
KOOL VENT AWNINGS LIMITED }
(Defendant)

APPELLANT;

1957

AND

*Apr. 3
June 26

HER MAJESTY THE QUEEN (*Plaintiff*) RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Sales Tax—Whether awnings, canopies, marquees and umbrellas are “prepared roofings”—The Excise Tax Act, R.S.C. 1927, c. 179, ss. 86(1), 89(1), sched. III.

*PRESENT: Taschereau, Rand, Locke, Fauteux and Nolan JJ.

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The aluminum awnings, canopies, marquees and umbrellas manufactured and sold by the defendant for installation over windows, doorways, patios and house balconies are not "prepared roofings" within the meaning of sched. III of the *Excise Tax Act* and consequently are not exempt from sales tax under s. 89(1) of the Act.

The words "prepared roofings" mean materials such as paper and felt, specially prepared for roofing, processed or treated so as to make them capable of resisting the weather. They are generally manufactured and sold in rolls or sheets and may be installed on roofs. A roof constructed with the defendant's products would not possess the essential characteristics of being an integral part of the building and of being weatherproof.

APPEAL from the judgment of Fournier J. of the Exchequer Court of Canada (1). Appeal dismissed.

H. Neuman and *J. Rudner*, for the defendant, appellant.

D. H. W. Henry, Q.C., and *P. M. Ollivier*, for the plaintiff, respondent.

The judgment of the Court was delivered by

NOLAN J.:—This is an appeal from the judgment of the Exchequer Court of Canada (1) awarding the respondent the sum of \$37,064.66, representing sales tax payable by the appellant in respect of the sale of aluminum awnings, canopies, marquees and umbrellas during the period May 1, 1950, to May 31, 1953, together with penalties to November 30, 1953, amounting to \$2,383.81 and further penalties in the amount of \$2,470.90 from December 1, 1953, to the date of judgment.

For the purposes of the action the appellant made the following admissions:

1. That it produced or manufactured in Canada the goods referred to in Plaintiff's information;
2. That the said goods were sold and delivered to purchasers by Defendant in all the provinces of Canada except Ontario, from the 1st of May 1950 to the 31st of May 1953;
3. That total payment, either on a cash or deferred payment basis, has been received by Defendant covering the said total sales prices;
4. That if the sales of the said goods were taxable under the provisions of the *Excise Tax Act* and amendments thereto, which is specifically denied for the reasons mentioned in Defendant's statement of defence, Defendant is liable for the amount of taxes claimed in the present action.

The appellant is an incorporated company having its head office in Montreal. It manufactures, sells and installs metal coverings known as "Kool Vent" and is a licensee of

(1) [1954] Ex. C.R. 633, 54 D.T.C. 1158, [1954] C.T.C. 311.

a company in the United States of America known as Kool Vent of America. Its two manufacturing plants in Canada are situate in the Province of Quebec and in the Province of British Columbia.

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The material manufactured and sold by the appellant consists of strips of aluminum of varying widths, but generally about 7 inches wide. After being painted, the strips are cut into the required lengths and are assembled by being hooked or fastened together. They are then given the shape and slope specified in the order form and the sides are processed in the same way. They are installed over windows, doorways, patios and balconies.

The only point in issue on this appeal is whether the learned trial judge was right in holding that such aluminum awnings, canopies, marquees and umbrellas, manufactured and sold by the appellant during the period in question, were subject to the sales tax imposed by s. 86(1) of the *Excise Tax Act*, R.S.C. 1927, c. 179, as amended, or whether such products were exempt as being "Prepared roofings" within the meaning of sched. III of that Act.

Sections 86(1) and 89(1) of the *Excise Tax Act* read, in part, as follows:

86. (1) There shall be imposed, levied and collected a consumption or sales tax of eight per cent. on the sale price of all goods

(a) produced or manufactured in Canada

- (i) payable, in any case other than a case mentioned in subparagraph (ii) hereof, by the producer or manufacturer at the time when the goods are delivered to the purchaser or at the time when the property in the goods passes, whichever is the earlier, and
- (ii) payable, in a case where the contract for the sale of the goods (including a hire-purchase contract and any other contract under which property in the goods passes upon satisfaction of a condition) provides that the sale price or other consideration shall be paid to the manufacturer or producer by instalments (whether the contract provides that the goods are to be delivered or property in the goods is to pass before or after payment of any or all instalments), by the producer or manufacturer *pro tanto* at the time each of the instalments becomes payable in accordance with the terms of the contract;

* * *

89. (1) The tax imposed by section eighty-six of this Act shall not apply to the sale or importation of the articles mentioned in Schedule III of this Act.

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Under the heading of "CERTAIN BUILDING MATERIALS" in sched. III are included "Prepared roofings" and "Articles and materials to be used exclusively in the manufacture or production of the aforementioned building materials".

The appellant contended that the products in question were "Prepared roofings" within the meaning of sched. III of the *Excise Tax Act* and consequently exempt from taxation by reason of s. 89(1) of that Act.

The evidence adduced on behalf of the appellant was that these coverings installed over windows, doorways, patios and balconies were roofs and that such Kool Vent products were "Prepared roofings". On the other hand the evidence adduced by the respondent was that prepared roofing consisted of felt, rags or asbestos saturated with bitumen and was sold in a roll and that it was called prepared roofing because it could be laid without the assistance of an expert by simply spreading it over a wooden roof and fastening it down with nails.

The learned trial judge, in accepting the contention of the respondent, set out his views on the expression "Prepared roofings" in the following language (1):

In my mind, the words "prepared roofings" were well explained by the witnesses and I believe they mean materials such as paper and felt, specially prepared for roofing. They are processed or treated in a way that makes them capable of resisting the weather. These materials are generally manufactured and sold in rolls or sheets and may be installed on roofs by an uncomplicated procedure requiring very little skill. The felt or paper is ordinarily saturated in a bituminous preparation and when affixed is covered with asphalt or tar and sprinkled with sand or very fine crushed stone. There may be other prepared roofings with which I am not familiar, but the above will suffice to illustrate what I think is the meaning of "prepared roofings" and the defendant's goods do not fall within that meaning.

In my opinion the learned trial judge, on the evidence, correctly defined the expression as it is understood by persons familiar with the building trade and the appellant has failed to discharge the onus of showing that its products come within the exempting provision contained in sched. III of the *Excise Tax Act*.

Moreover, I agree with the contention of the respondent that the roof of a building is commonly understood to be an integral part of the building and to be weatherproof. I

(1) [1954] Ex. C.R. at p. 642.

accept the evidence adduced by the respondent that a roof constructed with the products of the appellant would not possess these essential characteristics.

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I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitor for the defendant, appellant: Jack Rudner, Montreal.

Solicitor for the plaintiff, respondent: F. P. Varcoe, Ottawa.

