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The issue here is essentially one of fact, and involves an appraisal of the conflicting evidence presented by the parties. That issue was addressed in the first instance to the trial Judge, and we cannot say that his conclusion as to the testamentary incapacity of the testatrix is erroneous. It is based mainly on expert medical testimony to the effect that her mental infirmity was observed by the family physician as far back as 1953 and confirmed in 1955 by a competent psychiatrist, who described the process of the mental degeneration as progressive and irreversible; on the written admissions and declarations of appellant herself, who could have no motive then to falsify the facts; and on the testimony of the testatrix' brother-in-law, Jose Eugenio Ramirez. On the question of credibility, we find no ground to disregard such evidence in favor of the vague, inconclusive statements of the notary public who authenticated the will and of the two instrumental witnesses, nor even of the testimony of the rebuttal witnesses, the more categorical character of whose affirmations only serve to weaken their credibility, conflicting as they do not only with the evidence for appellee but also with that given by the other witnesses for appellant.

In view of the foregoing considerations, the order appealed from is affirmed, with costs against appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Fernando, Barredo, Villamor, and *Makasiar, JJ.,* concur.

Ruiz Castro and *Teehankee, JJ.,* took no part.

[G.R. Nos. L-20772 & L-20852. May 31, 1971]

AMERICAN RUBBER COMPANY, *petitioner, vs.* THE COMMISSIONER OF INTERNAL REVENUE and THE HON. COURT OF TAX APPEALS, *respondents.*

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SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; EXEMPTION FROM SALES TAX UNDER SECTION 188(b); NOT TAKEN AWAY MERELY BECAUSE PRODUCE UNDERGOES PROCESSING DESIGNED TO INCREASE OR PROLONG ITS MARKETABILITY.**— 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.

2. **ID.; ID.; SALES TAX; IMPOSED NOT ON THING SOLD BUT ON ACT OF SELLING; TREATMENT OF AMOUNT REFUNDED WHERE TAX BURDEN HAD BEEN SHIFTED TO INDIVIDUAL PURCHASERS.**— By contrast with the municipal taxes involved in the preceding cases, the sales tax is by law imposed directly, not on the thing sold, but on the act (sale) of the manufacturer, producer or importer (Op. of the Secretary of Justice, June 15, 1946; 47 C.J.S., p. 1141), who is exclusively made liable for its timely payment. There is no proof that the tax paid by plaintiff is the very money paid by its customers. Where

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the tax money paid by the plaintiff came from is really no concern of the Government, but solely a matter between the plaintiff and its customers. Anyway, once recovered, the plaintiff must hold the refund taxes in trust for the individual purchasers who advanced payment thereof, and whose names must appear in plaintiff's records.

3. ID.; ID.; WHEN INTEREST ON TAX REFUND ALLOWED.— The plaintiff Company also urges that the refund of the taxes should include interest thereon. While this Court has allowed recovery of interest in some cases, it has done so only in cases of patent arbitrariness on the part of the Revenue authorities; and in this instance we agree with the Tax Court that no such patent arbitrariness has been shown.

APPEARANCES OF COUNSEL

Ozaeta. Gibbs & Ozaeta for petitioner.

Solicitor General Arturo A. Alafriz, Solicitor Alejandro B. Afurong and *Special Attorney Venancia L. Moreno* for respondents.

DECISION

DIZON, *J.*:

Appeals taken by (1) American Rubber Company - hereinafter referred to as Rubber Company - and (2) The Commissioner of Internal Revenue, G.R. No. L-20772 and L-20852, respectively, from the decision of the Court of Tax Appeals in its case No. 978 entitled "American Rubber Company *vs.* The Commissioner of Internal Revenue," ordering the latter to refund to the former the sum of P879.50 only, without interest, out of the total sum of P12,759.07 which it sought to recover as sales tax collected from it on its local sales of certain rubber products known as Pale Crepe No. 1, Pale Crepe No. 2, Ribbed Smoked Sheet No. 1, Ribbed Smoked Sheet No. 2, 2 X Brown Crepe, Flat Bark Rubber and 3 X Brown Crepe which it produced and sold in its own rubber plantation at Latuan, Isabela, City of Basilan from January to April 1959.

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The Tax Court held that the rubber products known as Flat Bark Rubber and 3 X Brown Crepe were "agricultural products" within the meaning of said term as used in Section 188 (b) of the National Internal Revenue Code and, as a consequence, ordered the refund of the sum of P879.50 collected from the Rubber Company by the respondent Commissioner of Internal Revenue as sales tax due on the production and sale of the aforesaid rubber products from January to April 1959.

The Tax Court, however, held that the other rubber products produced and sold by the Rubber Company during the same period and known as Pale Crepe No. 1, Pale Crepe No. 2, Ribbed Smoked Sheet No. 1, Ribbed Smoked Sheet No. 2, and 2 X Brown Crepe were "manufactured articles" within the meaning of the term "manufacturer" as defined in Section 194(x) of the Tax Code and, as a result, held that the P11,879.57 representing sales tax he collected from the Rubber Company on the local sales thereof during the same period, was not refundable.

Both parties appealed as stated heretofore, American Rubber Company from the portion of the decision of the Tax Court denying its petition for the refund of the sum of P11,879.57 (G.R. L-20772), while the Commissioner of Internal Revenue appealed from that portion of the same decision ordering him to refund to the Rubber Company the afore-mentioned sum of P879.50 (G.R. L-20852). Both appeals are the subject of this joint decision.

Judging from the assignments of error made by the parties in their respective brief as appellant, the issue decisive of these appeals is whether or not the local sales made by the Rubber Company of the afore-mentioned rubber products are taxable under Section 186 of the Tax Code. If taxable, the appealed decision must be reversed insofar as it orders the Commissioner of Internal Revenue to refund to the Rubber Company the sum of P879.50; and, if not taxable, the aforesaid portion must be affirmed and, on the other hand, the portion of the appealed decision denying the refund of the sum of P11,879.57 must be reversed and judgment for the refund of said amount should be rendered in favor of the Rubber Company and against the Commissioner of Internal Revenue.

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Fortunately, the above decisive issue has previously been decided by this Court not only in one but in several cases appealed to it involving the same parties and exactly the taxability or non-taxability of the same rubber products produced and sold by the Rubber Company. We refer to our decisions in (1) G.R. L-10963 entitled "Collector of Internal Revenue, Petitioner *vs.* American Rubber Company and the Court of Tax Appeals, Respondents"; (2) G.R. L-11178 entitled "American Rubber Company *vs.* Collector of Internal Revenue," promulgated on April 30, 1963, and (3) G.R. L-19667 entitled "Commissioner of Internal Revenue, Petitioner *vs.* American Rubber Company and Court of Tax Appeals, Respondents," and (4) G.R. Nos. L-19801-19803 entitled "American Rubber Company, Petitioner *vs.* The Commissioner of Internal Revenue, et al., Respondent," promulgated on November 29, 1966.

The cases now before Us and the ones mentioned above were submitted for adjudication by the Court of Tax Appeals upon *similar stipulation of facts* which described the production and processing of the various rubber products produced and sold by the Rubber Company. The stipulation submitted in the present case (CTA Case No. 978) reads as follows:

"III. Petitioner produced the aforesaid forms of rubber from a portion of a tract of land with an area of approximately nine hundred hectares, more or less, situated in Latuan, Isabela, City of Basilan, which petitioner owned and operated as a rubber plantation during the period involved in this case.

IV. Petitioner produced the above-mentioned forms of rubber in the following manner:

The initial step common to the production of all these forms of 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 morning, of a spiral incision in the bark of rubber trees and placing a cup below the lower end of the incision to receive the flow of juice. The collecting cup is filled after two hours. The tapper then collects 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

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immediately taken in 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 matter such as leaves and dirt. After these initial steps, the processes then vary in the production of the various rubber products mentioned above and which we now describe briefly hereunder.

Preserved Rubber Latex.

Fresh latex is diluted with ammonia at the rate of 5 to 5-1/4 ounces to a gallon. This mixture is thoroughly stirred and then poured into empty metal drums. The addition of ammonia preserves the latex in liquid form and prevents its deterioration or the acquisition of a repulsive smell, at the same time maintaining its uniform color. Latex which has been artificially preserved in its liquid form generally lasts for about a month without spoiling. On the other hand, fresh latex in its original state lasts for only about two hours, after which it becomes spoiled.

The company sells preserved latex only upon previous orders of customers who supply empty metal drum containers.

Pale Crepe Nos. 1 and 2 and
Ribbed Smoked Sheets Nos. 1 and 2.

To produce Pale Crepe Nos. 1 and 2 and 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 thoroughly, 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 similarity in the production of Pale Crepe Nos. 1 and 2 and Ribbed Smoked Sheets Nos. 1 and 2 ends at the point of removing the coagulum (Coagulated rubber sheets) from the coagulating tanks.

To produce Pale Crepe No. 1, the coagulum is passed through a series of rollers until the desired thickness is attained, whereupon it is moved to the airdrying house situated in petitioner's plantation and hung for a period of about twelve or thirteen days to dry. There are no mechanical driers used; the airdrying is done naturally. As soon as the Pale Crepe is dried, they are sorted; those which are of uniform pale color are classified as Pale Crepe No. 1 and the rest are classified Pale Crepe No. 2, whereupon they are baled and stored ready for market.

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Ribbed Smoked Sheets Nos. 1 and 2 are produced practically in the same manner as pale crepe, except that 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) Nos. 1 and 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 Pale Crepe Nos. 1 and 2 and Ribbed Smoked Sheets Nos. 1 and 2 are not air-dried and smoked, they deteriorate, get spoiled, and the color varies.

Flat Bark Rubber.

Each morning before a tapper makes a fresh incision in the bark of a rubber tree, he gathers the latex drippings from the ground around the tree, called "ground rubber," as well as the dried latex from the incisions made the previous day, called "bark rubber." Ground and bark rubber are not intentionally produced. No chemicals are added to the latex transformed into ground and bark rubber, which, in their original form, are not marketable. This kind of dried latex is spoiled and has a bad odor.

Ground and bark rubber in sufficient quantities are passed numerous times through the rollers or mills until they form a uniform mass or sheet which, finally, is called Flat Bark Rubber. No chemical is used to coagulate the dried ground and bark rubber, because they are already coagulated. They are formed into sheets by means only of pressure of the mills or rollers through which they are passed.

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 or rollers until by force of 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.

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2 X Brown Crepe Rubber.

2 X Brown Crepe is obtained by milling or rolling the excess pieces of coagulated rubber latex cut 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 chemical.

V. The expert testimony of Mr. Michael Komaromi taken before the Clerk of Court of the Court of Tax Appeals on April 7, 1960 at 10:00 A.M. in connection with the trial of Court of Tax Appeals Cases Nos. 356, 440 and 632 which involve the same parties and identical issues as shown by the attached copy of the deposition consisting of 57 pages, is incorporated and made part hereof as Annex "A". (See pp. 89-91, C.T.A. records.)."

The total sum of P12,759.07, the refund of which was originally sought by the Rubber Company is itemized as follows:

1. Pale Crepe No. 1	P5,016.42
2. Pale Crepe No. 2	71.91
3. Ribbed Smoked Sheet No. 1	5,844.26
4. Ribbed Smoked Sheet No. 2	375.00
5. Flat Bark Rubber	596.20
6. 3 X Brown Crepe	283.30
7. 2 X Brown Crepe	571.98
Total.....	P12,759.07

The sum of P879.50 which the appealed decision orders the Commissioner of Internal Revenue to refund to the Rubber Company represents the sales tax collected from the latter on Flat Bark Rubber (P596.20) and 3 X Brown Crepe (P283.30), while the remaining sum of P11,879.57 represents the sales taxes which the Tax Court held to be not refundable and properly collected on the production and sales of the other rubber products involved in the case.

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As exactly the same issue was already conclusively resolved by this Court in the six cases mentioned above, We feel that it will now be sufficient to quote here the pertinent portions of the Decision of the Court, penned by Mr. Justice Jose B.L. Reyes, in G.R. Nos. L-19667, L-19801-19803, as follows:

"The issues posed on these appeals are:

(1) Whether the plaintiff's rubber products above described should be considered agricultural or manufactured for purposes of their subjection to the sales tax;

(2) Whether plaintiff is or is not entitled to recover the sales tax paid by it, but passed on to and paid by the buyers of its products; and

(3) Whether plaintiff is or is not entitled to interest on the sales tax paid by it under protest, in case recovery thereof is allowed.

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.

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Taking also into account the great distance that separates the plaintiff's plantation from the main rubber processing centres 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.

Even less justifiable is the position taken by the Revenue Commissioner in his appeal taken against the finding of the Tax Court that Flat Bark and 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.

As the 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.

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In his appeal, the Revenue Commissioner contends that all of plaintiff's products should be deemed manufactured articles, on the strength of Section 194 (N) of the Revenue Code defining a "manufacturer" as

> "every person who by physical or chemical process alters the exterior texture or form or inner substances of any raw material, or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put to in its original condition, or who — *alters the quality of any such raw material — as to reduce it* to marketable shape —."

But, as pointed out in the Philippine Packing Corporation case, this definition is not applicable to the exemption of agricultural products, "whether in their original form or not." The use of this last phrase in the statute clearly indicates that the agricultural product may be altered in texture or form without being divested of the exemption (cas. cit. 100 Phil., p. 548). The exception would be sales of agricultural products while Republic Act No. 1612 was in effect because under this Act the freedom from sales tax became restricted to agricultural products "in *their original form" only. So that plaintiff's sales from* August 24, 1956 (approval of Republic Act 1612) to June 22, 1957 (when Republic Act 1856 became effective and restored the exemption to agricultural products "whether in their original form or not") became properly taxable. Under paragraphs A(2) and B(4) of the additional stipulation of facts (CTA Rec. p. 261-262, G.R. L-19801), the sales tax properly collected during this period of plaintiff's transactions amounted to P18,187.19 from August 24 to December 31, 1956; and P18,888.28 from January 1 to June 21, 1957, or a total of P37,075.47. This last amount is, therefore, non-recoverable.

The second issue in this appeal concerns the holding of the Court of Tax Appeals that the plaintiff Company is not entitled to recover the sales tax paid by it from January, 1955 to August 2, 1957, because during that period the plaintiff had separately invoiced and billed the corresponding sales tax to the buyers of its products. In so holding, the Tax Court relied on our decisions in Medina *vs.* City of Baguio, 91 Phil. 854; Mendoza, Santos & Co. *vs.* Municipality of Meycawayan, L-6069-6070, April 30, 1954 (94 Phil. 1047); and Zosimo Rojas & Bros. *vs.* City of Cavite, L-10730, May 27, 1958.

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The basic ruling is that of Medina *vs.* City of Baguio, *supra,* where this Court affirmed the ruling of the Court of First Instance to the effect that —

> "'The amount collected from the theater goers as additional price of admission tickets is not the property of plaintiffs or any of them. It is paid by the public. If anybody has the right to claim it, it is those who paid it. Only owners of property has the right to claim said property. The cine owners *acted as mere agents of the* city in collecting additional price charged in the sale of admission tickets.'" (Medina *vs.* City of Baguio, 91 Phil. 854) (Italics supplied).

We agree with the plaintiff-appellant that the Medina ruling is not applicable to the present case, since the municipal taxes therein imposed were taxes on the admission tickets sold, so that, in effect, they were levies upon the theater goers who bought them; so much so that (as the decision expressly ruled) the tax was collected by the theater owners as agents of the respective municipal treasurers. This does not obtain in the case at bar. The Medina ruling was merely followed in Rojas & Bros. *vs.* Cavite, *supra,* and in Mendoza, Santos & Co. *vs.* Municipality of Meycawayan, 94 Phil. 1047.

By contrast with the municipal taxes involved in the preceding cases, the sales tax is by law imposed directly, not on the thing sold, but on the act (sale) of the manufacturer, producer or importer (Op. of the Secretary of Justice, June 15, 1946; 47 C.J.S., p. 1141), who is exclusively made liable for its timely payment. There is no proof that the tax paid by plaintiff is the very money paid by its customers. Where the tax money paid by the plaintiff came from is really no concern of the Government, but solely a matter between the plaintiff and its customers. Anyway, once recovered, the plaintiff must hold the refund taxes in trust for the individual purchasers who advanced payment thereof, and whose names must appear in plaintiff's records.

Moreover, the separate billing of the sales tax in appellant's invoices was a direct result of the respondent Commissioner's General Circular No. 440, providing that —

> "if a manufacturer, producer, or importer, in fixing the gross selling price of an article sold by him, has included an amount intended to cover the sales tax in the gross selling price of the article, the sales tax shall be based on the gross selling price *less*

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> the amount intended to cover the tax, *if the same is billed to the purchaser as a separate item in the invoice.* x x x" (Italics supplied)

In other words, the separate itemization of the sales tax in the invoices was permitted to avoid the taxpayer being compelled to pay a sales tax on the tax itself. It does not seem either just or proper that a step suggested by the Internal Revenue authorities themselves to protect the taxpayer from paying a double tax should now be used to block his action to recover taxes collected without legal sanction.

Finally, a more important reason that militates against extensive and indiscriminate application of the Medina *vs.* City of Baguio ruling is that it would tend to perpetuate illegal taxation; for the individual customers to whom the tax is ultimately shifted will ordinarily not care to sue for its recovery, in view of the small amount paid by each and the high cost of litigation for the reclaiming of an illegal tax. In so far, therefore, as it favors the imposition, collection and retention of illegal taxes, and encourages a multiplicity of suits, the Tax Court's ruling under appeal violates morals and public policy.

The plaintiff Company also urges that the refund of the taxes should include interest thereon. While this Court has allowed recovery of interest in some cases, it has done so only in cases of patent arbitrariness on the part of the Revenue authorities; and in this instance we agree with the Tax Court that no such patent arbitrariness has been shown.

IN VIEW OF THE FOREGOING, the decision of the Court of Tax Appeals is affirmed in Case G.R. No. L-19667 and modified in cases G.R. Nos. L-19801, 19802 and 19803, by declaring the sales taxes therein involved to have been improperly levied and collected and ordering respondent Commissioner of Internal Revenue to refund the same, except the taxes corresponding to the period from August 24, 1956 to June 22, 1957, during which Republic Act No. 1612 was in force. The amount of P37,075.47 paid by the taxpayer for this period is hereby declared properly collected and not refundable. Without special pronouncement as to costs."

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered as follows:

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1) In G.R. No. L-20772, the decision of the Court of Tax Appeals is reversed and another is hereby rendered ordering the Commissioner of Internal Revenue to refund to American Rubber Company the total sum of P11,879.57.

2) In G.R. No. L-20852, judgment is hereby rendered affirming the decision of the Court of Tax Appeals insofar as it ordered the Commissioner of Internal Revenue to refund to American Rubber Company the sum of P879.50.

Without special pronouncement as to cost.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and *Makasiar, JJ.,* concur.
Ruiz Castro, J., took no part.

[G.R. No. L-21104. May 31, 1971]

BCI EMPLOYEES AND WORKERS UNION (PAFLU), *petitioner, vs.* HON. PIO MARCOS, Judge of the Court of First Instance, BAGUIO CITY and BENGUET CONSOLIDATED, INC., *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; WHEN PREMATURE. — It is clear that the instant petition was prematurely filed and hence must be dismissed for that reason. The issue of respondent court's jurisdiction in the declaratory relief case was raised in the motion to dismiss filed by herein petitioner with said court; and the issue concerning the validity of the writ of preliminary injunction with respect to the deduction of union dues was likewise raised in the two motions to lift the same. All three motions had not yet been resolved by respondent court when the instant petition was filed, contrary to the settled rule that certiorari