public when it signed the Deed of Assignment. It did not question the validity of the Secretary's Certificate especially the discrepancy in the date of the board meeting authorizing May Reyes to sell the TCCs and the date of the instrument. These actions are grossly negligent that it militate against the very claim of petitioner that it acted in good faith. Thus, for failure to exercise the measure of precaution which may be required of a prudent man in a like situation, a buyer cannot be called a purchaser in good faith.⁴

Consequently, considering that TCC Nos. 018967 and 019031, the object of Deed of Assignment (sale), are fake and spurious and considering further that there was gross negligence in the purchase of the above TCCs, as such, petitioner cannot be considered a buyer in good faith. Thus, the case of *Pilipinas Shell*

³ G.R. No. 143826, August 28, 2003

⁴ Consolidated Rural Bank (Cagayan Valley), Inc. vs. Court of Appeals, G.R. No. 132161, January 17, 2005.



*Petroleum Corporation vs. Commissioner of Internal Revenue*⁵ where the Supreme Court ruled, viz:

"A transferee in good faith and for value of a TCC who has relied on the Center's representation of the genuineness and validity of the TCC transferred to it may not be legally required to pay again the tax covered by the TCC which has been belatedly declared null and void, that is, after the TCCs have been fully utilized through settlement of internal revenue tax liabilities. Conversely, when the transferee is party to the fraud as when it did not obtain the TCC for value or was a party to or has knowledge of its fraudulent issuance, said transferee is liable for the taxes and for the fraud committed as provided for by law.

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

is inapplicable in the case at bar. Instead, as held in *Proton Pilipinas Corporation vs. Republic*⁶, in case the TCCs used for payment of petitioner's tax liability are fake and spurious, "it is the obligation of the petitioner to make good its obligation by paying the customs duties and taxes, which remain unpaid by reason of the cancellation of the subject TCCs for having been found as fake and spurious. It should not make the Government suffer for its own misfortune."

In sum, the Court En Banc finds no cogent justification to disturb the findings and conclusion spelled out in the assailed August 28, 2008 Decision and January 16, 2009 Resolution of the CTA Second Division. What the instant petition seeks is for the Court En Banc to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon.



⁵ G.R. No. 172598, December 21, 2007.

⁶ G.R. No. 165027, October 12, 2006.

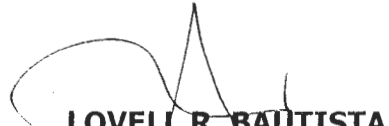
WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated August 28, 2008 and Resolution dated January 16, 2009 of the CTA Second Division are hereby **AFFIRMED**.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

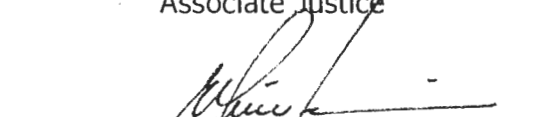

JUANITO C. CASTANEDA, JR.
Associate Justice

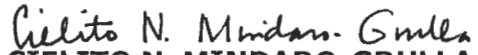

LOVELL R. BAUTISTA
Associate Justice

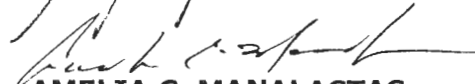

ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA C. MANALASTAS
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.


ERNESTO D. ACOSTA
Presiding Justice