

100 Phil. 60

[ G.R. No. L-8989. October 18, 1956 ]

**NGO SHIEK, PETITIONER AND APPELLANT, VS. COLLECTOR OF INTERNAL REVENUE, RES APPELLEE.**

**D E C I S I O N**

**REYES, J.B.L., J.:**

Ngo Siek prays, through counsel, for a review of the decision of the Court Appeals (CTA No. 14) holding him liable for manufacturer's 7 per cent the prescribed by section 186 of the National Internal Revenue Code, on sale of salted in the shell, and further holding that the cost of fresh eggs is not deductible from the gross sales of salted eggs.

There is no dispute that petitioner purchased raw or fresh eggs and later resold same after subjecting them to the following manipulations:

Fresh eggs were immersed in a solution of salt, mud, lime, ash and water contained in a can or vat. After immersion in said solution, the eggs were placed in big baskets and covered with hay. After a week, eggs were cleaned of mud and boiled, after which they were immersed in water containing basic red coloring. They were then allowed to dry, and the eggs were ready for the market." (Petition for review, p. 16)

The appellant Ngo Shiek was assessed, and paid, the amount of P3,499.08 as fixed and sales taxes and surcharges, on the basis of his sales of salted egg during the years 1951 and 1952, under sections 182 and 186 of the Internal Revenue Code. His request for refund having been denied, he brought the case to the Court Tax Appeals, with the unfavorable results noted at the start of the opinion.

The first issue tendered by appellant, that his sales are not taxable because manipulations to convert raw or fresh eggs into salted ones do not amount to the manufacture, is

unmeritorious. The evidence is clear, and in fact the Court well take judicial cognizance of it, that the salting, and boiling imp the substantially, different qualities than those possessed by the the fresh eggs. The shell toughened, and the contents solidified; the taste is altered, phosphorous lecithin compound of the fresh eggs is decomposed, with liberation of the oily lecithin that did not exist in the free state in the raw mater p. 4). While the egg remains edible, the qualities of the finished product sufficiently changed it unfit for certain purposes, while acquiring adaptability for others that the eggs do not possess. No one, for example, would use salted eggs to make ice cream; not would he use fresh egg for mixing with chopped tomatoes to make the well known condiment. That the qualities of salted eggs are sufficiently altered to make them a distinct product is shown by the trade custom of tinting the shells red, to differentiate the from other kinds of eggs. :

Even granting that the processing of eggs into the salted ones does not amount to manufacturing in the ordinary parlance, it certainly involves the production, and makes of appellant a producer, of a distinct class of merchandise, with qualities its own; hence the sales thereof are taxable under section 186 of National Internal Revenue Code, at “seven *per centum* of the gross selling p or gross in money, of the articles so sold—such tax to be paid by the *manufacturer o producer.*”

It is true that under section 188 of the Revenue Code, the sale of agriculture products (and eggs are undoubtedly such products) “whether in their original state or not” are exempt from the tax; but only when sold by the producer o owner of the land where produced.” The appellant is not the producer of the fresh egg’s converted into salted ones: he purchased the eggs from importer and producers, and consequently, being an intermediary processor, he is not entitled to exemption under section 188. Had the appellant been the owner o poultry that laid the eggs subsequently processed by him, his claim for exemption would be more plausible.

The second claim insisted upon by the appellant is that he should be allowed discount, from the value of his taxable sales, the cost of the fresh eggs used by him in 1952, and purchased locally. We see no merit in that contention. Under section 186 of the Revenue Code,

“\* \* \* where the articles are manufactured out of materials *subject to tax section*, the total cost of such materials, as duly established, shall deductible the gross selling price or gross value in money of the manufactured article Emphasis supplied).

But appellant has not shown that the fresh eggs used by him are subject to tax under section 186; on the contrary, they would be exempt from sales tax agricultural products if sold by the original producer (section 188).

We find no error in the appealed decision of the Court of Tax Appeals, and hence affirm the same, with costs against appellant.

*Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur*

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