Privy Council Appeal No. 40 of 1939

Canada Rice Mills Limited - - - - - - - *Appellants*

v.

The King - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CANADA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JULY, 1939.

Present at the Hearing:

LORD ATKIN.
LORD THANKERTON.
LORD RUSSELL OF KILLOWEN.
LORD WRIGHT.
LORD ROMER.

[*Delivered by* LORD ATKIN.]

This is an appeal from the Supreme Court of Canada who dismissed an appeal from the President of the Exchequer Court on a claim by the Crown for sales tax on transactions by the appellant company. The case has been disposed of as it appeared to their Lordships in both Courts upon the footing that the sales in question had in fact been made by the appellant company, who will be referred to as the Mills Company.

The tax is payable under the provisions of section 86 of the Special War Revenue Act, originally of 1915, which has been amended at different times. The relevant part of the section is as follows:—

> "(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 Mills Company had been formed for some considerable time for the purpose of what is called manufacturing rice products, that is to say, they bought rice in the raw state and they manufactured it into a finished product, and the tax was made eventually a tax which fell upon them.

The defence of the company is that these particular sales in respect of which the balance of tax was claimed, were not made by them, but were made by the Sales Company, which was an independent partnership which was formed in 1935. What is said is: "We, the Mills Company, sold our product to the Sales Company and then the Sales

Company sold it to the consumers or sold it in the market and we are only liable for the price which we received from our sales to the Sales Company."

The Sales Company was formed in circumstances which did throw some suspicion on its formation as being formed specially for the purpose of evading the tax, but it is not necessary to say that, because there is certainly evidence that it was in contemplation to form such an association at one time before the question of the tax came into existence. When it was formed it consisted of a partnership between all the shareholders in the Mills Company including the directors, and the partners were interested in the partnership in exactly the same proportions in which they held shares in the Mills Company. It has been found by both Courts in Canada that, when the Mills Company sold to the Sales Company and the Sales Company sold to the market, the Sales Company were only selling in fact as agents for the Mills Company.

The Supreme Court came to the conclusion that that was the finding of the President of the Exchequer Court, and their Lordships think they rightly came to that conclusion; they themselves were of opinion that that was the correct view of the facts. It appears to their Lordships that there were ample grounds upon which both Courts could come to that conclusion.

In those circumstances, it would appear to their Lordships to be an ordinary case of two concurrent findings on a question of fact, but, inasmuch as the Board has listened to a forcible argument by Mr. Griffin on this matter suggesting that there was no evidence to support the findings, they would mention some of the considerations which seem to afford evidence, taken together, upon which a Court could very properly come to that conclusion.

To begin with, the transaction would be a very remarkable transaction if in fact there were independent sales to the Sales Company, for it would mean that the Mills Company had sold their product, to persons who were shareholders and who also included their own directors, at less than the market price. It seems to their Lordships very doubtful whether such a transaction could be within the powers of the company at all, even though the persons to whom they sold it were in fact the shareholders and the whole of the shareholders in the company. When they come to consider whether or not there was here in fact a sale to the partners as an independent sale upon which the partners became personally liable to the Mills Company, on the one hand to accept delivery and become personally liable to the purchasers from them, on the other hand, to give delivery, there are very significant facts in the case. The partnership had no capital; it had no warehouse; the warehouse was the warehouse of the Mills Company; the offices were the offices of the Mills Company; and, what is rather significant for a company that on this footing must have been trading on a very large scale, it had no banking account; the only banking account was the banking account

of the Mills Company. The servants who attended to the sales part of the business were in fact paid by the Mills Company, whose servants they had been before the partnership came into existence. The proceeds of the sales were all in fact received ultimately by the Mills Company, who are said to have accounted for the proceeds afterwards to this partnership. It was suggested that the property, when the goods were delivered to the Sales Company, there and then passed to the Sales Company from the Mills Company, so that, though the goods were sold on credit, the Mills Company were supposed to lose their hold upon the property as security for the unpaid amount.

The way in which the transaction was said to be carried out was that the books were kept at the office. No doubt it is true, as it was said, that they were kept by persons whose services were appropriated to the Sales Company and in that sense they were servants of the Sales Company. The profits were ascertained on this part of the transaction, that is to say, the difference between the price at which the Sales Company had bought from the Mills Company and the price at which they had sold to the market, the difference having been in the hands of the Mills Company as part of the whole transaction. The profits would be the difference between those two prices less the cost of the wages of the different people who were employed in the selling part of the business, but neither the proceeds in gross nor the proceeds as so calculated were paid to the partnership as such, which is what might be expected if one were dealing with a real trading partnership selling rice; but apparently the division of the profits was calculated by the Mills Company and cheques were sent to each of the partners in proportion to his holding in the partnership. In other words, exactly the same position was reached as is reached in regard to the profits of the Mills Company. They would divide their profits by declaring a dividend amongst the shareholders, which would be distributed in this way, and these profits derived from the so-called sales part of it were divided in exactly the same way.

All those facts put together appear to their Lordships to afford ample evidence—they deal with it because Mr. Griffin has suggested that there was no evidence upon which the Courts could come to this conclusion—upon which the Courts could come to the conclusion to which they did come, namely, that these transactions were in fact being conducted throughout by the Sales Company for and on behalf of the Mills Company. The sales were, therefore, sales by the Mills Company and the price received was the sale price of the goods produced or manufactured by the Mills Company. Therefore, the appellants were properly liable to pay the balance of this tax.

In those circumstances, their Lordships will humbly advise His Majesty that this appeal should be dismissed and the appellants must pay the costs of the appeal.

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In the Privy Council

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v.

THE KING

DELIVERED BY LORD ATKIN

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