

Ottawa
1969
}
Sept. 9
—

DEPUTY MINISTER OF NATIONAL
REVENUE FOR CUSTOMS AND } APPELLANT;
EXCISE

AND

QUEBEC AND ONTARIO TRANS- } RESPONDENT.
PORTATION COMPANY, LIMITED }

Customs duty—Used ships imported for coastal trade—Whether duty payable on fair market value or on “value for duty” prescribed by Minister—Customs Tariff, item 44000-1—Canada Shipping Act, R.S.C. 1952, c. 29, s. 670—Customs Act, am. 1958, c. 26, secs. 35 to 40B.

Section 3(1) of the *Customs Tariff*, R.S.C. 1952, c. 60, provides that “subject to the provisions of this Act and of the *Customs Act*” customs duty shall be imposed at the rates itemized in the tariff. A specific tariff item (now 44000-1) provides that in the case of foreign-built ships of British registry, on application for a licence to engage in the Canadian coasting trade customs duty shall be calculated on fair market value as provided in Part XIII of the *Canada Shipping Act*. That statute (as its predecessors have done since 1902) provides (secs. 669 and 670) that a licence shall be issued to any such ship on payment of 25% duty on fair market value. However, secs. 35 to 40B of the *Customs Act* as enacted in 1958 provide that “value for duty” of used goods shall be prescribed by the Minister (s. 38(1)(b)(ii)).

Held (affirming the Tariff Board), used ships within the language of tariff item 44000-1 are to be valued for customs duty at fair market value and not as prescribed by the Minister under s. 38(1) of the *Customs Act* as enacted in 1958.

1. The only duty imposed in the premises by s. 3(1) of the *Customs Tariff* is that now defined in tariff item 44000-1 which does not refer to “value for duty”.
2. The provisions of secs. 35 to 40B of the *Customs Act* as enacted in 1958 respecting the calculation of “value for duty” must give way to a tariff item which prescribes its own basis for the calculation.
3. Section 3(1) of the *Customs Tariff* in stating that customs duty is imposed “subject to the powers of this Act and the *Customs Act*” does not extend but narrows the scope of taxation to the extent provided to the contrary in the statutes specified.

APPEAL from decision of Tariff Board in respect of the valuation of two vessels for customs duty.

D. H. Aylen and J. E. Smith for appellant.

Douglas K. Laidlaw, Q.C. for respondent.

THURLOW J. (*orally*):—I will not need to hear you, Mr. Laidlaw, because notwithstanding the very able presentation that Mr. Aylen has made I am of the opinion that the appeal cannot succeed. The question in this appeal, as I

have appreciated it, is whether the Tariff Board erred in law in deciding that the duty payable in respect of two ships of Bermuda registry which were imported into Canada in 1963 for use in the Canadian coasting trade should be calculated on their "fair market value" rather than on their "value for duty" as the same would be determined for used goods pursuant to sections 35 to 40B of the *Customs Act*.¹

Under these provisions, on the basis of replacement cost less adjustments for depreciation and obsolescence the Deputy Minister reached a value for duty of one of the ships of \$460,476 and of the other of \$439,353. On the evidence before it the Tariff Board found the fair market value of each of the ships at the material time to be \$139,750. That the latter figure represents the fair market value of the ships at the material time is not in dispute in the appeal.

Customs duty in respect of goods imported into Canada is imposed by section 3(1) of the Customs Tariff² which reads as follows:

3. (1) Subject to the provisions of this Act and of the *Customs Act*, there shall be levied, collected and paid upon all goods enumerated or referred to as not enumerated, in Schedule A, when such goods are imported into Canada or taken out of warehouse for consumption therein, the several rates of duties of Customs, if any, set opposite to each item respectively or charged on goods as not enumerated, in the column of the tariff applicable to the goods, subject to the conditions specified in this section.

At the material time, item 440(1) of the tariff (now renumbered item 44000-1) read:

440 (1) Ships and other vessels built in any foreign country, if British registered since 1st Sept. 1902, on application for license to engage in the Canadian coasting trade; on the fair market value of the hull, rigging, machinery, boilers, furniture and appurtenances thereof, (as provided in Part XIII of the Canada Shipping Act).

(Under the column "Most Favoured Nation Tariff" 25 p.c, under the column "General Tariff" 25 p.c.)

¹ Section 35(1) and 38(b)(ii) of the *Customs Act*, R.S.C. 1952, c. 58 as amended by S. of C. 1958, c. 26, read as follows:—

35. (1) The value for duty of goods inspected shall be determined in accordance with the provision of sections 36 to 40B.

38. Where in any case or class of cases

(b) The goods imported

(ii) are used or absolute goods, . . .

The value for duty shall be determined in such manner as the Minister prescribes.—ED.

² R.S.C. 1952, c. 60

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Prior to the enactment of item 440(1), which first appeared as item 589 of The Customs Tariff, 1907³ the granting to a foreign-built ship, which acquired British registry after 1902, of the right to engage in the Canadian coastal trade had been provided for by section 2 of chapter 7 of the Statutes of Canada, 1902, which was subsequently incorporated in the *Canada Shipping Act*⁴ and now appears in Part XIII thereof without material change as sections 669 and 670. The material part of section 669(1) reads:

669 (1) No foreign-built British ship, whether registered in Canada or elsewhere, after the 1st day of September, 1902, is entitled to engage or take part in the coasting trade of Canada unless she has first obtained a licence for that purpose, which may be granted by the Minister of National Revenue,...

Section 670 then provides:

670: The Minister of National Revenue shall issue a licence to any such foreign-built British ship upon application therefor and upon the payment of a duty of twenty-five per cent *ad valorem* on the fair market value of her hull, machinery, furniture and appurtenances.

Pausing here, it seems perfectly clear that section 670 of the *Canada Shipping Act* contemplates payment of a duty of 25 per cent on the fair market value of the hull, et cetera, of ships to which it applies and not on a valuation arrived at on any other basis. It seems equally clear, from the reference, in item 440(1) of the Customs Tariff, to what is provided in Part XIII of the *Canada Shipping Act*, that the duty referred to in item 440(1) is the same duty required by the provisions of the *Canada Shipping Act*, that is to say a duty of 25 per cent on the fair market value of the hull, et cetera, of any ship to which the item applies. In this respect item 440(1) differs from other items of the tariff most of which contain no definition or specification of the valuation to which the rate is to be applied.

As I see it there is no basis for the application of the definition of "value for duty" found in sections 35 to 40B of the *Customs Act* with respect to a ship, whether used or unused, which falls within item 440(1). The only duty imposed by section 3(1) of the Customs Tariff in respect of such a ship is that defined in item 440(1) which itself specifies that the rate is to apply on the fair market value

³ S. of C. 1907, c. 11.

⁴ Now R.S.C. 1952, c. 29.

and reinforces this position by specifically referring to the provision of Part XIII of the *Canada Shipping Act* where the fair market value is prescribed as the basis for the necessary calculation. Nowhere in item 440(1) is there any use of the expression "value for duty" or any imposition of duty on the "value for duty".

Thus while the "value for duty" of the ships in question, as prescribed by the *Customs Act*, may be the amount estimated by the Minister nothing appears to me to follow from that since no duty is imposed in the case of such ships on the "value for duty" thereof.

Moreover I am in agreement with the view of the majority of the Tariff Board that any conclusion to the contrary to be drawn from the provisions of sections 35 to 40B of the *Customs Act*, which prescribe how "value for duty" is to be calculated, must give way before a statutory item which prescribes its own basis for the calculation and which does not contain the expression "value for duty" or any reference to it. Apart, however, from the general principles cited by the majority of the Board in support of this view their construction appears to me to be expressly provided for by section 3(1) of the Customs Tariff which, in imposing duties does so "subject to the provisions of" that Act and of the *Customs Act* one of which provisions is item 440(1) of the Customs Tariff which prescribes that the duty in the case of a ship to which the item applies is to be calculated on the fair market value of the hull, et cetera, of the ship. I read the initial proviso of section 3(1) of the Customs Tariff not as expanding on the scope of the taxation imposed by the subsection, but as meaning that the imposition of tax by the general words "there shall be levied, collected and paid upon all goods enumerated", et cetera, in Schedule A "when such goods are imported into Canada or taken out of warehouse for consumption therein", is to be narrowed to the extent that may be provided to the contrary, either elsewhere in the Customs Tariff, or in the *Customs Act*.

The appeal, therefore, fails and it will be dismissed with costs.

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