

NPM No. 01-2010

07 January 2010

ATTY. JIMMY G. PESIGAN
Chairman, Bids and Awards Committee
LAND TRANSPORTATION OFFICE
East Avenue, Quezon City

Re: Manufacturer

Dear Atty. Pesigan:

We respond to your letter dated 12 November 2009 seeking guidance on the definition/meaning of the term “manufacturer” as stated under Section VII-Technical Specification of the revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (R.A. 9184).

A perusal of the Definition of Terms under Section 5 of R.A. 9184 and its IRR would show that the word “manufacturer” has not been included therein. Nonetheless, we posit that a common use of the term vis-a-vis its commercial nomenclature may be considered.

We have noted, moreover, for your guidance, some definitions of a manufacturer in the context of the law/rules/guidelines/jurisprudence governing the same, as follows:

A manufacturer is a person, or an entity that manufactures something.¹

Manufacturer refers to any natural person or juridical entity, whether domestic or foreign, producing, assembling, and/or processing a material or product except if the goods are manufactured, assembled, or processed for another person who attaches his own brand name to the final products, the latter shall be deemed the manufacturer.
xxx²

Every person who by physical or chemical process alters the exterior or form or inner substance of any raw material or manufactured or partially manufactured product in such a 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

¹ <http://dictionary.reference.com/browse/manufacturer>

² DTI Department Administrative Order No. 2, Series of 2002

manufactured products with other materials or products of the same or 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 alter 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, shall be considered as a manufacturer within the meaning of this article.³

We trust that this sufficiently addresses your concern. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

Ruby U. Alvarez
f. **RUBY U. ALVAREZ**
Executive Director III

³ Sinforoso Pascual vs. WM. T. Nolting, G.R. No. L-9252 dated 11 January 1916



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

3 December 2009

ATTY. JIMMY G. PESIGAN
Chairman, Bids and Awards Committee
LAND TRANSPORTATION OFFICE
Quezon City, Philippines

Re: Meaning of MANUFACTURER under Section VII Technical Specification and in the IRR of RA 9184.

Dear Atty. Pesigan:

We respond to your letter received on November 17, 2009 asking on the meaning/definition of “manufacturer” or when can a company be considered as a “manufacturer as stated under Section VII – Technical Specification (Statement of Compliance), of the revised IRR of RA 9184.

Statement of Compliance

xxx Evidence shall be in the form of **manufacturer’s** un-amended sales literature, unconditional statements of specification and compliance issued by the **manufacturer**, samples, independent test data etc., as appropriate. x x x

The meaning/definition of “manufacturer” may be found in different dictionaries, laws or jurisprudence.

As provided a “manufacturer” is a person, an enterprise, or an entity that manufactures something.¹

Manufacturer also refers to any natural person or juridical entity, whether domestic or foreign, producing, assembling, and/or processing a material or product except if the goods are manufactured, assembled, or processed for another person who attaches his own brand name to the final products, the latter shall be deemed the manufacturer. In case of imported products, the manufacturer’s representatives or, in his absence, the importer shall be deemed the manufacturer.²

And a more extensive definition was adopted by the Supreme Court in their decision that, “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 a 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

¹ <http://dictionary.reference.com/browse/manufacturer>

² Department of Trade and Industry Department Administrative Order No. 2 Series of 2002 Section 2.18

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 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 alter 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, shall be considered as a manufacturer within the meaning of this article.”¹

The provision of the Bidding Document provides that “Evidence shall be in the form of manufacturer’s un-amended sales literature, unconditional statements of specification and compliance issued by the manufacturer, samples, independent test data etc., as appropriate”. The purpose of this requirement is to be the basis of whether or not the Bidder has met all the technical specification provided by the Procuring Entity.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

¹ G.R. No. L-9252 Pascual vs. Nolting (*also quoted from Internal Revenue Law of 1904 Section 141*)



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

Thank,
Kindly check with DTL if they
have a specific definition for a
"manufacturer".

Please cite also the dictionary
source for your definition.

3 December 2009

T.Y.
1/4/10

ATTY. JIMMY G. PESIGAN
Chairman, Bids and Awards Committee
LAND TRANSPORTATION OFFICE
Quezon City, Philippines

Re: Meaning of MANUFACTURER under Section VII Technical Specification and in the IRR of RA 9184.

Dear Atty. Pesigan:

We respond to your letter received on November 17, 2009 asking on the meaning/definition of "manufacturer" or when can a company be considered as a "manufacturer as stated under Section VII – Technical Specification (Statement of Compliance), of the revised IRR of RA 9184.

Statement of Compliance

Bidders must state here either "Comply" or "Not Comply" against each of the individual parameters of each Specification stating the corresponding performance parameter of the equipment offered. Statements of "Comply" or "Not Comply" must be supported by evidence in a Bidders Bid and cross-referenced to that evidence. Evidence shall be in the form of **manufacturer's** un-amended sales literature, unconditional statements of specification and compliance issued by the **manufacturer**, samples, independent test data etc., as appropriate. A statement that is not supported by evidence or is subsequently found to be contradicted by the evidence presented will render the Bid under evaluation liable for rejection. A statement either in the Bidders statement of compliance or the supporting evidence that is found to be false either during Bid evaluation, post-qualification or the execution of the Contract may be regarded as fraudulent and render the Bidder or supplier liable for prosecution subject to the provisions of ITB Clause **Error! Reference source not found.** and/or GCC Clause **Error! Reference source not found.**

The meaning/definition of "manufacturer is provided in any other English dictionaries. As provided a "manufacturer" is a person, an enterprise, or an entity that manufactures something.

A company may be a manufacturer if such company engages in manufacturing something.

The provision of the Bidding Document provides that "Evidence shall be in the form of manufacturer's un-amended sales literature, unconditional statements of specification and compliance issued by the manufacturer, samples, independent test data etc., as appropriate". The purpose of this requirement is to be the basis of whether

or not the Bidder has met all the technical specification provided by the Procuring Entity.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

Thank,
Pls. draft reply. Consult w/
Bryan.



Ennie,
Pls. handle.

11/24/09

11/23/09

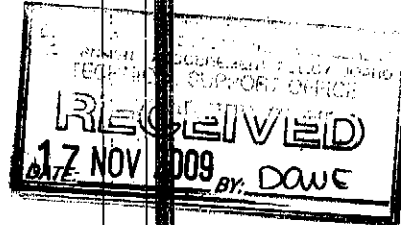
REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION & COMMUNICATIONS
LAND TRANSPORTATION OFFICE
East Avenue, Quezon City
E-mail Address: ltombbox@lto.gov.ph • Website: www.lto.gov.ph

CTIONS

gov.ph

12 November 2009

MS. RUBY ALVAREZ
Executive Director
Government Procurement Policy Board
Unit 2506 Raffles Corporate Centre
Ortigas Center, Pasig City



Dear Ms. Alvarez:

This has reference to the pre-bidding conducted by LTO for the CY 2010 1st Semester requirements for windshield validation stickers and plate year stickers.

In this connection, we would like to pose a query on the meaning of the definition of "manufacturer" as stated under Section VII - Technical Specification (Statement of Compliance), of the revised IRR of RA 9184.

Your usual understanding and cooperation regarding this matter is highly appreciated.

Very truly yours,

ATTY. JIMMY G. PESIAN
Chairman, Bids and Awards Committee

DEPARTMENT ADMINISTRATIVE ORDER No. 2
Series of 2002

**SUBJECT: DEFINING THE RESPONSIBILITIES AND LIABILITIES OF
MANUFACTURERS, IMPORTERS, TRADERS, WHOLESALERS,
DISTRIBUTORS, RETAILERS AND OR THEIR AGENTS, WITH
REGARD TO PRODUCTS COVERED BY MANDATORY PRODUCT
CERTIFICATION AND PRESCRIBING PENALTIES FOR VIOLATION
THEREOF**

Pursuant to Section 4, R.A. 4109, Section 2 of Executive Order No. 913, Section 3(x) of Executive Order No. 133, and Article 6 of R.A. 7394, empowering the Secretary of the Department of Trade and Industry (DTI) to promulgate rules and regulations to implement the provisions and intent of any trade and industry law, the following revised rules and regulations implementing Republic Act No. 4109 and the provisions of Republic Act 7394 relative to product standards are hereby prescribed and promulgated.

SECTION 1. Scope and Coverage

This Department Administrative Order prescribes the rules and regulations that cover the responsibilities and liabilities of manufacturers, importers, traders, wholesalers, distributors, retailers and or their agents of all products covered by mandatory standards, the procedures for compliance and to ensure compliance, as well as corrective measures and penalties in the event of non-compliance and violations. It shall likewise apply to the mediation and/or adjudication of administrative actions initiated by the DTI or a private complainant under R.A. 7394 based on a violation of Product Standards laws, rules and regulations.¹

SECTION 2. Definition of Terms

As used in this Department Administrative Order (DAO), the following terms are defined to mean:


- 2.1 BPS** refers to the Bureau of Product Standards of the Department of Trade and Industry (DTI).

¹ Complaints arising from violations of R.A. 7394 are at present covered and implemented by Joint DTI-DOH-DA Administrative Order No. 1 Series of 1993 and DTI Administrative Order No. 2 Series of 1993. Complaints (under R.A. 7394 or R.A. 4109) whether initiated by DTI or by a Private Complainant anchored on a violation of product standard covered by mandatory product certification will now be covered by this DAO. Under Articles 10, 11, and 159 of R.A. 7394, the DTI can *motu proprio* initiate proceedings for violation of a mandatory product standard.

- 2.2 DTI Regional Director refers to the designated head of a regional office of the DTI.
- 2.3 DTI Provincial/Area Director refers to the designated head of a provincial/area office of the DTI.
- 2.4 OLA refers to the Office of Legal Affairs of the DTI.
- 2.5 DAO 1:1997 provides for the “Revised Rules and Regulations Concerning the Philippine Standard (PS) Quality and/or Safety Certification Mark Scheme” and its future revisions or amendments thereto.
- 2.6 DAO 8:1995 provides for the “Revised Rules and Regulations Concerning the Issuance of Import Commodity Clearance” and its future revisions or amendments thereto.
- 2.7 PNS 01:1997 refers to the Philippine National Standard entitled “A Standard for Standards”.
- 2.8 E.O. 913 provides for “Strengthening the Rule-Making and Adjudicatory Powers of the Minister of Trade and Industry in Order to Further Protect Consumers”.
- 2.9 E.O. 133 provides for “Reorganizing the Department of Trade and Industry, its Attached Agencies, and for Other Purposes”.
- 2.10 R.A 7394 provides for the “Consumer Act of the Philippines”.
- 2.11 R.A. 4109 provides “An Act to Convert the Division of Standards Under the Bureau of Commerce Into a Bureau of Standards To Provide for the Standardization and/or Inspection of Products and Imports of the Philippines and for Other Purposes”.
- 2.12 Ministry Order 69, Series of 1983 provides for the “Rules and Regulations Governing Administrative Actions for Violations of Trade and Industry Laws”.
- 2.13 Philippine National Standard (PNS) refers to a standard promulgated by the BPS relating to a set of conditions to be fulfilled to ensure the quality and safety of a product.² It shall contain product specifications, test method, terminology, standardization procedures, and guidelines or practices.
- 2.14 Mandatory Philippine National Standards are standards for which PS marking on products covered is compulsory. Product standards, which will affect life, safety and health of the people and its environment, are declared for mandatory product certification for which approval by the Secretary of Trade and Industry is necessary.
- 2.15 PS (Philippine Standard) Quality Certification Mark refers to a mark of conformity to

² Definition of product “Standard” is taken from Par. (br), Art 4, R.A. 7394 and DAO 1, Series of 1997.

product quality standards, which appears on a product or product packaging as specified under DAO 1, Series of 1997.

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- 2.16** PS (Philippine Standard) Safety Certification Mark refers to a mark of conformity to product safety standards, which appears on a product or product packaging as specified under DAO 1, Series of 1997.
- 2.17** Import Commodity Clearance (ICC) refers to a document issued by the DTI /BPS attesting that the imported product, which is covered by a mandatory PNS, conforms to the specific Philippine National Standard.
- 2.18** Manufacturer refers to any natural person or juridical entity, whether domestic or foreign, producing, assembling, and/or processing a material or product except if the goods are manufactured, assembled, or processed for another person who attaches his own brand name to the final products, the latter shall be deemed the manufacturer. In case of imported products, the manufacturer's representatives or, in his absence, the importer shall be deemed the manufacturer.
- 2.19** Importer refers to any natural person or juridical entity that brings in products from a foreign country to the Philippines.
- 2.20** Trader refers to any natural person or juridical entity, whose business is buy and sell or barter. A trader may therefore be an importer-trader, manufacturer, wholesaler or retailer.
- 2.21** Distributor refers to any natural person or juridical entity, whether domestic or foreign, to whom a product is delivered or sold for purposes of distribution in commerce, who markets a product whether for an importer-trader or for a manufacturer, wholesaler, or retailer.
- 2.22** Wholesaler refers to any natural person or juridical entity that sells products in bulk or in large scale but not to the end-user.
- 2.23** Retailer refers to any natural person or juridical entity engaged in the business of selling products directly to end-users.
- 2.24** Agent refers to a person who is deemed authorized to act or transact for and in behalf of the manufacturer, importer, wholesaler, trader, retailer or distributor.
- 2.25** Suspension of License refers to a penalty in which a PS license, or an ICC, is temporarily revoked by the BPS, during which period the licensee shall not manufacture, sell, offer for sale, or otherwise dispose of their product(s) covered by the suspension order.
- 2.26** Cancellation of License refers to a permanent revocation of a PS license or an ICC, which mandates that the licensee or ICC Certificate holder immediately and permanently

cease to manufacture, sell, offer for sale, or otherwise dispose of products covered by the cancellation order.

- 2.27 Closure refers to a penalty imposed by the Secretary of Trade and Industry or his assigns, whether of a temporary or permanent nature, consisting of a shutdown and cessation of a plant or business operation.
- 2.28 Complainant refers to any natural or juridical person, which shall include the DTI or any of its authorized officials, having a cause of action against any person, natural or juridical, for violating any of the provisions of this DAO.
- 2.29 Respondent refers to the party called upon to answer an administrative formal charge or complaint.
- 2.30 Adjudicating Officer refers to the DTI Regional Director or his authorized DTI hearing officer designated to hear and decide a case as well as impose penalties as per EO 913.
- 2.31 Consumer Arbitration Officer refers to the DTI officer duly appointed pursuant to Articles 160 and 161 of R.A. 7394
- 2.32 Stockpiling means manufacturing or importing a product between the date of promulgation of its consumer product safety rule and its effective date, at a rate which is significantly greater than the rate at which such product was produced or imported during a base period as prescribed under Art 9., R.A. 7394, ending before the promulgation of consumer product safety rule.
- 2.33 Complaint is a written statement charging a natural or juridical person for committing any of the acts prohibited under this DAO, subscribed and sworn before a person authorized to administer oath.
- 2.34 Statement of Violation is a statement charging a natural or juridical person, for violation of this DAO, subscribed and sworn by the Head of the Office concerned.
- 2.35 Enforcement Activity refers to surveillance audit, market monitoring, and inspection/inventory of products covered by mandatory standards.

SECTION 3. Responsibilities of a Manufacturer, Importer, Trader, Wholesaler, Distributor, Retailer or their Agents

- 3.1 Manufacturers of any product covered by mandatory product certification are required to first secure a PS license prior to selling, offering for sale, or otherwise disposing of their product(s), the original copy of which shall be displayed in a conspicuous place at their plant or manufacturing facility.

- 3.2 Manufacturers shall ensure that their product(s) comply with the applicable mandatory product certification, and have the mandatory PS Mark clearly reflected, imprinted and/or embossed on the product or product packaging, whichever applies, for the purpose of conveying the required information about the products.
- 3.3 Importers of any product covered by mandatory product certification are required to first secure an Import Commodity Clearance (ICC) pursuant to DAO 5, Series of 2001 and its future amendments or revisions prior to selling, offering for sale, or otherwise disposing of their product(s).
- 3.4 An importer of a product covered by mandatory product certification shall ensure that all its imported products comply with the requisite product specifications, product markings, and other requirements prescribed under the applicable Philippine National Standard.
- 3.5 Distributors, wholesalers, retailers and those who offer for sale a product covered by mandatory product certification shall sell, or offer for sale only such products which complied with the requisite Philippine National Standard and with the required PS Mark, or with a valid ICC in the case of imported products.
- 3.6 Manufacturers who desire to produce/ manufacture any product covered by mandatory product certification for a special application shall notify and request BPS for the issuance of a Special Permit, which states the justification for such request, description of the product, specifications, size/weight/quantity/volume and the like, as well as the specific period to cover such activity.

SECTION 4. Requisite Licenses and/or Certificates

- 4.1 For any manufactured product covered by mandatory product certification, the applicable PS License shall be required of the said manufactured product before any sale is permitted, in accordance with the provisions of DAO 1, Series of 1997 and its future amendments or revisions.
- 4.2 For any imported product covered by mandatory product certification, an ICC shall be required of the said imported product before any sale is permitted, where the particular ICC certificate covers only the specific shipment and no other, in accordance with DAO 5, Series of 2001 and its future amendments or revisions.
- 4.3 BPS Permit allowing manufacturers to manufacture products covered by mandatory product certification for their special application.

SECTION 5. Requisite Markings

PHILIPPINE JURISPRUDENCE - FULL TEXT
The Lawphil Project - Arellano Law Foundation
G.R. No. L-9252 January 11, 1916
SINFOROSO PASCUAL vs. WM. T. NOLTING

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-9252 **January 11, 1916**

SINFOROSO PASCUAL, plaintiff-appellant,

vs.

WM. T. NOLTING, as Collector of Internal Revenue for the Philippine Islands, defendant-appellee.

Rohde and Wright for appellant.

Office of the Solicitor-General Harvey for appellee.

JOHNSON, J.:

The question presented by this appeal is whether or not the appellant is a manufacturer of salt and therefore subject to pay a tax in accordance with the provisions of section 139 of Act No. 1189.

It is admitted that the appellant produces salt, i. e., that he permits the salt water to run upon his land, allows the water to evaporate, and then collects the residue, the salt, and sells it. Does that operation make him a manufacturer of salt? .

Section 141 of Act No. 1189 defines who is a manufacturer for the purposes of that law, and we are governed by that definition. If the plaintiff falls within that definition, then he is a manufacturer and must pay the tax imposed by said section 138, in relation with section 139, unless he comes within the exception mentioned in section 142 of the same law. Section 141 defines a manufacturer as follows:

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 a 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 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 alter 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, shall be considered as a manufacturer within the meaning of this article.

A more comprehensive and inclusive definition could scarcely be given, of the acts which would make a person a manufacturer.

There is no question about the facts. The plaintiff admits that he commences with water; that the product which he gets is salt, and that he sells it; that he produces the finished article for the purpose of selling it to others, and not for his own use or consumption. The plaintiff, by a

physical process, alters the substance of the raw material in such a manner as to prepare it for a special use, or uses, to which it could not have been put in its original condition. By the admission of the plaintiff, it is clear that he alters the quality of the raw material and reduces it to a marketable shape.

We think the admissions of the plaintiff clearly bring him within the provisions of section 141 and that he is a manufacturer of salt. That being true, he is subject to pay the tax provided for in section 138 in relation with section 139 of Act No. 1189. That being true, the judgment of the lower court must be affirmed, with costs.

It is, therefore, hereby ordered and decreed that the judgment of the lower court sustaining the demurrer presented by the defendant is hereby affirmed, and it is further ordered and decreed that the record be returned to the court whence it came with direction that the plaintiff be given permission to amend his complaint, if he so desires, within a period of five days from notice hereof, and in the absence of such amendment that a judgment be entered dismissing his complaint. So ordered, with costs.

Arellano, C.J., Torres, Carson, Trent and Araullo, JJ., concur.

The Lawphil Project - Arellano Law Foundation

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<http://www.merriam-webster.com/dictionary/manufacturer>

Main Entry: man·u·fac·tur·er

Pronunciation: \-' fak-chər-ər, -' fak-shrər\

Function: noun

Date: circa 1687

: one that manufactures; especially : an employer of workers in manufacturing

Main Entry: 1 man·u·fac·ture

Pronunciation: \□man-yə-' fak-chər, □ma-nə-\

Function: noun

Etymology: Middle French, from Medieval Latin manufactura, from Latin manu factus, literally, made by hand

Date: 1567

1 : something made from raw materials by hand or by machinery

2 a : the process of making wares by hand or by machinery especially when carried on systematically with division of labor b : a productive industry using mechanical power and machinery

3 : the act or process of producing something

Main Entry: 2 manufacture

Function: verb

Inflected Form(s): manufactured; manufactur·ing\-' fak-chə-rɪŋ, -' fak-shrɪŋ\

Date: 1648

transitive verb 1 : to make into a product suitable for use

2 a : to make from raw materials by hand or by machinery b : to produce according to an organized plan and with division of labor c : prefabricate <a manufactured home>

3 : invent, fabricate <known to manufacture evidence>

4 : to produce as if by manufacturing : create <writers who manufacture stories for television>intransitive verb : to engage in manufacture

— man·u·fac·tur·abil·i·ty \-□ fak-chə-rə-' bi-lə-te, -□ fak-shrə-' bi-\ noun

— man·u·fac·tur·able \-' fak-chə-rə-bəl, -' fak-shrə-bəl\ adjective

— manufacturing noun

PHILIPPINE JURISPRUDENCE - FULL TEXT
The Lawphil Project - Arellano Law Foundation
G.R. No. L-21490 November 14, 1924
CENTRAL AZUCARERA DE BAIS vs. WENCESLAO TRINIDAD

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-21490 **November 14, 1924**

CENTRAL AZUCARERA DE BAIS, plaintiff-appellee,
vs.
WENCESLAO TRINIDAD, Collector of Internal Revenue, defendant-appellant.

Attorney-General Villa-Real for appellant.
Fisher, DeWitt, Perkins and Brady and John R. McFie, Jr., for appellee.

OSTRAND, J.:

This is an action to recover back merchants' percentage taxes collected from the plaintiff on consignment abroad under section 1459 of Act No. 2711, the Administrative Code of 1917, the defendant contending that the plaintiff is a "manufacturer" within the meaning of that section. The case went to trial upon the following stipulation of facts:

Come now plaintiff, *Central Azucarera de Bais*, and the defendant, Wenceslao Trinidad, Collector of Internal Revenue, through their respective undersigned attorneys, and submit hereunto an Agreed Statement of Facts involved in the above-entitled cause, as follows:

I. That plaintiff is a corporation existing under the laws of the Philippine Islands, and having its central office in the City of Manila, Philippine Islands; that the defendant is the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands;

II. That plaintiff, at all times material to this action, was the owner of a sugar mill located at Bais, Oriental Negros, Philippine Islands, for the production of raw centrifugal sugar from sugar cane delivered to it, for milling, by sugar-cane growers having plantations in the neighborhood of plaintiff's mill;

III. That all of the sugar produced at plaintiff's mill was made under milling agreements, with the sugar-cane growers, whereby plaintiff received as its share for milling the cane, forty-five per centum (45%) of the sugar produced; that the growers of the sugar cane received the balance of fifty-five per centum (55%) of the sugar so produced;

IV. That during the times hereinafter set forth, to wit:

A. The third quarter of the year 1920, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of P384,495.00

B. The third quarter of the year 1920, plaintiff shipped from the Philippine Islands for sale abroad, additional sugar of the aggregate value of 412,500.00

| | |
|---|------------|
| C. The second quarter of the year 1921, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of | 192,436.07 |
| D. The third quarter of the year 1921, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of | 699,627.18 |
| E. The fourth quarter of the year 1921, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of | 38,168.16 |
| F. The second quarter of the year 1922, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of | 758,083.00 |
| G. The third quarter of the year 1922, plaintiff shipped from the Philippine Islands, for sale abroad, sugar of the aggregate value of | 690.36 |

that all of the sugar so shipped by plaintiff, as aforesaid, represented and was the share of sugar received by plaintiff from the growers as its part of the product of the sugar-cane milled by plaintiff for said growers at its said mill;

V. That the defendant, Wenceslao Trinidad, as Collector of Internal Revenue of the Philippine Islands, and claiming to act under authority of section 1459 of Act No. 2711, Administrative Code of 1917, levied and assessed against plaintiff a percentage tax of one per centum (1%) on the value of the sugar set forth in paragraph IV hereof as follows:

| | |
|---|-----------|
| A | P3,844.95 |
| B | 4,125.00 |
| C | 1,924.36 |
| D | 6,996.27 |
| E | 381.68 |
| F | 7,580.83 |
| G | 6.90 |
| | 24,859.99 |

a total tax of twenty-four thousand eight hundred fifty-nine pesos and ninety-nine centavos (P24,859.99), Philippine currency:

VI. That plaintiff in order to avoid the exaction of penalties for delinquency in failing to pay the amounts assessed against it, as set forth in paragraph V hereof, did, in due time and upon the respective dates hereinafter specified, to wit:

| | |
|---|---------------|
| A | Oct. 20, 1920 |
| B | Dec. 21, 1920 |
| C | July 29, 1921 |
| D | Oct. 18, 1921 |
| E | Jan. 19, 1922 |

F July 20, 1922

G Oct. 12, 1922

involuntarily and under instant protest, in writing, pay to defendant the sum set forth in paragraph V hereof making in all the total sum of twenty-four thousand eight hundred fifty nine pesos and ninety-nine centavos (P24,859.99), Philippine currency:

VII. That plaintiff's protests against the payments of the aforesaid taxes were based upon the grounds that said taxes were illegal and that plaintiff was exempt therefrom by the terms of paragraph (b) of section 1460 of the Administrative Code of 1917 (Act No. 2711);

VIII. That the defendant overruled and denied the aforesaid protests of plaintiff and refused, on demand, and still persists in his refusal, to return to plaintiff the said sum of twenty-four thousand eight hundred fifty-nine pesos and ninety-nine centavos (P24,859.99) Philippine currency, or any part thereof:

IX. That thereupon, and on the 1st day of August, 1922, plaintiff filed its complaint herein, which complaint was thereafter amended on November 8, 1922, praying for the return to it of the sum of twenty four thousand eight hundred fifty-nine pesos and ninety-nine centavos (P24,859.99), Philippine currency, with interests and costs;

X. That on the 31st day of August, 1922, defendant demurred to plaintiff's original complaint upon the ground that the same did not state facts sufficient to constitute a cause of action in that the plaintiff was a contractor within the purview of Act No. 2711, Administrative Code of 1917; that on the 2d day of September, 1922, it was stipulated and agreed, by counsel for both plaintiff and defendant, to suspend further proceedings in said cause pending the final determination by the Supreme Court of the Philippine Islands, of the case of La Central Azucarera de La Carlota vs. Wenceslao Trinidad, R. G. No. 18154; that on the 26th day of September, 1922, the Honorable Supreme Court decided, in said cause No. 18154, that sugar mill owners and operators were not "contractors" within the purview of section 1462 of Act No. 2711; that thereupon and on the 8th day of November, 1922, plaintiff filed its amended complaint herein, as aforesaid, claiming exemption from the taxes levied by the defendant, Collector of Internal Revenue, under subsection (b) of section 1460 of Act No. 2711; that the defendant answered plaintiff's amended complaint on the 16th day of November, 1922, alleging that plaintiff was taxable as a "manufacturer" under section 1459 of Act No. 2711; whereupon this cause, being at issue, was set for hearing upon the merits on the 7th day of March, 1923, on which day it was stipulated and agreed to submit this cause for decision upon a stipulation and agreed statement of facts.

The court below held that the plaintiff was not a 'manufacturer' within the letter and the spirit of said section 1459 and rendered judgment in favor of said plaintiff for recovery back of the sum of P24,859.99, without interest and costs. From this judgment the defendant appealed to this court.

The decision of the case turns upon the determination of two questions: (1) Whether the plaintiff is a manufacturer in the sense of constituting it a merchant within the meaning of section 1459 of the Administrative Code, and (2) whether the plaintiff is entitled to the exemption provided for in subsection (b) of section 1460 of the same Code.

(1) Section 1459, which was expressly ratified by Act of Congress of June 5, 1918, reads as follows:

All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them such tax to be based on the actual

selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufacture products, and whether of domestic or foreign origin. The tax upon these things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.

The following shall be exempt from this tax:

(a) Persons engaged in public market places in the sale of food products at retail, and other small merchants whose gross quarterly sales do not exceed two hundred pesos.

(b) Peddlers and sellers at fixed stands of fruit, produce, and food, raw or otherwise, the total selling value whereof does not exceed three pesos per day and who do not renew their stock oftener than once every twenty-four hours.

(c) Producers of commodities of all classes working in their homes, consisting of parents and children living as one family, when the value of each day's production by each person capable of working is not in excess of one peso.

"Merchant," as here used, means a person engaged in the sale, barter, or exchange of personal property of whether character. Except as specially provided, the term includes *manufacturers who sell articles to their own production* and commission merchants having establishments of their own for the keeping and disposal of goods of which sale or exchanges are effected, but does not include merchandise brokers.

That the plaintiff is, in a general sense, a manufacturer of sugar cannot be successfully disputed.

The Century Dictionary defines a manufacturer as "one who is engaged in the business of manufacturing" and in the case of *Allen vs. Smith* (173 U. S., 389), the United States Supreme Court draws a clear distinction between the grower of the cane and the manufacturer of the sugar and says: "In the case of sugar a process of strict manufacture is also involved in converting the cane into its final product."

It has been suggested that in its last analysis sugar is a product of the soil and that therefore a manufacturer of sugar must be regarded as a producer of an agricultural product. We might, with equal reason, say that cotton cloth is an agricultural product because it is made from cotton which is a growth of the soil; yet no one would seriously contend that one who buys cotton from the planters and devotes himself to the business of converting it into cotton cloth by means of machinery is a planter and not a manufacturer. And in principal it can make no difference whether he, in buying the cotton, pays for it with merchandise or with money.

It is also suggested that following this argument to its logical conclusion, we would be compelled to hold that a sugar planter who has a small *trapiche* on his plantation wherein he converts his own cane into raw sugar is a manufacturer. We do not think that it would be necessary to so hold. A planter who devotes himself to the production of sugar cane and as an incident to such production works his product into a more convenient and valuable forms is primarily a planter; his manufacturing is merely an incident to the management of his plantation. His case is manifestly different from that of the plaintiff corporation which, in effect, buys it raw material and devotes itself exclusively to converting it into finished merchandise. It may, perhaps, not always be easy to draw the line of demarcation between one business and the other, but difficulties of that sort are frequently encountered in the interpretation of the law.

Counsel for plaintiff argues that the term "manufacturer" as used in the last paragraph of section 1459 us synonymous with the term "merchant" as employed in the first paragraph of the same section and applies only to manufacturers who sell the manufactures products in the Philippine Islands and does not refer to manufacturers such as the plaintiff, who sell their

products abroad. _

We agree with counsel that manufacturers who sell articles of their own manufacture are merchants within the meaning of section 1459; the statute says so expressly. But why limit this class of manufacturers to the ones who do their selling in the Philippine Islands? The statute certainly does not expressly make this distinction and it is only by reading into it words which are not there that we can sustain the plaintiff's contention. Instead of reading "manufacturers who sell articles of their own production," we would have to make the definition read, "manufacturers who sell articles of their own production in the Philippine Islands."

But it is argued that it was so evidently the intention of the Legislature to limit the tax in question to manufacturers who sell their goods here that we would be justified in so construing the law. This might be true if we were dealing with a poll tax or other personal tax, but such is not the case here. The tax we are considering is a tax on certain transactions which are made taxable when carried out by merchants as distinguished from persons who do not devote themselves to commercial operations. It is not merely a tax on sales; it is also, as in the present case, a tax on certain consignments. It is levied on local transactions and has no extra-territorial effect. Thus, in the present case, the plaintiff sells abroad and we collect no tax on such sales; but it makes the consignments of its merchandise here and the statute imposes a tax on such consignment. And if a merchant or manufacturer in Japan consigns his wares from there to the Philippines, we do not undertake to tax that consignment, but when the goods are sold here we collect a tax on the sales. The nationality of the merchant or manufacturer, or the location of his principal place of business has nothing to do with the tax; we are only concerned with the collection of the tax on such sales or consignments as are made in the Philippine Islands and it is a matter of indifference to us where the sales are made when we collect the consignment tax, or where the consignments are made when we exact payment of the sales tax. It can be readily seen that to hold otherwise would, in effect in many cases, amount to a discrimination against the local manufacturer or merchant, which would be without rhyme or reason and which the legislator cannot have intended to bring about. And, as we have already pointed out, such an intention is not expressly manifested by the statute itself; it can only be read into it by forming conjectures which have no logical bases.

(2) As to the second point raised by the appellee, namely, that it is entitled to the tax exemption provided for in subsection (b) of section 1460, it is sufficient to quote the pertinent part of that section and which reads as follows:

In computing the tax above imposed transactions in the following commodities shall be excluded:

x x x x x x x x x

(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not.

Once it is determined that the plaintiff is a merchant within the meaning of section 1459, it is obvious that it is not entitled to the exemption provided for in section 1460. The term "merchant" must be given the same meaning in both sections and includes manufacturers of the plaintiff's class.

From what has been said it follows that the percentage tax on the consignments in question was legally collected and that the judgment of the court below must be reversed. Whether this tax may be imposed on consignment made subsequent to the passage of Act No. 3082 we do not here decide.

The judgment appealed from is hereby reversed and the appellant is absolved from the complaint, without costs. So ordered.

Street, Malcolm and Romualdez, JJ., concur.

Separate Opinions

VILLAMOR, J., dissenting:

I vote for the affirmance of the appealed judgment. In my opinion the plaintiff, *Central Azucarera de Bais*, is not a manufacturing merchant within the purview of section 1459 of the Administrative Code, which impose a tax of one per centum on merchants' sale. In the language of the very law, the plaintiff is not a merchant because it is not engaged in the sale, barter, or exchange of personal property. It is neither a manufacturer because manufacturers, under the said section, are those who have fixed places of business of the same nature as, and in competition with, merchants engaged in the sale, barter, or exchange of commodities manufactured by them from raw materials that they purchase, with the object of selling them and, from this commerce and interchange, obtain profits.

The plaintiff *Central Azucarera* is a cooperator of the sugar-cane planters, or, as has been said in *La Carlota Sugar Central vs. Trinidad* (43 Phil., 816), is a partner or coparticipant of the sugar cane growers, for, while the latter supply the cane, the central furnishes the means for producing the sugar. And just as the planter of the cane is the producer of the cane, so also he who obtains the finished product called sugar is the producer of the sugar. (*Allen vs. Smith*, 173, U. S., 389; 43 L. ed., 741.)

If the producer of the sugar, by his work of converting the cane into sugar, obtains a participation in the finished product and sells it, such sales, in accordance with section 1460 (b) of the Administrative Code, are exempt from the tax because, the sugar being an agricultural product, not in its original state, must be deemed to have been sold by the producer himself.

Johnson and Avanceña, JJ., concur.

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