

HIS MAJESTY THE KING PLAINTIFF;

AND

BANK OF NOVA SCOTIA DEFENDANT.

1929
May 6.
May 17.

Special War Revenue Act, 1915—Consumption or sales tax—Goods manufactured for person's own use—Sections 86 and 87.

The plaintiff, by his Information, claims a consumption or sales tax on certain books, forms, etc., printed and made by the defendant for the use of its various offices or branches throughout Canada and elsewhere.

Held, that sections 86 and 87 of the Special War Revenue Act (R.S.C., 1927, c. 179) must be read together. That under section 87, when goods are manufactured and produced in Canada, not for sale, but for the use of the manufacturer or producer, such transactions are for the purposes of the Act to be regarded as sales, and that in consequence, the books, forms, etc., referred to are subject to the sales or consumption tax.

INFORMATION to recover from the defendant the consumption or sales tax upon certain books, forms, etc., printed by it for use in its various branches and offices.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

M. H. Ludwig K.C. for plaintiff.

W. N. Tilley K.C. for defendant.

The facts are stated in the reasons for judgment.

The PRESIDENT now (May 17, 1929) delivered judgment.

This is a case stated for the opinion of the Court by the parties hereto. The defendant is a chartered bank with its head office at Halifax, N.S., and its chief executive office in the city of Toronto, Ontario. At the times material here, the defendant in connection with its chief executive office at Toronto, maintained at Toronto a stationery department through which it supplied its various offices, including head office, executive office, and branch offices, with the stationery and supplies required in the conduct of the bank's business. For convenience and expedition, and to ensure secrecy, the bank has had for upwards of thirty years in its stationery department a printing plant, with which it prints and makes up ledgers, tellers' cash books, legal forms, by-laws, letter paper, ruled and printed forms, return forms of branches to the head office, minute books,

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pamphlets and other printed material required in carrying on the bank's business at its various offices throughout Canada and elsewhere. In the bank's system of accounting, every office bears its share of all expenses incurred by the bank for such office, including cost of stationery and supplies. The stationery and supplies are furnished to the various offices on their requisitions sent to the stationery department, and are shipped to such offices direct from the stationery department. On making the shipment, the stationery department renders statements to the receiving office, showing the amount to be charged against the receiving office, as the cost or estimated cost of the articles furnished.

Under the provision of the Special War Revenue Act 1915, now Chap. 179 of the Revised Statutes of Canada, 1927, there was assessed and levied on the defendant a consumption or sales tax of \$10,205.72 in respect of stationery, etc., supplied to its various offices as described, and the question for decision here is, whether under the provisions of the Special War Revenue Act, the defendant is liable for such consumption or sales tax.

The provisions of the statute bearing upon the issue are the following, and as found in Chap. 179, R.S.C. 1927:—

86. . . . there shall be imposed, levied and collected a consumption or sales tax of four per cent on the sale price of all goods.

(a) produced or manufactured in Canada, payable by the producer or manufacturer at the time of the sale thereof by him.

* * * *

87. Whenever goods are manufactured or produced in Canada under such circumstances or conditions as render it difficult to determine the value thereof for the consumption or sales tax because

* * * *

(d) such goods are for use by the manufacturer or producer and not for sale.

The Minister may determine the value for the tax under this Act and all such transactions shall for the purposes of this Act be regarded as sales.

Sections 86 and 87 of the Special War Revenue Act, Chap. 179, R.S.C. 1927, must be considered together. The former section imposes a consumption or sales tax upon the sale price of goods produced or manufactured in Canada, at the time of the sale thereof by the producer or manufacturer. That much is clear. Sec. 87 obviously refers to the same subject matter and might have been enacted as a part of the preceding section. It attempts to provide, that when goods are manufactured and produced

in Canada, not for sale, but for the use of the manufacturer or producer, that such transactions shall for the purposes of the Act be regarded as sales; and the Minister is empowered in such circumstances to determine the value of the goods so used by the manufacturer or producer for the tax under the Act. It seems clear that it was the definite aim and purpose of the Act, as set forth in these two sections, that when goods manufactured or produced in Canada were used or consumed by the manufacturer or producer, they were to be regarded as sales. That possibly was the reason for the introduction of the word "consumption" into these sections, as being partially descriptive of the tax, which is throughout referred to as a "consumption or sales tax." It is easy to imagine many instances in which the failure to impose the sales tax upon goods consumed by the producer would make the incidence of the tax appear most invidious and inequitable as to others paying the tax. Reading these two sections together, I think it is plain that it was the intention of the legislature to provide for the taxation of goods consumed by the manufacturer or producer. If not, then sec. 87 (d) was unnecessary, but it was enacted for a purpose, and what else could it be intended to mean except that which I venture to think it does mean. There cannot, I think, be any doubt but that in this case goods were manufactured or produced by the defendant. It is true the goods were distributed to the receiving offices at cost, but it was just to meet such cases that sec. 87 was enacted. I do not think the situation would be different, if the goods were distributed among the different branches of the defendant bank free of charge. They were transactions which are to be deemed to be sales of goods made by the defendant, as manufacturer or producer, for the purposes of and within the intendment of the Special War Revenue Act. I do not think much more can or need be said. A casual reading of the taxing sections of the statute might well leave the impression contended for by the defendant. However, a careful consideration of the two clauses together, leaves me entertaining no doubt as to their purpose and meaning, and that is, in this case, to impose a sales tax upon the defendant upon the transactions which have been described.

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There will therefore be judgment for the plaintiff against defendant in the amount of \$10,205.72 for the consumption or sales tax, and for the sum of \$10 the amount of the license fee mentioned in paragraph 5 of the stated case, together with interest as stated in paragraph 9 (3) of the stated case.

This case was stated by the parties for the opinion of the Court, because the meaning of the statute was claimed to be reasonably open to doubt. In the circumstances, I think I am justified in refusing any order as to costs.

Judgment accordingly.