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Corporate News

Supreme Court tells Shell to pay P209M in duties

THE SUPREME Court has quashed Pilipinas Shell Petroleum Corp.'s attempts to stop the Bureau of Customs (BoC) from collecting the corresponding amount for the P209 million worth of allegedly fraudulent tax credit certificates, or TCCs, it used in 1997 and 1998.

In a 12-page decision penned by Associate Justice Arturo D. Brion, the high court affirmed the Court of Appeals ruling that dismissed the oil firm's petition before the Court of Tax Appeals (CTA), which questioned the acts of the BoC.

Shell had settled its customs liabilities using TCCs from Board of Investment-registered companies. The One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center initially approved all of these. In Nov. 3, 1999 however, the center, through the Department of Finance, informed Shell that it was cancelling the TCCs as these were fraudulent. The oil firm, in effect, was required to pay the corresponding amount of the TCCs. The firm however refused to concede, saying it did not have anything to do with the drawing up of the TCCs.

On Feb. 15, Feb. 20 and April 12, 2002, the bureau, through deputy commissioner for revenue collections monitoring group Gil Valera, sent letters to Shell formally demanding payment.

Shell stood firm that it should not be held liable. Before it could reply to the last collection letter, however, the bureau brought the issue before the Manila Regional Trial Court on April 23, 2002. Shell, in turn, filed a petition for review before the Court of Tax Appeals on May 23, 2002, questioning the BoC.

The latter however noted that the filing went beyond the 30-day period provided by law for appeals. It said the 30-day period should be counted from the time Shell received the collection letters. The tax court however gave Shell its initial win, noting that the 30-day period within which to appeal should commence from the date when the collection case was elevated to the courts.

The BoC thereafter questioned the tax court's ruling before the Court of Appeals. It said "the government... does not ask for a review of its demand for payment on respondent Shell much less does it appeal from its assessment. What it seeks is to collect the duties and taxes due it from Shell, and clearly, the Regional Trial Court, a court of general jurisdiction, has jurisdiction over petitioner's complaint," the appellate court said.

The high court agreed.

The Tariff and Customs Code of the Philippines provide that the tax court can only take over the case if it is one on tax protests, it said.

"On account of the cancellation of the TCCs, the tax liabilities of Shell under the original assessments were considered unpaid; hence, the letters and actions for collection," the high court said.

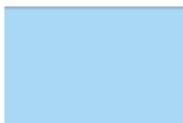
The issue has now become a collection case and "not tax protest issues within the CTA's jurisdiction to rule upon," it said.

"We note in this regard that Shell never protested the original assessments of its tax liabilities and in fact settled them using the TCCs," the high court stressed. — **Ira P. Pedrasa**

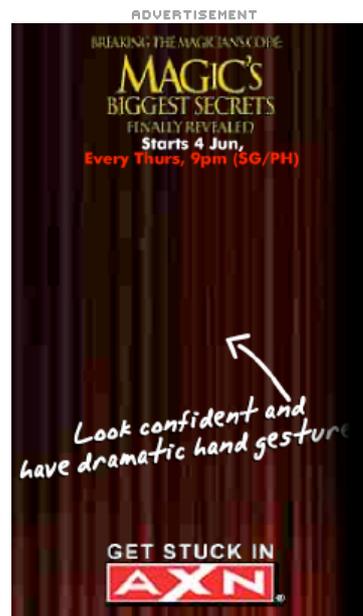
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