

Montreal
1966
Dec. 1-2

BETWEEN:

W. D. ARMSTRONG & CO. LTD. APPELLANT;

AND

THE DEPUTY MINISTER OF }
NATIONAL REVENUE FOR } RESPONDENT.
CUSTOMS AND EXCISE }

Sales tax—Appeal from Tariff Board—Exemption—Construction of exempting clause—Matrix used in production of rubber stamps—Whether used in production of “printed matter”—Excise Tax Act, Schedule III, Am S of C 1963, c. 17.

The Tariff Board denied appellant an exemption from sales tax on matrices used in producing rubber stamps on the ground that they were not “made for use exclusively in the manufacture or production of printed matter” within the meaning of Schedule III of the *Excise Tax Act*, as added by S of C 1963, c 17. The rubber stamps were produced by a process in which wording was transferred by pressure from a lead slug to a matrix and from the matrix by heat and pressure to an uncured rubber sheet. The same process is commonly used in producing newspapers, magazines, books, etc. Appellant appealed.

Held, the Tariff Board did not err in law and the appeal must be dismissed. While matrices used for the production of newspapers, magazines and books are unquestionably used exclusively in the manufacture or production of “printed matter” within the meaning of Schedule III, it was not shown that the Tariff Board incorrectly construed the words “printed matter” in the context in which they were used in Schedule III as applied to matrices used for the production of rubber stamps.

APPEAL from decision of Tariff Board.

Jonathan J. Robinson for appellant.

André Garneau for respondent.

JACKETT P.: (Delivered orally from the Bench at Montreal, December 2, 1966)—This is an appeal, under section 58 of the *Excise Tax Act*, R.S.C. 1952, chapter 100, as amended, from a declaration made by the Tariff Board on October 5, 1966, to the effect that an article, known as a matrix and used in the course of producing the rubber sheet portion of rubber stamps, did not fall within Schedule III to

the Act as it was during a period of approximately three years prior to the amendments thereto affected by chapter 40 of the Statutes of 1966, so as to bring the sales of such articles, during that period, within the exempting provision of section 32 and thus to exempt such sales from the consumption or sales tax imposed by section 30 of the Act. Those sections read in part as follows:

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30 (1) There shall be imposed, levied and collected a consumption or sales tax of eight per cent on the sale price of all goods

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(a) produced or manufactured in Canada

(i) payable, in any case other than a case mentioned in subparagraph (ii), by the producer or manufacturer at the time when the goods are delivered to the purchaser or at the time when the property in the goods passes, whichever is the earlier, and

(ii) payable in a case where the contract for the sale of the goods (including a hire-purchase contract and any other contract under which property in the goods passes upon satisfaction of a condition) provides that the sale price or other consideration shall be paid to the manufacturer or producer by instalments (whether the contract provides that the goods are to be delivered or property in the goods is to pass before or after payment of any or all instalments), by the producer or manufacturer *pro tanto* at the time each of the instalments becomes payable in accordance with the terms of the contract,

32 (1) The tax imposed by section 30 does not apply to the sale or importation of the articles mentioned in Schedule III

In the appellant's case the Minister also had to invoke section 31, which reads in part as follows:

31. (1) 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.

Pursuant to section 57 of the *Excise Tax Act*, which confers on the Tariff Board jurisdiction where any difference arises or doubt exists, *inter alia*, as to whether any tax

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is payable on any article, to declare that the article is exempt from tax under that Act, by a letter dated May 16, 1966, the solicitors for the appellant wrote to the Tariff Board to challenge a ruling of the Department of National Revenue concerning the application of sales tax to "matrices used in the production of rubber stamps". That letter stated that the appellant's contention was that the matrices are exempt by virtue of the amendment made to the Excise Tax Act by chapter 12 of the Statutes of 1963, by which a paragraph was added to Schedule III reading as follows:

Typesetting and composition, metal plates, cylinders, matrices, film, art work, designs, photographs, rubber material, plastic, material and paper material, when impressed with or displaying or carrying an image for reproduction by printing, made or imported by or sold to a manufacturer or producer for use exclusively in the manufacture or production of printed matter;

The letter from the appellant's solicitors to the Tariff Board informed the Board that "The department" had taken the position "that these matrices are not being used for printing", while it was the appellant's contention "that the definition of printing includes rubber stamping".

The evidence with reference to the article in question is summarized in the Board's declaration, in a manner the correctness of which has not been challenged, as follows:

In the process of making rubber stamps the applicant produces lead slugs, containing the wording of the stamps, and several of these are locked up in a chase. A matrix board is placed over the chase and pressure is applied indenting the matrix board with the characters from the lead slugs. A sheet of uncured rubber is then placed over the matrix board and by application of heat and pressure the rubber is forced into the indentations in the matrix board and cured. When this process is completed the individual stamps are cut out of the cured rubber sheet and attached to wooden handles to form the rubber stamps. The lead slugs are remelted and the matrix board is discarded once the stamps are found to create proper impressions.

It might also be mentioned, although this does not appear to be mentioned in the Tariff Board's declaration, that it was established by the evidence before the Board, and it is common ground, that, in a common type of printing process, exactly the same steps of

- (a) production of lead slugs containing the wording it is desired to print and locking several of them in a chase,
- (b) application thereto of a matrix board so as to indent the matrix board with the characters from the lead slugs, and
- (c) application of a sheet of raw rubber to the matrix board in such manner as to force the rubber into the indentations in the matrix board and curing the rubber while in that state,

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are used to produce a rubber sheet that is used for the final stage of the printing process. In other words, the same crafts and techniques are used in that process to produce a rubber sheet that is in a state in which it can, when inked, impress the required wording on paper or other material, as are used by the appellant in producing the rubber sheet for rubber stamps.

The Tariff Board’s determination of the matter is contained in the following portion of its declaration:

Counsel for the applicant contended that the matrix carries an image for reproduction by printing and is made by the manufacturer for use exclusively in the manufacture of printed matter. He contended that the cured rubber sheet is “matter” and that it is printed; the process of imprinting the configurations on the matrix into the rubber sheet, he contended, is “printing”.

Counsel for the respondent pointed out that the exemption applies to the enumerated goods when they are used exclusively in the manufacture or production of printed matter and he contended that the meaning to be attached to the words “printed matter” is that commonly attributed to such words, that is printed material of the nature of the printed material enumerated in the first four paragraphs under the heading “PRINTING AND EDUCATIONAL”. This material is produced by the use of the goods enumerated in the last paragraph under the heading, such things as composition, plates, cylinders, art work, design and so on. He contended that the cured rubber sheet was not “printed matter” within the meaning to be attached to these words in the exempting provision.

Although the applicant did not make the following point counsel for the respondent argued that while the matrix may carry an image for reproduction, the rubber stamp was not used in the production of printed matter and consequently the matrix does not qualify for exemption, i.e., a rubber stamp does not produce “printed matter” within the meaning to be attached to these words in the exempting provision.

The Board declares that the rubber sheet is not “printed matter” within the meaning to be attached to these words in the exempting

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provision The Board declares also that, in use, a rubber stamp does not produce "printed matter" within the meaning to be attached to these words in the exempting provision

Accordingly, the application is dismissed.

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By order of this Court made on November 22, 1966, leave to appeal was granted on the following question of law:

Did the Tariff Board err as a matter of law in determining that matrices used in the production of rubber stamps are not made for use exclusively in the manufacture or production of printed matter?

Substantially the same arguments were put forward in this Court as were put before the Board.

To understand the appellant's argument, it is helpful to understand the difficulty encountered in applying this exemption, which clearly applies to the articles made in the course of the printing process to which I have referred, to the articles made to be used in the course of manufacturing rubber stamps, even though such articles are for all practical purposes substantially identical. In examining this question, it is to be borne in mind that it is common ground that the appellant's only difficulty is to bring the articles in question within that part of the paragraph in Schedule III to which reference has already been made that reads, "matrices . . . made . . . by . . . a manufacturer or producer for use exclusively in the manufacture or production of printed matter".

Applying the words that I have just quoted to the printing process to which I have referred, there is no question that first the slugs, second the matrix and third the rubber sheet are used exclusively in the manufacture or production of the pages of the newspaper, magazine, book or other reading material that is the end product of the printing process and that that end product is "printed matter" that has been manufactured or produced by that process. There is, therefore, no question that the exemption applies to the slugs, the matrices and the rubber sheets used in the printing process.

In the case of the appellant's rubber stamps, the exempting provision is not so obviously applicable. As everybody knows, a rubber stamp, more often than not, is applied to

some article to add some words, such as "paid" to an account or "fragile" to a parcel, the addition of which does not have the effect of manufacturing or producing "printed matter" out of something that was not printed matter before such words were applied. (Clearly, rubber stamps might be used to manufacture or produce printed matter but such an occasional use is not sufficient for the appellant's present appeal because it is his purpose to obtain a decision that the exemption applies generally to the matrices made in the course of making rubber stamps.)

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The appellant seeks to overcome this difficulty and to bring the matrix used in making a rubber stamp within the exemption provision by bringing the rubber sheet (which is produced in the form of a sheet that may be cut into a number of appropriately shaped pieces that can be affixed to handles so as to become the articles commonly known as rubber stamps) within the expression "printed matter" in Schedule III. Counsel for the appellant frankly recognized that, at first blush, such a rubber sheet, having raised thereon the inverted representation of certain words for printing purposes, was not obviously within the meaning of the words "printed material" as those words are used in common parlance. His contention was, however, that it is the ordinary meaning of the words used, as that meaning is given to us by recognized dictionaries, that must govern. In applying this submission, he relied upon the primary meaning of the word "printing" as meaning impressing, stamping or moulding, and argued that any matter that was impressed, stamped or moulded was "printed matter". Mr. Robinson deserves great credit for the ingenuity, clarity and forcefulness of his presentation, but I cannot agree that the primary meaning of an ordinary English word as set out in the dictionaries is necessarily its "ordinary meaning" in all circumstances. Frequently, English words have more than one sense sometimes overlapping, sometimes quite different and which of those meanings is its ordinary meaning in a particular statutory provision depends entirely on the context in which it is used. I do not propose to endeavour to formulate a definition of "printed matter"

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in the context in which it appears in Schedule III to the *Excise Tax Act*. I content myself with saying that it has not been shown that the Tariff Board erred by attributing to that expression a sense other than the sense in which it was being used in Schedule III and that, as it appears to me, the Board was obviously applying the phrase in its proper sense in the context in which it appears. I might suggest, without stating any concluded view, that, generally speaking, "printed matter" is the final product of a printing process; in other words, that there is no printed material until something has been printed in the sense in which a printer would use that word. Printed matter would not, in this context, include physical objects resulting at some intermediate stage of the printing process.

In conclusion I wish to mention, so as to avoid any misunderstanding as to what is being decided at this time, that the only question raised by this appeal is the applicability of Schedule III to the matrices made and used in the course of making rubber stamps. The question as to whether sales tax is payable on the matrix made and used as part of the process of making a rubber stamp as well as on the rubber stamp itself, even though the matrix has no function except as one of the stages in manufacturing the rubber stamp and even though the matrix does not exist as an independent article of commerce, is a separate question that has not been raised by this appeal.

The appeal is dismissed with costs which, in the circumstances of this case and subject to what the parties have to say, I propose to fix at \$300. This amount is over and above the costs of the preliminary motions, which have already been awarded to the respondent.