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YU KUAN, (Owner of Hudson
Furniture Store),
Petitioner,

August 3, 1957

- versus -

C.T.A.
CASE NO. 270

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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DECISION

This is an appeal from the decision of respondent Collector of Internal Revenue assessing and demanding from petitioner the sum of ₱1,155.11 as sales and fixed taxes, surcharge and penalty, under sections 183 (a), 186 and 209 of the National Internal Revenue Code, on petitioner's sales of furniture.

The parties herein submitted the case for decision on the following agreed stipulation of facts:

1. That the petitioner is a furniture dealer and owner of the Hudson Furniture Store located at 312 T. Pinpin, Manila; while respondent is the Collector of Internal Revenue and has his office at the Department of Finance Building, Manila, Philippines;

2. That for the period from 1950 to 1954, petitioner as "furniture dealer", engaged in the business of buying and selling of furniture, has been paying the corresponding privilege tax under schedule C-13 prescribed in section 182 of the National Internal Revenue Code;

3. That petitioner as "furniture dealer" purchases from local furniture manufacturers various kinds of furniture, e.g. office tables, dining tables, chairs,

dressers, wardrobes and the like, without varnish, paint and/or mirror or glasses;

4. That before these pieces of furniture are offered for sale to the public, petitioner varnishes the same, and to some of these furniture petitioner affixes mirrors and/or glasses at the places specially designed therefor, for the purpose of making them more attractive and convenient for use;

5. That respondent has demanded from petitioner the payment of the sum of ₱1,055.11 as sales tax on its gross sales for the period from February 13, 1950 to December 31, 1953, plus the sum of ₱100.00 as penalty, or a total of ₱1,155.11, computed as follows:

	1950	1951	1952	1953
Purchases, unfinished furniture	₱4,200.00	₱5,100.00	₱5,010.00	₱ 9,565.50
Glass, mirrors and varnish	700.00	850.00	835.00	1,594.25
Total materials used	₱4,900.00	₱5,950.00	₱5,845.00	₱11,159.75
Gross sales (Approx.)	7,000.00	8,500.00	8,350.00	15,942.50
Taxable Sales	₱2,100.00	₱2,550.00	₱2,505.00	₱ 4,782.75

		Tax Due
Sales subject to 5% - February 13, 1950 - September 21, 1950	₱1,575.00	₱ 78.75
Sales subject to 7% - September 22, 1950 - December 31, 1953	10,362.00	725.34
Total sales tax due		₱ 804.09
25% surcharge		201.02
PTR C-14 (1950-1954)		50.00
TOTAL AMOUNT DUE		₱1,055.11

6. That the sole issue involved in this case is whether or not by applying varnish and affixing mirrors or glasses to locally purchased furniture, petitioner became a manufacturer within the purview of section 194 (x) of the National Internal Revenue Code; and

> 7. That the parties hereby reserve their right to present additional oral or documentary evidence in support of their respective causes.

Petitioner herein maintains that he is not a manufacturer as defined in section 194 (x) of the National Internal Revenue Code, ergo, his sale of furniture is not subject to the percentage tax prescribed in section 186 in relation to section 183 (a) thereof. On the other hand, respondent contends that petitioner's act of varnishing the furniture and affixing mirrors and/or glasses thereon, which is thereafter sold to the public makes petitioner a manufacturer within the purview of the Tax Code. Consequently, it is argued that petitioner is liable for the payment of sales and fixed taxes as prescribed by sections 183 (a) and 196 of the same Code.

Petitioner insists that the term "manufacturer" necessarily implies a change in the article manufactured, that a new and different one must emerge, having a distinctive name, character or use. The respondent, however, relies solely on the statutory definition of the word manufacturer as prescribed by section 194 (x) of the Tax Code in support of his assessment.

Section 194 (x) of the National Internal Revenue Code provides:

> "'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."

Analyzing the above-quoted provision of the Tax Code, this Court held:

> "For an analysis of the provision 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 inits original condition, constitutes manufacturing. Likewise, the alteration of the quality of such raw materials, manufactured or partially manufactured product, by the same process, as to reduce it to merchantable shape or prepare it for any of the uses of industry, is a manufacturing process. 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 product could not have been destined, makes one a manufacturer.

<u>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.</u> x x x." (Philippine Packing Corporation v. Collector of Internal Revenue, B.T.A. Case No. 182, January 31,1955, reversed on other grounds in G. R. No. L-9040, Dec. 26, 1956; underscoring supplied.)

Undoubtedly, the act of petitioner in varnishing and affixing of mirrors and/or glasses on the partially manufactured furniture he buys and subsequently sells, aside from enhancing their market value, also alters their exterior form and quality. From an aesthetic and utilitarian viewpoint, it becomes at once evident that furniture which are unvarnished and without mirrors or glasses as purchased by petitioner, being but partially manufactured products, do not have the same merchantable quality as the completely finished and polished furniture products which petitioner sells ready for use to the public in general. Consequently, we are of the opinion that petitioner herein comes within the purview of the term "manufacturer", contemplated in section 194 (x) of the Tax Code, he being a "person who by physical or chemical process alters - x x x - 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 x x x". A fundamental rule of statutory construction is that where a statute is clear and unambiguous on its face it can not be interpreted but must only be applied by the Court. (See Lizarraga Hermanos v. Yaptico, 24 Phil. 505, 513).

The petitioner argues however, that he is merely a dealer in furniture and that his act of varnishing furniture and affixing of mirrors and/or glasses thereon after which the same is sold, is merely an incident to his main business of dealing in furniture. This same argument has been answered in the case of Lin Tio, Dy Heng, and Dee Hue, B.T.A. Case No. 102, decided by the defunct Board of Tax Appeals, which petitioner admits stands four-square with the instant case. In the said case, the defunct Board of Tax Appeals held, and we quote:

> "We cannot agree with the theory of petitioners. If it is true that the pieces of furniture purchased by the petitioners were already finished products, marketable and usable at the time of purchase, what then was the necessity of varnishing and putting on these glasses or mirrors? It is true that some pieces of furniture may be purchased without varnish or mirrors by private individuals and the purchasers may varnish and put on them mirrors or glasses in order to minimize the purchase price, but it is also an undeniable fact that said furniture are not for commercial purposes but for the personal use of the purchasers. When the petitioness altered the quality of the furniture purchased by them for sale by varnishing and putting on glasses or mirrors in order to obtain a higher price in the market, they come squarely within the purview of section 194 (x) of the Tax Code. If the petitioners were mere agents or dealers of the manufacturers, there was no need for them to alter the quality of the furniture they bought. To accept petitioner's theory would be tantamount to sanctioning the practice of some manufacturers to find a loophole or circumvent the law in order to lessen the manu-

> <u>facturer's percentage tax as provided by the Tax Code</u>." (Resolution, December 29, 1952, Request for Reconsideration denied; underscoring supplied.)

We find the above-quoted opinion of the Board well-taken and <u>en rapport</u> with our own. It is without doubt that the main purpose of petitioner in buying the partially manufactured furniture, that is, without varnish, mirrors and/or glasses, is to subject the same to certain process which would convert them into finished products ready for use and salable in the general market. And to our mind, this process which petitioner employs falls squarely within the definition of "manufacturing" as contemplated by section 194 (x) of the Tax Code.

Relative to petitioner's contention that "the manufacturer's tax should be imposed only once upon the person who sells furniture in an already manufactured form and condition and not to all subsequent dealers of the same furniture who applies physical or chemical process thereon to make it more attractive and hence more salable", we find the same to be without merit. We believe that only those furniture dealers who buy furniture and sells the same without changing the form and <u>condition or quality</u> of the furniture through physical or chemical process should not be subject to the manufacturer's tax imposed by section 186 in relation to section 183 (a) of the Tax Code. Petitioner definitely is not of this class of furniture dealers.

In fine, therefore, we are of the opinion and so hold that petitioner is a manufacturer subject to the percentage tax imposed by section 186 in relation to section 183 (a) of the Tax Code.

It appears that the assessment or the computation of tax due inclusive of surcharge is not disputed by petitioner. However, with regards to the compromise penalty of ₱100.00 sought to be collected from petitioner, we believe that this Court has no jurisdiction to compel petitioner to pay the same. We have consistently held that a compromise penalty by its very nature implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised (Briñas vs. Collector of Internal Revenue, C.T.A. Case No. 16, Sept. 14, 1955; Central Azucarera de Tarlac vs. Collector of Internal Revenue, C.T.A. Case No. 90, July 9, 1956), and the choice of paying or not paying it distinctly belongs to petitioner (Cosmos Kapok Factory vs. Araneta, C.T.A. Case No. 125, March 29, 1957).

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision appealed from is modified in the sense that petitioner Yu Kuan, as owner of the Hudson Furniture Store, is hereby ordered to pay to the respondent Collector of Internal Revenue or his authorized representatives the sum of ₱1,055.11, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, August 3, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge