

AMERICAN RUBBER COMPANY (NOW AMERICAN RUBBER CORPORATION), PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE (NOW THE COMMISSIONER OF INTERNAL REVENUE) AND THE COURT OF TAX APPE...*G.R. No. L-25965. June 30, 1975*

Ponente: ESGUERRA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/236229e85fd6/>**ESGUERRA, J.:**

In Case No. 164, the Court of Tax Appeals in its decision dated July 31, 1965, held the petitioner, American Rubber Company (now American Rubber Corporation), liable for the payment of the sum of P47,374.38, representing deficiency sales tax and surcharge on its sales of lumber during the years 1950; 1951, 1952 and 1953. Hence this appeal.

Petitioner, a domestic corporation organized under the laws of the Philippines, is engaged in the business of producing logs and lumber for sale. It acquired its logs from its forest concession in Basilan City duly licensed by the Bureau of Forestry. (Exhibits "E-3", "E-4", t.s.n. pp. 15, 16, 95-96 Vol. 1 CTA rec.) It likewise cut timber in the forest covered by the UP Land Grant which was operated by the Santa Clara Lumber Co., Inc. hereinafter referred to as SCLCO, under Timber License Agreement No. 1 executed between the UP and SCLCO wherein the latter had an "exclusive license to cut, collect and remove timber of all groups from the Grant, subject to certain conditions, including payment of SCLCO to the UP of the corresponding forest charges on all timber cut and removed from the area in accordance with Commonwealth Act No. 466 (National Internal Revenue Code) and such other charges as may be required by other laws." (p. 7 Petitioner's Brief) Apart from this, petitioner hereinafter referred to as ARCO, was allowed to cut timber and operated a portion of the southwestern corner of SCLCO's concession in Basilan covered by Timber License No. 1425-V, which portion was applied for by ARCO and finally included in its Ordinary Timber License No. 2175, renewed May 31, 1947, and extended on July 6, 1948, to cover period ending June 30, 1952. (p. 10 Petitioner's Brief)

The operation of the aforesaid areas was embodied in a "Letter Agreement" executed between ARCO and SCLCO on January 13, 1948, which agreement is quoted hereunder:

"American Rubber Company
"Isabela de Basilan, Zamboanga

"Dear Sirs:

"In connection with your request which was approved by the Board of Directors of the Company in its last meeting, you are allowed to cut timber in the Southwestern corner of our Concession at Isabela de Basilan with an area of not over 400 hectares under the following terms and conditions:

"1. In the event that you will stop the operation of your mill or sell and or transfer the ownership of your present lumber business, the above portion of our Concession will be reverted to us;

"2. The Sta. Clara Lumber Co., will be allowed the free use of your private roads;

"3. The Sta. Clara Lumber Co., shall continue to take charge of the disposal of your production that may be sent to Manila in accordance with present arrangements.

"The Sta. Clara Lumber Co., will take up this matter with the proper authorities for the proper execution of whatever requirements that may be needed pursuant to its agreement.

If the above terms and conditions are agreeable to you, please sign and indicate your conformity on the space provided for below.

"Very truly yours,

"Sta. Clara Lumber Co., Inc.

"By T. M. Diaz

General Manager

Agreed:

"American Rubber Company

"By J. W. Strong"

From May, 1949, through February, 1952, Mr. Denoga, Administrator of the UP Land Grant, prepared monthly scale reports of timber cut by petitioner from the UP Land Grant, pursuant to which the UP billed forest charges against the SCLCO which paid the bills, later reimbursed by ARCO. (p. 561 t.s.n. Vol. II CTA rec.)

As testified to by Mr. Roque de Leon, "No. 2 man" of American Rubber Co.(ARCO) (t.s.n. 400-411 Vol. 11 CTA rec.), all the logs of petitioner in the lumber business were disposed of in the following manner:

"Timber were cut down from the UP Land Grant and/or the forest concession of petitioner, then the same were hauled in petitioner's trucks to its sawmills where they are sawn into lumber. The lumber were then loaded in petitioner's truck and hauled to petitioner's dock at Isabela, Basilan, where Jose Rubia, petitioner's checker, checked the same and prepared a summary or recapitulation from the tally sheets. Petitioner retained a copy of the recapitulation and forwarded four copies to SCLCO's office at Isabela, Basilan. The tally sheets and the corresponding recapitulations were marked Exhibits "Y", "Y-1" to "Y-152-a".

The lumber pieces belonging to petitioner which were deposited at petitioner's dock at Isabela, Basilan, were sold thru contracts executed by SCLCO with different buyers in Manila and the contracts recited among others that said lumber was "the timber of American Rubber Company". (Exhs. "F-187", "G-137", "10-H24-b")

SCLCO issued in behalf of petitioner sales invoices to said buyers. Petitioner reimbursed SCLCO for transportation, handling and other expenses advanced by the latter. After SCLCO had shipped to Manila buyers the lumber marked "ARCO", bills of lading were issued in favor of SCLCO as shipper and consignee. In some bills of lading, petitioner appears as shipper and SCLCO as consignee. (t.s.n. pp. 265-283)

SCLCO insured the lumber against marine risks of loss or damage occurring while in transit from petitioner's dock at Basilan to Manila. The premiums were allegedly paid by it although it is the contention of respondent that these premium payments were reimbursed by ARCO.

After delivery of the lumber sold by SCLCO in behalf of petitioner, SCLCO sent to petitioner's Manila office liquidation statements of said lumber shipped to Manila (t.s.n. pp. 450-451) which papers consisted of statements of lumber costs, bank deposit slips, bills of lading and lumber sales contracts. (t.s.n. 452-458) SCLCO in making the sales, charged and collected a 5% commission which was deducted from the gross sales. Likewise it deducted

freight, unloading and trucking charges from the proceeds of sale and the balance was deposited by SCLCO with petitioner's bank account at the National City Bank of New York. SCLCO provided itself with the privilege tax receipt and paid percentage taxes as commercial brokers during the period in question. (p. 331 CTA rec.)

On or about August 27, 1953, General Enterprises, Inc., a local business firm with offices at Basilan City, entered into a contract with petitioner wherein it appears that the General Enterprises Inc. agreed to ship to Japan, SS "Tamon Maru" under B/L No. 1 voyage No. 6. 400,000 bd. ft., of round apitong logs for which General Enterprises paid the sum of P32,000.00 to petitioner. The latter did not declare this sale nor did it pay the sales tax therefor. (p. 37 Petitioner's Brief)

Jose Cabrera, agent of the Bureau of Internal Revenue, conducted the investigation on petitioner company's business transactions for the years 1949 to 1953, and as a result of this investigation an assessment was recommended. On February 11, 1955, petitioner was assessed for alleged deficiency sales tax and surcharge in the sum of P66,022.77, itemized as follows:

Gross sales for 1949 — P941, 218.32

5% tax due

P47,060 92

Less: Taxes paid

36,509.54

Deficiency sales tax

10,551.38

Gross sales for 1950 — P1,700,308.59

5% tax due

P85,015.43

Less: Taxes paid

63,557.47

Deficiency sales tax

P21,457.96

Gross sales for 1951 — P1,203,736.29

5% tax due

P60,186.81

Less: Taxes paid

47,309.74

Deficiency sales tax

P12,877.07

Gross sales for 1952 — P164,294.94

5% tax due

P8,214.75

Less: Taxes paid

6,250.28

Deficiency sales tax

P1,964.47

Gross sales for 1953 — P32,000.00

5% tax due

1,600.00

Total deficiency sales tax brought forward

P48,450.88

25% surcharge

12,112.72

Add. Unpaid 25% surcharge for the 4th quarter of 1952

564.17

P61,127.77

Penalty for failure to pay on time

4,845.00

Penalty for using general journal and ledger in loose form without written authorization of BIR

50.00

TOTAL

66,022.77

=====

On July 25, 1955, petitioner filed a petition for review of the assessment with the Court of Tax Appeals. On July 27, 1955, CTA ordered respondent Commissioner (BIR) to file an answer to the petition for review. The Commissioner, by way of special defense pleaded that respondent CTA had no jurisdiction over the case. After a preliminary hearing on the issue of jurisdiction and after the submission by the parties of their respective memoranda, the CTA on August 25, 1956, resolved that it has jurisdiction of the case (pp. 72. 80 CTA rec.)

Respondent Commissioner sought a review by certiorari on the issue of jurisdiction, G. R. No. L-11612. This Court sustained the jurisdiction of respondent CTA which then proceeded with the trial of this case on the merits. On July 31, 1965, the respondent court handed down its decision modifying the assessment of the Commissioner, the dispositive portion of which reads:

"FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby modified, and petitioner is hereby ordered to pay the sum of P47,374.38, representing deficiency sales tax and surcharge on its sales of lumber during the years 1950, 1951, 1952 and 1953, within 30 days from the date this decision becomes final. Without pronouncement as to costs."

On October 2, 1965, petitioner filed with the respondent court a motion for reconsideration which was denied in its resolution dated April 20, 1966. On April 27, 1966, petitioner filed this petition for review, assigning the following errors:

"1. Respondent court erroneously held that SCLCO was an agent of petitioner in the questioned sales of lumber;

"2. Assuming, arguendo, that SCLCO was an agent of the petitioner in the questioned sales of lumber, respondent court erred:

(a) In not correctly computing the gross sales price of the turn her to the extent of the "discounts" provided in the contract of sale for broken pieces and short deliveries;

(b) In not deducting petitioner's cost in acquiring title to the logs cut from the UP Land Grant and the SCLCO forest concession.

"3. Assuming arguendo, that SCLCO was an agent of the petitioner in the questioned sales of lumber, respondent court erred in assessing petitioner for the years 1950 to 1952:

(a) On the basis of the first paragraph of Section 186 of the National Internal Revenue Code instead of the second paragraph of said provision after enactment of R.A. 588 on September 22, 1950 as amended by R.A. 894 dated June 20, 1953, and the enactment of R.A. 460 on June 8, 1950; and

(b) On the freight, handling and other expenses in the transportation of the lumber and logs from Basilan to Manila.

"4. Assuming, arguendo, that SCLCO was an agent of petitioner in the questioned sales of lumber, respondent court erred in relying upon evidence pertaining to the sales of lumber in 1949 and in overlooking or ignoring the evidence pertaining to the sales of lumber during the years 1950-52 in deciding whether there are sales taxes payable for said years.

"5. Respondent court erred in finding as a fact that it was not petitioner but the General Enterprises, Inc. that was the shipper of the logs involved in the assessment for 1953."

Thrust upon Us, therefore, for resolution is the question of whether or not the Court of Tax Appeals correctly affirmed the assessment of the Commissioner as regards petitioners alleged deficiency sales tax and surcharge.

I

Regarding the first assigned error, it is the contention of petitioner that based on the "Letter Agreement" Exh. "X" supra, executed between SCLCO and ARCO, it is clear and evident that there existed no contract of agency but rather a contract of purchase and sale or a contract for a piece of work. We believe otherwise and sustain respondent courts' theory of agency as the controlling relationship between petitioner and SCLCO. As a general rule the essence of a contract determines what law should apply to the relation between the parties and not what the parties prefer to call that relationship. However, only the acts of the contracting parties, subsequent to and in connection with the execution of the contract, must be considered for purpose of interpreting the same. A careful review of the voluminous records of the CTA reveals these facts: (a) that after the delivery of the logs of petitioner at Isabela, Basilan, SCLCO undertook the transportation of lumber from Isabela, Basilan, to Manila and paid the freight charges but which expenses were reimbursed by petitioner. (t.s.n. 581-583 Vol. II CTA rec.) The buyers in turn reimbursed the petitioner for the transportation, handling and other expenses in the amount of P35.00 per 1,000 bd. ft. which were advanced by the seller. (t.s.n. 581-583, 630-634, 643, 644-646, 725--735). The bills of lading covering the shipments were either consigned to ARCO or to SCLCO. Said bills of lading show that the purchase price includes not only the cost but also the freight, trucking, unloading and other expenses. These facts disproved the contention of petitioner that after delivery of its logs at Isabela, Basilan, ownership passed to SCLCO and "there ends their business with the lumber." (t.s.n. pp. 457-458); (b) that SCLCO after selling petitioners lumber collected payment of the same and remitted the proceeds of the sale to petitioner by depositing said proceeds with petitioners bank. (t.s.n. p. 472 Vol. II CTA rec.) In this connection too, a letter of transmittal dated June 7, 1949, was shown, the contents of which are hereunder reproduced. (Exh. "F-III")

"Dr. J.W. Strong
"American Rubber Co.
"Basilan City

"Dear Dr. Strong:

"Herewith please find the duplicate deposit slip in the amount of P 13,165.41 covering proceeds from sale of lumber you shipped to us on the Northern Hawker on May 15, 1949.

"Enclosed also are the statement of proceeds, bill to the customer and the corresponding sales contract.

"We believe that for the present and in the immediate future the price of lumber in the Manila market is fixed at P135.00 per M. bd. ft. for White Lauan and Apitong and P155.00 for Red Lauan.

"We hope that there will further be no slump in prices, the supply and demand at this time being almost about right. We might be a little too optimistic hut it is our own belief that prices will no longer go further down, notwithstanding the rainy season which has already started to set in, because of the closing of some of the small mills.

Very truly yours.

"Sta. Clara Lumber Co., Inc.

"By

(Sgd.) M. Diaz

General Manager"

On cross examination of Mr. Roque de Leon, representative of ARCO, regarding the aforequoted transmittal letter, this witness who earlier qualified himself to be the "No. 2 man" of ARCO, who had been employed with the firm for quite a long time and is supposed to have been "in the know", was caught in a quagmire and pleaded ignorance of the particular transaction and apologized 'that he was a mere subordinate to Dr. Strong and the latter made orders'. (t.s.n. pp. 586-587 Vol. II CTA rec.); (c) In compensation for its services, SCLCO, charged 5% commission on its sales of petitioner's lumber for which it provided itself with the privilege tax receipt and paid percentage tax as commercial broker. (Exh. "16", p. 331 CTA rec.) Anent the "commission", petitioner claims that SCLCO was its special customer entitled to a 5% commission and in support thereof petitioner cited the cases of Quiroga vs. Parsons, 38 Phil. 501 and Puyat and Sons, Inc. vs. ARCO Amusement Co., 72 Phil. 402. We have gone over said cases and We found that they are not on all fours with the case at bar because in both a contract of purchase and sale, clear on its face, existed between the parties; (d) SCLCO billed 5% sales tax as a separate item in the invoice issued by it to the Manila buyers. As found by the respondent court (Decision CTA, p. 484 CTA rec.): "For instance, in Invoice No. 4586, dated August 29, 1949, covering a sale of lumber to the New Manila Lumber Co. (Exh. "F-186" pp. 24-25 Memo for Petitioner), the sales tax of 5% in the sum of P979.56 was billed as a separate item in the invoice. If as alleged, the lumber was sold by petitioner to Sta. Clara Lumber Co., the resale of said lumber by the latter to the New Manila Lumber Co. is not subject to sales tax as it was not an original sale. The fact that the invoice shows that the sales tax was billed to the purchaser (New Manila Lumber Co.) conclusively shows that the sale was made by Sta. Clara Lumber Co. for petitioner and not for its own account." This is a finding of fact which We do not disturb as there is no showing of abuse on the part of respondent court which would warrant a review thereof. We have likewise gone over the three volumes of stenographic notes taken during the hearing before the respondent court and noted the testimony of Mr. Roque de Leon of ARCO who stated that it has been the practice of their company to issue sales invoices whenever a sale was made as per requirement of the law. (t.s.n. p. 481 Vol. II, CTA rec.) However, with regard to this particular transaction between SCLCO and ARCO involving lumber, no sales invoice was issued but instead tally sheets were prepared. When queried why, Mr. de Leon miserably failed to offer an explanation except for his usual and trite excuse that "he did not know the reason for such procedure and that he was a mere subordinate and could not question Dr. Strong's wishes." The reason, We believe, why petitioner did not issue sales invoices is the fact that SCLCO acted only as agent of petitioner as shown by the aforementioned circumstances surrounding the transactions between the petitioner and SCLCO.

II

On the second assigned error, We cannot see Our way clear to petitioner's contention that the cost in acquiring title to the logs cut by petitioner from the UP Land Grant and the Sta. Clara Lumber Co. Timber Concession should have been deducted pursuant to Section 186 of the National Internal Revenue Code.[1] Apart from the forest charges which the UP billed against SCLCO on timber cut by petitioner and which charges petitioner paid back SCLCO, there is no showing in the record that the logs were previously subjected to sales tax paid by the UP or the SCLCO. Forest charges are different from sales tax as provided for in the Tax Code.

As regards the alleged discounts granted by SCLCO to its Manila buyers, again petitioner claims that the Court of Tax Appeals erred in computing deficiency sales tax and 25% surcharge on the gross selling price of the lumber to the extent of these discounts. While it is true however that there was a stipulation in the sale contract executed by SCLCO, [2] on behalf of petitioner, with the Manila buyers that a discount shall be given on short deliveries etc., yet from the SCLCO's Lumber Bill charged against the Manila buyers, no such discount appeared to have been given. This is evidenced by the sample document reproduced by no less than Petitioner himself in its Brief

(pp. 32-34).

III

Under the third assigned error, petitioner contends that the deficiency sales tax for the years 1950 and 1952 should have been assessed on the basis of the second paragraph of Section 186 which provides for a special treatment of operators or proprietors of sawmills whose sales tax liability is computed on a 33-1/3% of the gross cost of logs purchased during any given month intended for manufacture into lumber, instead of under the first paragraph thereof.

Petitioner's theory is tenable if he were a mere sawmill operator. Record shows, however, that petitioner not only logged areas controlled by SCLCO during the years 1950 through 1953 but it likewise logged from its own concession. As was stated earlier (pp. 1 & 2 supra), petitioner was in the business of producing logs and lumber for sale, which logs he acquired from the concession of SCLCO and also from its own forest concession duly licensed by the Bureau of Forestry (Ordinary Timber License No. 2175-Renewal issued on May 31, 1947, in favor of petitioner and extended up to June 1952). Petitioner, therefore, being a forest concessionaire as well as a sawmill operator, clearly falls under, and is subject to, the first paragraph of Section 186 which provides:

"A sawmill operator who is at the same time a holder of an ordinary timber license is subject to the 7% sales tax on his gross sales of lumber produced by his sawmill."

It is also noteworthy that the second paragraph of Section 186 which provides for a lesser tax was subsequently deleted by R.A. 6110 made effective in September 1969. By virtue of the deletion, the sales tax payable by this class of taxpayers shall now be computed as provided for in the first and only remaining paragraph of the section.

Likewise petitioner's contention that the Court of Tax Appeals erred in assessing it from 1950 to 1952 on the freight, handling and other expenses, is devoid of merit. Section 186 of the Tax Code, explicitly provides that the freight charges and expenses of trucking are considered part of the gross selling price. On the term "actual selling price or gross value in money" on which Section 186 of the Tax Code assesses the merchant's percentage or sales tax, Mr. Jose Aranas, a tax expert and former Commissioner of Internal Revenue, writes:[3]

"This signifies the sum stipulated as the equivalent of the thing sold and also every incident taken into consideration for the fixing of the price, put to the debit of the vendee and agreed to by him. In other words, the tax is based not only on the actual cost of production of the goods and the profit added thereto by the vendor to make up its mill or factory price of the merchandise, but also upon each and every incident expense taken into account charged to and paid by the vendee, whether or not the former makes additional profit on these incidental items."

It is evident on the record that petitioner sold the lumber and that title to the lumber it sold passed to the buyer in Manila and not in Basilan, contrary to the terms of the sales contract executed by and between SCLCO and the buyers in Manila. Petitioner paid sales tax only on the net selling price of the lumber, i.e., on the gross selling price, less freight, trucking, handling and other expenses which formed part of said gross selling price. The deficiency, sales tax in question was assessed on the freight charges and other expenses of trucking and unloading advanced by SCLCO and billed to the buyer in Manila. If petitioner intended to consummate the sale of lumber at the point of origin in Basilan, and not at the point of destination in Manila, We see no reason why petitioner, thru its agent SCLCO, assumed the payment of the handling, transportation and other expenses from Basilan to Manila notwithstanding the "FOB" nature of the transaction. In the case of *Behn Meyer and Co. vs. Yangco*, 38 Phil. 602, 605, 606, the words "FOB" and "CIF" were clearly defined viz:

"Determination of the place of delivery always resolves itself into a question of fact. If the contract be silent as

to the person or mode by which the goods are to be sent, delivery by the vendor to a common carrier, in the usual and ordinary course of business, transfers the property to the vendee. A specification in a contract relative to the payment of the freight can be taken to indicate the intention of the parties in regard to the place of delivery. If the buyer is to pay the freight; it is reasonable to suppose that he does so because the goods become his at the point of shipment. On the other hand, if the seller is to pay the freight the inference is equally strong that the duty of the seller is to have the goods transported to their ultimate destination and the title to property does not pass until the goods have reached their destination.

"CIF stand for costs, insurance and freight. They signify that the price fixed covers not only the costs of the goods, but the expense of freight and insurance to be paid by the seller.

"FOB means that the seller shall bear all expenses until the goods are delivered where they are to be FOB. According as to whether the goods are to be delivered FOB at the point of shipment or at the point of destination determines the time when property passes.

"Both of the terms CIF and FOB merely make rules of presumption which yield to proof of contrary intention. The question is one of intent, to be ascertained by a consideration of all circumstances."

Under the sales contract between SCLCO and the Manila buyers, it is shown that petitioner was the owner and seller of the lumber sold and that the transportation, handling and other expenses from Basilan to Manila were paid by the seller. Involving the same shipment covered by the sales contract, supra, is the liquidation statement which We also quote hereunder, showing that petitioner paid for transportation handling and other expenses from Basilan to Manila.

"Sta. Clara Lumber Co. Inc.

501 Tecson, Manila

October 15, 1950

"Statement of Arco's Lumber

"Per M/ S Turkshead — Sept. 17, 1950

"129506 Board Ft. White Lauan at

P160.00

P.M.

P20,720.95

2579

Board Ft. White Lauan Strips

112.00

P.M.

288.85

4586 Board Ft. White Lauan Shorts

96.00

P.M.

440.26

39453 Board Ft. White Lauan Apitong

160.00

P.M.

6,312.48

889 Board Ft. White Lauan Strips

112.00

P.M.

99.57

1095 Board Ft. White Lauan Shorts

96.00

P.M.

105.12

83715 Board Ft. White Lauan Red Lauan

180.00

P.M.

15,068.70

1429 Board Ft. White Lauan Strips

126.00

P.M.

180.05

2407 Board Ft. White Lauan Shorts

108.00

P.M.

295.96

265659 board feet

P43,475.96

P.M.

Less 1/2% discount on short delivery

and badly broken pieces

217.38

P43,258.57

5% commission

2,162.93

P41,095.64

"Deduct expenses:

Freight charges on 265569 bd. ft. at P18.20 P.M.

P4,834.99

Additional charges on 265659 bd. ft.

199.24

Unloading charges at 265659 bd. Ft. at P4.00 P.M.

1,062.64

Trucking charges on 265569 bd. ft. at P8.00 P.M.

2,125.27

T o t a l

P 8,222.14

"Balance due ARCO

P32,873.50

Certified Correct

(Sgd.) M. Diaz

General Manager"

"The balance of P32,873.50 due to petitioner was deposited with the account of petitioner after deduction of expenses advanced by SCLCO as its agent, showing that the lumber were sold by petitioner. (Exhibit "G" and "10-H", Deposit slip p. 257; Exhibit "19-B", Account Sales 1950 Vol. II.)"

And since the freight charges, unloading, trucking and other incidental expenses formed part of the selling price of the lumber sold by SCLCO on behalf of the petitioner, the latter is liable for the payment of the deficiency sales tax. This is simply explained as follows:

"The sales tax is based on the gross and not on the selling price. Such being the case, the sales tax necessarily reaches the cost of manufacture and overhead expenses of the taxpayer, because in determining his gross selling price the taxpayer takes into account these items. Whatever maybe the theory behind the sales tax law is immaterial in the enforcement of the law. The law is quite clear and simply has to be enforced." (Aranas, Annotation and Jurisprudence on the National Internal Revenue Code, pp. 96 and 97, 1970 Ed.)

IV

Lastly, the petitioner claims that it shipped logs to Japan on the SS "TAMON MARU" No. 16 on August 27, 1953, and, therefore, on this particular transaction, being an export sale, no percentage tax should be collected.

It is to be noted that the particular provision of the Tax Code relative to this matter, as provided for in Section 186 as amended by R.A. 894, and referred to by the parties, was further amended by R.A. 6110. In the latter amendment, this provision on export sale was deleted. We can, therefore, safely say that with the deletion of this provision, the legislators intended to do away with this privilege. Although Section 188 of the Tax Code enumerates transactions and persons not subject to percentage tax, and letter (e) thereof provides:

"(e) Articles shipped or exported abroad by the manufacturer or producer, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer or ownership of the articles so exported."

it has not been shown that petitioner ARCO shipped the same to Japan on its own account. Instead what We found on record are the invoice and purchase order (Exhs. "10-B and 10-C"), showing that the purchaser did so, as follows:

Exh. "10-C"

"GENERAL ENTERPRISES, INC.

xxx xxx xxx

PURCHASE VOUCHER NO. 160

AMERICAN RUBBER CO. SEPTEMBER 2, 1953

ZAMBOANGA CITY PER S/S TAMON MARU

We purchased from you:

440 pieces — 400,000 bd. ft. Apitong logs at P60.00 per thousand bd. ft. P32,000.00

GENERAL ENTERPRISES, INC.

(sgd.) Geza. Prieder

Exh. "10-B"

AMERICAN LUMBER CO.

Isabela, Basilan City

No. Export 19-53

I N V O I C E

Sold to General Enterprises, Inc. Terms: Cash against shipping papers

Address: 5th Floor State Bldg. Manila Destination: Tokyo, Japan

Customers Order No. Per SS Tamon Maru No 16.

Delivered to

Date Shipped — August 27, 1953

Marks Qty. Particulars Unit Price

Total

xxx xxx xxx

Certified Correct and Payment

Not yet Received

ARCO by (Sgd) Jose Atilano

Vice-President and Gen. Manager"

The aforequoted documents clearly show a local sale which makes petitioner liable for the sales tax as assessed.

WHEREFORE PREMISES CONSIDERED, this Court finds the assessment made by respondent court correct and hereby affirms its judgment in toto. Without costs.

Makalintal, C.J., Castro, Fernando, Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Teehankee and Muñoz Palma, JJ., on leave.

[1] "Section 186. Percentage Tax on Sales of Other Articles. ... Provided, That where the articles subject to tax under this section are manufactured out of materials likewise subject to tax under this section and 189, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles."

[2]

STA. CLARA LUMBER CO., INC.

501 Tecson, Manila

"SALES CONTRACT"

"SOLD" TO:

New Manila Lumber

Manila

The lumber of the American Rubber Company to be shipped on the S/S "Turks Head" Sept. 17, 1950 to arrive in Sept. 21st for Manila on the following prices:

"White Lauan at P125.00 M /bd. ft. FOB Basilan

Apitong at P125.00 M/ bd. ft. FOB Basilan

Red Lauan at P145.00 M bd. ft. FOB Basilan

"TERMS AND CONDITIONS

- The buyer will reimburse the seller for transportation, handling and other expenses in the amount of P35.00 per 1,000 bd. ft. which shall be advanced by the seller.

- Payment shall be as follows: 50% upon receipt of the shipping papers (Bill of Lading and sawmill invoices) the balance within 10 days thereafter.

- No discount on cracks will be allowed. Two broken pieces of 6 ft. shall be considered as one piece; a broken piece of at least 10 ft. shall be considered one piece.

- A discount of 30% will be allowed on strips and 40% on shorts.

- A discount shall be given on short deliveries of lumber; on over deliveries the average price per piece shall be charged accordingly.

"AGREED:

(Sgd) NEW MANILA LUMBER CO."

[3] Aranas, Annotations and Jurisprudence on the NLRC, 1970 ed., 186 (3) p. 219.

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