LIM TIONG (Manila Lumber),
Petitioner,

- versus - C.T.A. CASE NO. 157

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

April 27, 1956

D E C I S I O N

This is an appeal from the decision of the respondent Collector of Internal Revenue assessing and demanding from the petitioner the payment of the sum of ₱2,938.20 as deficiency sales tax and surcharge, and the additional sum of ₱250.00 in extrajudicial settlement of his penal liability for violation of the provisions of the National Internal Revenue Code, or a total of ₱3,188.20.

It appears that petitioner Lim Tiong owns and operates the Manila Lumber which is provided with C-13 privilege tax receipt for buying and selling logs and lumber, and C-14 privilege tax receipt for buying logs intended to be sold after having been cut into standard sizes of lumber. The petitioner, not being an owner of a sawmill, merely buys logs and have them processed into lumber of various sizes by the Oriental Sawmill, Pio Barretto & Sons and other sawmills in Manila. He then pays the sawmill owners for their services rendered computed on the number of board feet cut and/or sawn. (Memorandum for the Petitioner, p. 1; Stipulation of Facts, par. 2)

Prior to September 22, 1950, the date when Republic Act No. 588 took effect, the petitioner had been paying the 5% sales tax on the gross selling price of the lumber after deducting the cost of the logs. After the date just mentioned, the petitioner continued to pay the 5% sales tax but computed on the 33 1/3% of the gross cost of logs purchased and from which said lumber were processed, pursuant to the second paragraph of Section 186 of the National Internal Revenue Code, as amended by Republic Act Nos. 588, 594 and 894.

On May 21, 1954, the respondent Collector of Internal Revenue issued an assessment and demand against the petitioner requiring the payment of the sum of ₱2,938.20 as deficiency sales tax and surcharge covering the period from 1949 to 1953, inclusive, plus the additional amount of ₱250.00 in extrajudicial settlement of his penal liability. The said deficiency assessment which is the subject of the present appeal, was computed by the respondent on the basis of 5% sales tax on the gross sales of lumber less the cost of the logs converted into such lumber in accordance with the first paragraph of Section 186 of the Tax Code, as amended. The petitioner admits the correctness and accuracy of the figures in the deficiency assessment but questions the basis on which the said assessment was computed.

The only question at issue in this case is the determination of whether or not the petitioner is "an operator of a sawmill" in order that he can take advantage of the provisions of the second paragraph of section 186 of the National Internal Revenue Code with respect to the payment of the 5% sales tax on the lumber he is selling.

Section 186 of the Tax Code reads in part as follows:

> "Sec. 186. Percentage tax on sales of other articles. There shall be levied, assessed, and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations to transfer ownership of, or title to, the articles not enumerated in section one hundred and eighty-four and one hundred and eighty-five a tax equivalent to seven per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: Provided, That where the articles are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles: And Provided, further, That with respect to all forest products, whether manufactured or in the original form, a tax equivalent to five per centum only of the selling price or gross value in money shall be levied, assessed, and collected; And provided, finally, That with respect to goods or products shipped or exported abroad, no percentage tax shall be levied thereon irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods or products exported.
>
> In the case of operators or proprietors of sawmills, who buy logs for the purpose of sawing and/or cutting them into lumber of

> standard sizes, the tax prescribed in this section shall be computed on thirty-three and one-third per centum of the gross cost of logs purchased during any given quarter intended for manufacture. x x x x " (As amended by Republic Act Nos. 588, 594 and 894) (Underscoring supplied)

The petitioner contends that he is an operator of a sawmill and therefore his tax liability on the sales of lumber should be computed on 33 1/3% of the gross cost of logs purchased during each quarter. We find this contention of the petitioner without merit. It is not supported by the facts as proved and established at the trial of the case. On the contrary, the records clearly show that he does not own or operate one, nor did he, at one time or another, ever enter into a contract of lease of a sawmill. No iota of evidence was presented to show that during the period in question, the petitioner was in possession of, or at least had something to do with the running of any sawmill. He merely hired the services of operators and owners of sawmills on a piece of work basis, and paid them for their work rendered computed on the number of board feed cut and/or sawn.

However, the petitioner insists that he is an operator of a sawmill, at least by fiction of law. He argues that a sawmill is a factory or manufacturing establishment where the conversion of logs into lumber of different sizes is effected. Inasmuch as in the payment of his sales tax, the petitioner is considered a manufacturer of lumber under section 186 of the Tax Code, he concludes that he is also an operator of a sawmill because one cannot be a manufacturer of lumber without being an operator of a sawmill, at least by fiction of law.

We cannot subscribe to the result of the legal gymnastics of the petitioner which unreasonably extend the meaning and import of words. It is our considered opinion that the term "operators of sawmills" as used in section 186 of the National Internal Revenue Code refers only to those who actually supervise, manage and control the operation of sawmills. In the instant case, the petitioner has no say whatsoever in the management and operation of any sawmill and we hold that he is not an operator of a sawmill.

Moreover, the petitioner does not possess the necessary permit from the Director of Forestry for the operation of a sawmill which is required by Republic Act No. 460. To our mind, this is a clear index that the petitioner is in reality not an operator of a sawmill which he pretends to be, and bolters our conclusion that he should pay the percentage sales tax under the first paragraph of Section 186 of the National Internal Revenue Code.

WHEREFORE, the petitioner is hereby ordered to pay the sum of ₱2,938.20 as deficiency sales tax and surcharge covering the period from 1949 to 1953 inclusive.

DECISION -
C.T.A. CASE NO. 157

SO ORDERED.

Manila, Philippines, April 27,1956.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
did not take part in the
proceddings.