BETWEEN:

HER MAJESTY THE QUEEN .....PLAINTIFF;

AND

EMMA WILHEMINA KAUFMANN .....DEFENDANT.

1953
Nov. 23 & 24
1954
Jan. 16

Revenue—Excise Tax—The Excise Tax Act, R.S.C. 1952, c. 100, s. 23(1), schedule 1, para. 3(a), s. 23(3), s. 61—Coffee maker consisting of percolator and electric hot plate—"Component" part—Liability for tax.

The Excise Tax Act R.S.C. 1952, c. 100, s. 23(1) schedule 1, para. 3(*a*) imposes an excise tax on "Electrical appliances adapted to household or apartment use, viz. . . coffee makers . . ." manufactured in Canada. Defendant manufactured and sold in Canada an aluminum coffee percolator which to be used as such was attached to an electric hot plate separate from the percolator itself.

The action is for the recovery of the excise tax imposed on the manufacture of electric coffee makers. At one time the defendant advertised the article as an "electric coffee maker".

Held: That the percolator and the electric hot plate were designed to be used together and when so used each is a component part of an electric coffee maker, and defendant is liable for the excise tax imposed by The Excise Tax Act.

INFORMATION exhibited by the Deputy Attorney General of Canada to recover excise tax from the defendant.

The action was tried before the Honourable Mr. Justice Potter at Toronto.

Joseph Singer, Q.C. for plaintiff.

W. J. Anderson for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

POTTER J. now (January 16, 1954) delivered the following judgment:

This is a proceeding by way of information within section 30 of The Exchequer Court Act, chapter 34 of R.S.C. 1927, as amended, now section 29 of chapter 98 of R.S.C. 1952, brought within the provisions of section 108 of The Excise Tax Act, chapter 179 of R.S.C. 1927, as amended, now section 50 of chapter 100 of R.S.C. 1952, to recover the sum of $1,827.34, as taxes, which the defendant was allegedly liable to pay to Her Majesty in the period from October 1, 1952 to December 31, 1952, under section 80, subsection 1 and Schedule I, paragraph 3(*a*) of said chapter 179

1954

THE QUEEN v. KAUFMANN

Potter J.

of R.S.C. 1927, as amended, now section 23(1) of chapter 100 of R.S.C. 1952, and Schedule I, paragraph 3(*a*) thereto, which section and Schedule are in part as follows:—

23 (1) Whenever goods mentioned in Schedules I and II of this Act are imported into Canada or taken out of warehouse or manufactured or produced in Canada and delivered to a purchaser thereof there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this Act or any other statute or law, an excise tax in respect of goods mentioned.

(*a*) In Schedule I, at the rate set opposite to each item in said schedule, computed on the duty paid value or the sale price, as the case may be;

Schedule I

3(*a*) Electrical appliances adapted to household or apartment use, viz.: blankets; chafing dishes; coffee makers; curling irons or tongs; dish washers; food or drink mixers; food choppers and grinders; floor waxers and polishers; garbage disposal units; hair dryers; irons and ironers; juice extractors; kettles; portable humidifiers; razors and shavers; toasters of all kinds; vacuum cleaners and attachments therefor; waffle irons.... twenty-five (formerly fifteen) per cent.

The plaintiff also claims penalties imposed under the provisions of the said statute up to the 30th day of April, 1953, amounting to $50.28, and additional penalties or interest subsequent to the 30th day of April, 1953, and prior to the date of judgment.

The plaintiff alternatively claims the sum of $1,827.34, plus a penalty of $500 under the provisions of section 119 of said chapter 179, as amended, now section 61 of chapter 100, R.S.C. 1952, which is as follows:—

61. Everyone liable under this Act to pay to Her Majesty any of the taxes hereby imposed, or to collect the same on Her Majesty's behalf, who collects, under colour of this Act, any sum of money in excess of such sum as he is hereby required to pay to Her Majesty, shall pay to Her Majesty all monies so collected and shall in addition be liable to a penalty not exceeding $500.

During the period in question, the defendant manufactured or produced an aluminum coffee percolator, about four and three-quarter inches in diameter, which was similar in construction to the ordinary aluminum coffee percolator except that its bottom was not flat but between one-half and three-quarters of an inch inside the edges, was recessed about one-quarter of an inch, at a diameter of about three and one-half inches and in the centre there was a hinged piece of aluminum about three sixteenths of an inch wide, so arranged that it could be pulled down to a position in

which it projected about one and one-half inches perpendicularly from the bottom and when folded upward, against the bottom, allowed the percolator to stand in a level position on a flat surface.

In the lower end of the hinged strip of aluminum was a hole or slot. When this strip of aluminum was pulled down to a position perpendicular to the bottom of the percolator, it could be inserted into a hole or slot in the centre of the top of a small hotplate, of about the same diameter as the percolator, and locked in that position by means of a rod attached to a projecting knob on the side of the hotplate, which, when pulled outward, allowed the hinged aluminum strip to be inserted and when then pushed forward, engaged the hole or slot in the bottom of the same and the two parts or pieces, viz.—the aluminum percolator and the small electric hotplate, were then fixed or fastened together. Samples of these articles were filed as Exhibits "B" and "3".

According to the testimony of Sigmund Kaufmann, husband of the defendant, Emma Wilhemina Kaufmann, and manager of the business carried on by her under the firm name and style of Filtro Products, the defendant, had, for some time, sold these two articles and had sent out invoices for large numbers of the same, describing them as so many electric percolators or percolator and hotplate combinations, "Model 107".

Later, the defendant, instead of invoicing them as so many units, made one invoice for a number of percolators and another for the same number of hotplates,—Exhibits "4" and "4A".

The question for decision, is whether or not the defendant was manufacturing or producing electric coffee makers in the sense that the percolator and hotplate combined made one unit or manufacturing percolators as separate articles, and hotplates as separate articles.

The Crown contends that the percolator and hotplate together was an electric coffee maker and therefore subject to excise tax. The defendant, on the other hand, maintains that the percolator could be and was, on some occasions, sold separately from the hotplate and that no excise tax was payable on non-electric percolators and that she also sold the electric hotplates separately and no excise tax was payable on the same.

1954

THE QUEEN v. KAUFMANN

Potter J.

Undoubtedly, the percolator, with the hinged strip of aluminum turned up against its bottom, could be used as a non-electric percolator, and, undoubtedly, the hotplate could be used for purposes other than heating water and making coffee in the percolator, but it is equally certain that the two articles, when the hinged aluminum strip is pulled down perpendicularly to the bottom of the percolator, and fixed into the slot in the centre of the hotplate, together make an electric appliance adapted to household or apartment use, viz.—a coffee maker.

The question is one of some difficulty, but it is clear that the two articles, viz.—the percolator and the electric hotplate were designed to be used together and when so used, each is a component part of an electric coffee maker.

The supplement to Murray's English Dictionary, published in 1933, the original of which was published in 1893, gives what was then a recent meaning of the word "component" as follows:—

> applied specially to the separate parts of motor cars and bicycles. Hence attributively and combined as component maker, component built.

While the circumstances provided for thereby are not before this Court, the words used in subsection 3 of section 80 of chapter 179, R.S.C. 1927, as amended, now section 23(3), c. 100, R.S.C. 1952, are of assistance:—

> 23(3). The tax imposed by this section or by section 28 is not payable in the case of goods that are purchased or imported by a manufacturer licensed under this Part or under section 129 of The Excise Act, and that are to be incorporated into and form a constituent or component part of an article or product that is subject to an excise tax under this Part or to an excise duty under The Excise Act.

Even if the electric hotplates in question were manufactured by one person and the percolators in question by another, but both for a third person who sold the two together, it would follow that the combination sold by the third party would be a component built electric coffee maker.

While the acts or statements of the defendant, her employees and purchasers are not to be taken as interpretations of the law, when words in common use are contained in a statute such acts and statements are some evidence of their accepted meaning.

1954

THE QUEEN v. KAUFMANN

Potter J.

In the early stages of the manufacture and sale of the combinations in question, they were described by the defendant in invoices, as already stated, as electric percolators, and an advertisement appearing in the Ottawa Journal, Exhibit "2", describes the combination as an "electric coffee maker", which is further evidence of the common use of the words.

An electrical engineer was called as a witness by the defendant, who described the two parts of the combination as a hotplate and a percolator and who stated that the combination was not an electric coffee maker.

> The testimony of experts may be given to explain the meaning of technical, local, obsolete, or foreign terms . . . but not of ordinary words used in modern statutes, of which the Court, aided where necessary by dictionaries and other literary authorities, will take judicial notice. Phipson On Evidence, 9th edition, page 682.

There will be judgment for the plaintiff for the sum of $1,827.34 tax and $50.28, the penalty imposed by the statute, together with interest subsequent to the 30th day of April, 1953, and prior to the date of judgment with costs.

Judgment accordingly.