
HIS MAJESTY THE KING.....PLAINTIFF;
 AND
 SARNIA BREWING COMPANY, LTD.....DEFENDANT.

1928
 June 27.
 Oct. 8.

*Revenue—Special War Revenue Act, 1915—Excise Tax—Exportation—
 Proviso—Sec. 19B—Onus of Proof.*

Held, that he who claims the benefit of an exemption in a taxing statute, must plead the exemption and must establish the facts which take his case out of the operation of a general rule, and where, as in this case, a person claims to be exempt from the excise tax, under the proviso to 19B, of the Special War Revenue Act, 1915, "that such excise tax shall not be payable when such goods are manufactured for export, under regulations prescribed by the Minister of Customs and Excise" the *onus* is upon him to prove that the goods in question were actually exported. (*The King v. Gooderham & Worts Ltd.* (1928) 3 D.L.R. 109 referred to.)

INFORMATION by the Crown to recover certain Excise Taxes from the defendant.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Toronto.

Hon. N. W. Rowell, K.C., and *Gordon Lindsay* for plaintiff.

A. G. Slight, K.C., and *H. E. Fuller* for defendant.

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The facts of the case are stated in the reasons for judgment.

THE PRESIDENT, now, this 8th October, 1928, delivered judgment.

At all times material here the defendant was licensed to carry on the trade or business of a brewer in Canada, and as such manufactured and sold beer.

Under section 19B subsection (b), of the Special War Revenue Act, 1915, and amendments thereto, there is leviable an excise tax of twelve and a half cents per gallon, in respect of beer manufactured and sold in Canada, the tax being payable at the end of the month next succeeding the month in which the sale took place. There is a proviso to section 19B, near the end of the section and following two subsections, to the effect that no gallonage tax is payable when such goods are manufactured for export, under regulations prescribed by the Minister of Customs and Excise.

Under section 19BBB of the Special War Revenue Act, 1915, and amendments thereto, there is imposed in addition to any other tax, a consumption or sales tax of five per cent on the sale price of all beer manufactured in Canada; this tax is payable by the producer or manufacturer at the time of the sale. There is also a proviso to this section to the effect that

the consumption or sales tax specified in this section shall not be payable on goods exported.

The statute provides for the keeping of records and books by all licensed manufacturers, which are to be open for inspection by persons authorized by the Minister. The regulations under the Act, require that each licensee keep adequate books and accounts "for the purposes of this Act" and that such books and accounts shall show the details of every transaction of the licensee, and shall be preserved by him and available for inspection for a period of two years. An inspection of the defendant's books was made by a firm of accountants, Messrs. Clarkson, Gordon & Co., which inspection was authorized by the Minister for the purpose of ascertaining the amount of excise tax and sales tax, if any, payable by the defendant. At the trial, a written statement prepared by this firm of accountants from the books and records of the defendant, was put in evidence showing the number of gallons of beer manu-

factured and sold each month within a stated period by the defendant, together with the amount of excise and sales tax payable thereon under the provisions of the statute already mentioned. It is agreed by counsel that the evidence given by Mr. Troop of the firm of accountants mentioned, on behalf of the plaintiff, in proof of and in connection with the written statement prepared from the books of the defendant, shall have the same force and effect as if the books and documents from which Mr. Troop had compiled the same, had been produced and proven in Court and had Mr. Troop given his evidence directly therefrom. This evidence establishes that there was manufactured and sold by the defendant beer in quantities and at the sale prices claimed by the plaintiff, and within the period pleaded.

As to the taxing and exempting provisions of the Special War Revenue Act here applicable, the intention of the legislature is clearly expressed, and with one exception such provisions are not subject to doubt. It cannot be contended that beer manufactured and sold within the country is not taxable. The proviso to 19B however presents some difficulties as to construction.

The exact words are:—

Provided that such excise tax shall not be payable when such goods are manufactured for export, under regulations prescribed by the Minister of Customs and Excise.

Mr. Rowell for the plaintiff urged that unless the beer was manufactured for export, and within prescribed regulations, no exemption could be claimed, and as no regulations had in fact been enacted within the meaning of the section, there was no exemption from the tax provided by the tax enacting clause. In my view of the case, there being no export proven, it is not necessary to pronounce upon this point. I should doubt very much Mr. Rowell's construction of this clause, and without passing definitely upon it, it appears to me that this proviso can only be made operative and practical by reading the words "manufactured for export" as "manufactured and exported." It seems to me, that must have been the intention of the legislature otherwise in actual application it would be difficult to read sense into the proviso. Then again, no regulations in reference to the "manufacture" or "export" of beer at least, was necessary. The Excise Act, and the Customs

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Act, make ample provision for this by their enactments, and the regulations made thereunder, and I doubt very much if any construction could be placed upon the latter part of this proviso in respect of regulations, which would at all affect this case.

The real question for determination here is, upon whom lies the onus of establishing what, if any, of the goods in question, were sold for export and in fact exported, and therefore coming within the exemptions from taxation. The defendant has not pleaded the provisos, and has produced no evidence of any kind whatever in support of the fact that the goods in question were exported. The defendant in fact contends that it is not obliged, as a rule of law or evidence, to offer any evidence as to export, and that this burden rests entirely upon the plaintiff. I think it clear under the authorities that the defendant must bring itself within the language of the provisos. He who claims the benefit of an exemption in a taxing statute, must plead the exemption and establish the state of facts which take his case out of the operation of a general rule. Whether or not there was in this case any export of the goods upon which taxes are claimed, is evidence peculiarly within the knowledge of the defendant, and it should adduce the evidence necessary to bring itself within the exemption. That burden, in a case of this kind should not in justice be placed elsewhere, and I think that was within the contemplation of the statute itself. The intendment of the taxing clauses of the statute, seems clear, and the provisions of these clauses are complete in themselves; they are distinct and substantive.

Where the burden of proof rests in a case of this kind, was recently the subject of a very careful consideration by Grant J. in *The King v. Gooderham and Worts Ltd.* (1), wherein that learned judge reviews at length the principal authorities upon the point, and I need not I think engage in any discussion of the same authorities, or the principles there discussed. I agree with the conclusions of Grant J. upon the point. I might however cite the following authorities, which are not referred to I think in the judgment of that learned judge, but which are much to the same effect.

They are, *Steel v. Smith* (1); *Vavasour v. Omrod* (2); *Apothecaries Company v. Bentley* (3); *Rex v. Jarvis* (4); *Chitty Pleading* 7th Ed., p. 246-7 and *Dominion Press Ltd. v. The Minister of Customs* (5).

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I am of the opinion therefore that there must be judgment for the plaintiff for the several amounts claimed, with interest at the rate of five per cent per annum from the time when the taxes became due and payable to June 1, 1927, and thereafter at the rate of two-thirds of one per cent per month as provided by the Special War Revenue Act. The plaintiff will have his costs of action.

Judgment accordingly.