



1933

BETWEEN:

Apr. 4.
Jun. 22.

HIS MAJESTY THE KING PLAINTIFF;

AND

CONSOLIDATED LITHOGRAPHING }
MANUFACTURING COMPANY } DEFENDANT.
LIMITED

Sales Tax—Playing cards—Excise Tax not included in sale price—Special War Revenue Act (R.S.C., 1927, Ch. 179)

Defendant, a licensed manufacturer under Part XIII of The Special War Revenue Act (R.S.C., 1927, ch. 179), manufactured and sold playing cards. It paid the sales tax on all cards sold, said tax being computed on the sale price of the cards exclusive of the excise tax imposed by section 82 of the Act. The Crown contends that the sales tax should have been computed on the sale price including the excise tax.

Held: The Act having defined *sale price* as the *duty paid value* in the case of imported goods, said *duty paid value* including, as regards playing cards, the excise taxes imposed by Parts X and XII of the Act, and omitting to include excise taxes in the sale price of playing cards manufactured in Canada, the excise tax imposed under Part XII of the Act is not included in the sale price of such cards for the purpose of calculating the sales tax.

ACTION by the Crown to recover from defendant certain money alleged due for sales tax on playing cards manufactured and sold by it.

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The action was tried before the Honourable Mr. Justice Angers, at Ottawa.

F. P. Varcoe, K.C., for plaintiff.

L. A. Forsyth, K.C., and *J. de M. Marler* for defendant.

The facts are stated in the reasons for judgment.

ANGERS J., now (June 22, 1933), delivered the following judgment:

The defendant is and was at all material times herein, to wit from December 1, 1931, to June 30, 1932, licensed as a manufacturer under part XIII of the Special War Revenue Act (R.S.C., 1927, chap. 179, and amendments) and as such manufactured and sold playing cards.

Under section 86 of the said Act the defendant became liable to pay a sales tax on the playing cards manufactured and sold by it. In virtue of regulation 2 (paragraphs (a) and (b)) of the regulations pertaining to part XIII of the Act, this tax is payable on or before the last day of the month next succeeding the month in which the sales were made.

From the 1st of December, 1931, to the 30th of June, 1932, the defendant sold playing cards in a quantity which is not in dispute.

The defendant paid to His Majesty the sales tax on all its sales during that period, the tax being computed on the sale price exclusive of the excise tax imposed on playing cards in virtue of section 82 of the Act.

The plaintiff contends that the sales tax should have been computed on the sale price including the said excise tax.

The plaintiff accordingly claims the sales tax on the excise tax paid on the playing cards sold by the defendant during the period aforesaid, namely, the sum of \$2,611.58.

Counsel for defendant admitted at trial that the sum of \$2,611.58 represented exactly the amount of the sales tax on the excise tax on the cards it had sold from December 1, 1931, to June 30, 1932.

Counsel on both sides declared, at the opening of the case, that the main object of the action was to obtain a

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decision as to whether the sales tax must be computed on the sale price exclusive of the excise tax or on the sale price including the excise tax.

Evidence was adduced which could have been dispensed with.

Two copies of invoices of Canadian Playing Card Company, Limited, which is owned and operated by the defendant company, one to International Fine Arts Co., dated April 8, 1932, and the other to The T. Eaton Co. Ltd., dated April 27, 1932, were filed as exhibits 2 and 1 respectively.

The invoice exhibit 1 mentions the price and the excise tax separately and the sales tax is computed on the total of the two items. The invoice exhibit 2 indicates the price in a lump sum, which includes the excise tax, and the sales tax is calculated on the whole.

According to Reid, the secretary-treasurer of the defendant company, the great majority of the invoices sent out by the company indicated separately the price and the excise tax.

The manner in which the invoices were made is, in my opinion, immaterial.

The proof shows that the company charged to its customers the sales tax on the sale price including the excise tax; its object, according to Reid's testimony, was to avoid a loss in case the Crown's contention that the sales tax was payable on the price inclusive of the excise tax was sustained by the Courts; this appears logical and reasonable.

It was argued on behalf of the defendant that the excise tax is not necessarily, if at all, payable by the manufacturer, the argument being made for the purpose of showing that the sale price does not include the excise tax. I must say that I cannot agree with this proposition; the Act and the regulations are perhaps not as explicit as one might wish, but they appear to me to impose on the manufacturer the obligation of affixing the excise stamps on the packages of cards before they leave his establishment.

Subsection 2 of section 82 of the Act stipulates that:

The excise taxes imposed by the preceding subsection shall be payable at the time

(a)

(b) of sale by the Canadian manufacturer.

The regulations pertaining to part XII of the Special War Revenue Act, of which section 82 forms part, contain, *inter alia*, the following provisions:

2. Excise Tax Stamps on playing cards, manufactured in Canada, shall be affixed to the individual packs, and be cancelled, before the playing cards are removed from the premises of the manufacturer.

4. Purchases of Excise Tax Stamps by playing card manufacturers shall be accounted for on individual entries, on Form B. 93A.

Regulation 5, relating to the security which the manufacturer of playing cards is required to furnish to the Collector of National Revenue speaks of the "Manufacturer's Tax on playing cards". It seems obvious to me that the intention of the legislators was to have the tax paid by the manufacturer at the time the cards were sold.

This however does not settle the question and the fact that the manufacturer is, in my opinion, bound to see that the excise stamps are affixed on the packages of playing cards before they leave his premises does not necessarily mean that the sale price, within the meaning of the Act, includes the excise tax.

Previous to the month of April, 1924, the Commissioner of Customs and Excise was of the opinion that the sale price did not include the excise tax. Indeed on the 16th of January, 1924, one S. W. Hobart, acting for the Commissioner, wrote to the defendant the following letter (exhibit A):

With reference to your telephone conversation respecting the application of sales tax as it applies to playing cards, I would inform you that the sales tax applies on the selling price of the cards, which does not include the stamp tax of 8 or 15 cents per pack, as provided for under the Special War Revenue Act.

On the 24th of the same month, the said Hobart, in a letter to the defendant (exhibit B), reiterated his statement as follows:

The consumption or sales tax is applicable on playing cards on the actual selling price thereof, not including the value of the stamp tax.

Sometime later the Commissioner referred the matter to the Department of Justice for a ruling. The ruling was at variance with the opinion of the Commissioner and the defendant was so informed by a letter from said Hobart bearing date the 17th of April, 1924; it reads as follows (exhibit 5):

With reference to the payment of sales tax and excise tax on playing cards, I have to inform you that this matter was referred to the Department of Justice for a ruling.

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A ruling has been issued that the fact that the excise tax on playing cards is shown as a separate item on your invoice should not have any effect to reduce the liability and the vendor should pay the tax on the full selling price, including the excise tax, whether such excise tax is mentioned as a separate item or not.

You are therefore instructed that from the 22nd inst. sales tax will apply as shown above.

Evidently clearness was not the main quality of that particular clause of the statute.

During the period from December 1, 1931, to May 26, 1932, date on which chapter 54 of 22-23 Geo. V, came into force, section 86 of the Special War Revenue Act contained, among others, the following stipulation:

(1) In addition to any duty or tax that may be payable under this Act or any other statute or law, 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 delivery of such goods to the purchaser thereof.

On May 26, 1932, an Act to amend the Special War Revenue Act, being chapter 54 of 22-23 Geo. V, was assented to. By section 11 of said Act, subsection (1) of section 86 of the Special War Revenue Act was repealed and another one substituted therefor. The substituted section contained, *inter alia*, the following provision:

(1) There shall be imposed, levied and collected a consumption or sales tax of six 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 delivery of such goods to the purchaser thereof.

The amendment made by 22-23 Geo. V, chap. 54, has no bearing on the case.

Section 85 defines the expression "sale price" as follows:

(a) "sale price" for the purpose of calculating the amount of the consumption or sales tax, shall mean the price before any amount payable in respect of the consumption or sales tax is added thereto, and shall include the amount of other excise duties when the goods are sold in bond; in the case of imported goods the sale price shall be deemed to be the duty paid value thereof.

Subsection (b) of section 85 then gives the definition of the words "duty paid value":

(b) "duty paid value" shall mean the value of the article as it would be determined for the purpose of calculating an ad valorem duty upon the importation of such article into Canada under the laws relating to the customs and the customs tariff whether such article be in fact subject to ad valorem or other duty or not, and in addition the amount of the customs duties, if any, payable thereon: Provided that in computing the "duty paid value" of tea purchased in bond in Great Britain the amount of the customs duty payable on tea for consumption

in Great Britain shall not be included in the value of such tea for purposes of this Part: and that in the case of matches or playing cards, the excise taxes imposed by Parts X and XII of this Act shall be included in the duty paid value.

In January as well as in April, 1924, when the letters exhibits A, B and 5 were written, the definition of "sale price" was substantially, though not literally, the same; it is to be found in the first two paragraphs of subsection (1) of section 19 BBB of the Special War Revenue Act, 1915, as amended by 13-14 Geo. V, chap. 70, section 6.

The definition of "duty paid value" in 1924 was almost identical to that appearing in the statute of 1931, but for one omission: section 19 AA, as enacted by 13-14 Geo. V, chap. 70, section 4, did not contain the second proviso found in subsection (b) of section 86, to wit

that in the case of matches or playing cards the excise taxes imposed by parts X and XII of this Act shall be included in the duty paid value.

The inclusion of this last proviso in the definition of the expression "duty paid value" is, in my opinion, of great consequence in the present case.

The definition of "sale price" and subsidiarily of "duty paid value", in the statute of 1923 (13-14 Geo. V, chap. 70, ss. 4 & 6 (ss. 19 AA and 19 BBB), was not so definite nor complete as the one now on the statute; for lack of precision, the old definition was not so comprehensive as the new one. One may conceive how, under the old definition, the Commissioner and the Department of Justice did not give to the statute the same interpretation. I am not called upon and I do not think that I ought to express an opinion as to whom the Minister, or the Commissioner, was right in the interpretation of the statute and I shall content myself with interpreting the law as it now exists.

In subsection (a) of section 85 the definition of "sale price" excludes any amount payable in respect of the sales tax and includes all other excise duties when the goods are sold in bond. It says nothing of excise tax. Can it be said that the legislators' intention was to leave out the excise tax? This contention can be upheld with at least as much plausibility and logic as the contrary. It would have been easy for the legislators, had they wished to include in the sale price the excise tax, to have said so specifically as they did in connection with the excise duties. Their silence may be interpreted as an intention of leaving out the excise tax.

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But there is more: the legislators went on to define what the sale price is to be in the case of imported goods, and they say that it shall be deemed to be the duty paid value. The legislators then proceed to define what is to be understood by "duty paid value". It means the value of the article as it would be determined for the purpose of calculating an ad valorem duty upon the importation of such article and in addition the amount of customs duties payable thereon, *provided that* in the case of playing cards *the excise tax imposed by Part XII shall be included in the duty paid value.*

So we have in the case of imported goods an express declaration by the legislators that the "sale price" shall be deemed to be the duty paid value and that the duty paid value shall include, apart from the value of the article as determined for the purpose of calculating an ad valorem duty upon the importation thereof into Canada, the amount of customs duties, if any, and, in the case of playing cards, the excise tax. On the other hand, in the case of goods manufactured in Canada, the legislators declare that the sale price shall include the excise duties when the goods are sold in bond and they omit to mention the excise taxes. It seems to me that the intention of the legislators is quite apparent and that the omission of the excise taxes from the sale price of domestic goods was just as intentional on their part as the inclusion thereof in the sale price of imported goods.

I can reach no other conclusion than that the legislators did not want to include in the sale price of playing cards manufactured in Canada, for the purpose of calculating the amount of the sales tax, the excise tax imposed thereon under Part XII of the Act.

It was argued on behalf of the Crown that if the excise taxes were to be excluded from the sale price in the case of domestic goods, this would constitute a discrimination as against the importer. This is obviously one of the results of the exclusion. It may be that the policy of Parliament was to protect the Canadian manufacturer, as was suggested during the argument. It was undoubtedly its right to do so. At all events, what may have been the object of the Legislature is immaterial. The law must be interpreted according to the apparent meaning which the

legislators attributed to it and, unless the interpretation arrived at be absurd or against public order, it must be adhered to, whatever its effects may be.

Counsel for defendant stressed the point that taxing statutes must be strictly construed and that, in case of ambiguity, the construction most favourable to the subject must be adopted, and he cited many authorities in support of his contention. This doctrine is perfectly sound and is now a well-settled rule of law; perhaps I may just refer to the authorities most in point: Maxwell, Interpretation of Statutes, 7th Ed., 246; Craies on Statute Law, 3rd Ed., p. 105; Beal, Cardinal Rules of Legal Interpretation, 2nd Ed., pp. 436 et seq.; Halsbury's Laws of England, vol. 27, p. 180, and vol. 24, p. 711; Canadian Encyclopedic Digest (Ont. Ed.), vol. 10, p. 267, parag. 66 and notes (v) at foot of page 267 and (w) and (x) at foot of page 268; *Stockton & Darlington Railway Co. v. Barrett* (1); *The Queen v. Barclay* (2); *Partington v. Attorney-General* (3); *Cox v. Rabbits* (4); *Attorney-General v. Peek* (5); *Canadian Northern Railway Co. v. The King* (6); *Foss Lumber Co. v. The King* (7); *In the matter of Micklethwait v. Commissioners of Inland Revenue* (8); *Attorney-General v. Beech* (9); *Tennant v. Smith* (10).

The conclusion to be derived from the above authorities is that every charge upon the subject must be imposed by clear and unambiguous language; if the authority bestowed upon the Crown to levy and collect a tax is doubtful, the doubt, provided it be a reasonable doubt, must be resolved against the tax. In the present case however, it seems obvious to me that the Legislature did not intend to levy a sales tax on the amount of the excise tax.

A good deal can be said in favour of the proposition that the sale price is what the purchaser pays to the vendor as consideration for the object of the sale and that, since the purchaser has to pay and does pay the excise tax included in the sale price, such excise tax must be considered, for

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| (1) (1844) 7 M. & G., 870, at 879. | (5) (1912) 2 K.B., 192, at 208. |
| (2) (1881) L.R., 8 Q.B.D., 306, at 312. | (6) (1922) 64 S.C.R., 264, at 275. |
| (3) (1869) L.R., 4 E. & I. App., 100, at 122. | (7) (1912) 47 S.C.R., 130, at 140. |
| (4) (1878) A.C. 473, at 478. | (8) (1855) 11 Exch. R., 452, at 456. |
| | (9) (1899) A.C., 53, at 59. |
| | (10) (1892) A.C., 150, at 154. |

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the purpose of calculating the sales tax, as forming part of the purchase price. I must admit that, if the sale price had not been defined in the Act, the above proposition would carry much weight. But the Legislature has deemed it advisable to give a definition of "sale price" and it is the meaning put in that definition that I had to determine and by which I must be guided. For the reasons above stated I am of opinion that the sale price, as defined in section 85 of the Act, for the purpose of calculating the sales tax, does not include, in the case of playing cards made in Canada, the excise tax imposed under section 82.

For these reasons I do not believe that the defendant is liable to pay to His Majesty the sales tax claimed herein and the action will accordingly be dismissed, with costs.

Judgment accordingly.