

1965
*June 7, 8
Oct. 14

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

AND

CONSOLIDATED DENISON MINES)
LIMITED and RIO TINTO MINING) RESPONDENTS.
COMPANY OF CANADA LIMITED .)

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Sales tax—Exemption—Rock bolts used in mining for support of ceilings and walls—Whether exempt from sales tax as safety devices—Excise Tax Act, R.S.C. 1952, c. 100, ss. 30, 32, Schedule III.

In the operation of their mines the respondents utilized "rock bolts" for retaining in position the walls and ceilings of shafts or tunnels so as to permit the ore to be removed therefrom. The Tariff Board found that these rock bolts were not exempt from sales tax under Schedule III of the *Excise Tax Act*, R.S.C. 1952, c. 100, as "safety devices and equipment for the prevention of accidents in the manufacturing or production of goods". The Exchequer Court reversed this finding and ruled that the bolts were exempt from sales tax. The Crown appealed to this Court.

Held (Cartwright J. dissenting): The appeal should be allowed.

Per Taschereau C.J. and Abbott, Ritchie and Spence JJ.: The purpose for which the rock bolts were designed and used was the retention of the contour of the underground cavity and, therefore, the making possible of mining. Devices designed to accomplish that purpose are not devices or equipment "for the prevention of accidents in the manufacturing or production of goods" but are simply devices to permit the manufacture or production of goods. These rock bolts were essentially structural devices and not safety devices and, consequently, not exempt from sales tax.

Per Cartwright J., *dissenting*: As rightly found by the Exchequer Court, the rock bolts were covered by the exemption in Schedule III of the *Excise Tax Act*.

Revenu—Taxe de vente—Exemption—Boulons utilisés dans les opérations minières pour supporter les plafonds et les murs—Sont-ils exempts de la taxe de vente comme étant des dispositifs de sécurité—Loi sur la taxe d'accise, S.R.C. 1952, c. 100, arts. 30, 32, Annexe III.

Les intimés utilisaient des boulons (rock bolts) dans leur opérations minières pour retenir en position les murs et les plafonds des puits ou des galeries de façon à permettre l'extraction du minerai. La Commission du Tarif a jugé que ces boulons n'étaient pas exempts de

* PRESENT: Taschereau C.J. and Cartwright, Abbott, Ritchie and Spence JJ.

la taxe de vente en vertu de l'annexe III de la *Loi sur la taxe d'accise*, S.R.C. 1952, c. 100, comme étant «des dispositifs et matériel de sécurité pour prévenir les accidents dans la fabrication ou production de marchandises». La Cour de l'Échiquier a renversé ce jugement et a adjugé que les boulons étaient exempts de la taxe de vente. La Couronne en appela devant cette Cour.

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Arrêt: L'appel doit être maintenu, le Juge Cartwright étant dissident.

Le Juge en Chef Taschereau et les Juges Abbott, Ritchie et Spence: Le but pour lequel ces boulons étaient fabriqués et utilisés était de retenir le contour de la cavité souterraine et, par conséquent, de rendre possible l'opération minière. Des dispositifs fabriqués pour accomplir ce but ne sont pas des dispositifs ou équipement «pour la prévention des accidents dans la fabrication ou production de marchandises», mais sont simplement des dispositifs pour permettre la fabrication ou production de marchandises. Ces boulons étaient essentiellement des dispositifs de construction et non de sécurité et, en conséquence, n'étaient pas exempts de la taxe de vente.

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Le Juge Cartwright, *dissident*: La Cour de l'Échiquier a bien jugé lorsqu'elle a décidé que les boulons étaient couverts par l'exemption de l'annexe III de la *Loi sur la taxe d'accise*.

APPEL d'un jugement du Juge Noël de la Cour de l'Échiquier du Canada¹, renversant un appel de la Commission du Tarif. Appel maintenu, le Juge Cartwright étant dissident.

APPEAL from a judgment of Noël J. of the Exchequer Court of Canada¹, reversing a decision of the Tariff Board. Appeal allowed, Cartwright J. dissenting.

G. W. Ainslie and D. G. H. Bowman, for the appellant.

G. F. Henderson, Q.C., and *J. D. Richard*, for the respondent Consolidated Denison Mines Ltd.

Stewart Thom, Q.C., and *J. D. Goodwin*, for the respondent Rio Tinto Mining Co.

The judgment of Taschereau C.J. and of Abbott, Ritchie and Spence JJ. was delivered by

SPENCE J.:—This is an appeal by the Deputy Minister from the decision of Noël J. in the Exchequer Court¹ in which he found that an item known as a “rock bolt” was covered by the exemption in Schedule 3 of the *Excise Tax Act* and, therefore, not liable for consumption or sales tax.

¹ [1964] Ex. C.R. 100, 63, D.T.C. 1191.

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For this purpose, it is sufficient to quote Schedule 3 as it appears in the reasons for judgment of the Tariff Board:

PROCESSING MATERIALS

Materials consumed or expended directly in the process of manufacture or production of goods.

Secondly:

MACHINERY AND APPARATUS TO BE USED IN MANUFACTURE OR PRODUCTION

Machinery and apparatus that, in the opinion of the Minister, are to be used directly in the process of manufacture or production of goods, and the following machinery or apparatus:

* * *

Safety devices and equipment for the prevention of accidents in the manufacturing or production of goods.

I deal first with the submission of counsel for the appellant, the Deputy Minister, that a "rock bolt" is not "machinery or apparatus" and that it is not a "device". I adopt the reasons of Noël J. that the rock bolt is a piece of "apparatus" and is a "device" and I find it unnecessary to decide whether it is a piece of "machinery". Therefore, there remains to be determined whether the rock bolt is a "safety device and equipment for the prevention of accidents in the manufacturing or production of goods" (the underlining is to indicate the questions left to be considered). Noël J. said:

It seems to me that the proper way to interpret this exemption clause is to take it, not piece-meal, but in its entirety and when that is done it appears that the safety device or equipment which must also be either machinery or apparatus, is directed at those accidental happenings which are peculiar to the industry or manufacture involved due to the existence of some distinctive important hazard particular to the process of manufacture or production involved.

It was urged upon this Court that the approach used by the learned Exchequer Court Judge was the one which should be adopted in order to reach the proper interpretation of the words for the determination of the exemption in question. I adopt that submission and turn to consider the "happenings which are peculiar to the industry or manufacture involved".

To simplify a description of mining, and certainly the simplification would shock those engaged in the industry, it is the delving of a hole in the ground until an ore body is reached and then the removal of that ore or other substance, such as salt, from the hole so delved. It is, of course, as has been stressed in both the declaration of the Tariff Board and

the reasons of Noël J., a fact of nature that a hole will not continue to be a hole unless protected and that nature operates to close all holes under its surface. Therefore, there can be no mine, no removal of ore, and even no hole from which to remove it unless the limits of the hole are in some manner efficiently retained. For many centuries, that end was attained by the use of some kind of wooden timber and the words "pit props" were ordinary in the language. Later, the science of mining developed so that other means were used for the same end, and we have had reference to steel framing or arching, cement retaining structures, and rock bolts. All of those means are utilized for retaining in position the walls of a shaft or tunnel and so permitting the ore to be removed therefrom. Now, of course, this entails the protection of those persons who are carrying on the mining, and the retaining of the walls and roofs of the shafts and tunnels protects them in a fashion which makes their labour possible. But even if no human ever entered the shaft or the tunnel there would still have to be some method of retaining such shaft or tunnel in its position in order to remove the ore. Devices which are designed to accomplish that purpose are not devices or equipment "for the prevention of accidents in the manufacturing or production of goods" but are simply devices to permit the manufacture or production of goods. I am, therefore, of the opinion that the definition was not intended by Parliament to include such devices. The word "safety" together with the words "for (*i.e.* with the purpose of) the prevention of accidents in the manufacturing or production of goods" imply that the purpose for which the device is designed and used is to prevent such accidents, while the purpose for which the rock bolt is designed and used is the retention of the contour of the underground cavity and, therefore, the making possible of mining which, of course, can only be possible if the formation of the cavity is retained and men can work safely therein. Therefore, I agree with the finding of the Tariff Board that these rock bolts were "essentially structural devices and not safety devices".

I would allow the appeal with costs.

CARTWRIGHT J. (*dissenting*):—The questions to be decided in this appeal are stated in the reasons of my brother Spence.

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After a consideration of the record in the light of the full and helpful arguments of counsel I find myself so fully in agreement with the reasons and conclusion of Noël J. that I am content simply to adopt them. At the risk of repeating what he has already said, I am of opinion that, in view of the findings of fact made by the Tariff Board and accepted by Noël J., the submission of the appellant as to the proper construction of the relevant words of the exempting clause necessitates the addition to that clause of words which it does not contain. It is sought to construe it as if it read:

— Safety devices and equipment *used solely* for the prevention of accidents
Cartwright J. in the manufacturing or production of goods.

The words which I have italicized do not appear in the exempting clause and for the reasons given by Noël J. I agree that this is not a case in which the Court can add those words or words similar thereto.

I would dismiss the appeal with costs.

Appeal allowed with costs, CARTWRIGHT J. dissenting.

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

Solicitors for the respondent, Consolidated Denison Mines Ltd.: Gowling, MacTavish, Osborne & Henderson, Ottawa.

Solicitors for the respondent, Rio Tinto Mining Co.: Osler, Hoskin & Harcourt, Toronto.