

## **FIRST DIVISION**

**[ G.R. Nos. 108135-36, September 30, 1999 ]**

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

### **D E C I S I O N**

**YNARES-SANTIAGO, J.:**

Before us is a petition for review on certiorari assailing the decision of the Sandiganbayan dated September 11, 1992 in Criminal Case Nos. 14208-14209 finding petitioner Potenciana M. Evangelista guilty beyond reasonable doubt of violation of Section 268, paragraph 4 of the National Internal Revenue Code (NIRC) and Section 3(e) of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Tanduay Distillery Inc., is a company engaged in the manufacture and sale of rum, gin, vodka and other spirits. On September 17, 1987, Tanduary filed with the Bureau of Internal Revenue (BIR) an application for tax credit in the sum of P180,701,682.00 representing alleged erroneous payments for ad valorem taxes covering the period January 1, 1986 to August 31, 1987. Attached to the application was a schedule of ad valorem taxes<sup>[1]</sup> allegedly paid by Tanduary with supporting confirmation receipts. The application was filed with the Specific Tax Office of the BIR headed by Aquilino T. Larin.

Tanduay anchored its claim for tax credit on the ground that it is a rectifier which is liable for specific taxes and not ad valorem taxes, citing a BIR ruling in a case involving Distilleria Limtuaco and Co. Inc. The ruling states that rectifiers are considered as extensions of distillers inasmuch as they purchase alcohol from distillers without prepayment of the specific tax. Since specific tax should be paid by the distiller before its removal from the place of production, the burden of payment therefor is shifted to and assumed by the rectifier.

In its application for tax credit, Tanduary stated that it is a rectifier with Assessment No. A-1-8 and a compounder with Assessment No. A-1-8-A, although compounding is only incidental to rectification of its products. Consequently, before the tax credit being sought by Tanduary could be granted, the BIR's Tax and Alcohol Division, headed by Teodoro D. Pareño, had to verify first whether Tanduary's products are distilled spirits or compounded liquor based on how they are manufactured. To do this, Justino Galban, Head of the Compounders, Rectifiers and Repackers Section under the Alcohol and Tax Division, had to look into the technical process for the manufacture of rum, gin, vodka and other intoxicating beverages of Tanduary. If it is determined that the products can be properly classified as distilled spirits based on how they are manufactured, then Tanduary could properly claim for a tax credit on its payments of ad valorem taxes in accordance with Section 121 of the NIRC and

the Limtuaco ruling that rectifiers, as an extension of distillers, are subject to specific and not ad valorem taxes. Finally, it had to be verified by the Revenue Accounting Division (RAD) headed by petitioner Potenciana M. Evangelista whether Tanduay actually paid the P180,701,682.00 as ad valorem taxes to the BIR which it claims it paid.

On September 23, 1987, Larin, in a marginal handwritten note, directed Pareño to prepare a request to the Revenue Accounting Division (RAD) for the authentication of the confirmation receipts covering the tax payments sought to be credited. Accordingly, a memorandum, signed by Larin, was sent to the RAD headed by petitioner Evangelista requesting verification and authentication whether the amounts reflected in the confirmation receipts submitted by Tanduay were actually paid to the BIR as ad valorem taxes.

Larin's Memorandum was received by the Records and Administrative Section (RAS), a unit under RAD, on September 24, 1987. In due course, RAS made the necessary verification on the basis of its records and prepared the corresponding verification<sup>[2]</sup> in the form of a 1st Indorsement to the Specific Tax Office on September 25, 1987. The indorsement, which was signed by petitioner Evangelista, contained a listing of two hundred thirty seven (237) confirmation receipts in various amounts under two categories designated with Tax Numeric Code (TNC) 3011-0011 and TNC 0000-0000. A total of 149 confirmation receipts covering P102,519,100.00 were listed as tax payments under TNC 3011-0011 and a total of 88 confirmation receipts covering P78,182,582.00 were listed as tax receipts under TNC 0000-0000.

A memorandum was thereafter prepared by Galban as Chief of the Compounders and Rectifier's Section addressed to Pareño describing the technical aspects of Tanduay's manufacturing process. Galban made no recommendation, however, as to the validity of Tanduay's claim. On October 13, 1987, Pareño sent a memorandum to Larin recommending that the request for tax credit of Tanduay Distillery, Inc. be given due course on the ground that Tanduay as a rectifier is an extension of the distiller and its products are subject of the payment of specific tax and not ad valorem tax. On same date, Larin signed a memorandum for the Deputy Commissioner of the BIR recommending that the claim of Tanduay Distillery Inc., for the alleged erroneous payment of ad valorem taxes in the amount of P180,701,682.00 be tax credited as in the case of Distilleria Limtuaco and Co. Inc.

On October 13, 1987, Eufracio D. Santos, Deputy Commissioner of the BIR, approved the recommendation made by Larin in his memorandum and thereafter signed Tax Credit Memo No. 5177 in the amount of P180,701,682.00 in favor of Tanduay Distillery, Inc. The approval was based on the following:

1. The memorandum of the Assistant Commissioner for Specific Tax Office, Aquilino T. Larin;
2. The memorandum of the Chief of Alcohol Division, Teodoro D. Pareño; and
3. The 1st indorsement/certification issued by the Chief of Revenue Accounting Division, herein petitioner Potenciana M. Evangelista.<sup>[3]</sup>

Immediately after the approval of Tax Credit Memo No. 5177, Tanduay availed of the tax credit on various dates covering the period from October 19, 1987 to June 20, 1988.<sup>[4]</sup> However, on June 22, 1988, a certain Ruperto Lim wrote a letter-complaint

to BIR Commissioner Bienvenido Tan, Jr. alleging that the grant of Tax Credit Memo No. 5177 in favor of Tanduary was irregular and anomalous. More specifically, Lim pointed out that Tanduary had paid only P73,614,287.20<sup>[5]</sup> by way of ad valorem taxes to the BIR from January 1, 1986 to August 31, 1987 and not P180,701,682.00 as claimed. Deputy Commissioner Santos, in approving TCM No. 5177, failed to notice that petitioner's 1st indorsement contained a listing of TNC indicating tax payments received from Tanduary under two categories, i.e., TNC 3011-0011 and TNC 0000-0000. As earlier mentioned, a total of 149 confirmation receipts were listed as tax payments under TNC 3011-0011 while a total of 88 confirmation receipts were listed as tax payments under TNC 0000-0000. Deputy Commissioner Santos admitted that while he knew that there was a tax numeric code for the kind of tax paid, he did not know which particular numbers corresponded to a particular tax revenue. These codes are contained in the "Handbook of Tax Numeric Code of the Revenue Sources," wherein it is stated that TNC No. 3011-0011 stands for specific tax on domestic and distilled spirits, TNC No. 3023-2001 for ad valorem on compounded liquors and TNC No. 0000-0000 for unclassified taxes. Had Deputy Commissioner Santos looked these up in the Handbook, he would have known that Tanduary was not entitled to the whole sum of P180,701,682.00. Santos, however, contended that the practice of using numeric tax codes is for the purpose of checking remittances of payments by the banks which properly falls under the jurisdiction of the RAD. He claimed that he merely relied on the certification of his subordinates, inasmuch as his work was merely confirmational.

On January 3, 1990, two informations were filed with the Sandiganbayan against Aquilino T. Larin, Teodoro D. Pareño, Justino E. Galban, Jr. and petitioner Potenciana M. Evangelista for violation of Section 268, Par. 4 of the National Internal Revenue Code (NIRC), docketed as Criminal Case No. 14208, and for violation of Section 3(e) of R.A. No. 3019 of the Anti-Graft and Corrupt Practices Act, docketed as Criminal Case No. 14209.

Section 268, par. 4 of the NIRC reads:

*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 herein below specified, shall upon conviction for each act or omission, be fined in the 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;*

x x x      x x x      x x x

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

On the other hand, Section 3 (e) of R.A. No. 3019 of the Anti-Graft and Corrupt Practices Act states:

*Sec. 3. Corrupt Practices of Public Officers – in addition to acts or omissions 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;

X X X      X X X      X X X

*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.*

Upon arraignment, all the accused including petitioner Evangelista pleaded not guilty. They raised the defense that no undue injury had been caused to the government and no unwarranted benefits had been accorded to Tanduary inasmuch as Tanduary had already fully reimbursed the BIR of the availments found to have been unjustified or improper in the amount of P73,000,000.00 and had, additionally paid P11,000,000.00 by way of penalties, or a total of P84,000,000.00.

Petitioner Evangelista, for her part, did not deny having issued the 1st indorsement. However, instead of taking the witness stand, she, like her three co-accused, refused to testify and opted to present as evidence in her behalf the following paragraphs from her letter of explanation dated November 21, 1988 to BIR Commissioner Bienvenido Tan which read as follows:

*"Confirmation receipts do not contain any information as to the kind of tax or TNC. Thus, there can never be any verification and certification as to kind of tax. What can only be verified/certified by this Division as required in existing orders is the fact that the total amount of each CR were remitted to the BIR by the collecting bank on the given date.*

X X X      X X X      X X X

*"In the case of Tanduary Distillery, I did not know at the time I signed the indorsement what the TNC therein stand for because I was informing (sic) was that payments were received by BIR. I just became curious to know its meaning and verify the same from the Handbook of Tax Numeric Codes of Revenue Sources, 1985 when a certain Atty. Villavicencio called me up to his Office at the Internal Security Division some two weeks ago to ask questions on the subject indorsement.*

In her letter, petitioner also categorically stated that, "Upon signing of this indorsement/certification I or whoever is head of this Division, for that matter, do not know what TNC stands for."<sup>[6]</sup>

On September 18, 1992, Aquilino T. Larin, Teodoro D. Pareño and petitioner Potenciana M. Evangelista were convicted and sentenced to suffer the penalty of imprisonment for an indeterminate period of 4 years, 8 months and 1 day by way of minimum to 6 years and 8 months by way of maximum, and a fine of Twenty Thousand Pesos (P20,000.00) each in Criminal Case No. 14208; while in Criminal Case No. 124209, Aquilino T. Larin, Teodoro D. Pareño and petitioner Potenciana M. Evangelista were convicted and sentenced to suffer imprisonment for an indeterminate period ranging from a minimum of 9 years and 1 month to a maximum of 12 years. The penalty of perpetual disqualification from public office was likewise imposed upon the three accused. Justino Galban was acquitted

inasmuch as his only participation was the preparation of the memorandum describing Tanduary's manufacturing process as rectifier and compounder of liquors.

Petitioner Evangelista was convicted on the basis of the 1st indorsement issued by her which the Sandiganbayan condemned as a "studied non-response" to Larin's query as to how much the BIR actually received as payment for ad valorem taxes from Tanduary. The Sandiganbayan held that Evangelista's indorsement could have been explicitly and directly responsive because Larin's memo was clear and the purpose for his query was specific: How much was paid by Tanduary to the BIR by way of ad valorem taxes for the purpose of computing the amount properly creditable to Tanduary for refund? However, Evangelista's response merely enumerated a set of confirmation receipts with the corresponding TNC numbers despite the fact that several employees of the Bureau were not well acquainted with the use and meaning of TNCs. Petitioner's ambiguous reply, according to the Sandiganbayan, permitted her superiors to equivocate as to its meaning which resulted in the improper grant of tax credits to Tanduary. The Sandiganbayan thus concluded that the gross negligence of the petitioner and its confluence with the acts of accused Larin and Pareño in recommending the approval of Tanduary's application for tax credit adequately proved conspiracy among them.

Her motion for reconsideration having been denied by the Sandiganbayan, Evangelista filed the instant petition contending that the 1st indorsement was issued after proper verification of the data given to the RAD against available records of the division. Petitioner claims the certification issued was patterned after the prescribed format as a routine response to an official request of the Assistant Commissioner for Excise Tax Office. Petitioner insists that she could not be held liable because there was no mention in the 1st indorsement that the payments made by Tanduary Distillery Inc. were actually for ad valorem taxes for which it could claim tax credit in the sum of P180,701,682.00.

On November 29, 1993, the Office of the Solicitor General filed a manifestation and motion in lieu of comment recommending the acquittal of petitioner. The Manifestation stated that: "Although petitioner herself may not have known the exact kind of taxes covered by the TNC reflected in her 1st Indorsement, this does not in any way make her guilty of gross negligence. Her duty was purely ministerial in nature, that is, to report all data pertinent to Tanduary's tax payments on file with RAD. She was not duty-bound to report her personal perception, understanding or conclusion regarding the significance or meaning of the data she had reported. It was Larin and Pareño's duty to do so."<sup>[7]</sup>

In view of the position taken by the Office of the Solicitor General, the Ombudsman and the Office of the Special Prosecutor filed a motion for leave of court to file comment which was granted. In its comment, the Office of the Ombudsman and the Office of the Special Prosecutor sought petitioner's conviction on the ground that the decision of the Sandiganbayan on the two cases filed against her is in accord with applicable jurisprudence and supported by factual evidence.

We find no reason to overturn petitioner's conviction for gross negligence.

Before 1969, internal revenue taxes were designated by descriptive words. This, however, proved to be unsatisfactory inasmuch as tax data could not easily be stored and processed by the computer, resulting in delayed compilation and retrieval