BETWEEN:

Toronto
1965
June 21

JAY-ZEE FOOD PRODUCTS LTD. .....APPELLANT;

AND

DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE *et al.* ..... RESPONDENTS.

Sales Tax—Federal—Excise Tax Act, R.S.C. 1952, c. 100, ss. 30, 32—Schedule III—Interpretation Act, R.S.C. 1952, c. 58, s. 15—Whether re-constituted orange juice "exempt tax as" fruit juice consisting of at least 85% of the pure juice of the fruit.

The issue was whether re-constituted orange juice, made by extracting water and other substances in Florida and shipping the concentrate in Ontario where water was added to it, was exempt from tax under Schedule III to the *Excise Tax Act*.

It was common ground that a rival product, canned single strength in Florida from which the water was not removed, was exempt.

Held: That a taxing statute should be interpreted, wherever possible, so as to avoid any anomaly or absurdity such as that distinguishing the two products referred to, and that if a statute admitted of two interpretations the one producing the more reasonable result should be preferred.

2. That in respect to a taxing statute, it was the duty of the Court to give effect to the intention of the legislature as that intention was to be gathered from the language employed, leaving regard to the context.

3. That "pure" was not a synonym for "fresh" or "natural" but implied freedom from defilement, corruption or impairment.

4. That the product in question was "pure juice of the fruit" within the meaning of the words of Schedule III of the *Excise Tax Act* and therefore not subject to the tax.

5. That the Appeal is allowed with costs.

APPEAL from a declaration of the Tariff Board.

John J. Robinette, Q.C. for appellant.

D. S. Maxwell, Q.C. and *D. H. Aylen* for respondent.

GIBSON J.:—This is an appeal from a declaration of the Tariff Board dated November 20, 1964, taken by the appellant, Jay-Zee Food Products Limited, a person who entered an appearance pursuant to s. 57 of the *Excise Tax Act* and who was heard by the Tariff Board at its hearing on the application of the respondent Edgewater Canning Company. Leave to appeal to this Court was granted by Order of the President dated the 18th day of December, 1964.

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JAY-ZEE FOOD PRODUCTS LTD. v. DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE

Gibson J.

Pursuant to that Order leave to appeal was granted upon the following question of law:

"Did the Tariff Board, having held as a matter of fact

(*a*) that re-constituted orange juice is a product made by the addition to concentrated orange juice of water and certain other substances lost in the process of concentration, and

(*b*) that re-constituted orange juice is a product more than 75% of which consists of the water so added to the concentrated orange juice,

err as a matter of law in holding that re-constituted orange juice is not included in the words 'fruit juice consisting of at least 85% of the pure juice of the fruit' within the meaning of those words in Schedule III of the *Excise Tax Act*?"

The issue in this appeal, therefore, is whether the product of the respondent Edgewater Canning Company, which is called "Saico", one tin of which was filed on the hearing before the Tariff Board as Exhibit A-1, is a product within the exemption from sales tax prescribed in those words posed in the question of law by the Order of this Court.

"Saico" is a reconstituted orange juice made by extracting the water and certain other substances in Florida and shipping the concentrate to Picton, Ontario, where water is added to it. The problem on this appeal is whether this product can be categorized as coming within the words of Schedule III of the *Excise Tax Act* as "fruit juice consisting of at least 85 per cent of the pure juice of the fruit".

It is common ground, and it is mentioned in the reasons of the Tariff Board, that the product known as "Horsey Orange Juice", a tin of which was produced as Exhibit A-5 on the hearing before the Board, is exempt from sales tax. This product is made in Florida and is a tinned single-strength orange juice which does not contain more than 15 per cent of materials or properties that do not come from the natural or fresh orange juice.

There is thus an anomaly or absurdity in respect to these two products. One is declared to be exempt from sales tax, while the other, which is practically the equivalent from the pure food point of view, practically the same product, is

declared to be subject to the tax. If the Court on a true interpretation of the statute can avoid such a result it should do so.

The provisions of s. 15 of the *Interpretation Act,* R.S.C. 1952, c. 58, apply to a taxing statute, with which we are concerned here, as the Supreme Court of Canada held in *The King v. Algoma Central Railway Company*[1] and in *Cartwright v. City of Toronto*[2]. The Court of Appeal in England also, in *Attorney General v. Carlton*[3] said that in respect to a taxing statute, as in the case of any other statute, the duty of the Court is to give effect to the intention of the legislature as that intention is to be gathered from the language employed, having regard to the context in connection with which it was employed. And in *City of Victoria v. The Bishop of Vancouver*[4] which was a case dealing with an exemption from municipal taxes in British Columbia, the Privy Council held that if the words of a statute admit of two interpretations, and if one interpretation leads to an absurdity and the other leads to a reasonable result, the latter is to be preferred.

In my opinion, in the case before the Court the key word in Schedule III of the *Excise Tax Act* is "pure" and it is not a synonym for "fresh" or "natural". This view is reinforced by a reading of the very clause in which the word appears, which provides that materials other than the natural or fresh juice of the fruit—in this instance, the orange—may be added, to the extent of 15 per cent, and the resulting product will be within the exempting provision. The removal of the water in Florida and the addition of the water in the Province of Ontario does not make the composition unpure. I think the word "pure" in Schedule III of the Act has the connotation that the resulting product must not be defiled, corrupted or impaired, and the addition of the water does not defile, corrupt or impair the reconstituted orange juice which is the subject of this appeal.

In my opinion, therefore, this product "Saico" is pure juice of the fruit within the meaning of Schedule III of the *Excise Tax Act*. In the result the question of law posed by the Order of this Court must be answered in the affirmative. The appeal, therefore, is allowed, with costs.

[1] (1902) 32 S.C.R. 277 at 283.
[2] (1914) 50 S.C.R. 215 at 219.
[3] (1889) 2 Q.B. 158 at 164.
[4] [1921] 2 A.C. 384 at 388.