

BETWEEN:

VANDEWEGHE LIMITED ET AL.....SUPPLIANTS;

AND

HIS MAJESTY THE KING.....RESPONDENT.

1931
 Nov. 17.
 1932
 Dec. 28.

*Revenue—Sales Tax—Special War Revenue Act, 1915, Sec. 86—
 Regulations*

The following regulation was enacted under the Special War Revenue Act, 1915:

Furriers are not to be granted a consumption or sales tax licence on and after the 1st September, 1924. Licences issued to furriers prior to that date are to be cancelled. Dressers and dyers of furs, however, are required to take out a sales tax licence and account to the Collector of Customs and Excise for consumption or sales tax on furs dressed or dyed by them. Such tax is to be computed on the current market value of the dressed furs whether the dresser is the owner of the furs or not.

Suppliant paid the tax computed on the actual selling price and now claims that it should have been computed on the current market value of the dressed furs, under the regulation, and sued to recover the amount alleged to be overpaid. The Crown contends that the tax was properly payable under section 19BBB of the then Act. The validity of the regulation was not raised.

Held, that as the validity of the regulation was not in question, it must, for the purposes of this case, be considered as valid, and that the tax payable by the Suppliant should have been computed on the current market value of the dressed furs and not on the actual selling price, and the Suppliant was entitled to the relief sought, but without interest.

PETITION OF RIGHT by Suppliants herein asking that the amount alleged to have been overpaid to the Crown in connection with certain sales tax, be refunded.

The Petition was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

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L. A. Forsyth, K.C., for the suppliants.

J. A. Mann, K.C., for the respondent.

The questions of fact and parts of the Act relevant to this case are stated in the reasons for judgment.

THE PRESIDENT, now (December 28, 1932), delivered the following judgment:

The suppliant carries on business at Montreal, Quebec, as a wholesale dealer or jobber in dressed or dyed furs, and as a dresser and dyer of furs, and in the period here in question, that is, between September 1, 1924, and December 31, 1929, it dressed and dyed almost exclusively raw furs which it had purchased and owned. The raw furs thus dressed or dyed were sold to manufacturing furriers. The process of dressing raw furs means that the hair of the fur is washed and combed and the hide is in some way made soft and pliable; dressing does not imply cutting or trimming of the skin with a knife. Dyeing, simply means that the skins are dyed the colour desired. Under the provisions of The Special War Revenue Act, 1915, as amended and in force on September 1, 1924, the Minister of Customs and Excise was empowered to make such regulations as he deemed necessary or advisable for carrying out the provisions of Part IV of the Act, and in pursuance thereof there was enacted the following regulation applicable to furriers, dressers and dyers of furs.

Furriers are not to be granted a consumption or sales tax licence on and after the 1st September, 1924. Licences issued to furriers prior to that date are to be cancelled.

Dressers and dyers of furs, however, are required to take out a sales tax licence and account to the Collector of Customs and Excise for consumption or sales tax on furs dressed or dyed by them.

Such tax is to be computed on the current market value of the dressed furs whether the dresser is the owner of the furs or not.

Prior to this regulation suppliant dealt largely with licensed furriers, and cloak and suit manufacturers, and it was not required to account for the sales tax in respect of such sales, but it was required to account for the tax in respect of sales to unlicensed persons and the tax was included in the invoiced price to customers. Prior to September 1, 1924, the suppliant was licensed as a manufacturer of furs, and this licence seems to have been continued during the period here in question, which is some-

what difficult to understand, but it is not, I think, of importance.

It is agreed that all dressers and dyers of furs in Canada, between September 1, 1924, and December 31, 1929, with the sole exception, I think, of the suppliant, accounted for the tax prescribed by the regulation, upon furs dressed or dyed by them for customers owning furs, computed upon the current market value of the raw furs to which valuation was added the charges for dressing or dyeing the same. These dressers and dyers appear to have paid the tax on the charges made for both the dressing and the dyeing of furs, though the last clause of the regulation would seem to state that the tax was to be computed on the current market value of dressed furs only. However, that is here purely an academic question and the point need not be considered as it was not raised at the trial.

The suppliant it appears accounted for the tax in respect of furs dyed or dressed by it within the period mentioned, computed not upon the current market value of such furs as provided by the regulation and as in the case of all other dressers and dyers of furs, but upon the actual selling price of the same. It was suggested that the suppliant collected the tax from the customers, but even if that were true it does not make law or alter the law. The suppliant claims that through error of law and fact it thus paid to the respondent at Montreal, in the province of Quebec, the sum of \$23,551.65 in excess of the proper amount payable by it, and it claims in its petition repayment of this amount with interest. It was agreed by counsel for both parties that it was the provisions of the Civil Code of the Province of Quebec that were applicable in the circumstances, and two sections of the Civil Code were referred to and which are as follows:—

1047—He who receives what is not due to him, through error of law or of fact, is bound to restore it; or if it cannot be restored in kind, to give the value of it. If the person receiving be in good faith, he is not obliged to restore profits of the thing received.

1140—Every payment presupposes a debt; what has been paid where there is no debt may be recovered. There can be no recovery of what has been paid in voluntary discharge of a natural obligation.

The suppliant contends that it was liable only for the tax on furs dressed and dyed by it, computed on the cur-

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rent market value of the dressed or dyed furs, as prescribed by the regulation, and that it should have been taxed in the same manner that all other dressers or dyers of furs were taxed. The respondent contends the tax was payable upon the actual sale price of such furs, as prescribed by sec. 19BBB of the Act as it then stood, now sec. 86 of the Act, and that the suppliant having dressed and dyed its own furs it was a producer or manufacturer under the terms of the Act. So the question for decision is whether during the period in question, it was the regulation, or the statute, which was applicable to the suppliant. If the suppliant was taxable under the Act as a producer or manufacturer, on its sale price, then it would seem the suppliant must fail. On the other hand if the tax payable by the suppliant was that provided for by the regulation then it would appear that the suppliant should succeed. I may at once say that the matter of the validity of the regulation was not raised at the trial, and I need not therefore concern myself with that question.

It seems to me that the suppliant's view is the correct one. The regulation seems quite clear as to where the tax is to be levied. It states that dressers and dyers of furs must account for the tax on all furs dressed or dyed by them, whether they own the furs or not, and the tax is to be computed on the current market value of the dressed furs. The regulation expressly states that no distinction is to be drawn between those who dress or dye furs on their own account, and those who dress or dye furs for others. It would seem unreasonable and discriminatory if any distinction were made between these two classes when it is remembered that the tax is imposed upon all dressers and dyers of furs, regardless of ownership. The tax was not to be computed upon the "sale price" of the dressed or dyed furs, but upon the current market value of the furs as dressed or dyed in the hands of the dresser or dyer, and whether or not he was the owner of the furs. It could not well be otherwise because the tax was exigible under the regulation as and when the furs were dressed or dyed by the dresser or dyer, and before a sale was made by the owner of the dressed or dyed furs, whoever he was. There is no definition of "current market value" in the statute, and I think the only meaning that can be given to those

words is that given by the Department of Government making and administering the regulation in question. The statute as since amended, sec. 86 (4), states that the tax is to be levied "upon the current market value of all raw furs, dressed and/or dyed in Canada, payable by the dresser or dyer at the time of delivery to him." This differs slightly from the regulation. I might also here point out that by another amendment to the statute a "producer or manufacturer" is now made to include any "dresser or dyer of raw furs" and therefore put in the same category as printers, publishers and lithographers or engravers.

If the regulation is valid, and for the purposes of this case it is so to be considered, then it seems to me quite clear that it was intended that the regulation was to apply to the suppliant in precisely the same manner as it was to other dressers and dyers of furs. To treat the suppliant differently from other dressers and dyers of furs, because it owned the furs which it dressed or dyed, seems to me to be flatly against the express words of the regulation. The purpose of the regulation was to tax furs which were dressed or dyed no matter who owned them. It seems to me to be altogether unwarranted to make a distinction between one who dresses or dyes his own furs and one who dresses and dyes furs for others, and the regulation seems to me to say in very clear language that no such distinction should be made. If the respondent's view is correct the suppliant would be at a disadvantage with his competitors in the fur market. A dresser and dyer of furs is now by an amendment to the Act a "producer or manufacturer," but at the time with which we are here concerned I should very much doubt if such a person was a producer or manufacturer within the meaning of the statute. According to the evidence it is one who makes or manufactures a fur neck piece, or a fur garment, or something of that sort, who is regarded as a manufacturer. I am of the opinion that the suppliant was not taxable as a producer or manufacturer within the period in question, under the provisions of sec. 19BBB of the Act, but as a dresser or dyer of furs under the regulation, and that it should have been taxed in the same way as those who dressed and dyed furs for others.

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Sales tax was paid by the suppliant upon sales of dressed or dyed furs made to certain licensed persons within the period in question, particularly the Acme Manufacturing Company, and there seems to be some dispute as to whether the tax has been fully accounted for; the evidence seems confusing on the point, and I am not sure that I thoroughly understand it. If this matter cannot be agreed upon between counsel I may be spoken to later upon the point, and in the meanwhile it is reserved.

The suppliant is entitled to judgment for the principal amount herein claimed, subject to verification of the amount to the satisfaction of counsel for the respondent, and if counsel are unable to reach an agreement as to the correct amount, then I may be spoken to upon the point. I think it is the law that the suppliant is not entitled to its claim for interest. The suppliant will have its costs of this proceeding.

Judgment accordingly.