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Republic of the Philippines
COURT OF TAX APPEALS
Manila

AMERICAN RUBBER COMPANY,
Petitioner,

- versus - Feb. 27, 1962

C.T.A.
CASES NOS. 356,
440 & 632

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

The petitioner is seeking the refund of the sales tax paid by it on its sales of rubber products from January, 1955 to December, 1958. In C.T.A. No. 356, the amount sought to be recovered is ₱82,193.48 for the period from January, 1955 to December, 1956; in C.T.A. No. 440, ₱20,504.99 for the period from January, 1957 to June 30, 1957; and in C.T.A. No. 632, ₱52,378.90 for the period from July, 1957 to December, 1958.

Petitioner is the owner of a rubber plantation. From the latex obtained by it from rubber plants, it produces rubber products identified as (1) Preserved Latex; (2) Pale Crepe No. 1; (3) Pale Crepe No. 2; (4) Ribbed Smoked Sheet No. 1; (5) Ribbed Smoked Sheet No. 2; (6) Flat Bark Rubber; (7) 3 x Brown Crepe; and (8) 2 x Brown Crepe. It paid the corresponding sales tax on its sales of such rubber products from January, 1955 to December, 1958. Contending that it is not subject to the sales tax on such sales, the said rubber products being allegedly agricultural products, it filed the required claims for refund of the amounts paid. Respondent has not rendered any decision on the claim for refund of ₱82,193.48 involved in C.T.A. No. 356 and on the claim for refund of ₱17,053.56 (should be ₱17,052.46), a portion of the sum of ₱52,378.90 involved in C.T.A. No. 632. The claims for refund of ₱20,504.99 involved in C.T.A. No. 440 and of the sum of ₱35,326.44, a portion of the claim involved in C.T.A. No. 632, were denied by respondent on the ground that the rubber products in question are not agricultural products but manufactured articles the sales of which are subject to the sales tax.

Three main issues have been raised for our consideration, viz: (1) whether or not petitioner is the proper party to institute the actions for refund; (2) whether or not this Court has jurisdiction to entertain the present "appeals" in those cases where no decision has as yet been rendered by respondent on the claims for refund; and (3) whether or not the rubber products in question are agricultural products within the meaning of Section 188(b) of the National Internal Revenue Code.

On the question whether or not petitioner is the proper party to institute the actions for refund, respondent contends that since the amount of the tax on the sales was billed to the customers as a separate item in the invoices, the tax was paid by the customers and not by petitioner; hence, the parties entitled to the refund if the tax was illegally paid, are the customers, or the purchasers of said rubber products, and not petitioner. On the other hand, petitioner contends that the tax was part of the selling price and that it was the one which paid the tax; therefore, it is entitled to institute the corresponding court action for recovery of the amounts paid.

From the evidence it appears that petitioner, during the period from January, 1955 to August 2, 1957, in issuing sales invoices covering sales of rubber products, itemized the amount corresponding to the tax separately from the price of the article. To illustrate:

20 Bales RSS 1 rubber of 50 kilos each bale, containing 2205 pounds at ₱0.62	₱ 1,387.10
Plus 7% sales tax	95.70
Total	₱1,462.80

However, from August 3, 1957 to December 27, 1958, petitioner discontinued the practice of itemizing the tax separately from the price of the article.

Section 186 of the Revenue Code provides that manufacturers taxable under the said section shall pay a tax equivalent to 7% of the gross selling price of the articles sold by them. The term "gross selling price" means "the sum stipulated as the equivalent of the thing sold and also every incident taken into consideration for the fixing of the price put to the debit of the vendee and agreed to by him." (Inchausti v. Cromwell, 20 Phil. 345; see also Macondray v. Adm. de Rentas Internas, G. R. No. L-2624, Sept. 29, 1951;

The Insular Lumber Co. v. Coll. of Int. Rev., G. R. No. L-7190, April 28, 1956.) The amount added by the seller because of the tax is paid by the buyer to get the goods and for nothing else. Therefore, it is part of the selling price. (Lash's Products v. U. S., 278 U. S. 175.) However, on July 29, 1939, the Bureau of Internal Revenue promulgated General Circular No. 431 providing that where a manufacturer includes an amount intended to cover the sales tax in the gross selling price of the articles, the sales tax shall be based on the gross selling price less the amount intended to cover the tax, if the same is billed to the purchaser as a separate item. For convenience, we quote from said circular:

> Sections 184, 185 and 186 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, provide for the levy, assessment, and collection once only on every original sale, barter, exchange, or similar transactions intended to transfer ownership of, or title to, the articles described in said sections a tax of ten per centum,[1] five per centum,[2] or three and one-half per centum,[3] as the case may be, on the gross selling price or gross value in money of the articles sold, bartered, exchanged, or transferred, such ta x to be paid by the manufacturer, producer, or importer;[4] provided, that where the articles are manufactured out of materials subject to the same percentage tax in each case mentioned, the total cost of such materials, as duly established, is deductible from the gross selling price or gross value in money of the manufactured articles for purposes of the

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1 Now 50%.
2 Now 30%.
3 Now 7%.
4 Importers are now subject to the advance sales tax under Sec. 183(B).

> tax. "Gross selling price" or "gross value in money" of the articles sold, bartered, exchanged, or transferred, as the term is used in the aforcited sections of the National Internal Revenue Code, is the total amount of money or its equivalent which the purchaser pays to the vendor to receive or get the goods. However, if a manufacturer, producer, or importer, in fixing the gross selling price of an article sold by him, has included an amount intended to cover the sales tax in the gross selling price of the articles, the sales tax shall be based on the gross selling price less the amount intended to cover the tax, if the same is billed to the purchaser as a separate item. To illustrate: In case an automobile dealer fixes the price of an automobile at ₱2,400 and charges an additonal of ₱120 to cover the sales tax which he bills as a separate item on the sales invoice, the tax of 5% prescribed in section 185 of the Code shall be imposed on ₱2,400.[5] (See also Gen. Cir. No. 440, Oct. 12, 1939.)

The tax is imposed upon the gross selling price of an article, which includes the amount corresponding to the tax, if it is charged by the seller as part of the selling price. But if the tax is billed separately to the customer, the gross selling price does not include the tax. This procedure has been sanctioned solely by administrative practice, although there is no legal basis for it, on the theory that when the tax is billed separately in the invoice it is shifted to and collected from the customer so that it is treated as not forming part of the gross selling price. In such case, the customer is the one who pays the tax and not the seller. The fact that the seller ultimate-

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[5] Automobiles are now taxable at 50%, 75% or 100% under Sec. 184 depending upon the gross selling price.

ly pays the tax to the Government does not convert it into a tax upon him to enable him to claim a refund thereof in case of illegal or erroneous payment.

In the example given above where petitioner sold 20 bales of RSS 1 for ₱1,387.10 and charged the buyer an additional sum of ₱95.70 as 7% sales tax, or a total of ₱1,462.80, petitioner treated the sum of ₱1,387.10 as the gross selling price and not ₱1,462.80 and paid the tax of only ₱95.70. If the tax was not billed separately in the invoice, the gross selling price would be ₱1,462.80, and the tax due thereon would be ₱102.40.

Since petitioner chose to shift the burden of the tax to its customers, obviously to enable it to sell its rubber products at a price less than what would have been possible if it had assumed the burden of paying the tax by including it as part of the selling price, it has no right whatsoever over the amount of the tax collected by it from its customers and paid to the Government. The rule is that where a person engaged in business directly collects a tax from his customer, the collection of which is illegal or erroneous, and pays the same to the Government, the former has no right to bring an action to recover said tax from the Government for the right belongs to the customer. (Medina v. City of Baguio, G. R. No. L-4060, Aug. 29, 1952, 48 O. G. 4769; Mendoza v. Municipality of Meycauayan, G. R. Nos. L-6069-6070, April 30, 1954; Zozimo Rojas & Bros. v. City of Cavite, G. R. No. L-

10730, May 26, 1958.) We are, therefore, of the opinion that with respect to the sales tax collected and paid on sales of rubber products during the period from January, 1955 to August 2, 1957, where the tax was billed as separate items in the invoices issued by petitioner to its customers, petitioner is not the proper party to institute an action for recovery thereof.

The parties agree that the sales tax was billed as a separate item in the invoices issued in connection with sales of rubber products involved in CTA Nos. 356 and 440. The said cases must accordingly be dismissed. With respect to the sales tax in the amount of ₱52,378.90 involved in C.T.A. No. 632, the parties agree that only the sum of ₱50,077.98 corresponds to the tax on sales where the tax was not billed as a separate item in the invoices. The said sum of ₱50,077.98 is the tax on sales effected from August 3, 1957 to December 27, 1958, itemized as follows:

RUBBER PRODUCTS	TAX PAID
(a) Preserved Latex	₱ 383.24
(b) Pale Crepe No. 1	11,929.46
(c) Pale Crepe No. 2	185.60
(d) Ribbed Smoked Sheet No. 1	30,343.88
(e) Ribbed Smoked Sheet No. 2	1,822.84
(f) Flat Bark Rubber	2,115.32
(g) 2 x Brown Crepe	1,879.71
(h) 3 x Brown Crepe	1,417.93
Total ...	₱50,077.98

Of the sum of ₱50,077.98, ₱17,052.46 corresponds to the sales tax on sales from July to December, 1958. A claim for refund was filed by petitioner for recovery of said sum of ₱17,052.46 but no decision has been rendered thereon by respondent. With respect to the tax on sales from July, 1957 to June, 1958 in the sum of ₱35,326.44 (which includes the sum of ₱2,300.92 which was billed as separate item in the invoices issued to customers), the claim for refund was denied by respondent. Respondent now claims that since no decision has been rendered on the claim for refund of ₱17,052.46, this Court has no jurisdiction to entertain the appeal, pursuant to Sections 7 and 11 of Republic Act No. 1125.

Section 306 of the Revenue Code requires that a taxpayer who believes that he has erroneously or illegally paid an internal revenue tax must file with the Bureau of Internal Revenue a written claim for refund within two years after payment and must institute court action for recovery thereof within the same period, whether or not the Commissioner renders a decision on the claim for refund. On the other hand, Section 7 of Republic Act No. 1125 provides that the Court of Tax Appeals shall have exclusive appellate jurisdiction to review by appeal decisions of the Commissioner in all matters involving, among others, claims for refund of internal revenue taxes, and Section 11 of said Act requires that the appeal from the decision of the Commissioner must be filed with said Court within 30 days from the date of receipt of such decision.

In College of Oral and Dental Surgery v. Court of Tax Appeals, G. R. No. L-10446, Jan. 28, 1958, it was held that Section 306 of the Revenue Code requiring the institution of court action for recovery of an internal revenue tax within two years from the date of payment, with or without a decision of the Commissioner, is inconsistent with Section 11 of Republic Act No. 1125. We quote from said decision:

> "While we cannot feign innocence of the existence of visible inconsistency in the provision of Section 306 of the National Internal Revenue Code, as construed by this Court -- requiring the institution of court proceeding for the recovery of taxes erroneously or illegally collected within 2 years from payment thereof, irrespective of the action taken by the Collector of Internal Revenue on the claim for refund of the same, which the taxpayer must first undertake -- and Section 11 of Republic Act No. 1125 specifically providing that actions should be brought to the Court of Tax Appeals within 30 days from receipt of the decision of the Collector of Internal Revenue, considering firstly that both mandatory provisions must be construed strictly, and secondly, that for purposes of the case at bar no further discussion would be necessary, we leave the proper dissertation on the same to some other opportune time. We feel free, however, to state that although to courts belong the prerogative and power of construction and interpretation and while we do not shirk from that duty bestowed on Us by law, the legislative branch of the Government should take notice of such apparent conflicts in our statute books and start the elimination of the same by corresponding legislation. (See also Rufino Lopez & Sons, Inc. v. Court of Tax Appeals, 58 O. G. No. 10, p. 3065, and Sampaguita Shoe and Slipper Factory v. Commissioner of Customs, et al., G. R. No. L-10825, prom. January 14, 1958.)"

Notwithstanding the "visible inconsistency" of Section 306 of the Revenue Code with Section 11 of Republic Act No. 1125, it has been held that the old law

(Sec. 306 of the Revenue Code) must prevail over the new law (Sec. 11 of Rep. Act No. 1125). (Coll. of Int. Rev. v. C.T.A., G. R. No. L-11494, Jan. 28, 1961.)

It is noteworthy, however, that in the case of Section 305 of the Revenue Code, to the extent that its provisions are inconsistent with Section 11 of Republic Act No. 1125, has been held to have been modified by the new law. Said the Supreme Court:

> "It therefore appears from the above that when in the opinion of the court the collection of the tax by the Collector of Internal Revenue may jeopardize the interest of the taxpayer it may, at any stage of the proceeding, suspend the collection and require the taxpayer either to deposit the amount claimed or file a surety bond for not more than double the amount with the court. <u>This section (referring to Sec. 11, R. A. No. 1125) must be deemed to have modified section 305 of the National Internal Revenue Code</u> in view of the repealing clause contained in said Act to the effect that 'Any law or part of law, or any executive order, rule or regulation or part thereof, inconsistent with the provisions of this Act is hereby repealed' (Section 21)." (Coll. of Int. Rev. v. Avelino, G. R. No. L-9202, Nov. 19, 1956; underscoring supplied.)
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> x x x x x
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> "We agree with petitioner that Section 305 of the National Internal Revenue Code precludes the use of injunction to restrain the collection of taxes, but as this Court has already pronounced, in view of the existence of the provisions of Section 11 of Republic Act No. 1125 allowing the Tax Court to issue said writ of injunction subject to certain limitations, <u>the former (Sec. 305) must be deemed to have been modified by the later enactment - Republic Act No. 1125 (Collector of Internal Revenue v. Avelino, G. R. No. L-9202, Nov. 19, 1956)</u>." (Coll. of Int. Rev. v. Aznar, G. R. No. L-10370, Jan. 31, 1958; underscoring supplied.)

It would seem from the foregoing that the doctrine laid down in the cases of Avelino and Aznar is inconsistent with the holding that Section 306 of the Revenue Code in regard to the two-year period for instituting an action for recovery of an internal revenue tax has not been repealed by Sections 7 and 11 of Republic Act No. 1125, which require that there be a decision of the Commissioner of Internal Revenue and that said decision is appealable to this Court only within 30 days after receipt thereof. There appears to be no legal basis for requiring a separate and express legislative enactment to repeal or modify Section 306, as suggested in the case of College of Oral & Dental Surgery, supra, while no such enactment is necessary in the case of Section 305.

In deciding to uphold the theory that there is no need for a taxpayer to wait for the decision of the Commissioner of Internal Revenue in cases involving refunds of internal revenue taxes, the Supreme Court quoted with approval a resolution of this Court in Paracale-Gumaus Co. v. Blaquera, C.T.A. No. 211, August 22, 1956, the pertinent portion of which reads as follows:

> "It might be argued that without the reply of the Collector of Internal Revenue denying the taxpayer's claim for refund, there would be actually no decision, order or ruling that this Court may pass upon in review under sections 7 and 11 of Republic Act No. 1125. Indeed, that would be the case if we were to interpret the two last cited provisions of Republic Act No. 1125 in their strict literal sense.

> However, we realize that by following such an unreasonable interpretation, the taxpayer would be left at the mercy of the Collector of Internal Revenue, without any positive and expedient relief from the courts.
>
> "It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector of Internal Revenue on his claim for refund; it would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Collector of Internal Revenue would have, at his personal convenience, given the go signal. In effect, that could be the ultimate result, if we were to interpret sections 7 and 11 of Republic Act No. 1125 strictly and literally by requiring the taxpayer in all instances to produce in black and white the ruling, decision or order of the Collector of Internal Revenue denying his claim for refund before assuming jurisdiction over his petition for review filed with this Court." (See Coll. of Int. Rev. v. Court of Tax Appeals and Hume Pipe & Asbestos Co., G. R. No. L-11494, Jan. 28, 1961.)

It will be observed, however, that the law governing appeals from decisions of the Commissioner of Internal Revenue in matters involving refunds of internal revenue taxes and of the Commissioner of Customs in matters of refunds of customs duties is the same - Sections 7 and 11 of Republic Act No. 1125. In customs cases, this Court has consistently refused to take cognizance of claims for refund of such duties if no decision has been rendered by the Commissioner of Customs. To quote from a recent resolution of this Court, penned by the Honorable, the Presiding Judge:

> "In fine, we are of the opinion and we so hold that this Court cannot take cognizance of petitioner's appeal with respect to his claim for the refund of

> customs duties and special import tax collected by the Collector of Customs for the port of Manila for the reason that there is as yet no decision of the Commissioner of Customs on petitioner's claim for refund which may be appealed to this Court under Sections 7 and 11 of Republic Act No. 1125." (Reynolds Phil. Corporation v. Com. of Int. Rev. and Coll. of Customs, C.T.A. No. 1101, Aug. 2, 1961, citing Rufino Lopez & Sons, Inc. v. Court of Tax Appeals, G. R. No. L-9274, Feb. 1, 1957; Sampaguita Shoe & Slipper Factory v. Commissioner of Customs, G. R. No. L-10285, Jan. 14, 1958; CMS Estate, Inc. v. Com. of Customs, C.T.A. No. 1014, May 31, 1961; Bookmark, Inv. v. Com. of Customs, C.T.A. No. 627, April 6, 1959; Liberty Motors, Inv. v. Menahan, C.T.A. No. 325, Jan. 22, 1957; Hatib Abdurasid v. Com. of Customs, C.T.A. No. 28, Nov. 29, 1954.)

It has been said that it would be unreasonable to leave the taxpayer at the mercy of the Commissioner of Internal Revenue "without any positive and expedient relief from the courts" by requiring him to wait for the decision of the Commissioner of Internal Revenue. But in customs cases the taxpayer must wait for the decision of the Commissioner of Customs. Is it because it is less unreasonable to require him to wait for the decision of the Commissioner of Customs than for him to wait for the decision of the Commissioner of Internal Revenue? That apparently is the present state of the law.

Another point which may be said in favor of the position taken by respondent is the doctrine of exhaustion of administrative remedies. The rule is well established that where a law permits a citizen to appeal from a decision of an administrative officer, it is required that he must first exhaust all administrative remedies before resorting to the courts.

> "This doctrine of exhaustion of administrative reliefs is indeed a sound rule for it provides for a policy of orderly procedure which favors a preliminary administrative sifting process, and serves to prevent attempts to swamp the courts by a resort to them in the first instance (United States v. Sing Tuck, 194 U. S. 161, 48 L. ed. 917, 24 S. Ct. 621; Oklahoma Pub. Welfare Commission v. State, 186 Okla. 654, 106 P (d) 547, 130 ALR 873)." (Sampaguita Shoe & Slipper Factory v. Com. of Customs, G. R. No. L-10285, Jan. 14, 1958.)

Finally, it has been held that, under the principles of Administrative Law in force in this jurisdiction, decisions of administrative officers shall not be disturbed by the courts, except when the former have acted without or in excess of their jurisdiction, or with grave abuse of discretion. They cannot be considered to have committed an abuse of discretion upon a question that had not been decided by them. (Com. of Customs v. Valencia, G. R. No. L-7470, Oct. 31, 1956.)

Notwithstanding all that has been said in favor of the stand of respondent on the jurisdiction of this Court in the instant case where no decision has as yet been rendered by him, the question has apparently been foreclosed by the recent decision of the Supreme Court in Collector of Int. Rev. v. Court of Tax Appeals and Hume Pipe & Asbestos Co., supra. Accordingly, all the members of this Court are now unanimously of the opinion that the position of respondent is untenable and must be rejected. It may be stated that the present state of the law is partly attributable to the wavering stand of counsel for the Government. In some cases, they sustain the view that there is no need for taxpayers to wait for the decision of the Commissioner of Internal Revenue; in some cases, they maintain the contrary view, depending in each case upon whether or not the view taken would favor the Government in the particular case. We believe the Government should adapt a definite policy, not one which is merely for convenience.

The next issue relates to the taxability of sales of the rubber products already mentioned above. Petitioner contends that they are agricultural products produced by it from its own plantation and are, therefore, exempt from sales tax under Section 188 (b) of the Revenue Code. Respondent contends that they are manufactured articles sales of which by the manufacturer, petitioner herein, are taxable under Section 186 of the same Code.

The various rubber products in question and the production and processing thereof are described in detail as follows:

x x x

> 3. Between: (a) January 1, 1955 and December 31, 1956; (b) January 1, 1957 and June 30, 1957; and (c) July 1, 1957 and December 31, 1958, petitioner was engaged in the rubber industry and produced rubber products identified in the rubber market as: (a) Preserved Latex; (B) Pale Crepe No. 1; (C) Pale Crepe No. 2; (D) Ribbed Smoked Sheet No. 1, other-

wise commonly known as RSS No. 1; (E) Ribbed Smoked Sheet No. 2, otherwise commonly known as RSS No. 2; (F) Flat Bark Rubber; (G) 3 x Brown Crepe; and (H) 2 x Brown Crepe. (Pars. II, SF 356, SF 440, ans SF 632.)

4. Petitioner produced the foregoing rubber products between January 1, 1955 and December 31, 1958 from a tract of land with an area of approximately nine hundred hectares, situated in Latuan, Isabela, City of Basilan, which petitioner owned and operated as a rubber plantation. (Pars. III, SF 356, SF 440, and SF 632.)

5. Petitioner produced and still produces the above mentioned rubber products in the following manner:

(a) The initial step common to the production of all the foregoing rubber products is tapping, i.e., the collection of latex (rubber juice) from rubber trees. This is done by the daily cutting, early in the morning, of a spiral incision in the bark of rubber trees and placing a cup below the lower end of the incision to receive the flow of latex. The collecting cup is filled after two hours. The tapper then collects this latex into buckets and carries them to the collecting shed. The tapper subsequently pours the latex collected into big milk cans. The filled milk cans are then taken in motor vehicles to a coagulating shed, also within the premises of petitioner's plantation, where the latex is strained into coagulating tanks to remove foreign matter such as leaves and dirt. After these initial steps, the processes vary in the production of the various rubber products mentioned above. Said processes are described briefly hereunder.

<u>(A) Preserved Rubber Latex</u>

(i) Fresh latex is diluted with 5 to 5½ ounces of ammonia per gallon of latex. This mixture is thoroughly stirred and then poured into metal drums. The addition of ammonia preserves the latex in liquid form and prevents its deterioration or its acquisition of a repulsive smell, and at the same time preserves its uniform color. Latex which has been thus artificially preserved in its liquid form generally lasts for about a month without spoiling. On the other hand, fresh latex in its original state lasts for only about two hours, after which it becomes spoiled.

(ii) Petitioner sells preserved latex only upon previous orders of customers who supply empty metal drum containers.

(B) Pale Crepe Nos. 1 and 2 and Ribbed Smoked Sheets Nos. 1 and 2

(i) To produce Pale Crepe Nos. 1 and 2 and Ribbed Smoked Sheets Nos. 1 and 2, the petitioner adds to the latex in the coagulating tank about 15 or 16 ounces of glacial acetic acid per gallon of latex. The mixture is stirred thoroughly. Thereafter aluminum partitions are placed crosswise inside the tank so that the latex will coagulate into uniform slabs. Acetic acid is added to the latex to hasten coagulation which otherwise takes place naturally, and to preserve its fresh state and color. The similarity in the production of Pale Crepe Nos. 1 and 2 and Ribbed Smoked Sheets Nos. 1 and 2 ends at the point of removing the coagulum (coagulated rubber sheets) from the coagulating tanks.

(ii) To produce Pale Crepe No. 1, the coagulum is passed through a series of rollers until the desired thickness is attained, whereupon it is moved to the air-drying house situated inside petitioner's plantation and hung for a period of about twelve or thirteen days to dry. There are no mechanical driers used; the air-drying is done naturally. As soon as the Pale Crepe is dried, they are sorted; those which are of uniform pale color are classified as Pale Crepe No. 1 and the rest are classified Pale Crppe No. 2, whereupon they are baled and stored, ready for the market.

(iii) Ribbed Smoked Sheets Nos. 1 and 2 are produced practically in the same manner as Pale Crepe, except that the coagulum is passed only once through a roller provided with ribs after which the flattened and ribbed coagulum is removed to petitioner's smokehouse where it is hung and cured by exposure to heat and smoke from wood fires for about six or seven days. The resulting smoked sheets are sorted and classified dependent upon color and opagueness into ribbed smoked sheets (RSS) No. 1 and No. 2, baled, and stored ready for the market. No mechanical equipment is used in generating the smoke in the smokehouse.

(iv) The petitioner's rollers are powered by engines although they could be turned by hand as it is done in small rubber plantations. If Pale Crepe Nos. 1 and 2 and Ribbed Smoked Sheets Nos. 1 and 2 are not air-dried and smoked, they deteriorate, get spoiled, and the color varies.

(C) Flat Bark Rubber

(i) Each morning before a tapper makes a fresh incision in the bark of a rubber tree, he gathers the latex drippings from the ground around the tree, called "ground rubber," as well as the dried latex from the incisions made the previous day, called "bark rubber." Ground and bark rubber are not intentionally produced. No chemicals are added to the latex transformed into ground and bark rubber. This kind of dried latex is spoiled and has a bad odor.

(ii) Ground and bark rubber when gathered in sufficient quantities are passed numerous times through the rollers or mills until they form a uniform mass or sheet which, finally, is called Flat Bark Rubber. No chemical is used to coagulate the dried ground and bark rubber because they are already coagulated. They are formed into sheets by means only of pressure of the mills or rollers through which they are passed. Flat Bark Rubber commands the lowest prices in the rubber market.

(D) 3 x Brown Crepe

(i) Every morning, before a fresh incision is made in the bark of the rubber trees, the tapper collects not only ground and bark rubber but removes and collects the latex in the cups, known as "cup rubber." The cup rubber coagulates and dries through natural processes and, when gathered in sufficient quantities, is milled and rolled through a series of rollers until by force of pressure it is formed into a mass of the desired thickness called "3 x Brown Crepe." Like ground and bark rubber, no chemicals are added to cup rubber to produce 3 x Brown Crepe. Cup rubber in its original form, like ground and bark rubber, is spoiled and has a bad odor.

(E) 2 x Brown Crepe

(i) 2 x Brown Crepe is obtained by milling or rolling the excess pieces of coagulated rubber latex cut over from the smoked sheets No. 2 into a uniform mass. 2 x Brown Crepe is produced in the same manner as the other sheets of crepe rubber, i.e., without the addition of any chemical. (Pars. IV, SF 356, SF 440, and SF 632.) (See pp. 2-6, Memo. for Petitioner.)

In American Rubber Co. v. Collector of Internal Revenue, C.T.A. No. 111, June 14, 1956,[1] we expressed the opinion that the nature of the labor employed in the processing of agricultural products and preparing the same for the market determines whether or not the said products remain "agricultural products" within the meaning of Section 188(b) of the Revenue Code, or manufactured articles taxable under Section 186. In line with this opinion, it was held that Preserved Latex, Flat Bark Rubber and 3 x Brown Crepe are agricultural products because the labor employed in the processing thereof is agricultural labor and the sales of such products by petitioner as producer or owner of the land where produced are exempt from the sales tax; while Pale Crepe No. 1, Ribbed Smoked Sheets Nos. 1 and 2 and 2x Brown Crepe are manufactured articles the sales of which by petitioner as manufacturer are taxable under Section 186. We find

[1] Appealed to the Supreme Court and the case is still pending consideration therein.

no justification to depart from said ruling. Consequently, only the sales tax paid on the sales of Preserved Latex, Flat Bark Rubber and 3 x Brown Crepe amounting to ₱3,916.49 is refundable, while the claim for refund of the sum of ₱46,161.49 as sales tax paid on sales of Pale Crepe Nos. 1 and 2, Ribbed Smoked Sheets Nos. 1 and 2 and 2 x Brown Crepe must have to be denied.

Petitioner prays that respondent be ordered to pay interest at the legal rate on the amount which is refundable to it. In Carcar Electric Co., Inc. v. Collector of Internal Revenue, G. R. No. L-9257, November 27, 1956, it was held that the Government may be held liable to pay interest on refunds of internal revenue taxes. We quote from said decision:

> "We conclude that under the present Internal Revenue Code (referring to Section 310), the Collector of Internal Revenue may be made to answer for interest at the legal rate on taxes improperly collected. Such liability serves as additional safeguard in favor of the taxpayer against arbitrariness in the exaction or collection of taxes and imposts."

However, in Collector of Internal Revenue v. St. Paul's Hospital, G. R. No. L-12127, May 25, 1959, and Collector of Internal Revenue v. Sweeney, G. R. No. L-12178, Aug. 21, 1959, it was held that there is no law authorizing payment of interest on refunds of internal revenue taxes. Subsequently, in Collector of Internal Revenue v. Antonio Prieto, G. R. No. L-11976 (resolution on motion for reconsideration dated September 26, 1961) and Commissioner of Internal Revenue v. Asturias

Sugar Central, G. R. No. L-15013 (resolution on motion for reconsideration dated December 28, 1961) it was held that the Government may be held liable to pay interest where the collection of the tax was attended with arbitrariness. We find no evidence in this case that the collection of the tax was attended with arbitrariness. Therefore, the Government may not be held liable to pay interest.

FOR THE FOREGOING CONSIDERATIONS, the appeals in C.T.A. Nos. 356 and 440 are hereby dismissed; and in C.T.A. No. 632, respondent is hereby ordered to refund to petitioner the sum of ₱3,916.49 without interest. No pronouncement as to costs.

SO ORDERED.

Manila, February 27, 1962.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge