Lia.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

ZAMBOANGA RUBBER COMPANY,
Petitioner,

- versus -

C.T.A. Case No. 386

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

10/6/75

D E C I S I O N

This appeal involves a claim for refund by petitioner of the amount of ₱12,461.10 paid by it by way of sales tax covering the period from July 15, 1955 to October 19, 1956.

As stipulated to by the parties, the facts of the case are as follows:

> 1. The petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office in the City of Manila; the respondent is the Commissioner of Internal Revenue of the Republic of the Philippines duly appointed and acting as such with office at the Finance Building, Manila.
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> 2. The petitioner is engaged, among other things, in the production and sale of raw rubber which is planted by itself in its plantation located at Kabasalan, Zamboanga, and the generally accepted process of production is as follows:
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> > 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 incision 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 collect 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 into 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 which we now describe briefly hereunder.

To produce 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 throughly, 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. 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.

The petitioner's rollers are powered by engines. If Ribbed Smoked Sheets Nos. 1 and 2 are not air-dried and smoked, they deteriorate, get spoiled, and the color varies.

3 x Brown Crepe Rubber

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'. 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 or pressure it forms 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 not marketable because it is spoiled and has a bad odor.

2 x Brown Crepe Rubber

2 x Brown Crepe is obtained by milling or rolling the excess pieces of coagulated rubber latex out over from the smoked sheet 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 chemicals.

3. That as a result of petitioner's operation, the City Treasurer of Manila, acting in behalf of the respondent Collector of Internal Revenue, assessed and collected 7% sales tax on the sale of raw rubber by petitioner herein.

4. That petitioner, in accordance with said assessments, paid the same and has paid from July 15, 1955 to October 19, 1956 a total of ₱12,461.10, the details of which are copied hereunder:

SUMMARY OF SALES TAXES PAID ON SMOKED RUBBER PRODUCTS SOLD DIRECTLY BY THE PRODUCER, ZAMBOANGA RUBBER CO., INC., AND TAXED UNDER SECTION 186, NIRC (BEFORE AMENDMENT BY REPUBLIC ACT 1612)

	O/R No.	For Qtr.	Date Paid	Amount Paid
1)	1170741	2nd Qtr. 1955	July 15, 1955	₱ 696.84
2)	1207091	3rd Qtr. 1955	Oct. 19, 1955	3,467.56
3)	1244852	4th Qtr. 1955	Jan. 19, 1956	2,637.25
4)	1280509	1st Qtr. 1956	Apr. 18, 1956	2,334.19
5)	B-0438762	2nd Qtr. 1956	July 17, 1956	1,256.95
6)	B-471353	3rd Qtr. 1956	Oct. 19, 1956	1,590.63
	GRAND TOTAL - - - - - - - - - - -			₱12,461.10

Photostat copies of the official receipts of payment therefor are hereto attached as Annexes "A-F", respectively, and made integral parts hereof.

5. That petitioner herein, claimed exemption under Section 188(b) of the National Internal Revenue Code of its raw rubber productions from the said percentage tax and requested respondent Collector of Internal Revenue to stop assessing

and collecting the same. Copy of the letter of the petitioner asking for exemption under the abovementioned section is hereto attached as Annex "G" and made an integral part hereof.

6. That on September 20, 1955, respondent Collector of Internal Revenue answered petitioner stating that inasmuch as petitioner's raw rubber is considered a manufactured product, the sale thereof is subject to the sales tax. Copy of Respondent's letter dated September 20, 1955 is hereto attached as Annex "H", and made an integral part hereof. (pp. 136-139, C.T.A. rec.)

The issues raised in this appeal are as follows:

(1) Whether the petitioner's rubber products which has been processed as described above are considered agricultural products within the meaning of Section 188(b) of the Tax Code.

(2) Whether or not the amount claimed by the herein petitioner is entitled to interest in the event this Court decides that the said amount is refundable to the herein petitioner.

Whether the petitioner's rubber products are agricultural or manufactured products have been squarely decided in the cases of Commissioner of Internal Revenue v. American Rubber Company and the Court of Tax Appeals, (18 SCRA 842, 849) and American Rubber Company v. The Commissioner of Internal Revenue, et al., (18 SCRA 842, 849) which involved the same kind of rubber products. In the said cases the Supreme Court held:

> The first issue, in our opinion, is governed by the principles laid down by this Court in Philippine Packing Corporation vs. Collector of Internal Revenue, 100 Phil. 545 et seq. We there ruled that the exemption from sales tax established in section 188(b) of the Internal Revenue Tax Code in favor of sales of agricultural products, whether in their original form or not, made by the producer or owner of the land where produced is not taken away merely because the produce undergoes processing at the hand of said producer or owner for the purpose of working his product into a more convenient

and valuable form suited to meet the demand of an expanded market; that the exemption was not designed in favor of the small agricultural producer, already exempted by the subsequent paragraphs of the same section 188, but that said exemption is not incompatible with large scale agricultural production that incidentally required resort to preservative processes designed to increase or prolong marketability of the product.

In the case before us, the parties have stipulated that fresh latex directly obtained from the rubber tree, which is clearly an agricultural product, becomes spoiled after only two hours. It has, therefore, a severely limited marketability. The addition of ammonia prevents its deterioration for about a month, and we see no reason why this preservative process should wrest away from the preserved latex the protective mantle of the tax exemption.

Taking also into account the great distance that separates the plaintiff's plantation from the main rubber processing centers in Japan, the United States and Europe, and the difficulty in handling products in liquid form, it can be discerned without difficulty that preserved latex with its 30-day spoilage limit, is still severely handicapped for export and dollar earning purposes.

To overcome these shortcomings, and extend its useful life almost indefinitely, it becomes necessary to separate and solidify the rubber granules diffused in the latex, and hence, according to the stipulation of facts and the evidence, acetic acid is added to hasten coagulation. There is nothing on record to show that the acetic acid in any way produces anything that was not originally in the source, the liquid latex. The coagulum is then rolled and compacted and afterwards air dried to make Pale Crepe (1 and 2), or else cured and smoked to produce rubber sheets. Once again we see nothing in this processing to alter the agricultural nature of the result; what takes place is merely an accelerated coagulation and dessication that would naturally occur anyway, only within a longer period of time, coupled with greater spoilage of the product.

Thus the operations carried out by plaintiff appear to be purely preservative in nature, made necessary by its production of fresh rubber latex in a large scale. They are purely incidental to the latter, just as the canning of skinned and

> cored pineapples in syrup was held to be incidental to the large-scale cultivation of the fruit in the Philippine Packing Corporation case (ante). Being necessary to suit the product to the demands of the market, the operations in both cases should lead to the same result, non-taxability of the sales of the respective agricultural products. In not so holding, the Tax Court was in error.
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> Even less justifiable is the position taken by the Revenue Commissioner in his appeal against the finding of the Tax Court that Flat Bark 3X Brown Crepe rubber are agricultural products. According to the record, these sheets result from the drippings and waste rubber that have dried naturally, that are rolled and compacted into the desired thickness, without any other processing.
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> As to 2X Brown Crepe which is compacted out of the trimmings and waste left over from the production of ribbed smoked sheets, no reason is seen why it should be treated differently from the ribbed smoked sheets themselves. (Underlining supplied)

The products involved in the aforecited cases were also Ribbed Smoked Sheet Nos. 1 and 2, 2 X Brown Crepe and 3 X Brown Crepe as in this case.

With respect to the second issue, we are of the opinion that since the collection of the sales tax involved herein does not appear to be tainted with arbitrariness, the respondent is not liable for interest on the refund. (Collector of Int. Rev. v. Antonio Prieto, et al., 3 SCRA 101; Comm. of Int. Rev. v. Asturias Sugar Central, Inc., 3 SCRA 727)

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner the sum of P12,461.10, representing the sales tax paid for the period from July 1955 to October, 1956. Without costs.

SO ORDERED.

Quezon City, October 6, 1975

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge