REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

AMERICAN RUBBER COMPANY,
Petitioner,

- versus -

June 14, 1956

C.T.A. CASE NO. 111

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is a claim for refund of the sum of ₱57,703.37, representing sales tax on original sales of crude rubber products produced by petitioner from its rubber plantation at Latuan, Isabela, Basilan City, during the period from the first quarter of 1953 to the fourth quarter of 1954.

Respondent presented no evidence at the hearing of the case, and in his memorandum filed with the Court on January 19, 1956 he admitted petitioner's statement of facts "as a fairly accurate reflection of the facts as presented during the trial."

From the evidence introduced by petitioner during the hearing of the case we gather the following facts. The petitioner herein, American Rubber Company, a corporation duly organized and established under Philippine laws, owns a tract of land located at Latuan, Isabela, Basilan City, about 900 hectares in area, 800 hectares of which are planted to rubber trees. From this rubber plantation operated by the petitioner, it produced and sold locally and abroad the following:- (a) Preserved Latex (Exh. "J"); (b) Pale Crepe No. 1

(Exh. "H"); (c) Ribbed Smoked Sheet No. 1 (Exh. "G"); (d) Ribbed Smoked Sheet No. 2 (Exh. "O"); (e) Flat Bark Rubber (Exh. "I"); (f) 2X Brown Crepe (Exh. "M"); (g) 3X Brown Crepe (Exh. "N"); and (h) Pale Crepe No. 2 and "Campo". The petitioner no longer produces Pale Crepe No. 2 and "Campo".

The initial step common to the production of all these forms of crude rubber products is tapping, i.e., the collection of latex(rubber juice) from rubber trees. This is done by the daily cuttings, early in the mornings, of a spiral incission in the bark of rubber trees and placing a cup below the lower end of the incission to receive the flow of juice. 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 immediately 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 matters, such as leaves and dirt. After these initial steps, the processes then vary in the production of the various crude rubber products mentioned above and which we now describe briefly hereunder.

Preserved Rubber Latex (Exh. "J")

Fresh latex is diluted with ammonia at the rate of 5 to 5-1/4 ounces to a gallon. This mixture is thoroughly stirred and then poured into empty metal drums. The addition of ammonia preserves the latex in liquid form and prevents its deterioration or the acquisition of a repulsive smell, at the same time maintaining its uniform color. Latex which has been 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.

The company sells preserved latex only upon previous orders of customers who supply empty metal drum containers.

Pale Crepe No. 1 (Exh. "N"), Ribbed Smoked Sheet Nos. 1 and 2 (Exhs. "G" and "O" respectively).

To produce Pale Crepe No. 1 and Ribbed Smoked Sheets Nos. 1 and 2, the petitioner adds to the latex in the coagulating tank about fifteen (15) or sixteen (16) ounces of glacial acetic acid. The mixture is stirred thoroughly, after which aluminum partitions are placed crosswise inside the tank so that the latex will coagulate in uniform slabs. Acetic acid is added to the latex to hasten coagulation and to preserve its fresh state and color (Test. B. G. Leaño, t.s.n. pp. 16 and 20; R. R. de Leon, t.s.n. pp. 40-41). The similarity in the production of Pale Crepe No. 1 and Ribbed Smoked Sheets Nos. 1 and 2 ends at the point of removing the coagulum (coagulated rubber sheets) from the coagulating tanks.

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 in 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, it is baled and stored, ready for the market.

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 smoke-house where it is hung and exposed to heat and smoke from wood fires for about six or seven days in order to be cured. The resulting smoked sheets are sorted and classified 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 smoke-house (Test. R. R. de Leon, t.s.n. 42-46).

The petitioner's rollers are powered by engines. If Pale Crepe No. 1 and Ribbed Smoked Sheets Nos. 1 and 2 are not air-dried and smoked, they deteriorate, get spoiled, and the color varies (Test. R. R. de Leon, t. s.n. p. 43).

Flat Bark Rubber (Exh. "E").

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", which together constitute Exhibit "D". Ground and bark rubber are not intentionally produced. No chemicals are added to the latex transformed into ground and bark rubber, which, in their original form, are not marketable (Test. B. C. Leaño, t.s.n. p. 23). This kind of dried latex is spoiled and has a bad odor.

"Ground" and "bark" rubber 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" (Exh. "E"). 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. (Test. B. C. Leaño, t.s.n. pp. 22-24; R. R. de Leon, t.s.n. p. 66).

3 X Brown Crepe Rubber (Exh. "N").

Every morning, before a fresh incision is made in the bark of the rubber tree, the tapper collects not only "ground" and "bark" rubber but removes and collects the latex in the cups, known as "cup rubber" (Exh. "C"). The cup rubber coagulates and dries through natural processes and, when gathered in sufficient quantities, milled and rolled through a series of rollers until by force of pressure it forms into a mass of the desired thickness called "3 X Brown Crepe" (Exh. "N"). 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 not marketable because it is spoiled and has a bad odor.

2 X Brown Crepe Rubber (Exh. "M").

2 X Brown Crepe is obtained by milling or rolling the excess pieces of coagulated rubber latex cut over from the smoked sheet No. 2 (Exhibit "O") 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 (Test. R. R. de Leon, t.s.n. pp. 63-64).

All the crude rubber of the various types mentioned above produced by petitioner during the period beginning the first quarter of 1953 thru the fourth quarter of 1954 were sold locally (Exhs. "P", "P-38", "Q", "Q-60", "R", "R-62", "S", "S-45", "T", "T-40", "U", "U-53", "V", "V-46", "W", "W-47"). All these aforesaid local sales of crude rubber were declared for sales tax purposes by petitioner (Exhs. "Y" to "Y-7") and the corresponding sales tax paid to the Treasurer of Basilan City.

On April 12, 1955, petitioner invoking Section 188 (b) of the National Internal Revenue Code, as amended, filed with the respondent Collector of Internal Revenue a claim for refund of the sales tax on sales of the above-mentioned rubber products in the aggregate amount of ₱57,703.37, which the latter paid to the Treasurer of Basilan City during the two-year period immediately prior to the claim for refund, itemized as follows:

DATE OF PAYMENT	OFFICIAL RECEIPT NUMBER	AMOUNT PAID
Apr. 14, 1953	#175160 (Exh. "K")	₱ 6,046.99
July 18, 1953	#1920244 (Exh. "K-1")	9,565.32
Oct. 19, 1953	#1927903 (Exh. "K-2")	7,301.42
Jan. 19, 1954	#3896943 (Exh. "K-3")	4,900.73
Apr. 17, 1954	#387863 (Exh. "K-4")	7,893.91
July 19, 1954	#388582 (Exh. "K-5")	7,760.05
Oct. 18, 1954	#389578 (Exh. "K-6")	6,938.25
Jan. 20, 1955	#317750 (Exh. "K-7")	8,096.70
	TOTAL PAID ------	₱57,703.37

The sales tax corresponding to each rubber product is shown below:

TYPE OF PRODUCT	AMOUNT OF TAX PAID
Pale Crepe No. 1 (Exh. "H")	₱ 7,999.17
Ribbed Smoked Sheet No. 1 (Exh. "G")	22,979.48
" " " " 2 (Exh. "O")	8,362.19
2 X Brown Crepe (Exh. "M")	1,572.34
3 X " " (Exh. "N")	2,090.01
Flat Bark Rubber (Exh. "E")	3,563.76
Preserved Latex (Exh. "J")	11,095.99
Miscellaneous (Pale Crepe No. 2 and "Campo")	40.43
T O T A L ----------	₱57,703.37

The petitioner during the hearing of the case did not adduce any evidence to substantiate its claim for refund of ₱40.43, representing sales tax paid on sales of Pale Crepe No. 2 and "Campo", "because such rubber products are no longer produced by the petitioner and the amount involved, ₱40.43, did not warrant any additional expense". The claim of petitioner has, therefore, been reduced to ₱57,662.94.

Petitioner contends that the crude rubber products it produces from its rubber plantation are essentially agricultural products and that the processes involved in their production are essentially agricultural practices performed as an incident to, or in connection with, farming operations, hence, it can not be considered a manufacturer. Pursuant to section 188 (b) of the Revenue Code, as amended, it is argued that local sales of its crude rubber products are not subject to the sales tax imposed by Section 186 of the same Code.

Respondent on the other hand, though not denying that petitioner is engaged in agriculture stoutly maintains that the processes used by the petitioner to produce the crude rubber products from its rubber plantation make the petitioner a "manufacturer" within the purview of that term as defined in Section 194 (x) of the Revenue Code. Hence, it is contended by the respondent that the petitioner can not avail itself of the benefits of Section 188 (b), and concludes that pursuant to Section 186 of the said Code, the imposition of the sales tax provided therein on the original sales of petitioner's crude rubber products is valid and proper.

The only issue to be decided in this case is whether or not the rubber products produced and sold by petitioner are <u>manufactured articles</u> within the meaning of Section 194 (x) of the Revenue Code, or whether they are agricultural products within the meaning of Section 188 (b) of the same Code. If they are manufactured articles, original sales thereof by the manufacturer (petitioner herein) are subject to the sales tax provided in Section 186 of the Revenue Code. On the other hand, if said rubber products are agricultural products, sales thereof by the producer (petitioner herein) are not subject to the sales tax.

Section 186 of the Revenue Code imposes a percentage tax or sales tax on original sales of articles not enumerated in Sections 184 and 185 when the sales are made by the manufacturer or producer. The term "manufacturer" is defined in Section 194 (x) thus:

> "'Manufacturer' includes every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished product of such process of manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption."

The term "producer" is synonymous to "manufacturer", except that the former is more commonly used to denote a person who raises agricultural crops and puts them in a condition for the market. (55 C.J. 631.)

From the operation of Section 186 are excepted the transactions and persons enumerated in Section 188, among which are sales of agricultural products. The provision exempting sales of agricultural products reads:

> "(b) Agricultural products x x x when sold, bartered, or exchanged in this country by the producer or owner of the land where produced, x x x whether in their original state or not."

The term "manufacturer" as defined in Section 194 (x) is very broad and comprehensive. As aptly stated by the Supreme Court -

> "A more comprehensive and inclusive definition could scarcely be given, of the acts which would make a person a manufacturer." (Pascual v. Nolting, 33 Phil. 154.)

This Court has also made the following observations on the meaning and scope of the word "manufacturer":

> "For an analysis of the provisions of section 194 (x), supra, will readily show that the definition of manufacturer is so broad and comprehensive that the mere altering of the exterior texture, form or inner substance of any raw material, manufactured or partially manufactured product, by physical or chemical process, in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition, constitutes manufacturing. Likewise, the alteration of the quality of such raw material, manufactured or partially manufactured product, by the same process, as to reduce it to marketable shape or prepare it for any of the uses of industry, is a manufacturing pro-

cess. Even the combining of these things with other materials or products, by physical or chemical process, in such manner that the finished product may be put to a special use to which such raw material, manufactured or partially manufactured products could not have been destined, makes one a manufacturer. While it is necessary that the purpose is for sale or distribution to others, it seems that the finished product need not be transformed into a new, different, distinctive, article having an entirely separate name and character. It is hardly necessary to add —

> 'The term manufactured article or product includes anything which is changed by process of manufacture from its natural form such as iron ore to iron, logs to lumber or timber, bones to bone dust, potatoes to potato chips, corn to corn meal, and water to ice.' (Atty. General vs. Lorman, 26 NE. 32)."

(Phil. Packing Corp. v. Collector of Int. Rev., B.T.A. No. 182, Jan. 31, 1955.)

There can be no doubt that Section 194 (x), standing alone, would make petitioner herein a manufacturer with respect to the rubber products produced and sold by it, except as regards Preserved Latex (Exh. "J"), as will be shown later, and, therefore, subject to the sales tax prescribed in Section 186. But Section 188 (b) exempts from the sales tax agricultural products, whether in their original state or not, when sold by the producer or owner of the land where produced. The phrase "whether in their original state or not" is likewise broad and comprehensive, and may include transformations which, ordinarily, would be considered manufacturing under Section 194 (x). The law neither defines nor limits alterations or transformations of agricultural products which are necessary to convert them into manufactured articles, or which would make them retain their character as agricultural products. The question, therefore, that is presented for resolution is: When is an agricultural product which has suffered alteration or transformation, and therefore not in its original state, still an agricultural product, and when is it no longer an agricultural product but a manufactured article?

A brief resumé of the background and the reasons for the inclusion of Section 188 (b) in our sales tax law would aid us in finding a solution to the apparent conflict between paragraph (b) of Section 188 and paragraph (x) of Section 194.

The exemption from the percentage tax or sales tax (formerly merchant's sales tax) found its way into our revenue laws first as Section 142 of Act No. 1189, better known as the Internal Revenue Law of 1904, paragraphs (a) and (g) of which read:

> "Sec. 142. The following persons shall be exempted from the payment of taxes imposed in section 139:
>
> "(a) Agriculturists, on all products of their own production sold by them.
>
> x x x
>
> "(g) Persons whose manufactures consists solely in harvesting and getting into condition for their own use or for sale the products of the land owned or occupied by them, such as, cutting and drying of copra and theshing of rice."

From the afore-quoted provisions, we see a definite policy established by the lawmaking body as early as 1904 to protect and encourage the farmers. Not only all agricultural products of their own production sold by the agriculturists were exempted from the sales tax; the exemption applies to those which in their production and preparation for the market had to undergo some sort of manufacturing processes to give the farmers a fair return for their labor, such as the production of copra from coconut or the threshing of rice from palay. This same policy of protection and encouragement was reiterated and its scope even broadened with the enactment of Act No. 2339, otherwise known as the Internal Revenue Law of 1914. We quote the pertinent provisions of said Act:

> "Sec. 41. Sales not subject to merchant's tax.- In computing the tax above imposed, transactions in the following commodities shall be excluded:
>
> x x x
>
> "(c) Agricultural products when sold by the producer or owner of the land where grown, whether in their original state or not."

From the afore-quoted provision it is apparent that sub-paragraphs (a) and (g) of Section 142 of Act No. 1189, were consolidated in order to accomplish the legislative purpose to exempt from the sales tax all persons directly producing goods from the land. By this consolidation, "the Legislature instead of attempting an enumeration of exempted products, has grouped them all under the general designation of 'agricultural products'." (Molina vs. Rafferty, 38 Phil. 167.) It is safe to assume, therefore, that

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the Legislature did not intend to limit the exemption from taxation of agricultural products which undergo manufacturing processes to copra and rice. It is evident that the change in the language used in the amended provision was intended to extend the scope of the exemption so as to include all other agricultural products which in their production and preparation for the market have to undergo some manufacturing processes.

As an offshoot of Pascual vs. Nolting, supra, the Legislature extended the exemption from the sales tax to cover ordinary salt (Sec. 1, 3293). Subsequent amendments expanded the exemption to include fish and its by-products, even when caught in the high seas, when sold by the fisherman or fishing operator. (Sec. 1, Act 3712; Sec. 1, Rep. Act No. 969.)

The reasons for the inclusion of the exemption from the sales tax of agricultural products have been explained by our Supreme Court in Molina vs. Rafferty, supra, thus:

> "The first inquiry, therefore, must relate to the purpose the Legislature had in mind in establishing the exemption contained in the clause now under consideration. It seems reasonable to assume that it was due to the belief on the part of the law making body that by exempting agricultural products from this tax the farming industry would be favored and the development of the resources of the country encouraged. It is a fact, of which we take judicial cognizance, that there are immense tracts of public land in this country, at present wholly unproductive, which might be made fruitful by cultivation, and that large sums of money go abroad every year for the purchase of food substances which might be grown here. Every dollar's worth

> of food which the farmer produces and sells in these Islands adds directly to the wealth of the country. On the other hand, in the process of distribution of commodities to the ultimate consumer, no direct increase in value results solely from their transfer from one person to another in the course of commercial transactions. It is fairly to be inferred from the statute that the object and purpose of the Legislature was, in general terms, to levy the tax in question, significantly termed the 'merchant's tax,' upon all person engaged in making a profit upon goods produced by others, but to exempt from the tax all persons directly producing goods from the land. In order to accomplish this purpose the Legislature, instead of attempting an enumeration of exempted products, has grouped them all under the general designation of "agricultural products."

In order to do justice to the intention of the Legislature in granting tax exemption to agricultural products, whether in their original state or not, when sold by the producer or owner of the land where produced, we should not rely solely on Section 194 (x) and consider as manufactured articles all agricultural products which have undergone any form of alteration or transformation. That would nullify the legislative purpose in qualifying "agricultural products" appearing in Section 188 (b) by the phrase "whether in their original state or not." The only reasonable interpretation that can be given to the two provisions (Secs. 188 [b] and 194 [x]), in order to harmonize them, is to consider as agricultural products those products which, although they have suffered changes or alterations, are the result of genuine agricultural labor. All other changes or alterations in an agricultural product not connected with agricultural labor make such products manufactured articles, and are, therefore, taxable under Section 186 in relation to Section 194 (x). No hard and fast rule can be made as to what constitutes genuine agricultural labor which may suffice for every given situation. We confess it is rather a difficult task, and we shall not, therefore, make any attempt to define in precise terms what constitutes genuine agricultural labor. Each case must be decided on its merits.]

That the nature of the labor applied to or expended in the production and preparation for the market of an article (produced from an agricultural product) determines whether or not such article is a manufactured artdále or remains an agricultural product may be gleaned from the decision of the Supreme Court in Mercado v. Collector of Internal Revenue, 32 Phil. 271. Said the Court in that case:

> "The raising of plant shrub known locally as 'bakawan' and the gathering of its trunk and branches for use as firewood constitute a genuine agricultural labor, and, consequently sales of 'bakawan' as firewood raised in mangrove swamps are exempt from the merchants' sales tax." (Underscoring supplied.)

In that case it was held that firewood produced out of "bakawan" plants is not a manufactured article. If Section 194 (x) is to be interpreted strictly, as respondent would want it to be so interpreted, firewood produced by cutting the stems, branches and twigs, and removing the leaves and unserviceable portions, of "bakawan" trees, cutting them into standard sizes and lengths, and tying or bundling the firewood into uniform sizes or weights, would constitute manufacturing. The Supreme Court rightly held that firewood so produced is not a manufactured article within the meaning of the law defining the term "manufacturer", the processes employed in the production of firewood being essentially agricultural labor.

Respondent cites the following cases in support of the taxability of the rubber products produced and sold by petitioner: Pascual v. Nolting, 33 Phil. 154; Kuenzle & Streiff v. Collector of Customs, 22 Phil. 510; Bermejo v. Collector of Internal Revenue, G. R. No. L-3029, July 25, 1950; Central Azucarera de Bais v. Trinidad, 46 Phil. 492; Philippine Packing Corporation v. Collector of Internal Revenue, B.T.A. Case No. 182, decided by this Court on January 31, 1955; Ngo Siek v. Collector of Internal Revenue, C.T.A. Case No. 14, February 28, 1955; Chua Kay v. Collector of Internal Revenue, B.T.A. No. 8, May 14, 1952; Lim Tio, Uy Hong & Uy Hue v. Collector of Internal Revenue, B.T.A. No. 102, December 13, 1952; and other American cases.

The case of Pascual v. Nolting can hardly be cited as authority in support of the proposition that the processing of an agricultural product to prepare it for the market constitutes manufacturing. That case involved the making of salt from sea matter. The gathering of sea water can not by any stretch of the imagination be considered an agricultural pursuit. It was precisely for this reason that Congress saw fit to specifically provide for the exemption of "ordinary salt".

Similarly, Kuenzle & Straiff v. Collector of Customs is not in point. That case involved imported coffee, and the question at issue was whether or not the coffee so imported from abroad was "manufactured" for tariff purposes. The Court precisely held that the definition of "manufacturer" in the Internal Revenue Law was inapplicable in fixing tariff rates on imported articles.

The same may be said of Central Azucarera de Bais v. Trinidad, where the plaintiff was the owner of a sugar mill and was engaged principally in the "production of raw centrifugal sugar from sugar cane delivered to it, for milling, by sugar-cane growners having plantations in the neighborhood of plaintiff's mill." Plaintiff was not the owner of a sugar land and was not engaged in planting sugar cane. The Supreme Court rightly held that the mill owner was a manufacturer. But the Court went further and made a pronouncement which precisely runs counters to the stand taken by respondent in this case. We quote:

> "It is also suggested that following this argument to its logical conclusion (referring to the opinion that a sugar mill owner is a manufacturer), we would be compelled to hold that a sugar planter who has a small trapiche on his plantation wherein he converts his own cane into raw sugar is a manufacturer. We do not think that it would be necessary to so hold. A planter who devotes himself to the production of sugar cane and as an incident to such production works his product into a more convenient

and valuable form is primarily a planter; his manufacturing is merely an incident to the management of his plantation. His case is manifestly different from that of the plaintiff corporation which, in effect, buys its raw material and devotes itself exclusively to converting it into finished merchandise. It may, perhaps, not always be easy to draw the line of demarcation between one business and the other, but difficulties of that sort are frequently encountered in the interpretations of the law." (Underscoring supplied.)

In this case, the Supreme Court very clearly expressed the opinion that a farmer who works his farm product into a more convenient and valuable form does not convert him into a manufacturer. That the farm product suffers alteration or transformation is immaterial, if the manufacturing process employed "is merely an incident to the management of his plantation," or, in the language used in Mercado v. Collector of Internal Revenue, supra, if the work employed constitutes a "genuine agricultural labor."

The case of Bermejo v. Collector of Internal Revenue involved nipa shingles and charcoal. In that case the Supreme Court held that nipa shingles and charcoal are manufactured articles. In the case of nipa, the nipa leaves have a utility of their own -- they are generally "utilized for partitions, windows and doors." The farm owner who makes nipa shingles out of nipa leaves no longer employs agricultural labor but engages in manufacturing. In the language of the Court:

"In principle, the nipa shingle industry could not be distinguished from hat-weaving or mat-weaving or the making

> of sawali. These are admittedly Philippine 'manufactures'. (See Miller, Principles of Economics Applied to the Philippines, pp. 468, et seq.)"

As regards charcoal, there can be no doubt that the production thereof out of firewood constitutes manufacturing, the processes employed in the production of charcoal not having any relation with the ownership or management of a farm. The doctrine laid down by the Supreme Court in this case is applicable to some of the rubber products involved in the instant case as will be shown presently.

The decisions of the Board of Tax Appeals and of this Court in the cases of Ngo Siek, Chua Kay and Lim Tio, Dy Heng and Dy Hue, supra, are also inapplicable to the instant case. All of them did not involve agricultural products and the taxpayers in those cases were not owners of agricultural lands. Any reference to those cases would be futile.

The only case so far decided by this Court involving exemption from taxation of agricultural products is the case of Philippine Packing Corporation v. Collector of Internal Revenue. The issue there was whether canned pineapple products are "agricultural products" or manufactured articles. The case is now pending in the Supreme Court on appeal by the Philippine Packing Corporation and we, therefore, decline to make any comment thereon.

We will not also dwell on the American cases cited by respondent, there being no showing that the facts and the laws involved in those cases are the same or similar to those involved in the instant case.

Having arrived at the conclusion that the exemption provided in Section 188 (b) in regard to agricultural products, whether in their original state or not, applies to farm products which have undergone alteration or transformation as a result of genuine agricultural labor, we shall now proceed to consider whether or not the sales of various rubber products produced by petitioner during the period in question are exempt from the sales tax under Section 188 (b), or subject to said tax as manufactured artdcles as defined in Section 194 (x).

The first kind of rubber products involved in this case is the so-called Preserved Latex exemplified by Exhibit "J". As has already been described above, fresh latex is merely diluted with ammonia at the rate of 5 to 5-1/4 ounces to a gallon. The mixture of ammonia with the latex has for its sole purpose to prevent the latex from being spoiled and to preserve it in its original state. It appears that fresh latex becomes spoiled after 2 hours, whereas with the addition of ammonia it lasts for about a month. Even setting aside the qualifying phrase "whether in their original state or not," referring to agricultural products, in Section 188 (b) and considering Section 194 (x) above, we can not see how Preserved Latex can be considered a manufactured article. The addition of ammonia to fresh latex does not "alter the exterior texture or form or inner substance" of the fresh latex "in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition. Neither is the quality of fresh latex altered by the addition of ammonia. In fact, the purpose of adding ammonia to fresh latex is merely to preserve the latex in its original condition. And Preserved Latex does not have "a special use or uses" to which fresh latex could not have been put in its original condition. This is the same as fish caught in fishponds which are placed in ice to prevent its early spoilage. There can be no doubt that such fish remains to be an agricultural product. We are, therefore, of the opinion that Preserved Latex, as described above, is essentially an agricultural product, the sales of which, by the owner of the land where produced, are exempt from the sales tax under Section 188 (b).

The next kind of rubber products sold by petitioner is what is known as Flat Bark Rubber (Exh. "E"). The process of producing this kind of rubber has also been described above. "Ground rubber" and "bark rubber" are coagulated latex collected every morning from the ground and from the incisions in the barks of rubber trees. They are spoiled coagulated latex and have a bad odor. They are not marketable as such. To prepare them for the market, they are passed numerous times through rollers or mills until they form a uniform mass or sheet which is called Flat Bark Rubber. We are of the opinion that the production of Flat Bark Rubber out of "ground rubber" and "bark rubber" consti-

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tutes a genuine agricultural labor, which is necessarily connected with the management and operation of the rubber plantation, and, therefore, the same retains its character as an agricultural product. (See Mercado v. Collector of Int. Rev. and Central Azucarera de Bais v. Trinidad, supra.)

The same is true with 3 X Brown Crepe Rubber (Exh. "N"). This kind of rubber is produced from "cup rubber", which is coagulated latex found every morning in the cups placed below the incisions made in the barks of rubber trees. "Cup rubber" in its original condition when gathered is not marketable. To prepare it for the market, it is milled and rolled through a series of rollers until it forms into a mass of the desired thickness called 3 X Brown Crepe. The labor employed in the production of this kind of rubber is genuinely agricultural, and we believe that such rubber product remains essentially an agricultural product within the meaning of Section 186 (b). (-).

The same can not be said about Pale Crepe No. 1, ribbed Smoked Sheets Nos. 1 and 2, and 2 X Brown Crepe. It is our opinion that the labor employed in processing fresh latex to produce these rubber products, as described above, is not a genuine agricultural labor nor is it necessarily connected with the management and operation of a rubber plantation. Fresh latex or preserved latex in itself is already marketable, and if the owner of a rubber plantation desires to process its latex into more marketable forms and thereby secure better prices for its products, it goes beyond the domain of agriculture and invades that of the manufacturing industry. The rubber products so processed are, therefore, no longer agricultural products but manufactured articles as defined in Section 194 (x), the sales of which by the manufacturer are taxable under Section 186 of the same Code. Herein applies the doctrine in Bermejo v. Collector of Internal Revenue, supra.

IN VIEW OF THE FOREGOING, we are of the opinion that the sales tax amounting to ₱16,749.76 paid by petitioner on its sales of Preserved Latex, Flat Bark Rubber and 3 X Brown Crepe, which are agricultural products, from the first quarter of 1953 to the fourth quarter of 1954, was illegally collected by respondent; while the sales tax in the sum of ₱40,913.18 paid by petitioner on its sales of Pale Crepe No.1, Ribbed Smoked Sheets Nos. 1 and 2, and 2 X Brown Crepe, which are manufactured articles, was collected in accordance with law. The decision of respondent denying petitioner's claim for refund of ₱57,662.94 is, therefore, modified accordingly, and respondent is hereby ordered to refund to petitioner the sum of ₱16,749.76, with costs against petitioner.

SO ORDERED.

Manila, June 14, 1956.

ROMAN M. UMALI
Associate Judge

CUR:

AUGUSTO M. LUCIANO
Associate Judge

Presiding Judge MARIANO NABLE
concurs and dissents in
a separate opinion.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

AMERICAN RUBBER COMPANY,
Petitioner,

- versus -

C.T.A.
CASE NO. 111

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x- - - - - - - - - - - - - - - -x

CONCURRING AND DISSENTING OPINION

After examining the record and the arguments presented by the parties, I have to make my dissent in part from the opinion of my colleagues. I believe that the question presented by the petitioner in this case clearly falls within the purview of the definition of manufacturer contained in Section 194 (x) of the National Internal Revenue Code, which is cited below for convenience.

> "(x) 'Manufacture' includes every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished product of such process of manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their

> original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption."

Under the description of the rubber production of the petitioner herein, it is evident that the petitioner is a manufacturer and, therefore, subject to the sales tax imposed upon all goods manufactured and sold by it and that the products of the petitioner do not come under the term "agricultural products" exempted under Section 188 of said Code. The definition cited above of a manufacturer may be paraphrased as follows:

A manufacturer is one of any of the following:

(a) One who, by physical or chemical process, alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such a manner as to prepare it for a special use or uses to which it could not have been in its original condition;

(b) One who by (any such) physical or chemical process, alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry;

(c) One who by (any such) physical or chemical process, combines any such raw materials or manufactured or partially manufactured product with other materials or products of the same or of different kinds in such a manner that the finished product of such process of manufacture can be put to a special use or uses to which such raw materials or manufactured or partially manufactured products in their original condition could not have been put; and

(d) One who, in addition to any of the processes above (i.e., (a), (b), and (c), above), alters such raw materials or manufactured or partially manufactured products or combines the same to produce such finished products for the purposes of their sale or distribution to others and not for his own use or consumption.

From the manner of producing the articles described in the majority opinion, I believe that the "flat bark rubber" (Exhibit "E") and "3X Brown Crepe Rubber" (Exhibit "N") produced by the petitioner do not constitute manufacturers within the purview of said section 194 (x) and as such are in the class of agricultural products exempt from the percentage taxes, by virtue of Section 188, of the same Code.

However, it is my belief, that all the other rubber products of petitioner presented in this case constitute manufacture under section 194 (x), and which do not fall within the exemption granted to agricultural products in said Section 188 so that these products are therefore subject to the percentage tax under Section 186.

In the first place, the product known as "preserved rubber latex" (Exhibit "J"), falls within the purview of the manufacture, by virtue of the addition of the chemicals which is intended to preserve the same and, as petitioner admits, is made only upon receipt of the orders of its customers, making it fall clearly within the class of manufacture to "prepare it for a special use or uses to which it could not have been put in its original condition."

The product known as "Pale Crepe No. 1", Exhibit "H", and that known as "ribbed smoked sheet Nos. 1 and 2", Exhibits "G" and "O", is essentially a manufactured product in that, chemicals are added to it to hasten the coagulation to preserve its state and color so that the same may be reduced to a marketable shape or prepare it for any of the uses of industry.

On the other hand, the flat bark rubber invoice no use of chemicals and it is not especially prepared for any particular use and, thus, does not fall under the definition of manufacturer contemplated in Section 194 (x) cited above. For the same

[redacted]

reasons, the rubber product known as "3XBrown Crepe Rubber" (Exhibit "N") does not constitute a manufacture.

It is a settled doctrine in taxation that the person who claims an exemption must clearly show that basis of such exemption, and that any exemption should be construed against the taxpayer claiming such benefits. He who claims the benefit of the exemption from the common burden generally sustained by all must justify his claim by the clearest grant of the benefits under the law. (Asiatic Petroleum Company vs. Llanes, 49 Phil. 466; Collector of Internal Revenue vs. Manila Jockey Club, G. R. L-8755, March 23, 1956.)

I sympathize deeply with the position of petitioner herein especially because its activities are closely related with the agricultural industry. Moreover it is contended that petitioner's products to some degree enhance the economic rehabilitation of the country, being a dollar-producing industry which should be given the benefits of exemption as an agricultural industry. However, it is my belief that the remedy lies not with this Tribunal but in the legislative body.

WHEREFORE, I vote to hold the petitioner liable for the percentage taxes on its rubber products, Exhibits H, G, O, M, J and that known as "Pale Crepe No. 2" and "Campo" but the petitioner should be exempt from the payment of percentage taxes in Exhibits "E" and "H". The decision of the respondent should be modified and petitioner granted a refund of ₱5,653.77, taxes erroneously paid on the rubber products, Exhibits "E" and "H".

Manila, Philippines, June 21, 1956.

MARIANO NABLE
Presiding Judge