

1939

* Feb. 20.

CANADA RICE MILLS LIMITED

AND

HIS MAJESTY THE KING

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Revenue—Sales tax—Special War Revenue Act—Liability for tax.

APPEAL by the defendant from the judgment of the Exchequer Court of Canada, Maclean J., President of the Court (1), holding the appellant liable for a balance of sales tax on rice and bags sold between the month of October, 1933 and the month of August, 1936, with penalties and interest, totalling \$12,320.12.

The defendant, a manufacturer of rice and bags, sold its entire output during the period in question herein to the Canada Rice Sales Company, a partnership, the members of which were with one exception only, shareholders in defendant company, and in that instance, the partner represented a limited company which was a shareholder in defendant company. The partnership purchased from defendant at a price lower than the current wholesale price, and sold at the current wholesale price. The partners divided any profits accruing to the partnership in the proportion of their holdings in defendant company. The defendant was assessed for sales tax upon the selling price of The Canada Rice Sales Company. The Exchequer Court of Canada held that the Canada Rice Sales Company was not an independent trading unit or business enterprise and that the defendant was liable for the sales tax and penalty assessed on the selling price of The Canada Rice Sales Company.

On the appeal to the Supreme Court of Canada, after hearing argument for the appellant, and without calling on counsel for the respondent, the Court delivered judgment orally, dismissing the appeal with costs. The Chief Justice, speaking for the Court, said:

“ It will not be necessary to call upon you, Mr. Varcoe.

* PRESENT:—Duff C.J. and Crocket, Davis, Kerwin and Hudson JJ.

(1) [1938] Ex. C.R. 257.

"The real point is whether or not the partnership was carrying on business for the company. That is a question of fact and we are quite satisfied that the learned President of the Exchequer Court had ample evidence before him upon which to base his finding, and we agree with his finding, which, in effect, we take to be that the partnership was carrying on business for, and as the agent of, the company.

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"The appeal will, accordingly, be dismissed with costs."

Appeal dismissed with costs.

Martin Griffin K.C. for the appellant.

F. P. Varcoe K.C. and *W. R. Jackett* for the respondent.
