

FIRST DIVISION

[G.R. Nos. 108135-36, August 14, 2000]

**POTENCIANA M. EVANGELISTA, PETITIONER, VS. THE PEOPLE
OF THE PHILIPPINES AND THE HONORABLE SANDIGANBAYAN,
(FIRST DIVISION), RESPONDENTS.**

R E S O L U T I O N

YNARES-SANTIAGO, J.:

On September 30, 1999, we rendered a Decision in this case acquitting petitioner of the charge of violation of then Section 268 (4) of the National Internal Revenue Code^[1] but affirming her conviction for violation of Republic Act No. 3019, Section 3 (e),^[2] thus imposing on her an indeterminate sentence of imprisonment for six (6) years and one month as minimum to twelve (12) years as maximum, and the penalty of perpetual disqualification from public office.

The basic facts are briefly restated as follows:

On September 17, 1987, Tanduay Distillery, Inc. filed with the Bureau of Internal Revenue an application for tax credit in the amount of P180,701,682.00, for allegedly erroneous payments of ad valorem taxes from January 1, 1986 to August 31, 1987. Tanduay claimed that it is a rectifier of alcohol and other spirits, which per previous ruling of the BIR is only liable to pay specific taxes and not ad valorem taxes. Upon receipt of the application, Aquilino Larin of the Specific Tax Office sent a memorandum to the Revenue Accounting Division (RAD), headed by petitioner, requesting the said office to check and verify whether the amounts claimed by Tanduay were actually paid to the BIR as ad valorem taxes. Larin's memorandum was received by the Revenue Administrative Section (RAS), a subordinate office of the RAD. After making the necessary verification, the RAS prepared a certification in the form of a 1st Indorsement to the Specific Tax Office, dated September 25, 1987, which was signed by petitioner as RAD chief.

The 1st Indorsement states that Tanduay made tax payments classified under Tax Numeric Code (TNC) 3011-0001 totalling P102,519,100.00 and payments classified under TNC 0000-0000 totalling P78,182,582.00. Meanwhile, Teodoro Pareño, head of the Tax and Alcohol Division, certified to Justino Galban, Jr., Head of the Compounders, Rectifiers and Repackers Section, that Tanduay was a rectifier not liable for ad valorem tax. Pareño recommended to Larin that the application for tax credit be given due course. Hence, Larin recommended that Tanduay's claim be approved, on the basis of which Deputy Commissioner Eufracio D. Santos signed Tax Credit Memo No. 5177 in the amount of P180,701,682.00.

Sometime thereafter, a certain Ruperto Lim wrote a letter-complaint to then BIR Commissioner Bienvenido Tan, Jr. alleging that the grant of Tax Credit Memo No. 5177 was irregular and anomalous. Based on this, Larin, Pareño, Galban and petitioner Evangelista were charged before the Sandiganbayan with violation of

Section 268 (4) of the National Internal Revenue Code and of Section 3 (e) of R.A. 3019, the Anti-Graft and Corrupt Practices Act. Larin, Pareño and petitioner were later convicted of both crimes, while Galban was acquitted inasmuch as his only participation in the processing of Tanduary's application was the preparation of the memorandum confirming that Tanduary was a rectifier.

The three accused filed separate petitions for review. Pareño's and Larin's petitions were consolidated and, in a decision dated April 17, 1996, both were acquitted by this Court in Criminal Cases Nos. 14208 and 14209.^[3] In this petition, on the other hand, we acquitted petitioner in Criminal Case No. 14208, for violation of Section 268 (4) of the NIRC. However, we found petitioner guilty of gross negligence in issuing a certification containing TNCs which she did not know the meaning of and which, in turn, became the basis of the Bureau's grant of Tanduary's application for tax credit. Thus, we affirmed petitioner's conviction in Criminal Case No. 14209, i.e., for violation of Section 3 (e) of the Anti-Graft and Corrupt Practices Act.

Petitioner seasonably filed a Motion for Reconsideration,^[4] wherein she asserts that there was nothing false in her certification inasmuch as she did not endorse therein approval of the application for tax credit. Rather, her certification showed the contrary, namely, that Tanduary was not entitled to the tax credit since there was no proof that it paid ad valorem taxes. Petitioner also claims that she was neither afforded due process nor informed of the nature and cause of the accusation against her. She was found guilty of an offense different from that alleged in the information; consequently, she was unable to properly defend herself from the crime for which she was convicted.

The Information against petitioner and her co-accused in Criminal Case No. 14209 alleges in fine that they caused undue injury to the Government and gave unwarranted benefits to Tanduary when they endorsed approval of the claim for tax credit by preparing, signing and submitting false memoranda, certification and/or official communications stating that Tanduary paid ad valorem taxes when it was not liable for such because its products are distilled spirits on which specific taxes are paid, by reason of which false memoranda, certification and/or official communications the BIR approved the application for tax credit, thus defrauding the Government of the sum of P107,087,394.80, representing the difference between the amount claimed as tax credit and the amount of ad valorem taxes paid by Tanduary to the BIR.^[5] According to petitioner, instead of convicting her of the acts described in the Information, she was convicted of issuing the certification without identifying the kinds of tax for which the TNCs stand and without indicating whether Tanduary was really entitled to tax credit or not.

The Solicitor General filed his Comment^[6] wherein he joined petitioner's cause and prayed that the motion for reconsideration be granted. In hindsight, even the Solicitor General's comment on the petition consisted of a "Manifestation and Motion in lieu of Comment,"^[7] where he recommended that petitioner be acquitted of the two charges against her.

We find that the Motion for Reconsideration is well-taken.

After a careful re-examination of the records of this case, it would appear that the certification made by petitioner in her 1st Indorsement was not favorable to Tanduary's application for tax credit. Far from it, petitioner's certification meant that