

EN BANC

[G.R. Nos. 107119-20, April 17, 1996]

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

[G.R NOS. 108037-38. APRIL 17 1996]

**AQUILINO T. LARIN, PETITIONER, VS. SANDIGANBAYAN AND
THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

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, Tanduary Dark Vodka (De Luxe Vodka, Cossack Vodka), and other similar products (Amaretto de Tanduary, 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 Tanduary'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-EI 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.