

1952
March 26
June 18

BETWEEN :

HER MAJESTY THE QUEEN PLAINTIFF;

AND

SAMUEL H. LEVENTHAL *et al.* DEFENDANTS.

Revenue—Sales tax—Special War Revenue Act, R.S.C. 1927, c. 179, ss. 86 and 89—Liability for tax on sale of secondhand or used goods—No presumption that sales tax paid on prior sale—Interpretation of statutes.

Held: That a licensed wholesaler is liable for sales tax under Part XIII of the Special War Revenue Act, R.S.C. 1927, c. 179 on goods sold by him unless he can bring himself within the exemptions or other relief from sales tax provided in the Act and it is immaterial that such goods sold are secondhand or used goods.

2. That there is no presumption under the Special War Revenue Act that the sales tax has been paid on a prior sale of goods.

INFORMATION exhibited by the Deputy Attorney General of Canada to recover from defendants sales tax alleged due the Crown under the provisions of the Special War Revenue Act, R.S.C. 1927, c. 179 and amendments thereto.

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The action was tried before the Honourable Mr. Justice Archibald at Winnipeg.

R. D. Guy, Q.C. and *K. E. Eaton* for plaintiff.

W. P. Fillmore, Q.C. for defendants.

The facts and questions of law raised are stated in the reasons for judgment.

ARCHIBALD J. now (June 18, 1952) delivered the following judgment:

In the Information filed in this matter, the plaintiff claims that the defendants are liable to pay sales tax as licensed wholesalers, pursuant to the appropriate provisions of Part XIII of the Special War Revenue Act (since entitled and hereinafter referred to as "The Excise Tax Act"), in the amounts and on the last day of the months following, that is to say:

Date of Sale	Purchaser	Tax	Penalty as at <i>May 1, 1951</i>
April 1947	Tomlinson Construction Co. Ltd., Mixermobile	\$ 880.00	\$ 281.60
July 1947	Huggard Equipment; Dragline	1,280.72	384.21
Oct. 1947	S. Simkin; Tractor	340.00	95.20
March 1948	Tomlinson Construction Co. Ltd., Grader	176.00	43.42
July 1948	B. Penner; Tractor	480.00	105.60
		\$3,156.72	\$ 910.03
		910.03	
		\$4,066.75	

Also from paragraph 5 of said Information, for certain penalties in respect of certain other sales.

The Information was heard before me at Winnipeg, Manitoba, on the 26th day of March, 1952. At the hearing of said Information, counsel for the defendants was furnished with information respecting paragraph 5 of the Information.

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With respect to the items enumerated in paragraph 4, the matter resolves itself into a question of law as to whether there is any liability on the defendants to pay the amount claimed, because, it is urged, the relevant sections of The Excise Tax Act at that time, are not applicable to *second-hand goods*. It is therefore necessary to refer briefly to certain facts, and these are agreed by and between counsel for the parties. These facts are as follows:

- (a) The defendants from June, 1944, to late in 1949, carried on in partnership the business of importing, buying, selling and distributing, new and used machinery, engineer and some equipment and other like and kindred merchandise.
- (b) That from the end of October or November 1, 1945, to March 31, 1949, the defendants were licensed wholesalers under the Special War Revenue Act.
- (c) That the goods enumerated in paragraph 4 of the Information, were sold at the dates therein stated, and that the sums of money therein named, correctly state the amounts of money therein indicated as due and payable by defendants if they are liable to pay same or any part thereof.
- (d) That the goods referred to in said paragraph 4 are all used or secondhand goods and that defendants made no return relative to said goods as holders of a license as licensed wholesalers.
- (e) That the defendants did not produce any books or records which would indicate sales tax had been at any time paid on original sales or other transactions respecting said goods, excepting as to the Huggard Equipment dragline and to the Simken tractor. The defendants submit that their own books of record were lost in the Winnipeg Flood of 1950 and cannot now be produced for examination in Court. However, having regard to the argument before me and the memoranda later submitted to me by counsel in their briefs, the question of the loss of defendants' records need not be discussed by me.

In The Excise Tax Act, provisions respecting sales tax are to be found in Parts XIII and XIV of the said Act. The references in the Act relevant and important to this case are to be found in sections 86 and 89. Section 86(1) reads:

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86(1). There shall be imposed, levied and collected a consumption or sales tax of eight per cent on the sale price of all goods

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(a) produced or manufactured in Canada

(i) payable, in any case other than a case mentioned in subparagraph (ii) hereof, by the producer or manufacturer at the time when the goods are delivered to the purchaser or at the time when the property in the goods passes, whichever is the earlier, and

(ii) payable, in a case where the contract for the sale of the goods (including a hire-purchase contract and any other contract under which property in the goods passes upon satisfaction of a condition) provides that the sale price or other consideration shall be paid to the manufacturer or producer by instalments (whether the contract provides that the goods are to be delivered or property in the goods is to pass before or after payment of any or all instalments), by the producer or manufacturer *pro tanto* at the time each of the instalments becomes payable in accordance with the terms of the contract;

(b) imported into Canada, payable by the importer or transferee who takes the goods out of bond for consumption at the time when the goods are imported or taken out of warehouse for consumption; or

(c) sold by a licensed wholesaler, payable by the vendor at the time of delivery by him, and the said tax shall be computed on the duty paid value of goods imported or if the goods were manufactured or produced in Canada, on the price for which the goods sold were purchased by the said licensed wholesaler and the said price shall include the amount of the excise duties on goods sold in bond.

Exemptions from sales tax are specified in sections 86(2) (b) (c) (d) (e) (f) and (g); and 89(1) (2) and (3). Provisions for deductions, refunds and drawbacks are specified in section 105, subsections (1) to (7) inclusive.

Counsel for the plaintiff urges, and I agree with him, that the reading of section 86 (a) (b) and (c) is clear and unambiguous, and means exactly what it says, namely, that a sales tax shall be imposed on *all goods* (a) produced or manufactured in Canada; (b) imported into Canada; (c) sold by a licensed wholesaler. He points out that (c) is not alternative to either sections (a) or (b) or (a) and (b), and further directs attention to the fact that in as much as all the goods to which sales tax applies, are either produced or manufactured in Canada, or imported into Canada,

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section (c) has reference solely to *goods sold by a licensed wholesaler* and the fact that such goods are secondhand or used is not material. Therefore, in the absence of proof by the defendants that they are entitled either to exemptions or other relief from the sales tax pursuant to the provisions already referred to, the sales tax, as imposed, must be borne by the defendants. Moreover, he points out that section 86(1) (c), refers to a tax payable whether the goods were either imported into, or manufactured or produced in Canada, and therefore cannot be merely or simply an alternative to 86(1)(b).

Counsel for the defendants seeks dismissal on the ground (i) that sales tax has either already been paid or should be *presumed* to have been paid on a prior sale of each of the five machines referred to in the plaintiff's Information, in short, that sales tax is not payable by a licensed wholesaler if the Crown has already collected tax on a sale of such article or articles by somebody else; (ii) that the tax imposed by section 86(1) (c) of The Excise Tax Act is simply an alternative because of the presence of the word "or" in the last line of section (1) (b).

Neither counsel could indicate to me any authority or judicial decision dealing with the interpretation of these sections in question.

I am unable to agree with counsel for the defendants that the use of the word "or" in the last line of 86(1) (b) gives rise to any ambiguity in the remainder of the section or justifies an interpretation that 86(1) (c) is an alternative to the tax provided in section 86(1) (b). The wording does not justify any departure from or qualification of the well known and long established guide to interpretation of statutes so well stated in Maxwell on The Interpretation of Statutes, 9th ed., at page 3:

The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and, otherwise, in their ordinary meaning; and, secondly, that the phrases and sentences are to be construed according to the rules of grammar. From these presumptions it is not allowable to depart where the language admits of no other meaning.

Moreover, a reading of the context and the other provisions in the statute indicates that Parliament intended the section to mean what it says. There is provision for exemptions and the defendants, in order to avail themselves of any such exemptions, must demonstrate that the facts bring them within those exemptions or entitle them to the relief provided in the relevant sections, which, from their wording, contemplates payment before seeking a refund.

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As to the argument that with respect to secondhand goods there is a presumption that sales tax had been paid on a prior sale, it should be pointed out that The Excise Tax Act does not indicate that any such presumption exists. As already pointed out, examination of the context and the wording of the Act is against such a presumption, and I do not find in the citations given me by counsel for the defendants, that I would be justified in giving effect to such a presumption. The Act prescribes the cases and instances which entitle a taxpayer to relief and to be entitled to any such relief *he must demonstrate* that he satisfies the requirements prescribed by the statute. The burden is on him to do so. See *Kennedy v. The Minister of National Revenue*, (1); *Walter G. Lumbers v. The Minister of National Revenue*, (2).

Counsel for the defendants stressed the hardship and unfairness which would result from imposition of sales tax a second time on the same articles. That may well appear to be the consequence but in the circumstances of this kind of case, that is a matter for Parliament and not one for this Court. Reference has already been made to the long established rules of interpretation, and the Court must follow the wording of the statute notwithstanding the consequences which apparently may result. This has been repeatedly stated and I am not going to elaborate, other than to refer to the well known and oft quoted observation of Lord Cairns in *Partington v. The Attorney-General*, (3), where he says:

As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be.

(1) (1929) Ex. C.R. 36. (2) (1943) Ex. C.R. 202; (1944) C.L.R. 167.

(3) 4 L.R. E. & I. A. 100 at 122.

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The plaintiff is therefore entitled to judgment as sought in this Information, subject however to any adjustments necessary as a result of the admissions made respecting paragraph 5 of the Information.

Archibald J. The plaintiff is also entitled to the costs of these proceedings.

Judgment accordingly.