

## THIRD DIVISION

[ G.R. NO. 152532, August 16, 2005 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS.  
SANDIGANBAYAN (FOURTH DIVISION) AND BIENVENIDO A.  
TAN JR., RESPONDENTS.**

### DECISION

#### **PANGANIBAN, J.:**

A judgment of acquittal made by a competent court on a valid information after the accused has entered a plea bars an appeal by the prosecution. Only a clear showing of grave abuse of discretion or denial of due process to the State can justify a review (through a petition for certiorari) of such decision by this Court. In acquitting private respondent in the present case, the Sandiganbayan has not been shown to have acted arbitrarily or whimsically. Equally important, the herein accused, Commissioner Bienvenido A. Tan Jr., has not been proven to have exceeded his discretion in the exercise of his functions. Taking into account the relevant facts and applicable laws in this very perplexing subject of taxation, this Court cannot fault him for abating an excessive and erroneous tax assessment. Quite the contrary, he has acted fairly and sensibly under the circumstances.

#### **The Case**

Before us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court, seeking to nullify and set aside the January 23, 2002 Resolution<sup>[2]</sup> of the Sandiganbayan (SB) in Criminal Case No. 20685. The dispositive part of the Resolution reads as follows:

"WHEREFORE, premises considered, the Decision dated 02 March 2001 is hereby RECONSIDERED and SET ASIDE, and the accused is hereby ACQUITTED of the charge in the instant case.

"The bailbond of the accused is hereby cancelled and the Hold Departure order previously issued by the court is hereby lifted and set aside."<sup>[3]</sup>

#### **The Facts**

The facts are narrated by the SB in its original Decision dated March 2, 2001, as follows:

"Pursuant to Letter of Authority No. ATD-035-STO dated January 2, 1986 and Memorandum of Authority dated March 3, 1986, an investigation was conducted by [Bureau of Internal Revenue (BIR)] examiners on the ad valorem and specific tax liabilities of [San Miguel Corp. (SMC)] covering the period from January 1, 1985 to March 31, 1986. The result of the

investigation showed that [SMC] has a deficiency on specific and ad valorem taxes totaling P342,616,217.88 broken down as follows:

'Specific Tax	P 33,817,613.21
Ad Valorem Tax	P308,798,604.67'

"On the basis of these findings, the BIR sent a letter dated July 13, 1987 to SMC demanding the payment of its deficiency tax in the amount of P342,616,217.88. Apparently, the letter was received by the SMC, as it protested the assessment in its letter dated August 10, 1987 with the information: 1) that the alleged specific tax deficiency was already paid when the BIR approved SMC's request that its excess ad valorem payments be applied to its specific tax balance; 2) that the computation of the ad valorem tax deficiency was erroneous since the BIR examiners disallowed the deduction of the price differential (cost of freight from brewery to warehouse) and ad valorem tax.

"The protest was denied by the BIR thru a letter dated October [8], 1987 signed by accused Commissioner Bienvenido Tan, Jr., but the original assessment of P342,616,217.88 was reduced to P302,[0]51,048.93 due to the crediting of the taxpayer's excess ad valorem tax deposit of P21,805,409.10 with a reiteration of the payment of the x x x assessed specific and ad valorem tax as reduced.

"On October 27, 1987, herein accused referred the matter to Jaime M. Maza, Assistant BIR Commissioner, Legal Service Division and thereafter different BIR officials also reviewed the case of SMC and rendered varying legal opinions on the issue x x x

"On the part of Alicia P. Clemeno, Chief, Legislative Ruling and Research Division, she recommended the reduction of SMC's tax liability, first to P21,856,985.29, and later to P22,000,000.00. Balbino E. Gatdula, Jr., Assistant Revenue Service Chief, Legal Service, supported the demand for ad valorem tax deficiency from SMC. In a letter dated August 31, 1988, SMC, thru a certain Avendano offered the amount of P10,000,000.00 for the settlement of the assessment. This was concurred in by Juanito Urbi, Chief, Prosecutor Division, BIR in a Memorandum dated December 20, 1988. Jaime Maza, Assistant Commissioner, Legal Service, BIR, also gave his concurrence to the recommendation that the offer of SMC for P10,000,000.00 in compromise settlement be accepted. The recommendation was approved by accused Bienvenido Tan; and accordingly, in a letter dated December 20, 1988, SMC was informed that its offer to compromise was accepted." [4]

Subsequently, the SB reversed its original March 2, 2001 Decision with its now assailed January 23, 2002 Resolution. The antecedents leading to the Petition before this Court are narrated by the SB in this manner:

"In our Decision of March 2, 2001, herein accused Bienvenido A. Tan, former Commissioner of the [BIR], was convicted for violation of Section 3(e) of Republic Act [(RA)] No. 3019 as amended, otherwise known as

the Anti-Graft and Corrupt Practices Act, the dispositive portion of which states as follows:

'WHEREFORE, premises considered, judgment is hereby rendered convicting the accused for Violation of Section 3(e) of [(RA)] 3019 as amended, and appreciating in his favor the presence of the mitigating circumstance of age, accused being over seventy (70) years old, and in the absence of aggravating circumstances to offset the same, applying the Indeterminate Sentence Law, he is hereby sentenced to suffer imprisonment of six (6) years and one (1) month as minimum to fifteen (15) years as maximum. He is further disqualified perpetually from holding public office.

'As the Court finds the compromise agreement to have been entered into illegally, the [BIR] is hereby ordered to collect from [SMC] the amount of P292,951,048.93 representing its tax liabilities covering the period from January 1, 1985 to March 31, 1986.

'SO ORDERED.'

"In his Motion for Reconsideration filed on March 12, 2001, accused seeks to reconsider aforesaid Decision and posits the following grounds: (1) the Court erred in holding that the assessment contained in the letter of accused dated 08 October 1987 was final and executory; (2) corollarily, the Court erred in holding that the referral of the 08 October 1987 assessment to the Assistant Commissioner for further study was uncalled for, given that there was no request for a reconsideration of the 08 October 1987 assessment; (3) the Court erred in not holding that the specific tax assessment of [P]33,817,613.21 had been paid through the application of SMC's excess ad valorem tax deposits to its unpaid specific tax; (4) the Court erred in not holding that the abatement of SMC's ad valorem tax was proper on the ground that there exists a reasonable doubt as to the correctness of said assessment; [(5)] the Court erred in holding that accused exercise of his authority under Section 204 of the [National Internal Revenue Code (NIRC)] to abate the assessment of ad valorem tax was improper; and [(6)] the Court erred in holding that there was a compromise of the SMC tax case which resulted in undue injury to the government.

"In its Comment, the prosecution asserts that (1) the assessment contained in the letter of SMC dated October 8, 1987 was final and executory; (2) the referral of the 08 October 1987 assessment to the Assistant Commissioner for further study was uncalled for given that there was no request for a reconsideration from SMC; (3) SMC's total tax due and collectible as Specific Tax of [P]33,817,613.21 has not been settled; (4) the Court correctly held that the abatement of SMC's ad valorem taxes is improper; and (5) the Court is correct in ruling that there was a compromise of SMC's tax which resulted in undue injury to the government.

"Thereafter, the accused and the prosecution made a further exchange of pleadings elaborating on their respective positions on the matter.

"The Motion is impressed with merit. After a careful and exhaustive review of the pleadings, the records and the evidence, we reconsider our Decision dated March 2, 2001 and hereby acquit the accused of the charge in the instant case."<sup>[5]</sup>

### **Ruling of the Sandiganbayan**

In acquitting herein private respondent, the SB adduced several reasons.

*First*, the SB failed to give weight to the October 27, 1987 meeting between Commissioner Tan and SMC's representatives -- a meeting which resulted in the referral of the assessment to Tan's subordinates for further review and study. The referral showed that the disputed assessment had not yet become final and executory.

*Second*, notwithstanding the prosecution's observation that the BIR rejected SMC's protest against the inclusion of the water component of beer, private respondent unequivocally approved SMC's application of its excess ad valorem deposit to complete the payment of its specific tax deficiency.

*Third*, the abatement of SMC's ad valorem taxes is proper. The tax base for computing them should not include the ad valorem tax itself and the price differential. Reliance upon Executive Order (EO) No. 273 is not misplaced, because that law simply affirms general principles of taxation as well as BIR's long-standing practice and policy not to impose a tax on a tax. Moreover, nothing precludes private respondent from applying EO 273 on an assessment made prior to its effectivity, because that law was merely intended to formalize such long-standing practice and policy.

*Fourth*, after inquiring into the discretionary prerogative of private respondent to compromise, the SB found no reason to conclude that he had acted contrary to law or been impelled by any motive other than honest good faith. The compromise he had entered into regarding SMC's tax did not result in any injury to the government. No genuine compromise is impeccable, since the parties to it must perforce give up something in exchange for something else. No basis existed to hold him liable for violation of Section 3(e) of RA 3019.

Hence, this Petition.<sup>[6]</sup>

### **The Issues**

Petitioner raises the following issues for our consideration:

"A.

"The respondent court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when, in upholding private respondent's act in ruling upon SMC's Motion for Reconsideration, it disregarded Section 228 (previously Section 246) of the NIRC.

"B.

"The respondent court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when, in upholding private respondent's act in accepting SMC's offer of compromise of P10,000,000.00 for its tax liability of P302,051,048.93, it disregarded Sections 124 and 228 of the NIRC.

"C.

"The respondent court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it declared the validity of private respondent's act of approving SMC's application of the excess ad valorem to its specific tax deficiency despite its being contrary to law.

"D.

"The respondent court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it acquitted private respondent for violation of Sec. 3(e) of RA 3019 despite the overwhelming evidence proving his guilt beyond reasonable doubt."<sup>[7]</sup>

We shall tackle the foregoing issues *seriatim*, with the exception of the third issue that will be discussed ahead of the second.

### **The Court's Ruling**

The Petition has no merit.

#### **First Issue:** **Viability of SMC's Motion for Reconsideration**

Section 229 of the NIRC<sup>[8]</sup> provides thus:

"Sec. 229. Protesting of assessment. -- When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.

"Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulation within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

"If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the