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MARIANO R. LACSON,
Petitioner,

- versus -

C.T.A.
CASE NO. 302

SILVERIO BLAQUERA, as
Collector of Internal
Revenue,
Respondent.

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Sept. 2, 1957

DECISION

This is an appeal from a decision of respondent Collector of Internal Revenue assessing against and demanding from petitioner, Mariano R. Lacson, the sum of ₱10,129.40 as forest charges and surcharge for the period from January 1954 to August 1955, inclusive.

From the documentary evidence and the stipulation of facts submitted by the parties, the following facts appear: Petitioner is a lessee of a forest concession in Bayawan, Oriental Negros, under License No. 44, granted by the Secretary of Agriculture and Natural Resources. He is also engaged in the manufacture of plywood and veneer and pursuant to Republic Act No. 901, he was granted by the Secretary of Finance an exemption from the payment of taxes in connection with said manufacture as a new and necessary industry. Plywood is manufactured by gluing together 3, 5, 7 or more sheets of veneer, the latter being thin sheets of lumber. During the period from January 1954 to August 1955, petitioner removed from his forest concession 11,147.96 cubic meters of logs on which the corresponding forest charges in the total amount of ₱8,103.52 was imposed. Petitioner used the said logs in the manufacture of plywood and veneer except the portion which he exported to Japan, under Export Entries Nos. 6504, dated January 5, 1954, 6861, dated March 8, 1954, and 6977, dated March 31, 1954, logs, measuring 1,168 cu. m., 1,770 cu. m. and 1,150 cu. m., respectively. Since the records of the Bureau of Forestry fail to show any payment of forest charges on logs exported abroad or used in the manufacture of plywood during the period from January 1954 to August 1955, respondent, in a letter dated December 19, 1955, assessed against and demanded from petitioner the sum of ₱8,103.52 as forest charges and the amount of ₱2,025.88 as surcharge. The request of petitioner for the reconsideration of the assessment having been denied by respondent, petitioner instituted the instant appeal.

Respondent does not dispute the fact that the logs not exported abroad were used in petitioner's business of manufacturing of plywood and veneer. However, respondent alleges that the forest charges on said logs are not directly payable by petitioner in said manufacturing business as a new and necessary industry under Republic Act No. 901, on the theory that they are charges on the privilege granted by the government for the exploitation of forest concessions. On the other hand, while petitioner admits his liability for the forest charges and surcharge due on the logs exported abroad under Export Entries Nos. 6861 and 6977 (p. 7, Memorandum, Petitioner), he however questions the taxability of the logs covered by Export Entry No. 6504 on the ground that said logs, having been allegedly scaled on February 3, 1954, could not have been exported in January 1954.

The main issue involved in this case is whether or not the forest charges come within the purview of the tax exemption granted to petitioner.

The resolution of this issue first turns upon whether or not "forest charges" are taxes within the exemption provision of Republic Act No. 901, the pertinent part of which reads:

> "Section 1. Any person, partnership, company or corporation who or which, subsequent to the approval of this Act, shall engage in a new and necessary industry shall be entitled to exemption until December thirty-one, nineteen hundred and fifty-eight from payment of all taxes directly payable by such person, partnership, company or corporation in respect to said industry x x x."

Petitioner contends that forest charges are taxes within the purview of the tax exemption provided in Republic Act No. 901 to which he is entitled, whereas respondent maintains the contrary view.

The proposition that forest charges are taxes is confirmed by Section 18 of the Tax Code, which provides as follows:

> "SEC. 18. Sources of revenue.--The following taxes, fees, and charges <u>are deemed to be national internal revenue taxes</u>:
>
> "x x x
>
> "(g) Miscellaneous taxes, fees and charges, namely, taxes on banks, and insurance companies, franchise taxes, taxes on amusements, <u>charges on forest products</u>, fees for sealing weights and measures, firearms license fees, radio registration fees, tobacco inspection fees, and water rentals." (Underscoring supplied.)

It must be so because forest charges like all other national internal revenue taxes are imposed primarily to raise revenue for the support of the government, and are not exactions for purposes of regulation and inspection (see Calalang v. Lorenzo & Villar, G.R. No. L-6991, June 17, 1955, 51 Off. Gaz. 2859, 2860).

The Report of the Tax Commission distinguishing forest charges from taxes (see Report of Tax Commission, Vol. 1, p. 90) cited by respondent cannot be considered controlling for the reason that Section 18 of the Tax Code specifically lists charges on forest products as among those deemed as internal revenue taxes.

Respondent however argues that petitioner may not claim exemption from the forest charges in view of the fact that the certificate of exemption granted by the Secretary of Finance does not include forest charges as among the taxes from which petitioner was granted exemption. We find this contention not meritorious. Respondent does not dispute that petitioner is exempted from the payment of taxes directly payable by him in respect to the manufacture of plywood and veneer. While, under Section 11 of Republic Act No. 901, the Secretary of Finance is authorized to determine the scope and extent of the privileges granted under its provisions, the authority conferred is limited to the classification as to which of the several industries or commercial ventures an applicant may have would be granted the privilege of tax exemption as a new and necessary industry. And the grant limiting the exemption to certain taxes only is illegal because the Secretary of Finance is not conferred the authority, either expressly or impliedly, by Republic Act No. 901 to determine for himself what taxes petitioner should pay and what taxes he should not. (See Marble Corporation of the Philippines v. The Collector of Internal Revenue et al., B.T.A. Case No. 126, December 17, 1954.)

Having ruled that forest charges are taxes, and, therefore, within the purview of the exemption provision of Republic Act No. 901, we hold that petitioner is not liable for the payment of forest charges on the logs not exported abroad.

However, it appears that the assessment of

December 19, 1955 includes forest charges and surcharge on logs exported by the petitioner to Japan. Unquestionably, these exported logs are subject to forest charges for they cannot be said to come within the tax exemption. In fact, petitioner admits liability for the forest charges due on the logs exported under Export Entry Nos. 6861 and 6977. However, petitioner, in his memorandum dated March 26, 1957, questions his taxability for the logs exported under Export Entry No. 6504 on the ground that said logs could not have been exported in January 1954 because they were, as alleged, scaled only on February 3, 1954. We cannot agree with petitioner on this score. Exhibit 9 merely indicates February 3, 1954 as the date of report, not the date of scaling. Moreover, as indicated in their stipulation of facts, the parties have raised only the issue of whether or not forest charges are taxes within the purview of the tax exemption provided for in Republic Act No. 901. We believe that petitioner cannot at this late stage raise the new issue of his non-liability for the forest charges on the logs exported under Export Entry No. 6504. We, therefore, find and so hold that petitioner is liable for the payment of forest charges and surcharge on the logs exported under Export Entries Nos. 6504, 6861 and 6977.

WHEREFORE, the decision of respondent should be, as it is, hereby modified in the sense that petitioner, Mariano R. Lacson, is hereby ordered to pay respondent the sum of ₱3,707.35 as forest charges and surcharge on the logs exported under Export Entries Nos. 6504, 6861 and 6977, with costs to petitioner.

SO ORDERED.

Manila, Philippines, September 2, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
concurs and dissents in
part.

MARIANO R. LACSON,
Petitioner,

- versus - C.T.A. CASE NO. 302

SILVERIO BLAQUERA, as
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CONCURRING AND DISSENTING
OPINION

I concur in the opinion of the majority that petitioner is liable for the payment of the forest charges and surcharge on logs cut and removed from his forest concession and exported to Japan, but I dissent from the majority opinion holding petitioner exempt from forest charges on logs used by him in the manufacture of plywood.

In connection with the logs exported to Japan, I wish to add that petitioner admits liability for the payment of the corresponding forest charges. However, liability is denied with respect to logs exported under Export Entry No. 6504, dated January 5, 1954, solely on the ground that there "is doubt . . . whether the logs covered by Export Entry No. 6504 is covered by the letter of demand, Exhibit '1'." (Page 7, Memorandum for Petitioner, March 26, 1957.) Having admitted liability for the payment of the forest charges on logs exported under Export Entry No. 6504, petitioner may relieve himself from liability only by presenting evidence of payment. No evidence has been presented that the forest charges have been paid; hence, petitioner cannot extricate himself from liability under the assessment.

With respect to the forest charges on logs cut and removed from petitioner's concession and used by him in the manufacture of plywood, I agree that forest charges are national internal revenue taxes. (Sec. 18, Nat. Int. Rev. Code.) There appears to be no legal basis for not considering forest charges as taxes when respondent considers them as taxes under Republic Act No. 304, as amended, thus enabling holders of backpay certificates to pay forest charges out of their backpay (B.I.R. ruling, November 22, 1955, Exh. B), and as internal revenue taxes under Chapter II, Title IX, of the Revenue Code, so as to authorize collection of said charges by distraint and levy (Op. Atty. Gen., Oct. 27, 1922). The argument that forest charges are not taxes because they are the price paid for the sale by the Government of forest products overlooks the fact that some forest charges are imposed on forest products cut and removed from unregistered private lands. (See Sec. 266, Revenue Code.) The Government cannot sell forest products which it does not own. From this it may be inferred that forest charges are not in reality the price paid for the sale by the Government of forest products; they are essentially taxes for the privilege of cutting and removing forest products from the public forests and from certain private lands. They stand on the same footing as the mining taxes imposed under Title VII of the Revenue Code. In the United States, forest charges and mining taxes are generally designated as production and severance taxes.

> "Taxes which, although imposed under statutes containing many variations as to their precise phraseology, are directed generally against the production, or severance from the soil, of such natural resources as timber, oil, natural gas, ores, or the like, and are normally measured according to the quantity or value of the articles produced or severed, are usually, although not invariably, regarded as excise rather than property taxes." (51 Am. Jur. 1072.)

But while forest charges are taxes, I do not believe that petitioner is exempt from the payment of such charges on logs that he cut and removed from his forest concession and used by him in the manufacture of plywood. Petitioner has been granted exemption under Section 1 of Republic Act No. 901 from the payment of all taxes directly payable by him in respect to the manufacture of plywood. No exemption has been granted with respect to the operation of his forest concession. The operation of a forest concession, by virtue of which the concessionaire is permitted to cut and remove forest products and to sell the same, is a separate and distinct business from the business of manufacturing plywood. Petitioner may not, therefore, claim exemption from the payment of forest charges because they are not taxes directly payable by him in respect to the operation of the exempt industry - the manufacture of plywood. (See Collector of Int. Rev. v. Marcelo Steel Corp., G.R. No. L-9248, Oct. 31, 1956.) That the operation of the forest concession by petitioner is a business separate and distinct from the business of manufacturing plywood is shown by the fact that he also exported logs cut and removed from his forest concession.

It is true that logs or lumber are essential to the operation of petitioner's plywood industry, but it is not necessary for him to operate a forest concession in order to manufacture plywood. He can buy the logs or lumber that he needs from other concessionaires or lumber mills. If he wants to economize in the cost of production of plywood by operating a forest concession he must be prepared to shoulder the corresponding taxes due on the latter business.

For the foregoing considerations, I vote to affirm the decision appealed from.

R M Umali
ROMAN M. UMALI
Associate Judge