

## TEODORO D. PAREÑO, PETITIONER, VS. SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

*G.R. Nos. 107119-20. April 17, 1996*

Ponente: KAPUNAN, J.

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### KAPUNAN, J.:

These consolidated petitions for review seek a review of the decision of the Sandiganbayan finding petitioners guilty of violations of the National Internal Revenue Code (NIRC) and Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

The facts are as follows:

In a letter dated September 17, 1987 addressed to Commissioner Bienvenido A. Tan, Jr. of the Bureau of Internal Revenue (BIR), through the Chief of the Specific Tax Office, Senior Vice-President Fausto Preysler of Tanduay Distillery, Inc. (Tanduay) requested a reimbursement of ad valorem taxes erroneously paid by Tanduay in the amount of P180,701,682.00 on the ground that Tanduay, as a rectifier and compounder of distilled spirits, should no longer be required to pay ad valorem taxes under Section 122 of the National Internal Revenue Code (NIRC).

Attached to said letter was a schedule of the ad valorem taxes allegedly paid erroneously and photostatic copies of Confirmation Receipts evidencing payment.

The letter read as follows:

September 17, 1987

Hon. Bienvenido A. Tan, Jr.  
Commissioner, Bureau of Internal Revenue  
Diliman, Quezon City

Attention: Chief, Specific Tax Office

We would like to request for Tax Credit on our erroneous payment of Ad Valorem tax on the sale of our product lines since January 1, 1986 up to August 31, 1987 amounting to P180,701,682.00.

Tanduay Distillery, Inc. is engaged in the manufacture and sale of Rum (ESQ), 5 Years Old, Tanduay Dark Vodka (De Luxe Vodka, Cossack Vodka), and other similar products (Amaretto de Tanduay, Creme de Chocolate, Creme de Menthe, Creme de Cacao). Our company is a rectifier with Assessment No. A-1-3 and compounder with Assessment No. A-1-3-A. Compounding is only incidental to rectifying.

We pay specific tax per proof liter on the spirit used in the production of liquor under Section 121 of the National Internal Revenue Code and also Ad Valorem tax under Sec. 122 which is erroneous since January 1, 1986. Section 121 is hereunder quoted:

Spirit or distilled spirits is the substance known as Ethyl Alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source by whatever process produced and shall

include whisky, brandy, rum, gin and Vodka, and other similar products or mixtures, except compounded liquors taxed under Section 122 of this Code.

We buy alcohol from other distillers for further rectification. The specific tax on such alcohol is not payable upon removal because it will undergo rectification pursuant to Sec 117 Under the same Section, the duty of paying specific tax on such alcohol removed under bond is shifted on the rectifier. From hereon, our process is a continuous one. We produce gin, rum, vodka and these products that are removed from our place of production fall squarely under the definition of distilled spirit. Attached is a detailed schedule of Ad Valorem taxes paid for the said period with supporting official receipts for your ready reference.

We will appreciate very much your immediate action on the above request.

Thank you.

Very truly yours,

TANDUAY DISTILLERY, INC.

Elizalde & Co., Inc.

Gen. Mgrs.

(SGD.) FAUSTO PREYSLER

SVP-Comptroller[1]

Acting on said letter, Aquilino. Larin, Assistant Commissioner and Chief of the then Specific Tax Office, now Excise Tax Service of the BIR, wrote a marginal note[2] on the letter instructing Teodoro Pareño head of the Alcohol Tax Division, to prepare a request to the Revenue Accounting Division (RAD) for confirmation of Tanduay's payments.

On September 23, 1987, upon receipt of said letter, Teodoro Pareño immediately referred the same to Justino Galban, Chief of the Compounders, Repackers and Rectifiers Section, one of the sections under the Alcohol Tax Division, for the preparation of the request.

Galban then prepared a memorandum to the Financial and Management Service, Attention: Chief, Revenue Accounting Division, requesting the desired authentication and verification. The memorandum reads as follows:

September 24, 1987

MEMORANDUM FOR:

The Assistant Commissioner  
Financial and Management Service

Attention: Chief, Revenue Accounting Division

Sir:

There is forwarded to you for verification and authentication that the amounts represented by the Confirmation Receipts mentioned in the attached schedules in the amount of One Hundred Eighty Million Seven Hundred One Thousand Six Hundred Eighty Two (P180,701,682.00) Pesos, were actually paid and received by our Bureau as Ad Valorem Tax Payments of Tanduay Distillery, Inc., No. 348 J. Nepomuceno St., Quiapo, Manila, during the period beginning January 1, 1986 to August 31 1987.

The Certification of your Office is requested as a requisite in the processing of the claim for Tax Credit filed by Tanduay Distillery, Inc. for alleged erroneously paid Ad Valorem Taxes on its compounded liquors.

Very truly yours,

(Sgd.) AQUILINO T. LARIN  
Assistant Commissioner  
For Specific Tax[3]

Immediately thereafter, the aforesaid memorandum signed by Larin was forwarded to the Financial and Management Service, a co-equal unit of the Excise Tax Service, on September 24, 1987.

On September 25, 1987, Potenciana M. Evangelista, Chief of the Revenue Accounting Division (RAD) forwarded to Larin through the Assistant Commissioner for Financial and Management Service the following First Indorsement, certifying as requested, the Confirmation Receipts listed therein as verified from their records:

1st Indorsement

September 25, 1987

Respectfully forwarded to the Assistant Commissioner for Specific Tax, THRU: the Assistant Commissioner, Financial & Management, the memorandum dated September 24, 1987 relative to the alleged erroneous payment of Ad Valorem taxes on its compounded liquors paid by TANDUAY DISTILLERY, INC. for the period January 1, 1986 to August 31, 1987 in the amount of P180,701,682.00 with the information that the confirmation receipts listed hereunder were verified from the records of this Office, as follows:

Name of Taxpayer: TANDUAY DISTILLERY, INC

CR NO.

TNC

DATE

BNKC

AMOUNT

7448215

3011-0001

1-06-86

02 1-002

P77,840.00

7448237

-do-

1-07-86

-do-

-do-

7448265

-do-

1-08-86

-do-

-do-

xxx

10395328

0000-0000

1-02-87

021-002

1,400,000.00

10396142

-do-

1-09-87

-do-

750,000.00

10395359

-do-

1-07-87

-do-

1,000,000.00

xxx

12439791

-do-

8-24-87

-do-

509,000.00

12439544

-do-

8-31-87

-do-

270,582.00

12439815

-do-

8-27-87

-do-

385,000.00

SOURCE: Abstract of Collections thru Bank  
BIR Form No. 12.56

a)Phil. Trust Co.

(SGD.) POTENCIANA M. EVANGELISTA  
Chief, Revenue Accounting Division  
TAN-El 526-E 1 946-A-0[4]

On October 13, 1987, Galban and Pareño prepared their respective memoranda describing the manufacturing process of Tanduay and stating that Tanduay was both a rectifier and compounder. The memorandum signed by Galban is quoted as follows:

October 14, 1987

The Assistant Commissioner for Specific Tax

Sir:

This is with reference to the tax credit claim of Tanduay Distillery Inc., for ad valorem taxes alleged to have been erroneously paid on its ESQ Rhum, Clubman's Dry Gin, De Luxe and Cossach Vodka and other similar intoxicating beverages.

Submitted herewith is my report on the manufacturing process of Tanduay Distillery, Inc. Tanduay Distillery, Inc. is a rectifier and at the same time a compounder bearing Assessment No. A-1-3 and A-1-3A, respectively, and has been in business since 1854.

The principal raw materials used in manufacture of these products is alcohol purchased either underbond or taxpaid from various distillers.

The underbond alcohol purchased and delivered are loaded in tankers from source covered by Official Tax Receipts (OTR) showing the total volume in gauge liters and proof liters. Each shipment of underbond alcohol are provided with samples which is tested and examined by the Quality Control Office of Tanduay Distillery for the purpose of determining if it meets the quality standard. It is therefore pumped into the underbond storage tanks of the rectifying plant of Tanduay Distillery, Inc., and undergoes rectification to remove turbidity, color, odor and other impurities for the purpose of bringing about improved quality of the alcohol for the specific use in the manufacture of liquors and wines. After sometime in the rectifying plant at time for several months of storage said underbond rectified alcohol are ready for compounding depending on the market demands in which case they are transferred to the compounding area after the payment of the corresponding specific tax. In the compounding tanks essences, oils, aromatics, coloring material and other ingredients are added to attain the desired premium quality brand of compound liquor to be produced. After all the materials were thoroughly mixed the resulting products which are ESQ Rhum, Clubman's Dry Gin, De Luxe and Cossach Vodka and other similar intoxicating beverages are tested and examined again by the Quality Control Office and if found to possess the standard quality strictly set by the company they are stored for sometime bottled, packed and affixed with the requisite auxiliary labels. All of these processes are always under the supervision of revenue enforcement officers assigned on-premises supervision together with the quality control personnel of Tanduay Distillery to insure a sanitary output. These various stages of operations are done in one continuous uninterrupted integrated process. The bottled liquors are packed into cases which are affixed with BIR regular labels under the supervision of our revenue enforcement officer assigned thereat.

The corresponding official tax receipts are then accomplished showing the brands of compound liquors produced, the total volume in gauge liters, grade, proof liters, serial number of regular and auxiliary labels and the amount of ad valorem taxes paid thereon which is the subject matter of the tax credit claim of Tanduay Distillery, Inc. The supervision and control of establishments manufacturing articles subject to excise taxes are extended for revenue purposes up to the factory's warehouse for finished products.

Very truly yours,

(SGD.) JUSTINO E. GALBAN, JR.  
Chief, Compounders, Repackers  
& Rectifiers Section.[5]

The other memorandum prepared and signed by Pareño was addressed to the Assistant Commissioner for Specific Tax reiterating essentially the manufacturing process of Tanduay and its status as a rectifier. Pareño recommended that the claim of Tanduay for tax credit for "alleged erroneous payment of ad valorem tax be given due course." The memorandum states:

October 13, 1987

MEMORANDUM FOR:

The Assistant Commissioner for Specific Tax

This refers to the tax credit claim of Tanduay Distillery, Inc., in the amount of P180,701,682.00 representing alleged erroneous payment of ad valorem taxes for the period January 1, 1986 to August 31, 1987 on its products namely ESQ Tanduay Rhum, Clubman's Dry Gin, De Luxe and Cossach Vodka and other similar products as Amaretto de Tanduay, Creme de Chocolate, Creme de Menthol and Creme de Cacao.

Tanduay Distillery, Inc., has been engaged in the business as rectifier and in the manufacture and production of Rhum, whisky, gin, vodka and other similar alcohol products since 1854.

Tanduay Distillery, Inc., is a rectifier and the underbond alcohol it purchases from alcohol plants, undergoes one integrated continuous manufacturing process the end finished products of which are rum, whisky, gin, vodka and other similar intoxicating beverages. The purpose of its being a rectifier is principally to produce the aforesaid products and the removal of any impurities or turbidity in the process of rectification is to bring about the desired quality of the alcohol for the specific use in liquor and wine manufacturing. Compounding is merely an adjunct or additional operation not a distinct independent process in the production of alcohol beverages.

Tanduay Distillery, Inc., becomes an extension of the distiller from which the alcohol is purchased and the liability in the payment of specific tax due on the alcohol is shifted and assumed by it. The finished products contemplated under Section 117 of the Tax Code on removal of spirits for rectification purposes subject to excise tax to be paid by the rectifier (Tanduay Distillery) are the very same products being manufactured by subject-taxpayer.

Section 121 of the Tax Code is hereby reproduced which has bearing in this particular case.

Section 121, Distilled Spirits.

Spirits or distilled spirits is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions purifications and mixtures thereof, from whatever source by whatever process produced and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures except compounded liquors taxed under Section 122 of this Code.

Because the law expressly considers whisky, brandy, rum, gin and vodka as distilled spirits it follows that the

products manufactured by Tanduay Distillery, Inc., fall squarely within the statutory definition without qualifying or distinguishing from whatever source by whatever process they are produced.

Relevant to the instant case is Section 157. 'On words and Phrases Defined.' which defines 'Compounder as every person who, without rectifying, purifying, or refining distilled spirits, shall by mixing such spirits, wines or other liquor with any material except water manufacture any intoxicating beverage whatever.

Herein taxpayer as a rectifier is an extension of the distiller, the finished product of which is subject to the payment of the specific tax on distilled spirits. Taxpayer-claimant produces by rectifying ethyl alcohol or neutral alcohol and in continuous, uninterrupted process produces as its products whisky, rum, vodka and the like.

In view of the foregoing, it is respectfully recommended that the request of Tanduay Distillery, Inc., for tax credit in the amount of P180,701,682.00 for alleged erroneous payment of ad valorem tax be given due course.

Very truly yours,  
(SGD.) TEODORO D. PAREÑO  
Chief, Alcohol Tax Division[6]

Thus, Larin prepared a memorandum, addressed to Deputy Commissioner Eufrazio D. Santos recommending that the claim of Tanduay for tax credit thereby be granted. Together with his memorandum, Larin also sent to Santos Tax Credit Memorandum No. 5177 (TCM) bearing his initial for Santos' signature. The memorandum reads, as follows

October 13, 1987

MEMORANDUM FOR:

The Commissioner of Internal Revenue

This refers to the Tax Credit Claim of Tanduay Distillery, Inc., 243 Nepomuceno Street, Quiapo, Manila in the amount of P180,701,682.00 for alleged erroneous payment of ad valorem taxes for the period January 1, 1986 to August 31, 1987 on its alcoholic products namely ESQ Tanduay Rhum, Clubman's Dry Gin, De Luxe and Cossach Vodka and other similar intoxicating beverages.

Tanduay Distillery, Inc., is engaged in the business as rectifier and manufacturer of rum, gin, vodka and other similar products.

As a rectifier it purchases underbond alcohol from distillers without prepayment of the specific tax and the same undergoes rectification for the purpose of bringing about the desired quality of the alcohol for the specific use in liquor and wine manufacturing of premium brands. This process is in the nature of a single integrated continuous process the final products of which are rum, gin, vodka and the like.

As a rectifier, Tanduay Distillery, Inc., under Section 121 of the Tax Code becomes an extension of the distiller from which the alcohol is purchased and accordingly since the transfer is without prepayment of the specific tax which should have been paid by the distiller before removal from the place of production, naturally in the execution of a joint bond between the distiller and rectifier, the burden of payment of the specific tax is shifted to and assumed by Tanduay Distillery, Inc. It is under this concept as provided for in the Tax Code that the rectifier pays the excise tax due on the finished products namely Tanduay ESQ Rhum, gin, vodka and the like.

The crux of the matter is premised on the definition of what is distilled spirits which is reproduced herein.

Section 121. Distilled Spirits.

"Spirits or distilled spirits is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof from whatever source by whatever process produced and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures, except compounded liquors taxed under Section 122 of this Code.'

From the foregoing, the law explicitly considers 'whisky, rum, gin, etc.' as distilled spirits and does not qualify whether by direct distillation or reverse fabrication. Suffice it to say that same may be produced from whatever source by whatever process produced. In other words, the business operation of Tanduay Distillery, Inc., in as far as the production of intoxicating liquors is concerned, is exactly the same as that of Destileria Limtuaco.

In view of the foregoing and considering that it has already been ruled that Destileria Limtuaco is entitled to a refund of its erroneously paid ad valorem taxes on its manufactured alcoholic products (approved memorandum for the Commissioner of the Chief, Appellate Division and concurred by the Chief, Revenue Service, Chief, Legal Office, copy attached for ready reference). It is recommended that the claim for tax credit erroneously paid by Tanduay Distillery, Inc., in the amount of P180,701,682.00 be also tax credited it appearing that the said erroneous payments have already been verified to have been remitted to the Bureau by the Revenue Accounting Division as per its 1st Indorsement dated September 25, 1987, hereto attached.

Very truly yours,

(SGD.) AQUILINO T. LARIN

Assistant Commissioner  
for Specific Tax[7]

On October 13, 1987, Santos approved the recommendation of Larin and signed Tax Credit Memo No. 5177.[8]

Consequently, Tanduay availed of the tax credit to the extent of about P74 million, bearing an unused balance of about P34 million.[9]

On June 22, 1988, one Ruperto Lim wrote to Commissioner Bienvenido A. Tan, Jr. denouncing an alleged "big Tax Swindle" to the effect that Tanduay got a very big amount of tax credit through fraud. A series of investigation was then conducted by the Intelligence and Investigation Office of the BIR with the help of the Department of Justice (DOJ) and the National Bureau of Investigation (NBI).

As a result of these investigations, two (2) informations were filed with the Sandiganbayan charging (1) Aquilino T. Larin,

Assistant Commissioner for Excise Taxes, (2) Potenciana Evangelista, Chief of the Revenue Accounting Division, (3) Teodoro Pareño, Chief of the Alcohol Tax Division and (4) Justino E. Galban, Section Chief Compounders, Rectifiers and Repackers Section, Alcohol Tax Division, for violation of the NIRC and R.A. 3019. The Informations read as follows:

(NIRC)

That during the period covering September 25, 1987 to October 13, 1987 and/or immediately subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all public officers being previously appointed to their above-stated positions at the Bureau of Internal Revenue (BIR) and having qualified to act as such, and who are all charged with the enforcement of the law and all rules and regulations pertaining to tax impositions and collections by the Government of revenues by then and there making and/or signing or causing the preparation and/or signing of false memoranda and certification regarding a claim for tax credit of Tanduay Distillery, Inc. previously filed by the latter with the BIR in the amount of P180,701,682.00 by stating in such memoranda and certification that Tanduay Distillery,

Inc. was legally entitled to such tax credit in the afore-stated sum for the reason that such claimant-firm was not liable to pay ad valorem taxes as its products are distilled spirits on which specific taxes are paid for by it and that the amount of P180,701,682.00 claimed for tax credit was actually paid by it and received by the BIR, all the accused knowing fully well that such statements made by them in their memoranda and certification had no legal and factual basis as they all failed to verify the truth and validity of the claim of Tanduay Distillery, Inc., which was their official duty to do, and by reason of such false memoranda and certification, the BIR allowed a tax credit in the amount claimed by the said firm to be made in its favor which in truth and in fact, the latter had not actually paid such amount to the Government by way of specific taxes and only P73,614,287.20 of ad valorem taxes was paid by it, the crime having been committed by the accused in relation to their office.

Contrary to law.

(R.A. 3019)

That during the period covering September 25, 1987 until October 13, 1987, and/or immediately subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, holding the above-stated positions at the Bureau of Internal Revenue (BIR) and as such, are charged with the duty of enforcing the law and all rules and regulations administered by the BIR concerning tax impositions and collections made on the taxpayers by the Government, taking advantage of their public and official positions and conniving, conspiring and confederating with each other, and mutually helping one another, did then and there wilfully and unlawfully cause undue injury to the Government and give unwarranted benefits to the Tanduay Distillery, Inc., a duly registered domestic corporation engaged in the manufacture and sale of rum, gin, vodka and other similar products, in the discharge of their official and/or administrative functions through manifest partiality, evident bad faith and/or gross inexcusable negligence in the following manner, to wit: the above-named accused, who were called upon in their respective official capacities to verify and act on the validity and/or veracity of a claim for tax credit in the amount of ONE HUNDRED EIGHTY MILLION SEVEN HUNDRED ONE THOUSAND AND SIX HUNDRED EIGHTY TWO (P180,701,682.00) PESOS, Philippine Currency, filed with the BIR by the Tanduay Distillery, Inc. on the pretext that said claimant-firm had made erroneous payments of ad valorem taxes on the sales of its products since January 2, 1986 up to August 31, 1987, deliberately and without any justifiable reason failed to perform their assigned tasks of checking the truth and validity of such claim for tax credit and without sufficient legal and factual bases they all endorsed approval of the same claim by preparing, signing, and submitting and/or causing the preparation, signing and submission of memoranda, certification and/or official communications stating their findings thereon that the Tanduay Distillery, Inc. was not liable to pay ad valorem taxes because its products are distilled spirits on which specific taxes are paid and that the amount mentioned by said firm in its claim for tax credit was actually paid and received by the BIR, said (sic) having been made by the accused in order to give claimant-firm undue benefits in the form of tax credits approved in their favor, official record of the BIR, actually paid the amount of ONE HUNDRED EIGHTY MILLION SEVEN HUNDRED ONE THOUSAND SIX HUNDRED EIGHTY TWO PESOS, (P180,701,682.00), Philippine Currency, for specific taxes, and only P73,614,287.20 was paid by it as ad valorem taxes and by reason by (sic) such false memoranda, certification and/or communications submitted by the accused, BIR approved the claim for tax credit, thereby defrauding the Government of the sum of P107,087,394.80 which is the difference between the amount claimed as tax credit and the amount of ad valorem taxes paid by Tanduay Distillery, Inc., to the damage and prejudice of the Government in the aforesaid sum.

Contrary to law.[10]

Larin, Pareño and Galban filed separate motions for reinvestigation on various dates, all of which were denied by the Sandiganbayan.

On April 26, 1990, all the accused were arraigned where they all pleaded "Not Guilty" to the charges filed against

them. After a pre-trial was conducted, trial finally commenced on January 7, 1991.

On September 18, 1992, the Sandiganbayan rendered a decision convicting Larin, Pareño, and Evangelista and acquitting Galban. The dispositive portion reads as follows:

WHEREFORE, judgment is now rendered in Criminal Cases No. 14208 & 14209 CONVICTING accused Assistant Commissioner for Specific Tax AQUILINO T. LARIN, Chief of the Alcohol Tax Division TEODORO D. PAREÑO, and Chief of Revenue Accounting Division POTENCIANA M. EVANGELISTA;

1. in Criminal Case No. 14208 for the violation of Section 268(4) of the National Internal Revenue Code, and imposing upon each of them the penalty of imprisonment for an indeterminate period of 4 years, 8 months and one (1) day by way of minimum to 6 years and 8 months by way of maximum, and a fine of Twenty Thousand (P20,000.00) Pesos to be paid by each of them;

2. in Criminal Case No. 14209 for violation of Sec. 3(e) of R.A. 3019, and hereby imposing upon each of them the penalty of imprisonment for an indeterminate period ranging from a minimum of 9 years and one (1) month to a maximum of twelve (12) years.

Likewise imposed upon each of them is the penalty of perpetual disqualification from public office.

The allegations of the Information in the above Criminal Cases not having been proven beyond reasonable doubt as to the other accused, judgment is now rendered ACQUITTING accused JUSTINO E. GALBAN of the charges under Criminal Cases No. 14208 and No. 14209, since his only function and activity had been the preparation of the description of the technical aspects of TANDUAY'S manufacturing process as a rectifier and compounder of liquors.

Costs against the accused LARIN, PAREÑO and EVANGELISTA.

SO ORDERED.[11]

On October 3, 1992, Lam filed a motion for reconsideration which was denied by the Sandiganbayan. Pareño opted not to file a motion for reconsideration and elevated his case directly to the Supreme Court.

Hence, these petitions.

The evidence for the prosecution mainly stems from the testimonies of the following witnesses: (1) Eufracio Santos, Deputy Commissioner of the BIR; (2) Brikcio Santos, Supervising Revenue Officer at the Intelligence and Investigation Office of the BIR; (3) Themistocles Montalban, Head Revenue Executive Assistant; and (4) Jeanet Segundo Aurelio, formerly the Revenue Clerk assigned at the Alcohol Tax Division under Teodoro Pareño.

Eufracio Santos testified that he was Deputy Commissioner of the BIR whose main duty was to assist the Commissioner in the administration of revenue laws and regulations being enforced by the BIR, its regional offices as well as the revenue district offices.

He testified that on October 13, 1987, he signed Tax Credit Memo No. 5177 (TCM) in favor of Tanduay Distillery for the amount of P108,701,682.00 on the basis of the memorandum submitted by Larin, memorandum of Pareño and the First Indorsement dated September 25, 1987 prepared by Potenciana Evangelista.

Considering the voluminous paperwork attendant to his office, he had to rely mainly on the certifications, recommendations and memorandum of his subordinates which in this case were herein petitioners. His precise participation in this case was only to determine if Tanduay's claim had legal and factual basis for the application of the decision of the Limtuaco case.

The legal basis in the Limtuaco ruling was used for the grant of the tax credit in favor of Tanduay considering that

they are both rectifiers - meaning that they get untax-paid alcohol underbond and then rectify the alcohol after which they pay the specific tax, hence, no longer subject to ad valorem tax.[12]

As to the factual basis, Santos had only to find out if Tanduary had indeed paid the taxes which can be determined through the endorsement of the Revenue Accounting Division (RAD) which is charged with the verification of the payments done. In this case, the fact that the papers passed through the RAD was sufficient proof that verification was made with regard to the tax payment of Tanduary.

His attention was drawn to this case only when an investigation was requested about an alleged tax swindle perpetrated on the bureau.

Santos would want to distinguish his position from that of the petitioners explaining that the Deputy Commissioners and the Commissioner do not perform investigative functions so they have to rely on their subordinates. The Office of the Assistant Commissioner, on the other hand, performs line functions and has investigatory powers. It is more in the position to determine if payments were indeed made.[13] Thus, Santos relied on the topmost document bearing Larin's signature for the approval of the TCM.

In effect, therefore, liability was pinpointed on Larin and Pareño who were more in the position to make a proper determination if Tanduary was indeed entitled to a tax credit.

The second witness, Brikcio Santos testified that he was Senior Revenue Enforcement Officer in 1988, about that time when the case arose. His duty was to conduct investigation of tax liabilities of taxpayers, prepare necessary reports and do other jobs assigned to him.

On July 18, 1988, he was assigned to look into the Tanduary case by virtue of a letter of authority issued by one Benjamin D. Parungo, Assistant Commissioner of the Special Operations Service, addressed to Tanduary. Together with this, Santos also received the entire docket of TCM No. 5177.

Santos was commissioned to examine the entire tax position of Tanduary. In the course of his examination of all the documents presented to him, the financial statement of the company was the most significant. According to Santos, the financial statement did not reflect any sales tax payment which formed the basis of a tax refund or tax credit. His audit report contained the following findings as observed by the Sandiganbayan:

x x x After making the schedule of the Payment Orders and Confirmation Receipts, he rendered an Audit Report (Exhibit "G") (p. 53, id.). He agreed that in this report, he found that the total amount of Specific Taxes paid from January 6, 1986 to August 31, 1987 was P180,701,682.00 while the Ad Valorem Taxes paid for the period January 6 to December 31, 1986 and January 2 to August 31, 1987 came up to the total amount of P67,632,524.00 (p. 55, id.). Thus, the P180 million claimed by TANDUAY was not for specific taxes alone but excise taxes in general. Excise taxes are composed of specific taxes and ad valorem taxes. Included in the P180 million was P1 million for ad valorem taxes (p. 56, id.). His report also stated that he found out that there were receipts which were labeled 'Specific Taxes' but which were actually payments for ad valorem taxes (p. 57, id.). He confirmed his conclusion therein that the tax credit memo of P180,701,682.00 was incorrect. The amount of the TCM should only be P67,632,524.00. This already took into consideration the P1 million that he found (p. 58, id.).

His report (Exhibit "G") also contained the observation, which he confirmed, that as of June 30, 1988, the total TCM of P180,701,682.00 had been fully applied (p. 50, id.). The memorandum for the Commissioner dated July 7, 1988 from Eliseo Pitargue, Chief, Intelligence and Investigation Office (Exhibit "X") was the source of this statement in his report (Exhibit "G") (p. 59, id.). He verified the correctness of the observation made by Mr. Pitargue by resorting to the History Card of TCM No. 5177 (Exhibit "X") on file at the Receivables Account Division (p. 60, id.).[14]

The prosecution's third witness, Themistocles Montalban who was the Revenue Executive Assistant for Collection merely testified that he came across TCM No. 5177 but did not actually sign all debit memos in application of TCM No. 5177. He stated that the amount of P180,701,682.00 was fully utilized in payment of Internal Revenue taxes due from Tanduary covering the period 1987 to 1988. This full availment was borne out by the records that they have compiled in the Accounts Receivable Billing Division.[15]

The next witness to testify was Jeanet Segundo Aurelio, who was the Revenue Clerk-typist of petitioner Teodoro Pareño.

She recalled that on October 13, 1987, she typed a memorandum signed by Pareño with regard to the Tanduary request and a letter of Justino Galban also with regard to the request of Tanduary. While typing the memorandum, she noticed the presence of Juliet Galan, who was the secretary of petitioner Larin in their office. She found this quite unusual since their offices are on different floors. She allegedly overheard that Juliet Galan was following up the memoranda she was typing on that day particularly that of Pareño. Except for that day, she never saw Galan again.

The defense, on the other hand, did not present testimonial evidence but only documentary evidence, adopting some of the exhibits of the prosecution.

Petitioners were charged for having violated the two (2) different laws, to wit:

xxx

(1) Section 268(4) of the National Internal Revenue Code in Criminal Case No. 14208 which reads as follows:

Sec. 268. Violations committed by government enforcement officers. -Every official, agent or employee of the Bureau of Internal Revenue or any other agency of the government charged with the enforcement of the provisions of this Code, who is guilty of any of the offenses hereinbelow specified, shall, upon conviction for each act or omission, be fined in a sum of not less than five thousand pesos but not more than fifty thousand pesos or imprisoned for a term of not less than one year but not more than ten years, or both;

xxx

4. Those who conspire or collude with another or others to defraud the revenues or otherwise violate the provisions of this Code;

xxx

(2) Section 3(e) of R.A. 3019 of the Anti-Graft and Corrupt Practices Act for Criminal Case No. 14209 which reads as follows:

Sec. 3. Corrupt Practices of Public officers. - In addition to acts or omission of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

e. Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. xxx

Specifically, the petitioners have been accused of the following acts:

For the violation of Sec. 268 of the NIRC (Criminal Case No. 14208):

- by having conspired and colluded with one another.
- in knowingly preparing false memoranda and certification regarding the claim for Tax Credits made by the taxpayer Tanduay Distillery, Inc. (TANDUAY)
- to the effect that the taxpayer had paid P 180,701,682.00 in ad valorem taxes;
- when in fact the accused had failed to verify the truth of the alleged payment of ad valorem taxes;
- the truth being that the taxpayer TANDUAY had not paid that amount in ad valorem but in specific taxes, although it had paid another sum (P72,614,287.20) in ad valorem taxes.

For the violation of the Anti-Graft and Corrupt Practices Act (Sec. 3/e of R.A. 3019) in Criminal Case No. 14209

- causing undue injury to the government and giving unwarranted benefits to TANDUAY;
- by the deliberate and unjustified failure of the accused to verify the truth and validity of TANDUAY's claim that it had paid the ad valorem taxes for which it was claiming a tax credit;
- and, instead, indorsing approval of the claim of taxpayer TANDUAY that it had allegedly paid erroneously the amount claimed (P180,701,682.00) in ad valorem taxes and would thus be entitled to a tax credit in that amount thereby resulting in the approval of a tax credit in the amount claimed in favor of TANDUAY;
- the truth being that the above amount had not been paid in ad valorem taxes but in specific taxes, although another amount (P73,614,287.20) had been paid in ad valorem taxes;
- resulting in undue prejudice to the Government for the difference of P107,087,394.80 and an unwarranted benefit to TANDUAY for that same amount.[16]

The Sandiganbayan found that the claim of Fausto Preysler was false. Tanduay had not actually paid the amount of P180,701,682.00 in ad valorem taxes. Out of the 237 tax receipts paid and presented by Tanduay in support of their claim of P180,701,682.00, only three (3) representing the amount of P1,109,582.00 turned out to be payments for ad valorem taxes. By reason of the issuance of TCM No. 5177, Tanduay had thereby availed of a tax credit amounting to about P 107,087,394.80 to the prejudice of and loss to, the government. Responsibility was pinpointed on petitioners, including Potenciana Evangelista, as the people who allegedly caused the preparation of TCM No. 5177: Larin, for having received the letter from Tanduay without any endorsement whatsoever from a higher official, for instructing Pareño to prepare the request to the RAD for verification and for recommending the approval of TCM No. 5177; and Pareño, for preparing a referral of the tax application to Potenciana Evangelista who promptly responded with her first indorsement.

With the foregoing acts, the petitioners were alleged to have conspired and colluded with one another in making false certifications, false memoranda and false recommendations to the detriment of the government. Their actions became suspect when they allegedly acted with haste on the matter.

While it is true that the factual findings of the Sandiganbayan are conclusive on this Court, this rule is however subject to established exceptions, among them: 1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; 2) the inference made is manifestly mistaken; 3) there is grave abuse of discretion; 4) the judgment is based on misapprehension of facts, and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.[17]

In the light of the testimonial and documentary evidence presented, the instant case undoubtedly falls under these exceptions. We find that the petitioners' guilt have not been proven beyond moral certainty.

Let us examine once again the events which transpired:

- 1) Larin received a letter dated September 17, 1987 from Fausto Preysler claiming a tax credit for Tanduary for alleged erroneous payment of ad valorem taxes amounting to P180,701,682.00;
- 2) Larin wrote a note on the margin of the letter addressed to Pareño to prepare a request to the RAD;
- 3) Pareño instructed Galban to prepare the memorandum addressed to the RAD requesting verification that payments were made;
- 4) This memorandum was brought back to Larin for his signature;
- 5) Larin received a First Indorsement from Evangelista with the information that the confirmation receipts were verified;
- 6) Larin received a memorandum from Galban and later from Pareño explaining the manufacturing process of Tanduary;
- 7) With the verification from the RAD and the memorandum of Pareño explaining the manufacturing process of Tanduary, Larin prepared a memorandum to the Deputy Commissioner recommending approval of TCM No. 5177.

The Court does not find anything irregular or illegal with the acts committed by the petitioners. The fact that the letter of Tanduary was addressed to Larin specifically does not prove anything at all. Nowhere in the rules of the BIR does it state that all communications must pass through the hierarchy of officers.

The head of the Excise Tax<sup>[18]</sup> Division was petitioner Larin. Any application for tax credit was usually referred to Larin and responded by him and his immediate subordinates.

In the instant case, it was but proper for Tanduary's claim for tax credit in ad valorem taxes to have been referred to his office. Whether or not tax refunds or tax credits were to be made and how much was to be credited was the responsibility of Larin and Pareño, too, as the head of the Alcohol Tax Division considering that the issue referred is taxes on liquor.

To repeat, there is nothing irregular with the fact that Tanduary's letter was directly sent to the Office of the Chief of the Excise Tax Division which would necessarily look into the validity of Tanduary's claim.

Neither do we find anything false or irregular in Larin's marginal note or Pareño's memorandum prepared by Galban to the RAD. They were merely requests for verification or authentication of the Confirmation Receipts for the purpose of determining if payments for ad valorem taxes had indeed been made by Tanduary.

Pareño and Galban's memorandum, on the other hand, merely explained the manufacturing process of Tanduary. Considering that the BIR had already ruled that ad valorem taxes paid by the distillers were erroneous payments and could, therefore, be proper subject of claims for tax credit, there was legal basis to Tanduary's claim.<sup>[19]</sup>

There were two things to be verified before Tanduary's claim for tax refund could be granted:

First, if Tanduary is a rectifier and is, thus not entitled to pay ad valorem taxes; and

Second, if Tanduary has paid the ad valorem taxes to the BIR.

With respect to the first, there is no question that Tanduary is a rectifier. The memoranda of Pareño and Galban very well explained the manufacturing process of Tanduary which was similar to that of Limtuaco Distillery. The recommendation made in each of these documents was based entirely on the technical aspects of Tanduary's claim

for tax crediting - namely whether or not its products were distilled spirits and therefore not subject to ad valorem tax. The memoranda were not questioned or disputed. As rectifiers, they were indeed entitled to a tax refund for any ad valorem taxes previously paid. The legal basis for Tanduary was ineluctable. The memoranda of Galban and Pareño are therefore not enough basis for petitioners' conviction.

What was crucial was the second prerequisite which the Sandiganbayan surmised as having been falsely certified by Larin.

The requested verification of the Confirmation Receipts from the RAD was forwarded to the office of Larin through the First Indorsement of Potenciana Evangelista. Potenciana Evangelista belonged to the Financial Management Service which was a co-equal unit of the Excise Tax Service in the BIR. As testified by Deputy Commissioner Eufracio Santos, verification of the amount of tax payments was the duty of the Revenue Accounting Division.[20] In such a case, we can not fault Larin for having relied on the First Indorsement of Potenciana Evangelista which stated that "the confirmation receipts listed hereunder were verified from the records of this Office." With such a verification, Larin presumed that Tanduary has indeed paid ad valorem taxes.

The Sandiganbayan, however, ruled that Larin should have not accepted the First Indorsement on its face. It was incumbent upon Larin to have gone beyond the verification of the RAD, and to personally verify the payments made. Such contention is absurd, if not outrightly ludicrous. The BIR is a big government office tasked with the collection of taxes which is considered the lifeblood of the government. Duties had to be delineated to the different offices for utmost efficiency in the tax collection system since workload is expectedly heavy. Eufracio Santos testified that he had to rely on the certifications and recommendations of the different officials below who are also presumed to rely on their respective subordinates. In this particular case, he affixed his signature on TCM No. 5177 because he had the trust and confidence not only in Larin but also in the system itself[21] In the same way, Larin also had the trust and confidence in the RAD in making the requested verification/certification that Tanduary has paid the ad valorem taxes. Eufracio Santos even admitted that the fact that Tanduary's papers passed through the RAD, bearing the certification and signature of Evangelista was sufficient for him to consider Tanduary's claim favorably.

Moreover, the Sandiganbayan maintains that a perusal of the First Indorsement reveals that most of the Confirmation Receipts bore TNC numbers referring to specific taxes. It was also incumbent upon the petitioners to know the meaning of these TNCs which would readily show that the payments made by Tanduary were for specific taxes and not ad valorem taxes.

The Tax Numeric Code (TNC) for Specific Taxes is contained in Revenue Memorandum No. 15-86.[22] The TNC system was adopted by the BIR to "facilitate the preparation of statistical and other management reports," the improvement of revenue accounting and the production of tax data so essential to the management planning and decision-making. Under this system, a code or number stands for: (a) kind or class of tax; and (b) the applicable rate.[23] Pertinent to this case are the following:

TNC No. 3011-0001 stands for "specific tax on domestic distilled spirits" (RMO 19-83, Exh. 17)

TNC No. 3023-2001 stands for "ad valorem tax on compounded liquors" (RMO Circular 15-86, Exh. 3)

TNC No. 0000-0000 for "unclassified taxes." (Decision, p.76)

Witness Eufracio Santos explained that the "practice of using tax numeric code was for the purpose of checking remittances of tax payments by the banks. Its purpose is for the guidance of the banks as well as the guidance of employees of the BIR, so that he agreed that a technical service like the Alcohol Tax Division has nothing to do with the verification of tax payments." [24] This was the turf of the RAD. Santos himself, as Deputy

Commissioner of the BIR admitted that he did not know the meaning of the TNCs.

It must be borne in mind that Larin specifically requested the RAD to verify the confirmation receipts with respect to the payment of ad valorem taxes. He made this request in connection with Tanduary's claim for tax credit. With the first indorsement of Evangelista, Larin understood that she verified the confirmation receipts to cover payments for ad valorem taxes as contained in his query.

Against this backdrop, Larin cannot therefore be held negligent in relying on the certification of a co-equal unit in the BIR or to look beyond the certifications made by the RAD.

The alleged haste in acting favorably for Tanduary is nothing but pure conjecture. The Sandiganbayan considered October 13, 1987 as a very busy day considering that all these transactions allegedly happened very quickly and in close succession: 1) preparation of the memorandum of Justino Galban with regard to the manufacturing process of Tanduary; 2) followed by the memorandum of Pareño reiterating the same; 3) memorandum of Larin to the Deputy Commissioner recommending approval of the tax credit; 4) approval of the Deputy Commissioner of TCM No. 5177.

The alleged haste or the alleged persistent follow-ups of Julieta Galan[25] with regard to Tanduary's claim was not without basis. As testified by Eufrazio Santos, Tanduary had pending big tax obligations which is why they were hurrying up with the approval of the tax credit.[26] Moreover, there is no reason to delay or prolong further the study of the instant case since there was a precedent already in the light of the Limtuaco ruling. It was not difficult for these BIR officials to refer back to the Limtuaco case. The records reveal that Limtuaco applied for tax credit about three (3) months before Tanduary filed its application for tax credit. The application for tax credit went through the usual process of passing thru the offices of Larin, Pareño and the RAD before it was finally approved by the Commissioner. Both Tanduary and Limtuaco are similarly situated. We do not see why Tanduary had to be singled out and the petitioners held liable for acts they were regularly doing.

Finally, petitioners were accused of having conspired or colluded with one another in granting the tax credit. In *Macadangdang v. Hon. Sandiganbayan*,[27] the Court stated that:

[C]onspiracy must be established by positive and conclusive evidence. It can not be based on mere conjectures but must be established as a fact. The same degree of proof required to establish the crime is necessary to support a finding of the presence of conspiracy, that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself.

Conspiracy may be proved by evidence of actual agreement between the parties to commit the crime, or evidence of concerted acts of the parties indicative of a common objective to commit the crime.

In the instant case, there is no proof of actual agreement between the petitioners to commit the crime charged. The acts of petitioners and that of Evangelista may be considered concerted only because they performed interrelated functions. Larin from the Excise Tax Office received the letter of Tanduary and referred the matter to Pareño, as head of the Alcohol Tax Division considering that the issue was a tax on liquor. A certification from the RAD was requested and indorsed back to Larin who made a favorable recommendation to the Deputy Commissioner. There is no showing that petitioners have acted irregularly, or performed acts outside of their official functions. The testimony of Jeanet Aurelio that she saw Larin's secretary at their office, following up the memorandum she was typing has no probative value at all. It must be founded on facts, not on mere inferences, conjectures and presumptions.[28] There is actually no proof that conspiracy exists between the parties.

It is rather apparent that under the Sandiganbayan's decision, a department secretary, bureau chief, commission chairman, agency head, department head or chief of office would be equally culpable for every crime arising from

any transactions or held guilty of conspiracy simply because he was the last of a long line of officials or employees who acted upon or affixed his signature to a transaction. We cannot allow this because guilt must be premised on a more knowing personal, and deliberate participation of each individual who is charged with others as part of a conspiracy.[29] There must be more convincing proof which in this case is wanting.

The Sandiganbayan's finding of guilt is merely based on speculations and conjectures which does not pass the test of moral certainty. We find that the evidence on record is not sufficient to sustain a conviction.

In this connection, the Court observes that there may have been parties involved in the criminal act but were, however, not included in the information, which matter may be appropriately acted upon by the authorities concerned, as the facts may warrant.

WHEREFORE, the questioned decision of the Sandiganbayan insofar as it convicts and sentences petitioners Teodoro D. Pareño and Aquilino T. Larin is hereby SET ASIDE. Petitioners Pareño and Larin are ACQUITTED on grounds of reasonable doubt. No costs.

**SO ORDERED.**

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, and Mendoza, JJ., concur.  
Hermosisima, Jr., J., no part. Signatory to decision in Sandiganbayan.  
Panganiban, J. no part. Counsel for petitioner in G.R. No. 107119 is a former law partner.  
Torres, Jr., J., no part. Did not participate in deliberations.  
Francisco, J., on leave.

[1] "Exhibit "E".

[2] Exhibit "9" (for Larin).

The handwritten annotation of Mr. A. T. Larin, 9/13 appearing on the upper left portion of the letter-request reads:

"Please cause the preparation of a request to the Rev. Accounting Division for authentication of the CR covering the payment which is being sought to be refunded and/or to be credited.

[3] Exhibit "10" (for Larin).

[4] "Exhibit "D".

1st Indorsement dated September 25, 1987 consists of five (5) pages.

[5] Exhibit "13" (for Larin), erroneously dated October 14, 1987 which should be October 13, 1987.

[6] Exhibit "C".

[7] Exhibit "B".

[8] Exhibit "A".

[9] Decision, p. 21.

[10] Decision, pp. 31-34.

[11] Decision, pp. 132-133 (G.R. No. 107119 at 162-163).

[12] Decision, p. 23, G.R. No. 108037, p. 137.

[13] G.R. No. 108037, p. 141.

[14] Id., at 147-148.

[15] Id., at 162.

[16] Id., at 57-59.

[17] Cesar v. Sandiganbayan, 135 SCRA 15 (1985).

[18] Under the Tax Code, an excise tax is a special levy on selected goods (such as alcohol, tobacco and petroleum products) manufactured in the Philippines for domestic corporation. (Sections 126 and 127).

There are two (2) kinds of excise tax: specific tax, which is imposed and based on weight or volume capacity or any other physical unit of measurement; and ad valorem tax which is imposed and based on selling price or other specified value of the goods.

[19] Decision, p. 80, G.R. No. 108037, p. 194.

[20] Decision, p. 18.

[21] Id., at 15.

[22] Rollo, p. 136.

[23] Records, Vol. V at pp. 13-14.

[24] Decision, p. 19.

[25] See testimony of Jeanet Aurelio.

[26] Decision, p. 16.

**[27] 170 SCRA 308 (1989).**

[28] Orodeo v. Court of Appeals, 165 SCRA 316 (1988).

[29] See Arias v. Sandiganbayan, 180 SCRA 309 (1989).

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