

The Dominion Press, Limited - - - - - *Appellants*

v.

The Minister of Customs and Excise - - - - - *Respondent*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 17TH MAY, 1928.

Present at the Hearing :

THE LORD CHANCELLOR.

VISCOUNT HALDANE.

LORD BUCKMASTER.

LORD WRENBURY.

LORD WARRINGTON OF CLYFFE.

[*Delivered by* THE LORD CHANCELLOR.]

In their Lordships' opinion this appeal fails.

The question to be determined turns upon the construction to be placed upon two taxing statutes, one passed in 1922, which covers the period down to the 1st January, 1924, and the second passed in 1923, which covers the period after the 1st January, 1924.

The appellants, The Dominion Press, Limited, are a company carrying on business in the Province of Quebec, in the Dominion of Canada, as printers. According to the evidence, they do not stock goods available for purchase by any customer who comes to their place of business. Their business consists in printing to the order of individual customers stationery of a business character, the customer explaining exactly what goods he desires and the printer furnishing the goods at a fixed price ; the relationship between the printer and the customer is that of principals, and no privity of contract is created between any supplier of paper, on the one hand, and the customer on the other.

The appellants contend that in these circumstances they do not come within the words of the taxing statute. The Act of 1922 imposes a tax of $2\frac{1}{4}$ per cent. "on sales and deliveries by Canadian manufacturers or producers and wholesalers or jobbers," and it contains two provisos. First of all, there is a proviso which enacts that "the tax shall not apply to sales or importations of job-printed matter produced and sold by printers or firms whose sales of job printing do not exceed 10,000 dollars per annum." Secondly, there is a proviso that the taxes "shall not be payable on goods exported or on sales of goods made to the order of each individual customer by a business which sells exclusively by retail under regulations by the Minister of Customs and Excise, who shall be sole judge as to the classification of the business."

The Act of 1923 imposes a tax of 6 per cent. "on the sale price of all goods produced or manufactured in Canada"; and it does not reproduce the provisos.

The first question to be determined is obviously whether or not these transactions are sales and deliveries by Canadian manufacturers or producers within the enacting words of this section. In their Lordships' opinion they do come within that language.

There has been a discussion before the Board as to whether or not the contract was a contract of sale and delivery within such cases as *Lee v. Griffin* (1 B. & S., 272), or a contract for work and labour done and materials supplied within the authority of *Clay v. Yates* (1 H. & N., 73).

In their Lordships' opinion the material matter to be considered is as to the meaning of the expression "sales and deliveries by Canadian manufacturers or producers" as used in this statute.

Having regard to the language of the first proviso and to the general scope of the enactment, their Lordships entertain no doubt that these contracts were contracts of sales and deliveries by Canadian manufacturers or producers, within the meaning of the taxing statute, and that the payments made under them constituted the sale price of goods produced or manufactured in Canada. That would be enough to dispose of the appeal with regard to the period after January, 1924.

With regard to the earlier period, a further argument was adduced before the Board that the second proviso exempted the appellants from liability. It was said that these sales, if they were sales, were sales of goods made to the order of each individual customer by a business which sells exclusively by retail, and it was contended that, if that was the case, it necessarily followed that the transactions were exempt and that the succeeding words in the proviso, "under regulations by the Minister of Customs and Excise, who shall be sole judge as to the classification of the business," could not avail to limit the exemption or to render liable to taxation that which would otherwise be outside its scope.

In their Lordships' view this is a misconstruction of the language of the proviso. The proviso is an exempting proviso, and, in order to obtain its protection, the taxpayer must bring himself within its language. It was not suggested that the regulations of the Minister of Customs and Excise at any relevant period would exempt the appellants. On the contrary, if valid, the regulations would necessarily bring this business within the scope of the tax. In their Lordships' view the effect of the proviso is only to exempt a sale of goods to the order of an individual customer by a business selling exclusively by retail where it can be shown that that business falls within the regulations made by the Minister of Customs and Excise, who is made sole judge as to the classification of the business.

In these circumstances the appeal fails with regard to the earlier period, equally with the latter. The result is that their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

THE DOMINION PRESS, LIMITED,

v.

THE MINISTER OF CUSTOMS AND EXCISE.

DELIVERED BY THE LORD CHANCELLOR.

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