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IN VIEW WHEREOF, the petition is *GRANTED*. The assailed Decision of the Court of Appeals, dated November 21, 2003, and the Resolution dated April 21, 2004, in C.A.-G.R. SP No. 69699, entitled *Department of Agrarian Reform (DAR) vs. Hon. Hakim S. Abdulwahid, as RTC Judge & Yupangco Cotton Mills, Inc.*, are *REVERSED*. Civil Case No. 5113, entitled *Yupangco Cotton Mills, Inc. v. Buenavista Yupangco Agrarian Reform Beneficiaries Association, Inc. (BYARBAI), et al.*, is *DISMISSED*.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 167278. February 27, 2008]

ATTY. GIL A. VALERA, CPA-LCB, Deputy Commissioner, Revenue Collection Monitoring Group, Bureau of Customs, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, rep. by Hon. ORLANDO C. CASIMIRO, Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO), in his capacity as Acting Ombudsman; PNP-CIDG, rep. by Director General Eduardo S. Matillano (public complainant); ATTY. ADOLFO CASARENO (private complainant); Hon. CESAR V. PURISIMA, Secretary of Finance, Department of Finance; Hon. ALBERTO D. LINA, Commissioner of Customs, Bureau of Customs; Hon. ROBERTO D. GEOTINA, Deputy Commissioner for Internal Administration Group, Bureau of Customs; and HONORABLE COURT OF APPEALS (Fourth Division),** *respondents.*

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SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; MISCONDUCT; GRAVE IF IT INVOLVES ANY OF ADDITIONAL ELEMENTS OF CORRUPTION, WILLFUL INTENT TO VIOLATE THE LAW OR DISREGARD OF ESTABLISHED RULES.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or disregard of established rules, which must be proved by substantial evidence.

2. REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF IN ADMINISTRATIVE PROCEEDINGS; ADMINISTRATIVE PROCEEDING NEEDS ONLY RELEVANT SUBSTANTIAL EVIDENCE FOR A FINDING OF GUILT.— At the onset, the Court would like to point out that in an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. We reiterate the well-settled rule that, when supported by substantial evidence and absent any clear showing of abuse, arbitrariness or capriciousness, findings of fact of administrative agencies, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court. After a thorough examination of the evidence on record, we find no reason to depart from this rule.

3. ID.; ID.; ID.; ID.; CASE AT BAR.— With respect to the second and third charges against the petitioner, the 4th Division of the Court of Appeals agreed with the findings of the OMB-MOLEO. The petitioner utterly failed to show that the factual findings of the respondent, affirmed by the appellate court, were attended with arbitrariness or abuse. The Matillano letter-complaint as well as its supporting affidavits made clear allegations under oath that petitioner recommended his brother-in-law, Ariel Manongdo, for employment with Cactus Cargoes Systems, Inc. (CCSI), a customs brokerage firm which necessarily deals on a regular basis with petitioner's office. Further, the Matillano letter-complaint also categorically asserted that petitioner

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traveled to Hongkong without obtaining the proper clearance. These allegations under oath constitute substantial evidence required in administrative proceedings.

4. ID.; ID.; ID.; SUPREME COURT CANNOT WEIGH ONCE MORE EVIDENCE SUBMITTED NOT ONLY BEFORE THE OFFICE OF THE OMBUDSMAN BUT ALSO BEFORE THE COURT OF APPEALS.— On the other hand, petitioner did not deny that Ariel Manongdo is his brother-in-law or that CCSI has regular transactions with his office. Neither did he deny that he failed to comply with the requirement of presidential authority to travel abroad. It is thus unfortunate that instead of demonstrating that he is innocent of the charges, the petitioner instead resorted to unavailing technicalities to disprove the allegations. The Supreme Court cannot weigh once more the evidence submitted not only before the Office of the Ombudsman but also before the Court of Appeals. All told, we are convinced that there is substantial evidence to hold petitioner liable for the second and third charges against him.

5. CRIMINAL LAW; R.A. NO. 3019; SECTION 4 THEREOF INCLUDES BROTHER-IN-LAW WITHIN THE DEFINITION OF FAMILY UNDER SECTION 3(D).— This otherwise perfect logic would result in irrationality if we follow the contention of petitioner that the definition of "family" under R.A. No. 6713 should also apply to R.A. No. 3019. It makes no rhyme nor reason to suppose that public officials and employees are prohibited from having their children under eighteen years accept employment in a private enterprise having pending official business before their office, and yet are allowed to have their children over eighteen years, which is the employable age, to do so. What petitioner fails to mention is that R.A. No. 6713 itself prohibits the act of public officials and employees during their incumbency to recommend **any person** to any position in a private enterprise which has a regular or pending official transaction with their office. Certainly, the definition of the word "family" under said law would unduly limit and render meaningless Section 3(d) of R.A. No. 3019 if applied to the latter. In fact, family relation is defined under Section 4 of R.A. No. 3019 which, according to the said section, "shall include the spouse or relatives by consanguinity or affinity in the third civil degree." Thus, we need not look beyond the provisions of R.A. No. 3019 to hold that a brother-in-law

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falls within the definition of family under Section 3(d) thereof.

6. REMEDIAL LAW; CIVIL PROCEDURE; TEMPORARY RESTRAINING ORDER; WOULD NOT HAVE THE EFFECT OF DIVESTING A PUBLIC OFFICER OF THE PUBLIC CHARACTER OF HIS OFFICE.— We agree with the appellate court that petitioner suffered no gap in his public service while the temporary restraining order was in effect. The nature of a temporary restraining order which would have the effect of preventing a public officer from discharging his office is provisional until a preliminary injunction is issued by the court hearing the case. Because of its temporary character, it would not have the effect of divesting such officer of the public character of his office.

7. ID.; ID.; ID.; ID.; ONCE C.A.-G.R. SP NO. 69855 (*ROSQUETA VS. HON. JUDGE JUAN NABONG*) WAS DECIDED IN FAVOR OF PETITIONER, THE EFFECTIVITY OF HIS APPOINTMENT RETROACTED TO THE ORIGINAL DATE THUS, IT WAS INCUMBENT UPON HIM TO FOLLOW TRAVEL GUIDELINES.— It cannot be denied that once CA-G.R. SP No. 69855 was decided and petitioner was allowed to re-assume his office, the effectivitiy of his appointment retroacted to the original date of his appointment. He certainly remained as a public officer during such period and it was incumbent upon him, especially since he was continuously asserting his right to the office, to comply with the guidelines on the application to travel abroad for private purposes of public officials.

8. CIVIL LAW; STATUTORY CONSTRUCTION; BASIC IS THE MAXIM THAT A STATUTE MUST BE CONSTRUED AS A WHOLE; CASE AT BAR.— Basic is the maxim in statutory construction that a statute must be read or construed as a whole or in its entirety. All parts, provisions, or sections, must be read, considered or construed together, and each must be considered with respect to all others, and in harmony with the whole. A reading of the provisions cited by the petitioner will show that there is really no conflict between them. Section 2401 covers the matter of the institution and filing of civil and criminal actions by customs officers, which is subject to the approval of the Commissioner if filed for the recovery of duties or the enforcement of any fine, penalty or forfeiture

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under the Code. It does not cover the compromise of such civil or criminal actions, while Section 2316 is the provision that deals with such a situation. In fact, the latter is categorical in providing an encompassing scope for the strict conditions for any compromise. Its coverage includes "**any case arising under this code or other laws or part of laws enforced by the Bureau of Customs involving the imposition of fines, surcharges and forfeitures unless otherwise specified by law**." Doubtless, civil cases for collection of customs taxes and duties, including the one in the case at bar, would fall under this coverage.

9. TAXATION; TAX CREDIT SCAMS; TASK FORCE DESIGNATED TO INVESTIGATE TAX CREDIT SCAMS; FAVORABLE RECOMMENDATION FOR APPROVAL BY THE SPECIAL TASK FORCE AND THE APPROVAL BY THE PRESIDENT ARE BOTH REQUIRED.— E.O. No. 156, as amended by E.O. No. 38, is clear in its requirement that **in cases involving tax credit scams the favorable recommendation for approval by the Special Task Force and the approval by the President of the Republic are both required**. The approval by the Chairmen of the Special Task Force is still subject to approval of the President. Prior presidential approval is the highest form of check and balance within the Executive branch of government and cannot be satisfied by mere failure of the President to reverse or reprobate the acts of subordinates. To sanction otherwise would be to ask the Court to reward passivity and render nugatory the fundamental safeguard required under the law.

10. ID.; TAXES; LIFEBLOOD OF THE GOVERNMENT; NOT FOR ANY GOVERNMENT OFFICIAL TO DEEM IT WITHIN HIS COMPLETE CONTROL TO LET PRECIOUS BLOOD FLOW TO THE PRIVATE SPHERE WHERE IT WOULD HAVE BEEN RIGHTFULLY AND LAWFULLY COLLECTED BY THE PUBLIC THROUGH THE GOVERNMENT.— The Court notes that in Civil Case No. 01-102504, SAMC defrauded the government of the amount of ₱37,195,859.00 in unpaid duties and taxes with the use of fraudulent tax credit certificates that were directly and originally procured by its officials on the basis of inexistent supporting documents. The legal interest, surcharges, litigation expenses and damages of this principal amount totaled a staggering

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₱14,762,467.70, which petitioner effectively waived through his entering into a compromise agreement with SAMC. We find lamentable the utter disregard of the legal requirements for entering into a compromise displayed by petitioner which is further aggravated by the fact that there were already sufficient properties of SAMC that were attached in the said case to satisfy not only the principal amount owed but also the penalties, surcharges and interests. No amount of reasoning can infuse an empty plea to justify this bloodletting. Fundamental it is in law that taxes being the lifeblood of the government, such must be continuously replenished and carefully preserved—and no public official should maintain a standard lower than utmost diligence in keeping our revenue system flowing. It is not for any government official to deem it within his complete control to let precious blood flow to the private sphere where it would have been rightfully and lawfully collected by the public through the government.

11. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; OFFICIALS AND EMPLOYEES OF THE BUREAU OF CUSTOMS SHOULD SERVE AS PRIMARY ROLE MODELS IN THE FAITHFUL OBSERVANCE OF THE CONSTITUTIONAL CANON THAT PUBLIC OFFICE IS A PUBLIC TRUST.— Persons appointed to the revenue collection agencies of the government, like petitioner, ought to live up to the strictest standards of honesty and integrity in the public service and must at all times be above suspicion. Because of the nature of their office, the officials and employees of the Bureau of Customs should serve as the primary role models in the faithful observance of the constitutional canon that public office is a public trust. Petitioner, being a Deputy Commissioner of the Revenue Collection Monitoring Group, should know that his actuations reflect adversely on the integrity and efficiency of his office and erode the faith and confidence of our people in its daily administration. We find that the totality of petitioner's acts constitutes flagrant disregard of established rules constitutive of grave misconduct.

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D E C I S I O N

PUNO, *C.J.*:

Public office is a public trust.[1] Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, and act with patriotism and justice, and lead modest lives.[2] With the numerous ills and negative perception surrounding the revenue collection agencies of the government, this mandate of our fundamental law becomes all the more relevant to the present petition. Petitioner, a Deputy Commissioner of the Bureau of Customs, seeks to reverse and set aside the Decision[3] rendered by the Court of Appeals which affirmed the Decision[4] of the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices (OMB-MOLEO) finding him guilty of grave misconduct, and decreeing his dismissal from the service with all the accessory penalties appertaining thereto.

The records show that petitioner Gil A. Valera was appointed by President Gloria Macapagal Arroyo as Deputy Commissioner of Customs in charge of the Revenue Collection Monitoring Group on July 13, 2001. He took his oath of office on August 3, 2001, and assumed his post on August 7 of the same year.

On December 21, 2001, he filed in the Regional Trial Court (RTC) of Manila, for and on behalf of the Bureau of Customs, a collection case with prayer for the issuance of a writ of preliminary attachment for the collection of ₱37,195,859.00 in unpaid duties and taxes against Steel Asia Manufacturing Corporation (SAMC), which utilized fraudulent tax credit certificates in the payment of its duties. The case, docketed as

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[1] CONST., Art. XI, § 1.

[2] CONST., Art. XI, § 1.

[3] *Rollo*, pp. 63-79; penned by Justice Jose C. Reyes, Jr., concurred in by Justices Delilah Vidallon-Magtolis and Perlita J. Tria Tirona, dated February 28, 2005.

[4] *Id*. at 281-289, dated August 30, 2004.

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Civil Case No. 01-102504, was raffled off to Branch 39 of the RTC of Manila.

On January 16, 2002, a writ of preliminary attachment was issued against SAMC in the aforementioned case. The writ was duly implemented and the raw materials, finished products and plant equipment of SAMC were subsequently attached. Petitioner and SAMC entered into a compromise agreement wherein the latter offered to pay on a staggered basis through thirty (30) monthly equal installments the ₱37,195,859.00 duties and taxes sought to be collected in the civil case.

On August 20, 2003, the Director of the Criminal Investigation and Detention Group of the Philippine National Police, Eduardo Matillano, filed a letter-complaint against petitioner with the Ombudsman, which reads:

> Investigation conducted disclosed that Atty. Gil A. Valera was appointed as Deputy Commissioner, Bureau of Customs by the President on July 13, 2001, took his oath on August 03, 2001 and assumed his post on August 07, 2001.
>
> On January 30, 2002, while in the performance of his official functions, Atty. Gil A. Valera had compromised the case against the Steel Asia Manufacturing Corporation in Civil Case No. 01-102504 before Branch 39, RTC Manila without proper authority from the Commissioner of the Bureau of Customs in violation of Section 2316 TCCP (Authority of the Commission to make Compromise) and without the approval of the President, in violation of Executive Order No. 156 and Executive Order No. 38. Such illegal acts of Atty. Gil A. Valera indeed caused undue injury to the government by having deprived the government of its right to collect the **legal interest, surcharges, litigation expenses** and **damages** and gave the Steel Asia unwarranted benefits in the total uncollected amount of **FOURTEEN MILLION SEVEN HUNDRED SIXTY TWO THOUSAND FOUR HUNDRED SIXTY SEVEN PESOS AND SEVENTY CENTAVOS** (₱14,762,467.70), which is violative of Sections 3(e) and (g) respectively of RA 3019.
>
> Further investigation disclosed that Atty. Gil A. Valera while being a Bureau of Customs official directly and indirectly had financial or pecuniary interest in the CACTUS CARGOES SYSTEMS a brokerage whose line of business or transaction, in connection with

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which, he intervenes or takes part in his official capacity by way of causing the employment of his brother-in-law, Ariel Manongdo, thus, violating 3(h) of RA 3019 and RA 6713 and Section 4, RA 3019 as against Ariel Manongdo.

Finally, investigation also disclosed that on April 21, 2002 Atty. Gil A. Valera traveled to Hongkong with his family without proper authority from the office of the President in violation of Executive Order No. 298 (foreign travel of government personnel) dated May 19, 1995, thus, he committed an administrative offense of Grave Misconduct.[5]

The administrative aspect of the complaint was docketed as OMB-C-A-03-0379-J. On November 12, 2003, then Ombudsman Simeon V. Marcelo issued a Memorandum[6] to Special Prosecutor Dennis M. Villa-Ignacio, inhibiting himself from the cases against the petitioner, and directing the latter to act in his stead and place. Acting pursuant to this authority, Special Prosecutor Villa-Ignacio made the finding that by entering into the compromise agreement, petitioner may have made concessions that may be deemed highly prejudicial to the government, *i.e.*, waiver of the legal interest and the penalty charges imposed by law, as well as the virtual exoneration of SAMC of its fraudulent act of using spurious tax credit certificates. He issued an Order[7] placing petitioner on preventive suspension for six (6) months without pay pending administrative investigation on the matter.

On March 19, 2004, the petitioner filed his motion for reconsideration of the preventive suspension order. Upon the lapse of the period[8] within which the Special Prosecutor, as acting Ombudsman, should have resolved the motion for reconsideration, petitioner filed a Petition for *Certiorari* and

[5] *Id*. at 151-152, dated July 28, 2003.

[6] *Id.* at 217.

[7] *Id.* at 218-224.

[8] a. "within three (3) days from filing" – Section 27(2), R.A. No. 6770, otherwise known as "The Ombudsman Act of 1989," and/or

b. "within five (5) days from receipt thereof" – Section 8, Rule III, Administrative Order No. 07 [April 10, 1990], otherwise known as the RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN.

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Prohibition before the Court of Appeals on March 29, 2004, docketed as CA-G.R. SP No. 83091 and raffled off to the Special First Division.

On June 14, 2004, Special Prosecutor Villa-Ignacio inhibited himself from the cases of herein petitioner in view of a complaint filed by the latter against him. OMB-C-A-03-0379-J was next assigned to the OMB-MOLEO, represented by respondent Orlando C. Casimiro.

On June 25, 2004, the Special First Division of the Court of Appeals rendered a Decision[9] setting aside the preventive suspension order of Special Prosecutor Villa-Ignacio and directing him to desist from taking any further action in OMB-C-A-03-0379-J. In so ruling, the appellate court held mainly that Special Prosecutor Villa-Ignacio was not authorized by law to sign and issue preventive suspension orders.

The OMB-MOLEO perfected an appeal from this decision on July 16, 2004. The appeal, docketed as G.R. No. 164250, was raffled off to the Second Division of this Court, and was eventually elevated *motu proprio* to the Court *En Banc*.

In the meantime, the adjudication of OMB-C-A-03-0379-J continued and the respondent Deputy Ombudsman issued a Decision[10] finding the petitioner administratively liable for grave misconduct and decreeing his dismissal from the service, with all the accessory penalties appertaining thereto. It was found that petitioner committed grave misconduct based on the following charges:

> (i) compromising the case against SAMC in Civil Case No. 01-102504 before Branch 39, RTC Manila, without proper authority from the Commissioner of the Bureau of Customs in violation of Section 2316[11] of the Tariff and Customs Code, and

[9] *Rollo*, pp. 225-253.

[10] *Supra* note 4.

[11] Section 2316 of the Tariff and Customs Code provides:

Section 2316. *Authority of Commissioner to Make Compromise*.—Subject to the approval of the Secretary of Finance, the Commissioner of Customs

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without the approval of the President in violation of Section 4(d) of Executive Order (E.O.) No. 156 as amended by E.O. No. 38;[12]

(ii) causing the employment of his brother-in-law with the Cactus Cargoes Systems, Inc. whose principal business involves transactions with the Bureau of Customs in violation of Section 3(d) of Republic Act (R.A.) No. 3019;[13] and

(iii) traveling to Hongkong without conforming with the guidelines on the application to travel abroad for private purposes of public officials.[14]

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may compromise any case arising under this Code or other laws or part of laws enforced by the Bureau of Customs involving the imposition of fines, surcharges and forfeitures unless otherwise specified by law.

[12] Section 4(d) of Executive Order No. 156 dated October 7, 1999, entitled "CREATING A SPECIAL TASK FORCE TO REVIEW, INVESTIGATE, AND GATHER EVIDENCE NECESSARY TO SUCCESSFULLY PROSECUTE IRREGULARITIES COMMITTED AT THE BUREAU OF INTERNAL REVENUE, BUREAU OF CUSTOMS AND OTHER GOVERNMENT OFFICES OR AGENCIES UNDER OR ATTACHED TO THE DEPARTMENT OF FINANCE," as amended by Executive Order No. 38, provides:

> SEC. 4. Powers, Duties and Functions. The Task Force shall have the following powers, duties and functions:
>
> xxx xxx xxx
>
> d) To recommend the settlement of cases for approval of the President, subject to appropriate rules on the settlement of claims by the government;

[13] Section 3(d) of R.A. No. 3019, entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," enacted on August 17, 1960, provides:

> SEC. 3. Corrupt practices of public officers.—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> xxx xxx xxx
>
> (d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.

[14] A Memorandum dated May 11, 1999, in accordance with Executive Order No. 39, dated August 6, 1986, and Malacañang Memorandum Circular

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The petitioner questioned this decision before the Court of Appeals, via a petition for review, and the case was raffled off to the 4th Division and docketed as CA G.R. SP. No. 86281.

The 4th Division of the Court of Appeals refrained from ruling on the first charge against the petitioner in deference to this Court in G.R. No. 164250. It however found enough evidence to substantiate the second and third charges and issued and promulgated its assailed decision affirming the decision of respondent Deputy Ombudsman finding petitioner guilty of grave misconduct. It held as follows:

After careful consideration of the matter, this Court finds it more prudent to defer from deciding the matters raised in connection with the first ground raised by petitioner in deference to the Supreme Court which is now tackling the very same issues. Respondents themselves argued that:

> "Needless to state, the Office of the Ombudsman lost no time in bringing the foregoing matters to the attention of the Honorable Supreme Court in a petition for review (G.R.

No. 18, dated October 27, 1992, was issued by Deputy Commissioner Julita S. Manahan providing Guidelines on Application for Travel Abroad for Private Purposes, which states:

3. Request shall be submitted at least ten (10) days prior to the expected date of departure supported by the following documentary requirements:

k. Letter request for travel abroad.
l. Indorsement from Legal Service Chief/District Collector.
m. Clearance from Legal Service.
n. Application for Leave.
o. Affidavit of support from sponsor who will shoulder such travel.
p. Last year income tax return and assets & liabilities of sponsor.
q. Affidavit of official or employee if he/she will shoulder expenses.
r. Last year income tax return and assets & liabilities of official or employee if he/she will shoulder expenses.
s. Affidavit stating that the travel will not exceed ten (10) days. No request for extension shall be entertained unless it is extremely necessary.
t. Request shall be approved on a case to case basis dependent on the justification submitted.

4. No application for travel abroad shall be approved unless all the documents required are submitted. Failure on the part of the official or employee to report back on duty after the expiration of the authorize travel abroad shall be considered AWOL.

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> No. 164250). Since then, the Supreme Court has *motu proprio* elevated the case from the Second Division to the Court *En Banc*, apparently because of the serious nature of the issues raised against the honorable Special First Division." (*Rollo*, p. 292)

It should also be considered that a ruling of the Supreme Court on the applicability of Section 2316 of the TCC is determinative of the existence of a basis to the charges made against petitioner.

Coming now to the second ground raised, petitioner asserted that the respondents erred in finding him liable for the employment of his brother-in-law Ariel N. Manongdo with CCSI, claiming that there is no evidence that he had any participation in the employment of said brother-in-law, to wit:

> "But, nothing is contained in the decision under review, particularly under the heading 'evidence for the complainant,' which shows that petitioner did anything or performed any act or participated in any way, directly or indirectly, in the employment of his brother-in-law, Ariel N. Manongdo, with CCSI. Simply put, the finding of fact is also a conclusion of law with no fact or iota of evidence to support the discussion and conclusion in the decision under review." (*Rollo*, p. 48)

Respondents countered that petitioner not only used his "official ascendancy" (*Rollo*, p. 348) to cause the employment of his brother-in-law with CCSI, but they further claimed that the joint-affidavit (*Rollo*, pp. 88-93) of the elements of the Criminal Investigation Detection Group (CIDG) showed that petitioner was a co-owner of CCSI as shown by the fact that he invited his close friends and relatives to the blessing of the brokerage firm. The relevant portion of said joint-affidavit stated that:

> "12. Further, during the conduct of our surveillance on the lifestyle of Atty. Valera, we received information that he has sent text messages to his close friends and relatives for the blessing of his brokerage. The text of the message is as follows" '*ON WED, INVITE KO KAYO SA BLESSING NG BROKERAGE KO. ROOM 604, GLC Bldg., TM KALAW cor MABINI 6 TO 8 PM.*'
>
> 13. Atty. Gil A. Valera's visitors were mostly his classmates from Ramon Magsaysay Cubao High School. He gave our asset his professional card (Annex '35');

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> 14. Our investigation disclosed that the GLC Bldg. is owned by a certain Mr. GERARDO L. CONTRERAS. According to Ms. JENNIE ESGUERRA, the building administrator, party on the 6th Floor was the inauguration of the CACTUS CARGOES SYSTEMS represented by its Marketing Coordinator, Mr. ARIEL MONONGDO (sic). Our information was that Monongdo is the brother-in-law of Atty. Valera. Attached are the SEC Registration of Cactus Cargo Inc., (Annex '36') and the Contract of Lease signed by Mr. Ariel Monongdo the Marketing Manager of Cactus with the building administrator (Annex '37')." (*Rollo*, pp. 91-92)

Respondents also asserted that CCSI is a customs brokerage firm which necessarily deals on a regular basis with petitioner's office, more particularly:

> "The Code of Conduct and Ethical Standards (R.A. No. 6713), under Section 7, subpar. (b)(3) thereof, is very specific in criminalizing the act of '(r)ecommend(ing) any person to any position in a private enterprise which has a regular or pending official transaction with their office.' On the other hand, Section 3 (d) of the Anti Graft and Corrupt Practices Act (sic) (R.A. No. 3019) punishes as criminal offense a public officer's act of '(a)ccepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.' (*Rollo*, pp. 349-350)

Parenthetically, petitioner also argued that this charge was also held by the Special First Division to be "too trivial". However, the Court considers that statement to have been made in relation to the question of whether or not the deputy ombudsman had the power to order petitioner's preventive suspension. That is, that statement should not be read to be a disposition of the question on the merits.

Now, to dispose of the matter, it should be noted that the findings of the respondent Deputy Ombudsman regarding the second charge was based on two (2) grounds: first, the alleged act of using petitioner's influence to obtain employment for his brother-in-law and, second, the mere fact of employment of his brother-in-law in a company which has regular business with petitioner's office.

While the evidence regarding the alleged use of influence by the petitioner to cause the employment of his brother-in-law may be a

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little tenuous, the Court finds basis to the second ground. The Court notes that petitioner did not deny that CCSI has regular transactions with his office. Neither did he deny that Ariel Monongdo is his brother-in-law. Under Section 3(d) of R.A. No. 3019, as amended, mere acceptance by a member of his family of employment with a private enterprise which has pending official business with the official involved is considered a corrupt practice. It is clear, therefore, that mere acceptance by Ariel Manongdo, a family member, of the employment with CCSI rendered petitioner liable under the law. The Court, therefore, agrees with respondent Deputy Ombudsman when he held that:

> "Moreover, the Anti-Graft and Corrupt Practices Act (R.A. 3019) prohibits the public officer's act of accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination. Ariel N. Manongdo, as brother-in-law of respondent Valera falls squarely within the definition of family under Section 4 of the same law." (*Rollo*, p. 70)

Coming now to the matter of his travel to Hongkong which is the subject matter of the third objection raised by petitioner, he first argued that his constitutional right to be informed of the charges against him had been violated. He asserted that while the Matillano Complaint charged him with violating E.O. No. 278, the questioned Decision was based on E.O. No. 39.

The Court does not agree with this assertion. It should be remembered that the present case is an administrative case while Section 14 of Art. 3 of the 1987 Constitution refers strictly to criminal prosecution. Said Constitutional provision reads:

> "SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence

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of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

It is well-settled that in an administrative case, due process is served when the respondent was given an opportunity to be heard (*Utto v. Comelec*, 375 SCRA 523 [2002]). In the instant case, petitioner cannot deny that he was given all the opportunity to present his side of the story. Thus, the Court agrees with respondents when they argued:

> "It is, thus, unfortunate that instead of demonstrating that he either complied with the requirement of presidential authority to travel that petitioner, as a lawyer, presumably knows to have existed (sic), or that he was legitimately exempted therefrom, petitioner instead resorted to the unavailing technicality that the complaint did not properly identify by the correct number [the] EO in point. Petitioner invokes the right to be informed of charges against an accused which, needless to state, has specific application to criminal charges. Needlessly, however, even in criminal cases, what matters is not the title of the law violated but rather the allegations of acts constituting a crime. In his case, the allegation in the complaint was simply that petitioner did not comply with the requirement for presidential authority to travel abroad. It certainly fully informed him of his infraction. After the issue was joined on such factual allegation, identifying and enforcing the applicable law by the public respondent simply followed as part and parcel of its quasi-judicial function." (*Rollo*, p. 35)

Turning now to his defense that his foreign travel should not be taken against him because at the time he made the travel with his family, he was a private citizen because he was prevented by a temporary restraining order issued by this Court in CA-G.R. SP No. 69855 (in the case entitled *Rosqueta versus Hon. Judge Juan Nabong*) from assuming office and from dispossessing then Deputy Commissioner Rosqueta of the position of Deputy Commissioner.

The Court cannot subscribe to this argument. Under the theory proposed by petitioner, there was in effect an *interegnum* as to his government service during the effectivity of the TRO. But it cannot be denied that once CA-G.R. SP No. 69855 was decided and petitioner was allowed to assume his position, the effectivity of his appointment retroacted to the original date of appointment. While the temporary

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restraining order was in effect, he nevertheless continued to assert on his right to the office. The Court also notes that petitioner did not even present any evidence to show that he had dissociated himself from the office at the time in question. As pointed out by the respondents' Comment:

> "For that matter, petitioner cannot claim that he suffered a gap in his public service during the period covered by the so-called TRO. He certainly was not dissociated from office during such period. He continued to be a public officer, notwithstanding, such that the application on him of the presidential authority to travel can not be deemed to have been then suspended." (*Rollo*, p. 356)
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> xxx xxx xxx

In fine, while the Court refrained from tackling the first charge against petitioner, the Court finds that as to the second and third charges, respondent Deputy Ombudsman did not err in finding petitioner guilty of grave misconduct.[15]

On September 30, 2005, without going into the issue of petitioner's guilt, the Court *En Banc* rendered a decision in G.R. No. 164250 ruling that the power to place a public officer or employee under preventive suspension pending an investigation is lodged only with the Ombudsman or the Deputy Ombudsmen and affirmed the nullification and setting aside by the appellate court of the preventive suspension order of the Special Prosecutor.

Petitioner now comes before us praying that he be absolved of the charges against him and that the decision of the 4th Division of the Court of Appeals which effectively affirmed the decision of the OMB-MOLEO be annulled and set aside.

We shall now put a finis to this controversy that has raged bitterly for the past several months and shun further delay so as to ensure that this case would really attain finality and resolve whether petitioner is guilty of grave misconduct in connection with administrative case OMB-C-A-03-0379-J.

First, we discuss the definition of grave misconduct as established by jurisprudence:

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[15] *Id*. at 71-78.

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Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[16] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or disregard of established rules, which must be proved by substantial evidence.[17]

At the onset, the Court would like to point out that in an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[18] We reiterate the well-settled rule that, when supported by substantial evidence and absent any clear showing of abuse, arbitrariness or capriciousness, findings of fact of administrative agencies, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court.[19] After a thorough examination of the evidence on record, we find no reason to depart from this rule.

With respect to the second and third charges against the petitioner, the 4th Division of the Court of Appeals agreed with the findings of the OMB-MOLEO. The petitioner utterly failed to show that the factual findings of the respondent, affirmed by the appellate court, were attended with arbitrariness or abuse. The Matillano letter-complaint as well as its supporting affidavits made clear allegations under oath that petitioner recommended his brother-in-law, Ariel Manongdo, for employment with Cactus Cargoes Systems, Inc. (CCSI), a customs brokerage firm which necessarily deals on a regular basis with petitioner's office. Further, the Matillano letter-complaint also categorically asserted that petitioner traveled to Hongkong without obtaining the proper

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[16] *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 16.

[17] *Civil Service Commission v. Juliana Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589.

[18] *Avancena v. Liwanag*, 454 Phil. 20, 25 (2003).

[19] *King v. Megaworld Properties and Holdings, Inc.*, G.R. No. 162895, August 16, 2006, 499 SCRA 101.

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clearance. These allegations under oath constitute substantial evidence required in administrative proceedings.

On the other hand, petitioner did not deny that Ariel Manongdo is his brother-in-law or that CCSI has regular transactions with his office. Neither did he deny that he failed to comply with the requirement of presidential authority to travel abroad. It is thus unfortunate that instead of demonstrating that he is innocent of the charges, the petitioner instead resorted to unavailing technicalities to disprove the allegations. The Supreme Court cannot weigh once more the evidence submitted not only before the Office of the Ombudsman but also before the Court of Appeals. All told, we are convinced that there is substantial evidence to hold petitioner liable for the second and third charges against him.

Be that as it may, petitioner raises some legal issues regarding these charges which we shall settle.

Anent the second charge, petitioner contends that under Section 3(d) of R.A. No. 3019,[20] a brother-in-law is not included within the scope of the word "family" and therefore, he cannot be found liable under the said law. In arguing so, petitioner refers to the definition of the word "family" found under Section 3(g) of R.A. No. 6713, which states:

> SEC. 3. Definition of Terms. — **As used in this Act**, the term:
>
> xxx xxx xxx
>
> (g) "Family of public officials or employees" means their spouses and unmarried children under eighteen (18) years of age.

This contention deserves scant consideration.

Section 3 of R.A. No. 6713 is unequivocal in that its definition of terms is limited to **as used in the Act**. Under R.A. No. 6713, the term "family" was used **only once** under Section 4, par. (h),[21]

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[20] *Supra* note 13.

[21] Section 4, par. (h) of R.A. No. 6713, provides:

SEC. 4. *Norms of Conduct of Public Officials and Employees*.—xxx

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which implores public officials and employees and their families to observe "simple living." The restrictive definition accorded to the word "family" under the law is logical since children of public officials and employees who are above eighteen and already emancipated by law and freed from parental authority should not be bound by this standard where their emancipation may lead them to an otherwise private lifestyle or one which is not beholden to the public trust.

This otherwise perfect logic would result in irrationality if we follow the contention of petitioner that the definition of "family" under R.A. No. 6713 should also apply to R.A. No. 3019. It makes no rhyme nor reason to suppose that public officials and employees are prohibited from having their children under eighteen years accept employment in a private enterprise having pending official business before their office, and yet are allowed to have their children over eighteen years, which is the employable age, to do so.

What petitioner fails to mention is that R.A. No. 6713 itself prohibits the act of public officials and employees during their incumbency to recommend **any person** to any position in a private enterprise which has a regular or pending official transaction with their office.[22] Certainly, the definition of the word "family" under said law would unduly limit and render meaningless Section 3(d) of R.A. No. 3019 if applied to the latter. In fact, family relation is defined under Section 4 of R.A. No. 3019[23] which, according to the said section, "shall

(h) Simple living. — Public officials and employees and their families shall lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form.

[22] Section 7, par. (b)(3) of R.A. No. 6713.

[23] Section 4 of R.A. No. 3019 provides:

SEC. 4. Prohibition on private individuals. — (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. **Family relation shall include the spouse**

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include the spouse or relatives by consanguinity or affinity in the third civil degree." Thus, we need not look beyond the provisions of R.A. No. 3019 to hold that a brother-in-law falls within the definition of family under Section 3(d) thereof.

Proceeding now to the legal issue with respect to the third charge, it is advanced by petitioner that a public official reverts to his *quo ante* status as a private citizen upon being subjected to a temporary restraining order directing him to refrain from holding his office. Hence, he need not comply with the requirements for traveling abroad during said period.

We are not persuaded.

We agree with the appellate court that petitioner suffered no gap in his public service while the temporary restraining order was in effect. The nature of a temporary restraining order which would have the effect of preventing a public officer from discharging his office is provisional until a preliminary injunction is issued by the court hearing the case. Because of its temporary character, it would not have the effect of divesting such officer of the public character of his office.

It cannot be denied that once CA-G.R. SP No. 69855 was decided and petitioner was allowed to re-assume his office, the effectivity of his appointment retroacted to the original date of his appointment. He certainly remained as a public officer during such period and it was incumbent upon him, especially since he was continuously asserting his right to the office, to comply with the guidelines on the application to travel abroad for private purposes[24] of public officials.

We now come to the pivotal first charge facing petitioner that was left unresolved by the Court of Appeals in deference to this Court – that of compromising the case against SAMC without prior authorization from the Commissioner of Customs

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or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

[24] *Supra* note 14.

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in violation of Section 2316[25] of the Tariff and Customs Code, and without prior approval of the President as required by Section 4(d)[26] of E.O. No. 156 as amended by E.O. No. 38.

Prefatorily, we emphasize that violations or disregard of regulations governing the collection of government funds are administratively sanctionable. Intended to raise revenue for government operations, these regulations must be followed strictly.

On the first provision of the special law alleged to have been violated by petitioner, Title VI Book II of the Tariff and Customs Code entitled "ADMINISTRATIVE AND JUDICIAL PROCEEDINGS" is divided as follows:

1. Part 1 – Search, Seizure and Arrest,
2. Part 2 – Administrative Proceedings,
3. Part 3 – Judicial Proceedings,
4. Part 4 – Surcharges, Fines and Forfeitures,
5. Part 5 – Disposition of Property in Customs Custody, and
6. Part 7 – Fees and Charges. (Note: No Part 6)

According to petitioner, Sections 2301 up to 2316 are provisions found under Part 2 and pertain to administrative proceedings, while Sections 2401 and 2402 are provisions found under Part 3 and pertain to judicial proceedings. Section 2316 provides:

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[25] *Supra* note 12.

[26] Section 4(d) of Executive Order No. 156 dated October 7, 1999, entitled "CREATING A SPECIAL TASK FORCE TO REVIEW, INVESTIGATE, AND GATHER EVIDENCE NECESSARY TO SUCCESSFULLY PROSECUTE IRREGULARITIES COMMITTED AT THE BUREAU OF INTERNAL REVENUE, BUREAU OF CUSTOMS AND OTHER GOVERNMENT OFFICES OR AGENCIES UNDER OR ATTACHED TO THE DEPARTMENT OF FINANCE," as amended by Executive Order No. 38, provides:

Section 4. *Powers, Duties and Functions*. The Task Force shall have the following powers, duties and functions:

xxx xxx xxx

d) To recommend the settlement of cases for approval of the President, subject to appropriate rules on the settlement of claims by the government;

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Section 2316. *Authority of Commissioner to Make Compromise*.— Subject to the approval of the Secretary of Finance, **the Commissioner of Customs** may compromise any case arising under this Code or other laws or part of laws enforced by the Bureau of Customs involving the imposition of fines, surcharges and forfeitures unless otherwise specified by law.

While Section 2401 as amended, which was made by petitioner as basis for his entering into the compromise agreement, provides:

Section 2401. *Supervision and Control over Criminal and Civil Proceedings*.—Civil and criminal actions and proceedings instituted in behalf of the government under the authority of this Code or other law enforced by the Bureau shall be brought in the name of the government of the Philippines and **shall be conducted by customs officers** but no civil or criminal action for the recovery of duties or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

Thus, for petitioner, since the case wherein the compromise agreement was entered into was already pending before a regular court, the requirement of prior authority of the Commissioner of Customs to enter into a compromise is not necessary.

This contention must fail.

Basic is the maxim in statutory construction that a statute must be read or construed as a whole or in its entirety. All parts, provisions, or sections, must be read, considered or construed together, and each must be considered with respect to all others, and in harmony with the whole.[27]

A reading of the provisions cited by the petitioner will show that there is really no conflict between them. Section 2401 covers the matter of the institution and filing of civil and criminal actions by customs officers, which is subject to the approval of the Commissioner if filed for the recovery of duties or the enforcement of any fine, penalty or forfeiture under the Code. It does not cover the compromise of such civil or criminal actions, while Section 2316 is the provision that deals with such a situation. In fact, the latter is categorical in providing an encompassing

[27] *St. Martin, etc. v. Iberville Parish, etc.*, 212 La. 886.

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scope for the strict conditions for any compromise. Its coverage includes "**any case arising under this code or other laws or part of laws enforced by the Bureau of Customs involving the imposition of fines, surcharges and forfeitures unless otherwise specified by law**." Doubtless, civil cases for collection of customs taxes and duties, including the one in the case at bar, would fall under this coverage.

To be sure, the adoption of petitioner's interpretation of these provisions would result in absurdity that could not have been intended by Congress. Following his logic, the Commissioner of Customs has to actively participate and seek the approval of the Secretary of Finance in compromising administrative collection cases; whereas, customs officers without even seeking authority from the Commissioner or approval from the Secretary of Finance can proceed to bargain off much larger collection cases in courts. Clearly, the Court cannot countenance the abuse and corruption engendered by this misreading of the law.

Petitioner next claims that there was no violation of Section 4(d)[28] of E.O. No. 156 as amended by E.O. No. 38, when he entered into the compromise agreement without the express approval of the President.

E.O. No. 156, as amended by E.O. No. 38, created a Special Task Force to investigate and prosecute the irregularities relative to the "tax credit scam" committed at the center of the Department of Finance and to recover and collect revenues lost by the government through the "scam." Section 4(d) thereof provides:

> Section 4. *Powers, Duties and Functions*. The Task Force shall have the following powers, duties and functions:
>
> xxx xxx xxx
>
> d) To recommend the settlement of cases for approval of the President, subject to appropriate rules on the settlement of claims by the government;

[28] *Supra* note 26.

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In the case at bar, and during the time relevant to this case,[29] specifically on May 10, 2002, the then Chairman of the Task Force, Department of Finance Undersecretary Cornelio Gison, reported to the then Department of Finance Secretary Jose Isidro Camacho the successful collection by petitioner of ₱37,195,859.00 in the SAMC case. On October 3, 2002, in his Memorandum,[30] Department of Finance Undersecretary Innocencio P. Ferrer, Jr., who succeeded Undersecretary Gison, also congratulated petitioner for his accomplishment in the said case.

Petitioner invokes the principle of qualified political agency wherein these acts of the Special Task Force Chairmen – who both approved the compromise agreement and lauded him for his accomplishment in the recovery efforts against the original grantees and buyers of fraudulently secured tax credit certificates – should be considered as approval by the President herself, especially since she did not disapprove of nor reprobate their acts.

This argument is likewise unavailing.

E.O. No. 156, as amended by E.O. No. 38, is clear in its requirement that **in cases involving tax credit scams the favorable recommendation for approval by the Special Task Force and the approval by the President of the Republic are both required**. The approval by the Chairmen of the Special Task Force is still subject to approval of the President. Prior presidential approval is the highest form of check and balance within the Executive branch of government and cannot be satisfied by mere failure of the President to reverse or reprobate the acts of subordinates. To sanction otherwise would be to ask the Court to reward passivity and render nugatory the fundamental safeguard required under the law.

The Court notes that in Civil Case No. 01-102504, SAMC defrauded the government of the amount of ₱37,195,859.00 in

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[29] Section 5 of E.O. No. 156, as amended by E.O. No. 38, provides:

SECTION 5. Section 6 of the same issuance shall read as follows:

Section 5. Term. The Task Force shall exist for another two years to expire on October 7, 2003, unless extended by the Office of the President.

[30] *Supra* note 6.

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unpaid duties and taxes with the use of fraudulent tax credit certificates that were directly and originally procured by its officials on the basis of inexistent supporting documents. The legal interest, surcharges, litigation expenses and damages of this principal amount totaled a staggering ₱14,762,467.70, which petitioner effectively waived through his entering into a compromise agreement with SAMC. We find lamentable the utter disregard of the legal requirements for entering into a compromise displayed by petitioner which is further aggravated by the fact that there were already sufficient properties of SAMC that were attached in the said case to satisfy not only the principal amount owed but also the penalties, surcharges and interests.

No amount of reasoning can infuse an empty plea to justify this bloodletting. Fundamental it is in law that taxes being the lifeblood of the government,[31] such must be continuously replenished and carefully preserved—and no public official should maintain a standard lower than utmost diligence in keeping our revenue system flowing. It is not for any government official to deem it within his complete control to let precious blood flow to the private sphere where it would have been rightfully and lawfully collected by the public through the government.

Persons appointed to the revenue collection agencies of the government, like petitioner, ought to live up to the strictest standards of honesty and integrity in the public service and must at all times be above suspicion. Because of the nature of their office, the officials and employees of the Bureau of Customs should serve as the primary role models in the faithful observance of the constitutional canon that public office is a public trust. Petitioner, being a Deputy Commissioner of the Revenue Collection Monitoring Group, should know that his actuations reflect adversely on the integrity and efficiency of his office and erode the faith and confidence of our people in its daily administration. We find that the totality of petitioner's acts constitutes flagrant disregard of established rules constitutive of grave misconduct.

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[31] *Cebu Portland Cement v. Court of Tax Appeals*, G.R. No. L-29059, December 15, 1987, 156 SCRA 535.

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One final note. It appears that petitioner is no longer a Deputy Commissioner of Customs.[32] This fact, however, does not render this petition moot and academic. As held in *Gallo v. Cordero*:

> . . . [T]he jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? xxx If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[33]

WHEREFORE, premises considered, the petition is *DENIED*. The assailed Decision dated February 28, 2005 of the Court of Appeals in CA G.R. SP. No. 86281 is hereby *AFFIRMED*.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[32] *Rollo* of G.R. No. 164250, p. 579.

[33] 315 Phil. 210 (1995), citing *Zarate v. Judge Romanillos*, 312 Phil. 693 (1995), which cited *Perez v. Abiera*, 159-A Phil. 580, 581 (1975).