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THIRD DIVISION

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

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

D E C I S I O N

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[1] under Rule 65 of the Rules of Court, seeking to nullify and set aside the January 23, 2002 Resolution[2] 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."[3]

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."[5]

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.[6]

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."[7]

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[8] 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 said decision; otherwise, the decision shall become final, executory and demandable."[9]

Petitioner argues that "on October 8, 1987, a final decision was rendered by private respondent as to SMC's tax liability totaling P302,051,048.93 x x x." Since SMC did not appeal to the CTA, this decision became final and could no longer be compromised by private respondent. We disagree.

A careful reading of the quoted tax provision readily shows that the "Motion for Reconsideration" filed by SMC was aptly ruled upon by private respondent. Despite the use of the phrase "finally decided," his October 8, 1987 letter to SMC did not constitute a final assessment.

First, the phrase "finally decided" referred not to the total amount of deficiency specific and ad valorem taxes, but to the reduction of such assessment. The reduction was the result of SMC's protest, by way of two requests for reconsideration dated June 9, 1987 and August 10, 1987. Contrary to petitioner's assertion, the rules on statutory construction did not apply; the October 8, 1987 letter was not even a law. *Grantia argumenti* that the letter partook of the nature of a final assessment, its finality was suspended by private respondent's handwritten note on the bottom left of the second page, extending the tender of payment for another 15 days from October 27, 1987, because of a referral of the assessment to the BIR's Legal Service.[10]

Second, SMC filed on November 2, 1987 a *timely* request for reinvestigation -- technically not a motion for reconsideration. Under Section 229 of the NIRC, this request was a proper administrative protest[11] done within 30 days from receipt of the assessment and substantiated by facts and law.[12] The assessment was received by SMC only on October 26, 1987. Its request for reinvestigation was in turn received by the BIR on November 10, 1987, well within the 30-day period allowed by Section 229; thus, the assessment had not yet become final.

Moreover, a day after SMC's receipt of the assessment, the SB found that a meeting had indeed been held between private respondent and the representatives of SMC, resulting in the suspension of the alleged finality of the assessment. The meeting partook of the nature of an oral, in advance of the written, request for reinvestigation. In both instances, the taxpayer's request was not merely *pro forma*; it had the effect of suspending -- not interrupting -- the 30-day period for appeal.[13]

We do not agree with petitioner's contention that, contrary to the finding of the SB in its March 2, 2001 Decision, no conference had been held on that date. A careful perusal of the Decision would, however, reveal that the date of the supposed conference was not indicated with certainty.[14] And even if it were, the conference was supposed to have been held between SMC's representatives and BIR officials, other than private respondent, on the computation (not the assessment) that was followed by SMC and that bore the alleged approval by the BIR.

Third, after SMC's request for reinvestigation, no other issuance emanated from the BIR that could be considered a decision. Therefore, no appeal to the Tax Court[15] could have been made under

Section 229 of the NIRC, since the protest filed with the BIR had not been acted upon. Appealable to the Tax Court is a decision that refers not to the *assessment* itself, but to one made on the *protest against such assessment*.[16] The commissioner of internal revenue's action in response to a taxpayer's request for reconsideration or reinvestigation of the assessment constitutes the decision, the receipt of which will start the 30-day period for appeal.[17]

Section 229 does not prevent a taxpayer from exhausting administrative remedies by filing a request for reconsideration, then a request for reinvestigation.[18] Furthermore, under Section 7(1) of RA 1125[19] as amended,[20] the Tax Court exercised exclusive appellate jurisdiction to review not the *assessments* themselves, but the *decisions involving disputed ones* arising under the NIRC.[21]

Fourth, quite obviously, no decision could as yet be made by the BIR, because the protest filed by SMC had been referred by private respondent to several top BIR officials for further review. In fact, various intra-office Memoranda were issued in 1988 involving the chiefs of the (1) Legislative Ruling and Research and (2) Prosecution Divisions of the BIR, as well as its assistant commissioners for legal service and excise tax. Had the assessment already become final in 1987, there would then be no more reason to reinvestigate and study the merits of SMC's protest in 1988.

Fifth, totally misplaced is petitioner's reference to the 180-day period from the submission of documents, within which time the BIR should act upon the protest, followed by a 30-day period of appeal to the Tax Court. This provision did not exist in either 1987 or 1988. It appeared only in a much later law, RA 8424, as Section 228 -- again erroneously referred to by petitioner as the basis for the present controversy.

Consequently, there was no legal impediment either to the referral of the protest by private respondent to his subordinates or to the action taken by them -- a process that lasted for more than 180 days. Neither was there a need to make a 30-day appeal to the Tax Court due to the BIR's inaction on the protest within the 180-day period.

The assessment was clearly not yet final, executory or demandable. While it is pending with the commissioner of internal revenue, it cannot yet serve as the basis of collection by distraint or levy or by judicial action.[22] No grave abuse of discretion can be attributed to the SB for upholding private respondent's act of reinvestigation upon SMC's request.

Second Issue:
Application of the Ad Valorem Tax
to the Specific Tax Deficiency

In like manner, no grave abuse of discretion was committed when the SB upheld private respondent's approval of SMC's application of its excess ad valorem tax deposits to its specific tax deficiency.

First, the approval given by private respondent was correct. Ad valorem taxes[23] and specific taxes[24] are both excise taxes[25] on alcohol products.[26] The payment by installment of a portion

of the total specific tax deficiency of SMC, in addition to the application of its excess and unused ad valorem tax deposits to the remaining portion, fully covered the total net specific tax shortfall. BIR committed an oversight in failing to credit the amount of deposits to the specific tax deficiency, as well as an error in crediting the same amount to a subsequent ad valorem tax liability. A confusion was thus created when it issued a later assessment for the same specific tax deficiency, this time inclusive of increments.[27] Proper was the BIR officials' abatement or cancellation of the specific taxes of SMC, after the amount of its ad valorem tax deposits had already been credited to it.

To state that the balances of accounts pertaining to different tax deposits could only be applied to cover certain tax liabilities upon the approval of a request for tax credit is to validate the proposition that the acceptance of payment by installment of a portion of the specific tax deficiency was indeed tantamount to the approval of the request. No law or regulation prevented such approval.

Private respondent's letter states a condition: should the final computation of specific and ad valorem taxes yield a different result, the difference plus penalties would be paid in addition to them. Obviously, this condition referred solely to the discrepancy, not to the application, and had nothing to do with the approval that was given.

Second, such approval had the concurrence of top tax officials within the Bureau. Not only was there a presumption of regularity in the performance of official functions;[28] also, their collective conclusion was controlling. Besides, the disclosure of the change in beer formulation was timely and voluntary; no attribution of bad faith or fraud could be made. A change in technology that would result in a change in the manner of computing taxes was well within the realm of tax administration, [29] on which private respondent had reasonable discretion to rule.

Third, the law and revenue regulations[30] allowed pre-payment schemes,[31] whereby excise taxes on alcohol products could be paid in advance of the dates they were due. Since the equivalent value of specific taxes by way of advance ad valorem tax deposits had already been paid, the government lost nothing. It was a simple request properly granted for applying the advance deposits made on one type of excise tax to another type. Granting such request was well within private respondent's authority to administer tax laws and regulations.[32] Again, the assessment was not final, demandable or executory at the time.

Fourth, in a letter to the Blue Ribbon Committee of the Senate, no less than the succeeding commissioner of internal revenue declared that the abatement of the specific tax deficiency through the proposed application was proper. Even if the new commissioner had admittedly been advised by private respondent, there remained the unrebutted presumptions of good faith and regularity in the performance of official functions.

Third Issue:

Acceptance of the P10 Million Alleged Compromise

The SB did not gravely abuse its discretion when it upheld private respondent's acceptance of SMC's compromise offer of P10 million.

In computing its ad valorem tax liabilities for the taxable period involved in the present case, SMC deducted from its brewer's gross selling price the specific tax, price differential, and ad valorem tax. The BIR allowed the deduction of the specific tax, but not the deduction of the price differential and ad valorem tax, thus increasing the tax base and consequently the ad valorem tax liabilities of SMC for the said period.

Prior to and during the taxable period involved in the present case, several changes were made in the NIRC of 1977, particularly its provisions pertaining to fermented liquor. We must therefore trace the NIRC's pertinent history to be able to rule properly on the validity of SMC's deduction of both the price differential and the ad valorem tax from the brewer's gross selling price.

Section 147(A) of the NIRC, as amended by PD 1959[33] in 1984, provides for the collection of a specific tax on each liter of the volume capacity of fermented liquor. In addition to the provision on the specific tax, the first paragraph of its Section 147(B) provides for the levying, assessment and collection of an ad valorem tax. The latter tax is equivalent to a certain percentage of the brewer's gross selling price, net of the specific tax, of the product to be removed from the brewery or other place of manufacture. The ad valorem tax shall be paid by the brewer at the same time as the specific tax.

Added in 1984 were provisions of Section 186-A[34] governing the determination of the gross selling price of cigarettes, as well as the administrative requirements and penalties imposable. Such provisions shall apply to the determination of the gross selling price of fermented liquor.[35] Basically, this means that the amount of tax due on the fermented liquor shall be determined by the price at which it is sold either wholesale in the factory of SMC or directly to the public through its sales agents. If the fermented liquor is sold or allowed to be sold wholesale by SMC in another establishment which it owns, the wholesale price in that establishment shall determine the tax applicable to the fermented liquor sold there. When the price is less than the cost of manufacture plus all expenses incurred, until the fermented liquor is finally sold by SMC, such cost plus expenses shall be the basis for determining the amount of tax to be collected.

In 1986, PD 1994 amended the NIRC of 1977 by renumbering, among others, Section 147 as Section 124.[36] In the new Section 124, the provisions on the specific and ad valorem taxes imposed on fermented liquors remained substantially the same, except for the tax rates.

On July 1, 1986, Section 4 of EO 22 amended said Section 124 by essentially providing that an ad valorem tax equivalent to a certain percentage of the brewer's wholesale selling price -- this time excluding the ad valorem tax -- shall be levied, assessed and collected on fermented liquors. It was only in 1988 that EO 273 renumbered Section 124 as Section 140, and thereby amended it further to exclude also from such wholesale price the value-added tax already imposed at the time upon the same articles.[37]

Price Differential Deduction

Section 110 of the NIRC of 1977, as amended in 1986 by PD 1994, explicitly provides that the excise taxes on domestic products shall be paid by the manufacturer or producer before the removal of those products from the place of production.[38] "It does not matter to what use the article[s] subject to tax is put";[39] the excise taxes are still due, even though the articles are removed merely for storage in some other place and are not actually sold or consumed.[40] The intent of the law is reiterated in several implementing regulations.[41] This means, therefore, that the price that should be used as the tax base for computing the ad valorem tax on fermented liquor is the price at the brewery. After all, excise taxes are taxes on property,[42] not on the sale of the property.

Verily, the price differential cannot be ascertained at the time the fermented liquor is removed from the brewery, because such ascertainment will involve amounts that cannot be determined with certainty in advance, and that vary from one commercial outlet to another. The price differential, according to SMC, represents the cost of discounts, promotions, rebates, and transportation. To require the inclusion of the price differential in, not its deduction from, the tax base for purposes of computing the ad valorem tax would certainly lead to the impossible situation of computing for such tax, because the price differential itself cannot be determined unless the fermented liquor is actually sold.

Hence, no ad valorem tax can ever be paid before the removal of the fermented liquor from the place of production. This outcome cannot be countenanced, for it would be contrary to what the law mandates --payment before removal. It follows that the tax base to be used should be net of the price differential. In other words, the gross selling price should be that which is charged at the brewery prior to the removal of the fermented liquor.

Ad Valorem Tax Deduction

The taxable period covered in this case is January 1, 1985 to March 31, 1986. Prior to the amendment of the NIRC of 1977 by EO 22 on July 1, 1986, the ad valorem tax was not excluded from the brewer's wholesale price. Does this mean that such tax cannot be deducted? The answer is no.

A tax should not be imposed upon another tax. This is tax pyramiding, which has no basis either in fact or in law.

Private respondent has shown by mathematical analysis that the inclusion of the ad valorem tax in the tax base would only yield a circuitous manner of computation that will never end in just one ad valorem tax figure properly chargeable against a taxpayer. Quoted verbatim, his presentation is as follows:

> "If [SMC] wants to make P42.7269 on a case of beer and because of price differential and specific taxes has to fix a price of P51.2722 ex brewery, what would the ad valorem tax be?
>
> "The prosecution's method is to charge the 20% ad valorem on the selling price ex

brewery of P51.2722 and to tack that on the SMC price as follows:

'P51.2722- price ex brewery
x .20
P10.2544- ad valorem tax
and 42.7269- SMC price
P52.9813- this should be the new selling price ex brewery but SMC only charged P51.2722'

"Following the prosecution's theory, since there is a new selling price ex brewery, i.e., P52.9813, the ad valorem tax should be adjusted to the new selling price or tax base or 20% of P52.9813, resulting in:

'P42.7269- SMC price
10.5962- new ad valorem tax P53.3231
P53.3231- another new selling price ex brewery'

"Then following the prosecution's theory, the 20% ad valorem tax is again charged on the new selling price ex brewery.

'20% of P53.3231 the new tax base or
P10.6646- the new ad valorem tax
Resulting in P42.7269- SMC price
10.6646-new ad valorem tax
P53.3915- new selling price ex warehouse

"Therefore, the ad valorem tax is not P10.2544 or P10.5962 but P10.6646 **ad infinitum.**

"The obvious untenability of the above situation is a clear enough argument to prove that ad valorem tax should be excluded from the tax base.

"The correct method is that used by the BIR and that is:

'P51.2722 - original price to public
[1.20]
= P42.726[8] - SMC warehouse price.""[43]

Expectedly, though, petitioner is unable to negate the mathematics proffered by private respondent.

Equally important, tax pyramiding has since 1922 been rejected by this Court, the legislature, and our tax authorities. The intent behind the law is clearly to obviate a tax imposed upon another tax. *Ratio legis est anima legis*. The reason for the law is its spirit.

For instance, Regulations No. 27,[44] promulgated March 1, 1923, already excludes the specific tax on cigars and cigarettes from the tax base upon which such tax is computed.[45] This is reiterated in

the more recent amendments to our tax law, among which are EOs 22 and 273,[46] and their implementing rules. In fact, *Commissioner of Internal Revenue v. American Rubber Co.* held that a taxpayer cannot be "compelled to pay a x x x tax on the tax itself."[47]

Having shown the appropriateness of deducting the ad valorem tax from the tax base upon which it is computed, private respondent has shown prudence in exercising his power under Section 204(2) [48] of the NIRC of 1977 to abate an unjust, excessively assessed, and unreasonable tax; and to accept the offer of P10 million,[49] if only to avoid protracted and costly litigation.

Abatement,
Not Compromise

Although referred to in the pleadings as a compromise, the matter at hand is actually an abatement or a cancellation. Abatement is the "diminution or decrease in the amount of tax imposed;"[50] it refers to "the act of eliminating or nullifying; x x x of lessening or moderating x x x."[51] To abate is "to nullify or reduce in value or amount";[52] while to cancel is "to obliterate, cross out, or invalidate"; [53] and "to strike out; x x x delete; x x x erase; x x x make void or invalid; x x x annul; x x x destroy; x x x revoke or recall."[54]

The BIR may therefore abate or cancel the whole or any unpaid portion of a tax liability, inclusive of increments, if its assessment is excessive or erroneous;[55] or if the administration costs involved do not justify the collection of the amount due.[56] No mutual concessions need be made,[57] because an excessive or erroneous tax is not compromised; it is abated or canceled. Only correct taxes should be paid.[58] Besides, as we have discussed earlier, there was no finality in the assessment that could be settled.

Moreover, petitioner did not prove the alleged bad faith attributed to private respondent, who simply relied upon his subordinates. Mere assertion will not suffice. Even reference to the approval by the Evaluation Board was misleading, for such approval was inexistent at the time and was merely a product of RA 8424 as amended.[59] Actual, not presumed, fraud should be the bench mark of liability.

Fourth Issue:
Violation of Section 3(e) of RA 3019

Clearly, the court *a quo* did not commit grave abuse of discretion in upholding private respondent in his act of ruling upon the request of SMC for reinvestigation, leading, *first*, to his approval of its application of the excess tax deposit to its tax deficiency; and, *second*, to his acceptance of its offer to pay for its tax liability, which was a little over the assessed amount, inclusive of increments. It necessarily follows that his acquittal is proper and inevitable.

Basic is the rule that no person shall be twice put in jeopardy of punishment for the same offense. [60] It is a constitutional guarantee repeated in Section 7 of Rule 117 of the Rules of Court. A

judgment of acquittal cannot be reopened, absent a grave abuse of discretion or a denial of due process to the State.[61] In this light, pertinent is the following excerpt, showing how a similar attempt was made by the prosecution to overturn an acquittal through a Petition for Certiorari in this Court:

> "The rule against double jeopardy proscribes an appeal from a judgment of acquittal. If said judgment is assailed in a petition for certiorari under Rule 65 of the Rules of Court, x x x the petitioner must prove that the lower court, in acquitting the accused, committed not merely reversible errors, but grave abuse of discretion amounting to lack or excess of jurisdiction. A judgment rendered with grave abuse of discretion or without due process is void, does not exist in legal contemplation and, thus, cannot be the source of an acquittal. However, where the petition demonstrate[s] mere errors in judgment not amounting to grave abuse of discretion or deprivation of due process, the writ of certiorari cannot issue. A review of the alleged errors of judgment cannot be made without trampling upon the right of the accused against double jeopardy."[62]

As aptly put by private respondent, error in the exercise of jurisdiction is not the same as error in judgment. The latter is not reviewable by certiorari,[63] since evidence has been duly considered and passed upon by the SB.

Epilogue

Former BIR Commissioner Bienvenido A. Tan Jr. was charged with "having willfully, unlawfully and criminally cause[d] undue injury to the government by effecting a compromise of the tax liabilities' of SMC amounting to P302,051,048.93 for only P10,000,000, a "compromise [that] is grossly disadvantageous to the government." In no uncertain terms, the assailed Resolution of the Sandiganbayan acquitted him of violating Section 3(e) of Republic Act No. 3019 (the Anti-Graft Law).

Under the Constitution, no person shall be twice put in jeopardy of punishment for the same offense. To implement this constitutional mandate, the Rules of Court[64] bars an appeal by the State from a judgment of acquittal, provided the following requisites are present: (1) a valid complaint or information was filed; (2) before a competent court; (3) the defendant pleaded to the charge; and (4) the accused was acquitted.

Petitioner alleges, however, that in acquitting the accused, the Sandiganbayan acted in a "capricious, whimsical, arbitrary or despotic manner" equivalent to lack or excess of jurisdiction.

Indeed, the double jeopardy principle will not protect the accused, if the prosecution can show that the court gravely abused its discretion in rendering the judgment of acquittal. The prosecution's burden is heavy: to show grave -- not just ordinary -- abuse of discretion equivalent to lack or excess of jurisdiction.

This Court notes the tenacity of the Ombudsman and the Office the Special Prosecutor in doggedly pursuing what they believe is the public weal. But after a careful review of the assailed judgment

and the relevant facts and laws, this Court cannot ascribe capricious or whimsical conduct on the part of the Sandiganbayan. The SB Resolution assessed the facts and applied the governing laws and jurisprudence. It analyzed the arguments of both the prosecution and the defense. It then concluded that the elements of the crime charged had not been sufficiently proven. Hence, it acquitted the accused.

Because of the importance of this case and the need to assist the government in collecting the correct amount of taxes, this Court even went further by inquiring whether private respondent (not just the Sandiganbayan) acted within the confines of his duties and prerogatives.

As can be seen from the foregoing discussions, Commissioner Bienvenido A. Tan Jr. acted fairly, honestly and in good faith in discharging his functions. To compromise a tax liability of more than P300 million for only P10 million may appear to be an arbitrary action grossly disadvantageous to the government. The fact remains, however, that the initial tax assessment of P300 million was correctly found by the SB to be overly excessive and erroneous. Under the circumstances, the abatement of the excessive and erroneous taxes was not only within the discretion of respondent; it was just and fair to all concerned. After all, the purpose of tax assessment is to collect only what is legally and justly due the government; not to overburden, much less harass, the taxpayers.

WHEREFORE, the Petition is ***DENIED***, and the assailed Resolution ***AFFIRMED.*** No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio Morales, and *Garcia, JJ.*, concur.

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[1] Rollo, pp. 2-52.

[2] Fourth Division. Penned by Associate Justice Narciso S. Nario (chairman), with the concurrence of Justices Nicodemo T. Ferrer and Raoul V. Victorino (members), the latter with a Separate Concurring Opinion.

[3] Sandiganbayan (SB) Resolution, p. 17; rollo, p. 70. Uppercase in the original.

[4] SB Decision dated March 2, 2001, pp. 13-16; rollo, pp. 222-225. Words in [bracket] supplied. Fourth Division. Penned by Justice Rodolfo G. Palattao (member), with the concurrence of Justices Narciso S. Nario (chairman) and Nicodemo T. Ferrer (member).

[5] SB Resolution, pp. 1-4; rollo, pp. 54-57. Words in [bracket] supplied.

[6] The Petition was deemed submitted for decision on August 29, 2003, upon receipt by the Court of private respondent's Memorandum, signed by Attys. Mario E. Ongkiko, Demetrio C. Custodio Jr.,

and Barbara Anne C. Migallos. Petitioner's Memorandum -- signed by Special Prosecutor Dennis M. Villa-Ignacio, Deputy Special Prosecutor Robert E. Kallos, Director (ASAB) Rodrigo V. Coquia, and Special Prosecution Officer III Pilarita T. Lapitan -- was filed on August 11, 2003.

[7] Petitioner's Memorandum, pp. 19-20; rollo, pp. 384-385. Original in uppercase.

[8] NIRC refers to the National Internal Revenue Code or Tax Code of 1986, the law prevailing when the BIR sent in 1987 its assessment of SMC's deficiency in specific and ad valorem taxes for the period January 1, 1985 to March 31, 1986.

[9] §229 was originally found in the NIRC of 1977, which was codified by and made an integral part of Presidential Decree (PD) No. 1158, otherwise known as "A Decree to Consolidate and Codify all the Internal Revenue Laws of the Philippines."

When the NIRC of 1977 was amended by PD 1705 on August 1, 1980, §229 was restated as §16(d). On January 16, 1981, PD 1773 further amended §16 by eliminating paragraph (d) and inserting its contents between §§319 and 320 as a new §319-A. PD 1994 then renumbered §319-A as §270 on January 1, 1986; and on January 1, 1988, §270 was again renumbered as §229 and rearranged to fall under Chapter 3 of Title VIII of the NIRC by Executive Order (EO) No. 273, otherwise known as "Adopting a Value-Added Tax, Amending for this Purpose Certain Provisions of the National Internal Revenue Code, and for other purposes."

At present, §229 has been amended as §228 by RA 8424, otherwise known as the "Tax Reform Act of 1997."

[10] If the commissioner of internal revenue makes changes in an assessment, then the previous action is deemed abandoned, and the modificatory action becomes the final decision upon receipt of which a new 30-day period for appeal shall be reckoned. *See* Paras, *Taxation Fundamentals* (1966), pp. 215-216. *See also* Vitug and Acosta, *Tax Law and Jurisprudence* (2nd ed., 2000), p. 312; (citing *Ker & Co., Ltd. v. CTA*, 114 Phil. 1220 [unreported], 4 SCRA 160, January 31, 1962).

Moreover, the commissioner should indicate to the taxpayer in clear language what constitutes the final decision on a disputed assessment; otherwise, the period for appeal cannot be deemed to have commenced to run. De Leon, *The Fundamentals of Taxation* (12th ed., 1998), pp. 256-257.

[11] De Leon, *The Fundamentals of Taxation*, supra, p. 249.

[12] See *Dayrit v. Cruz*, 165 SCRA 571, 580, September 26, 1988; and Vitug and Acosta, supra, p. 309.

[13] See *Dy Pac & Co., Inc. v. CTA*, 79 SCRA 442, 447, October 18, 1977; *Surigao Electric Co., Inc. v. CTA*, 57 SCRA 523, 527, June 28, 1974; and Vitug and Acosta, supra, p. 312.

[14] SB Decision, p. 23; rollo, p. 232.

[15] This refers to the Court of Tax Appeals (CTA).

[16] *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3, 7, January 2, 1968; and *St. Stephen's Association v. Collector of Internal Revenue*, 104 Phil. 314, 317, August 21, 1958.

[17] See *Commissioner of Internal Revenue v. Villa*, supra.

[18] De Leon, *The Fundamentals of Taxation*, supra, p. 249. *See also* Deoferio Jr. & Tan Torres, *Know Your CTRP: Comments on the Amendments to the National Internal Revenue Code Under Republic Act No. 8424* (1998), p. 131.

[19] This was the law that created the CTA.

[20] One of the amendatory laws to RA 1125 is RA 3457, which took effect on January 1, 1962.

[21] De Leon, supra, p. 281.

[22] *See* Vitug and Acosta, supra, p. 310.

[23] Ad valorem taxes refer to excise taxes that are based on the selling price or other specific value of the article taxed. 2nd paragraph of §109 of the NIRC of 1977, as amended and renumbered by PD 1994, and again amended by EO 22.

[24] Specific taxes refer to excise taxes that are based on the weight, volume capacity, or any other physical unit of measurement of the article taxed. 2nd paragraph of §109 of the NIRC of 1977, as amended and renumbered by PD 1994, and again amended by EO 22.

[25] These are taxes on articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition. De Leon, *The Law on Transfer and Business Taxation* (12th ed., 1998), p. 251.

[26] Both taxes fall under the same title in the NIRC of 1977.

[27] These increments pertain to the surcharges and interest on the amount of deficiency.

[28] §3(m) of Rule 131 of the Rules of Court.

[29] Tax administration involves two functions: assessment and collection. De Leon, *The Fundamentals of Taxation*, supra, p. 175.

[30] *See* §§5 and 6 of Revenue Regulations (RR) No. 15-84, and §3 of RRs 6-86 and 8-86.

[31] De Leon, *The Law on Transfer and Business Taxation*, supra, p. 288.

[32] Paras, supra, pp. 123-126. *See* also De Leon, *The Fundamentals of Taxation*, supra, p. 179.

[33] This law took effect on October 15, 1984, with respect to the first 10% ad valorem tax imposed on fermented liquor, and on January 1, 1985, with respect to the next 10% ad valorem tax.

[34] This section was added under a new Chapter IV of Title IV of the NIRC of 1977 by §1 of EO 960, which had already taken effect on September 1, 1984. Subsequently, the ad valorem tax on cigarettes was revised effective September 3, 1984, while the specific tax rates were also revised effective October 1, 1984. EO 978 effected both revisions, the dates of effectivity of which are found in its §6.

[35] 2nd paragraph of §147(B) of the NIRC of 1977 as amended by PD 1959.

[36] §45 of PD 1994, which took effect on January 1, 1986.

[37] §11 of EO 273. See De Leon, *The Law on Transfer and Business Taxation with Illustrations, Problems, and Solutions* (12th ed.), 1998, p. 278.

[38] De Leon, *The Law on Transfer and Business Taxation with Illustrations, Problems, and Solutions*, supra, p. 256.

[39] *Commissioner of Internal Revenue v. Abad*, 132 Phil. 551, June 27, 1968, per Castro, J. (later CJ).

[40] De Leon, *The Law on Transfer and Business Taxation with Illustrations, Problems, and Solutions*, supra, p. 257.

[41] *See* §§5 and 6 of RR 15-84, and §3 of RRs 6-86 and 8-86.

[42] De Leon, *The Fundamentals of Taxation*, supra, pp. 13-14 & 141.

[43] Respondent's Memorandum, pp. 23-25; temporary rollo, pp. 23-25.

[44] This refers to the "Revised Regulations and Instructions Governing the Business of Manufacturers of Cigars and Cigarettes and Chewing and Smoking Tobacco" issued by Alberto Barretto, Secretary of Finance, on August 10, 1922. XXI Official Gazette 26, p. 460.

[45] §19(a) of Regulations No. 27, dated August 10, 1922.

[46] Mr. Jose Ong, BIR Commissioner, also referred to these two laws before the Senate Blue Ribbon Committee.

[47] 124 Phil. 1471, 1483, November 29, 1966, per Reyes, J. B. L., J.

[48] This section became §295 when amended by PD 1773, and later §245 when amended by PD 1994.

[49] There was even a lower assessment at P8,001,977.97, as disclosed in a Memorandum dated November 21, 1988, issued by Supervising Revenue Enforcement Officer Jesus Q. Bundang; later confirmed and endorsed on November 25, 1988 by Assistant Commissioner (on Excise Tax) Aquilino T. Larin.

[50] Statsky, Hussey, Diamond, and Nakamura, *West's Legal Desk Reference* (1991), p. 1.

[51] Garner (ed. in chief), Black's Law Dictionary (8th ed., 2004), p. 3.

[52] Smith, *West's Tax Law Dictionary* (1993), p. 1.

[53] Statsky, Hussey, Diamond, and Nakamura, supra, p. 46.

[54] Moreno, *Philippine Law Dictionary* (3rd ed., 1988), p. 129.

[55] De Leon, *The Fundamentals of Taxation*, supra, pp. 192-193.

[56] §204(2) of the NIRC of 1977. *See* Vitug and Acosta, supra, pp. 292-293.

[57] De Leon, *The Fundamentals of Taxation*, supra, p. 216.

[58] Paras, supra, pp. 147-148.

[59] Last paragraph of §204(A) of RA 8424.

[60] §21 or Article III of the 1987 Constitution.

[61] *See* Regalado, *Remedial Law Compendium*, Vol. II (8th rev. ed., 2000), p. 422.

[62] *People v. CA*, 368 Phil. 169, 172, June 21, 1999, per Panganiban, *J.*

[63] *Jopillo Jr. v. CA*, 167 SCRA 247, 254, November 9, 1988.

[64] §1 of Rule 117 of the Rules of Court.