REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

vs.

ALMAN GAYATIN, ANDY CHUA, JIMMY CHUA and JOHN DOE,
Accused.

CTA CRIM NO. O-684
For: Violation of Section 254 of R.A. 8424, otherwise known as the "National Internal Revenue Code of 1997", as amended

Present:

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, JJ.

Promulgated:

SEP 24 2024
9:10 a.m.

x - x

DECISION

FERRER-FLORES, J.:

Before the Court is the *Information* filed by Senior Assistant City Prosecutor Hermes C. Cariño on February 21, 2019 charges accused **Alman Gayatin (Gayatin)**, **Andy Chua**, **Jimmy Chua** and a certain **John Doe** for violation of Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which reads:

> The undersigned Senior Assistant City Prosecutor accuses **ALMAN GAYATIN, ANDY CHUA, JIMMY CHUA, and a JOHN DOE – a Chinese national** of the crime of Violation of Section 254 of R.A. 8424 otherwise known as the National Internal Revenue Code of 1997, as amended, committed as follows:
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> That during the period covering the months of September 1, 2016 to August 31, 2017, in the City of Bacolod, Philippines, within the territorial jurisdiction of the Bureau of Internal Revenue (BIR) Region No. 12, Negros Island Region, Bacolod Sub Office, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, being then business partners, did, then and there willfully, unlawfully, feloniously

> and continually evade or defeat any tax due without lawful cause and despite repeated demands to pay the excise tax corresponding to the aforesaid period for their Cigarette products and Cigar or Cigarette Manufacturing Facilities located at Alter Trade, Purok Riverside, Barangay Bata, Bacolod City and at Villa Socorro Purok Kabukiran, Hernaez Extension, Barangay Taculing, Bacolod City with the Bureau of Internal Revenue (BIR) Bacolod City, including surcharge in the total amount of Eighteen Million Two Hundred Twenty Five Thousand (P18,225,000.00) Pesos, Philippine Currency, in violation of the aforementioned law.
>
> Act contrary to law.
> Bacolod City, Philippines, January 7, 2019.

FACTUAL ANTECEDENTS

On August 25, 2017, the BIR Regional Office No. 12-Negros Island Region, now Bacolod City, received a *Memorandum* from Police Superintendent (Police Supt.) Ronaldo P. Palomo of DCDA, Bacolod City Police Office,[1] requesting the BIR to conduct an inspection on the following premises: 1) Alter Trade Building located at Purok Riverside, Barangay Bata, Bacolod City; and, 2) Purok Kabukiran, Hernaez Extension, Barangay Taculing, Bacolod City (Villa Socorro). The inspection was for the affirmation of excisable goods that were found in the Alter Trade Building.

Acting on the *Memorandum* from Police Supt. Palomo, Atty. Eduardo L. Pagulayan, Jr., CPA, OIC Regional Director (RD) of the BIR Regional Office No. 12–Negros Island Region, issued Mission Order Nos. 00107579[2] and 00107580[3] both dated August 25, 2017. The said Mission Orders directed revenue officers (ROs) Atty. Carmen Grace L. Comoda, Atty. Roev Bryl T. Sobrejuanite, May Paz U. Batislaong, Adgar Allan D. Del Rosario, Luis David T. Tocoyo, Ma. Jocelyn T. Sumugat, Marites Gayotin, Harlan Salvador, Mary Mar Abas, Thelmita Galves, Ainil John Gabaya and Group Supervisor (GS) Randy D. Dosono (collectively known as the Composite Team) to, among others, search and seize excisable products in the two aforesaid premises.

Pursuant to the Mission Orders, the Composite Team went first to the Alter Trade Building where they found items relating to the production of cigarettes. After the search, the Composite Team padlocked the Alter Trade Building to secure the premise, then proceeded to the Villa Socorro property to conduct a search.

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1 Exhibit "P-4", Docket Vol. I, p. 52.
2 Exhibit "P-5", Docket Vol. I, p. 53.
3 Exhibit "P-6", Docket Vol. I, p. 54.

After conducting an inventory of the items to be seized, the Composite Team seized the following items,[4] as evidenced by Apprehension slip numbers 12901,[5] 12902,[6] 12903,[7] 12904[8] dated August 25, 29 and 30, 2017:

1. Cigarette – maker machine = 1unit
2. Cigarette finished products of various brands = 783 ½ cases (each box contains 50 reams at 10 packs)
3. Loose cigarette finished products of various brands = 26 ½ cases
4. Counterfeit BIR Strip Stamps = 10 boxes (each box contains 500 stubs at 500 pcs of stamps in each stub) or 2,500,000 pcs.
5. Cut fillers = 51 sacks
6. Bobbins = 31 cases (each case contains 4 rolls)
   36 cases (each case contains 7 rolls)
7. Cigarette papers = 55 case (each case contains 10 rolls)
8. Loose cigarette papers = 5 rolls
9. PVA emulsion = 43 small sized pails of 25 kilograms each
10. Filter rods = 97 boxes (each box contains 5 cases)
11. Loose filter rods = 22 cases
12. Sealer machines = 14 units
13. Generator = 1 unit (63 kva)
14. Mitsubishi Canter Van = 1 unit (Plate Number RMB 940)
15. Carrier room air conditioner = 3 units
16. Cigarette foils = 38 boxes
17. Cigarette label = 86 bundles
18. PMFTC packaging tape = 49 rolls
19. Filter rod = 48 boxes (seized from Villa Socorro warehouse)

Later, the Composite Team discovered, through the Tax Declarations, that the Alter Trade Building and Villa Socorro were registered under the name of accused Gayatin.

A *Memorandum Report* dated September 4, 2017 was then prepared by the Composite Team addressed to Commissioner Caesar R. Dulay detailing the circumstances of the search and seizure and recommending that appropriate charges be filed by the Legal Division of the Bureau of Internal Revenue (BIR) for violation of the NIRC of 1997, as amended, against accused Gayatin, Andy Chua and Jimmy Chua.[9]

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[4] *Joint Complaint Affidavit of Special Investigator Luis David T. Tocoyo, Revenue Officers Mary Mar Abas, Harlan Salvador and Gretchen Garrucho-Abay*, Exhibit "P-2", Docket Vol. I, p. 29.
[5] Exhibit "P-19", Docket Vol. II, p. 652.
[6] Exhibit "P-20", Docket Vol. II, p. 653.
[7] Exhibit "P-21", Docket Vol. II, p. 654.
[8] Exhibit "P-22", Docket Vol. II, p. 655.
[9] Exhibit "P-15", Docket Vol. I, pp. 60-63.

Subsequently, RD Pagulayan issued a *Letter of Authority* (LOA)[10] authorizing RO Gretchen Garrucho-Abay for the examination of the books of accounts and accounting records of accused Gayatin for the period from September 1, 2016 to August 31, 2017. In her *Memorandum Report*,[11] RO Garrucho-Abay came up with the following findings: 1) accused Gayatin was not registered as an excise taxpayer; 2) accused Gayatin has not filed any excise tax returns for the period January to December 2016 and January to August 2017; and, 3) accused Gayatin was not a registered Lessor of Revenue District Office (RDO) No. 77 – Bacolod City and has not submitted any Lease Information Statement required for Lessors of Real Properties. RO Garrucho-Abay then recommended the issuance of a Final Assessment Notice and Letter of Demand.

A *Formal Letter of Demand*[12] (FLD) was issued by RD Pagulayan on September 19, 2017 demanding payment of excise tax in the amount of ₱18,225,000.00 against accused Gayatin.

Accused Gayatin filed a protest to the FLD, through a *Letter* dated October 23, 2017,[13] arguing that he was just a lessor of the real property where the excisable goods were found and seized by BIR personnel. A *Final Decision on Disputed Assessment* (FDDA) was later issued. Accused filed a *Request for Reconsideration* addressed to Commissioner Caesar R. Dulay on February 23, 2018.[14]

Notwithstanding accused Gayatin's Request for Reconsideration, *Joint Complaint Affidavits* were executed and filed before the Bacolod City Prosecutor's Office. Accused Gayatin filed his *Counter-Affidavit* thereto.

PROCEEDINGS BEFORE THIS COURT

The *Information* charging accused of violation of Section 254 of the NIRC of 1997, as amended, was filed before the Court on February 21, 2019.

In the Resolution dated March 15, 2019,[15] the determination of probable cause was held in abeyance pending the submission of originals or certified true copies of some documents submitted by the prosecution.

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[10] Exhibit "P-23", Docket Vol. I, p. 75.
[11] Exhibit "P-24", Docket Vol. I, p. 76-79.
[12] Exhibit "P-28", Docket Vol. I, pp. 83-84.
[13] Exhibit "P-29", Docket Vol. I, pp. 85-89.
[14] Exhibit "A-22", Docket Vol. IV, pp. 1347-1353.
[15] Docket Vol. I, pp. 206-209.

On July 18, 2019, the Court found the existence of probable cause to issue a warrant of arrest against accused. Accordingly, the Court ordered the issuance of Warrants of Arrest against accused Gayatin, Andy Chua, Jimmy Chua, and a certain John Doe.[16]

Accused Gayatin posted a cash bail on August 20, 2019 before Hon. Edgar R. Tupas, 1st Vice Executive Judge, Regional Trial Court, Sixth Judicial Region, Bacolod City, who correspondingly issued an *Order*[17] of even date approving his cash bail bond. This was noted by the Court in the Resolution dated September 16, 2019 and correspondingly set the arraignment of accused Gayatin on October 14, 2019.[18] The other accused Andy Chua, Jimmy Chua and John Doe remained at-large throughout the proceedings of this case.

Accused Gayatin was not present on the scheduled arraignment on October 14, 2019 as he was not able to book a flight despite due notice. The arraignment was, thus, cancelled and reset to October 30, 2019.[19]

At the arraignment, accused Gayatin entered a plea of "NOT GUILTY". The Court then set the case for preliminary conference on November 6, 2019 and the Pre-Trial Conference on November 13, 2019.[20]

The Preliminary Conference was conducted as scheduled before the Clerk of Court on November 6, 2019.

Accused Gayatin filed his Pre-Trial Brief on November 8, 2019,[21] whereas the prosecution filed its Pre-Trial Brief on November 13, 2019.[22]

At the Pre-Trial Conference held on November 13, 2019, both parties adopted the Minutes of the Preliminary Conference held on November 6, 2019. The parties stipulated on the following facts:

1. Both parties admitted the jurisdiction of this Court;
2. Identity of the accused;
3. Accused Gayatin is the owner of a real property with building improvement located at Alter Trade Building, Purok Riverside, Barangay Bata, Bacolod City;

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16 Resolution dated July 18, 2019, Docket vol. I, pp. 363-365.
17 Docket Vol. I, p. 371.
18 Docket Vol. I., p. 384
19 Docket Vol. I., p. 386.
20 Docket Vol. I., pp. 390-391.
21 *Id.*, at 403-407.
22 *Id.*, at pp.412-423.

4. Accused Gayatin is the owner of a real property with building improvement located at Villa Socorro, Purok Kabukiran, Hernaez Extension, Barangay Taculing, Bacolod City;
5. Accused Gayatin is not a registered lessor before the BIR; and,
6. Accused Gayatin is not a registered excise taxpayer.

Thereafter, the Pre-Trial Order was issued on November 18, 2019,[23] thus terminating the pre-trial.

Trial then ensued.

The prosecution intended to present the following witnesses by way of Judicial Affidavits: 1) Special Investigator (SI) Luis David T. Tocoyo; 2) GS Dosono; 3) RO Garrucho-Abay; 4) Atty. Cheysson A. Chavez; and, 5) Atty. Mariano L. Natu-el.

The first four (4) witnesses for the prosecution were able to complete their testimonies. With respect, however, to the presentation of Atty. Natu-el, the prosecution's *Motion to Allow the Witness to Testify in a Special Hearing* was denied by the Court. In the Court's Order, inadvertently dated January 20, 2020, the Court indicated: "Instead, both the prosecution and accused counsels agreed that the signature appearing on the notarization in the Lease Contract was not the signature of the alleged Notary Public Atty. Mariano Natu-el Sr."[24]

After the presentation of its last witness, the Court granted the prosecution five (5) days from January 27, 2020 within which to file its Formal Offer of Evidence, and the accused was granted the same period to file his comment/opposition thereto. The initial presentation of evidence for accused Gayatin was set on March 23, 2020 for the testimony of accused Gayatin and the continuation of the presentation of evidence for accused Gayatin on April 20, 2020.

The prosecution filed its *Formal Offer of Evidence*[25] (FOE) on February 5, 2020, to which accused Gayatin filed a *Comment and Objection (to the Prosecution's FOE)* on February 10, 2020.[26]

Meanwhile, accused Gayatin filed a *Motion to Amend (the Order dated 20 January 2020)*[27] praying that the Court amend the said Order to 1)

[23] Docket Vol. I, pp.436-444.
[24] Minutes of the Hearing dated January 27, 2020, Docket Vol. II, pp. 635-636.
[25] Docket Vol. II, pp. 637-646.
[26] *Id.*, at 666-686.
[27] *Id.*, at 701-703.

reflect that the accused acknowledges that the prosecution is putting forward the issue of forgery on the said documents, such that the accused merely acknowledged that Atty. Natu-el has issued a Certification or Letter pertaining to the same and nothing further; and, 2) to amend the date of the Order to reflect the date of issuance or the date of hearing on January 27, 2020.

In the Resolution dated March 2, 2020,[28] the Court resolved the prosecution's FOE and admitted most of its exhibits; and gave the prosecution a period of ten (10) days from notice to file its comment on accused Gayatin's *Motion to Amend (the Order dated 20 January 2020).*[29]

Shortly after the issuance of the Court's Resolution above, the global pandemic brought by the Corona Virus Disease 2019 (COVID-19) hit causing unexpected and inevitable delays in the proceedings. As a safety measure, the government-imposed travel restrictions made it impracticable, if not impossible, for accused Gayatin to make arrangements for travel between Metro Manila and his residence in Bacolod City to attend hearings and present evidence. This prompted accused to file numerous urgent motions to reset the hearing.

On June 5, 2020, accused filed a *Motion for Partial Reconsideration (Re: Resolution dated 2 March 2020).*[30] The Court ordered the prosecution to comment on accused's motion;[31] however, the prosecution failed to file comment thereon.[32]

On August 4, 2020, the prosecution filed a *Comment to the Motion to Amend (the Order dated 20 January 2020).*[33] Thereafter, on August 25, 2020, accused Gayatin filed a *Comment/Opposition* to the prosecution's *Comment to the Motion to Amend (the Order dated 20 January 2020).*[34]

In the Resolution dated September 16, 2020,[35] the Court partially granted accused Gayatin's *Motion to Amend (the Order dated 20 January 2020)* with respect to changing the date of the Order from January 20, 2020 to January 27, 2020; while the *Motion for Partial Reconsideration (Re: Resolution dated 2 March 2020)* was denied.

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28 Docket Vol. II, pp. 706-708.
29 *Id.*, at 701-703.
30 *Id.*, at 721-727.
31 Resolution dated June 15, 2020, Docket Vol. II, p. 732.
32 Records Verification Report dated August 25, 2020, Docket Vol. II, p. 758.
33 Docket Vol. II, pp. 749-751.
34 *Id.*, at 754-756.
35 *Id.*, at 760-771.

On October 6, 2020, accused Gayatin filed a *Motion for Reconsideration (Re: Resolution dated 16 September 2020)*.[36] The prosecution was then ordered to comment thereon.[37]

On December 28, 2020, accused Gayatin filed an *Omnibus Motion* praying that the: 1) conduct of witness examination in preparation of the Judicial Affidavits of witnesses, accused Gayatin and Antonio Gayatin, be allowed to be conducted either through: a) video-conferencing by his counsels; or b) a Bacolod-based lawyer; 2) accused be allowed to seek the assistance of a Bacolod-based lawyer who will sign and notarize the Sworn Attestation of the Judicial Affidavits, while the witness examination will be conducted either by: a) his counsels through videoconferencing; or b) a Bacolod-based lawyer; and, 3) accused be given the option of seeking the assistance of a Bacolod-based lawyer entering his special appearance as the collaborating counsel of the undersigned counsels. Accused Gayatin's *Omnibus Motion* was granted by the Court in the Resolution dated January 13, 2021.[38]

Meanwhile, the prosecution failed to file comment on accused Gayatin's *Motion for Reconsideration (Re: Resolution dated 16 September 2020)* per Records Verification Report dated January 14, 2021.[39]

On January 15, 2021, accused Gayatin filed a *Motion for Extension of Time to File Judicial Affidavit and Motion to Reset* citing logistical difficulties brought by the global pandemic.[40]

In the Resolution dated January 19, 2021, the Court granted accused Gayatin's *Motion for Extension of Time to File Judicial Affidavit and Motion to Reset.* The initial presentation of his evidence was then reset to March 3, 2021 through video-conferencing. The Court also noted that the other accused were still at-large. Correspondingly, the Court ordered the issuance of Alias Warrants against Andy Chua, Jimmy Chua and John Doe.[41]

On February 18, 2021, the Court partially granted accused Gayatin's *Motion for Reconsideration (Re: Resolution dated 16 September 2020).* Accordingly, the pronouncement in the Order dated January 20, 2020 on the stipulation of the parties that "the signature appearing on the Notarization in the Lease Contract was not the signature of the alleged Notary Public, Atty. Mariano Natu-el Sr." was recalled, and the Order was deemed amended to

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36 Docket Vol. II, pp. 779-789.
37 Resolution dated October 12, 2020, Docket Vol. II, p. 796.
38 Docket Vol. II, pp. 824-832.
39 *Id.*, at 833.
40 *Id.*, at 834-836.
41 *Id.*, at 840.

reflect the fact that "accused Gayatin acknowledged that the prosecution is putting forward the issue of forgery."[42]

On February 26, 2021, the Court received the *Offer of Testimony* of accused Gayatin with attached Judicial Affidavit.[43] On March 3, 2021, defense's first witness, accused Gayatin, testified on direct examination by way of his Judicial Affidavit. Cross-examination, re-direct examination and re-cross examinations were conducted and the witness completed his testimony.[44]

On July 16, 2021, the Court received the *Offer of Testimony* of Mr. Antonio T. Gayatin with attached Judicial Affidavit.[45]

On November 29, 2021, the defense presented its second witness, Mr. Antonio Gayatin (Antonio), accused Gayatin's brother, who likewise testified on direct examination by way of his Judicial Affidavit. Considering the absence of the prosecution, the cross-examination of witness Antonio was deferred to January 17, 2022. The hearing on January 17, 2022 was, again, cancelled and reset due to the closure of the courts brought by the surge in COVID-19 cases.

In the hearing dated March 21, 2022, Antonio was present for cross-examination. Upon motion of counsels for accused Gayatin and considering the absence of the prosecution, the cross-examination of witness Antonio was waived. Upon motion, accused was granted a period of ten (10) days from March 21, 2022 within which to file an FOE and the prosecution was granted the same period of time from receipt to file its comment thereto.

On March 31, 2022, accused filed its *Formal Offer of Evidence*.[46] The prosecution failed to file a comment thereto, as per Records Verification Report dated April 26, 2022.[47]

In the meantime, on April 25, 2022, accused filed a *Motion to Set Commissioner's Hearing (Resolution dated 29 June 2018 of the Office of the City Prosecutor Bacolod City and Resolution dated 9 August 2018 of the Office of the City Prosecutor Bacolod City),*[48] which the Court granted in the Resolution dated May 11, 2022.[49]

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[42] Resolution dated February 18, 2021, Docket Vol. II, pp. 842-848.
[43] Docket Vol. III, pp. 856-865.
[44] Order dated March 3, 2021, Docket Vol. III, p. 1113.
[45] Docket Vol. III, pp. 1148-1153.
[46] Docket Vol. IV, pp. 1206-1219.
[47] *Id.*, at 1476.
[48] *Id.*, at 1466-1468.
[49] *Id.*, at 1478-1480.

Accused Gayatin filed a *Motion to Admit and Manifestation* on June 17, 2022.[50] In his motion, accused Gayatin prayed for the admission of the Transmittal Letter to prove that accused was not able to retain an original copy of the Contract of Lease with respect to the Alter Trade Property, and the Contract of Lease that was provisionally marked as Exhibit "A-6". The Court then ordered the prosecution to comment on accused Gayatin's *Motion.*[51] The prosecution failed to file comment thereto according to the Records Verification Report dated January 24, 2023.[52]

In the Resolution dated March 23, 2023,[53] the Court noted accused Gayatin's *Manifestation* and set the case for Commissioner's Hearing for the purpose of marking of the Transmittal Letter as Exhibit "A-38", and likewise set the case for hearing for the testimony of accused Gayatin in authenticating the same.

The Commissioner's Hearing initially set was cancelled as accused manifested that he had no documents for marking at that time.[54] Upon motion of the accused, the marking of Exhibit "A-38" will be done in open court during the hearing set for accused's testimony. The hearing was then set on August 15, 2023.[55]

On August 10, 2023, the Court received *Supplemental Judicial Affidavit of Alman T. Gayatin.*[56]

During the hearing on August 15, 2023, accused testified by way of Judicial Affidavit. His testimony was completed and terminated after re-direct examination. There being no other witnesses for the defense, the Court gave five (5) days for accused to file his FOE, and the prosecution was granted the same period to file its comment thereon.[57]

On August 18, 2023, accused Gayatin filed *Supplemental Formal Offer of Evidence.*[58] The prosecution failed to file comment thereon per Records Verification Report dated September 27, 2023.[59]

In the Resolution dated November 13, 2023,[60] the Court granted accused Gayatin's *Motion to Admit* and likewise resolved the *Formal Offer*

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[50] Docket Vol. IV, pp. 1481-1484.
[51] *Id.*, at 1493.
[52] *Id.*, at 1496.
[53] *Id.*, at 1498-1500.
[54] Commissioner's Report dated April 11, 2023, Docket Vol. IV, p.1501.
[55] Resolution dated May 25, 2023, Docket Vol. IV, pp. 1506-1507.
[56] Docket Vol. IV. pp. 1508-1511.
[57] Minutes of the Hearing dated August 15, 2023, Docket Vol. IV, pp.1515.
[58] Docket Vol. IV, pp. 1517-1519.
[59] *Id.*, at 1522.
[60] Docket Vol. IV, pp. 1524-1527.

of Evidence and *Supplemental Formal Offer of Evidence.* The Court admitted most of accused's exhibits. In the same Resolution, the Court granted the parties a period of thirty (30) days from notice within which to file their respective memoranda.

On December 20, 2023, the Court received the *Memorandum (for the Accused, Alman Gayatin).*[61] On even date, accused also filed a *Motion for Reconsideration to Admit Evidence.*[62] The Court then ordered the prosecution to file its comment thereon within a period of five (5) days from receipt.[63] The prosecution failed to file a comment on accused Gayatin's motion, per Records Verification Report dated May 9, 2024.[64]

Meanwhile, the prosecution filed its *Memorandum* on January 25, 2024.[65]

In the Resolution dated June 20, 2024, the Court granted accused Gayatin's *Motion for Reconsideration to Admit Evidence,* Accordingly, all of the exhibits of accused Gayatin were admitted. In the same Resolution, the Court submitted the case for decision.[66]

EVIDENCE FOR THE PROSECUTION

As earlier mentioned, the prosecution presented: 1) SI Tocoyo; 2) GS Dosono; 3) RO Garrucho-Abay; and, 4) Atty. Chavez.

Testimony of SI Tocoyo

Direct Examination (by way of Judicial Affidavit)[67]

SI Tocoyo testified that he is presently employed at the BIR Revenue Region (RR) No. 12 Bacolod City and presently assigned at the Regional Investigation Division as Officer-in-Charge (OIC) Chief of the Tax Fraud Division.

In 2017, he was the OIC Section Head of the Tax Fraud Section. Part of his responsibilities was to conduct and undertake investigation of tax

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61 Docket Vol. IV, pp. 1567-1585.
62 *Id.,* at 1532-1535.
63 Resolution dated March 4, 2024, Docket Vol. V, p. 1721-1723.
64 Docket Vol. V, p. 758 (sic).
65 *Id.,* at 1694-1704.
66 Id., at 765-766 (sic).
67 Exhibit "P-37", Docket Vol. II, pp. 461-477.

fraud cases after a thorough review of the pieces of evidence against taxpayers.

When confronted how he came to know about the accused, SI Tocoyo stated that accused is the owner of the properties where they conducted a search and seizure of excisable goods pursuant to two Mission Orders issued by then RD Pagulayan, Jr.

The Mission Orders, issued on August 25, 2017, were based on a Memorandum letter dated August 25, 2027 issued by Police Supt. Palomo addressed to RD Pagulayan, Jr.

SI Tocoyo recalled that the Memorandum letter informed RD Pagulayan, Jr. that there was a manufacturing plant of fake cigarettes at Alter Trade Building located at Purok Riverside, Barangay Bata, Bacolod City and a warehouse is maintained for excisable goods at Barangay Taculing, Bacolod City. The Memorandum letter requested the assistance for the conduct of inspection and affirmation of excisable goods.

According to SI Tocoyo Composite Team headed first to Alter Trade Building. The Mission Order corresponding to the same was served to Police Supt. Palomo who was at the premises at that time. As indicated in the Memorandum letter, the presence of Police Supt. Palomo was pursuant to a hot pursuit operation conducted by their office which led them to discover the existence of excisable goods in the property.

On the ground floor of the building, they found several materials used to produce cigarettes like filter rods, rolls of cigarette papers, gallons of solvent and a cigarette-maker machine. On the second floor, they discovered loose cigarettes, various sealed and unsealed boxes of cigarettes, sealer machines, packing tapes, loose filter rods and boxes of fake/counterfeit BIR strip stamps. The BIR Strip stamps were later on confirmed counterfeit when the "taggant device" that GS Donoso used to determine authenticity turned red. This means that the strip stamp tested was not authentic and, therefore, the excise tax due thereon was not paid.

After the inspection at Alter Trade Building, the officers secured the place by putting a padlock on the two main gates in the presence of barangay officials and police. Thereafter, the officers proceeded to the next property at Villa Socorro, Libertad Extension, Barangay Taculing, Bacolod City to implement Mission Order MSO2001-00107579. SI Tocoyo was joined by the other members of the Composite Team, RD Pagulayan, Jr., police and barangay representatives.

Upon arrival at Villa Socorro, they searched for the owner but to no avail. The Mission Order was then served on Mr. Alexander Diamante, the Barangay Captain of Barangay Taculing. The Mission Order was likewise received by Barangay Kagawad Ricardo Abangan and Bacolod Police Director Jack Wanky.

In the premises, they found filter rods used in producing cigarettes. They then prepared the Apprehension Slip and gave it to Barangay Captain Diamante and Barangay Kagawad Abangan, where the two affixed their respective signatures. Afterwards, they loaded the 48 boxes of filter rods to a jeepney and transported the same to the BIR Office for safekeeping.

Thereafter, the Composite Team went back to Barangay Bata to conduct an inventory of the items found in the building. The Apprehension Slip was also prepared covering the confiscated ten (10) boxes of strip stamps and loose in a plastic bag.

The ownership of the properties of accused Gayatin was established through the Tax Declaration of the property issued by the City Assessor's Office of Bacolod City.

Later, the Composite Team prepared their Memorandum Report for the CIR, Hon. Caesar R. Dulay. In the Memorandum Report, they recommended that appropriate charges be filed by the Legal Division for violation of Tax Code against Mr. Alman Gayatin, Jimmy Chua and Andy Chua.

Some members of the Composite Team then executed a Joint Complaint Affidavit and appeared before the OIC City Prosecutor of Bacolod City, Dennis Jarder, to have the Joint Complaint Affidavit subscribed and sworn to. The Joint Complaint Affidavit was filed before the Bacolod City Prosecutor's Office together with the Transmittal Letter signed by then OIC-RD Pagulayan, Jr.

Cross-examination[68]

On cross-examination, SI Tocoyo was asked whether he had personal knowledge of the hot pursuit and if Police Supt. Palomo had a search warrant, to which he answered both in the negative and mentioned that he went to the premises on the strength of the Mission Order.

[68] Transcript of Stenographic Notes (TSN) of the hearing dated November 27, 2019.

SI Tocoyo was then questioned whether he found accused Gayatin, or any of his personal effects, inside the two (2) premises, and he, again, answered in the negative.

He was later on confronted as to the basis of the filing of the charge, that is, Section 130 of the NIRC of 1997, as amended. When asked, SI Tocoyo confirmed that the subject matter of the provision refers to the owner or person having possession of the excisable product and not the real property and or building where the products are located. He likewise affirmed that he recommended the filing of the case against accused Gayatin on the basis that the latter is the owner of the Alter Trade and Villa Socorro properties.

When further prodded whether he had gathered or seen any evidence showing that accused Gayatin had been transacting unpaid excisable goods, SI Tocoyo answered "No".

With respect to the Villa Socorro property, SI Tocoyo narrated that, together with the police enforcement officers, they forced opened the gate, armed with a Mission Order, and without a search warrant.

SI Tocoyo also mentioned that he is not aware of the whereabouts of Andy Chua and Jimmy Chua.

Re-direct examination[69]

On re-direct examination, counsel for the prosecution delved on Section 171 of the NIRC of 1997, as amended. SI Tocoyo answered that, pursuant to the said provision, revenue officers could enter a house, building, if there are any taxable goods inside (not necessarily excisable) which the taxes had not been collected. Hence, even without a search warrant, revenue officers can still enter the premises.

With regard to Section 130 of the NIRC of 1997, as amended, SI Tocoyo relayed that the gist of the provision is that "any person caught in the possession of excisable goods where taxes were not paid is liable to pay the tax."

[69] Transcript of Stenographic Notes (TSN) of the hearing dated November 27, 2019.

Testimony of GS Dosono

Direct Testimony (by way of Judicial Affidavit)[70]

GS Dosono testified that he is employed at BIR RR No. 12 Bacolod City, presently assigned at the Excise Tax Area II, Bacolod City, as OIC-Area Supervisor-Bacolod City and has a Bachelor of Laws degree. As such, he is tasked to conduct or undertake ocular inspection of excisable establishments such as, but not limited to, alcohol distilleries, petroleum depot, compounders, breweries, automobiles, cigarettes and tobacco manufacturing facilities.

GS Dosono then testified as to the circumstances of the search conducted on the two (2) premises. During the search, he found documentary stamps on the cigarettes. He then used a "taggant device" to confirm the authenticity of the said stamps. He recalled that the taggant device turned red, which is an indication that the stamps are fake, meaning excise taxes have not been paid.

Given the quantity of the cigarettes with fake documentary stamps (405,000 packs multiplied by ₱30.00 per pack) pursuant to Section 145 of the NIRC of 1997, as amended, GS Dosono arrived at the basic tax liability of ₱12,150,000.00. Adding surcharge, the total liability is ₱18,225,000.00.

GS Dosono likewise testified as to the circumstances attending the seizure of the excisable goods and the preparation of the Apprehension Slips.

Thereafter, he, together with Mary Paz V. Batislaong, executed a Joint Complaint Affidavit, that was subscribed and sworn to before Bacolod City Prosecutor Jarder. They then forwarded the Joint Complaint Affidavit to the Regional Director for appropriate action.

Cross-examination[71]

On cross-examination, GS Dosono recounted that he did not see any personal property of the accused when they searched the two (2) premises.

When asked about the nature of possession in Section 130 of the NIRC of 1997, as amended, he said that the possessor may be in constructive

[70] Exhibit P-38, Docket Vol. II, pp. 481-490.
[71] TSN of the hearing dated November 27, 2019.

or actual possession thereto. Upon further inquiry, he testified that he was not able to gather evidence showing accused directing or controlling the people working on the premises, nor was there evidence showing accused transacting excisable goods.

GS Dosono also mentioned that, based on his personal knowledge, accused Gayatin trades in construction materials and hardwares and has no cigarette store.

Testimony of Atty. Chavez

Direct Testimony of Atty. Chavez (by way of Judicial Affidavit)[72]

Atty. Chavez is employed at the BIR RR No. 12 Bacolod City assigned at the Legal Division as an action lawyer. He came to know about accused Gayatin when RD Pagulayan directed him to verify the existence and due execution of the Contract of Lease of the Alter Trade Property, Special Power of Attorney and the Secretary's Certificate which were attached to the Letter Protest.

Further, Atty. Chavez narrated that on the strength of a Memorandum dated November 8, 2017, signed by then OIC-Assistant Regional Director Lorna Tobias, he went to the office of the notary public, Atty. Natu-el. During the meeting with Atty. Natu-el, Atty. Chavez testified that he saw Atty. Natu-el write on the above-enumerated documents "I hereby certify that this document is a forgery."

Atty. Natu-el later signed a Certification dated November 17, 2017, in essence certifying that the Special Power of Attorney, Secretary's Certificate and Contract of Lease do not exist in his notarial register and the signature above is not his signature. Thereafter, Atty. Bryl Sobrejuanite prepared a memorandum report addressed to the Regional Director.

Cross-examination[73]

Upon inquiry, Atty. Chavez stated that Atty. Natu-el is not a party to the Special Power of Attorney, Secretary's Certificate and the Contract of Lease. This being so, he answered in the affirmative when asked whether the signature of Atty. Natu-el is irrelevant.

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[72] Exhibit "P-41", Docket Vol. II, pp. 549-555.
[73] TSN of the hearing dated January 27, 2020.

Atty. Chavez was likewise asked about the location of Atty. Natu-el's office wherein he said that the office was close to the LTO office near Lucky 888, Bacolod Chinatown mall near the Hall of Justice.

Additionally, Atty. Chavez mentioned that the case filed against accused for falsification, in connection with the alleged notarization, was dismissed.

Re-direct examination[74]

On re-direct examination, it was established that the Contract of Lease referred to in the testimony pertains to the Alter Trade. Likewise, Atty. Chavez clarified that the Contract of Lease allegedly signed by the parties was notarized by Atty. Natu-el, but the notarization of the same was a forgery.

Re-cross examination[75]

On re-cross examination, Atty. Chavez was asked if he checked whether the Philippine National Police (PNP) was armed with a search warrant when they entered the property, to which he answered in the negative.

Testimony of RO Garrucho-Abay

Direct Testimony (by way of Judicial Affidavit)[76]

RO Garrucho-Abay is currently employed at the BIR as RO IV, assigned as GS at BIR Revenue District Office (RDO) No. 79 – Dumagete City. In 2017, she was assigned as a RO at the Assessment Section of RDO No. 77 – Bacolod City. She is a Certified Public Accountant and a lawyer tasked with the responsibility of assessing and collecting taxes for the government.

RO Garrucho-Abay testified that she came to know of the accused Gayatin when she personally served the LOA on the accused on September 6, 2017. The LOA was for the conduct of examination of books of accounts and accounting records with respect to accused Gayatin's excise tax liability. The issuance of the LOA was prompted by the Memorandum Report dated September 4, 2017 addressed to the Commissioner.

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74 TSN of the hearing dated January 27, 2020.
75 *Id.*
76 Exhibit "P-42", Docket Vol. II, pp. 559-570.

While waiting for accused Gayatin to submit books of accounts, RO Garrucho-Abay requested for a certification from RDO 77 – Bacolod City to verify: 1) whether accused Gayatin is a registered excise taxpayer; and, 2) whether accused Gayatin filed an Excise Tax Return for the period January to December 2016 and January to August 2017.

Revenue District Officer Arnulfo A. Galapia of RDO 77 – Bacolod City issued a Certification dated September 18, 2017, attesting that: 1) accused Gayatin is not registered as an excise taxpayer, and, 2) accused Gayatin has not filed any excise tax returns for the period January to December 2016 and for January to August 2017. Another Certification issued on even date by Revenue District Officer Galapia attested that accused Gayatin was not a registered lessor of RDO No. 77 and has not submitted any Lessee Information Statement which is required for lessors of real properties.

After securing the certifications and for failure of accused Gayatin to submit books of accounts, RO Garrucho-Abay narrated that she proceeded to compute the excise tax liability and determined that the basic tax due amounted to ₱12,150,000.00. She then prepared a Memorandum Report recommending the issuance of a Final Assessment Notice and Letter of Demand pursuant to Section 228(D) of the NIRC of 1997, as amended. According to her, the provision provides that when an excise tax due on excisable articles has not been paid, a Pre-Assessment Notice is no longer required.

Later, RO Garrucho-Abay executed a Joint Complaint Affidavit against the named accused in this case.

Cross-examination[77]

On cross-examination, it was pointed out that the LOA straddles two (2) calendar years 2016 and 2017. RO Garrucho-Abay explained that such was possible considering that there can be fiscal years. When asked whether accused Gayatin operates on a fiscal year basis, she answered that accused was not able to file excise tax return so she was not aware of the taxable period pertaining to excise tax. RO Garrucho-Abay also mentioned that she did not check accused Gayatin's Certificate of Registration (COR).

When inquired as to the basis of her assessment, she invoked Section 130 of the NIRC of 1997, as amended. Accused Gayatin was assumed the possessor for being the owner of the building. RO Garrucho-Abay, however, answered in the negative when asked whether she has proof that accused has

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[77] TSN of the hearing dated January 27, 2020.

actual possession of the fake cigarettes or evidence showing that accused was directing and controlling the people in the properties where the alleged fake cigarettes were found.

RO Garrucho-Abay also stated that she is not aware of any investigation against Jimmy Chua and Andy Chua, and that her personal knowledge of the investigation conducted was only limited to accused Gayatin.

Upon inquiry on the lease, RO Garrucho-Abay testified that she did not check whether Gajams Corporation is registered as a lessor and whether the same submitted the Lessee Information Statement.

Re-direct examination

On re-direct examination, RO Garrucho-Abay clarified that the LOA authorizing her to examine the books of accused Gayatin covers only excise taxes. She also re-stated that the certification to the effect that accused Gayatin is not a registered lessor establishes that accused Gayatin had not leased out the two premises.

Re-cross examination

On re-cross examination, RO Garrucho-Abay stated that she is not aware of a Special Power of Attorney covering the two (2) properties of accused Gayatin in favor of Gajams Corporation.

EVIDENCE FOR THE ACCUSED

The defense presented two (2) witnesses namely: 1) accused Gayatin himself; and, 2) Antonio Gayatin, accused Gayatin's brother.

Testimony of accused Gayatin

Direct Testimony (by way of Judicial Affidavit)[78]

Accused Gayatin testified that he is the registered owner of the Alter Trade Building and Villa Socorro, which were subjected to warrantless search and seizure by the members of the PNP on August 25, 2017 at 3:00 a.m. and 9:00 a.m., respectively. At the time of the raid, the properties were

[78] Docket Vol. III, pp. 857-865.

leased out to Jimmy D. Chua, as evidenced by the Contract of Lease for each of the property. A Board Resolution was passed authorizing Gajams Corporation to lease out the property.

Accused Gayatin narrated that he authorized Gajams to act as lessor of the two properties knowing that it is authorized to engage in the business of leasing and is already registered with the BIR as lessor. As Vice President of Gajams, he signed the Contract of Lease.

Accused Gayatin recalled that Jimmy Chua informed him that he is into dry goods business. According to accused Gayatin, it was a usual company practice to verify the identity of potential lessees, and in doing so, it was able to identify a store selling China goods owned by Jimmy Chua. As payment for the rental, Jimmy Chua issued post-dated checks.

On January 18, 2018, Gajams Corporation filed with BIR RDO No. 76 the Lessee Information Statement wherein it indicated that the Alter Trade Building and Villa Socorro properties were leased out starting July 2017, and the corresponding documentary stamp tax was paid.

Later, the checks issued by Jimmy Chua were dishonored, which prompted accused Gayatin to file two (2) criminal cases against him for violation of Batas Pambansa Bilang 22.

Accused Gayatin recalled that at the time of the raid, he was at home sleeping. It was only in the morning around 7:30 am when he learned of the raid through his brother Antonio. He also learned, through the Sworn Statements of the workers found at the Alter Trade Property that the workers identify Andy Chua, brother of Jimmy Chua, as the owner of the business.

After the search and seizure, accused Gayatin received the LOA, FLD and FDDA, which he answered through the help of his lawyers. He also filed a Request for Reconsideration against the FDDA issued against him, which was not acted upon. Accused Gayatin was later on charged with the following:

1. Unlawful pursuit of business due to failure to register as excise taxpayer;
2. Unlawful possession or removal of articles subject to excise tax without payment of tax;
3. Unlawful possession of spurious internal revenue stamps;
4. Attempt to defeat or evade excise tax on cigarettes; and,
5. Falsification of public documents and use of falsified documents.

Accused Gayatin's case for falsification was dismissed. With respect to the violation of Section 236 of the NIRC of 1997, as amended, otherwise known as Failure to Register as Excise Taxpayer, accused testified that the same is pending before the Municipal Trial Court in Cities – Bacolod City.

Cross-examination[79]

On cross-examination accused Gayatin was questioned on the Special Power of Attorney and the Contracts of Lease. The prosecution pointed out that there was no mention of the Transfer Certificate of Title (TCT) in both documents; hence, it cannot be ascertained whether the two (2) premises subjected of the search were the same properties accused authorized Gajams Corporation to lease out to Jimmy Chua. On this score, accused stated that the location of the properties were specified, and he has only one property in Barangay Bata and one property in Purok Kabukiran, Barangay Takuling. The premises searched were the same properties subject of the two Contracts of Lease. Accused elaborated that he authorized Gajams Corporation to lease the properties since he cannot engage in leasing properties.

Further, accused admitted upon inquiry that he did not personally appear before the notary public for the notarization of the two (2) Contracts of Lease and he only asked his employee to have the same notarized.

Accused was also prodded on his efforts to locate Jimmy and Andy Chua. He recounted that he even went to the BIR Office and told the officers that Jimmy Chua already changed the name of the store and was already owned by another person. Even RD Pagulayan was trying to sort out how the change happened in a short span of time.

Re-direct examination[80]

On re-direct examination, it was established that the properties subject of the two (2) Contracts of Lease were the same properties covered by the TCTs registered under the name of accused Gayatin.

Re-cross examination[81]

The prosecution inquired whether accused Gayatin inspected the premises to see if Andy Chua (sic) complied with the terms of the Contract of Lease, particularly the prohibition to store fire hazard and illegal or unlawful items, to which he answered in the negative.

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79 TSN of the hearing dated March 3, 2021.
80 *Id.*
81 *Id.*

<u>Testimony of Antonio Gayatin</u>

Direct Testimony (by way of Judicial Affidavit)[82]

Antonio, brother of accused Gayatin, testified that he co-manages the businesses with accused. They sell tiles and hardware items. They also lease-out properties through Gajams Corporation, where they both act as Directors.

At the time of the raid, the properties were leased out by Gajams Corporation to Jimmy Chua. He was not aware what these real properties were used for, aside from storage of dry goods, as indicated in the Contract of Lease.

During the search and seizure, Antonio narrated that he was at home then, sleeping, and that he only learned about the incident around 6:00 am, when he read the message of Police Major Jovil Sedil, Chief of Police of Bacolod City. He then proceeded to Alter Trade Building and immediately objected to the raid. The police carried on with search over his objection. Antonio then called accused Gayatin to apprise him of the situation.

Apart from machines used in the manufacture of cigarettes, the police also found minors working inside the Alter Trade Property pointing to Andy Chua as owner of the business in their Sworn Statements.

Antonio then requested the assistance of the police to personally check on the Villa Socorro property. According to him, the police did not find anything illegal inside the Villa Socorro property.

ISSUES

The Pre-Trial Order limits the issues of the case as follows:

1. Whether or not Mr. Alman Gayatin is criminally liable for violation of Section 254 of the Tax Code of 1997, as amended; and,

2. Whether or not the search and seizure in the Alter Trade Property is legal.

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[82] Exhibit A-36, Docket Vol. III, pp. 1149-1153.

Prosecution's Arguments

The prosecution claims that accused Gayatin, Jimmy Chua and Andy Chua employed unscrupulous scheme to evade or defeat the payment of excise tax on cigarettes by operating surreptitiously. No registration was done with respect to the business and facilities.

Additionally, there was no document to prove the existence of a lease contract except the forged documents, which accused presented as an after-thought to escape criminal liabilities.

The prosecution likewise argues that the two arguments forwarded by accused in his Memorandum are inconsistent and illogical. Accused is not in a position to question the validity of the search conducted when he is claiming to have leased out the properties and has no control over the same.

Accused's counter-arguments

For his part, accused Gayatin staunchly argues that: 1) he cannot be held liable for violation of Section 254 of the NIRC of 1997, as amended, since he was neither the owner nor the possessor of the alleged illegal products found in the Alter Trade Property. He further contends that the search and entry of the police officers inside the premises of the Alter Trade Property without a valid search warrant is void and unlawful, thus, all things, goods, or items seized or obtained during the said illegal search are considered fruits of a poisonous tree and are inadmissible in any proceedings.

THE COURT'S RULING

At the outset, the Court underscores that, as of the date of promulgation of this Decision, it has only acquired jurisdiction over the person of the accused Gayatin. Correspondingly, the discussion below focuses only on accused Gayatin, and not on any other accused named in the *Information.*

Accused Gayatin is charged with violation of Section 254 of the NIRC of 1997, as amended, to wit:[83]

> SEC. 254. *Attempt to Evade or Defeat Tax.*— Any person who willfully attempts in any manner to evade or defeat any tax imposed under

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[83] The alleged crime was committed prior to the effectivity of Republic Act No. 10963, otherwise known as the TRAIN Law.

> this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

To warrant conviction, the prosecution must establish, by proof beyond reasonable doubt, the presence of the following elements:

1. A tax is imposed under the NIRC, and a person, natural or juridical, is liable for the said tax;
2. There is an attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and,
3. Such attempt to evade or defeat tax or the payment thereof is willful.

The Supreme Court elucidated in the case of *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr.*[84] that tax evasion connotes the integration of three (3) factors: (1) the end to be achieved, *i.e.*, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being evil, in bad faith, willful, or deliberate and not accidental; and, (3) a course of action or failure of action which is unlawful.

<u>Conspiracy between accused Gayatin and the other accused not proved</u>

Prior to discussing each of the elements with respect to accused Gayatin, the Court finds it propitious to thresh out the allegation of conspiracy between the accused.

In the *Information*, the prosecution alleged that the named accused therein are business partners. This was anchored on the theory that there is no genuine lease contract between accused Gayatin and Jimmy Chua.

Apart from such allegation, however, the prosecution offered no evidence to prove that accused Gayatin conspired with the other accused, and acted as principal by indispensable cooperation. Notably, SI Tocoyo

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[84] G.R. No. 147188, September 14, 2004.

answered in the negative when asked if he has any documents or evidence showing that accused is the business partner of Jimmy and Andy Chua.[85]

It bears stressing that conspiracy must be proven beyond reasonable doubt and is never presumed. The Supreme Court ruling in *Fernando vs. People of the Philippines*,[86] citing *Bahilidad vs. People* is instructive:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.
>
> It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.

Here, the absence of a "genuine" lease contract, as the prosecution claims, is not sufficient proof of conspiracy between the accused.

Having settled the lack of conspiracy between the accused, We will now delve into the elements of Section 254 *in seriatim*.

First element - a tax is imposed under the NIRC, and a person, natural or juridical, is liable for the said tax

The charge for violation of Section 254 of the NIRC of 1997, as amended, sprung from the alleged nonpayment of excise tax liability. As basis thereof, the prosecution invokes Section 130 of the NIRC of 1997, as amended, *viz*:

> SECTION 130. *Filing of Return and Payment of Excise Tax on Domestic Products.*—

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[85] TSN of the hearing dated November 27, 2019.

[86] G.R. No. 229701, November 29, 2017.

> (A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.—*
>
> (1) *Persons Liable to File a Return.—* Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others, the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: *Provided, however,*That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim.
>
> **Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon. xxx** *(Emphasis supplied)*

As mentioned above, the parties stipulated that accused Gayatin is not a registered excise taxpayer. This, notwithstanding, the Court must determine whether accused is liable to pay excise tax.

The imputed excise tax liability of accused is hinged on the fact that he is the owner of the two premises where excisable goods were found and seized. The fact of ownership of accused over the two (2) properties is settled, with the parties stipulating on the same in addition to accused's admission. Hence, the issue left for the Court to rule on is whether accused has possession over the excisable goods.

It is the prosecution's theory that accused, being the owner of the properties, also has possession of the excisable goods. During trial, the prosecution tried to establish that the Contract of Lease between accused Gayatin and Jimmy Chua was spurious considering that the notarization was allegedly forged.

Accused Gayatin, on the other hand, insists that the properties were leased out and notwithstanding the alleged forgery on the notarization, the Contract of Lease remains to be a valid contract.

We find for accused Gayatin.

Besides being the owner of the two (2) properties, the prosecution fell short in establishing, by proof beyond reasonable doubt, that accused had possession over the excisable goods. While possession is inherent in the bundle of rights attributable to ownership, such may be given up by the owner in favor of another person, as in the case of a contract of lease.

In this case, the prosecution cast doubt on the validity and genuineness of the contract for the reason that the notarization was forged. It must be borne in mind, however, that defective notarization will not invalidate the contract entered into by the parties. In *Requina, Sr. vs. Erasmo,*[87] the Supreme Court ruled in this wise:

> A defective notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.

From the foregoing, the existence of a valid and enforceable contract of lease between accused Gayatin and Jimmy Chua cannot be disregarded. The Contract of Lease merely became a private instrument. It must be noted that, the Contract of lease was duly identified and admitted as evidence.

Anent the more important issue of possession of excisable goods, the prosecution proffered no evidence pointing to the accused as having either actual or constructive possession over the excisable goods. Rather, the possession over the goods was merely assumed by the mere fact of ownership over the properties.

An excerpt from SI Tocoyo's testimony provides:

> Q: You mentioned about the Memorandum or Letter from Police Supt. Palomo dated 25 August 2017, is this the copy of the letter or Mission Order of Supt. Palomo, can you read the last sentence of the second paragraph?
>
> A: "Further that the owner of the building was not aware of any illegal activities in his property."
>
> Q: So, did you not take this into consideration when you filed the case?
>
> A: We are bound only on the provision of Section 130.
>
> xxx xxx xxx
>
> **Q: Have you ever seen the accused or have you seen evidence the accused himself was directing and controlling the people working in the warehouse?**
>
> **A: No Sir.**
>
> **Q: Have you seen the accused holding office in the premises, the Alter Trade and the Villa Socorro?**

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[87] G.R. No. 221049, December 7, 2022.

A: No Sir.

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ATTY. SY: Have you gathered or have you seen any evidence showing that the accused have been transacting any of the unpaid excisable goods?

A: No Sir.

Q: Have you ever seen or have you any evidence showing that the accused is conducting business involving any unpaid excisable goods?

A: No Sir. *(Emphasis supplied)*

Additionally, a portion of GS Dosono's testimony is quoted as follows:

Q: When did you know Alman Gayatin? Did you know him before the raid or before you show the tax declaration?

A: Personally, I know Mr. Alman Gayatin but with regards to this case, through tax declaration secured from the City Assessor through the request of the Regional Director.

Q: Mr. Witness, in Question No. 57, you were asked "As the owner of the property referring to accused Mr. Gayatin, what is the participation of the accused Alman Gayatin excisable goods (sic) you found in the accused property?" You mentioned that pursuant to Section 130, "the possessor of the unpaid excisable goods is liable for taxes due thereon". So you just assumed that Mr. Gayatin is the possessor?

A: Yes sir.

Q: But you don't have any actual evidence that he is the owner, no signature of Alman Gayatin?

A: No.

Q: If you know Mr. Gayatin personally, what does he trade in? Does he trade in cigarettes?

xxx xxx xxx

A: Construction materials, hardwares.

Q: No cigarette store?

A: No. *(Emphasis supplied)*

Evidently, there is no clear nexus between the accused Gayatin and the excisable goods found in his property. There is no basis to conclude that accused had possession, whether actual or constructive, over the excisable goods.

Logically, without proof that accused Gayatin possessed the excisable goods, it cannot be said that he is liable to pay the excise tax due thereon. Although there is a tax imposed under the NIRC of 1997, as amended, the accused is not liable to pay the same.

Therefore, the *first* element of Section 254 of the NIRC of 1997, as amended, is *not* established.

Second element - there is an attempt in any manner to evade or defeat any tax imposed under the NIRC, as amended, or the payment thereof

Proceeding from the discussion on the *first* element, there can be no attempt to evade or defeat any tax imposed or the payment thereof when, to begin with, accused Gayatin is not liable to pay excise tax.

Moreover, it can hardly be said that accused is attempting to evade or defeat the excise tax imposed considering that he has actively participated in the assessment by presenting evidence to support his claim.

Consequently, the *second* element is lacking in this case.

Third element- such attempt to evade or defeat tax or the payment thereof is willful

In a similar vein, it is inconceivable to comply with the *third* element without first establishing that accused is liable to pay the tax. Obviously, the *third* element is absent in this instance.

Considering the discussion above, the Court finds no cogent reason to still delve into the second stipulated issue – that is whether the search and seizure in the Alter Trade Property is legal.

After a careful consideration of all the pieces of evidence presented, the Court finds that the prosecution failed to discharge its burden to prove beyond reasonable doubt that accused violated Section 254 of the NIRC of 1997, as amended.

Finally, as discussed above, accused is not liable to pay the excise tax. There is, thus, no basis for the imposition of civil liability.

WHEREFORE, accused Alman Gayatin is **ACQUITTED** of the crime charged.

Further, this case is hereafter **ARCHIVED**, pending the arrest of the accused Andy Chua, Jimmy Chua and John Doe.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice