

BETWEEN :

YORK, MARBLE, TILE AND }
TERRAZZO LTD. }

SUPLIANT;

Toronto
1966
May 5, 11

AND

HER MAJESTY THE QUEEN RESPONDENT.

Petition of right—Sales tax—Excise Tax Act, R.S.C. 1952, c. 100, s. 30(1)(a)—Imported goods not produced or manufactured in Canada —“Building materials” as defined in Schedule III by Section 6 of chapter 12, Statutes of Canada 1963 are irrelevant—Polishing and cutting of imported marble slabs for custom installation—Liability for tax.

The suppliant imported slabs of marble in bulk from Italy and used it mainly in carrying out subcontract work for its installation in new buildings. This work involved polishing and cutting the slabs and then installing them in place.

The issue for determination in this action was whether the polishing and cutting of the marble resulted in goods being “produced” or “manufactured” in Canada so as to incur tax under section 30(1)(a) of the Act.

Held, That the suppliant’s activities did not involve the application of any art or process so as to change the character of the imported natural product.

- 2. That the words “goods produced or manufactured in Canada” in the context of section 30(1)(a) had no application to the work done on the marble by the suppliant.
- 3. That the Petition is granted with costs against the respondent.

PETITION OF RIGHT to recover sales tax assessed by the Minister of National Revenue, under provisions of the *Excise Tax Act*.

W. D. Goodman and *B. A. Spiegel* for suppliant.

N. A. Chalmers and *A. B. Garneau* for respondent.

GIBSON J.:—By its Petition of Right the suppliant, a company incorporated under the *Ontario Corporations Act*, with head office in the City of Toronto, seeks to recover certain moneys paid by it under protest pursuant to a Notice of Assessment for sales or consumption tax dated January 18, 1965 made by the Minister of National Revenue purporting to act under the provisions of s. 30(1)(a) of the *Excise Tax Act*, Revised Statutes of Canada 1952, c. 100.

The issue for determination in this action is whether the work done by the suppliant on imported slab marble

1966
 YORK,
 MARBLE,
 TILE &
 TERRAZZO
 LTD.
 v.
 THE QUEEN
 Gibson J.

resulted in such marble becoming "goods produced or manufactured in Canada" as those words are employed in the said s. 30(1)(a) of the *Excise Tax Act*.

According to the evidence, the suppliant in the main, imports the slab marble it uses in the course of its business from Italy. (Some small quantities of marble are purchased by it in Canada, but such fact does not affect the decision in this matter). It is imported in slab form in various thicknesses and sizes which may vary from four feet to 12 feet in length and from two feet to six feet in width. The most used thickness of such slabs is seven-eighths inch. These slabs are quarried and sawn in these sizes and thicknesses in Italy and in such form are delivered to the business premises of the suppliant either bundled, packed in wooden crates or sometimes in loose form.

Although some of this marble is sold by the suppliant in the form in which it is imported, the major portion of it is sold polished and installed in various buildings. These latter sales are made by the suppliant as part of sub-contracts entered into with general contractors in the construction of new buildings. Such sub-contract installations take a number of forms, such as for decorative walls, floors in certain areas or window stools and so forth; and all become part of the finished building. The suppliant obtains such installation sub-contracts from general contractors in a number of ways but generally by competitive bidding based on specifications prepared by the architects of such buildings.

On obtaining such a sub-contract the suppliant selects the specified lengths and thicknesses of marble from its stock, polishes it, cuts it to the size required and then delivers it to the particular job site and installs it where required.

The polishing and cutting are done by relatively unskilled workmen and neither are complicated or costly tasks to perform, but substantial skill and expenditure of labour costs are required to install such marble into buildings on the job sites.

On the evidence there is one exception to this manner of doing business and it concerns some marble cut for an altar for a Catholic church in Hamilton, Ontario; but this was an exceptional and isolated instance and not the usual business of the suppliant and is therefore of no help in determination of the issue in this action.

It is in respect to this polishing and cutting activities of the suppliant in relation to the marble it imports that this action is concerned. Whether as a result "goods are produced or manufactured in Canada" as these words are used in this taxing statute is the question for decision.

The answer poses some difficulty for a number of reasons. To illustrate I mention three:

FIRSTLY, as Chief Justice Duff in *The King v. Vandeweghe Limited*¹ said:

The words "produced" and "manufactured" are not words of any very precise meaning and, consequently, we must look to the context for the purpose of ascertaining their meaning and application in the provisions we have to construe.

SECONDLY, the verb "produce" ordinarily is almost synonymous with the verb "manufacture", but how many exceptions there are is not easy to say. For example, a thing can be "produced" as a result of assembly of various parts, although it is not "manufactured".

THIRDLY, in taxing statutes "manufacture" generally is given its narrower meaning of production of articles for use from raw and prepared materials by giving them new forms, qualities and properties or combinations and usually, but not always, excludes repairing or processing for the purpose of restoring an article to its former condition. But there is no absolute rule as to how the word "manufacture" should be construed in a taxing statute.

In this case I think that counsel for the respondent put the issue for determination adequately when he submitted that the decision depends on its own facts in relation to the words used and the context in which they are used in the *Excise Tax Act*.

The material words of s. 30(1)(a) of the *Excise Tax Act* have remained substantially unaltered for many years in this statute and in the predecessor statute, the *Special War Revenue Act*.

The suppliant heretofore and up until this case was never considered by the Minister of National Revenue to have "produced" or "manufactured" "goods" in Canada by reason of the polishing and cutting work it did in its shop

1966
 YORK,
 MARBLE,
 TILE &
 TERRAZZO
 LTD.
 v.
 THE QUEEN
 Gibson J.

¹ [1934] S.C.R. 244 at p. 248.

1966
 YORK,
 MARBLE,
 TILE &
 TERRAZZO
 LTD.
 v.
 THE QUEEN
 Gibson J.

on the marble imported into Canada before it incorporated the same into buildings in its role as building sub-contractor.

The said marble that the suppliant incorporated in the manner mentioned into buildings was never heretofore considered by the Minister of National Revenue as a building material within a specific definition of such in Schedule III of the *Excise Tax Act* and therefore the repealing of the exemptions from sales tax of certain "building materials" as defined in Schedule III by s. 6 of c. 12 of the Statutes of Canada 1963 is irrelevant to the determination of the issue for decision in this case.

No new type of work has been done by the suppliant to the marble it imported during the relevant time in this action. The polishing and cutting work continued to be done in the same fashion as always.

On these facts, I find it impossible to conclude that this work on the marble constituted, in the result, manufacturing or producing as meant in this taxing statute.

In the result therefore, I find on the facts of this case that the words "goods produced or manufactured in Canada" in s. 30(1)(a) of the *Excise Tax Act* and in their context in that statute have no application to the work done by the suppliant during the relevant time on the marble it imported into Canada (or on the relatively small quantities of marble it purchased from others).

In my opinion, the activities were not the application of any art or process so as to change the character of the imported natural product dealt with so as to come within the meaning of "produced" or "manufactured" in that statute. The activities of the suppliant in relation to the imported marble were done as part and parcel of executing building sub-contracts resulting in such marble becoming part of the realty and in doing so the suppliant did not at any material time produce or manufacture in Canada "goods" as meant in s. 30(1)(a) of the *Excise Tax Act*.

The suppliant is therefore entitled to judgment against the respondent for the return of the money paid during the relevant period in so far as these moneys relate to the issue decided in this action. If the exact sum cannot be agreed upon, then there shall be a reference to the Registrar of this Court to determine the sum.

The suppliant is entitled to its costs.