SKUTTLE MFG. CO. OF CANADA LTD., B. D. WAIT CO. LIMITED, carrying on business under the firm name and style of WAIT-SKUTTLE COMPANY and the said WAIT-SKUTTLE COMPANY ..APPELLANT;

1964
*Oct. 15, 16, 19
Dec. 3

AND

HER MAJESTY THE QUEEN, on the Information of the Deputy Attorney General of Canada ..RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Sales tax—Exemptions—Humidifiers—Used in manufacture of tax-exempt furnaces—Certificates of exemption—Whether exempt as "building material" whether "partly manufactured goods"—Estoppel of the Crown—Excise Tax Act, R.S.C. 1952, c. 100, ss. 29(1)(d), 30(1)(a), 30(2), 32(1), 44(4), and Regulations.

The appellant manufactured humidifiers and sold them to manufacturers of furnaces, who supplied them with the furnace as a matter of course. The furnaces were exempt from sales tax as "building materials". When a manufacturer of furnaces ordered humidifiers, he quoted his licence number and gave a certificate as prescribed by the regulations. The appellant reported the sales as not taxable. This practice was accepted by the Revenue Department until July 1958, when the Crown took the view that the humidifier was not part of the furnace, and, later, that it was wrong to act on the certificates in the circumstances of this case. The Crown's claim to recover sales tax from the period of August 1, 1956, to December 31, 1958, was upheld by the Exchequer Court. The judgment was appealed to this Court.

Held: The appeal should be allowed.

The humidifier was part of the tax-exempt furnace supplied by the furnace manufacturer. It was not part of the duct work as was contended by the Crown. The manufacturer of humidifiers was entitled to rely on the certificate of the furnace manufacturer. The regulations provided that in those odd cases where the humidifier was not in fact used in the furnace, it was the purchaser of the humidifier who became responsible for the sales tax. These regulations did not require the manufacturer of humidifier to enter into contractual relations as to the use to which the manufacturer of furnaces could put the goods and to conduct an investigation for the purpose of ensuring that the goods were in fact put to that use.

It was not necessary to deal with the claim for exemption under s. 30(2) of the *Excise Tax Act* for "partly manufactured goods", nor as to whether the Crown was estopped as a result of its representations and conduct during that preceding period.

Revenu—Taxe de vente—Exemptions—Humidificateurs employés dans la fabrication de fournaises non sujettes à la taxe—Certificats d'exemption—Exempts comme matériaux de construction ou marchandise partiellement fabriquée—Fin de non-recevoir contre la Couronne—Loi sur la taxe d'accise, S.R.C. 1952, c. 100, arts. 29(1)(d), 30(1)(a), 30(2), 32(1), 44(4), et Règlements.

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*PRESENT: Taschereau C.J., and Fauteux, Judson, Ritchie and Spence JJ.

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L'appelant fabriquait des humidificateurs et les vendait à des fabricants de fournaises qui les fournissaient avec les fournaises. Comme «matériaux de construction» les fournaises n'étaient pas sujettes à la taxe. Lorsqu'un fabricant de fournaises commandait un humidificateur, il citait le numéro de sa licence et produisait un certificat tel que prescrit par les règlements. L'appelant rapportait cette vente comme n'étant pas sujette à la taxe. Cette manière d'agir fut acceptée par le ministère du Revenu jusqu'en juillet 1958, alors que la Couronne prit la position que ces humidificateurs ne faisaient pas partie de la fournaise, et, plus tard, que dans les circonstances l'appelant avait eu tort d'agir sur la foi de ces certificats. La réclamation de la Couronne pour le recouvrement de la taxe de vente entre le premier août 1956 et le 31 décembre 1958 fut maintenue par la Cour de l'Échiquier. D'où le pourvoi devant cette Cour.

Arrêt: L'appel doit être maintenu.

L'humidificateur fait partie de la fournaise, non sujette à la taxe, fournie par le fabricant de fournaises. Il ne fait pas partie des conduits, tel que la Couronne l'a prétendu. Le fabricant des humidificateurs était justifié de se fier au certificat du fabricant de fournaises. Les règlements stipulent que dans les quelques cas où l'humidificateur n'était pas en fait incorporé dans la fournaise, c'est l'acheteur de l'humidificateur qui devenait responsable de la taxe de vente. La fabricant de l'humidificateur n'est pas requis par les règlements d'entrer en relations contractuelles avec le fabricant de fournaises concernant l'usage que ce dernier pourrait faire de ces articles et de faire enquête dans le but de s'assurer que ces articles étaient en fait utilisés de cette manière.

Il n'est pas nécessaire de traiter de l'exemption sous l'article 30(2) de la *Loi sur la taxe d'accise* concernant les «marchandises partiellement fabriquées», non plus de la question de savoir s'il y avait fin de non-recevoir contre la Couronne à la suite de ses représentations et de sa conduite durant la période précédant la réclamation.

APPEL d'un jugement du juge Thurlow de la Cour de l'Échiquier du Canada[1], maintenant la réclamation pour taxe de vente. Appel maintenu.

APPEAL from a judgment of Thurlow J. of the Exchequer Court of Canada[1], maintaining the Crown's claim for sales tax. Appeal allowed.

P. B. C. Pepper, Q.C., and *William R. Herridge*, for the appellant.

C. R. O. Munroe, Q.C., and *R. A. Wedge*, for the respondent.

The judgment of the Court was delivered by

JUDSON J.:—This is a claim by the Crown for sales tax on humidifiers sold by the manufacturer, Skuttle Mfg. Co. of Canada Ltd., to a number of manufacturers of furnaces.

[1] [1964] Ex. C.R. 311, [1963] C.T.C. 500, 63 D.T.C. 1314.

The claim was allowed at $42,292.51, together with interest and penalties of $20,168.55. The period covered is from August 1, 1956 to December 31, 1958. During this period Skuttle carried on its business as it had done since 1945 without collecting sales tax. Its books had been audited by the Revenue Department from time to time and no question was raised against the propriety of this course until July of 1958, when the Crown decided that there was no exemption. Skuttle had hitherto reported all the sales of humidifiers to furnace manufacturers as tax free.

The company's claim for exemption is under s. 32(1) and Schedule III of the *Excise Tax Act*. This section reads:

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

Schedule III is a long classified list. Furnaces are included in the list under the heading of certain building materials. Also included in this list are:

> Articles and materials to be used exclusively in the manufacture or production of the foregoing building materials.

The evidence was that when a customer bought a furnace from a furnace manufacturer, the humidifier was supplied with the furnace as a matter of course and was included in the price, just as were other accessories such as pressure regulators, thermostats and other controls. When a manufacturer of furnaces ordered humidifiers, he quoted his licence number and gave a certificate as prescribed by the Regulations in the following form:

> I/We certify that the goods ordered/imported hereby are to be used in, wrought into, or attached to taxable goods for sale.
>
> Licence Number..... .....
> Name of Purchaser)

Before 1945 furnaces were subject to sales tax. After 1945 furnaces and articles and materials to be used exclusively in the manufacture or production of furnaces were exempted from sales tax by inclusion in Schedule III of the *Excise Tax Act*, 1945 (Can.), c. 30, s. 8. After 1945, this manufacturer of humidifiers continued as before to accept the above quoted certificate. I think that it was authorized to do this under the Regulations, the particular one reading as follows:

> (*b*) A licensed manufacturer shall not quote his licence number nor give the certificate as above when purchasing or importing goods to be

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used in, wrought into, or attached to articles specified as exempt from the Consumption or Sales Tax. (Note.—Except in respect of goods conditionally exempted according to use.)

These humidifiers were, in my opinion and evidently in the opinion of the Department until July of 1958, goods conditionally exempted according to use. In July of 1958, when the Department first raised the question, its only ground for saying that the humidifiers were not exempt from sales tax was that they were not part of the furnace but part of the duct work. This, I think, it is impossible to accept. These humidifiers had to be placed in the furnace close to the heating distributor if they were to function at all. Sometimes the humidifier was placed in that part of the furnace which is called the "plenum", which is the air pressure mixing chamber and serves as a lid for the furnace. Some furnaces were sold with the plenum already made. Some were sold while still requiring adaption to connect them with the duct system. But however sold, both the plenum and humidifier were part of the furnace.

In the Courts the Department extended its claims. In addition to the claim that the humidifier was part of the duct work, the Department said that it was wrong to act on the certificate in the circumstances of this case. Notwithstanding the fact that the furnace manufacturer certified, in accordance with the regulations, that the goods were to be used, wrought into or attached to taxable goods for sale, a few of these humidifiers might have been used in space heaters or sold as replacement parts for existing furnaces, and in both these cases there was no exemption. The evidence is that very few of the humidifiers would be so disposed of.

This led the Exchequer Court[1] to say that the certificates offered no protection and that in the absence of any contractual arrangements that the humidifiers were to be used exclusively in the manufacture or production of furnaces, the sales tax had to be paid. The manufacturer of humidifiers was not entitled to rely on the furnace manufacturer's certificate and the burden was imposed on the humidifier manufacturer of seeing to it both by contractual arrangements and by subsequent investigation that its products were used exclusively in the manufacture of furnaces. The difficulty or even impossibility of operating under these conditions is apparent.

[1] [1964] Ex. C.R. 311, [1963] C.T.C. 500, 63 D.T.C. 1314.

In so deciding, I think that the Exchequer Court was in error. The manufacturer of humidifiers is entitled to rely on the certificate of the furnace manufacturer. The Regulations provide that in those odd cases where the humidifier is not in fact used in the furnace, it is the purchaser of the humidifier who becomes responsible for the sales tax. This follows from those sections in the Regulations dealing with Certificates of Exemption, which are numbers (*b*), (*l*) and (*m*) and which read:

> (*b*) A licensed manufacturer shall not quote his licence number nor give the certificate as above when purchasing or importing goods to be used in, wrought into, or attached to articles specified as exempt from the Consumption or Sales Tax. (NOTE.—Except in respect of goods conditionally exempted according to use.)
>
> (*l*) Where a purchaser quotes a licence number *only* on his order for goods, the vendor is responsible for Sales Tax on the sale.
>
> Where a purchaser erroneously quotes both licence number and certificate on his order, the purchaser is liable for the tax, except in such cases where it is obvious to the vendor that the quotation was made in error.
>
> (*m*) A licensed manufacturer or producer, who also operates a retail branch or branches, shall not use his licence when purchasing or importing merchandise for such retail businesses.

These do not require the manufacturer of humidifiers to enter into contractual relations as to the use to which the manufacturer of furnaces can put the goods and to conduct an investigation for the purpose of ensuring that the goods are in fact put to that use.

It is unnecessary to deal with the claim for exemption under s. 30, subs. (2), of the *Excise Tax Act*, which exempts goods sold by a licensed manufacturer to another licensed manufacturer "if the goods are partly manufactured goods." I note that the Minister by s. 29(1)(*d*) is made the sole judge whether or not goods are "partly manufactured goods." Nor do I express any opinion on the argument that the Crown is estopped from collecting for the period in question as a result of its representations and conduct during the preceding period. It is, however, clear that everything that the Department did in the preceding period led this manufacturer to assume that its course of conduct was in accordance with the departmental interpretation of the Statute and Regulations. Nothing happened during the period August 1, 1956 to December 31, 1958, except a change of opinion on the part of the enforcement officers in July of

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1958, on the meaning and effect of the Statute and Regulations. I think that they were wrong in the second meaning which they attached to them.

I would allow the appeal with costs, set aside the judgment of the Exchequer Court and dismiss the Crown's Information with costs.

Appeal allowed with costs.

Solicitors for the appellant: McMillan, Binch, Stuart, Berry, Dunn, Corrigan & Howland, Toronto.

Solicitor for the respondent: E. A. Driedger, Ottawa.